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

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2004 --

This report is submitted by the Delegation of Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting (1-2 June 2005).

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Executive Summary

1. The year 2004 was the 12th since the laying down of the foundations for competition law in Lithuania. The general trends of the activity and tasks assigned to the Competition Council of the Republic of Lithuania (further – CC) reveals the intensifying pace of the activity.

2. With a view to ensuring the successful enforcement of the new EU competition rules following the accession of Lithuania into the European Union, relevant amendments were adopted to the Law on Competition of 1999 and the Code of Civil Procedure followed by the adoption of the requisite legal acts and regulations. Amendments to the Law on Competition constitute reforms aimed to the enhancement of the efficiency of the competition policy. That is the goal, which must be attained to enable the relevant public authorities and undertakings to successfully operate under the new economic conditions.

3. The CC continued its efforts to assure the effective application and enforcement of competition rules giving priority to such cases that concern the most serious distortions of competition. In 2004, the CC managed to reveal the most severe infringements of the Law on Competition: prohibited agreements and abuse of dominant position.

4. Applications to authorise mergers submitted by undertakings continue to remain quite numerous and required a most thorough analysis. The continuous surveillance of the concentrations of market structures and investigation of notifications on the intended concentration allow preventing creation or strengthening of a dominant position in relevant markets.

5. During 2004, as in previous years, the CC has been the authority in charge of the surveillance of misleading and comparative advertising in accordance with the Law on Advertising. Another area of activity that the CC was in charge of until 1 May 2004 was monitoring of State aid to Undertakings in accordance with the Law on Monitoring of State Aid to Undertakings.

6. The CC also performed an important work in preventing restriction actions of public and local authorities and actively participated in drafting and amending the legal acts prepared by different institutions seeking to harmonise the provisions of these acts with the competition rules.

7. In 2004, the CC increased its emphasis to further development of competition culture and awareness of the competition policy, and to strengthening of administrative capacities.

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

Summary of new legal provisions of competition law and related legislation

Amendments to the Law on Competition

8. Accession of Lithuania into the European Union and the modernisation of the EU competition rules, in particular, the adoption of Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings triggered new developments in the Lithuanian competition law. To facilitate the enforcement of the new EU competition rules upon the Lithuania's accession it was necessary to create the appropriate necessary preconditions, primarily through the amendments to the Law on Competition of 1999 and the Code of Civil Procedure. To that effect on 15

April 2004, the Parliament passed the Law on the Amendment and Supplementing the Law on Competition¹, which came into effect on 1 May 2004.

9. Although following the adoption of the amendments the essential previously applicable provisions of the Law on Competition (further – the LC) remained unchanged, the new legislation nevertheless introduced certain important new provisions in the area of prohibited agreements and merger control pertaining to the investigation procedures and imposition of sanctions. In addition, certain modifications in the LC were made in view of the shortcomings and gaps of the law, which had become apparent in the course of its practical enforcement.

General provisions

- Art. 1(3) of the LC stipulating that “This Law seeks for the harmonisation of the Lithuanian and the European Union law regulating competition relations” was supplemented by a reference to the Annex containing Council regulation No. 1/2003 – the relevant European legislation being implemented by provisions of the Law on Competition.
- A new Chapter was added to the LC titled “Application of the European Union competition rules” which provides that “the Competition Council (further – CC) shall be the institution authorised to apply the EU competition rules, the supervision of compliance whereof according to the European Union competition law is entrusted to the national competition authority”. This provision significantly expanded the scope of competences of the CC by providing for the application of Articles 81 and 82 of the Treaty in parallel with the provisions of the CC in cases where agreements placed under investigation or alleged abuse of a dominant position are capable of affecting trade between Member States.
- The new State aid monitoring system was made operational.

Prohibited agreements

- The authorisation system was replaced by the directly applicable exemption system.
- The obligation to submit information on agreements concluded under terms qualifying for a block exemption was abolished.

