

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Estonia****-- 2020 --**

This report is submitted by Estonia to the Competition Committee FOR INFORMATION.

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Estonia

Introduction

1. It is a pleasure to present the Authority's annual report, which provides an overview of our activities in 2020. It is typical of reports covering the last year to emphasise the exceptional nature of the year 2020. In the last year, competition issues were not the main focus for obvious reasons; however, economic life continued despite the pandemic and free competition is still one of the main pillars of the economy.

2. A year ago, in mid-March, it was not possible to foresee what the situation would be like with the economy closing down — nothing like that had ever happened before. Naturally, the worst was feared, with the 2008–2009 crisis still fresh in memory – the financial crisis of those years hit Estonia particularly hard and led to the economy declining as much as 14% in 2009. Fortunately, the economic downturn last year was 'just' 2.9 percent and Estonia is among the best in the EU with that result. Crises are different and a systematic financial crisis is very different from a health crisis. Predicting the future is a thankless job and the only way to make predictions is to look for an analogy in history. The Spanish flu claimed millions of lives 100 years ago, but it did not shake the economy. It can even be said that it led to the economic prosperity of 1920s, which ended in 1929 with a stock market crash. The Great Depression, which started in 1930 and lasted for almost a decade, was brought forth by economic reasons. Therefore, there is still reason to be optimistic about the future and to hope that the health crisis can be brought to an end this year. Economy will continue to move forward and it is important to keep in mind that free competition is the cornerstone of economic development. It is particularly important to recall this in the context of the state aid currently provided. It cannot be denied that aid is needed in certain circumstances and by some sectors, but in the end, economic development is still driven by free competition.

3. From among last year's activities, the competition analyses of pharmaceutical and telecommunication sectors should be highlighted. The first has been under our heavy scrutiny also in the past, and the main recommendation in this area is to apply the principles of free market economy more. At the same time, the pricing of medicinal products is highly important for the consumer and much could be done in terms of price regulation. In the field of telecommunications, it is good to note that the prices of Internet services in Estonia are generally at a reasonable level; the situation in this sector can, however, still be improved in terms of price regulation.

4. An important indicator of economic activity is the number of concentrations. For example, if in 2009 and 2010, respectively, only 17 and 10 concentration applications were submitted, then in 2019 and 2020, the number of applications was 45 and 36, respectively. Thus, the crisis of ten years ago is not comparable to our situation today. It is worth noting the concentration of cinemas as the most important procedure, this has also been covered in more detail as part of this annual report. Although the entertainment sector has been hit hard during the pandemic, a monopoly cannot be allowed in a sector that is so important to consumers. After all, we still want to go to the cinema and we will continue to do so; watching movies on TV or computer at home is not a substitute for going to the cinema – it is also very important that consumers have a choice and thus more favourable prices.

5. Regarding energy, as well as economic regulation, green transition and the aim of achieving carbon neutrality by 2050 cannot be ignored either. It is one of the greatest technological revolutions in the history of mankind and a precise plan and objective have been put in place for achieving it. It is important for the consumer that this takes place under conditions of free competition and that the price of energy would not increase. In light of this, the report also covers important issues such as subsidies for renewable energy and security of electricity supply. The basic documents for the EU's green transition have also repeatedly emphasised that the objectives must be achieved within the framework of free competition.

6. The energy sector will be covered in more detail in the overview of electricity and gas markets published on our website, and during this year we will once again publish an overview of the results of price regulation; we do this every three years. It can already be confirmed today that we have been successful in this area. For example, heating and electricity network fees have remained unchanged or even decreased over the last decade. The same tendency can also be seen in the field of other utilities, for example, the price of water in Tallinn remained unchanged from 2010, until the price fell significantly for consumers at the end of the year prior to the previous year.

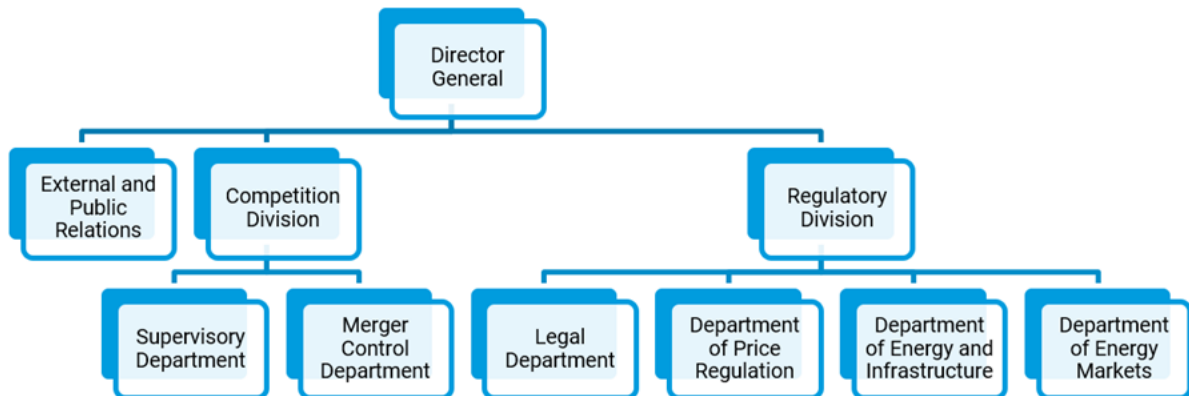
7. In conclusion, I am able to reaffirm that the aim of our work is to ensure free competition and consumer welfare; we will continue to work towards this objective in the current year.

