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Working Party No. 2 on Competition and Regulation

**Assessing and Communicating the Benefits of Competition Interventions – Note by
Lithuania**

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This document reproduces a written contribution from Lithuania submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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1. Introduction

1. This Note explains how the Lithuanian Competition Council sets and measures the achievement of its main activity objective – to bring maximum benefits to consumers. Our yearly commitment is that 1 euro allocated to the competition authority’s activities from the national budget would bring at least 5 EUR expected benefit to consumers. We calculate the expected average direct benefits to consumers accrued by the Competition Council’s activities, which help to stop anti-competitive actions or prevent restrictions of competition. Such benefits over the period 2020–2022 amounted to EUR 18.4 million. The average annual competition authority’s budget for the same period was EUR 2.7 million. So, the average direct benefit to consumers exceeded the annual budget by 6.9 times. It means that we have exceeded our commitment, as 1 euro allocated to our activities from the national budget brought 6.9 EUR of expected benefits to consumers. Such benefits of competition interventions are being yearly communicated to the national Parliament and the Government as well as to the general public. Despite the fact that certain actions of the Competition Council do not generate measurable direct benefits to consumers, they are no less important.

2. Bringing Maximum Benefits to Consumers is a Major Activity Objective

2. Bringing maximum benefits to consumers is among the most important objectives of the Lithuanian Competition Council activities. The performance indicator for this objective is the ratio between the average annual three-year expected direct benefits for consumers and the average annual three-year budget of the competition authority.

3. The Enforcement Priority document¹ enables us to conduct investigations or otherwise intervene in the functioning of the market, only if such intervention can ensure high possible benefits to consumers and significantly contribute to the effective protection of competition. In deciding whether investigations are in line with the Enforcement Priority, the Competition Council follows three principles of: 1) impact on effective competition and benefit to consumers; 2) strategic importance, and 3) rational use of resources.

4. Since 2011 onwards, our competition authority has set a commitment to achieve an annual three-year average expected benefit to consumers and a three-year average annual budget ratio of at least 5:1, i.e. that 1 euro allocated to our activities from the national budget would bring at least 5 EUR expected benefits to consumers. Ensuring transparency, this commitment ratio is presented in our annually published Strategic Activity Plans²,

¹ See Article 18(2)(4) of the Lithuanian Competition Law together with the Lithuanian Competition Council [Resolution No 1S-136 as of 27-12-2022](#) on the enforcement priority of the Competition Council of the Republic of Lithuania in performance of the supervision over the Law of the Republic of Lithuania on Competition.

² See the link: <https://kt.gov.lt/lt/administracine-informacija/veiklos-planas>

while its achievement is reported in the publicized Competition Council's Annual Activity Reports³ as well as Activities' Impact Assessment Reports⁴.

5. In addition, the chair of the competition authority presents Annual Activity Reports to the Parliament and the Government⁵. When reporting the 2022 activities results, the chairman Mr. Sarunas Keserauskas emphasized in his speech to the Parliament and the Cabinet of Ministers, that the Lithuanian Competition Council aims to make the most efficient use of the national budget resources allocated to its activities in order to maximize the benefits for consumers and to help policymakers to make decisions when there is a need to reconcile different values, one of which is competition⁶.

3. Methodology for Assessing Direct Benefits to Consumers

6. The Lithuanian Competition Council's Activities Impact Assessment Report enables the public to assess the performance of the authority and the benefits it brings to consumers. We carry out an impact assessment of our activities considering international good practice – the methodology developed by the Organisation for Economic Cooperation and Development (OECD) – and based on the investigation case-specific data as well as the assumptions about the effects of our decisions. Such assessment shows expected ex-ante direct benefits for consumers in the future rather than an ex-post evaluation of the efficiency of the adopted decisions in practice.

