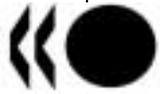


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**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

(2003)

This report is submitted by the Lithuanian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting (8-9 June 2004).

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LITHUANIA

2003

Executive Summary

1. In 2003 the main task for the Competition Council (further – the CC) was to ensure sufficient preparedness for the application of the EU competition rules and operation in the EU legal environment upon the accession of Lithuania into the European Union.

2. This task necessitated the distinction of several priorities in the area of competition:

- to ensure the further harmonisation of the Lithuanian competition legislation taking due regard of the forthcoming changes in the EU legislation,
- to establish the procedures for cooperation with the European Commission and the national competition authorities of other Member States in handling issues of case investigations and competition policy,
- to ensure the efficient application of competition rules,
- to enhance the awareness in issues of competition law and application thereof.

3. In 2003 amendments to the Law on Competition of the Republic of Lithuania have been drafted in pursuit of further alignment of the procedures for the investigations of alleged infringements of the Law on Competition and the related cases with the new Council Regulation No. 1/2003, and tightening of the sanctioning policy.

4. During 2003, the CC devoted substantial efforts and attention to the most severe infringements of the Law on Competition, - prohibited agreements and abuse of dominant position. Concentration control was also among the most important areas of activity of the CC.

5. It may be noted that during the recent years in particular due to the work performed in the application of the Law on Competition the awareness of competition rules has significantly enhanced. An increased number of undertakings seeking exemptions for certain agreements between undertakings constitute an additional confirmation of the statement.

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

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

6. In late 2003, the CC submitted the draft Law on the Amendment and the Supplement of the Law on Competition to the Government of the Republic of Lithuania.

7. The draft Law pursued two major objectives:

1. provide for the legal prerequisites for efficient enforcement of the competition policy in Lithuania upon the accession of Lithuania into the European Union, and assume obligations related to the EU membership;
2. amend (declare void) the provisions which, as practice showed, have not proved justifiable and supplement the Law with provisions facilitating the CC to more effectively protect the freedom of fair competition.

8. The draft Law proposed to supplement the Law on Competition by a new Chapter „Application of the European Union competition rules“, which provides that the CC is an institution authorised to apply the competition rules of the European Union, the supervision whereof within the meaning of the European Union competition law has been assigned to national competition authorities. This provision substantially expands the limits of competence of the CC by ensuring the simultaneous application of Articles 81 and 82 of the Treaty and the Law on Competition in the investigations conducted by the CC of whether or not agreements or abuse of dominant position are capable of affecting trade between Member States in accordance with the requirements of, respectively, Articles 81 or 82 of the Treaty. Having regard to the fact that the CC for the purpose of application of the European Union competition rules acts in accordance with the procedure established by the Law on Competition the draft Law reviewed the provisions concerning the procedures for conducting of investigations and imposing of sanctions.

9. Seeking to align the harmonisation of the regulation of prohibited agreements under the national and the European law the model of prior authorisation in respect of agreements between undertakings have been repealed and, upon the enactment of the draft Law, agreements complying with the established conditions for exemption shall be effective without any prior authorisation to that effect by the CC being required.

10. Since the national courts shall have the power and the obligations to directly apply Articles 81 and 82 of the Treaty the draft Law governs the peculiarities of the legal proceedings of the competition cases. To that purpose the Code of Civil proceedings will have to be supplemented so that competition cases are investigated in accordance with the provisions of the Code with an exception established by the Law on Competition. Upon receipt of complaints related to the scope of application of Articles 81 and 82 of the Treaty the court shall notify thereof the European Commission and the CC which at their own initiative may submit comments on the application of Articles 81 or 82, shall be entitled to familiarize themselves with the particulars of the case, provide explanations and evidence, participate in the proceedings dealing with the case, and submit requests. The draft Law also provides for an additional basis for the renewal of the case ensuring the possibility for the parties of the proceedings to protect their rights where the application of Articles 81 or 82 as ruled by the court contradicts the decision of the European Commission concerning the application of the Articles in question.

11. The draft Law provides for material changes in the area of implementation of concentration control. The practice shows that some markets (services markets in particular) may effect concentrations without having notified the CC thereof, by virtue of their minimum income ratios being below the thresholds invoking the obligation to apply to the CC for authorisation of the concentration. Thus the draft Law proposes to authorise the CC to independently initiate the concentration control proceedings in cases where less than 12 months have elapsed after the merger has been put into effect. The basis for the refusal to grant the authorisation of the concentration was considerably expanded having regard to the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings. The binding instruction to the undertakings to suspend the concentration after submission of the notification to the CC was also repealed. Undertakings will have a discretionary right to choose at which stage of the implementation to notify the CC thereof (prior to the realisation of concentration).

12. The adoption and the implementation of the Law will have a significant impact upon the development of the competition law; enhance the efficiency of the CC in its pursuit to protect the freedom of fair competition.