1. About the Authority

8. The Competition Authority exercises supervision in the fields of competition, electricity, natural gas, district heating, postal services, public water supply and sewerage, railways, and ports. In addition, the Authority settles disputes regarding airport fees and complaints of airport users. The Authority is in the area of government of the Ministry of Justice.

9. The functions of the Authority are divided between two divisions. **The Competition Division** exercises competition-related supervision, control of concentrations of undertakings, analyses the competitive situation, and raises competition-related awareness. **The Regulatory Division** implements price regulation and market supervision in the markets of electricity, natural gas, district heating, and water. The focus of the division is on controlling the markets in the above-mentioned sectors as well as in the rail and postal services market. Additionally, the Authority resolves disputes related to airport and port fees. **The External and Public Relations Department** is responsible for ensuring effective support services for the Authority (including international and public relations, management of human resources and training coordination, property and document management).

Figure 1. Structure of the Competition Authority



10. The Competition Authority employed **39** people as of the end of the year 2020, of which 36 were officials and 3 were employees. The Authority employed 70% women and 30% men. The average age of a staff member was 46 years and the average years of service at the Authority was 13 years.

11. Most staff members have higher education in economics or law. In addition, there are officials with higher education in disciplines such as thermal engineering, public administration, materials technology.

12. Over the years, the Competition Authority has placed great emphasis on creating an excellent working environment both physically and in terms of organisational culture. Thus, it was great to be selected for the Family-Friendly Employer Label Programme, which is a good opportunity to analyse all aspects of employee experience and to promote job satisfaction and commitment, as well as to be more effective in carrying out the Authority's core functions. The programme covers various categories related to the employee experience, from recruitment and flow of information to organisational climate and promotion of health.

2. Cooperation

13. The Authority participates in the work of various field-based working groups and networks, actively participating in sectoral discussions. Knowledge and experience are shared with competition agencies and sector regulators of various countries in the form of bilateral cooperation, but most of the international cooperation is achieved via respective cooperation networks and organisations.

14. **The European Competition Network (ECN)** is the forum for cooperation between the European Commission's Directorate General for Competition and the national competition authorities. As all the members of the network apply the European competition rules, it is necessary for the competition authorities to pool their experiences and share best practices in order to ensure the effective and consistent application of these rules.

15. **European Competition Authorities (ECA)** is a forum of discussion for the competition authorities in the EU Member States, European Commission and the EFTA States to discuss competition-related problems and share experiences.

16. **OECD Competition Committee** is a committee of the Organisation for Economic Cooperation and Development, focusing on competition issues in the area that includes all 35 members of the organisation.
17. **International Competition Network (ICN)** is a global network with members from every region in the world ranging from small agencies to large ones with different resources and capabilities. The network is an informal venue, and it is mostly addressed to maintain contacts and create convergence towards sound competition policy principles and application thereof.
18. **Agency for the Cooperation of Energy Regulators (ACER)** has the objective of centrally furthering the process of harmonising EU network and market regulation with the aim of increasing competition. The Agency coordinates regional and trans-regional initiatives promoting market integration. It monitors the work of the European Network of Transmission System Operators for Electricity and the European Network of Transmission System Operators for Gas, in particular their EU-wide network development plans.
19. **Council of European Energy Regulators (CEER)** was established for the cooperation of the independent energy regulators of Europe. The Council seeks to facilitate the creation of a single, competitive, efficient, and sustainable EU internal energy market.
20. **Energy Regulators Regional Association (ERRA)** is a voluntary organisation comprising independent energy regulatory bodies primarily from the Central European and Eurasian region, but also the United States of America, Cameroon, and ECOWAS, the association of state regulatory bodies of Africa. ERRA was founded in 2000 with the objective of exchanging information among energy regulatory bodies.
21. The aim of the **OECD Network of Economic Regulators** is to share experiences and good practices in different sectors of economic regulation but to also compare the efficiency and independence of regulatory bodies.
22. The objective of **Regional Gas Market Coordination Group** is to facilitate an effectively functioning common regional gas market in the Baltic States and Finland. The aim of the regulatory bodies is to develop a unified pricing scheme based on input-output points.
23. **European Water Regulator (WAREG)** was established under the leadership of 12 European water regulatory or development organisations. The WAREG working group on regulation is looking at the implementation of benchmarking in the water regulation of different countries, and the institutional working group is addressing the issue of affordability of water services.
24. **The Independent Regulators' Group-Rail (IRG-Rail)** is a group of independent national rail regulators made up of representatives from 29 countries. IRG-Rail is working on changes to the legislation planned by the European Commission and makes the necessary addition or amendment proposals.
25. **The European Network of Rail Regulatory Bodies (ENRRB)** is an institution set up by the European Commission to bring together national rail regulatory bodies and it includes representatives from the 26 Member States of the European Union. The main task of the ENRRB is to assist the European Commission in the preparation of delegated acts, to facilitate active cooperation and exchange of information between national rail regulatory bodies.

