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Annual Report on Competition Policy Developments in Lithuania

-- 2017 --

6-8 June 2018

This report is submitted by Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-8 June 2018.

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Executive summary

1. “You can do better” – I face this reminder every day. It has been inscribed on the wall in my office by one of my colleagues, who is yet to reveal the meaning of these words. While still searching for the answer, let’s see how this “can do better” standard can be employed in assessing the Council’s activities in 2017.
2. Without a doubt, last year we could do better – and we did, as best demonstrated by almost EUR 18 million direct average annual benefit to consumers, which exceeded the authority’s average annual budget of 2015–2017 ten times.
3. We did better due to the increased expertise of our team, which was especially important when examining the impact of a merger between supermarket chains and investigating a joint bidding case. Our experience of the last few years shows that the number of complex investigations is growing, thus in 2018 we are going to strengthen our team by employing new experts, which will improve our abilities of conducting investigations that are of greatest relevance to consumers.
4. We did more since we were not acting alone. The trilateral co-operation agreement with the Special Investigation Service and Public Procurement Office is running at full speed and helping us to detect co-ordinated actions in public procurement more effectively. Meanwhile, mutual co-operation opportunities in other fields are still underexplored. For instance, so that consumers could benefit most from competition in the pharmacy sector (it was among our last year’s priorities and will remain there in 2018), it is important that institutions responsible for investigating competition law infringements and those involved in developing healthcare policy combined their efforts. To achieve better inter-agency co-operation we engage in advocacy, the best such example being competition roadshow for public and private sectors, which was initiated by the authority in 2016 and continued in 2017.
5. The “doing more and better” recipe requires continuous improvements of our expertise and competition legislation. The year of 2017 saw us involved in several legislative initiatives. To deter public administrative bodies from competition law infringements more effectively, in the beginning of the last year amendments to the Law on Competition envisaging fines for public administrative bodies entered into force. With the same purpose in mind, we initiated the discussion regarding the size of fines for undertakings breaching the Law on Advertising. And finally, upon the proposal of the Competition Council and the Ministry of Economy, in December of 2017 the Parliament adopted amendments to the Law on Competition related to merger control, reducing administrative burden for business (fewer transactions will be subject to notification) and enabling the Council to allocate its resources more efficiently.
6. Our ambition to do more and better for the benefit of consumers has been supported by the European Commission. During the last year we actively participated in the legislative process by submitting proposals regarding the European Commission’s directive aimed at empowering national competition authorities to become better enforcers. I do hope that the directive, which may be adopted in 2018, will get support from Lithuanian policy makers, thus ensuring its real implementation in our country.
7. We will continue carrying out our mission without waiting for directives. The reminder “You can do better” is still there on the wall.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

1.1.1. Enacted:

8. Adopted amendments to the Law on Competition established a new merger notification and examination procedure. One of the main changes concerns merger notification thresholds which were increased from EUR 14.5 million and 1.45 million to EUR 20 million and 2 million respectively. In addition, the amendments to the Law on Competition provide that the gross income of undertakings registered in Lithuania and abroad comprise the income received from the activities in the Republic in Lithuania only. Moreover, amendments to the Law on Competition give the Lithuanian Competition Council (KT) the right to suspend merger proceedings if merging parties or related undertakings fail to provide information required by KT.

9. Taking into account the above-mentioned amendments of the Law on Competition, KT amended the submission and examination procedure of the notification of concentrations.

10. Amendments to the Law on Competition which enabled KT to fine public administrative bodies for the infringements of the Law on Competition entered into force. The amendments also allow KT to apply interim measures and oblige public administrative bodies to terminate illegal actions or perform certain actions necessary to avoid harming other undertakings or interests of the society.

11. Taking into account the amendments of the Law on Competition, a recast of the description of the procedure for calculating the amount of fines imposed for the infringements of the Law on Competition of the Republic of Lithuania entered into force. It established the procedure for calculating the amount of fines imposed on public administration bodies.

12. A recast of the Law on Competition entered into force. It established detailed rules for claiming damages for antitrust violations. These rules implement the EU Directive 2014/104/EU on antitrust damages actions and allow the victims of antitrust violations to defend their rights and interests more effectively. The same amendments provide the provisions regarding the financing of KT from merger fees. Moreover, the amendments explicitly introduce settlement as a ground to lower a fine.

