

Unclassified

English - Or. English

16 May 2024

Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Estonia

-- 2023 --

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

JT03543835

## Table of contents

<b>Foreword</b> .....	<b>3</b>
<b>1. Strategy and priorities</b> .....	<b>4</b>
1.1. Water reform 2025+ .....	4
<b>2. About the organisation</b> .....	<b>5</b>
2.1. Human resources statistics 2023.....	6
2.2. Launching the Electronic Price Calculation Information System.....	7
<b>3. In numbers</b> .....	<b>8</b>
3.1. The year in numbers .....	8
<b>4. Trends and overviews</b> .....	<b>10</b>
4.1. Unfair trading practices .....	10
4.2. 2023 Electricity and Gas Market Summary.....	11
4.3. Postal sector.....	13
4.4. Overview of prices for regulated services .....	13
<b>5. Supervision</b> .....	<b>16</b>
5.1. Supervisory proceedings against Elektrilevi .....	17
5.2. End of dispute over airport charges .....	17
5.3. Concentration of AS Maag Grupp and AS HKScan Estonia.....	18
5.4. Maxima misdemeanour proceedings .....	19
5.5. Proceedings regarding morgue services .....	19
5.6. Supervisory proceedings against Ragn-Sells AS.....	20
<b>6. Analyses</b> .....	<b>21</b>
6.1. Overviews of energy market.....	21
6.2. Analysis of the consequences of the pharmacy reform .....	21
6.3. Market analysis on the charging network of electric cars.....	23
6.4. Analysis of the fuel market.....	24
<b>7. Amendments to legislation</b> .....	<b>24</b>
<b>8. Government bill implementing the Competition Directive (ECN+)</b> .....	<b>26</b>
8.1. Distinguishing provision of assistance from self-incrimination .....	26
8.2. Verification of the relevance of information after a search .....	28
8.3. Court fines and methodology for imposing fines .....	28
8.4. Reimbursement of procedural costs.....	29

## FIGURES

Figure 1.	10
Figure 2. Average monthly electricity and gas exchange price in 2023, €/MWh.	12
Figure 3. Electricity production by type in Estonia in 2023	12
Figure 4. Average prices of fuels and electricity included in the maximum price of heat	14
Figure 5. Number of price applications submitted to the Competition Authority by distribution network operators and average electricity prices in the Nord Pool Estonian price zone for the same period	15

## TABLES

Table 1. Detailed data concerning electricity in Estonia (MW)	11
---	----

## *Estonia*

### Foreword

Dear Reader,

It is a pleasure to present the Competition Authority's 2023 Annual Report. Here you will find a comprehensive overview of our efforts and achievements in the past year to protect open markets and ensure fair pricing in Estonia.

Over the past couple of decades, the average number of merger notifications has been 34 per year. 2023 was no exception, with 32 notifications received. During the year, we conducted 15 procedures, completing 9 and continuing 6 into 2024. We also calculated the so-called consumer benefit, which shows that from 2020 to 2022, the Authority's actions allowed consumers to save a total of nearly 45 million euros. This equates to about 10 euros per year for every resident of Estonia. Our supervisory activities focused on the energy and fuel markets as well as the cinema and pharmacy sectors, among others, including the merger of AS Maag Group and AS HKScan Estonia, which posed a significant challenge in terms of potential market dominance and the impact of the transaction on competition.

In terms of economic regulation, it was another busy year – we carried out over a thousand administrative procedures or actions, including nearly 300 price procedures and more than 600 complaints or inquiries. In sectors such as water, district heating, and gas, which are subject to economic regulation, we remained active and consistently reminded businesses of their legal obligation to reduce tariffs when input prices fall. As a result, prices for water and district heating decreased in many areas at a time when consumer prices were generally rising. Here too, our effective price regulation saved consumers approximately 70 million euros in 2023, which means that economic regulation left an average of 50 euros in consumers' pockets last year. This year, a significant focus in economic regulation has been on supervising monopolistic enterprises, particularly in the electricity and gas networks. We conducted a supervision concerning Elektrilevi OÜ due to several extensive outages in its network that could not solely be attributed to weather conditions. It is gratifying to note that the company has since taken significant steps to improve the situation and enhance both its crisis management and the maintenance of systematically important assets.

2023 was also a successful year for cooperation, both with external partners and, especially, at the national level with entrepreneurs, ministries, and other stakeholders. We aim to continue with proven forms of cooperation because we believe that it is better to address issues related to economic regulation and competition supervision through prevention and dialogue rather than enforcement and compulsion. This approach not only makes economic and competition supervision more effective but also helps to build mutual trust and align the interests of stakeholders with the objectives of public services.

We are proud of our enhanced toolkit, which, in addition to standard market analysis and research, allows us to implement data analysis tools. We believe that increasing digital competencies and using technological solutions will significantly strengthen our ability to

assess market developments, and more importantly, will enable us to detect anti-competitive or consumer-damaging behavior more effectively and accurately.

All the measures taken in 2023 are crucial and support the Authority's efforts to ensure reliable and high-quality services for consumers, primarily in open markets and at fair prices. We will continue to monitor and analyze critical markets for consumers in 2024. We are committed to maintaining vigilant supervision to ensure that Estonian markets remain open to competition and prices are fair.

Sincerely,

Evelin Pärn-Lee

## 1. Strategy and priorities

1. In 2024, we will focus on enhancing competition supervision, especially in areas where the Authority conducts both regular and special market analyses. Additionally, we have made a strategic decision to engage in activities aimed at raising awareness and increasing competencies. We have opened our own in-house Competition Academy, which primarily aims to develop internal skills and expertise. We see potential for more and hope to soon be ready to extend these awareness-raising activities to the wider public, as prevention is always simpler and more cost-effective than enforcement and sanctioning.

2. The strategy for the upcoming years, spanning from 2024 to 2027, focuses on transforming supervision processes to increase supervisory capacity. We will use our expert knowledge to promote the development of Estonia's economy, utilizing various tools available to the Authority, from market analysis to effective supervision.

3. The main strategic goals for 2024 include focusing on consumer benefits to ensure they receive the best price-quality ratio. We aim to ensure that for every euro the taxpayer invests in funding the Authority, the consumer should receive at least three euros in return. We also consider it crucial that policy-making in the areas related to the Authority is data- and fact-based, which is why we will participate with our expertise where possible and necessary. We are also good partners to our international associates and actively participate in the activities of international organizations.

4. The Competition Authority's strategy is based on empowering qualified experts, adapting organizational structures and tools to changing needs, using technology, and focusing on real and measurable results. We strive to ensure that the public better understands the goals and tasks of the Authority and that every person in Estonia genuinely feels how the Authority's activities improve their well-being. To achieve this, we need to work within a unified value space, support the Authority's activities with the necessary resources and tools, and recognize good work. We have created a clear decision-making and procedural framework and prioritized increasing digital competence to enhance efficiency.

5. The strategy created by the Authority in 2023, aimed for the period 2023–2027 is designed to develop the capability to handle both current and future challenges in competition supervision and economic regulation.

### 1.1. Water reform 2025+

6. The Estonian water sector is facing a situation where European Union (EU) subsidies are decreasing, but to continue providing high-quality water and sewerage as a vital service, the sector still requires substantial investments. The Water Services Steering

Group convened by the Ministry of Climate is determining how to reorganise the Estonian water sector. The roadmap is due to be completed in the second half of 2025 and the European Commission's Directorate-General for Structural Reform Support provides technical assistance in implementing the project. One key issue in this process is the consolidation and efficiency improvement of the fragmented water supply and sewerage sector. The ability of a large number of water undertakings to make continued investments without EU subsidies is limited, as is finding qualified labour for the maintenance of modern equipment. One solution could be the merger of smaller water undertakings with larger ones in more densely populated areas.

7. Today, over 130 water undertakings operate in Estonia, most of them micro-enterprises, with varying efficiency indicators (such as water loss in pipelines). In Croatia, which is 25% larger in area and three times larger in population than Estonia, where currently about 200 water undertakings operate, there is a plan to reduce the number of water undertakings to 41. The purpose of this is to increase efficiency and to ensure that the consumers continue to receive water services of good quality at a reasonable price in the future.

8. In Estonia, water pricing is regulated under the Public Water Supply and Sewerage Act, which states that the price must cover justified expenses and ensure a justified rate of profitability on the invested assets of the undertaking. The basic principles for calculating water service prices are similar to those of other regulated services in Estonia, such as heating and the electricity network. Investments and their cost are one important component of pricing. This is where the state as a provider of subsidies and local governments come into play, approving and monitoring the compliance of water undertakings' investments with the development plans for public water supply and sewerage. Under the current regulation, investments made from European subsidies are not considered in the pricing of services in either the energy or water sectors. A similar principle is used in other EU countries, such as Latvia, Lithuania and Croatia.

9. The Estonian water sector needs to be reorganised to ensure sustainability. However, in the midst of reforms, the consumer must not be forgotten. The objectives and outcomes of the water reform must primarily serve the interests of consumers, ensuring that the quality of drinking water remains good and water prices reasonable in the future. Currently, the water price in Estonia is below two percent of household income. The OECD estimates that a reasonable water price could range between three to five percent of a household member's income. The threshold of five percent, which would financially mean a water price of 21 €/m<sup>3</sup>, would be nearly five times higher than today's average. Such a significant price increase, if considered in Estonia, must be very well justified, and if reorganising the sector can avoid or significantly mitigate this, then all market participants, as well as policymakers, should strive towards that goal. The Competition Authority is a partner in this journey for all undertakings operating in the sector, local governments and the Ministry. For example, the pricing methodology can implement incentive factors for water undertakings that contribute to achieving cost-effectiveness.