2. Enforcement of competition laws and policies

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

a) Summary of activities of competition authorities

13. During 2003, 72 investigations were launched in accordance with the requirements of the Law on Competition, including 4 investigations on the initiative of the CC and the remaining on the basis of requests submitted by undertakings.

14. The CC took 73 decisions. 7 decisions were taken concerning prohibited agreements, 6 concerning abuse of the dominant position. In addition, on two occasions the CC took a decision to grant a block exemption.

15. The overview of the performance of the enforcement function by the CC proves significant improvement in the quality of the investigations conducted, as well as the legal completeness of such investigations. Some investigations were extensive, time consuming and complicated which in the first place holds true of the investigations conducted in the information technologies, transport fuels and service markets.

16. In 2003 the CC imposed penalties upon defaulting undertakings in the amount of LTL 96 000 (EUR 26 377): for prohibited agreements LTL 80 000 (EUR 23 188); for abuse of a dominant position LTL 3 000 (EUR 870); concerning misleading and comparative advertising LTL 13 000 (EUR 2319).

b) description of significant cases

Prohibited agreements

- Cartel agreement in the information technologies market

17. In March 2003, prompted by the information submitted by the Head of the Commission Delegation in Lithuania on the alleged agreement among enterprises participating in the PHARE tender the CC started an investigation on its own initiative. The objective of the investigation was to establish the compliance of actions of enterprises participating in the tender called in 2002 by PHARE "Procurement of information technologies designed to strengthen the capacity of the Ministry of Agriculture and related institutions to manage and administer EU *acquis* for agriculture and rural development" with Art. 5 of the Law on Competition. Bidders for the tender were four companies, competitors in the information technologies market *UAB Aideta*, *UAB Blue Bridge*, *UAB Techna Orbis* and *UAB CompServis*. The tender object, valued at EUR 499,094 (around LTL 1,723,000) is regarded a large tender object in the Lithuanian market for information technologies. The gross annual income of the three companies suspected as having concluded the agreement amounted to LTL 70,140,585. Two of the tendering companies were holding leading positions in the said market. Such agreements between companies distort competition in the market and deprive other competitors of possibilities to win tenders on fair terms, and thus operate in the market under equal competitive conditions.

18. Within the investigation the CC performed the analysis of parts of the tender bids, i.e. the technical specifications submitted by the bidders. It was established that the technical specifications

submitted by three competing bidders, - *UAB Blue Bridge*, *UAB Aideta* and *UAB Techna Orbis*, were expressly similar, containing a number of identical items. The arrangement of the chapters of the technical specifications was identical, tables looked the same, contained identical mistakes, the three companies used the same font for the text, and it was also established that bids of the three companies specified hardware of the same names, types and models. The hardware offered by the three companies was identical, although the tender documentation specified only the minimum technical requirements thus leaving sufficient room for selection of the hardware by the bidders at own discretion. Only the hardware offered by the fourth company was entirely different. Such coincidences in the technical specifications of the tender bids could not have possibly occurred if the companies were preparing their bids independently and they gave sufficient grounds to suspect the bidders of an intention to submit coordinated bids for the tender. The similarities of the technical specifications of the bids submitted by three companies allowed a conclusion that the bids were executed and documented in one company, actually in one computer file. As it turned out, *UAB Blue Bridge* was the first to develop the technical specification which was later on, having adjusted some items of the specification and made some other insignificant changes were passed to the other two, i.e., *UAB Aideta* and *UAB Techna Orbis*. The findings were well proven by all facts established in the case: staff members of the competing *UAB Aideta*, *UAB Blue Bridge* and *UAB Techna Orbis* responsible for the preparation of the tender bids were corresponding by electronic mail thus coordinating the process of preparation of the tender bids and drafting documents for their competitors.

19. The investigation also established that the tenders submitted by the three companies contained identical mistakes basically related to the information on warranty clauses of their bids. The fact-finding actions established that *UAB Blue Bridge* drafted the application to participate in the tender, which later on was sent to its competitors *UAB Aideta* and *UAB Techna Orbis*, the task for the latter being just to sign and fax it at the specified fax number to the procuring organisation. Thus *UAB Blue Bridge* prepared the application to participate in the tender on behalf of its two competitors *UAB Techna Orbis* and *UAB Aideta*.

20. All these established actions produced sufficient evidence that *UAB Blue Bridge*, *UAB Aideta* and *UAB Techna Orbis* had agreed to submit coordinated bids in the tender concerned thus concluding an agreement prohibited by the Law on Competition. Furthermore, the companies agreed that the tender would be awarded to *UAB Blue Bridge*. The intended winner of the tender, upon the agreement of the three companies worked out the price calculations and offered the lowest price. The companies had concluded an agreement under which *UAB Blue Bridge* actually did not compete with *UAB Aideta* and *UAB Techna Orbis* that in their turn allowed the said company to win in the tender.