26. **The European Regulators Group for Postal Services (ERGP)** has 28 EU Member States as its members. The role of the ERGP is to advise the European Commission on postal services and to promote cooperation and communication between the Member States and the European Commission.

27. The role of the **European Committee of Postal Regulation (CERP)** is to examine postal regulation issues in a European context, while also considering regulatory changes. CERP also assesses the impact of international regulation on countries and liaises with relevant international postal regulatory organisations.

28. European Working Groups of the **Universal Postal Union (UPU)**. UPU is the main form of cooperation between the parties in the postal sector. The UPU also acts as an advisor and contact point, providing technical support as needed. UPU establishes rules for international correspondence and makes recommendations to promote the growth of letter, parcel, and financial services and to improve the service quality for users.

29. The Competition Authority cooperates most closely with colleagues from neighbouring countries. Annual meetings are held with Latvian, Lithuanian, and Finnish colleagues from the corresponding competition authorities as well as energy and postal regulators.

30. In addition to external cooperation, the promotion of national cooperation is equally important. This applies to public sector bodies as well as to business operators and business associations.

31. Due to the emergency situation caused by the pandemic, 2020 required some adjustment in terms of external relations. Thus, the Competition Authority also organised traditional international electricity and gas market forums virtually.

3. Competition supervision

32. The competition supervisory activities are generally divided to two major parts: solving cases related to competition-restricting agreements and conducting proceedings related to the activities of undertakings in a market dominant position. For the Competition Authority, that means conducting criminal, misdemeanour, or administrative proceedings. In addition, the Authority analyses the competitive situation in different economic sectors and, if necessary, makes proposals to respective ministries to improve the competitive situation.

3.1. Analysis of pharmaceuticals price regulation

33. The Competition Authority conducted an analysis of the competition situation, the objective of which was to assess the functioning and effectiveness of the price regulation of medicines (price limits of medicines) in Estonia. For the analysis, three major pharmaceutical wholesalers and about ten manufacturers provided information to the Competition Authority. The Authority also asked for opinions from the State Agency of Medicines, the Estonian Health Insurance Fund, and the Ministry of Social Affairs.

34. Retail and wholesale distribution of medicinal products is subject to mark-up limits, above which the wholesaler or the pharmacy may not mark up the price of the medicinal product. The Authority randomly checked the three-month settlements between pharmaceutical manufacturers and wholesalers, as well as the concluded agreements and their annexes. The analysis of the data showed that the purchase price at

which the wholesaler purchases medicinal products can be manipulated with. In practice, the pharmaceutical manufacturer often reimburses part of the purchase price to the wholesaler; this is done in the form of various bonuses or fees for additional services (so-called kickbacks). However, mark-ups are calculated on the basis of the higher price indicated on the original purchase invoice. This means that the price of a medicinal product is higher than it should be according to the price regulation, and thus the end user pays more for medicinal products. Additionally, if the medicinal product is in the list of discounted medicinal products the purchase of which is reimbursed by the Estonian Health Insurance Fund, more health insurance money is spent on the medicinal product. Non-functioning price regulation also has a negative effect on competition, which can be seen in the retail prices of medicinal products equalising and making pharmacies more dependent on the wholesaler who supplies medicinal products to them.

35. Despite the fact that the above-mentioned increase in sales revenue is contrary to the purpose of the regulation and also has other negative effects, no state agency has the competence to monitor the development of the wholesale purchase price. The Competition Authority has made the proposal to the Ministry of Social Affairs to establish rules for pricing without gaps and a functioning supervision system, thereby replacing the provisions of subsections 15 (1)–(4) of the Medicinal Products Act.

36. The Competition Authority's analysis showed that the current system of mark-up limits for medicinal products is clearly deficient and its supervision is fragmented. In order to regulate the pricing of medicinal products, appropriate bases for price regulation need to be laid down and an economic regulator with clear supervisory powers needs to be established. The aim is to ensure the economic availability of medicinal products to the patient and a fair price based on the actual purchase price of the medicinal product.

3.2. Activities of the Competition Authority in the field of electronic communications

37. Over the last few years, the Authority has been more active in the telecommunications markets due to ongoing supervision proceedings. In its competition related supervision activities, the Authority has paid attention to the activities of Telia Eesti AS (Telia) in sharing cable conduit and customer access resources with its competing telecommunications companies and the transparency of technical conditions issued by Telia to parties requesting them.

38. When reviewing requests for supervision in the field of electronic communications, the Competition Authority must consider the fact that Telia is subject to special regulations of the Consumer Protection and Technical Regulatory Authority, which is unreasonable and often not possible to be duplicated by competition related supervision. Thus, it is all the more important to ensure non-fragmented and effective regulation in the area of access to electronic communications infrastructure. In turn, the competitive situation in the declining communications services markets, the future opportunities of consumers and the capacity of Estonian entrepreneurs and the state in the field of digital development in general depend on this.

