

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Lithuania**

-- 2020 --

This report is submitted by Lithuania to the Competition Committee FOR INFORMATION.

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Lithuania

Executive Summary

1. When rating ourselves, we assess how successfully we managed to meet our long-term strategic goals: maximising consumer welfare, making impactful competition advocacy and becoming a more efficient authority. In 2020, an additional challenge in meeting these goals was posed by the Covid-19 pandemic. Despite the crisis, the Lithuanian agency never stopped its operations and produced considerable results.
2. When it comes to maximising consumer welfare, our public commitment is that every euro put into the authority's budget brings at least 5 euros of expected direct financial benefit to consumers. In 2018–2020 we reached the ratio 1:8. In 2020, financial benefit was created by holding film distributors liable for the price-fixing cartel, subjecting to remedies the acquisition by a telecom operator of another company's broadband business, imposing liability on the Ministry of Justice for setting minimum and fixed prices for notaries' services and thus undermining fair competition, and finally, finding the Lithuanian Transport Safety Administration liable for the extension of contracts with regular road passenger transport companies without conducting tenders. Not of least importance were our successful advocacy efforts which, among others, resulted in relaxed requirements for optometric service providers. The latter result constitutes the first case where the financial benefit was established on the basis of the authority's advocacy activities alone.
3. A large portion of all advocacy efforts last year was directed to addressing the consequences of the pandemic. In spring, we advised the Government and the Ministry of Justice against the risks of price control during the pandemic; eventually, the respective law was not enacted. Furthermore, the agency advocated against discriminatory restrictions for stores in the context of the quarantine. We also joined other EU competition authorities of the European Competition Network in declaring that business cooperation initiatives would not be precluded if they generated efficiencies outweighing negative impact. At the same time, the Competition Council noted that disruptions caused by the COVID-19 outbreak should not be used by companies as a veil for concluding anti-competitive agreements.
4. As regards the effectiveness of the authority's activities, the outbreak of COVID-19 did not disrupt the normal execution of our functions. Remote work was an option already before the pandemic and therefore the transition for the staff was smoothly available from the first day of the lockdown. Oral hearings were also held remotely, our authority conducted 9 dawn raids and assessed more mergers than in 2019.
5. In addition, several amendments of the competition law and bylaws were enacted, empowering the Competition Council in several respects. Firstly, streamlined leniency programme should result in higher efficiency of this instrument. Secondly, new possibilities of cross-border cooperation will allow to enforce fines and deliver documents across the EU. Last but not least, additional safeguards are included in the law in order to ensure independence and sufficient resources of the Lithuanian competition authority. Furthermore, organisational structure was improved. Enforcement against unilateral behaviour and public authorities was allocated to a single unit and separated, respectively, from merger control and advocacy. This allows to concentrate investigation capacities in one place and achieve synergy, as these types of infringements often go hand in hand.

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

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

6. Summary of amendments to the Law on Competition:
 - the procedure of a merger review was improved reducing possible risks which were present before the amendments. According to the amendments, the Competition Council can prolong the period of merger consideration to up to 1 additional month on the basis of two grounds: 1) if an undertaking agrees to do so; 2) if the authority receives additional information relevant for the consideration of a merger when only 20 or less days are left to the adoption of the decision and it is not objectively feasible to take this information into account. Furthermore, the period for the review is started only once all information required by the law is received. If any of this information is received after commencement of the review process, the period for the review is started anew. Both these amendments allow the Competition Council to adopt sounder decisions in cases if required information is not provided at the beginning or if some new circumstances become known at the end of the review procedure. The possibility of applying stop-the-clock tool is also capped at 3 months term;
 - clarified rules on immunity from fines or their reduction under which undertakings which provide evidence having added value regarding an anti-competitive agreement to the Lithuanian competition authority may be exempted from fine or offered a reduction in fine, type B immunity introduced;
 - explicitly reflected the liability for undertakings forming a single economic unit and successor's liability so that companies could not escape fines through corporate re-structuring;
 - in order to increase the effectiveness and deterrent effect of sanctions imposed on undertakings for breaches of the EU antitrust rules, it was specified that the maximum amount of fines is calculated based on the undertaking's total worldwide turnover in the preceding business year;
 - the authority gained powers to impose higher fines on undertakings for continuous or repeated infringements committed not only in Lithuania, but also in other EU jurisdictions;
 - the amendments also ensure more guarantees of independence for the Competition Council as a national competition enforcement authority and require that it has sufficient human, financial, technical and technological resources.