21. In the course of the investigation all the three companies made statements by which they actually confessed of having concluded the agreement in contradiction to Art. 5 of the Law on Competition. This was the first official statement made by undertakings to have ever been made in the history of investigations of prohibited agreements by the CC. Such voluntary cooperation on the part of the companies in the course of the investigation, the timely submission of the necessary information in addition to the requested explanations was extremely helpful to the authorised officials of the CC to rapidly complete the investigation and thus reduce its costs. The investigation of the prohibited agreement was completed in a record short time – 4 months. For the purpose of passing a final decision concerning the penalty such cooperation by the companies the actions whereof were subject to the investigation was considered, as provided in par. 2 of Art. 42 of the Law on Competition, extenuating circumstances.

22. Having regard to the fact that the companies confessed to have concluded prohibited agreement and rendered assistance to the officials of the CC, also that no aggravating circumstances were established as related to the infringements the CC imposed the following fines: to *UAB Blue Bridge* – LTL 50,000, to *UAB Aideta* and *UAB Techna Orbis*, respectively, LTL 20,000 and LTL 10,000.

- Other investigations

Telecommunications

23. The CC carried out a full-scale investigation, which was initiated on the basis of a complaint filed by *UAB Bitè GSM*. The applicant claimed that rates applied to the calls from the fixed telephone line to the mobile telecommunications network of *UAB Bitè GSM* may be discriminatory as compared to rates effective for calls from the fixed telephone to *UAB Omnitel* mobile network.

24. The applicant stated that action of *AB Lietuvos Telekomas* whereby it transmits the domestic calls as international may be assessed as the imposition of unfair prices and terms by an operator dominating in the telephone calls transit market.

25. *UAB Bitè GSM* claimed that the difference in the rates for domestic call termination in the *UAB Omnitel* network and that of international call termination in the *UAB Omnitel* network maintained in the new network connection agreement concluded between *AB Lietuvos Telekomas* and *UAB Omnitel* may be regarded as an agreement between two related undertakings imposing unfair prices and terms for other market participants.

26. The CC examined the complaint lodged by *UAB Bitè GSM* and did not establish any infringements committed by *AB Lietuvos Telekomas*.

- Dairy market

27. As ordered by the Prime Minister the CC carried out an investigation of the milk purchase market with a view to establishing a possible agreement between the dairy processing enterprises for fixing the milk purchase prices. The CC conducted a thorough analysis of all circumstances related to the reduction of the milk purchase prices. The objects of the analysis were the dates of price cuts, reduction rates, methods of fixing and adjustment of purchase prices by the dairy processing enterprises, as well as the operation of the milk purchase market. Officials of the CC did not establish any agreements or concerted practices by the major Lithuanian milk processing enterprises. The analysis showed that the reduction of the milk purchase prices were primarily caused by economic factors, such as the fall of such prices in foreign markets, the devaluation of the US dollar, severe competition on the domestic market which all in combination prevented the enterprises from the increase of the milk purchase prices. All these factors were basically pertinent to major milk processing enterprises, which sell most of their output in foreign markets.

28. The investigation, however, did not establish any evidence that milk processors had been engaged in some kind of agreement and/or concerted practices for the purpose of fixing the milk purchase prices.

- Payment cards

29. An investigation carried out by the CC concerned the compliance of actions of *AB Vilniaus bankas* and *AB bank NORD/LB Lietuva* with the requirements of Art. 5 of the Law on Competition.

30. The investigation was initiated by the institution itself prompted by the information published in the press in April 2003 claiming that on 31 March 2003 *AB Vilniaus bankas* and *AB bank NORD/LB Lietuva* agreed on the joint network of cash dispensers (ATMs). The contract provided that all customers holding payment cards issued by *AB Vilniaus bankas* and *AB bank NORD/LB Lietuva* could withdraw cash

or check the account balance in all ATMs operated by the contracting banks under the same terms as those established by the bank issuing the card.

31. Having analysed the contract of *AB Vilniaus bankas* and *AB bank NORD/LB Lietuva* it was established that the contract did not provide for the cash withdrawal charge, as this was established by each of the banks independently.

32. The investigation concluded that the agreement between *AB Vilniaus bankas* and *AB bank NORD/LB Lietuva* - the two competing operators of the financial services market – to fix identical terms for cash withdrawal in own ATMs and those of the contracting party was not capable of restricting the possibilities of each of the banks to unilaterally fix the charge for cash withdrawal in ATMs operated thereby, i.e., the agreement does not produce any restrictive affect upon the competition between *AB Vilniaus bankas* and *AB bank NORD/LB Lietuva*, hence the allegations on the infringement of Art. 5 of the Law on Competition were ruled out.

