

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Digital Disruption in Financial Markets – Note by Lithuania

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Lithuania

1. Introduction

1. In Lithuania, the Fintech sector is dynamic and has been growing and developing rapidly. For example, according to the report “The Fintech Landscape in Lithuania” prepared by *Invest Lithuania* and *Rise Vilnius*,¹ the number of Fintech companies in Lithuania has been rising: whereas, in 2014, the number of Fintech companies was 55, this number rose to 117 in 2017 and was 170 at the end of 2018. According to the report, divided by the sub-sector, the biggest part of the Lithuanian Fintech companies provides payment services (74 Fintech companies), whereas some of the other sub-sectors are, for example, lending (26 Fintech companies), banking (19 Fintech companies), blockchain (18 Fintech companies) etc.² Out of 170 companies, 120 have their headquarters located in Lithuania, whereas 30 are headquartered in other EU Members States and 20 – in non-EU countries.³

2. For example, one of the recent acquisitions was the indirect acquisition of UAB “Earthport Payment Services” by Visa Inc. and Visa International Service Association - on 5 April 2019, the Bank of Lithuania announced that it did not oppose to this acquisition.⁴ Before that, UAB “Earthport Payment Services” was granted a payment institution licence by the Bank of Lithuania based on which the company may offer payment services such as credit transfers, issuing of payment instruments and acquiring of payment transactions.⁵

2. Regulatory environment

3. With regard to Fintech, the Bank of Lithuania has played an important role. For example, in order to create a better Fintech environment, the Bank of Lithuania has invited Fintech companies to test their innovative solutions in the regulatory sandbox of the Bank

¹ Invest Lithuania/Rise Vilnius, “The Fintech Landscape in Lithuania”, 2018 Report (available at: <https://investlithuania.com/wp-content/uploads/2019/01/The-Fintech-Landscape-in-Lithuania-Report-2018.pdf>), at Section 4. See also the press release of the Bank of Lithuania as of 1 February 2019 “Lithuania’s FinTech results in 2018: rising potential and world-known market players” (available at: <https://www.lb.lt/en/news/lithuania-s-fintech-results-in-2018-rising-potential-and-world-known-market-players>).

² *Ibid.*, Section 4.

³ *Ibid.*, Section 4.

⁴ See the press release of the Bank of Lithuania as of 5 April 2019 “Visa given the green light to acquire Earthport Payment Services, UAB” (available at: <https://www.lb.lt/en/news/visa-given-the-green-light-to-acquire-earthport-payment-services-uab>).

⁵ See the press release of the Bank of Lithuania as of 18 March 2019 “Earthport Payment Services, UAB granted a payment institution licence” (available at: <https://www.lb.lt/en/news/earthport-payment-services-uab-granted-a-payment-institution-licence>).

of Lithuania. The submission of applications was opened on 15 October 2018.⁶ In the words of the Bank of Lithuania, “[t]he regulatory sandbox allows potential and existing financial market participants to test financial innovations in a live environment under the guidance and supervision of the Bank of Lithuania”.⁷ According to the scheme of the regulatory sandbox, the company, the application of which meets the eligibility criteria and has been accepted by the Bank of Lithuania, may offer its innovative financial services in a live environment for a limited period of time (testing period), whereby the Bank of Lithuania monitors the provision of these services and provides consultations to the company during the testing period. After the testing period, and if the testing proves successful, the company may decide whether to continue providing the services that were tested (upon the condition that any licences that may be necessary are obtained).⁸ Also, regarding the regulatory environment, the Bank of Lithuania notes that it has put into practice the Bali Fintech Agenda, which was put forward by the International Monetary Fund and the World Bank in October 2018.⁹