Control of concentrations

- The requirement to notify the concentration not later than within 7 days following the first action of concentration, and the requirement to suspend the concentration after such, pending the final decision of the CC permitting the implementation of concentration have been abolished. Consequently, the sanctions for failure to submit a concentration notification within the established timeframe have also been abolished.
- The four-month term allocated for the CC to pass a final decision concerning the concentration, upon a duly grounded request of the notifying undertaking may be extended for an additional period of one month.

¹ Law No IX-2126 of 15 April 2004 on supplementing and amendment of the Law on Competition of the Republic of Lithuania, recognition as invalidated the Law on Monitoring of State Aid to undertakings, and amendment of Article 1 of the Civil Code of the Republic of Lithuania.

- A fee has been introduced for the submission and examination of the notification on concentration.
- For the purpose of the assessment of concentrations between undertakings the dominance test has been supplemented by a test of significant restriction of competition.
- The CC has been granted an additional authorisation to require the submission of notification where it becomes probable that concentration will result in the creation or strengthening of the dominant position, or a significant restriction of competition in the relevant market, although otherwise the prior notification was not required since the threshold income indicators have not been exceeded. The new procedure shall be applicable only provided no more than 12 months have passed from the implementation of the concentration in question.

Investigation procedures

- It has been provided that the inspections to be conducted by the European Commission (further – EC) and the possible use of force shall be authorised by the Vilnius Regional Administrative Court.
- The new wording of the law provides for an additional basis for the renewal of the case creating a possibility to ensure the protection of the rights of the parties to the proceeding where the application of Article 81 and 82 of the Treaty contained in the judgement of the Court contradicts the decision of the EC concerning the application of the above Articles.
- Appropriate amendments were introduced in the provisions of the LC governing the submission of application for investigation and its examination by the CC, as well as the completion of investigation whereby the CC is obligated to examine the applications filed with respect to restrictive practices not within 14 days as under the previous provisions, but within 30 days from submission of the application and documentation and take a decision to start or to refuse to start the investigation. Furthermore, the term of the completion of the investigation has been extended to 5 months providing for a possibility to extend the term each time by up to three months. The CC is entitled to refuse to start the investigation if there are no evidence available allowing to reasonably suspect the infringement of the LC.
- An additional possibility for the termination of the investigation has been introduced whereby the investigation may be discontinued not only in the absence of the infringements of the law, but also where the actions of the undertaking have not caused any material damage to the interests protected by laws and the undertaking concerned submits to the CC a commitment in writing not to perform such actions. The undertakings shall be bound by the commitment. In an event the undertaking fails to meet its commitments a fine of up to 5 per cent of the average gross daily income in the preceding business year may be imposed on the undertaking for each day of the commission (continuation) of infringement.
- New regulatory provisions have been introduced in respect of the judicial proceeding of competition cases. It has been established that the undertaking whose legitimate interests have been violated by actions performed in contravention of Articles 81 or 82 of the Treaty or other restrictive actions prohibited by the law shall be entitled to appeal to the Vilnius Regional court with a claim concerning the termination of illegal actions and the compensation of damage incurred.

Sanctions

- Amounts of pecuniary sanctions for prohibited agreements, abuse of a dominant position, and putting into effect of a notifiable concentration without the permission of the CC, continuation of concentration within the period of its suspension, also infringement of concentration conditions or mandatory obligations established by the CC Council have been increased up to 10 percent of the gross annual income in the preceding business year.
- Under the new provision of the LC the procedure for the establishment of the amount of the fine shall be approved by the Resolution of the Government.

Supplement to the Code of Civil Procedure

10. The Code of Civil Procedure has been supplemented by a provision that competition cases shall be examined in accordance with the rules of the Code, save the exceptions established by the LC. Upon receipt of a claim related to the application of Articles 81 and 82 of the Treaty the Court shall accordingly notify the CC and EC thereof.

Secondary legislation

Rules on the amounts of fines

11. Resolution of the Government of the Republic of Lithuania of 6 December 2004 approved „The Rules on the determination of the amount of fines for infringements of the Law on Competition“. The Rules define in detail the procedure for the imposition and the determination of the amount of fines. It should be noted that the methodology for the establishment of the amount of fines as set forth in the Rules is to a large extent comparable to that employed by the EC in respect of fines for infringements of Article 81 and 82 of the Treaty.

