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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Lithuania

-- 2021 --

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

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Lithuania

Executive Summary

1. Over the last few years, we paid special attention to uncovering systemic competition infringements causing the most serious harm to consumers. At the same time, we engaged in active advocacy activities seeking to promote leniency and settlement programmes. As a result of these initiatives, in 2021 we uncovered one large-scale bid-rigging agreement among food wholesalers, which lasted almost four years. Although solid sanctions were envisaged for the cartelists, we reduced them from 15 to 75 percent since all four companies cooperated with the authority, i. e. submitted leniency applications, revealed anti-competitive actions, as well as acknowledged the infringement and fines. This case shows that our long-standing efforts to encourage businesses to report the infringements and cooperate with the authority are bringing results.
2. Although the pandemic has not had a direct negative impact on the functioning of our institution, it established some directions of investigation. For the first time we disclosed a cartel in the sports sector when the Lithuanian Basketball League and 10 basketball clubs agreed not to pay players' salaries after the termination of the basketball championship due to the COVID-19. Since the start of the pandemic, the Competition Council has been vocal that disruptions caused by the COVID-19 outbreak should not be used by companies to justify the conclusion of anti-competitive agreements.
3. The authority's merger control activities were particularly active and diverse last year. Although the number of reviewed mergers remained relatively stable during the previous three years, 2021 stood out for extremely complex transactions which required a detailed legal and economic analysis to assess their impact on competition in the markets of health services, telecommunications, cinemas, agriculture and information technology. Having analysed the data collected, we cleared three in-depth mergers, one of them subject to commitments. We also terminated one merger review procedure and in one case refused to grant clearance, while one company operating in the telecommunications sector was fined for providing incorrect or incomplete information. Furthermore, the Competition Council proactively monitored the situation in the markets. After suspecting that the transaction in the market for the distribution of tickets to various events in Lithuania might have restricted competition, the Competition Council decided to apply the merger control procedure on its own initiative.
4. Seeking to address the needs of small and medium-sized enterprises (SME) and to use the expertise and internal resources more effectively, the Competition Council, in cooperation with the Bank of Lithuania, conducted a market study to find out the opportunities for the improvement of SME financing. Having assessed the possibilities of the companies' access to the sources of financing and identified the factors limiting them, both authorities proposed recommendations on how to increase the availability of SME financing services in the country.
5. Last but not least, when it comes to maximising consumer welfare, our public commitment is that every euro put into the authority's budget brings at least 5 euros of expected direct financial benefit to consumers. In 2019–2021 we reached the ratio 1:6.2. The significance of the Competition Council's actions was also backed by the results of the survey of the businesses' understanding of competition law which revealed that the majority of respondents rated the performance of the Competition Council as good or satisfactory.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

6. There were no changes to the Law on Competition last year. However, as part of the authority's enforcement of the Law on Unfair Practices of Retailers, after the amendments to the Law on the Prohibition of Unfair Practices of Retailers came into force on 1 November 2021, the Competition Council gained the right to impose stricter sanctions on a retail company which infringes the law (up to 0.7 per cent of the sales turnover in the preceding business; previously, a fine of up to EUR 120,000 could be imposed). Besides, according to legal amendments, the number of food and drink suppliers that are protected by the law increased, thereby the scope of the Competition Council's functions was extended. In addition to this, the authority gained the right to conduct dawn raids in the premises of suspected undertakings to inspect documents, e-mail correspondence and other records without prior warning.

1.2. Other relevant measures, including new guidelines

7. There were no guidelines developed / updated in 2021.

1.3. Government proposals for new legislation

8. There were no Government proposals for new competition legislation.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

9. Concerning the actions against anti-competitive practices, the authority identified 4 infringements of the Law on Competition:

- the Lithuanian Basketball League and 10 basketball clubs concluded an anti-competitive agreement when they decided to terminate the 2019–2020 championship due to the COVID-19 pandemic and agreed not to pay salaries and remuneration for basketball players for the remaining part of the season;
- the food wholesalers *Sanitex*, *Sotėja*, *Selnera*, *Maistulis* and *Egilėja* coordinated their bids, including the price, in public procurements for the purchase of food products organised by (or for the benefit of) educational institutions and social service providers;
- Palanga City Municipality restricted competition when it authorised its municipal company to provide the services relating to the administration, construction and design of buildings and exceeded the exemption applied for in-house contracts;
- the telecommunications service provider *Cgates* failed to provide correct and complete information on essential aspects of the transaction during the merger review process.

