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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –
Contribution from Estonia**

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This contribution is submitted by Estonia under Session III of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: oe.cd/icar.

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Interactions between Competition Authorities and Sector Regulators

– Contribution from Estonia –

1. Institutional context

1. Estonian Competition Authority (ECA) was established as an enforcement agency in 1993. Over the years ECA has gained regulatory functions which means today ECA is a multi-purpose agency with antitrust and regulatory functions.
2. A major reform concerning the functions and design of ECA was undertaken in 2007, with the result of five agencies within the administrative area of the Ministry of Economic Affairs and Communications being merged into two. The merging parties were the Competition Board, the Energy Market Inspectorate, the Communications Board, the Railway Inspectorate and the Technical Surveillance Inspectorate, which became the Competition Authority and the Technical Surveillance Authority. The merger entered into force on 1st of January 2008. The new Competition Authority retained all of its antitrust related enforcement functions, whilst taking over the tasks of the energy regulator and obtaining some functions of the communications regulator. In addition, some tasks in the railway sector previously exercised by the Ministry of Economic Affairs and Communications were transferred to ECA, due to requirements of European Union legislation.
3. In 2011 ECA was also entrusted with additional regulatory functions in the fields of district heating and water supply, which were previously wholly or partly regulated by local authorities. Due to the adoption of the European Union directive on airport charges, ECA became the agency which settles disputes between airport operators and airport users on applicable rates.
4. Since 1st of July 2014 functions of telecoms regulator were transferred to the Technical Surveillance Authority (now named the Consumer Protection and Technical Regulatory Authority), ending the division of responsibilities between the two agencies, as the latter is now the sole telecoms regulator. Due to the harmonization of EU energy efficiency directive, it has been proposed that ECA should be responsible for regulatory functions foreseen by that directive.
5. In 2021 ECA was mandated to supervise over the act on combating unfair trading practices in the agricultural and food supply chain and since 2022 Competition Authority also performs the duties assigned to it by law in the field of insolvency.
6. In present time ECA exercises state supervision in the fields of competition, electricity, natural gas, district heating, postal services, public water supply and sewerage, railways, and ports. In addition, the authority resolves disputes and complaints related to airport and port charges and monitors unfair commercial practices.

7. The functions of the authority are divided between three divisions, which are Competition Division, Regulatory Division and Insolvency Division¹. The Competition Division supervises competition, controls mergers, analyses the competition situation in various sectors, and raises competition awareness and also monitors unfair commercial practices. The Regulatory Division supervises and regulates prices in the areas of electricity, natural gas, district heating, and water. The focus of the division is on controlling the markets in these sectors and in the rail and postal services market. Additionally, it resolves disputes related to airport and port fees.

8. In a small country like Estonia, it is economically reasonable to have several policy instruments within the same agency, as it also enables better synergies between different policies. For example, people working with several functions are better suited to solve jurisdictional questions, find common grounds and solutions. To be more concrete, Competition Division has relied on the financial expertise of the Regulatory Division in the competition cases regarding unfair pricing and pricing related abuse cases, Regulatory Division on the other hand has informed Competition Division of potential competition concerns on energy markets and so on. Also, over the years several cases in the fields of energy and post were proceeded in very close co-operation between the divisions. One of the first analyses made in co-operation just after the authority was merged and it concerned water and sewerage sector². The sector-based know-how and expertise proved to be remarkably useful also in merger cases concerning regulated markets, for example electricity market³. Equally important is the daily exchange of know-how that significantly helps to contribute to the speed and quality of the proceedings. The ultimate goal is that undertakings receive feedback to their requests as quickly as possible.

2. Cooperation with telecom regulator

9. As already mentioned above, ECA was responsible for regulating part of electronic communications for the years 2008 till 2014. Since 2014 the tasks, rights and obligations of the electronic communications market regulator, which previously had been divided between ECA and the Technical Surveillance Authority, are under the competence of the latter. In relation with these changes, the electronic communications department was also transferred to the Technical Surveillance Authority, but as the people were before part of ECA, the contact is still there which also contributes to better cooperation. Even if regular meetings are not held, the discussions are held between the case handlers of both authorities to address an issue of interest or concern. In several cases concerning telecommunication markets ECA has received valuable technical and sector specific help from the colleagues of Consumer Protection and Technical Regulatory Authority. Recent examples concern broadband services market and cable conduits market⁴.