1.2. Other relevant measures, including new guidelines

- After the amendments to the Law on Competition entered into force on 1 November 2020, the authority started applying the updated leniency rules and the newly adopted rules on cooperation with the EU competition authorities or other counterparts. The aforementioned rules implement the Directive of the European Parliament and the Council to empower the competition authorities of Member States to be more effective enforcers and ensure the proper functioning of the internal market (ECN+).
- The Competition Council also developed / updated the guidelines on the: a) procedure of remote hearings of participants in the procedure of violations of the

Law on Competition; b) rights and duties of the authority's officials during the dawn raids; c) application of competition rules in e-commerce; d) payment of fines; e) leniency program; f) explanations concerning the establishment of a dominant position; g) explanations on market definition.

1.3. Government proposals for new legislation

7. Amendments to the Law on Competition were submitted to the Seimas mostly in order to transpose the EU Directive ECN+ into the national law. These amendments are in line with the ECN+ Directive intended to empower the competition authorities of Member States to be more effective enforcers and ensure the proper functioning of the internal market. More specifically, the Directive aims to ensure that national competition authorities have the necessary guarantees of independence, resources, as well as enforcement and fining powers.

8. On 1 November 2020 amendments to the Law on Competition of the Republic of Lithuania transposing the above-mentioned Directive entered into force.

2. Enforcement of competition laws and policies

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

9. Concerning the actions against anti-competitive practices, the authority identified 3 infringements of the Law on Competition: the film distributor *Theatrical Film Distribution* and the firms *NCG Distribution* and *Forum Cinemas*, which belong to the same group of companies, agreed on the prices of their distributed films in order to limit special offers and discounts in cinemas. Although the fines calculated for the cartel constituted more than EUR 3.8 million, the authority took into account that during the COVID-19 pandemic the sector faced unprecedented activity restrictions and thus reduced the fines by 80 per cent and the following fines were imposed: *Theatrical Film Distribution* – EUR 33,500; *NCG Distribution* – EUR 26,600; *Forum Cinemas* – EUR 707,500.

10. With regard to the abuse of dominance cases, the authority terminated the investigation into the actions of *Diginet LTU*, the owner of classified real estate ads websites, without finding that the company abused its dominant market position by way of charging unfair prices to customers. The results obtained during the investigation did not lead to the conclusion that the prices applied by *Diginet LTU* to business customers (real estate brokers) and private customers (consumers) were unfair, therefore, the investigation into suspected abuse of dominance was terminated.

2.1.1. Summary of activities

Competition authorities

11. In 2020 the authority launched 4, continued 8 investigations, issued 3 decisions.

Launched:

- Anti-competitive agreements – 4
- Abuse of dominance – 0
- Anti-competitive actions by public administrative bodies – 0

Continued:

- Anti-competitive agreements – 5
- Abuse of dominance – 1
- Anti-competitive actions by public administrative bodies – 2
- Procedural infringements (merger control)– 1

Decisions issued (identified infringement):

- Anti-competitive agreements – 1
- Abuse of dominance – 0
- Competition restricting actions by public administrative bodies – 2