4. It is noteworthy that, upon the initiative of the Ministry of Finance of the Republic of Lithuania, nine Lithuanian institutions joined forces and signed the Interinstitutional Memorandum on 19 March 2019 – “The Memorandum on Cooperation and Exchange of Information in Risk Management in Financial Innovation and Financial Technology”.¹⁰ One of the main goals of the Memorandum was said to be a better anticipation and management of the risks that may be posed by Fintech.¹¹ These nine institutions that signed the aforementioned Memorandum are: the Ministry of Finance, the Ministry of the Interior, the Bank of Lithuania, Special Investigation Service, Financial Crime Investigation Service, the Lithuanian Police, State Tax Inspectorate, State Data Protection Inspectorate, and the state company of Deposit and Investment Insurance.¹² According to the Minister of Finance, “[t]he institutions will rapidly exchange information in Lithuania and abroad, if necessary, - we will act immediately, regularly review legal acts and, if needed, we will initiate their amendments”.¹³

5. As regards different conditions for getting a licence for various types of financial services, it should be noted that the Bank of Lithuania issues licences for financial

⁶ See the press release of the Bank of Lithuania as of 26 September 2018 “Lithuania’s financial regulator launches its regulatory sandbox” (available at: <https://www.lb.lt/en/news/lithuania-s-financial-regulator-launches-its-regulatory-sandbox>).

⁷ <https://www.lb.lt/en/regulatory-sandbox>.

⁸ *Ibid.*

⁹ See the press release of the Bank of Lithuania as of 29 March 2019 “Lithuania at the forefront of Fintech regulation” (available at: <https://www.lb.lt/en/news/lithuania-at-the-forefront-of-Fintech-regulation>).

¹⁰ See the press release of the Ministry of Finance of the Republic of Lithuania as of 19 March 2019 “Nine Lithuanian Institutions Join Forces in Fintech Risk Management” (available at: <http://finmin.lrv.lt/en/news/nine-lithuanian-institutions-join-forces-in-Fintech-risk-management>).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

institutions such as banks, credit unions, electronic money institutions, payment institutions, operators of crowdfunding platforms, currency exchange operators, consumer credit providers, operators of a peer-to-peer lending platforms etc.¹⁴ In order to create a better Fintech environment in Lithuania, the Bank of Lithuania offers a “newcomer programme” and lists a smooth authorisation process among five reasons to build a Fintech business in Lithuania.¹⁵

6. In fact, as regards banking, the amendments to the Law on Banks of the Republic of Lithuania¹⁶ (hereinafter: Law on Banks) that entered into force on 1 January 2017¹⁷ may be relevant, particularly as regards the legal provisions on a rather new form of banks, i.e. specialised banks. In fact, Law amending Articles 2, 4, 9 and 40 of the Law on Banks of the Republic of Lithuania supplemented the Law on Banks by the legal provisions on specialised banks. After the amendment, the Law on Banks stipulates (Article 2(10) of the Law on Banks) that a specialised bank is a credit institution established in the Republic of Lithuania that has a licence to provide and provides services of accepting deposits and other repayable funds from non-professional market participants and lending of such funds and carries the thereto related risks and responsibility and may provide only such financial services, which are listed in Article 4(5) of the Law on Banks. Whereas a bank may provide any financial services as long as this right is not limited by the laws (Article 4(2) of the Law on Banks), the list of financial services that a specialised bank may provide pursuant to Article 4(5) of the Law on Banks is narrower and covers services such as, for example, the acceptance of deposits and other repayable funds, lending, leasing, payment services, financial intermediation (agency activities), money management, cash exchange etc. For example, investment services are not listed in the aforementioned legal provision. The Bank of Lithuania has to make a decision on a licence within 6 months as of the submission of all the documents and may extend this period by 6 months in the case there is a need to supply additional documents or if there is a need to correct or specify the submitted information; however, a decision to issue a licence or to refuse to issue a licence has to be adopted no later than 12 months as of the submission of the application (Article 9(11) of the Law on Banks).