2.1.1. Summary of activities of:

Competition authorities;

10. In 2021 the authority launched 4, reopened 2, continued (from previous years) 7 investigations, issued 4 decisions.

Launched:

- Anti-competitive agreements – 2
- Abuse of dominance – 0
- Anti-competitive actions by public administrative bodies – 2

Reopened

- Procedural infringements (obstruction case)– 1
- Anti-competitive agreements – 1

Continued:

- Anti-competitive agreements – 5
- Abuse of dominance – 1
- Anti-competitive actions by public administrative bodies – 1

Decisions issued (identified infringement):

- Anti-competitive agreements – 2
- Procedural infringements (mergers) – 1
- Competition restricting actions by public administrative bodies – 1

Courts;

11. According to national laws, the authority's decisions may be appealed both on procedural and substantive grounds.

12. In 2021:

- 6 decisions were appealed (in 2020 there were 9 appealed decisions) (1 decision – procedural infringement (failure to provide correct and complete information in merger review process), 1 decision – blocked merger, 1 decision – anti-competitive agreement in the sports sector, 1 decision – infringement by a public entity, 1 decision – termination of an investigation into abuse of dominance, 1 decision – refusal to open an investigation into the actions of a public entity).
- courts ruled on 22 decisions: they upheld 14 decisions of the Competition Council (64 per cent) in their entirety (additional 8 decisions (36 per cent) were upheld partly):
- 14 decisions were completely upheld by courts (2 decisions – anti-competitive agreement cases, 1 decision – infringement by a public entity, 2 decisions – retail trade cases, 2 requests – director's liability in anti-competitive agreement cases, 3 decisions – refusal to open investigations (abuse of dominance; actions of public entities; anti-competitive agreements), 2 decisions – termination of an investigation (Law on Advertising; abuse of dominance), 2 decisions – procedural matters in retail trade case);

- 8 decisions were partly upheld (in 5 cases courts amended the decisions or requests of the Competition Council by reducing the fines and (or) changing other sanctions imposed (extended the deadline for the implementation of imposed obligations), in 1 case court returned the case back to the Competition Council asking to recalculate the fines and in 2 cases regarding procedural matters court returned the case back to the authority to examine a part of undertakings' complaints against the actions of the officials of the Competition Council).
13. Most important courts' decisions are the following:
- the Supreme Administrative Court of Lithuania upheld the Competition Council's decision fining 26 driving schools and their association for price-fixing;
 - the Supreme Administrative Court of Lithuania upheld the Competition Council's decision finding that the companies **Būsto aplinka** and **Mano Būsto priežiūra** obstructed the dawn raids and prevented the authority's experts from obtaining necessary documents for the investigation;
 - Vilnius Regional Administrative Court upheld a fine for anti-competitive road passenger transport service contract extensions. In 2020, the Competition Council imposed EUR 43,120 fine on the Lithuanian transport safety administration for breaching competition law by extending contracts with 42 regular road passenger transport services without launching a competitive procedure (tender). The conduct infringed Article 4 of the Law on Competition which concerns the duty of public entities to ensure the freedom of fair competition.

2.1.2. Description of significant cases, including those with international implications.

First cartel in the sports sector which concerned the players' salaries

14. The Competition Council disclosed anti-competitive actions between undertakings which used the COVID-19 crisis to justify a competition law infringement and sought to collectively mitigate the consequences of the crisis at the expense of employed persons. The Competition Council found that the Lithuanian Basketball League (*Lietuvos krepšinio lyga* – LKL) and 10 basketball clubs concluded an anti-competitive agreement when they decided to terminate the 2019–2020 championship due to the coronavirus pandemic, applying the force majeure clause, and agreed not to pay salaries and remuneration for basketball players. The infringement, which has been the first cartel case in the sports sector so far in Lithuania, resulted in EUR 3,440 fine for LKL and EUR 36,640 fine for basketball clubs.

