

Unclassified

English - Or. English

25 May 2023

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Lithuania

-- 2022 --

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

JT03519652

Table of contents

Executive Summary	3
1. Changes to competition laws and policies, proposed or adopted	4
1.1. Summary of new legal provisions of competition law and related legislation	4
1.2. Other relevant measures, including new guidelines	4
1.3. Government proposals for new legislation	4
2. Enforcement of competition laws and policies	5
2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions	5
2.1.1. Summary of activities of:	5
2.1.2. Description of significant cases, including those with international implications	6
2.2. Mergers and acquisitions	8
2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;	8
2.2.2. Summary of significant cases	8
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies	10
4. Resources of competition authorities	10
4.1. Resources overall (current numbers and change over previous year):	10
4.1.1. Annual budget (in your currency and USD):	10
4.1.2. Number of employees (person-years):	11
4.2. Human resources (person-years) applied to:	11
4.3. Period covered by the above information:	12
5. Summaries of or references to new reports and studies on competition policy issues	12

Tables

Table 1. Mergers notified and/or controlled under competition laws	8
--	---

Lithuania

Executive Summary

1. Year 2022 was full of major global challenges which were also relevant for competition policy: first, the Russian aggression in Ukraine, then the following energy crisis coupled with high inflation. Still, when rating ourselves, we do not cease to rely on our long-term strategic goals: maximising consumer welfare, making impactful competition advocacy and becoming a more efficient authority.
2. 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 2020–2022 we exceeded that commitment by reaching the ratio 1:6.9. In 2022, the financial benefit was created by stopping the cartel between real estate agencies, prohibiting two mergers as well as subjecting one merger to the commitments, and achieving several changes in policy making by the successful advocacy.
3. Notably, in 2022 consumer welfare was also increased by an investigation into the alleged abuse of dominance. Although it was closed without finding an infringement, the benefit resulted from the company Toksika having amended the anti-competitive provisions of the contracts which was done outside of the commitments procedure.
4. However, the landmark decision of 2022 was the one which did not result in direct financial benefit. In December, the Competition Council fined 8 major pharmaceutical companies for coordinating the margins of reimbursable medicines, which were submitted to the Ministry of Health and which were allegedly based on the firms' operating costs. The Ministry relied on the margins agreed between the competitors and approved them by the order of the Minister. This infringement resulted in record fines exceeding EUR 72 million.
5. Our advocacy efforts were largely related to the global disturbances of 2022. First, cooperating with several competition authorities of the neighbouring countries, we initiated removal of Russia from various competition-related international fora, including OECD and ICN. Second, we reacted to the numerous legislative changes regulating the energy sector which were caused by the price hikes due to the war, liberalisation of the electricity supply, green transition etc. Third, we participated in the public debate on the unprecedented inflation in Lithuania and what is the role of competition in this situation. Finally, throughout 2022, we provided technical assistance to the Ukraine's competition authority in aligning Ukrainian legislation with EU acquis – the war did not interrupt this work.
6. As regards the effectiveness of the authority's activities, one of the challenges is that in recent years we have seen the increase of complicated mergers. Currently, we use the bulk of our economic analysis capacities for merger review. Another trend over the past years is the increase in number of leniency applications (we received 10 leniency applications between 2017-2022, and two of them in 2022 alone). We believe that this rise is largely due to the effective ex officio cartel detection tools that we had successfully applied in all the years when leniency applications were scarce.

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

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

7. There were no adopted changes to the Law on Competition last year. However, the Lithuanian Competition Council initiated and contributed to the drafting of amendments to the Lithuanian Law on Public Procurement, according to which, from 2023, contracting authorities are obliged to claim damages from infringers after the Competition Council's decision on anti-competitive agreement in public procurement comes into effect. According to this regulation it shall be presumed that the damage caused by agreements restricting competition between suppliers in a public procurement is equivalent to 10 % of the value of the supplies, services, works covered by the contract concluded and, in the case of termination of the contract, of the payments made by the contracting authority for those supplies, services and works. A presumption of harm will facilitate the proof of damage.