## 2. About the organisation

10. The Competition Authority exercises state supervision over competition, electricity, natural gas, district heating, mail, public water supply and sewerage, as well as railways, aviation and ports, and unfair trading practices. The office belongs to the area of government of the Ministry of Justice.

11. The functions of the Competition Authority are divided between two divisions. The Competition Division supervises competition, controls concentrations, analyses competition conditions, exercises supervision over unfair commercial practices and raises competition awareness. The Regulatory Division exercises supervision and regulates prices in the areas of electricity, natural gas, district heating and water. The division is also engaged in controlling the rail and postal service markets as well as the markets in the above sectors. In addition, the Competition Authority resolves disputes related to airport and port charges.

12. The Cooperation and Support Services Department is responsible for the functioning of support services (including international and public relations, staffing, organisation of training and events, asset and document management), which, in addition to the Competition Authority, also provides services to the Data Protection Inspectorate and the Patent Office.

13. The majority of staff members have a higher education in economics or law. In addition, there are employees who specialise in fields such as thermal engineering, public administration and materials technology.

14. As of the end of 2023 the Authority employed:

- 11 consultants
- 11 senior analysts
- 8 lawyers
- 3 experts
- 2 analysts
- 1 person carrying out proceedings
- 1 investigator

15. The Competition Authority supports the active and healthy lifestyle of employees through the Stebby programme, paying for the services 75 euros per quarter per person.

16. As has become a tradition, a summer seminar was also organised this year, focusing on the secrets of healthy relationships and communication, and preliminary work was done for creating the Competition Authority's strategy map.

## **2.1. Human resources statistics 2023**

- The Competition Authority employs 36 women and 23 men.
- The total turnover of the Competition Authority is 16%
- 11 employees joined us.
- There are 9 employees under the age of 30.
- There are 29 employees between the ages of 31 and 50.
- There are 21 employees over the age of 50.
- Our average age is 43.8 years.

### **2.1.1. Seniority**

- 1 to 5 years – 33 employees

- 5 to 10 years – 8 employees
- 10 to 20 years – 11 employees
- 20 to 25 years – 7 employees
- 98% of employees have higher education.

### *Director General*

### *Cooperation and Support Services Division*

#### *Competition Division*

- Data and Economic Analysis Team
- Administrative Proceedings of Competition Team
- Special Proceedings of Competition Team
- Legal Disputes Team

#### *Regulatory Division*

- Legal Department
- Department of Energy and Infrastructure
- Department of Energy Markets
- Price Regulation Department

#### *Insolvency Division*

- The Insolvency Division is an independent supervisory and law enforcement body in the service of the Competition Authority, with autonomous competence and its own budget

## **2.2. Launching the Electronic Price Calculation Information System**

17. The aim of the Electronic Price Calculation Information System (HAI) is to make obtaining approvals for prices of monopolistic services (heat, water, gas and electricity network services) more efficient and transparent and to enable digital data processing. Currently, the information system allows applications for gas prices to be approved under the short procedure and for heat prices to be approved in network areas with a valid pricing formula.

18. HAI is a software application that analyses the data of undertakings, taking into account the indicators and forecasts of the economic environment (input prices for fuels, electricity, etc) and calculates the justified price of the service. This is a pilot project, and the first decisions have been drawn up and issued. Development works are continuing.

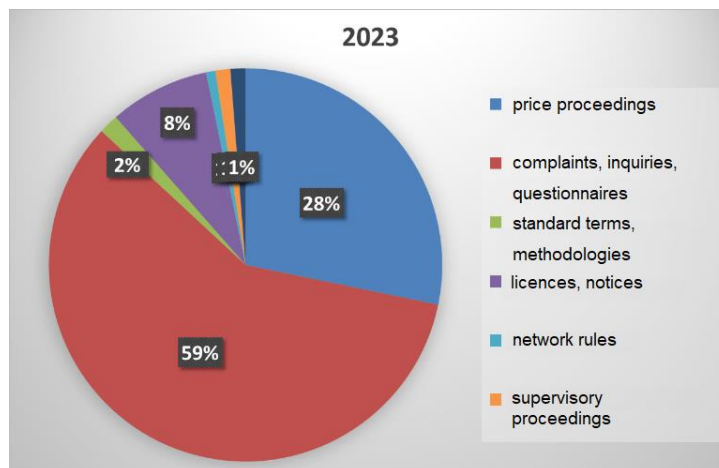
19. One of the tasks of the Competition Authority in the areas of heat, water, gas and electricity is to coordinate and control the prices of services of undertakings in a monopoly position (district heating, water and sewerage, electricity and gas network services) so that the fee charged for the service is economically justified for both consumers and undertakings. This means that the necessary expenses are covered, but the profit is limited.

20. The HAI information system was created in cooperation with the Competition Authority, the Centre for Registries and Information Systems (RIK) and development partners Red Function OÜ and Merada OÜ.

### 3. In numbers

21. 2023 was just as intense a year in terms of regulated markets as 2022, although the energy crisis was coming to an end. A total of 1,055 administrative proceedings were conducted or measures taken within the framework of regulation procedures, of which the largest share was responding to various complaints and inquiries. The area of price regulation focused on proactive price supervision, where undertakings were actively urged to reduce prices for regulated services. Although the number of decisions taken in price proceedings regarding energy and water services fell from 389 to 298 in 2022, the impact across Estonia was comparable to the previous year, as some decisions included, for example, changes to 33 heating network areas simultaneously.

22. In the area of concentrations, the trends were influenced by the rise in borrowing money, which led to a further decrease in the number of undertakings wishing to concentrate. At the same time, one of the largest mergers in the region took place when the Competition Authority authorised the concentration of AS Maag Grupp, AS HKScan Estonia, AS HKScan Latvia and UAB HKScan Lietuva.



### 3.1. The year in numbers

#### 3.1.1. Competition Division

23. In 2023, 32 notices of concentration were submitted.
24. In total, the Competition Authority conducted proceedings in 38 cases, including 6 cases that came over from the previous year.
25. In turn, 6 cases went over to 2024.
26. For 26 concentrations, proceedings were conducted with a time limit of 30 calendar days.
27. For 6 concentrations, supplementary proceedings were initiated (ie 1+4 months), of which in turn
- in the case of 2 concentrations, the transaction was abandoned;

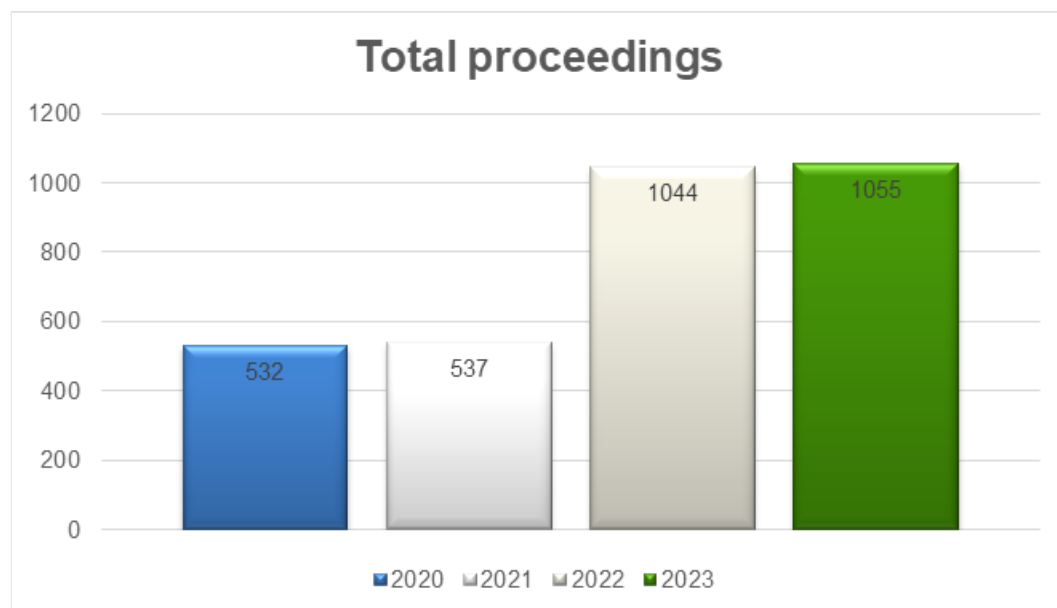


- in the case of 2 concentrations, permissions to concentrate were granted without obligations;
  - 2 concentrations were granted with obligations;
  - 1 of the proceedings will continue in 2024.
28. The transactions that were granted permission in 2023 were broken down by legal basis as follows:
- under clause 1 of subsection 1 of § 19 of the Competition Act (merger of undertakings) – 2 cases;
  - under clause 2 of subsection 1 of § 19 of the Competition Act (acquiring dominant influence) – 26 cases;
  - under clause 3 of subsection 1 of § 19 of the Competition Act (acquiring joint dominant influence) – 3 cases.
29. In 4 cases, the concentration proceedings were suspended due to shortcomings in the notice of concentration.

### ***3.1.2. Regulatory Division***

30. A total of 1,055 administrative procedures/measures:
- 298 price proceedings
  - 619 complaints/inquiries
  - 87 activity permits/notices
  - 6 market analyses
  - 25 network rules, standard terms/methodologies
  - 7 supervisory proceedings
  - 13 court/challenge proceedings
31. The total turnover of the sectors in the areas of economic regulation is 1.8 billion euros, of which fees for economic regulation supervision are calculated. Monopoly services are used by 0.65 million consumers.
32. 2023 is characterised by proactive supervision of monopoly services (maximum prices of heat, prices for electricity and gas network services and prices for water services). In connection with the fall in fuel and electricity prices, prices for regulated services were also brought down, which can be seen under the sectoral trends.
33. In 2023, the Authority's first e-service, the Electronic Price Request Information System (HAI) was launched to make the process of obtaining approvals and exercising supervision over prices of heat, water, gas and electricity network services more transparent and efficient.
34. The Authority actively participated in the Water Reform 2025+ project, the project regarding data-based reporting in the real-time economy, and discussions on postal sector reform, and made proposals for the reform of the district heating sector.