7. Consumer direct benefit calculations serve several purposes: 1) to assess if a case at hand brings enough expected benefits compared to the costs of investigation to be considered as falling into the Competition Council's enforcement priorities and 2) to measure the competition authority's performance in terms of the achievement of its activity's objective. First, when selecting cases based on the enforcement prioritization policy, we carry out a cost-benefit analysis of starting an investigation and formulate our preliminary views on the theory of harm. At this stage, the cost-benefit analysis consists of an estimation of the expected cost of human resources and the expected benefit to consumers. At the end of the year, as part of the external accountability, consumer benefits are calculated across all cases and decisions taken throughout the year, to let the public assess the overall performance of the institution and the expected benefits it brought to consumers.

8. Direct benefits include savings that accrue to consumers as a result of the Competition Council's:

- decisions, which lead to the termination of anti-competitive agreements, abuse of a dominant position, infringements committed by public authorities when they restrict competition by their decisions⁷, block the mergers or clear them with commitments (remedies), or

³ See the link: <https://kt.gov.lt/lt/administracine-informacija/veiklos-ataskaitos>

⁴ See the link: <https://kt.gov.lt/lt/administracine-informacija/veiklos-vertinimas>

⁵ As it is required by the Article 20(1)(4) of the Lithuanian Competition Law.

⁶ See the press release: <https://kt.gov.lt/lt/naujienos/konkurencijos-tarybos-2022-m-veiklos-ataskaita-pristatyta-seimui-ir-vyriausybei>

⁷ See Article 4 of the Lithuanian Law on Competition which stipulates that:

- recommendations, which lead to the removal of restrictions on competition.

9. The premise is that the harm would have been caused to consumers if the competition authority had not put an end to anti-competitive practices or prevented restrictions of competition, e.g., had a cartel not been disclosed, or a problematic concentration not been prohibited, consumers would have paid higher prices for several years, etc.

10. The estimations of direct benefit do not cover wider aspects of the work of the Competition Council. For example, they do not reflect in many cases the competition authority's advocacy efforts and activities in raising the culture of competition in society. The benefit is also not always generated by market studies. Furthermore, estimation of direct benefit does not take into account:

- the indirect benefits for consumers of the competition authority's decisions, i. e. the deterrent effect or increased competition in the markets:
- the fines imposed (collected) for infringements of the Lithuanian Law on Competition. For example, in 2022 the Lithuanian competition authority imposed fines totalling EUR 74,346,570 and offenders paid EUR 15,083,200 to the state budget after the end of court proceedings following previous decisions of the Competition Council.

11. However, even though with regard to some activities direct benefit to consumers cannot be estimated, we intend to continue carrying out these activities because they allow us to bring certainty to market participants, to understand the mechanisms of operation of certain markets better, to deter other companies from violating the law etc. This means that in the future we may not be able to achieve our goal of 1:5 ratio between the budget and direct benefit due to the prioritisation of some of those activities which do not bring the direct benefit, and we have made the public aware of this.

12. When assessing the impact of our interventions, we follow the conservative assumptions defined in the OECD Guidelines⁸, as well as the OECD methodology set out in the OECD Competition Assessment Toolkit⁹, which helps governments and competition authorities in assessing the impact of decisions/legal acts by public authorities on competition and consumers (hereinafter – the OECD Methodology).

4. Direct Benefits to Consumers Generated in 2022

13. The direct benefits to consumers accrued by the Competition Council in 2022 were calculated primarily on the basis of case-by-case data and, if this data was insufficient or unreliable, on the price increase and duration assumptions suggested in the OECD Guidelines and the OECD Methodology.

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1. In carrying out the assigned tasks related to the regulation of economic activities within the Republic of Lithuania, public administration entities must ensure freedom of fair competition.
 2. Public administration entities shall be prohibited from adopting legal acts or other decisions which grant privileges to or discriminate against any individual undertakings or their groups and which give or may give rise to differences in the conditions of competition for undertakings competing in a relevant market, except where the difference in the conditions of competition may not be avoided when meeting the requirements of the laws of the Republic of Lithuania.

