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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**Co-operation between Competition Agencies and Regulators in the Financial Sector  
- Note by Lithuania**

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## *Lithuania*

1. In addition to the co-operation agreement signed in June 2016 between the Council of the Republic of Lithuania and the Bank of the Republic of Lithuania, there are a number of Lithuanian legal provisions providing a framework for such a co-operation. For example, the Law on Competition foresees that an expert opinion from the Bank of Lithuania has to be submitted to the Competition Council together with a notification about the planned merger. Although this legal provision has been implemented in practice, the Project on the Amendment of the Law on Competition proposes to delete it from the aforementioned law. Such an amendment basically aims at reducing the administrative burden on the side of the undertakings and explains that there are other legal provisions in the Law on Competition that still guarantee the right of the Competition Council to request and to obtain relevant information if needed. As regards the enforcement of competition law, the co-operation between the Competition Council and the Bank of Lithuania is mostly visible in merger control. Yet, the Competition Council also dealt with (alleged) anti-competitive agreements in the financial sector, which are worthwhile mentioning. Finally, the co-operation between the Competition Council and the Bank of Lithuania is also relevant in the ongoing investigation on the alleged abuse of a dominant position, since the commitments offered by the dominant undertaking directly refer to compliance with the Best Practices announced by the Bank of Lithuania.

### **1. Introduction**

2. According to Article 46 of the Constitution of the Republic of Lithuania,<sup>1</sup> the law prohibits the monopolization of the production and market, and safeguards the freedom of fair competition. Furthermore, as regards the financial sector, Article 125 of the Lithuanian Constitution states that the central bank in the Republic of Lithuania is the Bank of the Republic of Lithuania, the ownership rights of which belong to the State of Lithuania. The second sentence of the aforementioned legal provision says that the order of the organization and the activities of the Bank of Lithuania, its powers, the legal status of the chair of the Board of the Bank of Lithuania and the basis of the chair's dismissal are set by the law. Flowing from such constitutional foundations, the questions of the co-operation of the Competition Council of the Republic of Lithuania (hereinafter: the Competition Council), as the main institution safeguarding competition, and the Bank of the Republic of Lithuania (hereinafter: the Bank of Lithuania) can be analysed from the perspective of both regulation and enforcement. As regards the latter, it is mostly the cases of merger control that make such a co-operation more visible. However, also anti-competitive agreements in the financial sector that were dealt with by the Competition Council are worthwhile mentioning. On a more informal basis, as regards pooling of resources and sharing of expertise, it has to be noted that the Competition Council and the

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<sup>1</sup> Constitution of the Republic of Lithuania, 25 October 1992.

Bank of Lithuania signed on 20 June 2016 the co-operation agreement, which, *inter alia*, aimed at sharing best practices also by exchanging experts.<sup>2</sup>

## 2. Co-operation between the Competition Authority and Regulators in the Financial Sector: A Regulatory Perspective

3. According to Article 8(2) point 2 of the Law on the Bank of the Republic of Lithuania,<sup>3</sup> the Bank of Lithuania supervises financial markets, except for cases set in the Regulation 1024/2013. Article 42(1) of the Law on the Bank of Lithuania says that the supervised financial institutions are such as banks, the subsidiaries of the banks of foreign countries established in Lithuania, Central credit union, credit unions, insurance companies, electronic money agencies etc. The Law on Banks<sup>4</sup> states (in Article 64(1)) that the supervising authorities of the banks are the European Central Bank and the Bank of Lithuania according to the division of their competences as set in the Regulation 1024/2013. Similarly, the Law on Insurance<sup>5</sup> (Article 2(24)) stipulates that the institution, which supervises the activities of insurance, reinsurance as well as the intermediaries of insurance and reinsurance, is the Bank of Lithuania.