12. The Rules contain a separate leniency provision for participants of a prohibited agreement of competitors (cartel).

13. The CC is authorised to reduce the amount of the fine up to 75% where the participant of a cartel agreement notifies the prohibited agreement and cooperates with the CC throughout the investigation.

Fee for the notification of concentration

14. In accordance with the relevant amendment to the LC, a fee has been introduced for the submission and examination of the notification on concentration. The amount of the fee LTL 4,000 was set forth by Resolution No. 916 of 16 July 2004 of the Government of the Republic of Lithuania „On the amendment of Resolution No. 1458 of 15 December 2000 of the Government of the Republic of Lithuania „On the approval of the list of the State duty objects, and the rules for the determination, payment and refund of such duty“.

Resolutions declared void

15. On 2 September 2004, in accordance with the reading of Art. 6 of LC defining the terms for exemptions the CC passed Resolution No. 1S-132 „On the declaration of agreements meeting the terms of Art. 6(1) of the Law on Competition and certain Resolutions of the Competition Council of the Republic of Lithuania repealed“. The Resolution of the CC has defined that any agreement complying with the terms of granting block exemptions as stipulated in EU regulations shall not be subject to Art. 5 of LC, and such agreement shall be deemed pro-competitive, i.e., meeting the terms for exemptions as defined in Art. 6 of

LC. The Annex to the Resolution contains the list of regulations granting block exemptions and is intended to inform undertakings and other persons applying the competition law of regulations containing the terms for block exemptions.

De *minimis* regulation

16. Resolution No. 1S-172 of 9 December 2004 of the Competition Council „On the amendment of Resolution No. 1 of 13 January of 2000 of the Competition Council of the Republic of Lithuania „On the approval of terms and requirements for agreements which because of their minor impact are not deemed to constitute infringements of Art. 5(1) and (2) of the Law on Competition“ essentially modified the regulation of recognition of agreements as having minor influence (*de minimis*). The new legislation has been drafted following the guidelines contained in the EC *de minimis* notice (2001/C 368/07). As compared to the legal act previously in power the new regulation has introduced the following major changes:

- the minor influence of agreements shall be assessed not on the basis of the gross annual income of undertakings concerned; instead, the only criteria for the assessment shall be the market share held by the undertakings parties to the agreement;
- the market shares are accordingly increased – from 10% to 15% in respect of vertical agreements, and from 5% to 10% in respect of horizontal and mixed agreements;
- the list of contractual restrictions under which the agreements are not deemed as meeting *de minimis* conditions was expanded.

Amendments to the Regulations of the CC

17. Having regard to the relevant amendments to the LC as well as other legal acts governing the activities of the CC (laws on Prices and Advertising) the CC prepared the draft Resolution of the Government of the Republic of Lithuania „On the Amendment to Resolution No. 822 of 12 July 1999 of the Government of the Republic of Lithuania „On the approval of Regulations of the Competition Council“ which was approved by the Resolution No. 1171 of 15 September 2004 of the Government of the Republic of Lithuania. This Resolution constituted the legal basis for the expansion of the functions of the CC concerning the coordination of State aid subject to EU State aid regulation, and introduced other amendments.

Amendments to the Rules of Procedure

18. In 2004, the Rules of Procedure of the Competition Council was essentially changed. The major changes are related to the new provisions of the LC. In addition, certain improvements of the Rules of Procedure were prompted by the experience gained through its practical application.

New Regulations of the Administration of the CC

19. Resolution No. 1S-96 of 10 June 2004 approved the new wording of the Regulations of the CC, setting forth the division of responsibilities among the Administration units of the institution. The structure and the layout of the Regulations were modified and with some major improvements introduced, the functions of individual departments were defined having given due regard to the requirements of legal techniques and the enacted amendments to the LC.

