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Case Prioritisation and Prosecutorial Discretion – Note by Lithuania

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1. Introduction

1. The ability to set priorities is an essential element of the Lithuanian Competition Council's independence and effectiveness. The Council operates within a prioritisation framework that enables it to allocate its resources effectively and focus on cases and sectors with the greatest impact on competition and consumer welfare. The Council exercises its discretion to prioritise both at the level of individual cases and at the level of economic sectors. The discretion to prioritise is exercised within a defined legal framework.

2. Legal ground and principles of case prioritisation

2. The legal basis for prioritisation is established in the Law on Competition, which provides that the Competition Council has the power to determine and publish its activity priorities on its website (Article 18(2)(4)). This ensures transparency and allows stakeholders to understand the authority's strategic focus. The Law also expressly provides that the Council may refuse to initiate an investigation where the examination of the facts indicated in a complaint does not correspond to its enforcement priorities (Article 23(4)(8)). The ability to reject complaints on priority grounds was introduced by the 2012 amendments to the Law on Competition, following which the Council adopted and published its Enforcement Priorities Notice¹ setting out the main prioritisation principles.

3. The overarching priority guiding its activities is to intervene only where such intervention is likely to significantly contribute to the protection of effective competition and thereby maximise consumer welfare. Accordingly, when deciding whether to initiate or discontinue an investigation, the Council assesses whether a case meets this objective.

4. In doing so, the Council relies on three main principles: (i) impact on effective competition and consumer welfare, focusing on cases affecting prices, quality, variety, market access or a significant number of consumers; (ii) strategic significance, including novel or repeated infringements, cases that enhance legal clarity, or have broader deterrent effects; and (iii) efficient use of resources, taking into account the likelihood of achieving meaningful results, the resources required, and the need to prioritise higher-impact cases. No single principle is determinative, and in practice an assessment under one principle may be sufficient to justify a prioritisation decision.

3. Prioritisation decisions and scrutiny

5. Where a case does not meet these criteria, the Council may decide not to initiate an investigation or to terminate an ongoing investigation. Such decisions do not imply that no infringement has occurred but rather reflect the prioritisation of enforcement resources.

6. In assessing individual complaints to launch an investigation, the Council relies on information provided in a complaint, as well as publicly available sources and information

¹ "[Priority](#) of the Activity of the Competition Council of the Republic of Lithuania in Supervising Compliance with the Law on Competition of the Republic of Lithuania" approved by the Resolution No 1S-136 (2022) of 27 December 2022 of the Competition Council of the Republic of Lithuania.

obtained from public authorities if needed. Where necessary, additional information (such as data on market conditions, the behaviour of undertakings, or potential effects on competition) may be gathered through requests for information and preliminary analysis. This information is used to assess the potential impact of the conduct, its strategic significance, and the proportionality of allocating resources to the case.

7. For example, in one instance, a company complained that the Port Authority discriminated against it by requiring financial contributions to new infrastructure, resulting into potential abuse of dominance. After assessing the case and collecting preliminary information from both the applicant and the Port Authority, the Council decided not to investigate, concluding there was no significant impact on effective competition and consumer welfare². It carried out a preliminary assessment of the relevant market, the profitability of the applicant's activities and financial situation, as well as the number of other economic operators active in the relevant market and their operating conditions. No direct restrictions on the ability of economic operators to operate in the market, nor meaningful negative impact on the company, were found. The issue was essentially limited to the interests of the complainant rather than negatively affecting a substantial part of the market or consumers. Furthermore, the available information was partly contradictory, and a full investigation would have required disproportionate resources in light of the expected results.

8. The exercise of the discretion to prioritise is subject to procedural safeguards: decisions refusing to initiate investigations must be reasoned, are made public. This discretion is subject to judicial review, which ensures that decisions are properly reasoned. National case law further clarified the scope of the Council's discretion in applying its prioritisation framework. The Supreme Administrative Court of Lithuania has examined such decisions in several instances³. It has recognised the Council's right to prioritise cases, interpreting this discretion in light of Directive (EU) 2019/1 (the ECN+ Directive). In practice, the Court has assessed whether the Council sufficiently substantiated a contested decision refusing to initiate an investigation, whether the decision clearly sets out the legal and factual grounds, and whether those grounds are linked to specific legal provisions. While the courts do not substitute their own assessment or require the authority to open an investigation, they may annul decisions where the reasoning is insufficient.