10. ECA has also drawn attention to the Consumer Protection and Technical Regulatory Authority regarding the problems in telecommunication market encountered in competition analyses. In 2020 ECA observed the Estonian telecommunications market in order to assess several developments related to the telecommunications sector. The

¹ The Insolvency Division will be established as an independent structural unit of the Competition Authority and will start operating in 2022

² https://www.konkurentsiamet.ee/sites/default/files/991tln_vesi_30_11_2009_loplik.pdf

³ The concentration of Enefit Green AS and Nelja Energia AS, 2018

⁴ https://www.konkurentsiamet.ee/sites/default/files/juhtumid/2021/teade_menetluse_lopetamisest_telia_ee_as_19.02.21_arakiri.pdf

assessment concerns in particular the wholesale and retail prices of broadband services and the provision of access to these services through cable conduits. The assessment shows that the retail prices of mobile internet in Estonia are one of the most favourable when compared to the European average. At lower speeds, Internet prices of the fixed network are lower or at the same level as in neighbouring countries (Lithuania, Latvia, Finland, Sweden and Denmark) and are not higher than the EU average. Estonia is in a rather good state compared to the rest of Europe in terms of Internet connection that meets the needs of regular consumers. However, at higher speeds (100 Mbit/s and above), internet prices for certain services are higher than the European average. There is also continued concern about the entry into service of high-speed fixed broadband network, which, despite the widespread availability of very high-capacity networks, is well below the EU average. For example, 83% of consumers have access to high-speed internet, while only 14% use it.

11. The assessment shows that the development of 5G high-speed internet service requires the existence of a fixed network because the service cannot be provided only on the basis of mobile communications. In the telecommunications markets, access to the infrastructure of the undertaking in control of essential facilities, including cable conduits, is crucial, and ECA considers the main issue to be the existence and transparent availability of available capacity in the cable conduits. In its assessment, ECA found that the sector-specific obligations imposed on Telia Eesti AS (Telia) for access to cable conduits are not effective enough to ensure the functioning of competition. Ensuring effective regulation is crucial for access to electronic communications infrastructure. In order to regulate prices effectively, it is essential that the regulator not only defines the methodological bases of pricing, but also later checks all costs and calculations at the basic level. Therefore, the fundamental choices of pricing by undertakings in this market should also be accompanied by a detailed cost accounting review by the Consumer Protection and Technical Regulatory Authority.

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

13. In addition, Electronic Communications Act⁵ regulates the co-operation between Consumer Protection and Technical Regulatory Authority and ECA. The aim of co-operation between the Consumer Protection and Technical Regulatory Authority and ECA in the area of electronic communications is to ensure uniform and consistent interpretation of the competition situation and prevent the passing of contradictory decisions. Therefore, Consumer Protection and Technical Regulatory Authority and ECA have to co-operate in the area of market regulation and exercising of supervision in the electronic communications sector and, if necessary, exchange appropriate information. The law also gives opportunity and legal base to specify the conditions of co-operation between the authorities by way of a protocol⁶.

⁵ <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/517122020006/consolide>

⁶ ECA and Technical Regulatory Authority signed the protocol of co-operation in 2005.

14. According to the law the Consumer Protection and Technical Regulatory Authority shall promptly provide the Competition Authority with the following information:

- the results of the market analysis, including the results of the analysis conducted for defining the markets;
- decision on declaration of an undertaking as an undertaking with significant market power, or a decision to revoke such declaration;
- decisions on imposition of the obligations related to access and interconnection on undertaking with significant market power.

15. ECA usually issues an opinion on the draft decisions prepared by the Consumer Protection and Technical Regulatory Authority. ECA has provided generally positive feedback to the measures envisaged in the draft decisions of the Consumer Protection and Technical Regulatory Authority.

16. To have effective co-operation between different authorities, it is crucial to have legal base for the exchange of necessary information. As it was mentioned above, the Consumer Protection and Technical Regulatory Authority and ECA can exchange appropriate information and if necessary also confidential business information. In such case the officials of the Consumer Protection and Technical Regulatory Authority and ECA are required to maintain the confidentiality of state secrets, classified information of foreign states and confidential information which have become known to them in the course of performing their service duties and they have the right to use such information only for the performance of their service duties.

17. In conclusion, it can be considered that the current cooperation between ECA and the Consumer Protection and Technical Regulatory Authority may be assessed positively and is certainly useful for both authorities.