7. An important difference between a bank and a specialised bank is when it comes to the minimum capital requirement: whereas the minimum capital requirement for a bank is EUR 5 million (Article 40(1) of the Law on Banks), the amount required for a specialised bank is EUR 1 million. (Article 40(2) of the Law on Banks). When elaborating on specialised banks, the Bank of Lithuania notes that “[t]his form of a bank has been devised in order to establish a favourable environment for Lithuanian and foreign startups seeking to begin providing various financial services in the European Economic Area”.¹⁸

¹⁴ <https://www.lb.lt/en/credit-and-payments-market>.

¹⁵ <https://www.lb.lt/en/newcomer-programme#ex-1-2>.

¹⁶ Law on Banks of the Republic of Lithuania as of 30 March 2004, No. IX-2085, as lastly amended on 26 March 2019.

¹⁷ Law amending Articles 2, 4, 9 and 40 of the Law on Banks of the Republic of Lithuania No. IX-2085 as of 30 June 2016, No. XII-2568 (according to Article 5 of this Law, it enters into force on 1 January 2017).

¹⁸ <https://www.lb.lt/en/authorisation-of-banks#ex-1-2>, Section on specialised banks.

8. Other licences that may be relevant for Fintech companies may be, for example, a licence of an electronic money institution or a licence of a payment institution.

9. According to the Law on electronic money and electronic money institutions of the Republic of Lithuania¹⁹ (hereafter: Law on electronic money and electronic money institutions), Article 2(2), an electronic money institution, which has a licence of an electronic money institution or a licence of an electronic money institution to engage in restricted activities, is entitled to issue electronic money in the Republic of Lithuania and (or) in other Member States. However, pursuant to Article 13(1) of the Law on electronic money and electronic money institutions, the licence of an electronic money institution also entitles a company to provide services listed in Article 5 of the Law on Payments of the Republic of Lithuania²⁰ (hereinafter: Law on Payments). Such services include, for example, payment initiation services, account information services, money remittances, issuing of payment instruments and (or) the management of the received payments etc. The minimum capital requirement for an electronic money institution is EUR 350 000 (Article 22(2) of the Law on electronic money and electronic money institutions).

10. No such minimum capital requirement is foreseen for a licence of an electronic money institution to engage in restricted activity. In the case of latter, however, Article 14(1) of the Law on electronic money and electronic money institutions stipulates that such a licence is valid only in the Republic of Lithuania and does not grant a right to issue electronic money or to provide payment services in other Members States. According to the Bank of Lithuania, “[t]o establish a favourable environment for Lithuanian and foreign startups, a special project for an EMI licence to engage in restricted activities has been implemented with the aim of facilitating access of new market participants to the Lithuanian market and later, after being granted a licence to engage in usual activities, to also the European Economic Area market”.²¹ The decision on a licence of an electronic money institution has to be made by the Bank of Lithuania within 20 months from the submission of the application (Article 13(6) of the Law on electronic money and electronic money institutions), whereas the decision on a licence of an electronic money institution to engage in restricted activities has to be made respectively within 2 months (Article 14(8) of the Law on electronic money and electronic money institutions).

11. A licence of a payment institution is granted according to the requirements of the Law on Payment Institutions of the Republic of Lithuania²² (hereafter: the Law on Payment Institutions). Article 7 of the Law on Payment Institutions provides for a possibility to apply for a licence of a payment institution to engage in restricted activities. Pursuant to Article 7(1) of the Law on Payment Institutions, such a licence is valid only in the Republic of Lithuania and does not entitle to provide payment services in other Member States. Also, whereas the requirements for the initial capital for a payment institution are listed in Article

¹⁹ Law on electronic money and electronic money institutions of the Republic of Lithuania as of 22 December 2011, No. XI-1868, as lastly amended on 27 June 2018.

²⁰ Law on Payments of the Republic of Lithuania as of 5 June 2003, No. IX-1596, as lastly amended on 27 June 2018.