4. An explicit co-operation between the Bank of Lithuania and the Competition Council is foreseen in the Law on Competition of the Republic of Lithuania<sup>6</sup> (hereinafter: Law on Competition). Article 9(5) of the Law on Competition stipulates that, if the notification about the planned concentration relates to commercial banks or other credit institutions, together with the notification to the Competition Council an expert opinion from the Bank of the Republic of Lithuania has to be submitted. In this regard it is worthwhile noting that, although this provision was used in practice when the Competition Council analyzed mergers in the banking sector (as illustrated in the text below), the recently issued Project on the Amendment of the Articles 3, 8, 9, 11 and 12 of the Law on Competition<sup>7</sup> suggests striking this provision from the Law on Competition.<sup>8</sup> Following the amendment, there would be no more a requirement to submit an expert opinion from the Bank of Lithuania together with the notification. Since the process as regards the proposal for these amendments of the Law on Competition is ongoing, it will

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<sup>2</sup> Source: <https://www.lb.lt/lt/tarpzinybiniai-ir-tarptautiniai-susitarimai>; <https://kt.gov.lt/lt/naujienos/konkurencijos-taryba-keisis-patirtimi-su-lietuvos-banku>.

<sup>3</sup> Law on the Bank of the Republic of Lithuania, 1 December 1994, No. I-678, with later amendments.

<sup>4</sup> Law on Banks, 30 March 2004, No. IX-2085, with later amendments.

<sup>5</sup> Law on Insurance, 18 September 2003, No. IX-1737, with later amendments.

<sup>6</sup> Law on Competition of the Republic of Lithuania, 23 March 1999, Nr. VIII-1099, as lastly amended on 12 January 2017.

<sup>7</sup> Project on the Amendment of Articles 3, 8, 9, 11 and 12 of the Law on Competition, 23 October 2017, No. 17-9950(2). It is noteworthy that initially the project was submitted on 24 August 2017 (No. 17-9950), but the project itself was changed and the „new“ text was submitted on 23 October 2017.

<sup>8</sup> Article 3(4) of the Project on the Amendment of the Articles 3, 8, 9, 11 and 12 of the Law on Competition.

be seen whether the amendments will be accepted into the final text of the Law on Competition. It is nevertheless worthwhile mentioning that the rationale for such an amendment is described in the Explanatory Memorandum of the Project on the Amendment of the aforementioned Law.<sup>9</sup> According to the Explanatory Memorandum, such a requirement causes additional time efforts on the side of the notifying parties, whereas the right of the Competition Council to get all the relevant information from other institutions is in any case enshrined in Article 18(2) point 1 of the Law on Competition.<sup>10</sup> In fact, the latter provision stipulates that the Competition Council, while performing its functions, has a right to give obligatory requests to undertakings, including commercial banks, other credit institutions and the subjects of public administration, to submit financial and other documents, including those which entail trade secrets, as well as other information, which is needed by the Competition Council in order to perform its functions. The aforementioned amendment thereby aims at reducing the administrative burden on the side of the undertakings.<sup>11</sup> Furthermore, the Explanatory Memorandum stresses that, Article 11(1) of the Law on Competition provides a possibility for any institution, including the Bank of Lithuania, or any interested party to give an opinion on the planned merger, since that legal provision states that the Competition Council, after it receives the notification about the planned merger, makes an announcement on its website about the nature of the concentration and the participating parties.<sup>12</sup>