⁸ OECD Guide for Helping Competition Authorities Assess the Expected Impact of their Activities, April 2014, <http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>

⁹ See the link: http://www.oecd.org/daf/competition/COMP_Toolkit_Vol.3_ENG_2015.pdf

14. In 2022 direct benefits to consumers were calculated regarding the decisions or advocacy efforts taken by the Competition Council, which:

- terminated cartel, whereby the Lithuanian Association of Real Estate Agencies and its 39 members agreed not to solicit each other's clients and brokers¹⁰;
- terminated an investigation into a suspected abuse of dominance by a hazardous waste management company *Toksika* after the company amended previously identified anti-competitive provisions of the contracts with customers¹¹;
- allowed an acquisition by *Snowball.xyz* with conditions and obligations (i. e. not to tie the sales of e-diary and digital educational content, etc.).¹²;
- blocked the acquisition of 100 percent of the shares and sole control of the Lithuanian company *Baltic Mill* (manufacturer of flour, pasta, and other grain products) by the Latvian firm *Dobeles dzirnavnieks*. The acquisition would have created or strengthened the dominant position or significantly restricted competition in the relevant markets in Lithuania¹³;
- blocked an acquisition by the Estonian company's *Piletilevi Group* of 100 percent of the shares and sole control of the Lithuanian ticket distributor *Tiketa*. The parties were obliged to restore the situation prevailing prior to the concentration or to eliminate the consequences thereof¹⁴;
- recommended the Ministry of Transport and Communications to refrain from amendments in the Road Transport Code and other legal acts about some carrier licensing conditions, which granted unreasonable privileges to some economic operators¹⁵;

¹⁰ Decision of the Lithuanian Competition Council on the compliance of actions of the real estate agencies and an association that unites them with Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 of the Treaty on the Functioning of the European Union, [27 December 2022, No. 1S-138 \(2022\)](#).

¹¹ Decision of the Lithuanian Competition Council on the termination of an investigation on the compliance of actions of the Joint-Stock Company *TOKSIKA* with Article 7 of the Law on Competition of the Republic of Lithuania and Article 102 of the Treaty on the Functioning of the European Union, [29 March 2022, No. 1S-45 \(2022\)](#).

¹² Decision of the Lithuanian Competition Council on the permission for concentration whereby company *Snowball.xyz* indirectly, through the establishment of a controlled company, acquires 100 percent of shares of companies *Šviesa*, *Edukacinio turinio sprendimai* and *Mokomasis turinys* and 70 percent of shares of company *Ateities pamoka* (together with the shares held – 100 percent of shares), and acquires the sole control of the latter companies in accordance with the conditions and commitments set by the Competition Council for the implementation of the concentration, [9 September 2022, No. 1S-102 \(2022\)](#).

¹³ Decision of the Lithuanian Competition Council on the refusal of permission for concentration whereby company *Dobeles dzirnavnieks* acquires 100 percent of shares of company *Baltic Mill* and acquires the sole control of the latter company, [26 August 2022, No. 1S-95 \(2022\)](#).

¹⁴ Decision of the Lithuanian Competition Council on the refusal of permission for concentration whereby company *Piletilevi Group* acquires 100 percent of shares of company *TIKETA* and acquires the sole control of the latter company, [14 June 2022, No. 1S-72 \(2022\)](#).

¹⁵ See the link: <https://kt.gov.lt/lt/naujienos/keliu-transporto-kodekso-pataisos-patobulintos-kad-reikalavimai-neribotu-konkurencijos>

- recommended the Lithuanian Heraldry Commission to improve legal regulation in the creation of coat of arms, flags, seals and other heraldic signs (eliminate possible conflicts of interest, establish a clear procedure for selecting candidates, etc.)¹⁶.

15. Still, the above-listed decisions and recommendations do not provide a full picture of the benefits to consumers generated by the Competition Council activities. Economic benefits for consumers were generated in other cases as well, however, there is no sufficient data to calculate those benefits, or it is not possible to express them in sufficiently precise monetary terms.