²¹ <https://www.lb.lt/en/authorisation-of-electronic-money-institutions#ex-1-4>, Section on a licence of an electronic money institution to engage in restricted activities.

²² Law on Payment Institutions of the Republic of Lithuania as of 10 December 2009, No. XI-549, as lastly amended on 27 June 2018.

14 of the Law on Payment Institutions, a payment institution engaged in restricted activities is not subject to these requirements. According to the Bank of Lithuania, “[i]n order to create a favourable environment for Lithuanian and foreign start-ups, a special project for a payment institution licence to engage in restricted activities, based on the ‘sand-box’ principle, was implemented. The aim of it was to facilitate access of new market participants to the Lithuanian market and later, after being granted a licence, to engage in unrestricted activities, to the European Economic Area market as well”.²³

3. The Competition Council’s investigation against AB “Swedbank”

12. On 12 June 2018, the Competition Council terminated the investigation – by accepting commitments - against AB “Swedbank” on the suspected abuse of a dominant position.²⁴

13. The Competition Council started the investigation on its own initiative.²⁵ The Competition Council scrutinised whether the actions of AB “Swedbank” in terms of including clauses into the “Bank link” service provision contracts concluded with the undertakings providing payment initiation services in electronic commerce (e-commerce) did not infringe the prohibition of an abuse of a dominant position enshrined in Article 7 of the Law on Competition of the Republic of Lithuania²⁶ (hereafter: the Law on Competition); the aforementioned clauses restricted the ability of the aforementioned undertakings to provide to the clients of AB “Swedbank” a new service, i.e. the service of the collection of payments in electronic commerce (payment initiation service).²⁷

14. It was explained by the competition authority that the “Bank link” service could be used by the e-shops directly, by concluding the “Bank link” service contract with the relevant bank, or through an intermediary (for example, a payment institution or an electronic money institution), which concluded the “Bank link” service with the bank.²⁸ An e-shop, wishing to use the “Bank link” service, had to have a bank account in the same bank, from which the purchaser intended to provide a payment, it also had to have concluded the “Bank link” service contract and integrated the technical solution of the “Bank link” service into their e-shop’s internet website.²⁹ In the case of an intermediary,

²³ <https://www.lb.lt/en/authorisation-of-payment-institutions#ex-1-3>, Section on a licence of a payment institution to engage in restricted activities.

²⁴ Decision of the Competition Council of the Republic of Lithuania on the termination of the investigation on the compliance of actions of AB “Swedbank” with the requirements of Article 7 of the Law on Competition of the Republic of Lithuania, 12 June 2018, No. 1S-79 (2018).

²⁵ *Ibid.*, para. 2.

²⁶ Law on Competition of the Republic of Lithuania, 23 March 1999, No. VIII-1099, as lastly amended on 21 March 2019.

²⁷ Decision of the Competition Council of the Republic of Lithuania on the termination of the investigation on the compliance of actions of AB “Swedbank” with the requirements of Article 7 of the Law on Competition of the Republic of Lithuania, 12 June 2018, No. 1S-79 (2018), para. 3.

²⁸ *Ibid.*, paras 4-5.

²⁹ *Ibid.*, para. 4.

the e-shop did not need to conclude the “Bank link” service contract, but such a contract was concluded by the intermediary, which collected the payments into their bank account, present in the same bank, from which the purchaser made their payments.³⁰

15. One of the undertakings, which acted as an intermediary, was UAB “Paysera LT”, which provided the service of payment collection in electronic commerce, by using the “Bank link” service, to e-shops. However, during the investigation, the company explained that as of 1 October 2010 it started providing a new type of service of the collection of payments in electronic commerce, i.e. a *payment initiation service*.³¹ Such a service was provided without concluding the “Bank link” service contract with the banks, but rather it was UAB “Paysera LT” that received all the relevant data from the purchasers, i.e. their personalised security data, and, on their behalf and in their name, connected to the purchasers’ bank accounts and made all the steps for initiating the payment.³²