13. KT established a procedure for the application of settlement, as a result of which a fine can be reduced by 15 percent.

14. Amendments to the Law on Local Self-Government concerning the right of legal persons established by municipalities to engage in economic activities entered into force. These changes prevent municipalities or municipal companies from engaging freely in economic activities, which, so far, has often resulted in the restrictions of competition. The amendments established the obligation for municipalities to obtain permission from KT to engage in economic activities.

1.2. Other relevant measures, including new guidelines

15. KT presented interactive guidelines on comparative advertising to help undertakings avoid misleading consumers by incorrect price comparisons in the advertisements.

16. Last year KT also prepared the guidelines “Cooperation with public institutions: how to reduce the risks of competition law infringement?” and video on anti-competitive agreements and bid rigging in public procurement which has been voted as one of the Most Innovative 2017 Soft Laws in the Antitrust Writing Awards.

1.3. Government proposals for new legislation

17. In 2017 the Government proposed amendments to the Law on Competition. Together with the Ministry of the Economy, KT contributed to the preparation and approximation of the amendments regulating merger control. The amendments in question entered into force on 1 January 2018. One of the main changes concerns merger notification thresholds which were increased from EUR 14.5 million and 1.45 million to EUR 20 million and 2 million respectively. In addition, the amendments to the Law on Competition provide that the gross income of undertakings registered in Lithuania and abroad comprise the income received from the activities in the Republic in Lithuania only; merging parties shall submit financial statements of the last one year and not of the last three years as it was required previously. According to the amendments, undertakings are considered related if they own ½ of the shares or assets of another undertaking, or rights to ½ of votes, unless the presumption was denied. Besides, two or more transactions made between the same persons or undertakings within the period of two years are considered one merger. Moreover, amendments to the Law on Competition give KT the right to suspend merger proceedings if the merging parties or related undertakings fail to provide or provide incomplete information. Finally, merging parties have the right to get acquainted with case material after the conclusions by KT have been drawn.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

18. KT prioritises investigations based on the expected impact of its investigations on consumer welfare. Sector-wise, in 2017 KT focused on the following:

2.1.1. Food industry

19. KT completed an investigation regarding an unnotified merger in the market of agriculture. For the infringement of the Law on Competition, the Council fined Kauno grūdai EUR 947,700.

2.1.2. Medicine and pharmaceuticals

20. KT found that an Italian-based supplier Tecnos Dental and its Lithuanian distributor UAB Implamedica engaged in fixing minimum resale prices of bone regeneration products used in implant dentistry. The infringement resulted in both companies receiving a total of EUR 175,500 of fines.

2.1.3. By types of infringement, KT mainly focused on:

Bid rigging in public procurement

21. KT found that joint bids submitted by two Lithuanian construction firms UAB Irdaiva and AB Panevėžio statybos trestas restricted competition “by object”, in breach of Article 5 of the Law on Competition (national equivalent of Article 101 TFEU), as both firms could have bid separately. The fines imposed on firms amounted to EUR 3,685,900 and EUR 8,513,500 respectively;

22. KT found that UAB Norvesta and the German company Sypra concluded a cartel agreement while participating in the radioactive scrap metal auction conducted by Ignalina nuclear power plant, and thus were fined EUR 27,500 and EUR 27,100 respectively;

23. KT found that UAB Elmis, UAB LEDEVILA and UAB Vortex Capital (Companies) concluded a collusive bidding agreement while participating in the public procurement for the purchase of construction and installation works. Vilnius Regional Administrative Court upheld the Council’s decision;

Other investigations

24. KT found that UAB koncernas Achemos grupė implemented an unnotified merger by acquiring sole control of UAB Jūros vartai and AB KLAIPĖDOS LAIVŲ REMONTAS. For the infringement of the Law on Competition, the Council fined Achemos grupė EUR 54,700;

25. Ongoing investigation into the suspected abuse of dominance by AB ORLEN Lietuva in the oil production and trade sector;

26. Ongoing investigation into the suspected abuse of dominance by Swedbank, AB in the banking sector;

27. Ongoing investigation into the suspected abuse of dominance by the provider of postal services AB Lietuvos pastas;

28. Ongoing investigation into suspected anti-competitive decisions by Klaipėda City Municipality regarding the road maintenance, traffic safety, lighting services of streets and public spaces.