39. The Competition Authority issued an opinion on a draft decision on the definition, analysis, designation of a business operator with significant market power on a wholesale local access and imposition of obligations on that operator prepared by the Consumer Protection and Technical Regulatory Authority (draft decision). The notes of the Competition Authority are included in the annex to the decision of the Consumer Protection and Technical Regulatory Authority. The Competition Authority provided generally positive feedback to the measures envisaged in the draft decision of the

Consumer Protection and Technical Regulatory Authority. The Authority considered that the proposed access obligation to the digital floor plan of Telia's communications network and the obligation imposed on Telia to divide the 100 mm opening of the communication pipe into 12 imaginary parts instead of the current 6 installation sites would certainly help to improve competing communications operators' access to cable conduits. Additionally, based on its experience in competition related supervision, the Competition Authority wanted to contribute to the supplementation of the draft decision in order to preclude questions and disputes that could become an obstacle to the purposeful implementation of the decision.

40. The notes of the Competition Authority are largely related to Telia's practice in determining the free capacity in communication piping. According to the Authority, further regulation was needed for reservations and Telia's own future needs, the procedure for requesting access and finding alternatives, the lack of transparency in the verification of the accuracy of register data, and the costs of on-site inspections, among other things.

41. A separate issue is the construction of new cable conduits on newly-developed properties, regarding which the Consumer Protection and Technical Regulatory Authority has also noted a competition problem in the draft decision. In short, the question is how to avoid monopolistic pricing in the future and create the necessary conditions for the property owner to have a choice between competing communication service providers. It is possible to examine the positions submitted by the Competition Authority on the draft decision of the Consumer Protection and Technical Regulatory Authority in more detail through the public document register of the Competition Authority.

42. The Competition Authority also terminated the supervision proceedings concerning Telia's potentially anti-competitive practices in connection with new developments. The issue was related to a situation where the property was to be connected to Telia's main cable conduit in order to ensure physical access to the customer for the provision of communication services. The proceedings started with allegations made to the Authority that Telia would issue technical specifications to applicants, which would require the installation of a 50 mm communication pipe from the communication well to the building.

43. The Competition Authority forwarded a preliminary position and a precept warning to Telia, to which Telia responded and proposed its own measures to improve the competitive situation. The amendment was based on clarifying to the applicant that the choice of the communication pipe diameter is the decision of the property owner and that the selection of the communication pipe diameter will among other things establish how many communications undertakings can use the pipe to connect their cable to the building. Telia upgraded its online environment accordingly. The following notice will be visible to the applicant before requesting the technical specifications: 'The choice of the diameter of the communication pipe is the decision of the property owner. The diameter of the communication pipe chosen establishes, among other things, how many communication cables can be installed in the communication pipe and how many communications undertakings have the potential to enter the building using their cable.' The notice clarifies that the width of the communication pipe is not determined by Telia, it is instead the choice of the applicant themselves, this in turn determines the access of other communications undertakings and the property owner's future choices regarding service providers.

44. The Competition Authority considered the change to be an improvement of the competitive situation and terminated the supervision proceedings.

3.3. Competition Authority's assessment of the telecommunications market

45. The Competition Authority observed the Estonian telecommunications market in order to assess several developments related to the telecommunications sector. The assessment concerns in particular the wholesale and retail prices of broadband services and the provision of access to these services through cable conduits.

46. The assessment shows that the retail prices of mobile internet in Estonia are one of the most favourable when compared to the European average. At lower speeds, Internet prices of the fixed network are lower or at the same level as in neighbouring countries (Lithuania, Latvia, Finland, Sweden and Denmark) and are not higher than the EU average. Estonia is in a rather good state compared to the rest of Europe in terms of Internet connection that meets the needs of regular consumers.

47. However, at higher speeds (100 Mbit/s and above), internet prices for certain services are higher than the European average. There is also continued concern about the entry into service of high-speed fixed broadband network, which, despite the widespread availability of very high-capacity networks, is well below the EU average. For example, 83% of consumers have access to high-speed internet, while only 14% use it.

48. The assessment shows that the development of 5G high-speed internet service requires the existence of a fixed network because the service cannot be provided only on the basis of mobile communications. In the telecommunications markets, access to the infrastructure of the undertaking in control of essential facilities, including cable conduits, is crucial, and the Authority considers the main issue to be the existence and transparent availability of available capacity in the cable conduits.

49. In its assessment, the Competition Authority found that the sector-specific obligations imposed on Telia Eesti AS for access to cable conduits are not effective enough to ensure the functioning of competition. Ensuring effective regulation is crucial for access to electronic communications infrastructure.

50. In order to regulate prices effectively, it is essential that the regulator not only defines the methodological bases of pricing, but also later checks all costs and calculations at the basic level. Therefore, the fundamental choices of pricing by undertakings in this market should also be accompanied by a detailed cost accounting review by the Consumer Protection and Technical Regulatory Authority.

51. Due to the range of services of communications undertakings, including Telia, being very wide, it is essentially extremely difficult or even impossible to control how costs are allocated to the wholesale level, i.e. services on the regulated market, and the retail level, i.e. free market services. Therefore, the Competition Authority recommends that the Consumer Protection and Technical Regulatory Authority, when choosing different pricing methodologies, would also assess how data can be obtained from the regulated companies and how efficient supervision of costs can be conducted. The Agency recommends supplementing the Building Code and issues that require separate analysis regarding the construction of a fixed communications network in rural areas.

3.4. Fine issued to Piletilevi for contracts containing loyalty discounts

52. The Competition Authority fined AS Piletilevi in the amount of 10,000 euros on 8 July 2020 for abuse of dominant position pursuant to subsection 73⁵ (2) of the Competition Act penalising the legal person for violation of subsection 16 (4) of the Competition Act.