II. Enforcement of competition laws and policies

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

a) Summary of activities of competition authorities

20. During 2004, 69 investigations were launched in accordance with the requirements of the Law on Competition, including 6 investigations on the initiative of the CC and the remaining on the basis of requests submitted by undertakings.

21. The CC took 79 decisions, including those in respect of completed investigations started back in 2003. 7 decisions were taken concerning prohibited agreements, 5 concerning abuse of a dominant position.

22. In 2004 the CC imposed penalties upon defaulting undertakings in the amount of LTL 281 500 (EUR 81 530); for prohibited agreements LTL 36 500 (EUR 10 570); for concentration control LTL 3 000 (EUR 870); concerning misleading and comparative advertising LTL 242 000 (EUR 70 090).

b) Description of significant cases

Prohibited agreements

- The cartel agreement in the area of waste management projects

23. The investigation was initiated in May 2004 upon receipt by the CC of the information from the Environmental Project Management Agency under the Ministry of Environment about the tender held in 2003 "Development of waste recovery system" concerning alleged agreement prohibited by Art. 5 of the LC.

24. The investigation was started in order to determine whether undertakings participating in the tender under the ISPA program had possibly committed any actions prohibited by Art. 5(1)(1) of the LC. Participants of the tender were *UAB Ekoprojektas*, *UAB Ekobaltas*, *UAB COWI Baltic*, and *UAB EKO RIVI*. The submitted information suggested that in the opinion of tender evaluation commission bids of two participants, namely *UAB Ekobaltas* and *UAB Ekoprojektas* were nearly identical in a number of aspects.

25. As a first stage of the investigation the CC conducted an in-depth analysis of the relevant market, which had been defined as waste management project market. This market was defined as a dynamic, rapidly developing and growing directly related to the absorption of the resources under EU support. One of the main areas of activity in the market during the year 2003 was the development of the waste management system in ten regions of Lithuania. The geographical territory of the market concerned was the territory of Lithuania since this specific market was related to problems inherent to municipal territories.

26. The examination of the tender bids submitted by *UAB Ekobaltas* and *UAB Ekoprojektas* revealed that the bids filed by two companies were very strikingly similar. The structural layout of the financial parts of both bids was nearly identical and contained expressly similar price offers. The difference between the tender prices offered was just negligent; that offered by *UAB Ekobaltas* was higher by 50 euros, or a mere 0.02%.

27. While the investigation was in progress *UAB Ekoprojektas* submitted a statement in which the company essentially acknowledged to have concluded a prohibited agreement. This acknowledgment filed

by *UAB Ekoprojektas*, and the voluntary cooperation in the proceeding, operative provision of any required information and explanations facilitated an expeditious course of the investigation. When passing the final decision concerning the imposition of fines, in accordance with Art. 42(2) of the LC, such behaviour was considered an extenuating circumstance. *UAB Ekoprojektas* and *UAB Ekobaltas* were recognised having infringed the requirements of the LC, and were subjected to fines in the amount, LTL 20,000 and LTL 3,000.

- The cartel agreement of undertakings providing driving training services

28. The investigation was launched in February 2004 and aimed to determine the compliance of actions of undertakings providing driving training services and the Lithuanian Association of Drivers' Training and Qualification Schools (further – Association) with the requirements of Art. 5 of the LC. In the course of the investigation it was examined whether undertakings providing drivers' (category B) training and skill advancement services in Klaipėda and Vilnius and the Association had infringed the relevant requirements of the LC.

29. The investigation established that in late January 2004 the undertakings being investigated held a meeting in Klaipėda. Director of *UAB Particula* at the same time holding a position of Head of the Klaipėda branch of the Association, informed the meeting about the service price established by the undertaking he was representing. Members of the meeting discussed the rates and prices for the drivers' training services and, following the meeting, passed the decision to raise the fees. Participants of the meeting, *UAB Alviridika*, *UAB Darbo rinkos mokymo centras*, *UAB Particula*, *UAB Kalbų gama*, *UAB Kerulis ir partneriai*, *A. Andrijauskas PE*, *J. Gelumbauskas PE*, *E. Matuzevičius PE*, *A. Strižak PE* and *V. Volikas firm* increased the service fee from LTL 500 to LTL 900 – 960, on the average. Thus the companies, having by their concerted actions increased the service prices, committed an infringement of Art. 5(1)(1) of the LC stipulating that all agreements which have as their object the restriction of competition or which may restrict competition, including agreements to directly or indirectly fix prices of certain commodity are prohibited.