- Goods carriage by motorcars

33. In March the CC conducted the investigation the purpose whereof being to establish the compliance of actions of *Linava*, the Lithuanian National Road Carriers Association and its members with the requirements of Art. 5 of the Law on Competition. The investigation was started by the CC on its own initiative on the basis of the information published by the Lithuanian News Agency ELTA and the address to the Lithuanian road carriers published in the website of *Linava*. The text of the address allowed a suggestion that the goods carriers were indirectly prompted to recalculate the costs of goods transportation and increase the rates for the goods transport services. This raised a suspicion that the Association *Linava* and its members seeking to establish new goods carriage rates intended to perform actions potentially in contravention of the Law on Competition.

34. It was established that the inducement by the Association *Linava* and its members to coordinate their business decisions in relation to the increase of the transportation rates (recalculation of goods carriage costs and the rates of the goods transportation services) had not been of the scope that could possibly produce a negative effect upon competition. The initiated investigation prevented *Linava* from putting its intentions into operation. Although the CC terminated its investigation, it continued to further observe the actions of *Linava* and its members to avert any attempts of coordinated price increase.

35. The Association *Linava* was invited to notify all its members that in accordance with par. 1 of Art. 5 of the Law on Competition all agreements which have as their object the restriction of competition or which may restrict competition shall be prohibited and are void from the moment of conclusion thereof.

- Exemptions

Block exemption in the office paper market

36. The CC examined the notification filed by *UAB Papyrus Distribution* and *UAB Mabivil* on the vertical agreement qualifying for a block exemption. The office paper market is an extremely rapidly developing market in Lithuania including 10 wholesale operators, five of which are members of the Baltic Association of Paper companies, and about 50 retailers. It was established that the said notification complies with the requirements of par. 4 of Art. 7 of the Law on Competition which stipulates that undertakings must within an established time limit after the coming into effect of the agreement concluded according to the conditions of block exemption present information on the principal conditions of the agreement to the CC.

Block exemption in the maritime transport market

37. In 2003, upon the request of AB LISCO Baltic Service the CC carried out an investigation seeking to establish the compliance of the German-Lithuanian conference agreement between AB LISCO Baltic Service and the company Scandlines AG with the requirements of the Resolution of the CC “On granting of a block exemption to certain agreements between transport undertakings in individual branches of the transport sector in accordance with Articles 5, 6 and 7 of the Law on Competition of the Republic of Lithuania”.

38. It was decided to confirm that the German-Lithuanian conference agreement between AB LISCO Baltic Service and Scandlines AG as notified by the applicant complies with the terms laid down in Resolution No. 11 of 18 January 2001 of the CC “On granting of a block exemption to certain agreements between transport undertakings in individual branches of the transport sector in accordance with Articles 5, 6 and 7 of the Law on Competition of the Republic of Lithuania”.

Abuse of a dominant position

- Sugar market

39. The object of the investigation initiated on the basis of the notification of the agricultural cooperative *Kėdainių krašto cukriniai runkeliai* was to establish on whether or not the clause of the interprofessional agreement of *AB Danisco sugar Panevėžys* and *AB Danisco sugar Kėdainiai* complies with provisions of Art. 9 of the Law on Competition. The agreement was concluded in 2002 among the said sugar factories and 5 cooperatives of sugar beet growers, and contained the provision, which prohibited the sugar beet growers to deliver the sugar beets for processing where the sugar beets were grown from the seeds acquired from other sources than the sugar factories. During the investigation it was established that *Danisco* factories prohibiting the sugar beet growers from delivering for processing the sugar beets grown from the seeds acquired from elsewhere than the factories, were abusing their dominant position thus restricting the freedom of the economic activity of the sugar growers and restricting competition in the wholesale seed market. Being allotted certain sugar beet growing quotas and obliged to purchase the sugar beet seeds exclusively from the factories the sugar beet growers are made dependant upon the factories and the sugar processing factories are then able to unilaterally fix the price for sugar beet seeds. By imposing the obligation upon the sugar beet growers to purchase the seeds exclusively from the factories and providing that the payment for the seeds is effected upon the delivery of the sugar beets *Danisco* restricted the possibilities of the sugar beet growers to opt for other more acceptable payment terms or choose other seed suppliers.

40. In the course of the investigation *Danisco* factories submitted the data on the adjustments in the existing system for selling of sugar beet seeds to sugar beet growers proving that the liberalisation of trade in seeds is related to substantial costs, which would have an appreciable affect on the competitiveness of the sector. In addition, having regard to the findings of the investigation *Danisco* factories submitted the provisions of new agreement on the sale of sugar beet seeds intended to make part of the interprofessional agreement for the year 2004. In order to analyse the impact of the provisions of the produced agreements upon the liberalisation of the market for the sugar beet seeds and assess the compliance of such provisions with the Law on Competition, the investigation was extended until the completion of the negotiations concerning the conclusion of the interprofessional agreement between *Danisco* factories and the cooperatives of sugar beet growers.