Courts

12. According to national laws, the authority's decisions may be appealed both on procedural and substantive grounds.

In 2020

- 9 decisions were appealed (including 3 decisions relating to procedural infringements);
- 11 decisions were upheld by courts (2 upheld decisions in merger cases; 4 upheld decisions in misleading advertising cases (the authority was responsible for the enforcement of the Law on Advertising until 1 May 2019); 3 upheld decisions in anti-competitive agreement cases, 1 upheld decision regarding the non-compliance of commitments by public entities, 1 upheld decision relating to procedural matters);
- 1 decision was partly upheld because the court sent the case back to the authority to conduct further evaluation relating to the authority's refusal to launch an investigation into the compliance with the rules prohibiting the abuse of dominance and anti-competitive practices by public undertakings. The authority's refusal to launch an investigation regarding an unnotified merger and into the compliance with the rules prohibiting anti-competitive agreements was confirmed.
- 3 decisions were annulled due to the changes in legal regulation concerning in-house contracts (competition restrictions by public bodies).

13. In 2020 courts upheld 80 per cent of the decisions and requests of the Competition Council. Most important of them:

- the Supreme Administrative Court of Lithuania confirmed EUR 947,700 fine imposed on the company *Kauno grūdai* for an unnotified merger;
- the Supreme Administrative Court of Lithuania confirmed the fines imposed on the construction company *Panevėžio statybos trestas* and company *Active Construction Management*, previously known as *Irdaiva*, for anti-competitive joint bidding. The Court's extended panel of judges confirmed the authority's findings that the two companies infringed the Law on Competition when they presented joined bids in 24 public tenders even though, taking into account their experience, qualifications and capacities, they both were able to bid separately and exert competitive pressure on each other and other market participants;

- the Supreme Administrative Court of Lithuania upheld the authority's decision to impose EUR 209,800 fine on *Panevėžio melioracija* for rigging bids in 25 public tenders on street and road repair and land melioration works;
- Vilnius Regional Administrative Court satisfied the authority's request to impose individual sanctions on the directors of *PST* and *Active Construction Management*. Former head of *PST* was restricted from working in managerial positions for five years, together with a personal fine of EUR 14,481, while the former head of *Active Construction Management*, formerly *Irdaiva*, was restricted from working in managerial positions for four years, with EUR 11,000 personal fine. The court's decision was appealed and is now pending in the court of final instance.

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

Antitrust enforcement

14. In 2020 the authority found that the film distributor *Theatrical Film Distribution* and the firms *NCG Distribution* and *Forum Cinemas*, which belong to the same group of companies, agreed on the prices of the distributed films. Although the fines calculated for the cartel constituted more than EUR 3.8 million, the Competition Council took into account that during the COVID-19 pandemic the sector faced unprecedented activity restrictions and thus reduced the fines by 80 per cent.

15. The Competition Council also launched four new investigations into suspected anti-competitive agreements, one of them was initiated into the conduct of the Lithuanian Basketball League and basketball clubs after evaluating their exchange of information on the terms of payment of basketball players' salaries. The authority noted that anti-competitive agreements which do not bring benefits for consumers may not be justified by the COVID-19 outbreak.

Public entities

16. The role of the Competition Council in enforcing specific rules that prohibit restrictions of competition by public bodies has been significantly strengthening over the years. One of the main reasons is that the effect of such conduct on the market may oftentimes be very, if not more, significant than that of private conduct. After many years of enforcement and advocacy, in 2017 the Competition Council has been entrusted with a power to impose monetary fines on public bodies and last year the authority continued to use this power in its two significant decisions.

17. Firstly, the authority found that by setting the minimum and fixed notary fees, the Ministry of Justice, which regulates the notaries' activities, established regulation which restricted the abilities of notaries to compete on prices and thus breached the duty to ensure the freedom of fair competition foreseen by the Law on Competition. The Ministry of Justice received a fine of EUR 45,000 and was ordered to eliminate the infringement of the Law on Competition within six months from the authority's decision.