5. It could also be noted that there is a legal presumption, which is included in the Law on Competition with regard to the mergers, the participants of which are commercial banks or other credit institutions. Article 8(5) of the Law on Competition stipulates that it will be considered that no concentration is taking place when commercial banks, other credit institutions, the intermediaries of the public circulation of the security papers, the subjects of collective investment or the undertakings, which control them, and insurance companies acquire 1/3 or more of the shares of the other undertaking with the aim to give them over, if no use is made of the voting rights granted by such shares and such shares are given over no later than in one year and if the relevant information about such an acquisition is provided to the Competition Council no later than in one month after such an acquisition. However, the last sentence of this provisions says that if the financial institutions, which acquire more than 1/3 of the shares of other undertaking, decide not to comply with the aforementioned conditions, they must notify about the concentration pursuant to general rules. It is yet noteworthy that also this legal provision is addressed by the aforementioned proposal on the amendments of the Law on Competition. According to Article 2(4) of the Project on the Amendment of the Articles 3, 8, 9, 11 and 12 of the Law on Competition, it will be presumed that no concentration is taking place, when commercial banks, other credit institutions, the intermediaries of the public circulation of the security papers, the subjects of collective investment or the undertakings, which control them, and insurance companies acquire security papers of other undertakings with the aim to give them over, if no use is made of the voting rights granted by them and such security papers are given over no later than in one year and if the relevant information about such an acquisition is provided to the Competition Council no later than in one

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<sup>9</sup> Explanatory Memorandum of the Project on the Amendment of Articles 3, 8, 9, 11 and 12 of the Law on Competition, 20 October 2017.

<sup>10</sup> *Ibid.*, p. 2.

<sup>11</sup> *Ibid.*, p. 2.

<sup>12</sup> *Ibid.*, p. 9.

month after such an acquisition. If financial institutions, which acquire security papers of other undertakings, decide not to comply with aforementioned conditions, they must notify about the concentration pursuant to general rules.

6. Finally, it is noteworthy that the Competition Council follows from the competition law perspective the legislative initiatives and submits its observations if needed. For example, in 2015 the Competition Council submitted its opinion<sup>13</sup> on the legislative proposal of the Law on Payments. According to Article 59(1) point 2 of the Project of the Law on the Amendment of the Law on Payments No. VIII-1370,<sup>14</sup> it was suggested to stipulate that credit institutions must provide the service of the main payment account for a specifically set fee. Reacting to such a legislative proposal, the Competition Council in its aforementioned Opinion pointed out that such a proposal basically suggests restricting the possibilities of the credit institutions to independently set the amount of the fee for the provision of the service of the main payment account and setting a uniform amount of such a fee for all credit institutions, which provide the service of the main payment account, thereby limiting the undertakings' freedom of the economic activity.<sup>15</sup> It was stressed by the Competition Council that any type of limiting the economic freedom of the undertakings has to be well-grounded and proportionate to the aim, which is pursued to be achieved. It drew the attention to the fact that the Constitutional Court of the Republic of Lithuania has elaborated on the conditions, which have to be fulfilled in case of setting the limitations and the prohibitions of the economic activity, i.e. 1) the freedom of economic activity can be limited by law, 2) such limitations are necessary in the democratic society for the purpose of safeguarding the rights and freedoms of other persons and the values enshrined in the Constitution of the Republic of Lithuania as well as the constitutionally relevant aims, 3) such limitations do not deny the nature and the essence of the rights and freedoms, 4) compliance is ensured with the principle of the constitutional proportionality.<sup>16</sup> Therefore, the Competition Council recommended to the compilers of the aforementioned Project of the Law to assess the proposed restriction of the freedom of the economic activity in terms of its soundness and proportionality with regard to the aims pursued to be achieved. It is noteworthy that the final text of the aforementioned legal provision in the amended law<sup>17</sup> stated that the maximum monthly amount of the aforementioned fee is set annually by the supervising institution and the criteria were listed based on which such a fee had to be calculated. The Board of the Bank of Lithuania issued a decision on 26 October 2016 on the method of calculating the maximum fee for the provision of the service of the main

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<sup>13</sup> Opinion of the Competition Council on the alignment of the projects of the laws, 14 July 2015, No. (2.30-35) 6V-1570.

<sup>14</sup> Project of the Law on the Amendment of the Law on Payments No. VIII-1370, 17 June 2015, No. 15-7071.

<sup>15</sup> Opinion of the Competition Council on the alignment of the projects of the laws, 14 July 2015, No. (2.30-35) 6V-1570, Point 3.