Figure 1.



#### 4. Trends and overviews

35. In contrast to 2022, the pervasive trend of 2023 was the reduction in energy prices. The reduction of prices of regulated services (heat, gas, electricity, water) meant that the Competition Authority was actively monitoring the market and issuing memorandums to companies to reduce prices.

36. In the electricity and gas market, the fluctuation of prices was caused by weather conditions and repair works. Throughout 2023, Estonia imported more electricity than it exported.

37. In the postal sector, AS Eesti Post, operating under the Omniva brand, remained the only provider of services involving the home delivery of periodicals and forwarding items of correspondence in Estonia in 2023. The transition did not go smoothly, but Eesti Post was able to solve the issues in a few months.

##### 4.1. Unfair trading practices

38. In the area of unfair trading practices, the focus of 2023 was on outreach, which continues to be important and is planned to continue this year. In addition to raising awareness, outreach is necessary to establish a relationship of trust between the producer/seller and the Competition Authority. In turn, the establishment of a relationship of trust is extremely necessary to alleviate the fear factor that characterises the field, which is characterised by the seller's fear of irritating/losing the buyer as its contractual partner, for example, in the case of exercising its legal right to cooperate with the Competition Authority during an investigation.

39. Other Member States are also talking about the fear factor in this field, and it is a serious issue that needs to be addressed. Direct communication in a pressure-free atmosphere and format is a good way to alleviate the fear factor and it already seems to be bearing the first fruits – more and more parties feel free to contact us with questions and

concerns. Thanks to these inquiries, the Competition Authority is initiating new proceedings to investigate unfair trading practices.

40. Last year, the Authority was most often asked for its position on the legality of the logistics fee applied by purchasers. The logistics fee is charged in a situation where the buyer has many stores across Estonia, but the seller delivers the goods to the buyer's central warehouse and the buyer organises the delivery of the goods to the retail stores. Such an activity is directly related to the sale of agricultural and food products by the seller, and is not prohibited if agreed by the parties. It is important to emphasise that for this there must be a bilateral agreement, and the buyer is prohibited from unilaterally modifying the contract and charging a logistics fee if the parties have not previously agreed to this.

## 4.2. 2023 Electricity and Gas Market Summary

41. In 2023, electricity and gas prices were highly volatile. Such volatility was influenced by several factors, but difficult weather conditions, short- and long-term maintenance and repair work at production stations, as well as transmission capacity limitations both in Estonia and in neighbouring countries were the most important. In 2023, Estonia imported more electricity than it exported. Table 1 shows the import, export, domestic production and consumption of electricity in Estonia.

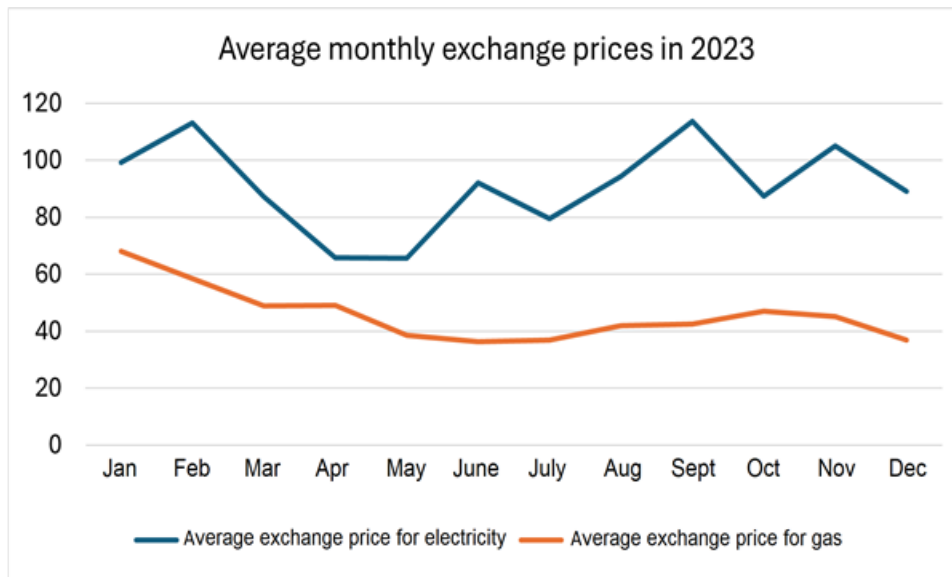
**Table 1. Detailed data concerning electricity in Estonia (MW)**

Import of electricity	7,406
Export of electricity	4,156
Domestic production	4,909
Domestic consumption with network losses	8,159

42. According to the Elering website, the average exchange price of electricity in the Estonian price zone in 2023 was 90.78 €/MWh. The most expensive average exchange price for electricity was in February at 113.14 €/MWh. The maximum exchange price for electricity was on 21 November 2023 at 777.18 €/MWh. The minimum exchange price for electricity was on June 16 at 60.04 €/MWh. Figure 1 shows the average monthly exchange prices in 2023.

43. The average exchange price of natural gas in the Estonian price zone in 2023 was 45.72 €/MWh, according to the Elering website. The most expensive average exchange price for gas was in January at 68 €/MWh. The market price for gas was at its highest on January 4, with the price of one megawatt of gas at 81.31 euros. The minimum exchange price for gas was on June 4, 29.42 €/MWh. Figure 1 shows that the average monthly exchange price for electricity has been more volatile compared to the average market price for gas.

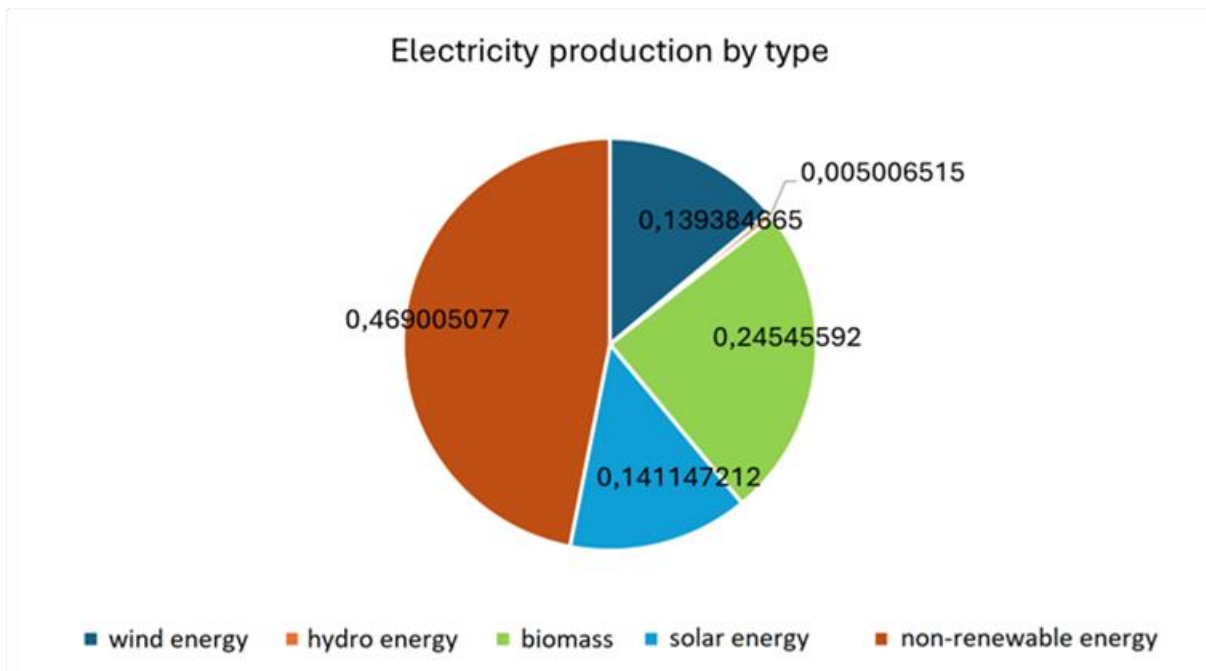
Figure 2. Average monthly electricity and gas exchange price in 2023, €/MWh.



44. According to German electricity futures, the estimated exchange price for electricity by 2025 is 79.50 €/MWh and the average projected exchange price for gas 32.15 €/MWh as of 6 February 2024.

45. In 2023, 47% of electricity was generated from non-renewable energy (including oil shale plants). Next, the figure shows biomass, which accounted for 25% of the total electricity produced in Estonia. Out of the total electricity produced in Estonia, 14% was generated from solar and wind energy and 1% from hydroelectric power.

Figure 3. Electricity production by type in Estonia in 2023



46. Among the most significant events in 2023, we can single out the breakdown of the Balticconnector on 9 October. The estimated time for completion of the repair work is April 2024.

### 4.3. Postal sector

47. The year 2023 turned out to be a tumultuous one for the postal sector. If previously, two companies – AS Eesti Post and Express Post AS – were offering domestic home delivery and the forwarding of items of correspondence, Express Post AS ceased to provide the service in June 2023. So AS Eesti Post, operating under the Omniva brand, remained the sole provider of services involving the home delivery of periodicals and forwarding items of correspondence in the domestic market. This meant that, in addition to rural areas, AS Eesti Post began to provide services for the home delivery of periodicals in Tallinn, Tartu, Pärnu and Viljandi.