16. The provision of such service required to have a direct access to the bank accounts of the purchasers and to be able to use all the personalised security information related to these purchasers and that was delivered to them by the payment institutions managing their bank accounts.³³ In the contract - on the “Bank link” services - concluded between UAB “Paysera LT” and AB “Swedbank” on 10 February 2011, the clause was included stipulating that UAB “Paysera LT” could not provide the payment initiation services that it started to provide on 1 October 2010.³⁴ Specifically, the clause restricted - in relation to the clients of AB “Swedbank” – to use such payment models, which would enable the disclosure of or the acquaintance with the bank clients’ personalized security information, which was used when connecting to the information system of the bank or to the internet banking.³⁵ This clause raised the suspicion of the Competition Council that AB “Swedbank”, by including the aforementioned clause in the “Bank link” service agreements, concluded with UAB “Paysera LT” as well as with some other undertakings, which provided the service of payment collection in e-commerce, might have abused a dominant position in terms of Article 7 of the Law on Competition.³⁶

17. The Competition Council explained that the provision of payment initiation services was, at that time, not yet regulated in Lithuania (the Law on Payments implementing EU Directive 2015/2366³⁷ had to enter into force on 1 August 2018 and the applicability of the Technical regulatory standards was set for a later date), but stressed

³⁰ *Ibid.*, para. 5.

³¹ *Ibid.*, para. 6.

³² *Ibid.*, para. 6.

³³ *Ibid.*, para. 55.

³⁴ *Ibid.*, para. 7.

³⁵ *Ibid.*, para. 55.

³⁶ *Ibid.*, paras 8-9.

³⁷ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ [2015] L 337/35.

that, according to the position of the Bank of Lithuania,³⁸ such services were considered to be legal and, during such a transition period, had to be provided in compliance with the general civil law provisions.³⁹ The banks, however, explained that due to the lack of regulation, the provision of the payment initiation services raised some risks such as the increased responsibility of the banks and the risks related to the security of information and finances of their clients, since the bank, it was said, could not identify who was connecting to their clients' accounts, whether a secure connection was used etc. Also, it was pointed out that a risk existed that the undertakings, providing payment initiation services, could collect excessive amounts of data about the users of such services.⁴⁰ Also, AB "Swedbank" submitted information to the Competition Council about their "Bank link" service fees showing that such fees had been substantially decreasing.⁴¹

18. Nevertheless, on 7 July 2017, AB "Swedbank" offered to the Competition Council their commitments in writing together with their request to terminate the investigation.⁴² After the initial commitments offered by AB "Swedbank" and the market test conducted by the Competition Council,⁴³ AB "Swedbank" submitted their final commitments.⁴⁴ It was stipulated that AB "Swedbank" will initiate changes in their contracts on the "Bank link" service, namely, as regards the clauses that restricted the provision of payment initiation services, and will enable access to their information system for the purposes of the payment initiation services. However, this was said to be done upon the condition that the other party of the contract, intending to offer the payment initiation service, would comply with the principles of the provision of the service listed in the commitments. Basically, such principles were that the provider of the payment initiation services will comply with the best practices announced by the Bank of Lithuania as regards the provision of such services, will properly inform the users of such a service, i.e. the clients of AB "Swedbank", about the fact that they disclose their data to the provider of the payment initiation service, will ensure the security of the personalised data of the users of the service, i.e. of the clients of AB "Swedbank", when providing payment initiation service to the clients of AB "Swedbank", the service provider will properly identify itself, so that AB

³⁸ The Competition Council referred to the press release of the Bank of Lithuania: <https://www.lb.lt/lt/naujienos/atveriamas-kelias-naujaj-mokejimu-paslaugai-sustiprinsianciai-konkurencija-vykdant-mokejimus-elektronineje-erdveje> (available in English: <https://www.lb.lt/en/news/way-opened-for-new-payment-service-to-strengthen-competition-in-executing-payments-in-e-commerce>) (Decision of the Competition Council of the Republic of Lithuania on the termination of the investigation on the compliance of actions of AB "Swedbank" with the requirements of Article 7 of the Law on Competition of the Republic of Lithuania, 12 June 2018, No. 1S-79 (2018), para. 13).