- Mortuary services

41. The investigation was initiated on the basis of the application lodged by *UAB Kremata*, which indicated that A. Jankauskas' service and trade undertaking is the only company in the town of Biržai leasing the mortuary premises. According to the applicant the lessor of the mortuary premises also required the customer to acquire all related funeral articles exclusively from it in the opposite case the customers were refused the service.

42. The investigation established that such actions of A. Jankauskas' service and trade company restricted the possibilities of other undertakings to operate in the mortuary article and services market thus violating the customers' interests.

43. Taking into consideration the fact that A. Jankauskas' mortuary services and trade enterprise having violated the provisions of the Law on Competition submitted all the information necessary for the investigation of alleged abuse of dominance and that no material or irretrievable damage to the interests of another undertakings or the society was incurred by prohibited actions under investigation, A. Jankauskas' mortuary services and trade enterprise was subjected to a minimum fine of LTL 3,000.

- Insurance market

44. In September 2002 an investigation was initiated with a view to establishing possible infringements of Art. 5 and 9 of the Law on Competition according to the notification presented by the insurance company *AB Lietuvos draudimas* on the allegedly prohibited agreement between *AB Lietuvos žemės ūkio bankas* and the *AB Lietuvos žemės ūkio banko draudimas*. In its notification *AB Lietuvos draudimas* was claiming that it was approached by *UAB Lekėčiai* with a request to terminate the livestock insurance agreement since the Šakiai division of the *AB Lietuvos žemės ūkio bankas* was crediting *UAB Lekėčiai* and one of crediting condition is to insure the livestock in *UAB Lietuvos žemės ūkio banko draudimas*.

45. The investigation established that in accordance with the provisions of the Law on Competition *AB Lietuvos žemės ūkio bankas* and *UAB Lietuvos žemės ūkio banko draudimas* should be treated as a single undertaking because they are interrelated by mutual control and do not operate in the market independently while organising their economic activities. Prohibitions laid down in par. 1 of Art. 5 of the Law on Competition are not applicable to agreements concluded by undertakings that are to be treated as a single entity.

46. Having assessed the compliance of actions of *AB Lietuvos žemės ūkio bankas* and *UAB Lietuvos žemės ūkio banko draudimas* with the requirements set forth in Art. 9 of the Law on Competition the CC concluded that *AB Lietuvos žemės ūkio bankas* isn't dominating in the Lithuanian market of agricultural loans since no barriers for other undertakings to enter the market were established. From the banks' point of view the agriculture sector is related to high risks, and crediting of agricultural activities is not a priority area of activity of the banks that therefore do not intend to significantly increase their market shares in this particular sector.

- Goods carriage by motorcars

47. The CC examined the application presented by L. Karpavičius *PE Talka* concerning abuse of a dominant position. The applicant claimed that the National Road Carriers' Association *Linava* was abusing its dominant position when charging different prices for TIR Carnets issues to members of the Association and the candidate members, thus placing them at a competitive disadvantage.

48. The Association *Linava* has been assigned an exclusive right to issue TIR Carnets as a guaranteeing association in accordance with the Customs Convention on the International Transport of Goods under Cover of TIR Carnets. It was established that by charging different prices for TIR Carnets for members of the Association and its candidate members *Linava* did not create different competitive conditions for national road carriers, because all undertakings have equal conditions to fulfil the relevant requirements and become regular members of the Association. The differentiation in the charges for the TIR Carnets is justified since according to the data of the Association *Linava* members and candidate members of the Association are considered not equally reliable. The risk assumed by the Association in respect of candidate members is higher than that in relation to its regular members. The difference in the prices for the TIR Carnets were established in view of different administrative costs incurred while issuing them to members and candidates of the Association.

49. Having examined the factual data the CC resolved that under the provisions of Art. 9 of the Law on Competition there was no legal basis for the assumption that by establishing different prices for TIR Carnets issued to its members and candidate members the Association was abusing its dominant position in the market concerned. The applicant's allegation that *Linava* was distributing the TIR Carnets to its members at the price below costs was also found groundless.

2.2 Mergers and acquisitions

a) statistics on number, size and type of mergers notified and/or controlled under competition laws

50. During the year 2003, the CC received 54 notifications concerning approvals to implement concentrations of market structures. On 52 occasions the concentrations were approved by appropriate resolutions of the CC. Those included 6 cases of conditional approvals seeking to avoid the creation or strengthening of a dominant position. The examination of 3 notifications is being continued throughout the year 2004. One undertaking withdrew its notification on the intended merger, in 5 cases, where the CC was seeking to expedite the decision making process, and where it was apparent that the implementation of the merger will not result in a creation of a dominant position or restriction of competition and pursuant to par. 3 of Art. 12 of the Law on Competition it was permitted to exercise individual actions of concentrations pending the adoption of final decision.