15. The Competition Council decided that in the absence of the anti-competitive agreement, basketball players might have expected to receive a competitive salary and had better chances to negotiate. These factors could have determined the players' decisions on the club's choice for the next LKL championship, and, consequently, different positions of the clubs in the new championship season.

First bid-rigging cartel among food wholesalers in which all suspected undertakings acknowledged infringement

16. The second case concerned a cartel in public procurements for the purchase of food products organised by various educational institutions and social service providers operating in Lithuania, i. e. nurseries, kindergartens, gymnasiums, healthcare centers, colleges, nursing homes. In the Competition Council's practice it has been the first case in

which all suspected undertakings acknowledged the infringement and therefore received reduced fines.

17. The Competition Council established that from 2016 and 2019 the food wholesalers *Sanitex*, *Sotėja*, *Maistulis* and *Egilėja*, through *Selnera*, coordinated commercial offers, including the price, in 101 public tenders.

18. For *Sanitex*, which was the first to report the agreement and provide the evidence after opening an investigation, the fine for part of the infringement period was not calculated and the envisaged sanction was reduced by 75 per cent. For the undertakings *Sotėja* and *Selnera*, which submitted leniency submissions and provided additional evidence, the fines were reduced by 65 per cent, meanwhile for *Egilėja* and *Maistulis*, which acknowledged the infringement at the end of an investigation – by 15 per cent. In addition, the directors of *Sanitex*, *Sotėja* and *Selnera*, which submitted leniency applications and provided the evidence, will avoid personal liability.

19. For the infringement of the Law on Competition, *Sanitex* was fined EUR 12,663,200, *Maistulis* – EUR 74,600, *Sotėja* – EUR 40,000, *Selnera* – EUR 4,700, *Egilėja* – EUR 3,500.

Fine for submitting incorrect and incomplete information in merger review process

20. The Competition Council found that information provided by the Lithuanian telecommunications service provider *Cgates*, which was necessary for the authority to be able to assess the potential impact of the merger on competition, was incorrect and incomplete. Such infringement of the Law on Competition resulted in EUR 215,100 fine on the company.

21. On 24 January 2019 *Cgates* notified the Competition Council of the intended acquisition of 100 per cent of the shares of its competitor *SPLIUS*. When assessing the information provided, the authority's experts had grounds to suspect that *Cgates* provided incorrect and incomplete information both in the merger notification and during the merger review process that followed. On that basis, in 2019 the Competition Council launched an investigation and in 2021 established an infringement. For example, it was found that significantly lower market shares of the merging parties were indicated in the merger notification, as compared to the internal documents found during the inspection. In addition, presentations addressed to the company's investors and the board contained comprehensive information on consistent business plans of *Cgates*, i. e. not only a detailed analysis of the current situation, but also clear next steps, opportunities, and other information that the authority had not received even after repeated requests.

Public entity was held liable for restricting competition

22. The role of the Competition Council in enforcing specific rules that prohibit restrictions of competition by public bodies has been significantly strengthening over the years. One of the main reasons is that the effect of such conduct on the market may oftentimes be very, if not more, significant than that of private conduct. In 2021 the Competition Council found that Palanga City Municipality infringed the Law on Competition when it authorised its municipal company *Palangos komunalinis ūkis* to provide the services relating to the administration, construction and design of the buildings. The actions of the municipality exceeded the exemption applied for in-house contracts and prevented other companies from providing the aforementioned services on equal terms, therefore, the infringement of the Law on Competition resulted in EUR 33,750 fine on the

municipality (Vilnius Regional Administrative Court reduced the fine to EUR 22,500). The ruling of the court of first instance was not appealed.