<sup>16</sup> The Competition Council thereby cited the Judgment of the Constitutional Court of the Republic of Lithuania, 31 May 2006, No. 42/03.

<sup>17</sup> Law on the Amendment of the Law on Payments No. VIII-1370, 30 June 2016, No. XII-2561.

payment account<sup>18</sup> (the aforementioned decision was amended by the Bank of Lithuania on 15 September 2017<sup>19</sup>). Accordingly, the Board of the Bank of Lithuania issued a decision on 19 September 2017 on setting the maximum fee for the provision of the service of the main payment account in the year 2018.<sup>20</sup> The aforementioned monthly fee for the year 2018 is thereby set to EUR 1,50.<sup>21</sup>

### 3. Co-operation between the Competition Authority and Regulators in the Financial Sector: Enforcement

7. There is a number of decisions of the Competition Council in the financial sector. Most of the decisions fall under merger control, but also there are important decisions on anti-competitive agreements as well as the ongoing investigation on the alleged abuse of dominance.

#### 3.1. Merger Control

8. It could first of all be noted that, as regards the licenses issued by the Bank of Lithuania for the financial institutions, a rather recent merger cleared by the European Commission in the mobile payments sector is worthwhile mentioning. In *Bite/Tele2/Telia Lietuva/JV*<sup>22</sup> the European Commission allowed the establishment of a full-function joint venture – an instant payment platform – by three mobile operators in Lithuania. It was inter alia noted that “[...] the JV will hold a license (already issued by the Bank of Lithuania) allowing it to conduct its activities as an e-money institution in Lithuania<sup>23</sup> and that the newly established joint venture will be „subject to the regulatory supervision of the Bank of Lithuania<sup>24</sup>. In the assessment of the merger, the European Commission noted that:

*“The markets for the provision of mobile payment services in Lithuania, especially mobile proximity services, are still nascent and in its early development. In this context the Commission notes that the Transaction, by introducing a new player, will allow for a faster development of these markets. In any event the market entry resulting from the Transaction will increase the*

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<sup>18</sup> Decision of the Board of the Bank of Lithuania on the confirmation of the method of calculating the maximum fee for the provision of the service of the main payment account, 26 October 2016, No. 03-154.

<sup>19</sup> Decision of the Board of the Bank of Lithuania on the amendment of the decision of the Board of the Bank of Lithuania as of 26 October 2016, No. 03-154 on the confirmation of the method of calculating the maximum fee for the provision of the service of the main payment account, 15 September 2017, No. 03-146.

<sup>20</sup> Decision of the Board of the Bank of Lithuania on setting the maximum fee for the provision of the service of the main payment account for the year 2018, 19 September 2017, No. 03-147.

<sup>21</sup> *Ibid.*

<sup>22</sup> Decision of the European Commission, Case M.8251 – *Bite/Tele2/Telia Lietuva/JV*, 19 July 2017.

<sup>23</sup> *Ibid.*, para. 9.

<sup>24</sup> *Ibid.*, para. 5.

*competitiveness of the existing payment service markets in Lithuania, and is therefore likely to have pro-competitive effects. This is highlighted by evidence in the Commission's file demonstrating that absent the Transaction the Notifying Parties would not have made the investments to enter the market unilaterally.*"<sup>25</sup>