1.2. Other relevant measures, including new guidelines

8. The Competition Council amended its Enforcement priority applicable in implementing competition policy and supervising compliance with the Law on Competition. This document lays down the main principles for deciding on the expediency and scope of conducting investigations and it was reviewed adding an exemption that the relevant principles do not apply for:

- collective agreements concluded by solo self-employed persons with counterparties that have a certain level of economic strength;
- collective agreements on working conditions concluded by self-employed persons pursuant to national or Union legislation.

9. Such revision was implemented in accordance with the European Commission Communication “Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons” (2022/C 374/02).

10. The Competition Council amended its Rules of Procedure to provide that hearings may be held remotely. Thus, the Competition Council or its Chairman will have the right to decide, for important reasons, where technical possibilities allow, to organise hearings of participants in the procedure remotely. The Competition Council assessed that even after the Covid-19 pandemic, there was still a need to organise remote hearing meetings in certain cases, for example, when a suspected undertaking wishes to attend the meeting, but is located in a city remote from the capital city Vilnius.

1.3. Government proposals for new legislation

11. The Government adopted amendments to the procedure for setting fines, which will enter into force on 1st of May 2023. The change in the methodology will reduce the grounds for litigation in court regarding the level of fines imposed on offenders and will provide more clarity on the application of the provisions of the Law on Competition when imposing financial sanctions. Moreover, businesses will have more incentives to cooperate with the Competition Council in the context of full immunity and settlements.

2. Enforcement of competition laws and policies

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

12. The following 3 investigations were finalised:

- we found that the Lithuanian Pharmacy Association and 8 pharmaceutical companies restricted competition when agreed on the margins of reimbursable medicines before submitting it for approval to the Ministry of Health;
- we found that the Lithuanian Association of Real Estate Agencies and its 39 members agreed not to solicit each other's clients and brokers, and thus restricted competition;
- we terminated an investigation into a suspected abuse of dominance by a hazardous waste management company Toksika taking into account that the firm amended anti-competitive provisions of the contract with customers and few businesses might have been affected by the infringement of the state-owned company.

2.1.1. Summary of activities of:

Competition authorities

13. In 2021 the authority launched 3, reopened 2, continued (from previous years) 5 investigations, issued 2 decisions.

Launched:

- Anti-competitive agreements – 3
- Abuse of dominance – 0
- Anti-competitive actions by public administrative bodies – 0

Reopened

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

Continued

- Anti-competitive agreements – 2
- Abuse of dominance – 0
- Anti-competitive actions by public administrative bodies – 3

Decisions issued (established infringement)

- Anti-competitive agreements – 2
- Competition restricting actions by public administrative bodies – 0

Courts

14. According to national laws, the Lithuanian Competition Council's decisions may be appealed both on procedural and substantive grounds.

15. In 2022, 9 decisions of the competition authority were appealed (1 decision – anti-competitive agreement between real estate agencies, 1 decision – anti-competitive agreement between pharmaceutical companies, 2 decisions – blocked mergers, 1 decision – procedural decision regarding LPP, 1 decision – procedural decision regarding access to the investigation file, 2 decisions – procedural decisions regarding actions of authorised officials of the Competition Council in the merger procedure, 1 decision – refusal to open an investigation into the actions of a retail trade company).

16. In 2022, courts adjudicated on 13 cases concerning appeals against the Lithuanian Competition Council's decisions on infringements of the laws which fall under the authority's supervision, as well as on the legality of the Competition Council's procedural actions and other decisions. The courts entirely upheld 6 decisions, partially upheld – 4, overturned – 3. Most significant cases in which courts upheld our decisions are the following:

- in the public tender of Vilnius city cemetery maintenance services, the firms Būsto aplinka and Naujininkų ūkis, concluded a cartel (facilitated by City Service Engineering), which restricted competition: the companies agreed to rig their bids, including the prices, and imitated competition in the public tender;
- film distribution company Theatrical Film Distribution and Forum Cinemas as well as NCG Distribution (belonging to the same group of companies as Forum Cinemas) agreed to apply the same pricing when distributing films in order to limit the application of lower prices (special offers, discounts) in cinemas;
- UAB Palink, one of the major retail companies in Lithuania, infringed the Law on the Prohibition of Unfair Practices of Retailers by performing prohibited actions regarding food and drinks suppliers.