2.1.4. The main advocacy initiatives last year included:

29. **Conferences and seminars.** KT delivered 116 public talks in local and international conferences and seminars on anti-competitive agreements, merger control, state aid, abuse of dominance, anti-competitive conduct by public administrative bodies, misleading advertising and unfair commercial practices.

30. **Projects.** #OpenWithKT – a project carried out in partnership with the biggest law firms in Lithuania to strengthen the dialogue with competition law practitioners and business community. In 2017 KT organised two such conferences. The topics included competition in public procurement, and recent competition law changes, trends and challenges;

31. Competition roadshow – a series of seminars in 10 different regions of Lithuania on three major topics: state aid, anti-competitive agreements and misleading advertising. In 2016 KT organised the opening seminar in Kaunas, and delivered 5 more seminars in

2017 to around 600 representatives of public and private sector. During the seminars the Council Members also had individual meetings with the mayors of relevant municipalities and discussed the most significant competition concerns in the regions. The project is planned to be finished by the end of 2018;

32. #KTGoesToSchool – a series of seminars on competition-related topics to pupils. In 2017 KT's experts visited 19 gymnasiums and delivered 30 lessons on anti-competitive agreements, misleading advertising and monopoly to 500 pupils of Vilnius gymnasiums;

33. On December 5 the Lithuanian Competition Council joined the rest of the world to celebrate the World Competition Day and reminded the society that #CompetingIsHealthy, #CompetingIsWorthwhile, #CompetingIsBeneficial. The Competition Council celebrated the day by engaging into an open dialogue with the passers-by in Vilnius.

34. **Collaboration with institutions and academia.** To foster interinstitutional co-operation while conducting investigations into corruption, suspected violations of public procurement rules, collusive bid-rigging, as well as to enhance staff qualifications, KT signed collaboration agreements with the National Audit Office of Lithuania, as well as with the Public Procurement Office and the Special Investigation Service. The institutions were involved in regular bilateral and trilateral meetings, consultations, exchange of information and best practices;

35. KT continued sharing its expertise in the field of competition with colleagues from foreign institutions, mostly as part of the EU Twinning Project in Ukraine and technical assistance project in Georgia;

36. On the 9th-10th October 2017 competition law experts and representatives of the European Commission, Lithuanian public, private sector and academia gathered for the 14th Baltic Competition Conference in Vilnius to discuss how competition authorities could become better enforcers, strengthen institutional credibility and contribute to the well-being of the country and the citizens;

37. **Relationships with the media.** In 2017 KT continued strengthening relationships with the media which is of great benefit when advocating competition and its benefits to the society.

38. The Council's experts published 16 op-eds on competition-related issues in local and regional media;

39. KT organised "Breakfast with the media" to discuss the most topical questions off the record.

2.1.5. Summary of activities of:

Competition authorities

40. In 2017 KT launched 10, continued 12 investigations, and issued 7 decisions (excluding unfair or misleading practices).

Launched:

- Anti-competitive agreements – 8
- Abuse of dominance – 0

- Unnotified mergers – 0
- Anti-competitive actions by public administrative bodies – 2

Continued:

- Anti-competitive agreements – 5
- Abuse of dominance – 3
- Unnotified mergers – 2
- Anti-competitive actions by public administrative bodies – 2

Decisions issued (identified infringement):

- Anti-competitive agreements – 5
- Abuse of dominance – 0
- Unnotified mergers – 2
- Anti-competitive actions by public administrative bodies – 0

Courts

41. According to national laws, KT's decisions may be appealed both on procedural and substantive grounds. As of December 31, 2017 there were 26 decisions under examination at courts of various instances.

In 2017:

- 9 decisions were appealed;
- 8 decisions were upheld by courts;
- 7 decisions were partly amended;
- 1 decision was annulled;
- 1 case was terminated.