48. The transition of the entire service of home delivery of periodicals to AS Eesti Post did not go painlessly. Between June and the end of the year, the Authority received 92 different complaints concerning problems with the home delivery of periodicals. The main problem was that the mail (periodicals) had not been delivered. A year earlier, there were no complaints regarding the home delivery of periodicals.

49. AS Eesti Post is also a universal postal service (UPS) provider. Universal postal services mean the continued and high quality forwarding of items of correspondence weighing up to 2 kilograms as ordinary, registered and insured items and the forwarding of postal parcels weighing up to 20 kilograms as registered and insured items at an affordable price throughout the whole territory of Estonia on the bases and pursuant to the procedure provided by legislation.

50. The affordable price for universal postal services is determined by a regulation of the minister in charge of the policy sector and is valid throughout the territory of the state.

51. As of 1 May 2023, the affordable prices for the UPS changed. Faster forwarding, ie if the sender chooses forwarding that takes one working day (priority letters), the domestic forwarding of a simple letter weighing up to 250 g costs 2.30 euros. If speed is not decisive for the sender and they choose delivery within three working days (so-called regular letters), domestic forwarding of an ordinary letter weighing up to 250 g costs 1.30 euros.

52. The second important event involving the Estonian postal market took place in the late autumn of 2023. On 27 October 2023, NOVA POST Estonia OÜ received a licence for the provision of postal services. What makes this event significant is that next to AS Eesti Post, NOVA POST Estonia OÜ is the only licenced postal service provider which is entitled to provide all services (except UPS). Previously, companies had not shown interest in applying for an operating license to provide all postal services based on it.

53. NOVA POST Estonia OÜ is a company with Ukrainian origins that has previously operated in several European Union countries. NOVA Group, which NOVA POST Estonia OÜ belongs to, provides logistics services all over the world. At present, NOVA POST Estonia OÜ has opened its first post office in Tallinn, Estonia pst 7.

### 4.4. Overview of prices for regulated services

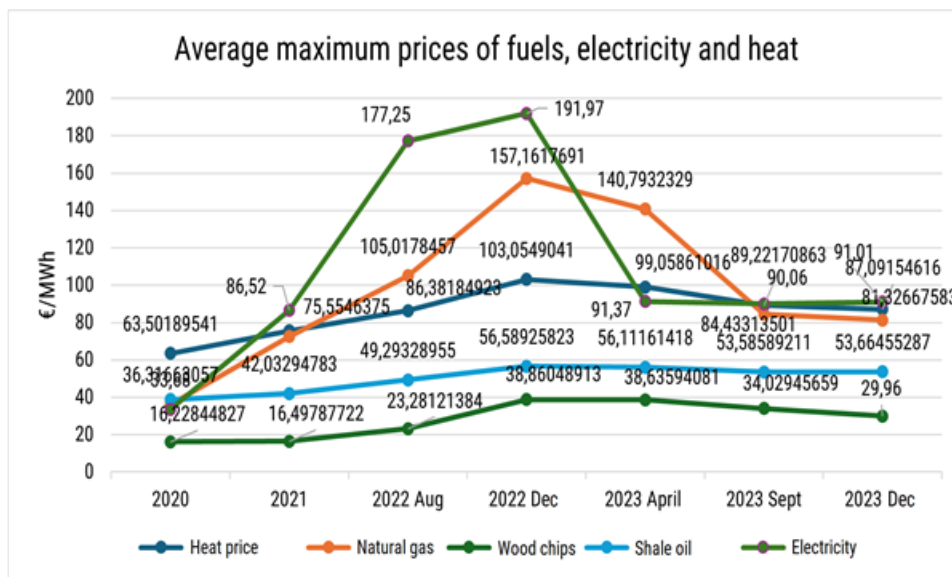
54. 2023 was an active year for supervisory proceedings over the prices of regulated services. As fuel prices fell, the Competition Authority proactively sent out memoranda to undertakings to reduce regulated prices. In 2023, the total number of price proceedings was

298, plus responses to price-related inquiries. The biggest impact of the price drop was on the maximum prices of heat.

55. The maximum price of heat changed in 2023 in 129 network areas, of which, as of the end of 2023, the maximum price decreased in 116 network areas and increased in 13 network areas. At the same time, the Competition Authority approved the maximum price of heat on more than one occasion in many network areas, ie a total of 250 decisions were taken during the year on the approval of the maximum price of heat (including in 236 cases the maximum price for the final consumer). While the largest reductions in maximum prices were more than twofold and occurred in individual network areas producing heat from 100% natural gas, the maximum price of heat dropped by more than 15% in 81, ie almost half, of the network areas. On average, the maximum price as approved by the Competition Authority decreased by 12% during 2023, which meant a cost level reduction of almost 40 million euros in the average heat supply of 175 network areas compared to the approved maximum prices of heat at the end of 2022. As of the end of 2023, the selling price of heat in some of Estonia’s major cities stayed below the agreed maximum price, to the extent that it reduced said cost level by an additional 10 million euros.

56. The above reductions in heat prices were possible due to the decrease in input prices for fuels (natural gas, wood chips, shale oil, etc) and electricity used in heat production in 2023 compared to 2022 (see Figure 1).

Figure 4. Average prices of fuels and electricity included in the maximum price of heat



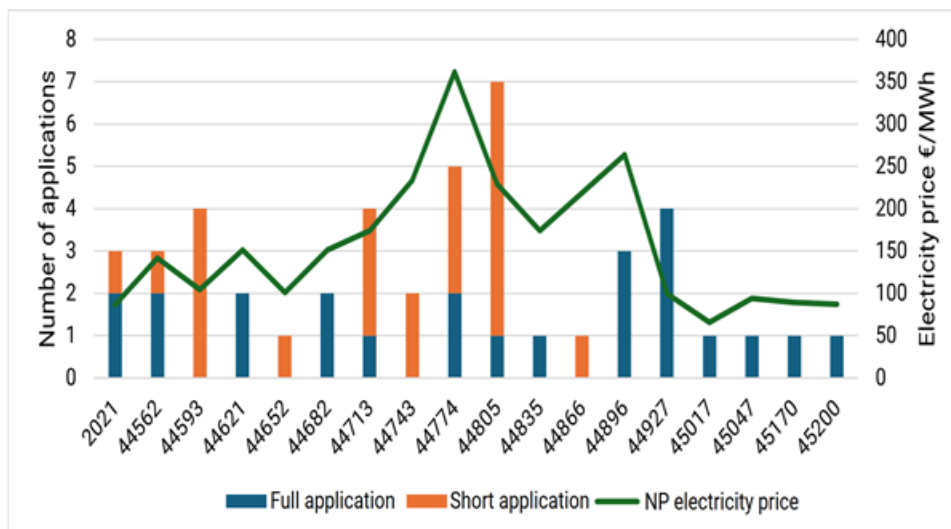
57. Thus, while fuel costs and other variable costs accounted for a very large part of the price of heat in 2022, the share of investments in heat prices has steadily increased during 2023 (the share of variable costs has decreased from 71% in 2022 to 65% in 2023).

58. As of the end of 2023, the Competition Authority has approved the electricity network charges for 29 distribution network operators with an annual total sales volume of electricity network service of 7.858 GWh and a weighted average network charge of 4.13 cents/kWh. In 2023, the Competition Authority approved the change in electricity network charges in ten distribution network areas, with a decrease in network charges in several large network areas (a price drop of 7% and 8% occurred respectively in the network areas of Imatra Elekter AS and OÜ VKG Elektrivõrgud). This meant a reduction of almost 1.8 million euros in costs for these network areas compared to 2022. As a weighted average,

the network charge in Estonian distribution networks remained essentially the same in 2023 (down by 0.27% by the end of 2023), as the application for price increase by the largest network operator Elektrilevi OÜ was still pending at the end of 2023.

59. The chart below (see Figure 2) also shows the relation of the change in electricity exchange prices to the number of and reason for price applications for electricity network services submitted to the Competition Authority in 2022 and 2023. If in 2022, due to high electricity prices, the main reason for submitting applications (35 in total) was a change in non-controllable purchase prices (for example, the cost of electricity transmission and/or distribution service to be outsourced, the cost of electricity to be purchased to cover network losses, the cost of purchasing reactive energy, etc) (so-called short application), then in 2023 applications (8 in total) were submitted due to a change in price components (sales volume, operating costs, investments, etc) requiring a more thorough analysis (so-called full application), since in addition to changes in electricity prices there have also been significant changes in other cost components over the years.

**Figure 5. Number of price applications submitted to the Competition Authority by distribution network operators and average electricity prices in the Nord Pool Estonian price zone for the same period**



60. In 2023, a change in the price structure in the network charges of the transmission network operator Elering AS was approved, with the aim of fairer distribution of transmission network maintenance costs between different customer groups. The size of the average transmission network charge was not affected by the change in the price list structure.

61. Changes in the price of the natural gas network service were approved by the Competition Authority in 2023 for 20 distribution network operators (in most areas repeatedly, ie 62 in total). The main reason for the increase in the price of the network service in the gas distribution networks was the significant increase in the price of the network service of the transmission network operator Elering AS, which in turn was triggered by the significantly reduced gas consumption in Estonia, so that the price so far did not cover the cost of maintaining the working order of the gas network. Several gas distribution networks also applied for a price change due to a change in gas consumption in their area. However, the end of 2023 shows a trend of some recovery in gas consumption.

