

For Official Use

DAFFE/COMP(2002)15



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

14-May-2002

English - Or. English

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

**DAFFE/COMP(2002)15
For Official Use**

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2000 - 2001 --

This annual report by the Lithuania Delegation is submitted FOR CONSIDERATION to the Competition Committee at its forthcoming meeting on 5-6 June 2002.

JT00126008

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English - Or. English

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

(2000 – 2001)

Executive Summary

1. The new Law on Competition No VIII-1099 was passed by the Parliament (Seimas) of the Republic of Lithuania on 23 March 1999 and became effective on 2 April 1999. The Law replaced the former 1992 Law on Competition law.

Changes to competition laws and policies, proposed or adopted

Summary of new legal provisions of competition law and related legislation

2. The new Lithuanian Law on Competition is structured so as to prevent and prosecute three main kinds of anti-competitive actions. First, Article 5 prohibits agreements which have as their object the restriction of competition or which may restrict competition. Second, Article 9 prohibits abuse of a dominant position. Third, Articles 10-15 provide for premerger notification and merger control in order to prevent creation or strengthening of a dominant position.

3. An important aspect of the new law is its approximation to the competition law of the European Community. The provisions proscribing restrictive agreements and abuse of dominance are practically identical to Articles 81 and 82 of the EC Treaty. The law provides for notification of mergers (concentrations), that exceed certain size thresholds in advance of consummation, and, like in the EU, establishes as substantive legal standard the prohibition of mergers that establish or strengthen a dominant position and result in the significant reduction of competition in a relevant market.

4. The law covers not only the three traditional areas of antitrust but it also contains provisions relating to unfair competition and actions of public and local authorities.

5. The most important new elements of the competition law are as follows:

- The law introduces control over both vertical and horizontal restrictive agreements. Anti-competitive agreements include all agreements, which have their object the restriction of competition or which may restrict competition. Such agreements are considered to be void from the moment of conclusion. The specific prohibitions include agreements among competitors fixing prices or terms of sale, allocating markets or sales volumes, and bid rigging.
- The law provides for block or individual exemptions for agreements that improve investment, technical or economic progress or distribution of goods to the benefit of consumers.
- The law prohibits abuse of a dominant position and is in line with Article 82 of the EC Treaty. Like Article 82, it prohibits certain discriminatory conduct, imposition of additional obligations not directly related to the commercial purpose of a contract, limiting production or output without objective reasons, and imposing unfair sales or purchase prices or terms

with contracting partners. Under the new law, a 40 per cent market share establishes a presumption of dominance. In addition, the new law creates a presumption of joint dominance when the three largest firms in a market have a collective market share of 70 per cent.

- As regards unfair competition, the law prohibits certain actions that are defined as unfair competition, the Competition Council investigates the actions of unfair competition only in cases where these the interests of a significant number of undertakings or consumers are violated.
- According to new law, public and local authorities are required to ensure freedom of fair competition in the course of their regulation of economic activity. They are prohibited from discriminating in favour or against individual undertakings. The new law provides that the Competition Council may request governmental bodies to modify or abolish legal acts that are considered to violate the law, and if such measures are not taken, to appeal to the administrative courts.
- The new law explicitly sets out the administrative procedures and appeals in prosecuting cases. The economic entities that have been injured by allegedly anticompetitive conduct, bodies of public administration and local authorities, and associations and unions of economic entities and consumers, may submit a formal request for an investigation. If an investigation is begun it must be completed within three months, except that the Council can extend the period for up to an additional two months. The Competition Council may conduct public hearings, in which the parties to the proceedings may participate and present evidence. After the hearing the Competition Council may adopt resolutions to the effect that a violation of law has or has not occurred, and impose sanctions as appropriate. Sanctions may include orders to stop an illegal activity or to take action to eliminate the consequences of such activity. Fines may also be imposed, both for substantive violations and for failure to observe procedural obligations imposed by the law. For the most substantive violations the new law provides the maximum fine up to 10 per cent of the gross annual income.
- The new competition law provides for a principle of extra-territoriality, according to which the law may apply not only to Lithuanian undertakings but also to foreign undertakings, provided that their activities restrict competition in the Lithuanian market.

6. The new Law on Competition has committed to further improve and develop the competition law in Lithuania by adopting secondary legislation to facilitate the effective implementation of the provisions of the Law. While meeting such requirements, the Competition Council has adopted the following acts:

- Resolution No 38 of 27 December 1999 “On Granting a General Exemption to Vertical Agreements under Articles 5, 6 and 7 of the “Law on Competition””;
- Resolution No 1 of 13 January 2000 “On Agreements of Minor Importance that Do Not Fall Under Article 5(1) and Article 5(2) of the “Law on Competition””;
- Resolution No 17 of 24 February 2000 "On the Competition Council Notice on the Definition of the Relevant Market";
- Resolution No 45 of 27 April 2000 "On Notifications of Concentration and Calculation of Aggregate Turnover";