Some of the most significant court decisions:

- The Supreme Administrative Court of Lithuania upheld the KT's decision of 11 February 2015, according to which two competitors UAB Lukrida and UAB Manfula fixed the prices of internal combustion engines purchased from UAB Envija and restricted competition in the combined heat and power plants construction market;
- The Supreme Administrative Court of Lithuania upheld KT's decision, according to which Alytus City Municipality granted privileges to an energy services provider, discriminated against other market players and thus infringed the Law on Competition;
- The Supreme Administrative Court of Lithuania upheld the Council's decision, according to which in 2011–2012 construction companies, namely UAB Convertus, UAB Gedarta, UAB UGNA, UAB Aestus and Baltic Transport Service concluded bid rigging agreements;
- The Supreme Administrative Court of Lithuania upheld the Competition Council's decision on two bid rigging agreements, i.e. by UAB Ministerium, UAB Nebūk briedis and VŠĮ TV Europa (public procurement for the purchase of software development works) and by UAB Nebūk briedis and VŠĮ Media medis (public procurement for the purchase of communications services);

- Vilnius Regional Administrative Court upheld the Competition Council's decision of 5 December 2016, according to which UAB Žagarės inžinerija and UAB Rovaltra rigged their bids in the public procurement organised by UAB Fontas LT for the purchase of machinery.
- The Supreme Administrative Court of Lithuania upheld the Council's decision regarding the non-compliance with KT's obligation to conduct a competitive procedure for the provision of municipal waste management services by Joniškis District Municipality;
- Vilnius Regional Administrative Court upheld the Council's decision regarding the non-compliance with KT's obligation to conduct a competitive procedure for the provision of maintenance works of public areas by Trakai District Municipality;
- Vilnius Regional Administrative Court upheld the Council's decision regarding the non-compliance with KT's obligation to conduct a competitive procedure for the provision of municipal waste management services by Molėtai District Municipality.

2.1.6. Description of significant cases, including those with international implications.

42. **24 January.** KT found that UAB Elmis, UAB LEDEVILA and UAB Vortex Capital concluded a collusive bidding agreement while participating in the public procurement for the purchase of construction and installation works. For the anti-competitive agreement, KT fined UAB Ledevila EUR 2 100 and UAB Vortex Capital EUR 12 600.

43. **13 June.** KT found that having acquired about 51 per cent of Vievio paukštynas shares and gained control over the company, Kauno grūdai implemented unnotified merger. For the infringement of the Law on Competition, KT fined Kauno grūdai EUR 947,700.

44. **2 August.** KT found that UAB koncernas Achemos grupė implemented an unnotified merger by acquiring sole control of UAB Jūros vartai and AB KLAIPĖDOS LAIVŲ REMONTAS. For the infringement of the Law on Competition, KT fined Achemos grupė EUR 54,700.

45. **31 October.** KT found a number of occasion wear shops operating in Vilnius guilty of a cartel that set a fixed dress try-on fee for customers. Firms received fines ranging from EUR 1 to EUR 1,960, with seven out of 12 cartel members admitting the infringement.

46. **31 October.** KT found the Italian-based supplier Tecnos Dental and its Lithuanian distributor UAB Implamedica engaged in fixing minimum resale prices of bone regeneration products used in implant dentistry. The infringement resulted in both companies receiving a total of EUR 175,500 of fines.

47. **21 December.** KT found that joint bids submitted by two Lithuanian construction firms UAB Irdaiva and AB Panevėžio statybos trestas (PST) restricted competition "by object", in breach of Article 5 of the Law on Competition (national equivalent of Article 101 TFEU), as both firms could have bid separately. The fines imposed on firms amounted to EUR 3,685,900 and EUR 8,513,500 respectively.

48. **27 December.** KT found that UAB Norvesta and the German company Sypra concluded a cartel agreement while participating in the radioactive scrap metal auction conducted by Ignalina nuclear power plant, and thus were fined EUR 27,500 and EUR 27,100 respectively.

2.2. Mergers and acquisitions

2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws;

49. KT received 24 filings between 1 Jan and 31 Dec 2017:

50. 4 mergers led to an in-depth review.

Table 1.

	2017	2016	2015
Received filings	24	39	38
Mergers cleared	23	37	36
Mergers cleared with remedies and commitments	1	1	0
Challenged mergers	1	2	1
Mergers withdrawn	1	1	1
Partly cleared mergers (permission to individual concentration actions)	0	0	0

2.2.2. Summary of significant cases.

51. **18 October.** KT cleared the supermarket merger – acquisition of 100 per cent of UAB Palink (PALINK) shares by UAB Rimi Lietuva (RIMI) – with remedies. RIMI offered to sell a part of its business related to retail trade. RIMI will be able to take over the control of PALINK only after RIMI has found a suitable purchaser for 17 stores that have to be divested. The suitable purchaser to be confirmed by KT has to be able, among other things, to compete in the relevant local markets effectively.