62. Price changes for public water supply and sewerage services (water services) were approved/determined by the Competition Authority in 2023 in the licensed territories of 36 water undertakings. At the same time, the price of water services fell in several operating areas of water undertakings due to the fall in electricity input prices in 2023. For example, price reductions (up to about 1/5) in larger areas included licensed territories of regional as well as county centre water undertakings in Ida and Lääne-Viru County, Põlva County, Tartu County, Jõgeva County and others. This meant an overall reduction in costs for consumers in these licensed territories of around 2.5 million euros compared to 2022. As a weighted average, the price of water services for Estonian water undertakings as of the end of 2023 turned out to be somewhat (about 7%) higher than in 2022, insofar as the costs associated with investments and operating costs increased.

## 5. Supervision

63. The keywords characterising the supervision exercised in 2023 are increased proactivity of the Authority and more active intervention in the focus topics of the respective fields.

64. Over the course of the year, the Competition Division conducted 15 proceedings, out of which 9 were terminated and 6 resumed in 2024. In one case, the market participants were given a recommendation.

65. Control of concentrations is the cornerstone of effective competition supervision. The Competition Authority controls concentrations of undertakings with the aim to assess the effects of competition law and to prevent the emergence or strengthening of a dominant market position which may impede effective competition in the goods market or in a substantial part thereof. In 2023, the Competition Authority received 32 notices of concentration, 6 of which were subject to supplementary proceedings (for details see the statistics [LINK HERE](#)). As an example of one of the most important supplementary proceedings of 2023, the concentration of AS Maag Grupp and AS HKScan Estonia, AS HKScan Latvia and UAB 'HKScan Lietuva' ([LINK](#)) can be cited.

66. The Regulatory Division conducted 7 supervisory proceedings and 13 court/challenge proceedings. The year 2023 is characterised by proactive supervision of monopoly services (maximum prices for heat, prices for electricity and gas network services and prices for water services). At the beginning of the year, Elektrilevi's supervisory proceedings concerning large-scale disruptions of the power supply in Saaremaa were terminated, on the basis of which it was concluded that Elektrilevi needs to increase both its planning skills and its real ability to eliminate outages. It is also necessary to strengthen the supervision of circumstances threatening power lines. In the autumn, there were again several large-scale interruptions, for which the Competition Authority initiated new supervisory proceedings – which ended with a precept against Elektrilevi. Supervisory proceedings were also initiated regarding Elering's emergency reserve power plant in Kiisa. In connection with the fall in fuel and electricity prices, prices for regulated services were also brought down, which can be seen under the sectoral trends.

67. In addition to supervision, we also consider dialogue with market participants to be important and we have set ourselves the goal of being an expert organisation that is consulted to prevent issues and is a partner to undertakings.



## 5.1. Supervisory proceedings against Elektrilevi

68. The Competition Authority conducted supervisory proceedings with regard to the extensive power outages in the Elektrilevi network in autumn. The Authority identified that Elektrilevi has a shortage of repair teams eliminating outages, but mostly a lack of resources in the control centre, which results in long call queues that delay the work of repair teams. Elektrilevi does not have sufficient capability to automatically detect failures, mainly in the low-voltage network but, to some extent, in the medium-voltage network, which makes determining the start time of outages inaccurate. As a result, consumers' network charges may in some cases not be reduced enough. This results in longer power outages for consumers. The lack of the necessary capability leads to inaccuracies in security of supply indicators and non-compliance with the actual situation in the Elektrilevi network. According to the Competition Authority, although Elektrilevi has taken the necessary steps to eliminate outages and improve its crisis management processes compared to December 2022, when large-scale network outages took place in Saare County, the lack of a framework for crisis measures in framework agreements continues to be a weakness for Elektrilevi, making it more difficult to promptly involve repair teams between regions. The Competition Authority has established that the outages of November and December were mainly caused by Elektrilevi's shortcomings in the maintenance of line corridors. Twenty-eight percent of line corridors in need of maintenance have not been maintained by Elektrilevi, so when strong winds and/or heavy snow causes trees to break, it leads to extensive power outages.

69. Thus, the Competition Authority issued a precept to Elektrilevi and obliged it to develop an action plan to carry out maintenance on all line corridors in need of it. Elektrilevi must also develop an action plan on how to better and more promptly involve the teams of companies dealing with network outages in the event of crises, as well as a plan to reduce the resource shortage of Elektrilevi OÜ. Elektrilevi must also review the number of consumers whose network charges are to be reduced due to outages. The Competition Authority will carry out separate proceedings to assess Elektrilevi's past and planned investments to meet the requirements for ensuring the security of supply of the network.

## 5.2. End of dispute over airport charges

70. In 2011, Directive 2009/12/EC of the European Parliament and of the Council on airport charges was incorporated into the Aviation Act, the aim of which was to establish a general framework regulating airport charges in the European Union. The principles of the Directive that were incorporated into the Aviation Act applied to the airport with the largest number of passenger movements in Estonia – AS Tallinna Lennujaam. Pursuant to the Aviation Act, where the airport operator and airport users have not come to an agreement on the new charge rates, both the airport operator as well as the airport users may address the Competition Authority with a request to analyse whether the change of the rates is justified.

71. Tallinn Airport announced the increase in charges in the summer of 2022, and in October of the same year Ryanair appealed to the Competition Authority with a request to analyse the justification for changing the charge rates together with a complaint to identify violations by Tallinn Airport.

72. On 24 April 2023 the Competition Authority made a decision stating that the fees charged by Tallinn Airport are reasonable and justified. It was not found during the proceedings that Tallinn Airport had violated the law or the methodology for calculating airport charges when determining the airport fees. Nevertheless, the Competition Authority

highlighted the fact that Tallinn Airport is the largest international airport in Estonia, and there are no significant alternatives available. Therefore, Tallinn Airport is required to adhere to the requirements outlined in the Competition Act during its operations. It is prohibited from applying different conditions for equivalent agreements, which could place certain airlines in an unfavourable competitive situation.

73. In accordance with the grounds set out in the Aviation Act, Tallinn Airport published the new charge rates that are in compliance with the decision of the Competition Authority on its website and applied them after two weeks had passed from the publication of the new rates, i.e. as of 10 May 2023.

74. [The decision of the Competition Authority, which omits the trade secrets of the undertakings, is available in the Authority's documents register at https://adr.rik.ee/ka/dokument/14081973.](https://adr.rik.ee/ka/dokument/14081973)

### 5.3. Concentration of AS Maag Grupp and AS HKScan Estonia

75. On 21 July 2023 the Competition Authority authorised the concentration of AS Maag Grupp and AS HKScan Estonia, AS HKScan Latvia and UAB HKScan Lietuva on the condition that the parties to the concentration perform their obligations. The notice of concentration was submitted to the Competition Authority on 30 January 2022 and on 27 January 2023 under decision No 5-5/2023-004 supplementary concentration proceedings were initiated.

76. The parties to the concentration are undertakings that have a very strong position in the production and sale of meat products in Estonia which offer a wide variety of meat products and have well-known brands. AS Maag Grupp and AS HKScan Estonia are both involved in the production of meat products. AS Maag Grupp markets its products under the Rannamõisa and Rannarootsi trademarks, and AS HKScan Estonia owns the Tallegg and Rakvere trademarks.

77. As a result of the proceedings, the Competition Authority came to the conclusion that the concentration of AS Maag Grupp and AS HKScan Estonia does not significantly restrict competition in the production and sale of fresh white meat and processed meat products. Pursuant to the Competition Act, the Competition Authority may grant permission to concentrate if the parties to the concentration assume obligations to avoid restriction of competition. AS Maag Grupp proposed assuming obligations. AS Maag Grupp will transfer in two stages its current business activities in the production and sale of meat products – AS Rannarootsi Lihetööstus and chicken products marketed under the Rannamõisa trademark. Due to the obligations, the concentration will not permanently change the market structure and the concentration of the business activities of AS Maag Grupp and AS HKScan Estonia.

78. AS Maag Grupp has complied with its reporting obligation and, as of March, neither the undertaking's Rannamõisa share nor Rannarootsi Lihetööstus AS have yet been transferred.

79. The Competition Authority supervises the concentration of undertakings if the parties' total turnover of the previous financial year in Estonia exceeds 6,000,000 euros and the turnover of at least 2 concentration parties in Estonia exceeds 2,000,000 euros each. The turnover of a party to the concentration is calculated based on the Guidelines for Calculation of Turnover of Parties to Concentration, established by Regulation No 68 of the Minister of Economic Affairs and Communications of 17 July 2006.

80. [Decision on concentration](#)

#### 5.4. Maxima misdemeanour proceedings

81. The Competition Authority initiated misdemeanour proceedings against Maxima on 19 September 2023 on the grounds of subsections 1 and 4 of § 4 and subsection 2 of § 5 of the Act on Combating Unfair Trading Practices in the Agricultural and Food Supply Chain in connection with the possible non-compliance of contracts concluded between Maxima and sellers with the regulation of said Act. According to the complaint, the violations were in the wording of the contract, where invoices are due for payment after 30 days, and the buyer is given the right to return products that exceed the expiration date to the seller.

82. Under the Act on Combating Unfair Trading Practices in the Agricultural and Food Supply Chain the payment period must not exceed 30 days and it is also considered an unfair trading practice under said Act if the buyer requires the supplier to pay for the deterioration or/and loss of agricultural and food products, where such deterioration or loss is not caused by the negligence or fault of the supplier, the deterioration or loss has occurred on the buyer's premises, or the ownership has been transferred to the buyer. Speaking of food in particular, the passing of the expiration date is equivalent to the deterioration of the product.

83. Although the contracts also included the wording 'to the extent that it does not violate the requirements of legislation' with regard to the return of products that have exceeded the expiration date, and which essentially precluded Maxima from being held liable for mere non-compliance of a contractual term, the grounds and motivation for conducting the proceedings were, among other things, the explanations provided by Maxima as part of the supervision proceedings, as well as hints received from market participants in the food industry and dissatisfaction with Maxima's activities more broadly.