- Resolution No 52 of 17 May 2000 "On the Competition Council Notice on the Establishing of the Dominant Position".
- Resolution No 157 of 21 December 2000 "On the Order on Preparation, Submission and Examination of Applications for Confirmation that Agreement Qualifies for Granting a Block Exemption, and of Applications for Granting an Individual Exemption";
- Resolution No 11 of 18 January 2001 "On Block Exemption to Agreements Between Transport Undertakings in Certain Transport Sectors Applying Art 5, 6 and 7 of the Law on Competition of the Republic of Lithuania";
- Resolution No.151 of December 19, 2001 "On Notice on granting an individual exemption to certain categories of agreements in the insurance sector in accordance with Articles 5, 6 and 8 of the Law on Competition of the Republic of Lithuania";
- Resolution No.152 of December 19, 2001 "On granting of an individual exemption to horizontal co-operation agreements in accordance with Articles 5, 6 and 8 of the Law on Competition of the Republic of Lithuania;
- Resolution No.157 of December 27, 2001 "On granting of a block exemption to agreements between users of land designated for agricultural purpose in accordance with Articles 5, 6 and 7 of the Law on Competition of the Republic of Lithuania";
- Resolution No.158 of December 27, 2001 "On granting of an individual exemption to certain categories of technology transfer agreements in accordance with Articles 5, 6 and 8 of the Law on Competition of the Republic of Lithuania".

Other relevant measures, including new guidelines

7. None

Government proposals for new legislation

8. None

Enforcement of competition laws and policies

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

Summary of activities of the Competition Council

9. Over the year 2000, within the framework of enforcement of the Law on Competition, the Competition Council conducted 92 investigations, of which 13 were initiated by the Competition Council and 79 - upon request of undertakings.

10. The Competition Council took 69 decisions. 5 decisions were taken concerning resolutions aimed at restricting competition passed by public and local authorities, 3 concerning prohibited agreements, 4 concerning abuse of the dominant position. In addition, the Competition Council examined 2 applications for an individual exemption, in 5 events it confirmed that the intended agreements qualified for a block exemption. On one occasion the Competition Council took a decision to grant an individual exemption.

11. In 2001, 79 investigations were conducted regarding the application of requirements of the Law on Competition, of which 3 were initiated by the Competition Council, and others were prompted by requests of undertakings. The Competition Council passed 73 decisions concerning the fulfilment of requirements of the Law on Competition.

12. During 2001, in exercising the supervision over the enforcement of the Law on Competition the Competition Council emphasized the quality as well as legal completeness of the conducted investigations. Some investigations were rather noticeable in terms of the scope of work involved, as well as complexity of issues addressed. This in the first place holds true for investigations of the situation in telecommunications, fuel and construction markets.

Description of significant cases

Important competition cases in 2000:

Telecommunications (Abuse of dominance)

13. "Lietuvos Telekomas" continues to have exclusive rights to provide fixed line telecommunications services, which are scheduled to expire at the end of 2002. "Lietuvos Telekomas" is the sole fixed public telephone networks operator and services provider. The company installed special filters on its analogue lines, which are rented to other operators providing Internet services. Such restrictions reduced the frequency of data transmission and enforced the operators (especially new operators) to rent four times more expensive digital lines from "Lietuvos Telekomas". The Competition Council concluded that this practice was in violation of the Law on Competition. The Council imposed a fine in amount of 150000 Litas (37500 USD) upon Lietuvos Telekomas for abuse of dominant position.

Heating (Abuse of dominance)

14. Joint stock company "Utenos Silumos Tinklai" enjoyed a dominant position as a supplier of heat in the Utena region. Joint stock company "Utenos Trikotazas" was a large heat consumer and was given price discounts because of its large purchases. After learning of the possibility that "Utenos Trikotazas" intended to switch to an alternative source of energy (natural gas) "Utenos Silumos Tinklai" eliminated all discounts previously given to "Utenos Trikotazas". The discounts were removed not for decreases in purchases of heat but because "Utenos Trikotazas" was considering switching to a competitive source. "Utenos Trikotazas" lodged a complaint with the Competition Council. The Council imposed a fine in amount of 100000 Litas (25000 USD) upon "Utenos Silumos Tinklai" for abuse of dominance and application of unfair prices.

Fuel (Abuse of dominance)

15. Joint stock company AB MAŽEIKIŲ NAFTA is the dominant petroleum refiner in Lithuania. It provided large discounts on the sale of refined products to petrol companies that had petrol import licenses and that operated in retail petrol markets in Lithuania. Other companies that did not have import licenses did not enjoy the same discounts for purchases of similar quantities. In the agreements with the companies having import licenses it was provided that if those companies began to import refined products they would lose their discounts and, in some cases, also pay an additional penalty. After a full investigation the Competition Council determined that the effect of these restrictions was to restrict competition in the petrol market, raising prices to consumers. The Council imposed a fine in amount of 100000 Litass (25000 USD) upon AB MAŽEIKIŲ NAFTA for abuse of dominant position.