9. The Lithuanian Competition Council has time and again dealt with the mergers of the banks. It is in this context that the co-operation between the Competition Council and the Bank of Lithuania is more visible, since, as mentioned, Article 9(5) of the Law on Competition foresees the submission to the Competition Council of an expert opinion from the Bank of Lithuania together with the notification about the planned concentration, if the latter relates to commercial banks or other credit institutions. For example, on 22 March 2016 the Competition Council allowed AB "Swedbank" and UAB "Swedbank Lizingas" to acquire part of the assets, rights and obligations of the Lithuania subsidiary of the A/S Danske Bank related to the provision of the retail banking services.<sup>26</sup> Together with the notification about the concentration the Competition Council received an expert opinion from the Bank of Lithuania about the planned merger as it is requested in Article 9(5) of the Law on Competition. The business field, in which the merger took place, was the retail banking. Although the latter was said to generally concern both natural and legal persons (as regards the latter, particularly, small and medium-sized), the analysis of the merger by the Competition Council was narrowed down to the provision of retail banking services to natural persons, since the acquisition concerned only the latter branch.<sup>27</sup> According to the Competition Council, the relevant product market for the purposes of the planned concentration could be defined, in the broadest sense, as the market for the provision of services of retail banking.<sup>28</sup> Yet, the Competition Council also stressed that the latter market could be divided into narrower segments, so that, in order to assess the potential effect of the planned merger on the various segments of such a market, the Competition Council provided possible narrower definitions of the relevant market: the relevant market for the deposits of natural persons,<sup>29</sup> the relevant market for lending to natural persons,<sup>30</sup> which, in turn, could be divided into two sub-markets, such as the relevant market for the real-estate loans granted to natural persons<sup>31</sup> and the relevant market for the consumption credits provided to natural persons,<sup>32</sup> the relevant market for the management of the bank accounts of natural persons by the banks, credit unions, payment institutions and the institutions of electronic money (including the provision of payment services to natural persons),<sup>33</sup> the relevant

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<sup>25</sup> *Ibid.*, para. 82.

<sup>26</sup> Decision of the Competition Council allowing the merger of AB "Swedbank" and UAB "Swedbank Lizingas" by acquiring part of the assets, rights and obligations of the Lithuanian subsidiary of the A/S Danske Bank, 22 March 2016, No. 1S-37/2016.

<sup>27</sup> *Ibid.*, para. 18.

<sup>28</sup> *Ibid.*, para. 64.

<sup>29</sup> *Ibid.*, para. 65.

<sup>30</sup> *Ibid.*, para. 66.

<sup>31</sup> *Ibid.*, paras 66-67.

<sup>32</sup> *Ibid.*, paras 66, 68.

<sup>33</sup> *Ibid.*, para. 69.

market for the issuance of payment cards to natural persons, which could be divided into two sub-markets, such as the market for the issuance of debit cards to natural persons and the market for the issuance of credit cards to natural persons,<sup>34</sup> the relevant market for the management of the accounts of the security papers and of the sales of the security papers.<sup>35</sup> In addition, it was noted that a separate market in terms of the market for the provision of leasing services, the object of which is cars, could be defined.<sup>36</sup> With regard to the geographical relevant market, the Competition Council pointed out that the aforementioned markets could be considered to be national, i.e. spanning the territory of the Republic of Lithuania.<sup>37</sup> The Competition Council stressed that the fact that many bank clients can and do use electronic banking does not change the definition of the relevant geographic market, since a number of banking services, for example, such as the opening of a bank account or the issuance of the tools for the identity confirmation used in the electronic banking, can be provided only when a client is physically present at the bank.<sup>38</sup> However, the Competition Council said that a specific definition of the relevant market was not important in the present case, since it would not significantly affect the appraisal of the merger.<sup>39</sup> The Competition Council then proceeded with the appraisal of the merger in the relevant market for the provision of services of retail banking (including the possible narrower market definitions) and in the market for the provision of car leasing services, both comprising the territory of the Republic of Lithuania. The Competition Council started with the analysis of non-coordinated effects and first of all pointed out that after the merger the companies, participating in it, will have a market share of 30-40 percent, which will be equal to the market share of the closest competitor AB SEB bank.<sup>40</sup> The Competition Council concluded that, although the number of the competitors after the merger will be reduced, the acquired part of the A/S Danske Bank was not significant with regard to the aforementioned relevant markets, so that no significant changes could be expected to be caused by the merger in these relevant markets.<sup>41</sup> As regards the coordinated effects, the Competition Council noted that there was no reason to consider that the aforementioned markets (both in broader and narrower terms) were transparent.<sup>42</sup> Furthermore, it was stressed that in the market for the provision of retail banking services natural persons are offered a number of various services, so that it could be more difficult to sort out a particular service and to coordinate the behavior in this regard.<sup>43</sup> Besides, the attention was drawn to various loyalty programs offered to natural persons by the banks, and the Competition Council said that

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<sup>34</sup> *Ibid.*, para. 70.