84. The procedural acts carried out included the questioning of witnesses, extensive telephone communication with Maxima's suppliers, and the sending of written inquiries to 26 Maxima contractual partners. The fact of the return of the products that exceeded the expiration date was not confirmed in the course of the proceedings, which is why the Authority terminated the proceedings due to the Act lacking the necessary element of a misdemeanour and with regard to the payment period due to expediency, insofar as there was no confirmation that Maxima had actually been late with payments. The proceedings were terminated on 21 March 2024.

#### 5.5. Proceedings regarding morgue services

85. In 2023, the activities of morgues providing services to hospitals received more attention than usual. In 2023, the Competition Authority terminated two supervisory proceedings against morgues operating at hospitals and issued a recommendation to all Estonian hospitals. In both supervisory proceedings, the issue was the allegedly very high fee for issuing the deceased by the undertakings providing morgue services. In Estonia, it is common practice for hospitals themselves not to generally provide morgue services, and some funeral and morgue service providers have under the procurement procedure won the right to provide morgue services in the hospital premises, renting premises suitable for the provision of the service. Therefore, it is common practice for deceased individuals in hospitals to be taken to the morgue located within the hospital premises. In the supervisory proceedings conducted by the Competition Authority, the situation was also resolved in the manner described above. However, this in turn creates an opportunity for the undertakings providing morgue services to design their own price lists without significant competitive pressure, since the undertakings providing the service have the confidence that the deceased

individuals from the hospital will be brought to the morgue managed by them. The service of delivering the deceased is a service that cannot be chosen by a loved one of the deceased, so the service provider must always be paid for the delivery of the deceased. As a result of one of the supervisory proceedings conducted by the Competition Authority, the amount of the fee for the delivery of the deceased was reduced to the extent provided by law, since under the Public Procurement Act it is possible to change the price by up to 10% during the performance of the contract. In the case of the second supervisory proceedings, it was revealed during the proceedings that this was the average fee charged for a similar service in Estonia and that the fee charged is in no way unfair and the allegations made in the media towards the undertaking were misleading.

86. The Competition Authority is of the opinion that it would be reasonable to set out mechanisms in the competition or procurement terms of morgue premises that would preclude potential disputes and issues regarding pricing. As a result, the Competition Authority made a recommendation to hospitals operating in Estonia, according to which the Competition Authority considers the most reasonable solution to be if the maximum possible rental price is set in competition and/or procurement terms and in order to win the procurement, the lowest possible service fees charged to consumers must be offered. By setting a maximum rental price at a level corresponding to the market price, the economic interests of hospitals are reasonably protected on one hand, while on the other hand, the service fees charged to consumers are formed in a real competitive situation. Among other things, the Competition Authority advised hospitals to set out in their procurement terms that, in addition to the free preservation fee for the first 24 hours, the delivery of the deceased should also be free of charge during the first 24 hours. In addition, in its recommendation, the Competition Authority found that it would be advisable for hospitals to introduce to the relatives of the deceased all providers of morgue services operating in their area, including under what conditions and how it would be possible to use service providers operating outside the hospital.

87. Notice [Valga Hospital](#)

88. Notice [Rakvere Hospital](#)

## 5.6. Supervisory proceedings against Ragn-Sells AS

89. Last year, the Competition Authority completed supervisory proceedings regarding Ragn-Sells AS, during which it found that the increase in prices for additional services in the waste collection areas of Pärnu was not justified. As a result, Ragn-Sells AS reduced its prices. More specifically, within the framework of the supervisory proceedings, an additional service was examined, which involved manual transportation (up to 15 meters from the stopping point) of waste bags or up to an 800-litre wheeled containers to the waste collection vehicle. Ragn-Sells AS had set the price of the aforementioned additional service to be 12 euros per time, which was much higher than the price for the same service in other waste transport areas. The Competition Authority found that this was a possible case of unfair pricing within the meaning of clause 1 of § 16 of the Competition Act, as a result of which Ragn-Sells AS reduced the price of the additional service in question to 5.35 euros. As a result, the Authority decided to terminate supervisory proceedings due to the improvement in the competitive situation.

90. The unfair pricing of additional services did not concern only the waste transport areas of Ragn-Sells AS. After the supervisory proceedings, the Competition Authority also mapped out the prices of additional services (manual transportation of up to an 800-litre container, for at least 11 m) set by other waste transport operators and found unreasonably high prices in certain areas. In total, the prices of additional waste collection services were

changed in 12 waste collection regions: Kambja municipality, Põltsamaa, Türi municipality, Kose municipality, Lääneranna municipality, Anija municipality, Alutaguse municipality, Kohtla-Järve, Narva, Narva-Jõesuu, Sillamäe, and Jõgeva.

91. When pricing additional services related to organised waste transport, waste transport operators must always take into account the conditions for the prohibition of unfair pricing under subsection 1 of § 16 of the Competition Act. During the proceedings regarding the unfair pricing of additional services, it became apparent that the competitive situation in the organised waste transport sector requires broader attention from the Competition Authority. Considering that one of the objectives of the green transition is recycling and collection of municipal waste by type, the Competition Authority believes that more attention should be paid to organised waste transport procurements so as to ensure better conditions and maintain competition.

92. [Notice of termination](#)

## 6. Analyses

93. An important aspect of the Competition Authority's work is the analysis of datasets to identify trends and connections. In 2023, two new analysts joined the organisation, and the Data and Economic Analysis Team was created under the Competition Division.

94. Several analyses were carried out during the year, the largest of which were the analysis of the pharmacy reform and the market analyses of the fuel market and the electric car charging network launched in 2023.

95. The Competition Authority analysed disruptions in the electricity market, prepared an analysis of the electricity and gas market, in addition to which the Authority is also publishing monthly overviews of energy markets as of autumn 2023.

### 6.1. Overviews of energy market

96. The Competition Authority prepares monthly overviews of the energy market. These are summaries of electricity and gas price statistics for the past month and the most important events in the electricity and gas market.

97. Energy market overviews are intended for all readers interested in the situation of the Estonian electricity and gas markets and the most significant events that may affect electricity and gas market prices. The overview also covers the forecast prices of the electricity and gas market, for which the prices of various derivatives are analysed. The overview of energy markets includes historical electricity and gas prices, production volumes by type of production, gas flow, electricity production and consumption, electricity and gas balance portfolios and CO<sub>2</sub> prices. In addition, at the end of the energy market overview, the most affordable electricity and gas packages for household consumers over the past month are highlighted. The Competition Authority's overview gives the reader the opportunity to quickly find a summary of what is happening with the prices of the electricity and gas market.

### 6.2. Analysis of the consequences of the pharmacy reform

98. In 2023, the Competition Authority focused on the analysis of the consequences of the pharmacy reform. With the reform that came into force in 2020, the right to establish a pharmacy was linked to a restriction of ownership, and general pharmacies previously owned by wholesalers of medicinal products became pharmacies operated by pharmacists.

By April 2020, the pharmacy licences had to be brought into line with the conditions that pharmacies must be owned by pharmacists and the wholesalers of medicinal products must have no shareholding or dominant influence in pharmacies. These changes were intended to ensure the separation of retailers and wholesalers of medicinal products, which were previously closely vertically integrated. An analysis published by the Competition Authority in early 2024 shows that the market has not become dominated by independent pharmacies. On the contrary, through pharmacy franchises a strong vertical link with the main wholesaler of medicinal products has been maintained. At the same time, competition in the wholesale market for medicinal products has declined even more. Thus, the main objectives of the pharmacy reform have not been realised.

99. The analysis included a description of the economic situation based on public data, a random survey of pharmacy operators regarding vertical market relations and an analysis of contracts concluded between market participants. The Authority requested additional information from other market participants. The analysis provides an overview of the limits of a franchise in the framework of competition law, deals with the concept of dominant influence in the meaning of competition law and the procedure set out in the Medicinal Products Act to ensure the independence of pharmacies. The relationship with the price regulation of retail and wholesale of medicinal products is highlighted separately. The conclusions section offers possible solutions on how to correct the situation that has arisen.

100. There are two major wholesalers (Magnum Medical OÜ, Tamro Eesti OÜ) on the wholesale market of medicinal products, whose market shares together account for approximately 80% of the market. Compared to 2019, the third largest wholesaler has left the market, and the shares of market leaders have increased by 18% and 4%, respectively.<sup>1</sup> Four franchises operate on the pharmacy market (Apotheka, Benu, Südameapteek and Euroapteek). 444 out of 476 pharmacies are associated with franchises, of which Apotheka makes up 34%, Benu 28%, Südameapteek 16% and Euroapteek 15% of the share).

101. The analysis shows that the instrument of dominant influence has not ensured the independence of pharmacies operated by pharmacists from the vertical market relationship. The identification of dominant influence in competition law depends on the existence or absence of a control capability. Even if the owner of the pharmacy has *de jure* dominant influence, its market behaviour can be influenced by the contractual framework through franchise obligations, the right to use the pharmacy premises, as well as loan obligations, especially in the case of pharmacies which became independent following the reform. In the situation described, the control of dominant influence as set out in the Medicinal Products Act is not an appropriate instrument. Instead, the law should provide for a separate set of rules, with particular regard to contractual relations developed in the pharmacy sector following the reform.