Important competition cases in 2001:

Fuel (Restrictive agreement)

16. While conducting the investigation on the abuse of the dominant position by the AB MAŽEIKIŲ NAFTA, where the company concluding sale agreements with buyers was applying different (discriminatory) discounts and other exclusive purchase terms to individual undertakings, the Competition Council established restrictions with regard to import of oil products. Consequently, the Competition Council initiated an investigation on the compliance of actions of the AB MAŽEIKIŲ NAFTA and undertakings trading in oil products with Art. 5 of the Law on Competition. The investigation established that the AB MAŽEIKIŲ NAFTA is the only oil refinery in Lithuania which in the period 1999-2000 was producing gasoline, diesel fuel, aviation fuel and fuel oil and was operating in the production level of the said oil products, while the UAB LUKOIL BALTIJA, UAB LIETUVA STATOIL, UAB PAKRIJAS, UAB UOTAS and UAB VAIZGA were engaged in the distribution of the said oil products in the trade level.

17. The investigation established the presence of vertical agreements between the producing AB MAŽEIKIŲ NAFTA and the oil product distributors concerned to not to import fuel into Lithuania. The AB MAŽEIKIŲ NAFTA, by way of concluding vertical agreements restricting competition, selected companies holding or potentially holding import licenses, also maintaining relations with producers of oil products in other countries and holding a significant share of the market for trade in oil products. Hence, the AB MAŽEIKIŲ NAFTA concluded agreements with the UAB LIETUVA STATOIL, UAB UOTAS, UAB LUKOIL BALTIJA, UAB VAIZGA and UAB PAKRIJAS providing for discounts for these companies in exchange for their obligations not to import the said oil products, i.e. the parties to the agreement agreed to refuse to import oil products into Lithuania and to purchase oil products imported into Lithuania. In practice it means that where any supposed actual or potential foreign producer would have an intention to sell its products on Lithuanian market, the binding contractual obligations would prevent the resellers operating therein from purchasing and distributing the products of such a producer. As a result, the possibilities of the AB MAŽEIKIŲ NAFTA to increase the sale of its products in the said markets and thus reduce the competition between its own products and imported ones were significantly improved. That restricted consumers' choice and could ultimately negatively affect the oil product prices.

18. Such actions restricted the possibilities for other producers of oil products to enter the market of Lithuania and distribute their production which ultimately resulted in negative impact upon competition and consumers. The actions constituted an infringement of Art. 5 of the Law on Competition which prohibits all agreements which have as the object the restriction of competition or which may restrict

competition. On the account for these illegal actions the companies were subject to pecuniary penalties (upon AB MAŽEIKIŲ NAFTA – 100 thousand Litas and upon other companies – from 86 thousand Litas to 29 thousand Litas) and were obligated to terminate the agreements concerned. This decision of the Competition Council has been appealed to the Vilnius Regional Administrative Court.

Construction (Bid rigging)

19. The Competition Council conducted an investigation concerning a suspected agreement between companies participants in the tender for the extending of water supply and waste water network in Klaipėda 2001. The investigation was prompted by information received from the World Bank on possible price coordination between two tendering companies (AB HIDROSTATYBA and AB PANEVĖŽIO STATYBOS TRESTAS). The object of the investigation was “The tender for the extending of water supply and waste water network in Rimkų, Kosmonautų, and Labrenčiškių districts” in Klaipėda. It was established that AB HIDROSTATYBA and AB PANEVĖŽIO STATYBOS TRESTAS, being competitors in the Lithuanian construction market, made an agreement to participate in the public tender and coordinated their tender bids in the way that the AB HIDROSTATYBA would be awarded the tender. Such coordinated bids were submitted to the tender organizers. In the course of the investigation sufficient evidence was collected to prove the cooperation between the competitors. According to Art. 5 of the Law on Competition, all agreements the object of which is to restrict competition, or which restrict or may restrict competition are prohibited and are void from the moment of signing thereof, including agreements to directly or indirectly fix prices of certain goods or other conditions of sale or purchase, and agreement between competitors to participate or not to participate, or to submit co-ordinated bids for public procurement contract, for tender or other procurement of a similar type.

20. The Competition Council established that the AB HIDROSTATYBA and AB PANEVĖŽIO STATYBOS TRESTAS were concealing the infringement, and that the agreement could have caused a substantial damage to competition and customers, the prohibited agreement generated a considerable amount of income, and also that the AB HIDROSTATYBA was the organizer and executor of the agreement. Having taken into account the above factors, the Competition Council acknowledged aggravating circumstances of the infringement and imposed pecuniary penalties to the AB HIDROSTATYBA and the AB PANEVĖŽIO STATYBOS TRESTAS in the amount of 543 thousand LTL, and 498 thousand LTL, respectively.

Confirmation of a Block exemption in the engine oil market

21. The Competition Council considered an application to confirm that the agreement between the UAB PEMCO KURAS and UAB LIETUVA STATOIL qualified for a block exemption or to grant an individual exemption, filed by the parties to the agreement (concluded on the basis of the Sale agreement and the Agreement on oil mixing and bottling of March 12, 2001).

