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**The Standard and the Burden of Proof in Competition Law Cases – Note by Lithuania**

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## Lithuania

### 1. Introduction

1. The evaluation of evidence and the burden of proof in competition law cases present significant challenges for courts and regulatory authorities. In Lithuania, the Supreme Administrative Court plays a central role in shaping the legal standards applied since there is no legal regulation concerning standard of proof or burden of proof. As in many continental law jurisdictions, the principle of free evaluation of evidence guides the administrative process and questions regarding the sufficiency, coherence, and reliability of evidence in competition disputes remain central to judicial review.

2. This note examines key principles of evidence evaluation and burden of proof in the case law of the Supreme Administrative Court. It further explores the treatment of economic evidence, and recent developments involving resale price maintenance. By outlining the evolving standards applied by the Supreme Administrative Court and the Competition Council, this contribution aims to provide a clearer understanding of the procedural and substantive challenges faced in competition law disputes in Lithuania, while also highlighting the implications of emerging jurisprudence for future cases.

### 2. Standard of proof in competition cases

3. The Supreme Administrative Court applies the same rules of evidence evaluation in competition law cases as it does in any other matter within the jurisdiction of administrative courts: there is no specific rules concerning evaluation of evidence in competition law cases. Therefore, in the administrative process of the Republic of Lithuania, as in many other continental law jurisdictions, the principle of free evaluation of evidence is established. The principle of free evaluation of evidence is developed in the case law of the Supreme Administrative Court.

4. Under the case law, the existence or non-existence of a particular fact can only be determined based on the entirety of the evidence collected in the case, rather than on individual piece of evidence. When determining legally significant circumstances, the sufficiency of the collected evidence, their consistency, potential contradictions, logical coherence, the circumstances under which the evidence was provided, and the reliability of the sources must be assessed under the case-law of the Supreme administrative court.

5. The evaluation of evidence, as a process aimed at establishing the most objective truth possible, is based on a subjective factor – *conviction intime* or the judge's internal conviction. However, internal conviction is not a preconceived notion or intuition, but rather a conclusion based on the evidence, which is drawn from the examination of relevant facts, consideration and investigation of possible hypotheses, and evaluation of each piece of evidence both individually and as a whole.

6. As previously mentioned, neither legal regulation nor the Supreme Administrative Court defines specific standard of proof required in competition law disputes. The Court emphasises that the Competition Council must present sufficiently precise, consistent, and compelling evidence to substantiate the existence of a breach. Supreme Administrative Court addresses the issue of standard of proof in general terms: “sufficient evidence has been gathered and appropriately substantiated”, or “a finding of anti-competitive conduct may be inferred from a series of coincidences and indicia which, when considered

collectively and in the absence of a plausible alternative explanation, may serve as sufficient evidence of a violation of competition law”. In some instances, the Court has remarked that the Competition Council has met a “high standard of proof” in demonstrating the alleged infringement.

7. The Competition Council typically relies on direct evidence, using indirect evidence to reinforce its case. For instance, in the driving schools’ cartel case<sup>1</sup>, the Competition Council relied on substantial direct evidence, including communications between the companies and documents detailing the agreement. Additionally, it used indirect evidence, such as price increase data, to further support its findings. In a case involving obstruction of a dawn raid<sup>2</sup>, the Competition Council relied on indirect evidence to substantiate its claim that an employee of the undertaking had provided a false statement about his whereabouts. Specifically, the Council used mobile operator location data to support its argument.

8. Supreme Administrative Court in merger cases extensively relies on the case law of the European Court of Justice. Supreme Administrative Court in most recent decision concerning prohibition of a merger stated that economic analysis is prospective and it is not permissible to require to adhere to an exceptionally high standard of evidence in order to demonstrate that the concentration will significantly restrict, or conversely, will not restrict effective competition. To determine whether the concentration is incompatible or compatible with the internal market, it is sufficient to demonstrate, based on sufficiently significant and consistent data, that it is more likely than not that the relevant concentration will significantly restrict effective competition in the internal market or a substantial part of it.<sup>3</sup>

### 3. Burden of proof

9. The principles governing the burden of proof within the jurisdiction of the Supreme Administrative Court of Lithuania are articulated with clarity, namely, the onus of proving a violation of the Law on Competition rests entirely upon the Competition Council.