17. The 75 % rate of cases won by the Competition Council before the national courts shows not only the validity of the decisions taken, but also the professional representation of the authority in complex litigation cases.

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

Cartel on margins of reimbursable medicines

18. The Competition Council found that the Lithuanian Pharmacy Association (LPA) and 8 pharmaceutical companies agreed on the margins of reimbursable medicines. The infringement of the Law on Competition and the Treaty on the Functioning of the European Union resulted in more than EUR 72 million in fines.

19. In 2017, the Ministry of Health of Lithuania (Ministry) decided to assess the need to change the retail and wholesale margins of pharmaceuticals and thus asked the association to submit proposed margins based on economic calculations.

20. Assisted by the LPA, pharmaceutical companies coordinated the margins of reimbursable medicines, which were submitted to the Ministry and which were allegedly based on the firms' operating costs. Later, the competitors jointly prepared a document of a prototype pharmacy, which was supposed to show that the companies would be able to stay in the market only if the Ministry approved the proposed margins. The document indicated that a pre-tax profit of the prototype pharmacy with the margins provided to the Ministry by the association is equal to "0", while current profit with the existing margins is negative and is even expected to decrease, after changing the procedure for the reimbursement of pharmaceuticals.

21. However, as it was revealed by the Competition Council, the margins of reimbursable pharmaceuticals coordinated between the competitors were supposed to cover not only the costs incurred by the companies, but also to ensure additional profits.

22. The Ministry relied on the margins agreed between the LPA and competitors, and subsequently approved them by the order of the Minister of Health.

23. Later, the Ministry introduced additional regulation, under which a pharmacy that is willing to compete and reduce the margin, would face a proportionate reduction in the price of a pharmaceutical reimbursed by the Compulsory Health Insurance Fund. Such legal regulation eliminated economic incentives for companies to compete by setting a lower price of pharmaceuticals, and this way the margins in fact became fixed.

24. The Competition Council concluded that the competitors' agreement on the margins restricted competition between the wholesalers and retailers of reimbursable pharmaceuticals. As a result, the companies influenced the Ministry's decisions in setting the margin rates: if the competitors had provided information to the Ministry independently and had not coordinated the margins, these might have been lower.

Real estate agencies' cartel

25. The Competition Council established that the Lithuanian Association of Real Estate Agencies (LAREA) and its 39 members agreed not to solicit each other's clients and brokers, and thus restricted competition. The infringement of the Law on Competition and the Treaty on the Functioning of the European Union resulted in a total of EUR 969,060 in fines.

26. We found that the Code of Ethics, which was adopted by the members of the LAREA in 2015, included a provision under which real estate specialists had to avoid direct contact with the brokers' clients of other agencies belonging to the association. By this provision the members of the LAREA sought to avoid competition among themselves in order not to lose their existing clients with whom they had concluded exclusive contracts.

27. Besides, the LAREA and its members agreed not to compete for each other's real estate brokers. Soliciting specialists from other real estate agencies was considered unethical behaviour, for which penalties were envisaged.

Investigation into suspected abuse of dominance in the hazardous waste management market

28. The Competition Council has terminated an investigation into a suspected abuse of dominance by a hazardous waste management company Toksika taking into account that the firm amended anti-competitive provisions of the contract with customers and few businesses might have been affected by the infringement of the state-owned company.

29. We initiated an investigation into the actions of Toksika, the only company having a license to dispose hazardous waste (including hazardous medical waste) by burning. Toksika signed contracts with undertakings collecting medical waste from medical institutions and transporting it for disposal to Toksika obliging them to deliver a certain minimum amount of medical waste per month and to transfer to Toksika for disposal the entire amount of medical waste awarded by public contracts. The customer was also prohibited from using the contract in order to obtain permission to transport medical waste to other countries. The Competition Council suspected that Toksika might have restricted the abilities of companies to transport waste, which do not require burning, to alternative managers at a competitive price. Besides, Toksika might have restricted other undertakings' ability to provide medical waste management services.