22. The investigation revealed that the agreement between the UAB PEMCO KURAS and UAB LIETUVA STATOIL was a vertical agreement, since the UAB PEMCO KURAS was operating at the oil production level, while the UAB LIETUVA STATOIL – in the oil distribution (trade) level. It should be noted that the oil market in Lithuania is very a dynamic market, with abundant new products being offered on a regular basis. There is a considerable number of undertakings engaged in this business (about 30 larger, and about 90 medium or small undertakings). The barriers for entering the oil market are rather insignificant. The agreement between the two companies qualified for an exclusive distribution agreement. The agreement between the UAB PEMCO KURAS and UAB LIETUVA STATOIL cannot significantly restrict competition in the oil market, as containing no vertical restrictions which according to Resolution

No. 38 of the Competition Council of December 27, 1999, are prohibited, because the market share of the undertakings concerned does not exceed 30 percent. Furthermore, this vertical agreement between the UAB PEMCO KURAS and UAB LIETUVA STATOIL will promote investments, technical and economical progress, and will improve product distribution which eventually will bring additional benefit to all consumers.

23. As a result, the Competition Council decided to confirm that the intended agreement between the UAB PEMCO KURAS and UAB LIETUVA STATOIL complied with the conditions for granting a block exemption, as provided for in the Resolution No. 38 of December 27, 1999 of the Competition Council "On the granting of a block exemption to vertical agreements in accordance with Articles 5, 6 and 7 of the Law on Competition of the Republic of Lithuania".

Individual exemption in the cement distribution market

24. On October 11, 2001, the Competition Council examined an application filed by the AB AKMENĖS CEMENTAS and UAB CEMEKA to grant an individual exemption to the intended agreement between the two companies. The agreement sets forth the rights and duties of the parties thereto in relation to the distribution of cement of different kinds produced by the AB AKMENĖS CEMENTAS, and provides for vertical restrictions of competition which fall within the scope of Art. 5 of the Law on Competition "Prohibition of Agreements Restricting Competition", - the UAB CEMEKA is granted exclusive rights to purchase products of the AB AKMENĖS CEMENTAS and distribute them in the Lithuanian market. The Competition Council decided to grant an individual exemption to the agreement concerned in order to ensure that the currently effective agreement is completed. The decision was passed having considered that within the term of duration of the agreement significant investments were made into the development and modernization of the terminal, specialized vehicles were acquired, the marketing functions were developed and the efficiency of the distribution network operation was notably enhanced. The investment made ensured stable and regular supply of cement of guaranteed quality to final consumers. This was also confirmed by certain long-lasting customers of the company.

25. The investigation established that the agreement concerned did not restrict competition between Lithuanian cement and the imported cement of other producers in the Lithuanian cement market. The individual exemption to the agreement on exclusive distribution was granted establishing its term of validity until December 31, 2003. Besides, the exemption was granted with a reservation that during the term of validity of the agreement the UAB CEMEKA shall develop a public, transparent and non-discriminatory with respect to individual undertakings policy of prices and discounts and apply it to all its buyers. It should be noted that the Competition Council reserves the right to amend or revoke the decision concerning granting of the individual exemption where at least one of the circumstances due to which the decision to grant an individual exemption had been made changes.

SPAB Lietuvos geležinkeliai (Lithuanian Railways)

26. Having established that in the course of the year 2000 the SPAB LIETUVOS GELEŽINKELIAI was applying reduced carriage tariffs to certain companies forwarding black metals, fuel oil, diesel fuels, iron ore, coal and fertilizers, the Competition Council initiated an investigation. These actions of the SPAB LIETUVOS GELEŽINKELIAI could place some individual undertakings in the freight forwarding market at competitive disadvantage. However, there being no elements of infringement, the investigation was terminated.

Restrictive actions by AB Lietuvos Telekomas

27. The investigation was started on May 17, 2001 on the basis of the application filed by the UAB INTERPROVA. The applicant requested an explanation whether actions of the AB LIETUVOS TELEKOMAS where it blocked the ISDN flow and telephone lines violated the requirements of the Law on Competition. The applicant maintained that the AB LIETUVOS TELEKOMAS was blocking the ISDN flow and telephone lines because UAB INTERPROVA was violating the Law on Telecommunications of the Republic of Lithuania, which provides that "The Lithuanian market of operation of fixed public telephone networks and provision of telecommunications services via fixed public telephone networks must be free as of December 31, 2002. Until this date, the main fixed public telephone operator has a right to remain the sole operator of fixed public telephone and the sole provider of fixed public telephone services". The investigation will be completed in 2002.

28. In 2001, the Competition Council conducted an investigation on the basis of the application lodged by the SE INFOSTRUKTŪRA. The enterprise requested to clarify whether the AB LIETUVOS TELEKOMAS which started rendering Internet services using the switched telephone lines applying new tariffs committed an infringement of Art. 9 of the Law on Competition, and whether national Internet service providers were in the position to compete with the AB LIETUVOS TELEKOMAS at a level-playing field. The investigation will be completed in 2002.