18. Besides, the authority found that the Lithuanian transport safety administration (LTSA) infringed the Law on Competition when it extended contracts with 42 regular road passenger transport service providers without a competitive procedure, thereby restricting competition and impeding the entry of new market participants. During the investigation the Competition Council found that specific intercity bus routes in Lithuania are currently operated by 43 private and municipal companies, out of which only 1 was selected through a competitive process, while the remaining contracts were simply extended in 2018. Such

anti-competitive behaviour of the LTSA resulted in the privileges to incumbent market participants and distortion of competition in the market. The LTSA was obliged to pay EUR 43,120 fine, terminate existing contracts with relevant carriers, as well as to organise an open competitive procedure.

Abuse of dominance

19. The authority terminated the investigation into the actions of *Diginet LTU*, the owner of classified real estate ads websites, without finding that the company abused its dominant market position by way of charging unfair prices to customers. The results obtained during the investigation did not lead to the conclusion that the prices applied by *Diginet LTU* to business customers (real estate brokers) and private customers (consumers) were unfair, therefore, the investigation into suspected abuse of dominance was terminated.

2.2. Mergers and acquisitions

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

20. The authority received 21 filing between 1 Jan and 31 Dec 2020:

Table 1.

	2020	2019	2018	2017	2016
Received filings	21	28	38	24	39
Mergers cleared	24*	22	36	23	37
Mergers cleared with remedies and commitments	1	0	0	1	1
Mergers that went into 2 nd phase of analysis	3	4	7	4	9
Prohibited mergers	0	0	1	0	1
Mergers withdrawn	0	1	2	1	1
Partly cleared mergers (permission to individual concentration actions)	0	0	0	0	0

Note: *some of the cleared mergers were notified in 2019.

2.2.2. Summary of significant cases.

21. In the field of merger control, the authority cleared the acquisition of *Mezon* broadband business from the state-owned operator *Telecentras* by *Bitė Lietuva* subject to remedies.

22. *Bitė Lietuva* committed:

- not to transfer, lease or otherwise provide access to *Mezon* 2.3, GHz and 2.6 GHz radio frequencies (channels) to the joint venture *Centuria* which implements the common project *Century* of the telecommunications operators *Bitė Lietuva* and *Tele2*;
- not to apply to the Lithuanian Communications Regulatory Authority (neither directly, nor indirectly, through related persons) regarding the transfer or lease of 2.3, GHz and 2.6 GHz radio frequencies (channels) to the joint-venture;
- not to use 2.3, GHz and 2.6 GHz radio frequencies (channels) for the provision of mobile Internet access services, etc.

23. Having evaluated the proposed commitments and other circumstances related to the transaction, the authority decided that proper implementation of the commitments assumed

by *Bitė Lietuva* would eliminate the negative effects on competition identified by the authority and would not create or strengthen the dominant position, or significantly restrict competition in the relevant markets.

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

24. According to the Law on Competition, the Lithuanian competition authority 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.

25. Last year the authority examined 482 draft legal acts and submitted comments regarding 241 of legal acts adopted in 2020 (77 per cent of the authority's comments were taken into account by legislators).

26. Proposals concerning draft legal acts:

- we drew the attention of the Ministry of Justice and the Government that regulating prices during the emergency situation could negatively affect the availability of goods and cause other problems, which in the long run could damage the economy. The Seimas agreed with the veto issued by the President Gitanas Nausėda and refused plans to regulate wholesale and retail prices;
- having assessed the draft Law on Concessions which proposed to establish in-house agreements in cases of concession, we noted to the Ministry of Economy and Innovation that in-house agreements can be concluded only in exceptional cases, i.e. when the continuity, good quality and availability of the relevant service could not be ensured by a service provider chosen through a competitive procedure. The draft proposal was not adopted;
- we submitted comments to the Ministry of Health which proposed to set the upper limit of the indicator used for calculating the price premium of reimbursable drugs (20 per cent of the average reimbursable price of the prescription) to prevent the increase of price premiums for reimbursable drugs. We noted that imposed price reduction when the “ceiling” of composite reimbursable drugs for one supplier is set without any qualifications might create obstacles for suppliers to enter the Price list of reimbursable medicines and affect competition in the market.