30. Having assessed that there were not many companies that might have been affected by the suspected infringement and the fact that Toksika amended the medical waste management contract and eliminated anti-competitive provisions, we decided to terminate the infringement into a suspected abuse of dominance by Toksika on the prioritisation grounds.

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 22 filings between 1 Jan and 31 Dec 2022:

	2022	2021	2020	2019	2018
Received filings	22	21	21	28	38
Mergers cleared	17	19	24**	22	36
Mergers cleared with remedies and commitments	1	1	1	0	0
Mergers that went into 2nd phase of analysis	5	5	3	4	7
Prohibited mergers	2	1	0	0	1
Mergers withdrawn	0	1*	0	1	2
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

Blocked merger in the manufacture of flour, pasta and other grain products

31. The Lithuanian Competition Council refused to clear the acquisition of 100 per cent of the shares and sole control of the Lithuanian company Baltic Mill by the Latvian firm Dobeles dzirnavnieks. The merger would have created or strengthened the dominant position or significantly restricted competition in the relevant markets in Lithuania.

32. Dobeles dzirnavnieks and its related undertakings were active in the manufacture of grain mill products and wholesale supply of flour, flakes, pasta, groats, animal feed, grains and other products. Baltic Mill carried out holding activities of subsidiaries, while its related undertakings (one of which was Malsena plius) were active in the manufacture of grain mill products and wholesale supply of flour, flakes, porridge, cereals, pasta, groats and other products in the Baltic States and other countries.

33. Having assessed the information it had collected, the Competition Council found that Dobeles dzirnavnieks and Baltic Mill were close and important competitors in the daily consumer goods', i.e. flour, flour mixtures and pasta, markets which were already concentrated, and that competition between these companies was significant. The merged entity would have a very large share of the relevant markets in Lithuania, while the competitive pressure, which benefited consumers, would disappear.

34. Although Dobeles dzirnavnieks had previously received clearances from the Latvian and Estonian competition authorities to implement the merger in these countries, it was not allowed to implement the transaction in Lithuania.

Blocked merger in the market of the distribution of tickets to various events

35. The Lithuanian Competition Council refused to clear the merger whereby the Estonian company Piletilevi Group acquired 100 per cent of the shares and sole control of the Lithuanian ticket distributor Tiketa. We found that the merger created or strengthened a dominant position or substantially restricted competition in the market for the distribution of tickets to various events in Lithuania. The merging parties were obliged to restore the situation prevailing prior to the merger or to eliminate the consequences of the merger.

36. On 9 July 2021, Piletilevi Group acquired 100 per cent of the shares and sole control of Tiketa. Since the income of Tiketa in 2020 did not exceed EUR 2 million (notification threshold in Lithuania), there was no obligation for Piletilevi Group to notify the intended merger and obtain clearance. However, the Competition Council decided to apply the merger control procedure on its own initiative and oblige Piletilevi Group to submit the merger notification after suspecting that the transaction might have created or strengthened a dominant position or substantially restricted competition in the market for the distribution of tickets to various events in Lithuania, where Piletilevi Group owns two of the largest ticket distributors, namely Tiketa (which owns the website tiketa.lt) and Nacionalinis bilietai platintojas (the company owns the ticket distribution network bilietai.lt).

37. Having assessed the evidence collected during the merger review process, the Competition Council's experts concluded that, following the transaction, the market share of the merging parties increased significantly. The merging parties already served the largest number of event organisers compared to other ticket distributors, therefore, according to the Competition Council, they would continue to have an advantage over their competitors in the form of guaranteed higher revenues, financial power and more opportunities to expand and enter into new or maintain the existing exclusive agreements; the merged entity would not face significant competitive constraint from its competitors after the merger, and, moreover, other companies' ability to enter the market would be impeded.

Merger control procedure in the market for maintenance of lifting equipment (lifts)

38. The Lithuanian Competition Council decided to apply the merger control procedure on its own initiative and assess whether the acquisition by Kauno liftai of 100 per cent of shares of Baltijos liftai would create or strengthen a dominant position or significantly restrict competition in the market of lifting equipment maintenance services in Lithuania.