Courts

29. During 2001, the interests of the Competition Council were professionally defended in national courts of different levels.

30. Courts of appeal in the field of anti-trust and merger control in Lithuania:

- Vilnius Regional Administrative Court is the court of the first instance against the all Resolutions of the Competition Council;
- the Supreme Administrative Court of Lithuania is the appellate instance for cases heard by the Vilnius Regional Administrative Court.

31. Representatives of the Competition Council participated in the hearings of 20 cases, of which 9 cases are still pending decision. During 2001, final decision was given on 11 cases. In 8 cases decisions were in favour of the Competition Council. In 2 cases the claimants (undertakings) waived their claims to the court on the basis of which the cases were discontinued. During the period under review the Competition Council lost only 1 case in court.

32. This statistics proves that decisions passed by the Competition Council were successfully defended in courts to a large extent owing to the accumulated sufficient undeniable evidence proving infringements identified by the Competition Council. Of special significance is the fact that on numerous occasions the courts acknowledged decisions of the Competition Council as legitimate, in particular, in more complex cases dealing with infringements most harmful for economy and consumers. This most applies to decisions adopted with regard to undertakings abusing the dominant position and agreements restricting competition. It is also notable, that having investigated appeals of undertakings regarding decisions taken by the Competition Council in comparatively intricate cases regarding prohibited agreements and abuse of a dominant position administrative courts of the Republic of Lithuania usually ruled to uphold the decisions.

33. A description of several decisions taken by administrative courts on infringements of the Law on Competition is presented below.

34. The proceedings were initiated concerning an administrative case on prohibited agreements in photo service business according to the appeal of several companies representing the business concerned. Since on September 26, 2001, the Vilnius Regional Administrative Court refused the claim, two companies filed an appeal to the Supreme Administrative Court of Lithuania. In its ruling the latter Court established that the decision of the Competition Council acknowledged actions of the undertakings concerned as concerted and the fines administered to individual undertakings were substantiated. The Supreme Administrative Court of Lithuania dismissed the appeals and upheld the decision of the Vilnius Regional Administrative Court.

35. The Court also upheld the decision of the Competition Council of December 28, 2000 concerning the compliance of activities of AB LIETUVOS KURAS and A.Kekio individual company with item 1, par. 1 of Art. 5 of the Law on Competition. The companies were subject to pecuniary penalties for concerted actions between competitors in fixing fuel prices. AB LIETUVOS KURAS appealed the decision to the Vilnius Regional Administrative Court. The Court rejected the appeal by its decision of December 28, 2001. This investigation is exclusive in the sense that for the first time in Lithuania the agreement in fuel market was proven on the basis of the indirect evidence of concerted actions. As the evidence of indirect concerted actions were considered the actions of the two competing companies which could not be explained otherwise as the coordination of fuel prices in gas stations. Because of these prohibited actions fuel prices of the competing companies were increased simultaneously and by the same amount.

36. This particular decision allows a conclusion that gradually a framework of legal precedents is being formed, which will enable courts to easier and in an accelerated manner take decisions regarding infringements of competition law. The Competition Council will also be facilitated in taking decisions in cases where infringements of the competition law are established and prohibited agreements between companies are proved on the basis of abundant indirect evidence.

37. Of special significance was the administrative case on the basis of the appeal lodged by the AB LIETUVOS TELEKOMAS. Decision of December 22, 2000 of the Competition Council established that the AB LIETUVOS TELEKOMAS holding a dominant position in the market of lease of telecommunications networks used for data and voice transmission, restricted the provision of services and impeded the development and technical progress of the data transmission market which is closely related to the market dominated by the AB LIETUVOS TELEKOMAS, and thus committed an infringement of item 2 of Art.9 of the Law on Competition. AB LIETUVOS TELEKOMAS appealed the decision to the Vilnius Regional Administrative Court. The Court agreed with the reasoning contained in the decision of the Competition Council and argumentation presented at the court sessions and arrived at the decision to reject the appeal. Then the claimant appealed the decision to the Supreme Administrative Court of Lithuania. The latter established that the First instance court appropriately applied and interpreted the substantive legal norms, correctly assessed the evidence collected in the case, and, as a result, decided to uphold the decision of the Vilnius Regional Administrative Court of May 17, 2001, and to refuse the appeal of the AB LIETUVOS TELEKOMAS.

38. Decisions in favour of the Competition Council were also taken in other administrative cases according to appeals of the Panevėžys Municipality, UAB EIMARTA, A.Laurinaitienės company, UAB IPM BALTIC, and others.

39. On a single occasion the Lithuanian Supreme Administrative Court allowed the appealed lodged by the SPAB UTENOS ŠILUMOS TINKLAI (Utena District Heating company), and reversed the decision of the Vilnius Regional Administrative Court of August 30, 2001. The Court established that the

requirements under the Law on Competition are not applicable to the heat supply agreement between the SPAB UTENOS ŠILUMOS TINKLAI and the AB UTENOS ŠILUMOS TINKLAI. In disagreement with the court decision the Competition Council has filed a request to renew the case.