52. **13 November.** KT cleared the acquisition of 51 per cent (together with the currently owned shares – 100 per cent) of UAB Adnet media shares and sole control by the Estonian-based company AS Ekspress Grupp. After receiving merger notification on July 27, KT analysed whether the transaction might result in any negative effects on competition in the sector of online advertising since after the merger has been completed, both Delfi, the owner of various websites, and Adnet media, providing online advertising intermediation services, would belong to the Estonian media group Ekspress Grupp. Having evaluated the circumstances related to the transaction, the Council acknowledged that the intended merger would not create or strengthen the dominant position, or significantly restrict competition in the sector of online advertising.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

53. According to the Law on Competition, KT is empowered to carry out expert examination of draft laws and other legal acts, issue opinions regarding the effect on competition to the Parliament of the Republic of Lithuania and the Government of the

Republic of Lithuania, as well as submit proposals to the Government of the Republic of Lithuania to amend legal acts restricting competition.

54. Last year KT examined 359 draft legal acts, regarding 83 of them KT issued proposals on how to minimise negative impacts on competition and freedom of economic activity.

55. KT sent 285 official letters:

- To different ministries, mostly regarding draft laws, decisions and orders;
- To the Central purchasing body in the Republic of Lithuania regarding the determination of the acceptable market price of products, services and works to the whole public sector;
- To the Parliament regarding gas pipeline installation prices, public services, competition in waste management sector, insurance sector, annual report;
- To the Parliament and the Ministry of Health regarding competition in the pharmaceutical sector;
- To the Lithuanian President Administration regarding social enterprises, insurance prices, law amendments;
- To the Government regarding draft decisions related to pharmaceuticals, public interest services, state resources, as well as amendments to the laws; statistical data, economic activities by municipalities, KT's strategic plan and annual report, enforcement of the fine imposed on Gazprom.

4. Resources of competition authorities¹

4.1. Resources overall (current numbers and change over previous year):

4.1.1. Annual budget (in your currency and USD):

- EUR 2.29 m EUR, USD 2.80 m (2017)
- EUR 1,69 m, USD 2,07 m (2016)

4.1.2. Number of employees (person-years):

- Economists: the Council had 3 dedicated economists as of 31 Dec 2017. One of them worked as Adviser on Economic Analysis holding a PhD in Economics, while the other 2 were embedded within the investigative divisions;
- Lawyers – 40;
- Other professionals – 6;
- Support staff – 19;
- All staff combined – 68.

4.2. Human resources (person-years) applied to:

- Enforcement against anticompetitive practices –9 (anti-cartel);
- Merger review and enforcement –10 (these people are also dealing with abuse of dominance issues, thus there is full overlap of staff in these two fields));
- Advocacy efforts – 24:
 - 7 lawyers in the Legal Division (all areas);
 - 1 Chief Economist (all areas);

- 1 Adviser on Competition Policy (all areas);
- 1 Chief Adviser (all areas);
-
- 9 members of staff dealing with competition restrictions imposed by public entities (these people are also dealing with enforcement against anticompetitive practices by public entities);
- 5 Council Members (all areas).

4.3. Period covered by the above information:

- 1 Jan 2017 to 31 Dec 2017.

5. Summaries of or references to new reports and studies on competition policy issues

“Safe Harbours and Legal Presumptions in Competition Law” (OECD)
[https://one.oecd.org/document/DAF/COMP/WD\(2017\)62/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2017)62/en/pdf)

“Co-operation between Competition Agencies and Regulators in the Financial Sector” (OECD) [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2017\)18/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2017)18/en/pdf)

“Judicial perspectives on competition law” (OECD)
[https://one.oecd.org/document/DAF/COMP/GF/WD\(2017\)35/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2017)35/en/pdf)

“Methodologies for Conducting market studies” (OECD)
[https://one.oecd.org/document/DAF/COMP/WP3/WD\(2017\)21/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)21/en/pdf)