102. The Competition Authority proposed to consider additional measures to end the situation where the right to use the commercial space used to operate an independent pharmacy is controlled by the franchisor. In addition to the sublease of premises, it also concerns other important resources such as IT systems, personnel service, etc. In order to achieve effective state supervision, it is necessary to ensure that complete information is available to the competent authorities. The introduction of more precise rules, especially regarding the independence of pharmacies, would also allow greater clarity on what information and to whom an undertaking must provide in the licence proceedings. Additional competition law instruments are also worth considering.

---

<sup>1</sup> See Aivar Linnamäe osalusega Apteekide Koostöö Hulgimüük lõpetab tegevuse. ERR News [23 September 2020](#).

103. In ensuring the economic independence of pharmacies, it is important to bear in mind economic reality, in particular as regards regulated mark-ups and repayment practices. The Competition Authority has previously<sup>2</sup> expressed the view that the existing model of price regulation for medicinal products does not work. What's more, the regulation that has not worked so far does not support competition, but the continued involvement of pharmacies with the main wholesaler and franchisor. In conditions of limited mark-ups, the selling prices of medicinal products have become more harmonised, and pharmacies do not have the economic incentive to choose between different wholesalers. Although the prices of medicinal products are agreed upon between the manufacturer and the state, and wholesale and retail mark-ups are regulated, a random analysis of settlements between manufacturers and wholesale traders carried out by the Competition Authority in 2020 showed that manufacturers in turn give wholesale traders significant discounts on the nationally agreed price. To ensure that manufacturers' discounts to wholesalers of medicinal products reach the retail level and from there the consumers, it is necessary to develop effective regulation and implement measures to stimulate price competition between wholesale traders.

104. The Competition Authority proposed to consider introducing additional requirements for pharmacy ordering systems. It is necessary to revive the price competition between wholesalers through the operation of pharmacies. To do this, it is possible to ensure that each pharmacy, regardless of franchise, using automatic ordering, can choose goods not on the basis of the wholesaler, but on the basis of the best offer, for example, based on price and delivery conditions.

### 6.3. Market analysis on the charging network of electric cars

105. In autumn 2023, the Authority started a market analysis on the charging network of electric cars. The aim of the analysis is to obtain a competition law overview of the public charging network of electric car chargers in Estonia.

106. The survey has been divided into phases and starts with identifying topics and formulating research questions. In the second phase, meetings with relevant authorities will take place and after that, questionnaires will be sent to market participants. In addition, different interviews with market participants and authorities will take place. Developments in some other European Union countries will also be taken into account in the survey and compared with the situation in Estonia.

107. As a result of the climate objectives set by the European Union, the development plan aims to reduce the greenhouse gas emissions of the transport sector by 30% by 2035 compared with 2018. From 2035, the European Union has planned to end the sales of cars with internal combustion engines. As a large part of the total greenhouse gas emissions is caused by road transport and largely by cars, this objective can be met only if the number of cars with petrol and diesel motors is reduced and more electric cars are taken into use. The electric car market is growing rapidly in Estonia, which is why the development of the charging network and possible problems on this market should be paid attention to.

108. The Competition Authority will publish its final report of the analysis presumably by the end 2024, taking into account that such analyses usually take 12 months.

---

<sup>2</sup> [Analysis of the price regulation of medicinal products published by the Competition Authority on 1 September 2020](#). See also [Competition Authority Annual Report 2020, page 9](#).

#### 6.4. Analysis of the fuel market

109. In the autumn of 2022, the Competition Authority commenced a comprehensive mapping of the retail and wholesale competition situation in the motor fuel market.

110. The aim of the study is to better understand the functioning of these markets, including identifying possible distortions of competition and, where appropriate, providing pro-competitive measures. This is an economic analysis that is not directly intended to identify possible violations of law.

111. To conduct the survey, nine major retailers and wholesalers were sent extensive questionnaires.

112. During 2023, the Competition Authority collected the necessary information from all major market participants. In addition to the initial survey, the Authority has asked undertakings to send additional data. We have also been in contact with other important entities such as the Environmental Board, Elering, the Tax and Customs Board and the Ministry of Climate.

113. To date, the Competition Authority has carried out an extensive analysis of the fuel market in various areas. We focused on five major topics: retail, wholesale, biofuel, fuel supply and alternative fuels. The main types of fuel we examined were petrol 95, petrol 98 and diesel. We compared the Estonian market with other EU countries as well as Estonian undertakings with each other.

114. Separately, it is worth highlighting the price analysis. As a result of the extensive data, the Competition Authority was able to analyse price behaviour on the Estonian market, both as a result of external factors (world market prices) and domestic factors (behaviour of competitors).

115. The final report was completed in the first half of 2024.

#### 7. Amendments to legislation

116. On 1 July 2023, the new Public Water Supply and Sewerage Act entered into force, establishing the bases for planning, organisation and use, the rights and obligations of the state, water undertaking, local government and consumer, state supervision, and liability for violation of the requirements. The bill sets out the principles and bases of pricing the public water supply and sewerage services. Compared to the previous Act, a new regulation regarding the procedure for the management of hazardous substances was introduced in order to ensure that there is an overview of hazardous substances from their place of origin until their treatment. The grounds for suspension and termination of the contract arising from breach of contract and the principles of sustainability of service provision were also supplemented. The principles of the methodology for the pricing of water, which were previously set out in a guideline prepared by the Competition Authority, were also brought to the level of law. One of the important changes was also the provision of a time limit for eliminating the price difference for legal and natural persons – a water undertaking, if it has set different prices for public water supply and sewerage services for legal and natural persons, is obliged to bring the prices in line with the principle of equal treatment within three years from entry into force of the Act. Therefore, prices should be harmonised by 1 July 2026 at the latest.

117. However, the Estonian water sector is facing a situation where European Union subsidies are decreasing drastically, but the sector will continue to need large-scale investments in order to continue providing quality water and sewerage as a vital service. It



is the task of the Water Services Steering Group convened by the Ministry of Climate to find out how by 2025 to reorganise the Estonian water sector. Technical support for the impending work will be provided by the European Commission's Directorate-General for Structural Reform Support. The parties involved in the water reform have confirmed their willingness to cooperate to prepare a reform plan – the heads of the Ministry of Climate, the Competition Authority, the Association of Estonian Cities and Rural Municipalities, the Estonian Waterworks Association, the Estonian Central Union of Homeowners [*Eesti Omanike Keskliit*], the Health Board of Estonia and Environmental Investment Centre signed a goodwill and cooperation agreement.<sup>3</sup>

118. More specific proposals and news related to the water reform are expected in particular during the second half of 2024.

119. With regard to energy, it can be noted that the main changes in the electricity and natural gas sector relate to 2022, when the amendments relating to the transposition of common rules for the internal market for electricity of Directive (EU) 2019/944 of the European Parliament and of the Council entered into force in the Electricity Market Act, which led, inter alia, to the tightening of the requirements for management of distribution networks and laid down a requirement to formulate a plan for network development. However, taking into account the geopolitical situation of 2022 in which the likelihood of a halt in gas supplies from Russia increased, the Natural Gas Act was supplemented by a regulation to ensure the viability of the gas system during a long-term gas supply disruption and to cover the costs of managing the strategic gas stock. The changes ensured the supply of gas to protected consumers and specified the activities related to the supply disruption in such a way that the gas in the system could be used optimally after the disruptions of gas supplies from Russia.

120. Taking into account the need and objective to accelerate the transition to renewable energy and create conditions conducive to its promotion, the possibility for network operators to purchase wasted power as energy produced from renewable sources and to reduce the pressure on the increase in connection costs was set out in the Electricity Market Act in 2023. The Act also specified provisions concerning the benefit instrument for local communities regarding wind energy. According to the bill, which has now passed its first reading in the Riigikogu, provision of the universal service will cease from May 2024 and a legal regulation for the introduction of a mechanism for electricity reserve capacity will be established. In addition, with the amendment of the Act, administrative costs related to the LNG extraction dock and infrastructure are included in the strategic gas stocks payments in order to increase Estonia's security of natural gas supply. It also provides that, in an emergency, the network operator must deliver gas to the consumer at the same price at which it was purchased from the strategic stock. As a result of the amendments, the Competition Authority has the right to initiate misdemeanour proceedings if it becomes clear that the seller has resold the gas purchased from the strategic gas stocks to the consumer at a price higher than its purchase price.

121. The Competition Authority has been actively involved in the development of legislation governing the aforementioned areas of activity of the Authority, proposing amendments and supplements to the legislation.

---

<sup>3</sup> Available at: <https://kliimaministeerium.ee/uudised/kliimaministeerium-alustab-uleriigilise-veemajanduse-reformi-kavandamist>

122. There were no other changes in 2023 to the Competition Authority's tasks regarding other areas over which the Authority exercises supervision (district heating, rail, post, ports and aviation).

## 8. Government bill implementing the Competition Directive (ECN+)

123. The Ministry of Justice has prepared a bill to transpose the European Union Directive [2019/1 \(ECN+ Directive\) to enhance competition supervision, which, as an important aspect, provides for the fining of](#) undertakings outside offence proceedings. Under the same rules of procedure as the fining, the bill makes it possible to prescribe a cessation of the violation or also to approve assumption of an obligation. It is also possible to terminate proceedings without applying competition supervision measures, including on the grounds that the case is not a priority. The person subject to proceedings is obliged to provide information and to assist.

124. The Competition Authority had an advisory role in the preparation of the bill, provided opinions on it and explained the meaning and possible effects of the amendments. The first versions of the bill were prepared in the Ministry of Justice in 2021, after which it passed the round of approval. Several discussions have taken place, as a result of which the Ministry has made changes to the text of the bill and supplements to the explanatory memorandum. At the end of 2023, the bill remained pending the decision of the Government of the Republic, which was reached in mid-February 2024. Negotiations prior to this led to a number of significant amendments, while the proposed improvements on some issues were abandoned.