<sup>35</sup> *Ibid.*, para. 71.

<sup>36</sup> *Ibid.*, para. 72.

<sup>37</sup> *Ibid.*, para. 73.

<sup>38</sup> *Ibid.*, para. 74.

<sup>39</sup> *Ibid.*, para. 76.

<sup>40</sup> *Ibid.*, para. 77.

<sup>41</sup> *Ibid.*, para. 84.

<sup>42</sup> *Ibid.*, para. 85.

<sup>43</sup> *Ibid.*, para. 86.

also this fact could be considered as making it more difficult for the companies to coordinate their behavior.<sup>44</sup> All in all, the Competition Council allowed the merger.

10. Furthermore, also in the assessment of another merger, which the Competition Council cleared based on the commitment decision,<sup>45</sup> the Bank of Lithuania provided information. In that case the Vienna Insurance Group wanted to acquire BTA Baltic Insurance Company, the main area of activity of which was non-life insurance. The latter area was the overlapping area of activity in terms of the planned concentration, more specifically, the obligatory insurance of civil liability related to the control of transport vehicles operating on land. Concerns of the Competition Council were expressed with regard to the Lithuanian market for the insurance provided for the international carriers, which are insured for civil liability related to the control of transport vehicles operating on land, in particular with regard to the market shares held before the merger by the companies participating in the merger, the fact that participating undertakings were close competitors, the potential of the competitors, the fact that the merger would annul an important competitive power, the compensatory influence of the buyer, market entry barriers. The Competition Council therefore held that the merger would significantly impede effective competition by creating a dominant position in the aforementioned market, but cleared the merger by accepting the by the participating undertakings offered commitments, which mostly related to the sale of the subsidiary in Lithuania related to that part of the business, on which the concerns were raised (i.e. insurance provided in Lithuania for the international carriers, which are insured for civil liability related to the control of transport vehicles operating on land).

### 3.2. Anti-competitive agreements

11. On 20 December 2012 the Competition Council issued a decision on the actions of AB SEB Bank, AB “Swedbank”, AB DNB Bank and UAB “G4S LIETUVA” as regards Article 5 of the Law on Competition and Article 101 TFEU and on the actions of UAB “G4S LIETUVA” as regards Article 7 of the Law on Competition and Article 102 TFEU.<sup>46</sup> In the decision, the Competition Council stated that each of the aforementioned banks concluded an agreement with the security company G4S on the exclusive purchase from G4S of the services on money management and the collection of money in cash-machines and that such a vertical agreement limited the entry abilities of other money management services’ companies and restricted competition by effect in the money management services’ market. Accordingly, based on the infringement of Article 5(1) of the Law on Competition and Article 101(1) TFEU, the Competition Council imposed fines on all four undertakings. With regard to the assessment of whether the actions of G4S fall under Article 7 of the Law on Competition and Article 102 TFEU, the Competition Council terminated the investigation. The Competition Council’s

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<sup>44</sup> *Ibid.*, para. 86.

<sup>45</sup> Decision of the Competition Council allowing the merger of *Vienna Insurance Group AG Wiener Versicherung Gruppe* by acquiring 100 percent of the shares of *BTA Baltic Insurance Company AAS*, 18 August 2016, No. 1S-97(2016).