2.2. Mergers and acquisitions

2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

Table 1. Mergers notified and/or controlled under competition laws

The authority received 21 filings between 1 Jan and 31 Dec 2021:

	2021	2020	2019	2018	2017
Received filings	21	21	28	38	24
Mergers cleared	19	24**	22	36	23
Mergers cleared with remedies and commitments	1	1	0	0	1
Mergers that went into 2nd phase of analysis	5	3	4	7	4
Prohibited mergers	1	0	0	1	0
Mergers withdrawn	1*	0	1	2	1
Partly cleared mergers (permission to individual concentration actions)	0	0	0	0	0

Note*: A merger review procedure in the cinema market was terminated by the competition authority after the merging parties failed to provide all the required information within a set deadline. This had in essence the same effect as a withdrawn merger notification.

Note**: some of the cleared mergers were notified in 2019.

2.2.2. Summary of significant cases.

23. The Competition Council cleared the acquisition of joint control of *InMedica* and, indirectly, *MediCA klinika*, *Kardiolita*, *Bendrosios medicinos praktika* and *Svalbono klinika* by the investment fund *INVL Baltic Sea Growth Fund* and the companies *Litgaja* and *RP PHARMA* on condition that part of the healthcare business in the cities and districts of Kaunas and Šiauliai is sold. The Competition Council decided that in the absence of commitments the transaction would have created or strengthened a dominant position and significantly restricted competition in the markets of paid outpatient secondary-level cardiology, pulmonology and rheumatology services in the city and district of Kaunas, as well as in the markets of paid outpatient secondary-level cardiology and urology services in the city and district of Šiauliai.

24. In addition to the aforementioned case, the Competition Council refused to clear the acquisition of 100 per cent of the shares and sole control of *SPLIUS* by *Cgates*. Although *Cgates* submitted commitments, the Competition Council decided that the intended merger would have significantly restricted competition in the relevant market of pay-TV services in Šiauliai and in the relevant market of retail fixed Internet services in the same city, and since the proposed commitments would not have eliminated the identified competition concerns, the authority refused to clear the transaction.

25. In another case, the Estonian company *MM Grupp* intended to acquire another Estonian company *Forum Cinemas Lithuania*, which owns and operates cinemas in the cities of Vilnius, Kaunas, Klaipėda and Šiauliai in Lithuania. Since the parties of the transaction did not provide all the required information within a set deadline, the authority

terminated a merger review process. As a result, the companies were not be able to implement the transaction.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

26. According to the Law on Competition, the Lithuanian competition authority is empowered to carry out expert examination of draft laws and other legal acts, issue opinions regarding the effect on competition to the Parliament of the Republic of Lithuania and the Government of the Republic of Lithuania, as well as submit proposals to the Government of the Republic of Lithuania to amend legal acts restricting competition.

27. Last year the authority examined 410 draft legal acts and submitted comments to decision-makers regarding 152 of them (74 per cent of the Competition Council's comments were taken into account by legislators).

28. Concerning the most important advocacy results in the field of public entities, the authority:

- evaluated the proposed amendments to the Law on Electricity related to the liberalisation of the electricity market and recommended to the Ministry of Energy to ensure that the activities of the electricity supplier, which acts both as a public and independent supplier, are separated. The Competition Council suggested that the public supplier, as far as it acts as an independent supplier, should not be able to use the customer data and to directly encourage consumers to sign a contract with it until the customer data was made available to all independent electricity suppliers. Our proposals were taken into account;
- submitted proposals to the Committee on Budget and Finance of the Seimas regarding the regulation of the activities of notaries and expressed doubts as to whether some aspects of it are reasonable and proportionate, namely, the restriction of the number of notaries, the prohibition of advertising of notary activities, the exclusive competence of notaries to provide certain services and the mechanism of self-regulation. On the basis of these proposals, no legislative changes were initiated or adopted in 2021, however, we hope that they will be made in the future and our suggestions will help to ensure that there is more competition in this area;
- proposed to the Ministry of Environment to change legal regulation of the activities of architects so that to avoid a conflict of interest (according to the Competition Council, a conflict of interest could have arisen since regional architects' councils, the members of which are architects, evaluated the projects of other architects (their competitors). The Ministry took into account the suggested recommendations and initiated amendments to the Law on Architecture and the Law on Architects' Chamber.
- recommended to the Lithuanian Heraldry Commission to eliminate a possible conflict of interest by publishing information about the need to create a coat of arms and inviting interested stakeholders to participate in the selection process, instead of selecting a supplier out of the members of the Commission. The Competition Council also noted that it is necessary to regulate the procedure for selecting candidates and the participation of the members of the commission in it. The Competition Council's proposals were taken into account and enacted.

