Organisation for Economic Co-operation and Development

DAF/COMP/GF/WD(2025)50

Unclassified English - Or. English

7 November 2025

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Cancels & replaces the same document of 7 November 2025

Global Forum on Competition

Competition in the Healthcare Sector – Contribution from Lithuania

- Session II -

1 December 2025

This contribution is submitted by Lithuania under Session II of the Global Forum on Competition to be held to be held on 1-2 December 2025.

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

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1. Introduction

1. The healthcare sector has distinctive features and great social significance. Only part of the healthcare services can be qualified as economic activity and, respectively, become the object of competition law enforcement. Moreover, the policy makers are not always willing to open this sector to the private companies since they seek to preserve the control of this important sector and express concerns that introduction of market principles may undermine other legitimate interests, such as the universal accessibility of healthcare services.

2. This Note overviews the Lithuanian experience related to the policy makers' decision-making process affecting the healthcare sector. The Lithuanian Competition Council following the jurisprudence of the Court of Justice of the European Union (hereinafter – the CJEU) concluded in its decisions that competition law enforcement in the healthcare sector has its limits. However, even in the situations, where provision of healthcare services does not qualify as economic activities, the Competition Council advises the policy makers to adhere to the principle of competition, where it can be beneficial to consumers.

3. In this Note, specific examples of Competition Council's enforcement and advocacy activities in the healthcare sector are covered. These examples demonstrate that the competition authority carefully selects the scope and type of its interventions depending on the issue at hand. The Competition Council considers that the full elimination of competition in the healthcare sector would result in negative consequences not only to the private companies, but also to the State and patients.

2. Limited space for the competition law enforcement in the healthcare sector

4. The special features of the healthcare services cause both social and legal implications. For example, the CJEU stated in its jurisprudence that not all healthcare services can be qualified as economic activities[1]. This jurisprudence results in the fact that, depending on the national frameworks, competition and State Aid rules of the European Union might be applicable to the healthcare services to a limited extent. The Competition Council follows this jurisprudence of the CJEU in its evaluation of the issues related to the healthcare services, namely, whether the competition rules apply.

5. In 2024, the Competition Council concluded an investigation into a program of Akmenė District Municipality, which incentivised doctors of scarce specialties to work in public healthcare institutions. The program included various measures to attract doctors, including a one-time financial grant, compensation for residency studies and provision of municipal housing. These incentives were available only to public healthcare institutions managed by the municipality and holding service agreements with the territorial health insurance fund.

[1] When deciding whether specific services can be qualified as economic activities, the CJEU relies on the following criteria: (i) the system pursues a social goal; (ii) the principle of solidarity applies in the system; (iii) the activity is carried out without seeking profit; (iv) whether state supervision of activities is carried out. See, e. g., the CJEU decision of 11 June 2020 in cases No. C-262/18 P ir C-271/18 P, decision of 27 April 2023 in case No. C-492/21 P.

6. The Competition Council investigated whether the Akmenė District Municipality, by approving the mentioned program, might have granted privileges to its managed healthcare institutions, and discriminated against private institutions, thus creating unequal competition conditions and potentially violating the Law on Competition. After conducting the analysis of the case, the competition agency concluded that free healthcare services funded by the Compulsory Health Insurance Fund (CHIF), whether provided by municipal or private healthcare institutions, should be considered non-economic activity and, therefore, are not subject to the requirements of the Law on Competition.

7. The Competition Council found that the program under review was primarily intended to attract doctors to ensure the provision of services funded by the CHIF (i.e., non-economic activities). Paid medical services, which qualify as economic activities, accounted only for up to 10% of services provided by healthcare institutions in Akmenė District, and the program has managed to attract three family doctors, who were not prohibited from additionally working in private healthcare institutions. Therefore, considering that the established facts related to economic activities were of minor extent and significance, the agency decided to terminate the investigation.

8. One of the specific features of the healthcare services is that their provision is heavily regulated by public authorities and for this reason undertakings operating in the healthcare sector face various restrictions (e. g., related to the price-setting process, requirements of the licensing, etc.). The question whether the heavy regulation eliminates the need and (or) possibility to apply competition rules to the practices of companies carried out in this strictly regulated area is highly relevant in Lithuania. In the Competition Council's assessment, undertakings should still comply with the competition law requirements, where applicable.

9. In 2022, the Competition Council adopted a decision[2] establishing that the Lithuanian Pharmacies Association (the LPA) and 8 pharmaceutical companies entered into anti-competitive agreement and infringed national and European Union competition law, when they agreed on the wholesale and retail mark-ups of reimbursable medicines subsequently approved by the Lithuanian Ministry of Health[3]. The agreement was qualified by the Competition Council as indirect price fixing, i. e. competition law infringement "by object".

10. In 2017, the Ministry decided to assess retail and wholesale mark-ups for reimbursable medicines. The Ministry informed the LPA that a working group would be formed to evaluate the existing mark-ups and requested the LPA to submit economically based proposals for their adjustment. Later the Ministry requested for calculations supporting the necessity of a change in the mark-ups and data on the mark-ups required for the undertakings to operate in an economically rational manner. The LPA, with the consent of its members (the pharmacies) and member-affiliated companies (the wholesalers), submitted to the Ministry jointly set wholesale and retail mark-ups for reimbursable

[2] The Competition Council resolution of 9 December 2022, No. 1S-132 (2022). Available online: https://kt.gov.lt/uploads/docs/docs/5491_5e8421360b4f3b61c6678178fecf3a46.pdf.