39. Even though the Law on Competition does not require to notify that specific merger, however, the Competition Council decided to apply the merger control procedure on its own initiative and oblige Kauno liftai to submit the merger notification after suspecting that the transaction might create or strengthen a dominant position or significantly restrict competition in the market of lifting equipment maintenance services in Lithuania, where the market share of Kauno liftai might increase significantly.

40. The Competition Council is still analysing the information and data from companies which provide lifting equipment maintenance services in Lithuania, as well as from other undertakings whose activities are related with the provision of these services and assessing in detail whether the completed transaction would create negative consequences for market participants and consumers.

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

41. According to the Law on Competition, the Lithuanian Competition Council 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.

42. Last year the authority examined 453 draft legal acts and submitted 198 comments to decision-makers. In 2022, 119 legal acts were adopted, on which the Competition Council's experts made comments in 2019-2022. 75 per cent of those comments were taken into account by legislators.

43. The most important authority's advocacy results in the field of public entities where that:

- the Government took into account our proposal and determined that, in order to mitigate the rise in electricity and natural gas prices, state compensation must be provided for household consumers, but not for electricity and/or natural gas suppliers to gain economic benefits that they would not receive under normal market conditions;
- the Ministry of Transport and Communications, while making changes to the Road Transport Code and other legal acts, took into account our recommendations to refuse the carrier licensing conditions, which grant unreasonable privileges to some economic operators;
- we proposed to the Ministry of Health and the Government to amend the Law on Pharmaceuticals and other legal acts, establishing, among other things, clear and transparent criteria for determining the margins of reimbursable medicines.

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

45. Moreover, we replied to numerous requests of politicians, gave our comments to the media, and remained vigilant in supervising that the inflation, which was driven by macroeconomic reasons such as the decrease in imports from Russia, Belarus, Ukraine due to the war in Ukraine, monetary policy, the increased prices of energy resources, strong wage growth and the resulting increase in demand among consumers would not be used as a disguise for anti-competitive practices.

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):

46. Annual budget:

- EUR 3.04m, USD 3.34m (2022)
- EUR 2.71m, USD 2.92m (2021)

4.1.2. Number of employees (person-years):

47. As of 31 December 2022 there were:
- economists – 7;
 - lawyers – 36;
 - other professionals (IT, communications, experts supervising the Law on the Prohibition of Unfair Practices of Retailers) – 7;
 - support staff – 13;
 - all staff combined – 67.

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

- Enforcement against anticompetitive practices – 25:
 - 6 lawyers of Anti-Competitive Agreements Investigation Group
 - 5 Council Members
 - 5 lawyers of Legal Group
 - 5 economists of Economic Analysis Group
 - 2 lawyers from Competition Policy Group
 - 2 Chief Advisers
48. Dominance/antimonopoly – 24:
- 5 lawyers of Dominant and Public Entities Investigation Group
 - 5 Council Members
 - 5 lawyers of Legal Group
 - 5 economists of Economic Analysis Group
 - 2 lawyers from Competition Policy Group
 - 2 Chief Advisers
49. Merger review and enforcement – 24:
- 6 lawyers of Mergers Supervision Group
 - 5 Council Members
 - 5 lawyers of Legal Group
 - 5 economists of Economic Analysis Group
 - 1 lawyer from Competition Policy Group
 - 1 Chief Adviser
50. Advocacy efforts – 20:
- 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
- 7 lawyers of Competition Policy Group

4.3. Period covered by the above information:

51. 1 January 2022 to 31 December 2022.

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

52. Considering the development of e-commerce, in cooperation with the Latvian competition authority, the Lithuanian Competition Council conducted surveys of participants in this sector in order to find out whether the business faces possible competition restrictions in online marketplaces and what problems could be relevant for companies operating in both Baltic States. The final report will be published in 2023.

53. The authority's experts submitted 5 written contributions to the OECD and shared experience on the following topics:

- Competition in Energy Markets;
- Director Disqualification and Bidder Exclusion;
- Competition and Inflation;
- Purchasing Power and Buyers' Cartels;
- Disentangling Consummated Mergers – Experiences and Challenges.