51. The 2003 recorded 10 approvals to implement the concentration to foreign entities, which is a reduction as compared to 15 such approvals in 2002. In 5 cases the mergers were enacted between undertakings registered abroad although operating in the Lithuanian product markets and the mergers would raise the degree of concentration in Lithuania. In 5 cases foreign undertakings acquired undertakings registered in Lithuania, which included 4 cases of horizontal concentrations and 1 case of conglomerate concentration.

52. In other 42 cases, which were placed to the CC for examination, mergers were implemented by undertakings registered in Lithuania, including 6 approvals to Lithuanian undertakings controlled by foreign capital, and in 5 approved cases Lithuanian and the foreign capital jointly controlled the merging undertakings. In 23 cases the mergers were considered as horizontal mergers. These included 5 cases in the trade sector, 8 cases in industry sector, 3 cases in construction sector, and 2 cases were recorded in each of the finance, agriculture, information technologies sectors, 1 merger was approved in the energy sector. In 3 cases the mergers were considered bearing features of horizontal merger, in 5 cases mergers were vertical and in 9 cases the mergers were recognised as conglomerate.

53. However, the comparison of the number of horizontal concentrations effected in 2003 to that of the previous year showed an increase, concentrations have become more frequent in the industry, construction and agricultural sectors. Although notifications on concentration in the trade sector were

fewer, concentrations among small trade companies not subject to the notification requirements under par. 1 of Art. 10 of the Law on Competition became more common.

b) summary of significant cases

- Alcoholic beverages market

54. As early as 2002, while assessing the compliance of actions by AB Stumbras by granting rebates and arranging for settlement for advertising services with the provisions of the Law on Competition, the CC established the dominance of AB Stumbras in the market for strong alcoholic beverages. UAB Mineraliniai Vandenyys was awarded the public privatisation tender called by the SE Turto Fondas. UAB Mineraliniai Vandenyys was operating in the alcoholic beverages (imported, as well as locally produced) wholesale market. Besides, the CC established possible concerted actions in the relevant market on the basis that AB Stumbras was holding a 10% interest in UAB Artrio-2 and, accordingly, was participating in the management of the latter. At the same time a 10% holding of UAB Artrio 22 was held by AB Alita, which was also participating in the management of this company. AB Alita is the second largest producer of alcoholic beverages in Lithuania, being the largest producer of sparkling wines. UAB Artrio-2 was tendering in the privatisation tender relating to AB Anykščių Vynas privatisation announced by the SE Turto Fondas and was awarded the privatisation tender. AB Anykščių Vynas also produces strong alcoholic beverages and certain kinds of wine. Provisions of the Law on Alcohol Control established the State monopoly in the strong alcoholic beverages production market to be effective until 1 January 2004. Therefore any increase in competition in this market may be possibly expected only after the alcoholic beverages market is liberalised, after part of producers of alcoholic and non-alcoholic beverages will be able to launch the production of strong alcoholic beverages without the need to allocate substantial investment. Imported strong beverages can hardly substitute the supply of local producers, basically due to the substantial difference in prices, as well as quality standards, and, finally, the preferences on the part of Lithuanian consumers to local production. However, after the accession of Lithuania to the EU and the abolition of all trade barriers, AB Stumbras would have to face competition not only from the part of the EU producers, but also that from the neighbouring States enjoying a zero rate EU customs tariff.

55. Having regard to the circumstances as described above, the CC decided to approve UAB Mineraliniai Vandenyys to effect concentration by acquiring up to 100% shareholding of AB Stumbras according to the submitted notification subject to the following terms and conditions of the concentration:

1. Having acquired the control of AB Stumbras and having taken over the management of the company UAB Mineraliniai Vandenyys is obligated to sell all shares of UAB Artrio-2 it currently owns;
2. The time limit for the above transaction is deemed confidential.
3. Having acquired the control of AB Stumbras and having taken over the management of the company, UAB Mineraliniai Vandenyys is obligated to recall the representative delegated by AB Stumbras from the management board of UAB Artrio-2;
4. To sell the shares of UAB Artrio-2 to an undertaking deemed under the requirements prescribed by the CC not related to UAB Mineraliniai Vandenyys.

56. The CC also imposed an obligation upon the parties to appropriately notify the CC of the performance and the course of any equity transactions, which shall be subject to the latter's approval. Upon

an individual request the CC may decide to extend the time limit for the sale transaction for a period duly grounded as necessary to complete the sales transaction.

57. In order to prevent discrimination and dissimilar competitive terms AB Stumbras was obligated in its contracts with other undertakings to establish prices and other terms, which are comparable to those established in the contracts with UAB Mineraliniai Vandeny.