Mergers and acquisitions

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

40. Over the year 2000, the Competition Council examined 57 notifications on the intended concentration of market participants. In 48 cases permissions to implement concentration were authorized by decisions of the Competition Council, in the remaining cases the concentration was put into effect in accordance with the procedure established in item 3 Article 14 of the Law on Competition. Over 2000, the Competition Council authorized 15 foreign undertakings to implement concentration, including 6 cases recognized as horizontal concentration, 7 cases were considered as a capital concentration bearing features of a vertical concentration, and 2 cases of capital concentration with features of horizontal concentration. In the remaining 42 cases the Competition Council examined the concentration between undertakings registered in the Republic of Lithuania. 26 cases were treated as a horizontal concentration, including 8 cases in the industry sector, 1 in financial markets, 2 in the construction installation sector, and 16 in trade services. In 11 cases the concentration was bearing features of a vertical concentration, in 3 cases the concentration was considered vertical, and in 2 cases the concentration was related to the establishment of new undertakings.

41. In the course of 2001, the Competition Council examined 47 notifications to authorise intended concentrations of market structures. In 42 cases the notified concentrations were permitted, while in one case the permission to implement concentration was effected in the manner prescribed by the Law on Competition. In three cases the applicant undertakings withdrew their applications for the authorisation of the concentrations, while in one case in the course of examination the notification was transformed into an application to grant an exemption to the agreement. In 9 cases where the intended merger apparently could not create a dominant position, or restrict competition and also seeking to faster consider the notifications of undertakings to implement concentrations, and acting in accordance with par. 3 of Art. 12 of the Law on Competition the authorisation was granted to exercise individual actions of concentration pending the adoption of final decision.

42. In 2001, the Competition Council authorised 7 foreign undertakings to implement concentration, including 4 cases recognised as horizontal concentration, 2 cases were considered capital concentration bearing features of vertical concentration, and 1 case was considered capital concentration bearing features of horizontal concentration. In the remaining 36 cases concentration was implemented between undertakings registered in the Republic of Lithuania. These included 20 cases regarded as horizontal concentration, of which 11 in retail trade sector, 6 – in industry sector, 1 in construction installation sector, 2 – in mass media and information technologies sector. In 5 cases the concentration was recognised as bearing features of horizontal concentration, in 2 cases it was vertical concentration, in 8 cases the concentration was recognised as aggregation, and in a single case the concentration was related to the establishment of new undertakings.

43. Since 1998 the number of examined concentrations has reduced. In that year 160 cases of concentration were registered, in 1999 – 93 cases, and in 2001 – 51 cases. The declining number of concentrations, however, does not indicate that the concentration processes in the national economy have slowed down. Upon adoption of the Law on Competition in 1999, the criteria according to which undertakings are required to notify an intended concentration and obtain permission have changed.

44. The Competition Council has adopted the Resolution “On the approval of the procedure for the submission and examination of notifications on concentration and calculation of aggregate income”. Seeking to avoid notifications on concentrations which do not result in a change of the degree of concentration of market structures, the Resolution defines the cases in which the concentration is deemed not to be implemented. This provision is still undergoing elaboration, since according to the Law on Competition, undertakings are considered associated where they hold 25 or more percent of shares of another undertaking, however, frequent are the cases when such minority shareholding does not entail acquisition of control.

45. Although in 2001, in all cases having assessed that action of undertakings implementing the concentration did not cause significant changes of the market structure, the concentrations were authorised, undertakings were applying for preliminary guidance. Following the consultations, and having taken into account the possible high degree of concentration of market structures, creation of a dominant position and restriction of competition, the undertakings concerned would refrain from filing official notifications on concentration or would abandon their initial intentions. Such cases involved undertakings processing agricultural products, also road construction companies and those operating in financial markets.

Summary of significant cases

The ferrous scrap metal purchase and processing market

46. In 2000 an investigation was launched concerning an intended concentration by CSC VITOMA by acquiring 70.09 percent of shares of the SC ANTRIMETA, 70 percent of shares of the CSC ĮKROVA, 70 percent of shares of the CSC METALO LAUŽAS, and 70 percent of shares of the CSC ANTRINIAI METALAI. Concentration of the enterprises involved was implemented by concluding a contract on purchase and sale of shares with the SE STATE PROPERTY FUND, having won an open tender for the acquisition of shares of the companies concerned.

47. Concentration initiated by the CSC VITOMA is considered to be horizontal concentration in the Lithuanian ferrous scrap metal purchase and processing market. The investigation allowed a conclusion that the intended concentration would result in constitute a considerable increase of the degree of concentration, marked by 22.5 percentage points. The concentration would ensure a dominant position of the CSC VITOMA in the Lithuanian ferrous scrap metal purchase and processing market, as defined in par 11 of Article 3 of the Law on Competition, because the company would hold around 48 percent of the relevant market.

