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National Security Considerations in Competition Enforcement – Note by Lithuania

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1. Introduction

1. National security considerations have become an integral part of the Lithuanian Competition Council's work in recent years, reflecting significant changes in the geopolitical environment and corresponding shifts in state policy priorities.
2. The Competition Council's mandate has neither been amended nor broadened to encompass national security considerations, and no exceptions to the application of competition law based on national security have been established at the national level. Nevertheless, in response to growing significance of the defence sector, the Competition Council has increasingly focused on this area, both by responding to policy makers' needs and by taking proactive measures to safeguard effective competition in the defence field.
3. Both in 2025 and 2026 the Competition Council designated the defence sector as one of its sectoral priorities. In the Competition Council's view, fair competition in this area helps to ensure that the State obtains the goods and services needed at the best possible price and that the quality of the latter meets the required standards. The Competition Council seeks to intensify its cooperation with the Ministry of Defence (Ministry), to assess the impact of legislation and draft legislation on competition, and to pay particular attention to public procurement processes in order to prevent possible anti-competitive agreements.
- 4.
5. The Competition Council's activities in the defence sector predominantly consist of advocacy efforts, consultations with policy makers on competition law and State aid matters, as well as active measures aimed at preventing bid-rigging and other anticompetitive agreements. This Note presents specific examples of the Competition Council's activities in the defence sector, including cooperation initiatives with policy makers and other institutions. These examples demonstrate that the preservation of effective competition supports, rather than undermines, the achievement of defence policy objectives.

2. Consultations to the policy makers

6. Article 346(1)(b) of the Treaty on the Functioning of the European Union (TFEU) establishes that *any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.*
7. This legal notion has gained particular relevance and has been increasingly invoked in Lithuania in recent years, driven by heightened geopolitical threats and the need to strengthen national defence capabilities. The Competition Council's experts provide consultations to the Ministry when it seeks to invoke Article 346(1)(b) TFEU, for example when purchasing mines, ammunition, parts of warships and other war materials. While the assessment of whether specific measures are necessary for the protection of the State's essential security interests falls outside the Competition Council's area of expertise, it

nevertheless seeks to ensure that decisions taken by the Ministry are as pro-competitive as possible.

8. For example, following its assessment of the Ministry's draft decisions seeking to invoke Article 346(1)(b) TFEU, the Competition Council recommended to establish a competitive procurement mechanism. Specifically, where the Ministry determines that certain war materials must be produced and procured domestically in order to protect essential security interests, a supplier operating in the national market should be selected through a procurement procedure, rather than awarding a contract directly without a tender. The Ministry took the Competition Council's recommendations into consideration and indicated in its feedback that tender procedures have led to lower prices for war materials compared to the initial price indications submitted by potential suppliers.

9. In other cases, where it was not reasonable to conduct a tender, the Ministry, following the Competition Council's remarks, amended its draft decisions. In particular, the Ministry reinforced the justification for the application of Article 346(1)(b) TFEU and introduced contractual clauses prohibiting suppliers from using the remuneration received for the supply of war materials to finance the production or sale of goods intended for civil purposes.

3. Prevention of bid-rigging

10. The Competition Council is also active in assisting the Ministry in preventing bid-rigging practices in the defence sector and ensuring the rational use of financial resources.

11. In 2025–2026, the Competition Council organised several training sessions for the Ministry and its agencies, with a view to strengthening their capacity to detect possible bid-rigging signals and to react to them effectively.

12. The Competition Council also advised the Ministry in the preparation of its public procurement screening tool, based on the materials developed by the Organisation for Economic Co-operation and Development, to facilitate the identification of bid-rigging practices. Furthermore, the Competition Council provided proposals for the Ministry's plan aimed at preventing various unlawful practices, including corruption and bid-rigging (e.g. proposing the inclusion of online training on the recognition of bid-rigging available on the Competition Council's e-learning platform).

13. The Government established a working group composed of representatives of various State authorities and tasked it with analysing public procurement strategies in the defence sector and proposing measures to enhance the effectiveness and transparency of such procurements. Representatives of the Competition Council were invited to take part in the working group and to provide expert advice falling within their respective areas of competence.

14. Finally, the Competition Council noted that the scale of certain defence sector projects may require cooperation between undertakings to ensure effective participation in the relevant procurement procedures. For this reason, the Competition Council prepared and published guidelines on companies' joint participation in public procurements, providing guidance on when such cooperation is permissible and when it may raise competition concerns¹.

¹ The press release and guidelines are available online: <https://kt.gov.lt/lt/naujienos/svarbiausia-informacija-apie-jungtine-veikla-viesuosiuose-pirkimuose-naujoje-atmintineje>;

4. Conclusions

15. Procurement decisions in the defence sector may pursue specific objectives, such as the protection of the State's essential security interests, which may legitimately take precedence over purely economic considerations. Nevertheless, economic considerations cannot be entirely excluded from defence procurement, as they contribute to more rational use of public resources and support the effective achievement of security objectives.

16. As demonstrated in this Note, even in the absence of sector-specific powers in relation to the defence sector, the Competition Council's interventions – through advocacy activities, cooperation with other authorities, and the development of soft-law instruments – may bring tangible benefits to the sector, notably by enhancing competition and safeguarding public financial resources.

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