53. According to the decision in misdemeanour proceedings, AS Piletilevi had entered into ticket sales brokerage agreements with event organizers between 1 January 2017 and 21 August 2019, which included, among other things, conditions for loyalty discounts, which allowed AS Piletilevi to tie the customer to receiving a price discount by purchasing the service only from AS Piletilevi. The respective conditions were included in two clauses of AS Piletilevi's ticket sales brokerage agreement, one of which obliged a customer of AS Piletilevi to grant Piletilevi the exclusive right to ticket brokerage for the event, otherwise commissions would apply according to the basic price list, and the other condition provided for a contractual fine of 190 euros for breach of contract.

54. It was the opinion of the Competition Authority that by entering into agreements that included terms for loyalty discounts, AS Piletilevi obliged the other party to the contract to assume an additional obligation not related to the object of the agreement within the meaning of subsection 16 (4) of the Competition Act. This means that the organizer of the event had to turn to AS Piletilevi for the provision of all the correspondingly required service, because otherwise the basic price lists of the service, i.e. higher prices, would have applied. Due to such conditions, the purchasing party could not freely decide how many of the tickets for the event would be brokered by AS Piletilevi and how many by other companies providing ticket brokerage services — these undertakings primarily being competitors of AS Piletilevi. AS Piletilevi tied the majority of customers purchasing the respective service through the condition for loyalty discounts.

55. Pursuant to the decision in misdemeanour proceedings, by entering into contracts with the condition for loyalty discounts described above, AS Piletilevi also ensured that their client had to broker all tickets for the event through AS Piletilevi and could not use the services of other companies that also operated in the ticket sales brokerage market and competed with AS Piletilevi. According to the case law of the Supreme Court of Estonia, an undertaking in a dominant position is prohibited from tying customers through the obligation to have all or most of their needs met exclusively by the said undertaking in a dominant position, i.e. the application of loyalty discounts or loyalty bonuses. According to the decision, this is inherently anti-competitive behaviour which may have an effect of closing the market up.

56. In this case, the clientele of AS Piletilevi consisted of event organisers, i.e. legal persons that organised festivals, concerts, sports events and other events. The website www.piletilevi.ee, managed by AS Piletilevi, had grown over the years into the main ticket sales channel in Estonia, through which consumers chose and bought tickets for events. Due to its great popularity among consumers, AS Piletilevi had also become an important business partner for the majority of event organizers. According to the Competition Authority, AS Piletilevi held a dominant position in the market of ticket sales brokerage services for various events in 2017-2019. During this period, Piletilevi's competitors were primarily Piletimaailm managed by the Drama Theatre, Fienta Ticketing OÜ, Ticketer OÜ and Mandarin Production OÜ.

57. In imposing the punishment, the Authority primarily considered the effect of the COVID-19 outbreak on the activities of AS Piletilevi, as due to the emergency situation, ticket sales for various events in Estonia stopped in the period from March to at least May 2020. The assumption of obligations by AS Piletilevi in the supervision proceedings was also taken into account; as a result of this, the contracts entered into by AS Piletilevi do not include the terms of the loyalty discount in the future.

3.5. Criminal case of Pärnu land improvers

58. The Competition Authority conducted criminal proceedings against OÜ Hetver, AS Projekteerimisbüroo Maa ja Vesi and their representatives on suspicion of a pricing and market sharing agreement pursuant to clauses 400 (2) 1) and 3) of the Penal Code.

59. The activities took place within the framework of the third round of applications of the Rural Development Plan measure 4.3.2 of the Agricultural Registers and Information Board (ARIB) to support the development and maintenance of agricultural and forestry infrastructure. Under this measure, farms could apply for support from the ARIB, especially for the restoration of drainage systems and access roads located on profit yielding land.

60. OÜ Hetver and AS Projekteerimisbüroo Maa ja Vesi were suspected of coordinating and agreeing on the conditions and prices for the preparation of price offers for four procurements in October 2017 within the framework of the ARIB round in such a way as to ensure that the agreed undertaking would be awarded with the contract with the offers being comparable. In the course of that activity, the undertakings sent each other also the signed price offers quotations prepared by them.

61. The criminal proceedings were terminated against OÜ Hetver, AS Projekteerimisbüroo Maa ja Vesi and the three natural persons representing them in accordance with the principle of opportunism. The persons paid a total of 4,100 euros to the public revenues.

3.6. Assessment of dominant influence in the context of the pharmacy reform

62. On 1 April 2020, the five-year transitional period of the pharmacy reform was completed, as a result of which the retail and wholesale of medicinal products had to be separated (the ban on vertical integration entered into force on 9 June 2014) and the right to operate pharmacies had to remain with pharmacists only (with the requirement for pharmacist ownership entering into force from 20 March 2015).

63. In the large pharmacy chains not owned by pharmacists, there were about 286 main and branch pharmacies in need of reform, these pharmacies were divided between the four largest chains as follows:

- Terve Pere Apteek OÜ operating under the APOTHEKA brand – 89 pharmacies;
- Apteek Eesti OÜ operating under the BENU brand – 82 pharmacies;
- Pharma Group OÜ operating under the SÜDAMEAPTEEK brand – 65 pharmacies;
- Euroapteek OÜ operating under the EUROAPTEEK brand – 50 pharmacies.