48. The concentration provided for economies of scale, advantageous price policy, rather limited volumes of purchased scrap metal, high costs of acquisition of new technologies, the company concluded long-term export contracts with a single foreign buyer. All these circumstances might create conditions conducive to restriction of competition in this relevant market.

49. Based on the findings and conclusions of the investigation, and in accordance with item 3 of par 1 of Article 14 of the Law on Competition, the Competition Council refused to grant a permission to implement the concentration on the basis of the submitted notification.

50. The CSC VITOMA filed a repeated notification to the Competition Council on the concentration and presented data on the sale of a share of the business. The repeated investigation noted the following: the share of the ferrous metal purchase and processing market held by the CSC VITOMA has decreased,

certain changes were brought about in the relevant market, such as notable decrease of the market entry costs, due to lower license charges, over the period concerned several new participants emerged in the market, having acquired the share of the CSC VITOMA business. In the light of the above considerations the Competition Council passed a decision to permit the concentration notified.

Beer market

51. On July 12, 2000, CARLSBERG A/S filed a notification on an intended concentration through the acquisition of the controlling interest of the SC KALNAPILIS, the CSC UTENOS ALUS, and the CSC JUNG TINIS ALAUS CENTRAS. The Competition Council had received numerous comments on the implemented concentration from beer producers and relevant associations. They were unanimous in their opinion that the concentration would create domination in the beer market, and eventually would significantly restrict competition in this market.

52. The Competition Council projected that concentration implemented by CARLSBERG A/S would result in the dominant position for the company in the beer market and significantly restrict competition therein. The horizontal concentration in the beer market would be intensified by vertical concentration stemming from the activity of the CSC JUNG TINIS ALAUS CENTRAS. Together with the closest competitors of the company the collective dominance would cover over 80 percent of the beer market which would severely strengthen the restrictive effect.

53. The Competition Council, having considered the proposals submitted by CARLSBERG A/S, passed a decision to issue permission to CARLSBERG A/S to implement the concentration subject to certain conditions and obligations:

1. CARLSBERG A/S and/or BHH are obligated to sell an unspecified enterprise (either SC ŠVYTURYS, or SC KALNAPILIS, or CSC UTENOS ALUS) involved in the concentration within the prescribed time limit.
2. CARLSBERG A/S is obligated to maintain the image, competitiveness, trade marks, other acquired rights, except the rights related to the shared production distribution network. The imposed obligations and conditions for implementing concentration in question may be amended upon an individual request and consent of the parties, if that is necessary to avoid restriction of competition and ensure selling of the enterprise.

54. By Resolution No. 123 of November 9, 2000, in the view of an excessive concentration in the market CARLSBERG A/S and (or) BHH were obligated to sell an unspecified undertaking involved in the concentration (either AB ŠVYTURYS, AB KALNAPILIS, or UAB UTENOS ALUS) within a prescribed period of time. The Resolution also stipulated the conditions for implementing the concentration.

55. The final agreement between CARLSBERG A/S and ORKLA ASA was concluded as late as February 2001, and a notification was filed that BBH, acting in compliance with the Resolution concerned, shall sell AB KALNAPILIS. Also a request was received to extend the time limit for selling, with an indicated duly motivated period of time for the completion of the sale transaction, broken down into specific stages and time limits thereof, and a list of potential buyers.

56. Upon deciding to sell the AB KALNAPILIS, BBH filed a request to separate the network for sale and marketing of the AB KALNAPILIS products, since these services were rendered to AB KALNAPILIS, as well as UAB UTENOS ALUS by the UAB JUNG TINIS ALAUS CENTRAS (JAC).

Having split the JAC, the UAB UTENOS ALUS would lose part of the distribution network, therefore the BBH was also requesting to allow JAC to act as a distributor of the AB ŠVYTURYS products.

57. The Competition Council passed a decision to extend the time limit for the sale of the involved company for a duly motivated period and also honour other requests of the BBH, while supervising the course of the sale transaction on a continuous basis. The Competition Council passed the decision having taken special account of the following:

- at the time of concluding the agreement between CARLSBERG A/S and ORKLA ASA concerning the establishment of CARLSBERG BREWERIES A/S, the property relations among CARLSBERG A/S, ORKLA ASA and HARTWALL OYJ, of which the latter two were holding 50 percent of BBH each, had not been completely settled. Besides, HARTWALL OYJ had over 20 percent interest in ORKLA ASA;
- a certain period of time was necessary to evaluate and sell the companies concerned pursuant to procedures established by other laws;
- The Norwegian Competition Authority passed a decision concerning the establishment of CARLSBERG BREWERIES A/S only on December 12, 2000, that of Sweden – on December 12, 2000, and Finland – on January 12, 2001;

and following the EU practice which requires to maintain the principle of proportionality, i.e. not to impose more burden upon the parties concerned than it is necessary to tackle specific issues related to the concentration, and also seeking to ensure that the part of the business being sold is viable and competitive, and that AB KALNAPILIS A is sold to a potential competitor.