4. Sectorial priorities and practical implications

9. In addition to case-level prioritisation, the Council sets sectorial priorities (selected sectors of the economy) to guide its activities at a broader level. Sectorial priorities are determined within the broader strategic planning framework of the institution and are approved during internal annual strategic sessions. The Council publishes its priority sectors once they are selected and reports on them in its annual reports.

10. The designation of priority sectors does not imply that infringements will necessarily be identified. Rather, it means that the Council will use the full range of its available tools – such as enforcement actions, market monitoring, advocacy, and other measures – depending on the specific circumstances.

² Decision No 1S-110 (2023) of the Lithuanian Competition Council of 18 July 2023.

³ Judgment of the Supreme Administrative Court of Lithuania of 19 March 2025 in case No eA-380-552/2025; Judgment of the Supreme Administrative Court of Lithuania of 2 October 2019 in case No eA-833-822/2019.

11. While individual cases arising in priority sectors might be more likely to be prioritised, they are still assessed on their merits and in accordance with the operational prioritisation criteria. Cases outside these sectors are also pursued where they meet the prioritisation criteria.

12. Since 2022, the Council has publicly identified priority sectors on a regular basis. While the specific sectors evolve over time, there is a consistent focus on areas with high consumer impact, competition risks or strategic and economic importance. Priority sectors have included labour markets, health and pharmaceuticals, retail trade, digital and e-commerce markets, as well as energy and defence. For 2026, the Council has identified defence, retail trade, and digital markets as priority sectors.

5. Methodology for selecting priority sectors and practical application

13. Priorities, typically three to four sectors each year, are set through annual internal strategic discussions, informed by the Council's market intelligence, enforcement and advocacy experience. In addition, the Council consults relevant stakeholders, including business associations, ministries, sectoral regulators, and other enforcement authorities. These targeted consultations provide insights into market developments and potential competition concerns. While stakeholder input is taken into account, the final decision remains with the Council, which determines its priorities independently.

14. Priority sectors are selected based on several key considerations. Firstly, their economic and strategic importance, particularly where sectors are significant for the national economy, undergoing major structural or regulatory changes, or linked to broader policy objectives. This includes rapidly evolving markets or sectors affected by legislative reforms that may impact competition conditions. For example, the energy sector was identified as a priority in previous years due to its systemic importance, market liberalisation, and the green transition. In this sector, for example, the Council completed a market study into e-vehicle charging stations. Similarly, the defence sector has been prioritised in light of its increasing importance at the national and international level and growing public expenditure. In this area, the Council actively cooperates with the Ministry of Defence to strengthen their big rigging prevention and detection capabilities.

15. Secondly, the Council places strong emphasis on consumer impact, prioritising sectors where goods or services are widely used and directly affect consumer welfare, such as retail trade and healthcare. Over the last years, resources were devoted to investigating pharmaceutical companies' actions under Article 101 of TFEU, while several investigations in retail trade are still ongoing.

16. Thirdly, the presence or risk of competition problems is an important factor. For example, labour markets were prioritised due to emerging risks of anti-competitive conduct. In this sector, the Council uncovered two anti-competitive agreements (a wage-fixing arrangement in the basketball market in 2021 and a no-poach agreement in the real estate sector in 2022) and also issued guidelines on agreements in labour markets.

17. Finally, the Council considers its ability to act effectively and proactively, focusing on sectors where increased attention enables early detection and resolution of competition concerns, including through monitoring and advocacy. For instance, digital markets have been prioritised to support proactive engagement, such as market monitoring and analysis of evolving dynamics. In this sector, the Council carried out a marketplace monitoring exercise, initiated a digital markets study in cooperation with the OECD, and issued detailed guidance on e-commerce.

6. Conclusions

18. Overall, the Council applies a structured and transparent prioritisation framework grounded in the Law on Competition and reflected in clearly defined principles for case selection. Prioritisation decisions in individual cases are subject to procedural safeguards and judicial review, ensuring accountability. The Council complements case-level prioritisation with the identification of priority sectors, based on their economic and strategic importance, impact on consumers, the presence or risk of competition problems, and the authority's ability to act effectively and proactively. This combined approach enables the Council to allocate its resources effectively and to focus its enforcement and advocacy efforts on areas with the greatest expected impact on competition and consumer welfare.