64. Pursuant to subsection 42 (5) of the Medicinal Products Act, shareholders or members of a private legal person holding a general pharmacy authorisation must not include persons holding a wholesale distribution or manufacturing authorisation or a health service authorisation or undertakings related to these undertakings via dominant influence for the purposes of the Competition Act or persons holding the right to prescribe medicinal products or holders of a professional activity licence of a veterinarian. The State Agency of Medicines has the right to request that the Competition Authority identify an undertaking related via dominant influence.

65. Subsection 42 (5) of the Medicinal Products Act in conjunction with subsection 2 (4) of the Competition Act places the burden of proof for establishing the existence of

a dominant influence on the Competition Authority. This means that the Competition Authority must be able to show whether or not the undertakings concerned are related through a dominant influence.

66. In 2020, the Competition Authority processed the State Agency of Medicines' applications regarding 76 pharmacies; the applications included checking the data entered in the business register and the register of pharmacists (whether the company's shareholder is a pharmacist) and reviewing franchise agreements. The Competition Authority analysed the franchise agreements of four pharmacy chains (APOTHEKA, EUROAPTEEK, SÜDAMEAPTEEK, BENU) and the codes of conducts (manuals) that are an integral part thereof, based primarily on the information available to the Competition Authority and pursuant to the provisions of subsections 41 (3) and 42 (5) of the Medicinal Products Act and subsection 2 (4) of the Competition Act.

67. Franchise agreements reviewed by the Competition Authority can be considered to be agreements specific to franchises where the terms and conditions agreed between the franchisor and the franchisee comply with the general principles of franchising and protect only trademarks and intellectual property and where the parties communicate only to ensure the operation of the franchise and the protection of the franchise concept.

68. Although in the case of a franchise the franchisee's discretion to protect the franchisor's interests is limited to a certain extent and the franchisor also has the possibility to intervene to a certain extent, competition law does not automatically regard the franchisor and the franchisee as related undertakings. This is only the case if the franchisee is independent in making its strategic decisions and bears its own business risk. It is therefore important that the terms and conditions agreed in the franchise agreements are specific to the franchise.

69. Pursuant to the definition of dominant influence provided in subsection 2 (4) of the Competition Act, the most common way of acquiring dominant influence is generally the acquisition of shares or assets. Whether a transaction actually results in the acquisition of a dominant position depends on a number of legal and/or factual aspects. A dominant influence can also be acquired on the basis of a contract, but only if the management, funds and assets of another undertaking are subjected to the same rights of the ownership of shares or assets, i.e. dominant influence may arise from both ownership and the right to use all or part of the assets of the undertaking. Such an agreement may give rise to a dominant influence if the person controlling the management has full rights to make strategic business decisions. In view of these considerations, franchise agreements do not normally give the franchisor control over the franchisee. When reviewing franchise agreements, the Competition Authority ensured that the franchisee had retained veto rights in making strategic business decisions. In the course of the proceedings, the parties to the agreements made a number of amendments on the proposal of the Competition Authority, and thus the franchise agreements were brought into compliance with competition law.

70. In conclusion, it is important to note that the assessment of the dominant influence of pharmacies and wholesalers during the administrative proceedings with the use of the available procedural means is extremely limited in practice. The regulation provided for in the Competition Act is designed to resolve certain competition law issues and may not be suitable for situations where the parties may try to conceal aspects giving rise to dominant influence.

71. Following the pharmacy reform, a form of cooperation has emerged on the pharmacy market that is not linked by ownership or dominant control but through which wholesalers and pharmacies continue to be linked to some extent.

4. Control of concentrations

72. The purpose for control of concentrations is to ensure conditions of competition in product markets and market structures open to competition. The Competition Authority will intervene in a concentration only if the concentration may significantly impede effective competition in the Estonian markets or in a substantial part thereof, especially as a result of the creation or strengthening of a dominant position in the market. The primary way to avoid restriction of competition is to impose conditions on the parties to the concentration to fulfil their obligations, such as the obligation to divest part of their business, etc. However, a concentration may be prohibited if the obligations taken are not sufficient to prevent restrictions of competition or if the parties to the concentration do not propose assuming obligations. The parties to the concentration also have the opportunity to abandon the proposed concentration. If the parties to the concentration abandon the concentration, the Competition Authority shall terminate the concentration proceedings.

73. The concentration must be notified to the Competition Authority after the conclusion of the agreement, the conclusion of a transaction, or act for the acquisition of control or the announcement of a public offer, but before the entry into force of the concentration. A concentration may also be notified to the Competition Authority as soon as the parties indicate with sufficient certainty their intention to complete the concentration. The control applies to concentrations between undertakings if the total turnover of the parties in Estonia in the previous financial year exceeds 6,000,000 euros, and the turnover of at least two parties to the concentration in Estonia each exceeds 2,000,000 euros. A concentration that must be controlled by the Competition Authority may not be enforced until a decision approving the concentration has been made.