30. In November 2004, the CC passed the decision whereby the above undertakings were recognised having infringed the LC, and were subjected to fines ranging from LTL 500 to LTL 5,000 (total fines amounted to LTL 13,500).

31. The investigation was also conducted seeking to determine the compliance of Vilnius-based companies providing driving training services and the Association with the requirements of Art. 5 of the LC, however, there being no basis to conclude an infringement, the case was terminated.

- Investigation in the taxi services market

32. In October 2004, the CC started the investigation concerning the compliance of actions of undertakings operating in Vilnius as call taxi and the Association of taxi service providers with the requirements of Art. 5 of the LC. The investigation concluded that members of the Association of taxi service providers, taxi companies *Argilta*, *Artaksa*, *Autovisatos taksi*, *Greitvila*, *Fiakras ir Ko*, *Kablasta*, *Kobla*, *Martono taksi*, *Merseros autotransportas*, *Romerta*, *Taksvija*, *Tanagros taksi* and *Transmoderna* providing their services in Vilnius, increased the services rates by coordinating their actions. Accordingly, actions and behaviour of the taxi companies and their Association were recognised to constitute a prohibited agreement concluded through concerted actions. The CC concluded the investigation in December 2004; however, the decision concerning the violation of the LC and sanctions will be passed later in 2005.

Exemptions

- Motor vehicle market

33. Resolution of 15 January 2004 of the CC concluded that the agreement between *Auto Riga SIA*, and *UAB Keturi žiedai* and *UAB Klasera* satisfies the conditions for a block exemption as defined by the Resolution of the CC “On block exemptions for vertical agreements in accordance with Art. 5, 6 and 7 of the Law on Competition”.

34. The Latvia-based company *Auto Riga SIA* and the principal activity whereof is trading in brand new AUDI cars and spare parts applied for confirmation that the agreements it intended to conclude with *UAB Keturi žiedai* and *UAB Klasera* concerning distribution of AUDI cars qualified for a block exemption. As specified in the application the purpose of the agreement was to implement a new procedure for the sale of AUDI cars in Lithuania as an integral part of the newly developed distribution system in the Baltic States.

35. The market shares held by both *Auto Riga SIA*, *UAB Keturi žiedai* and *UAB Klasera* were not in excess of 30 %, therefore the intended agreement was deemed to meet the conditions of item 26 of the block exemption conditions in terms of the market share. *Auto Riga SIA* and *UAB Keturi žiedai* are wholly controlled by the company *Moller Bill AS*, and it determines the market behaviour of the former, therefore under the provisions of the LC these companies were treated as a single undertaking. *UAB Klasera* is not directly associated with undertakings of the *Moller Bill AS* group, however, being a distributor of *Auto Riga SIA* operates on a different AUDI products distribution level than the latter.

36. Acting in accordance with Art. 7(3) of the LC and the above Resolution the CC confirmed that the agreement between *Auto Riga SIA*, *UAB „Keturi žiedai* and *UAB Klasera* satisfied the conditions of a block exemption.

Abuse of a dominant position

- Concerning actions of UAB Švyturys-Utenos alus

37. The investigation concerning the compliance of actions of *UAB Švyturys-Utenos alus* with the provisions of Art. 9 of the LC was initiated on the basis of the application submitted by *AB Kalnapilio – Tauro grupė*, *AB Gubernija*, *AB Ragutis* and *UAB Norfos mažmena*. During the investigation it was found out that contracts on sale promotion/advertising between *UAB Švyturys-Utenos alus* and public catering enterprises included a clause whereby the enterprises concerned were paid an advance payment by *UAB Švyturys-Utenos alus* and the ultimate settlement for the services provided was calculated on the basis of the volumes of beer purchased by the enterprises from *UAB Švyturys – Utenos alus*. In case of termination of the contract or where the contract is not extended such public catering enterprises were obligated to refund part of the advance payment for the outstanding advertising/sales promotion services to *UAB Švyturys – Utenos alus* and pay the fine in equal amount. Furthermore, the sales promotion/advertising contracts with *UAB Švyturys – Utenos alus* obligated the public catering enterprises to coordinate advertising materials of competing companies with the contracting party, as well as methods and places of provision of information.