58. The BBH fulfilled the obligation to sell AB KALNAPILIS within the prescribed time limit.

59. This particular case demonstrates how vital for the speedier handling of arising problems is the co-operation between competition authorities of different countries where a particular concentration concerns the structure of the relevant markets of several countries.

Market of financial services

60. On March 22, 2001 the Competition Council received a request from the Estonian Bank AS HANSAPANK to authorise the acquisition of over 90 percent of the capital of the AB LIETUVOS TAUPOMASIS BANKAS (Lithuanian Savings Bank, further – LTB) by way of privatisation. The intended concentration was considered as a horizontal concentration in the market of financial services, which would have an impact upon the expansion of the share of the market for the relevant services without creating a dominant position and imposing restriction upon competition in the market concerned.

61. At that time the negotiations between the SE STATE PROPERTY FUND and AS HANSAPANK on the subject of privatisation of the LTB were actually completed. However, almost at the same time at a press conference in Stockholm the announcement was made by FORENINGS SPARBANKEN AS (further – SWEDBANK), and SKANDINAVISKA ENSKILDA BANKEN AB (further – SEB) on the intended merger of the two banks, which in the Lithuanian context would result in a creation of a dominant position. Yet, the intended merger of the two Swedish banks was announced only in the mass media, there was no relevant official announcements, nor the consent of the shareholders of SWEDBANK and SEB, hence the Competition Council did not have any legal basis to prevent the acquisition of the LTB by the AB HANSAPANKAS. Neither was any official notification on the merger filed by the SEB and the SWEDBANK to the EU authorities (received only on June 12, 2001). Having

assessed the situation the Competition Council expressed its views and proposed possible solutions for preventing the creation of a dominant position (to sell one of the banks). Notices thereof were communicated to the Government of the Republic of Lithuania, SE STATE PROPERTY FUND, AS HANSAPANK, the Bank of Lithuania, as well as relevant committees of the Seimas of the Republic of Lithuania. Appropriate consultations were held with the EU officials and representatives of the Swedish competition authorities.

62. The Competition Council also received a letter from the SEB and SWEDBANK confirming that in the event of the merger, and having obtained all necessary permits, one of the members of the group of the merging banks operating in Lithuania would be sold. Having received comments from the European Commission in October 2001, the SEB and the SWEDBANK abandoned their intentions to merge.

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

63. During reporting period, the Competition Council played an active role in the formulation and implementation of other policies. The activity of the Competition Council has been aiming at the improvement of Lithuanian economy and promotion of investment by protecting legitimate interests of undertakings and consumers.

64. In addition to the supervision of the Law on Competition, the Competition Council performed supervision of the Law on Monitoring of State Aid to Undertakings, and also carried out functions assigned by the Law of Prices, the Law on Advertising and Antidumping Law.

65. The Competition Council actively participated in drafting and amending the legal acts prepared by different institutions. Especially productive was participation in drafting of the Civil Code seeking to harmonize the provisions of civil law with the fair competition rules.

66. Seeking to liberalize energy sector and introduce competition in order to provide a possibility for suppliers and consumers to operate in accordance with competition rules, and to give an opportunity for consumers to choose a supplier of electricity, the Competition Council made proposals to the draft Law on Energy, which was adopted by the Parliament on 16 March, 2000.

67. The Competition Council also provided comments on the Law on Free Economic Zones, the Heat Law and others.

68. The Competition Council, within the limits of its competence, was submitting information to the President's Office, the Parliament and the Government of the Republic of Lithuania. The ever strengthening interaction between the Competition Council and these institutions facilitated coping with problems, related to the market supervision tasks. The chairman of the Competition Council participated in the weekly governmental meetings and expressed the opinion regarding competition policy questions. Members of the Competition Council were frequently invited to the sittings and working groups of the Parliament and inter-ministerial commissions. This provided a perfect opportunity to express views on topical issues related to the implementation of the requirements of the Law on Competition, while developing competition culture in the country.

69. The Competition Council submitted a proposal to the Government concerning the abolition of the currently effective 15 percent tariff levied upon the imported oil products, with a view to promoting the entry into the Lithuanian market of foreign producers which would eventually enhance competition and bring about additional benefit to consumers.

70. The Competition Council was submitting proposals concerning the establishment of the minimum marginal purchase price of grain, and the amounts and prices of white sugar sold by the sugar producers.

71. During the period under review the Competition Council was actively involved in the activities of the European Integration Commission under the Government of the Republic of Lithuania, furnished reports and proposals regarding enforcement of the law harmonization.

Resources of competition authorities

Resources of Competition Council:

Annual budget:

- LTL 2,004 thousand (USD 501 thousand) in 2000.
- LTL 2,409 thousand (USD 602 thousand) in 2001.

Number of employees - 62

- Economists - 36
- Lawyers - 9

Human resources applied to:

- Enforcement against anticompetitive practices - 21
- Merger review and enforcement - 4

Period covered by the above information: 2000 and 2001.