74. During 2020, the Competition Authority had a total of 38 concentration control proceedings, of which 36 concentration notifications were submitted in 2020, and 2 notifications were transferred from 2019. At the same time, 28 decisions to grant permission to concentrate were made within the 30 days prescribed by law, four concentration proceeding decisions were made to initiate supplementary proceedings. Supplementary proceedings will be carried out to gather additional information and to determine whether there are circumstances restricting competition in case of concentration of the subject to control. According to the law, the length of supplementary proceedings may be up to four months. In the course of supplementary proceedings initiated in 2020, the parties to the concentration abandoned the concentration in one case (MM Grupp OÜ and Forum Cinemas OÜ), and in three cases (Alexela Varahalduse AS, OÜ 4E Biofond and Eesti Biogaas OÜ; aktsiaselts SEMETRON and osäühing InBio; USS Security Eesti AS and SECURITAS EESTI AKTSIASELTS) a permission to concentrate was granted by the Competition Authority.

4.1. By type of concentration, the concentrations were as follows:

75. 32 concentrations involved the acquisition of control by an undertaking over another undertaking or a part thereof (clause 19 (1) 2) of the Competition Act);

76. 4 concentrations concerned the acquisition of joint control by undertakings over a third undertaking or a part thereof (clause 19 (1) 3) of the Competition Act).

77. During the year, the Competition Authority processed concentrations in the following economic sectors:

- renting of commercial real estate
- sale of electronic and IT equipment
- forwarding services
- construction of buildings
- manufacture of concrete construction products
- sale of construction foams
- retail sale of household appliances, kitchen appliances, stationery and toys
- biomethane production
- non-life insurance services
- wholesale and retail of food and consumer goods
- provision of healthcare services
- production and sale of heat-treated solid wood products
- heat production and distribution
- wholesale of video surveillance products
- provision of general cleaning services
- import and sale of medical devices and supplies
- crop production and raw milk production
- retail sale of alcoholic beverages and tobacco products
- gambling
- screening and distribution of films in cinemas
- provision of security services
- production and sale of wood chips
- road construction, sale and production of bitumen, road maintenance
- vehicle rental service
- wholesale and storage of motor fuels
- wholesale and retail of beauty and cosmetics products
- programming services.

4.2. Question of timeliness in the court action concerning the concentration of OÜ R-S Valdus and Aktsiaselts Väätsa Prügila

78. In 2020, the so-called dispute over timeliness concerning the decision prohibiting the concentration of OÜ R-S Valdus / Aktsiaselts Väätsa Prügila was resolved, this provided additional clarity regarding the interpretation of subsection 28 (3¹) of the Competition Act.

79. The Competition Authority had prohibited the merger of OÜ R-S Valdus and Aktsiaselts Väätsa Prügila with its decision No. 5-5/2018-058 of 21 September 2018. OÜ R-S Valdus filed an appeal with the Tallinn Administrative Court to annul the decisions of the Competition Authority and to establish the admissibility of the concentration. OÜ R-S Valdus also found that the Competition Authority did not make a decision prohibiting the concentration in a timely manner. In the court proceedings, the dispute over the timeliness of the decision was separated from the dispute over the substance of the decision.

80. The dispute over the term of the decision arose from the question of how to interpret subsection 28 (3¹) of the Competition Act only after the merger proceedings. In a situation where the Competition Authority has come to the conclusion in the course of proceedings that the concentration may significantly distort competition and has notified the parties to the concentration pursuant to subsection 28 (1) of the Competition Act, the parties to the concentration have the opportunity to propose to assume obligations.

81. Pursuant to subsection 28 (3¹) of the Competition Act, the term of the concentration proceedings is suspended if the obligations to be assumed require additional analysis or if the parties to the concentration agree to amend or supplement the obligations to be assumed. The proceedings shall be suspended as of the date following the date of sending the relevant notice to the Competition Authority, and the term shall continue to run from the day of receipt of the offer. The term of the proceedings may be suspended once and for up to two months. The purpose of the provision is to allow an opportunity to analyse in more detail the impact of the commitments on the prevention of distortion of competition and to prevent situations where the lack of time does not allow to make the most appropriate decision considering the circumstances of the case. At the same time, extending the term is subject to the agreement of the parties to the concentration and thus does not harm the interests of the undertaking.

82. In the present case, the dispute over timeliness essentially shifted to the question whether, in a situation where the Competition Authority had suspended a proposed concentration and the parties to the concentration submitted new, alternative obligations (clearly expressing their willingness to accept previously submitted obligations and amend proposed obligations), the term of the proceedings would continue to run from the submission of a proposal for the final (amended or supplemented) obligations or any alternative obligations. The Competition Authority was of the opinion that the term of the proceedings can continue after notice has been given of the results reached during the analysis of the proposed obligations if the party to the concentration submits a new final proposal for obligations to be assumed.

83. Both the Tallinn Administrative Court and the Tallinn Circuit Court supported the position of the Competition Authority and found that the Competition Authority had made a decision prohibiting the concentration of OÜ R-S Valdus and Aktsiaselts Väätsa Prügila in a timely manner.

4.3. Concentration of MM Grupp and Forum Cinemas OÜ

84. The Competition Authority was processing a notification from of a concentration during the period of 21 September 2020 to 19 February 2021 according to which MM Grupp OÜ intended to acquire control over Forum Cinemas OÜ. The Authority terminated the concentration proceedings due to MM Grupp OÜ deciding to abandon the concentration. Prior to that, the Authority had reached the conclusion that the concentration was likely to significantly impede competition.