[3] The mentioned mark-ups became mandatory to every undertaking selling reimbursable medicines in Lithuania on wholesale and (or) retail level.

medicines and presented them to the Ministry as allegedly necessary to cover their operating costs. However, the Competition Council found that the proposed mark-ups were not only intended to cover the operating costs of the undertakings concerned but were designed to ensure additional profits for all competing groups of companies.

11. In 2025, the Regional Administrative Court upheld the complaint lodged by the LPA and pharmaceutical companies and annulled the Competition Council's decision. According to the court, the actions of the association and the companies in the legislative process examined in the case are not considered a violation of the Law on Competition since they were not carried out „in the market" and the decision concerning mark-ups was taken by the Ministry of Health. The Competition Council appealed the mentioned decision to the Lithuanian Supreme Administrative Court. In the competition agency's view, in this particular case the coordinated actions carried out by the undertakings could, and indeed have influenced the Ministry's decision since the Ministry needed the companies' economic data to adopt a reasonable decision on the mark-ups – an element of prices applied in the market. The case is still pending.

12. The above-described examples demonstrate that the competition law enforcement is somehow limited in the healthcare sector, as competition rules do not apply in all cases. In the Competition Council's view, such framework should not discourage the competition agencies to be active in this sector. On the contrary, in the heavily regulated sectors, it is even more important to apply competition rules where relevant and to preserve the remaining competition creating benefits to consumers and the State. To reach this goal the enforcement activities should be supplemented by active advocacy efforts.

3. The advocacy activities in the healthcare sector: balancing policy goals

13. The Competition Council's advocacy activities aim at contributing to the regulatory environment of healthcare services that is most favourable to the consumers and the State. As already mentioned in this report, not all healthcare services can be qualified as economic activities. Notwithstanding the special features of healthcare services, in the Competition Council's view, introducing principle of competition into the regulation concerning healthcare services may be beneficial. Moreover, the Competition Council is aware that many other legitimate objectives (e. g., quality, accessibility, equity, transparency of the services) exist in the field of healthcare and the pursuit of these objectives may require regulatory intervention and balancing these objectives against free competition.

14. In recent years, the Lithuanian policy makers carried out various reforms and debated various potential amendments concerning the healthcare sector. In 2025, the Ministry of Health proposed the amendments seeking to limit the private companies' provision of healthcare services funded by the CHIF. Namely, the Ministry proposed establishing the regulation, according to which the priority to sign contracts for the provision of mentioned services would be given to the public healthcare services providers. The Ministry claimed that the proposed regulation would result in a more effective use of the public healthcare providers' resources and infrastructure. Another amendment proposed by the Ministry seeks to eliminate the possibility for all healthcare services providers to charge additional payments for the healthcare services funded by the CHIF (e. g. if patients wish to receive higher quality services than those funded by the CHIF and agree to pay the price difference). This issue is complex since in theory such additional

payments are already restricted by the current regulation, however, the requirements of the law are interpreted differently by different stakeholders. In addition, the Ministry claims that private healthcare services providers might abuse the legal requirements and demand additional payments from the patients absent legal and factual grounds.

15. Notwithstanding that the Competition Council qualifies the healthcare services funded by the CHIF as non-economic, the authority evaluated the above-described initiatives and provided its position to the policy makers. Concerning the initiative to prioritise the public healthcare services providers, the Competition Council advised the Ministry to evaluate the possibility to maintain the element of competition between private and public providers in the sector at least to a certain extent since it would facilitate a more effective functioning of the system and higher quality services to the patients in the long term. Regarding the second initiative seeking to eliminate the additional payments, the Competition Council advised the Ministry to consider alternative regulation, i. e. establishing clear list of services/materials for which patients could pay additional payments and set transparent prices. The mentioned alternative was accepted by the policy makers and included in the draft law amendment. The legislative procedure is still pending.

16. To sum up, although publicly funded healthcare services may be qualified as non-economic activities, the Competition Council nonetheless actively carries out advocacy activities and encourages the policy makers to preserve the principle of competition in the healthcare sector.

4. Conclusions

17. As demonstrated in this Note, the competition authority's interventions take into account the fact that the healthcare services have specific features. In Lithuania, a certain part of healthcare services is qualified as non-economic activities and, therefore, the competition authority cannot carry out competition law enforcement in respect of such services. However, even these services can be subject to advocacy efforts. When such efforts are successful, they can translate into more effective regulatory rules that benefit patients and the State itself.

18. Other legitimate objectives, such as universal access to high quality services or efficiently managed public healthcare system, are important and may need to be balanced against free competition. The Competition Council accepts the policy makers' right to balance competing policy goals and, accordingly, adopt decisions that to some extent may restrict competition. However, the Competition Council endeavors to act as an expert and competent adviser in the legislative process providing regulatory alternatives that would allow reaching the policy makers' legitimate interests, at the same time preserving the competitive element and its benefits.