38. The investigation established that the above actions by *UAB Švyturys – Utenos alus* did not incur material damage to the interests protected by law. Furthermore, *UAB Švyturys – Utenos alus* voluntarily ceased such activity, i.e., waived its requirements imposed upon the contracting public catering enterprises. It also assumed an obligation to amend the provisions of the contracts and refrain in the future from imposing such obligations upon the public catering enterprises. Having regard to the fact that subject to the

agreed amendments to the contracts, the public catering enterprises will be able to terminate (or not extend) the contracts even though they have not fully utilised the advance payment made by *UAB Švyturys – Utenos alus*, and thus other beer suppliers will be provided more favourable terms to compete in supplying beer to such public catering enterprises and advertise their products therein, the CC terminated the investigation.

2. Mergers and acquisitions

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

39. During 2004, the CC received 56 notifications requesting an authorisation to perform concentration of market structures. On 54 occasions, resolutions of the CC authorised the concentration, which included those according to two notifications received late in 2003. The assessment of two notifications is still in progress in 2005. In five cases resolutions of the CC authorised concentration subject to conditions and obligations. In four cases seeking to ensure that the applications for authorisation are dealt with expedition, and having considered that the implemented concentration will not create or strengthen a dominant position or significantly restrict competition, individual actions of concentration were authorised pending the final decision, in accordance with Art. 12(3) of the LC. In one case the CC refused to authorise the individual actions of concentration. In one case economic sanctions were imposed for the failure to notify the intended concentration. The CC received one complaint regarding the concentration implemented illegally.

40. In 2004, more permissions were issued to foreign undertakings, as compared to the previous year (15, and 10 in 2003). In four cases concentration was implemented between undertakings registered in foreign countries, although operating in the Lithuanian commodities markets which caused an increase in the level of concentration in Lithuania. In 11 cases foreign undertakings acquired the Lithuanian-based companies, including 6 cases when the concentration was assessed as horizontal.

41. In 39 cases considered concentration was implemented by undertakings registered in Lithuania, which included 8 cases when the permissions were issued to undertakings controlled by foreign capital, and in 4 cases – to undertakings jointly controlled by Lithuanian and foreign capital. In 24 cases the concentration was assessed by the CC as horizontal concentration. They included 8 concentrations in the industry sector, 6 – in trade sectors including retail trade in medicines, 5 – in the service sector, 3 – in information technology sector, and 1 concentration was authorised in each of construction and energy sectors. In 4 cases concentration was considered bearing features of horizontal concentration, in 2 cases concentration was vertical, and in 7 cases - conglomerate concentration. In 3 cases the CC approved the establishment of new undertakings. In over 50 % of cases concentration between undertakings controlled by foreign capital was implemented by undertakings of Scandinavian countries or Lithuanian undertakings controlled thereby.

42. As compared to previous years, there were more horizontal concentrations having a direct impact upon concentrations of market structures. Nearly 60% of all issued permissions were issued to concentrations of the type.

43. Intensive concentration processes were notable in industry, services, information technology sectors, as well as retail trade (including the retail trade in medicines). In 2004, of all major trade networks only *UAB „Baltisches Haus”* submitted two notifications on concentration and were granted the authorisations.

44. Concentration among small trading enterprises has become notably more intense, where in most cases according to Art. 10(1) of the LC they are exempted from the obligation to submit notifications on

concentration. For instance, the *Aibė* network which, through contractual arrangements, integrates small traders, mostly operating in towns, settlements or small townships, has not submitted a single notification on concentration, nevertheless the CC issued the permission to establish *UAB AVS prekyba*, intended as a network analogous to *Aibė* network, composed of independent undertakings operating on a contractual basis which, due to its centralised purchases, will benefit from larger discounts.