85. Both parties to the concentration are screening films in cinemas. Apollo Kino OÜ, which is under the control of MM Grupp OÜ, operates 10 cinemas in Estonia, including four cinemas in Tallinn (Solaris Centre, Mustamäe Centre, Ülemiste Centre and O'Learys Cinema Restaurant in Kristiine Centre), two cinemas in Tartu and one cinema in Pärnu, Saaremaa, Narva and Jõhvi. Forum Cinemas OÜ operates 3 cinemas in Estonia (Coca-Cola Plaza in Tallinn, cinema Ekraan in Tartu and cinema Centrum in Viljandi). MM Grupp OÜ also distributes motion pictures. Distribution of motion pictures is to the upstream market of the screening of films in cinemas, i.e. a seller-buyer relationship exists.

The activities of the parties to the concentration in screening films in cinemas overlap geographically in Tallinn and its vicinity and in Tartu. In assessing the competition situation in Tallinn and its vicinity, the Competition Authority included the cinema in Viimsi, which is near Tallinn, on the same product market as other cinemas. The following tables show the market shares of the parties to the concentration and other market participants.

4.4. Market shares in Tallinn and its vicinity

Table 1.

	Number of cinemas			Number of auditoriums			Number of seats			Number of visitors			Ticket revenue			Total sales revenue		
	2018	2019	2020	2018	2019	2020	2018	2019	2020	2018	2019	2020	2018	2019	2020	2018	2019	2020
CC Plaza	38%	40%	40%	40%	43%	43%	43%	45%	45%	[40-50]%	[40-50]%	[50-60]%	[40-50]%	[40-50]%	[50-60]%	[40-50]%	[40-50]%	[50-60]%
Solaris	13%	10%	10%	31%	23%	23%	32%	24%	24%	[30-40]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[40-50]%	[30-40]%	[30-40]%
Cinamon	13%	20%	20%	9%	19%	19%	8%	19%	19%	[5-10]%	[10-20]%	[0-5]%	[5-10]%	[10-20]%	[0-5]%	[5-10]%	[10-20]%	[0-5]%
Viimsi	13%	10%	10%	11%	9%	9%	8%	6%	6%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Artis	13%	10%	10%	6%	4%	4%	5%	4%	4%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Sõprus	13%	10%	10%	3%	2%	2%	4%	3%	3%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

4.5. Market shares in Tartu

Table 2.

	Number of cinemas			Number of auditoriums			Number of seats			Number of visitors			Ticket revenue			Total sales revenue		
	2018	2019	2020	2018	2019	2020		2018	2019	2020	2018	2019	2020		2018	2019	2020	2018
Apollo	25%	40%	50%	43%	53%	75%	Apollo	25%	40%	50%	43%	53%	75%	Apollo	25%	40%	50%	43%
Forum	25%	20%	25%	14%	12%	17%	Forum	25%	20%	25%	14%	12%	17%	Forum	25%	20%	25%	14%
Cinamon	25%	20%	0%	36%	29%	0%	Cinamon	25%	20%	0%	36%	29%	0%	Cinamon	25%	20%	0%	36%
Elektriteater	25%	20%	25%	7%	6%	8%	Elektriteater	25%	20%	25%	7%	6%	8%	Elektriteater	25%	20%	25%	7%

86. In the table of market shares in Tartu, Cinamon's data for 2020 has been annulled in order to simulate the situation that exists in the product market for screening films in cinemas in Tartu after the closure of the Cinamon cinema. Cinema Cinamon operated in Tartu until 1 September 2020.

87. As a result of the assessment of the concentration, the Authority found that the concentration would significantly impede competition in the film screening markets of Tallinn and the surrounding area and of Tartu. As a result of the concentration, the undertaking acquiring the other business operator would acquire its main competitor, i.e. the greatest source of competitive pressure would leave the product market. In the already highly concentrated product markets, the product markets would become even more concentrated, and as a result of the concentration, the merged entity would have a position close to being a monopoly in Tallinn and its vicinity and in Tartu.

88. Additionally, the Competition Authority established that MM Grupp OÜ has grown into the largest market participant in the distribution of motion pictures in Estonia. According to the Authority, this vertical link would exacerbate the distortion of competition with the opportunities offered by foreclosing the distribution services market (input market) for competing cinemas and foreclosing the motion picture purchasing market (customer market) for competing film distributors.

89. The Competition Authority also analysed the information provided during the proceedings on Forum Cinemas OÜ's financial difficulties and possible exit from the product market and found that it could not be stated with sufficient confidence that without the concentration, the competitive structure in the market would weaken at least to the same extent.

90. The parties to the concentration submitted proposals for obligations to be assumed in order to eliminate the competition issues identified by the Competition Authority. The proposals included both obligations to transfer some of the cinemas of the parties to the concentration and a behavioural non-discrimination obligation to alleviate competition issues in the distribution of motion pictures. The Competition Authority assessed the proposed obligations not to be sufficient.

91. The Competition Authority notes that although this is a difficult period for the entertainment sector due to COVID-19, this is not a reason to permit concentrations that distort competition and have a negative long-term effect on the structure of the product market to be approved.

92. As a result, the concentration proceedings were terminated as the parties to the concentration withdrew the notification.