³⁹ Decision of the Competition Council of the Republic of Lithuania on the termination of the investigation on the compliance of actions of AB "Swedbank" with the requirements of Article 7 of the Law on Competition of the Republic of Lithuania, 12 June 2018, No. 1S-79 (2018), paras 11-13.

⁴⁰ *Ibid.*, para. 14.

⁴¹ *Ibid.*, para. 16.

⁴² *Ibid.*, para. 17.

⁴³ *Ibid.*, paras 19-41.

⁴⁴ *Ibid.*, paras 42-52.

“Swedbank” could clearly and unambiguously understand that the payment is initiated by their clients using the payment initiation services, will avoid open sessions, will organize access to the bank accounts of AB “Swedbank” clients or to their information in such a way that the amount of data received is no more than necessary for the initiation of the payment operation, and, in the case a client of AB “Swedbank” challenged the operation as unauthorized or improperly authorized or would claim against an illegal disclosure of their data, the provider of the payment initiation service would be responsible for any claims for damage if it were proven that such damage arose from the improper implementation of the obligations of the payment initiation service provider and (or) from not implementing the requirements of the laws.⁴⁵

19. On the basis of the commitments and their assessment, the Competition Council terminated the investigation by accepting commitments.⁴⁶ The Competition Council referred to Article 28(3) point 2 of the Law on Competition, which stipulates that the Competition Council terminates the investigation when the actions did not cause any significant damage to the interests safeguarded by the Law on Competition and the undertaking, which is suspected to have infringed the Law on Competition, in good will terminated the actions and submitted to the Competition Council in writing the commitment not to engage in these actions or to perform actions, which annul the suspected infringement or which provide conditions to avoid it in the future.⁴⁷

20. The competition authority held that no significant damage was caused to the interests safeguarded by the Law on Competition by the actions of AB “Swedbank”.⁴⁸ It was said the AB “Swedbank” terminated their actions in good will.⁴⁹ The competition authority noted that, in light of the lack of the regulation at that time for payment initiation services, there was a need for clear rules (principles), with which the providers of such services should comply; thus, the inclusion in the commitments of the principles based on which such a service could be provided was considered as grounded.⁵⁰ It was also said that the commitments of AB “Swedbank” will bring clarity for other undertakings intending to provide payment initiation services to the clients of AB “Swedbank” until the relevant regulation will start to be applicable.⁵¹ Accordingly, based on the assessment of the Competition Council, it was concluded that the commitments offered by AB “Swedbank” adequately and properly annulled the suspected infringement of the Law on Competition and provided conditions to avoid it in the future.⁵² The term of the commitments was set until the date when the regulatory technical standards implementing EU Directive 2015/2366 start to be applied.⁵³

⁴⁵ *Ibid.*, Annex 5.

⁴⁶ *Ibid.*, paras 53-73.

⁴⁷ *Ibid.*, para. 58.

⁴⁸ *Ibid.*, para. 60.

⁴⁹ *Ibid.*, para. 61.

⁵⁰ *Ibid.*, para. 65.

⁵¹ *Ibid.*, para. 72.

⁵² *Ibid.*, para. 72.

⁵³ *Ibid.*, Annex 5, point 4.

4. Conclusions

21. The regulatory framework in Lithuania with regard to Fintech has been developed with the aim to create a more favourable environment for the companies, which strive to provide innovative financial services. However, although the Fintech sector has developed rapidly in Lithuania, it remains to be seen how it will develop in the future.