16. For example, direct benefits for consumers were not calculated after discovering the anti-competitive agreement on margins of reimbursable pharmaceuticals concluded between the Lithuanian Pharmacy Association (LPA) and 8 pharmaceutical companies¹⁷. The termination of that anti-competitive agreement was not a result of the Competition Council's intervention. In such a case the direct benefits are not calculated, even though the markets investigated are of particular importance to consumers and the health sector is among the competition authority's priority sectors.

17. After concluding the above-mentioned investigation, we proposed to the Lithuanian Ministry of Health to evaluate whether the established legal framework, which eliminated pharmaceutical companies' incentives to apply lower margins as compared to those approved by the order of the Minister of Health, is necessary and proportionate and, if not, to amend the established regulation, as well as to set new wholesale and retail margins of reimbursable pharmaceuticals¹⁸.

18. In case the proposed changes would be adopted, it would become possible to assess the benefits for consumers in the future.

5. Average Annual Direct Benefits to Consumers Over the Period 2011–2022

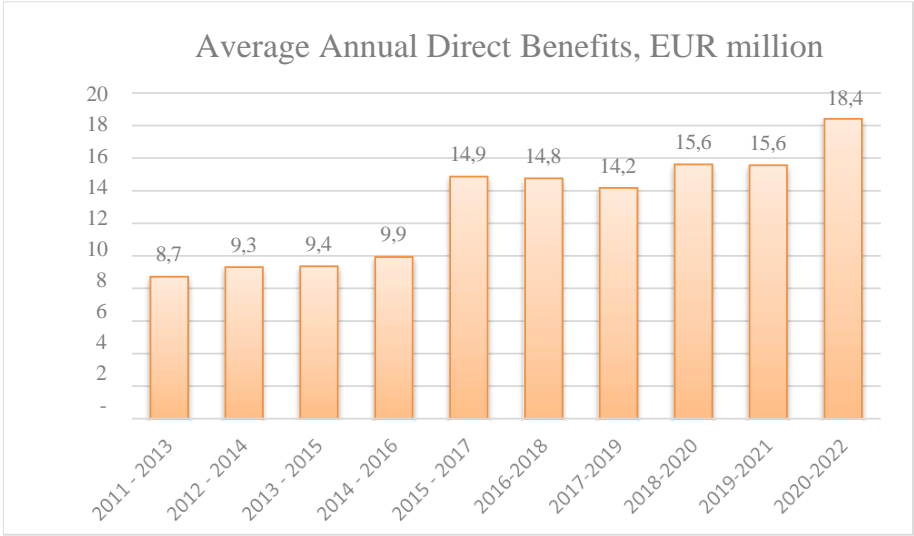
19. According to our estimations, the average annual three-year direct benefits to consumers expected from the activities of the Competition Council have gradually increased from EUR 8,7 million in 2011–2013 to EUR 18,4 million in 2020–2022 – the benefit has more than doubled in the period concerned.

See the link: <https://kt.gov.lt/lt/naujienos/keliu-transporto-kodekso-pataisos-patobulintos-kad-reikalavimai-neribotu-konkurencijos>

the Lithuanian Competition Council on the compliance of actions of undertakings active in the sales of pharmaceuticals with Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 of the Treaty on the Functioning of the European Union, [27 December 2022, No. 1S-132 \(2022\)](#).

¹⁸ See the link: <https://kt.gov.lt/en/news/pharmaceutical-companies-agreed-on-margins-of-reimbursable-medicines>

Figure 1.



20. A comparison of the average annual three-year expected direct benefits to consumers accrued by the Competition Council over the period between 2011 and 2022 with the average annual three-year budget of the Competition Council over the period between 2011 and 2022 shows that the generated average direct benefits to consumers exceeded its annual budget by 6.9–8.2 times depending on the year. It means that 1 euro allocated to our activities brought 6.9–8.2 EUR expected benefit to consumers depending on the year. So, during all the period of 2011-2022, we exceeded our commitment that 1 euro allocated to the competition authority’s activities from the national budget should bring at least 5 EUR expected benefit to consumers.

Figure 2.