- Dairy sector

58. During the year 2003, the Lithuanian dairy sector (milk purchase and dairy products sector) was undergoing further concentration processes.

59. In this respect the most important case for the CC was the case of the concentration of AB Panevėžio Pienas and AB Rokiškio Sūris. This particular case investigated was challenging to the competition authority both in terms of establishing the type of concentration, and in terms of defining the markets. The notification of the intended concentration was submitted four times, in three cases it was withdrawn, where each time the applicant would indicate a different size of targeted shareholding, and emphasise that the main purpose of the concentration effected by AB Rokiškio Sūris is to acquire an interest in AB Panevėžio Pienas of the size ensuring a significant influence in the process of decision making while preventing any devaluation of shares.

60. In April the CC examined the notification submitted on 12 March 2003 by AB Rokiškio Sūris on intended concentration by acquiring up to 35.3% shareholding in AB Panevėžio Pienas. Acting in accordance with item 2 of par. 1 of Art. 14 of the Law on Competition the CC passed a decision of conditional approval permitting for AB Rokiškio Sūris to effect concentration by acquiring up to 35.3% shareholding of AB Panevėžio Pienas pursuing to avoid the creation of a dominant position:

1. AB Rokiškio Sūris is obligated to refrain from voting by all previously and additionally acquired voting shares of AB Panevėžio Pienas in the general AB Panevėžio Pienas meetings of shareholders on the following issues:
 - distribution of profit;
 - formation, distribution and liquidation of reserves not available for distribution;
 - sale, transfer, lease or mortgage of fixed assets the value whereof amounts to over 1/20 of the company's authorised capital, as well as offering guarantee or surety for the discharge of obligations of other entities.
2. Any additional acquisitions of the shares of AB Panevėžio Pienas and (or) other actions of concentration (e.g. for the purpose of coordinating of business decisions between the shareholders of AB Panevėžio Pienas and the related undertakings) shall be approved by the CC.

61. The peculiarity of this particular case of concentration stems from the fact that the companies operate in the same market – milk purchase and dairy product markets. The concentration to be effected was assessed as horizontal concentration significantly affecting the degree of concentration in the relevant milk purchase and unskimmed milk product markets. Since in these relevant markets the share of AB Rokiškio Sūris and AB Pieno Žvaigždės would account for, respectively, approximately 61% and 60%, only AB Žemaitijos Pienas is a comparable competitor for them, and other participants of the relevant markets are rather small, the concentration could result in the creation of a dominant position which could have a restrictive affect upon competition in these relevant markets.

- Telecommunications sector

62. In December 2003, the CC examined the notification filed on 2 September 2003 by *TeliaSonera AB* on concentration by acquiring up to 90% shares of *UAB Omnitel* through its subsidiary *Amber Mobile Teleholding AB*. The CC resolved to authorise the intended concentration under the following terms and obligations:

1. *UAB Omnitel* is prohibited from effecting reorganisation through taking over or merging with *AB Lietuvos Telekomas* or any other undertaking directly or indirectly controlled by *TeliaSonera AB* without the prior notification of CC in the prescribed manner and within the established time limits, and having obtained an authorisation of the CC to perform such concentration actions.
2. *AB Lietuvos Telekomas* shall not, unless it obtains a prior authorisation of the CC, transfer its current operations (customer contracts) related to the provision of the fixed telecommunications market to *UAB Omnitel*. This obligation shall be revoked in case *UAB Omnitel*, in the manner prescribed by the laws, is subject to one or more regulatory obligations as an undertaking exercising a significant influence in the relevant telecommunications market.
3. Seeking to ensure the transparency of operations related to the provision of telecommunications services via the public fixed and the mobile telecommunications networks, *UAB Omnitel* is obligated to maintain separate accounting of all costs related to the provision of fixed telecommunications services. This obligation, in view of the segregated accounting of costs related to the access and the network interconnection must be fulfilled not later than within three months following the coming into effect of the Resolution of the CC authorising the concentration.
4. *TeliaSonera AB* is obligated to ensure that *AB Lietuvos Telekomas* and *UAB Omnitel* including all other directly or indirectly controlled undertakings providing the fixed telecommunications services in the Republic of Lithuania, acting in accordance with the effective domestic laws abide in their operations with the non-discrimination clause, in particular, when concluding contracts concerning the network interconnection and network access.

63. The decision of the CC was based on the data produced by telecommunications markets surveys and the liberalisation tendencies inherent to the fixed telecommunications markets. Since in this particular case of the examined concentration the joint control over *UAB Omnitel* exercised jointly by *TeliaSonera AB* and *Motorola AB* was actually being replaced by a unilateral control by *TeliaSonera AB*, the concentration was designated as horizontal and vertical concentration in the relevant telecommunications markets. In the course of the examination of this particular case of concentration it was established that the principle markets affected by the concentration in question are the fixed telecommunications services and the mobile telecommunications services markets. Besides, the data transmission and the Internet as well as related services markets are rapidly expanding, and, upon the liberalisation of the telecommunications markets, this trend is expected even to accelerate.