125. The deadline for transposition of the ECN+ Directive was 4 February 2021 and to date Estonia is the only Member State that has not transposed the Directive. In connection with exceeding the deadline, the European Commission initiated infringement proceedings against Estonia (No 2021/0112) and on 18 September 2023 the Commission brought an action against Estonia to the Court of Justice concerning the failure of a Member State to fulfil its obligations.

126. Below is an overview of some of the most important topics that we dealt with in 2023.

### 8.1. Distinguishing provision of assistance from self-incrimination

127. In her opinion on the bill, the Chancellor of Justice has raised the question of whether the extensive obligation to provide information to a person subject to penal proceedings under the bill is in conformity with the constitutional privilege of non-self-incrimination (*nemo tenetur se ipsum accusare*). Pursuant to subsection 3 of § 22 of the Constitution of the Republic of Estonia, no one shall be compelled to testify against himself or herself, or against those closest to him or her. In the analysis of the fundamental rights of the bill it was concluded that the scope of the right to remain silent granted to natural persons (including the privilege of non-self-incrimination) is not equally transferable to legal persons.

128. When talking about competition supervision, it is important to bear in mind that it examines an undertaking's market activities, and not the criminal or misdemeanour matters of natural persons associated with it. The person subject to the proceedings is the person forming the undertaking, which in the vast majority of cases is a legal person. For this reason, this is not a typical criminal proceeding, in which a person faces alone the powerful

penal system of the state, and through it the entire state apparatus.<sup>4</sup> This begs the question whether the representative of the legal person forming the undertaking should be able to refuse to provide information in the proceedings as if they were a natural person facing criminal charges. The answer to this question is negative. The privilege of non-self-incrimination in competition supervision proceedings cannot be so broad as to extend to the right not to provide information at all and to remain silent.

129. For the effective conduct of proceedings in competition cases, a limited obligation to assist is prescribed for the person subject to the proceedings.<sup>5</sup> An undertaking whose activities are associated with an infringement of competition law may refuse to provide the Competition Authority with the information necessary to investigate and prove the infringement only in limited cases. Similar to the Directive, the bill restricts the right to request information from the person subject to the proceedings in such a way that the person may not be compelled to admit the infringement. Consistent case-law of the Court of Justice confirms that it is possible to compel a legal person to provide all necessary information concerning such facts as may be known to it and to disclose such documents relating thereto as are in its possession, even if they may result in self-incrimination.<sup>6</sup> It is prohibited to be compelled to give answers that could be considered as an admission of guilt. The provision of the right to request information in the Directive bears a full harmonisation requirement and therefore the Member State does not have discretion as to its wording and content. Otherwise, the directive has not been correctly transposed by the Member State, which leads to substantive infringement proceedings before the Court of Justice.

130. The Competition Authority approached the other European competition authorities with the question of how other countries, when transposing the directive, have distinguished a person's obligation to assist from the privilege of non-self-incrimination. To this end, the Authority examined whether the competition authorities of other European countries may require from a person, without said person being compelled to plead guilty to the infringement, information: (a) which contains evidence that can be used against them in imposing a fine as a result of competition supervision proceedings (hereinafter also referred to as competition fine proceedings); (b) where not only the information available is required, but where the addressee must also prepare information in order to respond (for example, explain their price list, provide data and calculations on the cost-basis of the price). Secondly, the Authority asked whether the person subject to the proceedings could rely on the so-called right to remain silent in competition fine proceedings and refuse to answer questions which do not compel the person to admit to the commission of the infringement.

131. Responses were received from the competition authorities of Austria, Belgium, the Czech Republic, the Netherlands, France, Sweden, Germany, Slovakia, Slovenia and

---

<sup>4</sup> See Heili Sepp and Eerik Kergandberg. *Põhiseaduse kommenteeritud väljaanne*, paragraph 7 of section 22 of Chapter II.

<sup>5</sup> Article 8 as well as point (b) of Article 6(1) of Directive 2019/1.

<sup>6</sup> See Court of Justice judgment of 2 February 2021 in Case C-481/19 *DB v Commissione Nazionale per le Società e la Borsa (Consob)*, paragraph 46; judgment of 18 October 1989 in Case 374/87 *Orkem v Commission of the European Communities*, paragraph 34; judgment of 29 June 2006 in Case C-301/04 P *Commission of the European Communities v SGL Carbon AG*, paragraph 41, and judgment of 25 January 2007 in Case C-407/04 *Dalmine SpA v Commission of the European Communities*, paragraph 34.

Spain, and the European Commission. The vast majority of <sup>7</sup> respondents stated that information can be required from the person subject to the proceedings to be used as evidence against them, which does not concern only existing documents but may include an obligation to compile, explain, justify, calculate, etc. The obligation of the person subject to the proceedings to provide assistance is limited with the prohibition to be compelled to give incriminating testimony, outside of this there is no right to remain silent as inherent in criminal proceedings.

132. Previous replies from Lithuania, Latvia and Finland also showed that undertakings held liable in competition supervision proceedings do not have the right to refuse to provide information and explanations. The person conducting the proceedings is prohibited from compelling the person subject to the proceedings to answer questions that would directly lead to the admission of the infringement. In other matters, there is an obligation to assist, not only including the obligation to provide the required documents, but also to provide explanations, etc.

133. While with regard to the previous issue of the obligation to assist, the Ministry limited itself to supplementing the explanatory memorandum, on the following issues amendments were made to the provisions of the bill.

## 8.2. Verification of the relevance of information after a search

134. At the initiative of the Estonian Bar Association, the bill established the right of access of the person subject to the proceedings in the procedure for the initial examination of the data seized during a search. This means that if the Competition Authority takes data carriers with them during a search or makes copies of them, the person subject to the proceedings has the right to be present when the Competition Authority opens the seal and proceeds with further examination to extract relevant information. The amendment was considered necessary, in particular, to protect the information submitted in a client-lawyer relationship of trust subject to LPP (legal professional privilege) which the person conducting the proceedings does not have the right to access. The provisions in the bill concerning LPP have also been significantly clarified in accordance with the comments received from the Estonian Bar Association.

135. Regarding the verification of the relevance of the information, the bill was clarified with regard to the reimbursement of procedural costs and the possibility of the person subject to the proceedings being reimbursed for the costs incurred by the presence of their representative in the further examination of the information was expressly excluded.

## 8.3. Court fines and methodology for imposing fines

136. The Competition Authority has drawn attention to the need to set out grounds for imposing a fine in the law. Previously, the only criterion laid down by law was 10% of an undertaking's worldwide turnover, which according to Article 15 of the ECN+ Directive constitutes the maximum not the minimum amount. From the point of view of fundamental rights, the formation of the amount of the fine is certainly an important issue, the grounds for which must be provided for by law with sufficient precision. In view of this, the bill set out the grounds for determining the basic amount of the fine on which the European Commission is relying in its calculation of fines.

---

<sup>7</sup> The answers draw the following picture: 1a) 10 affirmative answers 1b) 11 affirmative answers 2) 10 affirmative answers.

137. The Ministry of Justice specified in the bill the methodology for calculating the amount of the fine, but also provided for the transition from the system of administrative fines to the so-called court fines. This means that the Competition Authority will not impose a fine itself, the administrative court does, and we will only make a request to them. A system like this is not common in the European Union, nor does the European Commission use it. Still, it is in place in Finland, but Sweden, for example, recently reversed course and moved from court fines to administrative fines imposed by the competition authority.

#### **8.4. Reimbursement of procedural costs**

138. In addition to the above, it is worth mentioning separately that in 2023 the Competition Authority submitted its motions to amend regarding the provision setting out the reimbursement of procedural costs to the person subject to the proceedings out of court at their request. The Competition Authority should, by means of an administrative act, decide on the justification of reimbursement of the costs of legal aid, economic expert assessments, translations and the like, inter alia, if a violation cannot be established in the proceedings and the matter does not reach the court.

139. As far as the Competition Authority is aware, no other country which has transposed the ECN+ Directive is reimbursing an undertaking subject to proceedings for the legal assistance and other procedural costs incurred in the proceedings prior to the notification of the assessment whether competition law has been violated (ie the lodging of a formal complaint or a (fine) decision). The exception is Hungary. The Estonian Competition Authority's questions were answered by 22 competition authorities from the following countries: Austria, Belgium, Bulgaria, France, Croatia, Germany, Ireland, Greece, Cyprus, Lithuania, Luxembourg, Norway, Poland, Portugal, Spain, Sweden, Romania, Slovakia, Slovenia, Finland, Denmark, Spain, Hungary. In addition, the European Commission provided its input.

140. In competition supervision proceedings, a person is not entitled to claim reimbursement of procedural costs if the proceedings against such a person are terminated without taking measures. Nor can applications for reimbursement of costs for legal assistance be filed in pre-action proceedings, nor will the competition authorities examine such applications or decide whether the procedural costs are justified. Only the Hungarian competition authority is obliged to reimburse the person subject to the proceedings for the costs of legal assistance incurred during pre-action proceedings outside court costs and state liability. German law does provide for the right of a person subject to procedural acts in a fine procedure to claim reimbursement of costs to a limited extent, but only with regard to searches or the seizure of documents. Costs of legal assistance must relate to procedural acts carried out in relation to the relevant persons. The costs of other contractual representation and the exercise of the right of defence are not subject to reimbursement.

141. On 11 March 2024, the Economic Affairs Committee of the Riigikogu presented the bill for the first reading. During the proceedings in the Riigikogu, all interest groups are once again invited to participate in the process of discussion of the bill, so the amendments described above may not be final, ie the final text of the bill may change compared to the version sent to the Government of the Republic.