<sup>46</sup> Decision of the Competition Council on compliance of actions of AB SEB Bank, AB “Swedbank”, AB DNB Bank and UAB “G4S LIETUVA” with Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 TFEU and on compliance of actions of UAB “G4S LIETUVA” with Article 7 of the Law on Competition of the Republic of Lithuania and Article 102 TFEU, 20 December 2012, No. 2S-15.

decision as regards the infringement of Article 5 of the Law on Competition and Article 101 TFEU was repealed by the Supreme Administrative Court of Lithuania.<sup>47</sup> The Court stressed that it was not necessarily the individual agreements of the banks that restricted competition, but rather it was their cumulative effect that distorted competition.<sup>48</sup> In this regard, the Court noted that the Competition Council in its decision did not analyze the ability of the banks to reasonably foresee the cumulative effect of the agreements on competition. It was said that, if the following circumstance is important in terms of liability, the Competition Council had to prove that the undertaking understood (could understand) and could control the effect on competition of the agreements concluded by it.<sup>49</sup> Since the latter was not proved by the Competition Council, the Court repealed the Competition Councils' decision so far as it related to the liability of the banks.<sup>50</sup> It was noted by the Court that it was only G4S that could be held liable, because it was the undertaking, which concluded all agreements with three banks, so that it could better foresee the effects on the market of such agreements.<sup>51</sup> However, since the Competition Council was held to have not sufficiently assessed the commitments offered by G4S (due to the fact that such commitments did not comply with the form (not content) requirements requested for such commitments), the case was referred back to the Competition Council for re-investigation.<sup>52</sup> In its decision issued after the re-investigation,<sup>53</sup> the Competition Council noted that, according to Article 28(3) point 2 of the Law on Competition, the Competition Council issues a decision on the termination of the investigation when all three following conditions are fulfilled: a) the action did not cause significant damage to the interests safeguarded by the laws, b) the undertaking, which allegedly infringed the law, willingly terminated its behaviour, c) the undertaking, which allegedly infringed the law, submitted to the Competition Council a written commitment not to perform such actions anymore and to perform actions, which eliminate the alleged infringement or creates conditions to avoid it in the future. It was noted that the first condition – the action did not cause significant damage to the interests safeguarded by the laws – depends on the objective conditions related to the investigation of the alleged infringement and that it was the obligation of the Competition Council to find out the circumstances relevant for the assessment of the infringement, since it was the latter that bore the burden of proof of the infringement.<sup>54</sup> The Competition Council noted that such damage was caused, since the agreements to purchase exclusively from one supplier limited the abilities of other companies to enter the market and to

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<sup>47</sup> Judgement of the Supreme Administrative Court of Lithuania, 8 April 2014, Case No. A502-253/2014.

<sup>48</sup> *Ibid.*, paras 95, 98.

<sup>49</sup> *Ibid.*, para. 99.

<sup>50</sup> *Ibid.*, para. 103.

<sup>51</sup> *Ibid.*, para. 104.

<sup>52</sup> *Ibid.*, para. 115.

<sup>53</sup> Decision of the Competition Council on the assessment of the agreements in the market for the services of money management with regard to Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 TFEU, 30 September 2014, No. 2S-9/2014.

<sup>54</sup> *Ibid.*, para. 110.

successfully function in it.<sup>55</sup> Furthermore, the Competition Council stated that, given the circumstances of the case, damage was caused not only as regards consumers or other undertakings, but also market structure as such.<sup>56</sup> Finally, it was said that the damage was caused also to the clients of the banks, since they could not benefit from competition by not being able to choose the supplier of the services of money collection by cash-machines and to pay a lower price.<sup>57</sup> Therefore, the Competition Council held that there was no basis for the termination of the investigation and stated that G4S, by concluding vertical agreements with each of the three aforementioned banks, infringed Article 5(1) of the Law on Competition and Article 101(1) TFEU and was thereby imposed a fine of EUR 2,7 mln. This decision of the Competition Council was upheld on 5 September 2017 by the Supreme Administrative Court of Lithuania.<sup>58</sup>