10. In the sphere of competition law adjudication, it is reaffirmed that the Competition Council bears the responsibility to substantiate any allegations of contravention against the Law on Competition. To meet this obligation, the Competition Council is required to present evidence that is not only sufficiently precise but also consistent, thereby establishing that an infringement has indeed occurred.

11. Conversely, should the Competition Council successfully demonstrate the existence of a breach of competition law, the onus then shifts to the undertaking to furnish counter evidence that would effectively undermine the conclusions drawn by the Competition Council. In circumstances where there exists uncertainty regarding the liability of the applicant, such ambiguities must be resolved in favour of the accused party (*in dubio pro reo*). For instance, the Supreme Administrative Court has endorsed the presumption of paternal responsibility, thereby imposing the burden upon the undertaking to effectively counter this presumption.

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<sup>1</sup> [Decision of Competition council, 2018-12-17, case No. 2S-7 \(2018\).](#)

<sup>2</sup> [Decision of the Supreme administrative court, 2021-09-09, case No. eA-1150-520/2021.](#)

<sup>3</sup> [Decision of the Supreme administrative court, 2024-05-22, case No. eA-10-502/2024.](#)

#### 4. Economic evidence

12. Review of complex economic analysis is limited since Supreme administrative court confines its review to assessing whether the Competition Council adhered to procedural rules, whether all conclusions were sufficiently reasoned, whether the factual circumstances of the case were not distorted, whether there was no manifest error in assessment, and whether there was no abuse of power.

13. The case law of the Supreme administrative court has undergone development in this sphere. Early jurisprudence indicated that the Court regarded the comprehensive investigations conducted by the national competition authority as complex economic analysis. However, more recent rulings indicate a shift, with the Court now distinguishing particular elements of these investigations—such as market definition—as constituting complex economic analysis. Also, Supreme Administrative Court highlights that Competition council has discretion while conducting complex economic analysis, however courts must verify factual accuracy, reliability, and consistency of the evidence provided, evaluate if evidence encompasses all essential data that must be considered when assessing a complex situation, and whether it can substantiate the conclusions drawn. However, the court should not replace economic assessment with its own.<sup>4</sup>

#### 5. Recent challenges – resale price maintenance cases

14. In recent years, the Competition Authority has concluded several cases involving resale price maintenance. The Competition Council determined that a cosmetics manufacturer had entered into agreements with its distributors, requiring them not to sell products to consumers at prices below those set by the manufacturer, nor to offer discounts<sup>5</sup>. Additionally, the Competition Council has recently issued two statements of objections related to resale price maintenance practices.

15. In numerous instances, the contractual agreements between manufacturers and distributors included explicit provisions establishing resale price maintenance. Despite the clear wording of these contracts, the undertakings implicated in these cases have consistently argued that they did not adhere to the contractual pricing stipulations in practice. Rather, they claim to have exercised independent discretion in determining their resale prices, diverging from the formal contractual obligations. To substantiate this contention, they have submitted extensive volumes of pricing data, purportedly reflecting their actual practices over a defined period. The Competition Council maintains position that deviation from the agreed-upon price, does not absolve the undertaking in question from its responsibility under competition law and minor difference between agreed prices and prices set in practice may not absolve from responsibility.

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<sup>4</sup> [Decision of the Supreme administrative court, 2024-05-22, case No. eA-10-502/2024.](#)

<sup>5</sup> [Decision of Competition council, 2023-07-25, case No. 1S-115 \(2023\).](#)