29. Additionally, the Competition Council sent 5 warnings regarding the alleged anti-competitive decisions by public entities.

30. What is more, 332 letters were sent to lawmakers, ministry officials or other government leaders.

31. Topics addressed in the most important letters:

- judicial reform proposed by the President of the Republic of Lithuania;
- radio frequency auction for 5G mobile networks;
- mobile network-sharing between mobile operators;
- regulation of the role of public electricity supplier in the liberalisation process;
- postponement of the liberalisation of the electricity market;
- proposals regarding the conflicts of interest in the field of self-management of architects;
- proposals regarding the regulation of the activities of notaries;
- proposals regarding the establishment of a competitive procedure in the field of municipal waste collection, transport and processing;
- proposal to include biological medicinal products into the price list of reimbursable pharmaceuticals;
- proposals regarding the conditions for the breeding of medicinal leeches.

32. The authority also had 57 meetings with lawmakers, ministry officials or other government leaders.

33. Topics addressed in 10 most important meetings:

- Lithuanian Railway Transport Code;
- merger control procedures;
- regulation of the activities of notaries;
- digital Markets Act;
- business conditions during the pandemic;
- legal acts related to the field of retail trade;
- situation in the pig sector;
- envisaged reform of healthcare institutions;
- the Competition Council's proposals regarding the compensation for damages for bid-rigging in public procurement;
- assessment of the impact on competition of subsidies to persons engaged in individual activities that have been affected by the COVID-19 pandemic.

4. Resources of competition authorities

4.1. Resources overall (current numbers and change over previous year)

4.1.1. Annual budget (in your currency and USD):

- EUR 2.71m, USD 2.92m (2021)
- EUR 2.64m, USD 2.85m (2020)

4.1.2. Number of employees (person-years):

34. As of 31 December 2021 there were:

- economists – 4;
- lawyers – 43;
- other professionals (IT, communications, experts supervising the Law on the Prohibition of Unfair Practices of Retailers) – 9;
- support staff – 13;
- all staff combined – 69.

4.2. Human resources (person-years) applied to:

35. Enforcement against anticompetitive practices:

- anti-cartel – 26:
- 8 lawyers of Anti-Competitive Agreements Investigation Group
- 5 Council Members
- 6 lawyers of Legal Group
- 3 economists of Economic Analysis Group
- 2 lawyers from Competition Policy Group
- 2 Chief Advisers

36. Dominance/antimonopoly – 22:

- 4 lawyers of Dominant and Public Entities Investigation Group
- 5 Council Members
- 6 lawyers of Legal Group
- 3 economists of Economic Analysis Group
- 2 lawyers from Competition Policy Group
- 2 Chief Advisers

37. Merger review and enforcement – 24:

- 8 lawyers of Mergers Supervision Group
- 5 Council Members
- 6 lawyers of Legal Group

- 3 economists of Economic Analysis Group
 - 1 lawyer from Competition Policy Group
 - 1 Chief Adviser
38. Advocacy efforts – 21:
- 5 Council Members
 - 2 lawyers of Legal Group
 - 2 lawyers of Anti-Competitive Agreements Investigation Group
 - 2 lawyers of Dominant and Public Entities Investigation Group
 - 2 lawyers of Mergers Supervision Group
 - 8 lawyers of Competition Policy Group

4.3. Period covered by the above information

39. 1 January 2021 to 31 December 2021.

5. Summaries of or references to new reports and studies on competition policy issues

40. The authority's experts submitted 2 written contributions to the OECD and shared experience on the promotion of competitive neutrality, highlighting the importance of equal competitive grounds for public and private entities, as well as on [regulatory barriers](#) to competition in professional services.