12. On 15 February 2013 the Competition Council issued a decision on the termination of the investigation on the actions of the banks and their associations with regard to Article 5 of the Law on Competition and Article 101 TFEU.<sup>59</sup> Initially, the Competition Council had started the investigation on its own initiative. The investigation covered a number of two-side agreements among various banks in the Republic of Lithuania on the payments among the banks for the operations, which were performed using the MasterCard International and/or Visa Europe system payment cards issued by the banks. The concerns of the Competition Council were that the two-sided bank agreements on the amount of the payment for the operations could have allegedly infringed Article 5 of the Law on Competition and Article 101 TFEU. However, during the investigation no factual circumstances were found that could prove the agreement or a concerted practice in terms of Article 5 of the Law on Competition and Article 101 TFEU. Also, the investigation did not reveal any factual circumstances that the relevant undertakings were exchanging information through the Lithuanian Bank Association. On the aforementioned basis, the Competition Council terminated the investigation.

13. In another case, a request to start the investigation was submitted to the Competition Council by the Lithuanian Consumer Institute, which argued that the three banks (AB SEB, AB DNB and AB “Citadele”) had allegedly coordinated their behavior by fixing the price for the services of the bank cards and thereby infringed Article 5(1) of the Law on Competition and Article 101(1) TFEU.<sup>60</sup> Supporting its argument, the Lithuanian Consumer Institute drew attention to the fact that the aforementioned banks

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<sup>55</sup> *Ibid.*, para. 115.

<sup>56</sup> *Ibid.*, para. 125.

<sup>57</sup> *Ibid.*, para. 128.

<sup>58</sup> Judgement of the Supreme Administrative Court of Lithuania, 4 September 2017, Case No. A-3075-822/2017.

<sup>59</sup> Decision of the Competition Council on the termination of the investigation on compliance of actions of the banks and their associations with Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 TFEU, 15 February 2013, No. 1S-16.

<sup>60</sup> Decision of the Competition Council on a refusal to start the investigation on compliance of actions of AB SEB Bank, AB DNB Bank and AB „Citadele“ Bank with Article 5 of the Law on Competition of the Republic of Lithuania and Article 101(1) TFEU, 24 September 2015, No. 1S-103/2015.

during one month period increased the price to consumers for cash operations in cash machines declaring a social aim – to decrease the amount of the operations by cash. The Competition Council refused to start the investigation on the basis of Article 24(4) point 7 of the Law on Competition, which says that the Competition Council can refuse to start the investigation if there are no basis for a grounded suspicion on the infringement of the Law on Competition.

### **3.3. An alleged abuse of market dominance: the assessment of the commitments**

14. On 20 December 2016 the Competition Council started the investigation on an alleged abuse of market dominance (Article 7 of the Law on Competition) by AB Swedbank. The concerns of the Competition Council are that the undertaking may possibly be restricting competition by providing the services of fee gathering in electronic sales. Specifically, the case relates to the allegations of the Competition Council that AB Swedbank restricted (by way of a contract clause) the abilities of one company operating in the aforementioned area to provide to the clients of Swedbank a new fee gathering service, i.e. the service of payment initiation. AB Swedbank offered commitments, which relate to the change of contract clauses related not only to that one undertaking, but also to other undertakings, with which such contracts are concluded, and also not to include such clauses in the future and not to hinder the abilities of other undertakings to provide payment initiation services. The commitments were open for public consultation<sup>61</sup> till 3 August 2017 and are currently under the examination of the Competition Council. Importantly, the text of the commitments includes the statement that AB Swedbank commits to provide payment initiation services pursuant to the Principles of Best Practices as Regards Money Initiation Services, announced by the Bank of Lithuania on 23 March 2016 (Annex B, Point 2).

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<sup>61</sup> Press Release of the Competition Council as of 20 July 2017.