64. The investigation conducted by the CC concluded that *AB Lietuvos Telekomas* holds a dominant position in certain relevant service markets, such as public fixed telecommunications market, individual fixed telecommunications markets and the market for the dedicated lines services. *AB Lietuvos Telekomas* is holding a significant share in the market for data transmission, provision of the Internet or related

services, while a large share of the same markets is held also by *UAB Omnitel*. Furthermore, *UAB Omnitel* share in the mobile telecommunications market and the international mobile inter-network services market is also significant. The degree of concentration would be affected in the relevant telecommunications markets, which could lead to a creation or strengthening of a dominant position and severe restriction of competition. Furthermore, *TeliaSonera AB*, by enhancing its control over *UAB Omnitel* would secure a possibility to exercise a complete coordination of actions of *AB Lietuvos Telekomas* and *UAB Omnitel*. For that reason *TeliaSonera AB* would enhance its capacity through its economy of scale and the volumes of its investment into the development of new technologies, integration of the existing and the developed telecommunications networks, it could rearrange its organisational management structures. It is credible that in the future both *AB Lietuvos Telekomas* and *UAB Omnitel* would be able to strengthen their positions in the relevant markets.

65. While passing the decision the CC also made allowance for the fact that *TeliaSonera AB* undertook to initiate and encourage *AB Lietuvos Telekomas* to consider the issue of a gradual replacement of the NMT-450 technology by a cable network which would open new opportunities for a more diversified range of telecommunications services in areas where it is considered expedient in view of consumer needs and economic substantiation of such upgrading operations.

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

66. The activity of the CC helps to promote competition and economic growth. CC actively cooperates with the President's Office, the Seimas, the Government of the Republic of Lithuania, and other authorities.

67. In addition to the supervision of the Law on Competition, the CC 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.

68. Having regard to the provisions of the European Commission directive 80/723/EEC "On the transparency of financial relations between Member States and public undertakings" (and the subsequent supplements thereto) and acting as a coordinating authority in the area of State aid, the CC, in conjunction with the Ministers of Finance, Economy and Transport defined the stages for the implementation of the directive in Lithuania and outlined the relevant implementing regulations. In May 2003, the CC drew up the draft of the Resolution of the Government of the Republic of Lithuania "On the approval of the decision of the European Union and the Republic of Lithuania Association Committee on the regional aid map to be used as a basis for the assessment of State aid granted in Lithuania".

69. During 2003, the CC examined 13 cases related to the use of misleading and comparative advertising. Infringements of the Law on Advertising were established in 8 cases, which led to the infringing undertakings being obligated to cease the use of the advertising, in 2 more severe cases the undertakings were subjected to pecuniary sanctions. Two investigations were discontinued on the basis that the undertakings voluntarily ceased the infringing activities, 3 investigations are still in progress. In certain cases due to the small significance of the infringements sanctions were limited to preventive measures where four undertakings were warned in writing to cease the use of misleading advertising.

70. During 2003, the CC continued to make its active contribution in the legislation process by presenting proposals and comments in respect of various draft legal acts prepared by a range of institutions. By assessing the new drafts of legal acts in the light to requirements of the Law on Competition and presenting relevant comments the CC fulfils a very important mission of consolidation of the principles of fair competition in legal acts. Of special significance were the comments presented in respect of the draft

Law on Water Services, The draft Resolution of the Government On the approval of the Rules on licensing of trade in explosives. The CC commented in the Draft Law on The mandatory insurance against civil liability in respect of the use of motor vehicles, in the Draft Law on Public Information.

71. During the year 2003, significant efforts were dedicated to the approximation of two Treaties of special importance to Lithuania. First, - the CC actively participated in the process of technical adaptations of the text of the Treaty of Accession in the negotiation chapter "Competition Policy". In the course of approval of the text of the EEA Enlargement Agreement the CC also presented comments within the limits of its competence.

4. Resources of competition authorities

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

a) *Annual budget (in your currency and USD):*

LTL 2,505 thousand (EUR 726 thousand) in 2003¹

LTL 2,741 thousand (EUR 794 thousand) in 2002²

b) *Number of employees (person-years):*

Economists 36

Lawyers 10

other professionals 2

support staff 15

all staff combined 63

4.2 Human resources (person-years) applied to:

a) *Enforcement against anticompetitive practices: 23*

b) *Merger review and enforcement: 4*

c) *Advocacy efforts: 6*

4.3 Period covered by the above information: 2003

¹ Exchange rate as of April 1, 2003; 1 Euro = 3,4528 LTL

² LTL 320 thousand (EUR 92,7 thousand) were committed for the renovation of the building of the CC.