27. Additionally, the Competition Council sent 6 warnings regarding the alleged anti-competitive decisions by public entities.

28. What is more, 563 letters were sent to lawmakers, ministry officials or other government leaders.

29. Topics addressed in 10 most important letters:

1. Government's initiative to set maximum wholesale and retail prices for essential goods and services in emergency situations;
2. publication and regulation of raw milk purchase prices;
3. increased prices of fuel and disinfectants;
4. pandemic-related bank moratoriums;
5. regulation of reimbursable medicines;

6. regulation of marking of pet animals;
 7. initiative to grant the right for notaries to organise real estate auctions;
 8. amendments to the Railway Transport Code;
 9. amendments to the Law on Concessions;
 10. suggestion to establish presumption of harm (10 %) in cases of private enforcement related to bid rigging.
30. The authority also had 74 meetings with lawmakers, ministry officials or other government leaders.
31. Topics addressed in 10 most important meetings:
1. amendments of the Law on the prohibition of unfair practices by suppliers and purchasers of raw milk and milk products;
 2. transposition of the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (UTP Directive);
 3. application of state aid rules during COVID-19;
 4. regulation of Free Economic Zones;
 5. amendments to the Forest Law;
 6. amendments to the Law on Concessions;
 7. amendments to the Law on Renewable Energy Sources;
 8. investment of state property and increase of the capital of the owner of public body;
 9. amendments to the Law on the Prohibition of Unfair Actions on the Part of Economic Operators Buying and Selling Raw Milk and Trading in Milk Products;
 10. amendments of competition law transposing the Directive 2019/1 (ECN+).

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 2.64, USD 3.16 (2020)
- EUR 2.53 m, USD 3.03 m (2019)

4.1.2. Number of employees (person-years):

32. As of 31 Dec 2020 there were:
- economists – 4;
 - lawyers – 37;
 - other professionals (IT, communications, experts supervising the Law on the Prohibition of Unfair Practices of Retailers) – 8;
 - support staff – 13;

- all staff combined – 62.

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

33. Enforcement against anticompetitive practices:
- anti-cartel – 27:
 - 9 lawyers of Anti-Competitive Agreements Investigation Group
 - 4 Council Members
 - 6 lawyers of Legal Group
 - 4 economists of Economic Analysis Group
 - 2 lawyers from Competition Policy Group
 - 2 Chief Advisers
 - dominance/antimonopoly – 22:
 - 4 lawyers of Dominant and Public Entities Investigation Group
 - 4 Council Members
 - 6 lawyers of Legal Group
 - 4 economists of Economic Analysis Group
 - 2 lawyers from Competition Policy Group
 - 2 Chief Advisers
 - Merger review and enforcement – 23:
 - 6 lawyers of Mergers Supervision Group
 - 4 Council Members
 - 6 lawyers of Legal Group
 - 4 economists of Economic Analysis Group
 - 2 lawyers from Competition Policy Group
 - 1 Chief Adviser
 - Advocacy efforts – 20:
 - 4 Council Members
 - 2 lawyers of Legal Group
 - 2 lawyers of Anti-Competitive Agreements Investigation Group
 - 2 lawyers of Dominant and Public Entities Investigation Group
 - 2 lawyers of Mergers Supervision Group
 - 8 lawyers of Competition Policy Group

4.3. Period covered by the above information:

34. 1 January 2020 to 31 January 2020.

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

35. The authority's experts submitted 3 written contributions to the OECD and shared experience on the topics "[Economic Analysis in Merger Investigations](#)", "[Sustainability and Competition](#)", "[Conglomerate Effects of Mergers](#)". The Competition Council also submitted information for the ICN member competition agencies about the Lithuanian [legislation concerning anti-competitive practices](#), particularly hardcore cartels. It is not only useful for businesses participating in cartel activities since it informs about the rules applicable to them, but it also enables businesses and individuals which suffer from cartel activity to get information about the possibilities of private enforcement of their rights in one or more jurisdictions.