45. The year 2004 was also the year of severe competition among trade networks, which were mostly expanding by building new modern trade centres and attracting foreign investors. The most recent case that the CC issued a permit to *UAB VP Market* to expand its operations through concentration was in 1999, when *UAB VP Market* share in retail trade was 15% only. The intensive competition is also manifested by the fact that in 2004 the turnover of *UAB Norfos mažmena* increased by as much as 48 %, yielding only to *VP Market* and *Iki* trade networks, but overtaking them in terms of growth. In late 2004, the *Iki* network strengthened its position by selling part of its holding to *Citigroup Venture Capital International*, a division of one of the largest world financial groups *Citigroup*. In 2004, the EC authorised the concentration of *Kesko Food Ltd.* and *ICA Baltic AB*, which affected all three Baltic States, and although the degree of concentration in Lithuania increased only slightly, *Rimi* and *UAB Senukų prekyba* trade networks strengthened their financial position and increased their market power. All local trading centres were seeking to gain strength in the enlarged EU and in the preparation for the entry of larger foreign trade networks into the Lithuanian market. The trade network *Lidl* owned by the German *CE Beteiligungs GmbH* is expected to launch its operations in Lithuania in 2005.

46. The trade networks produced a strong leverage effect in respect of enterprises operating in highly concentrated sectors, such as milk processing, beer production, etc.; as a result such enterprises could not use their market power to raise prices, which eventually benefited consumers. The expansion of *UAB VP Market* network into Latvia, Estonia, Romania, Bulgaria, the growth of *Aibė* network in Latvia and Estonia, intentions of *Iki* network to invest in Latvia, have had and will in the future have a tangible impact not only upon the export of goods of Lithuanian producers into these countries, but also upon the import of the goods produced in those countries into Lithuania. Eventually, this will further strengthen competition. The expansion of trade networks in regional areas, combined with the merging of small stores in towns and regional centres with the trade networks *Aibė* or *AVS prekyba* on contractual basis benefited the low-income population of regional areas by making the staple food products more affordable.

47. In some commodity markets the competition lessened as a result of compliance with the requirements of EU legislation. For instance, about 300 enterprises were operating in the meat sector, however, only part of them were found to meet the EU quality requirements, while the others were forced to wind up their operations.

b) *Summary of significant cases*

- Natural gas market

48. Among other cases when the permission for concentration was issued subject to conditions was the case of concentration in the natural gas market. The CC decided to permit *OAO „Gazprom”* to implement, according to the submitted notification, concentration by acquiring a 34% shareholding of *AB Lietuvos dujos* and acquiring in cooperation with *SE Valstybės turto fondas*, *Ruhrgas Energie Beteiligungs AG* and *E.ON Energie AG* joint control over *AB Lietuvos dujos*. The permission was issued subject to the condition that undertakings participating in the concentration will not create any obstacles for gas suppliers holding appropriate licenses and having concluded contracts with buyers in Lithuania, as well as consumers using gas for their own needs to conclude the gas purchase contracts with any gas extraction or supply company, as well as other undertakings extracting natural gas to supply gas to buyers in Lithuania.

- Dairy sector

49. During 2004, like in previous years, concentration processes further continued in the dairy sector (milk purchase and dairy product markets). However, some new tendencies were also noticeable, after certain dairy sector enterprises renewed their activities following a period of suspension in their operations, which eventually caused a rise in milk purchase prices.

50. In January 2004, the CC examined the application by *A. Trumpa, UAB Pieno pramonės investicijų valdymas, UAB Survesta* and *UAB Snavesta* to authorise the acquisition of up to 100 % shareholding of *AB Rokiškio sūris* and acquire the joint control over the target undertaking. Having considered all previous relevant facts and circumstances the CC passed the decision:

51. Permit *A.Trumpa, UAB Pieno pramonės investicijų valdymas, UAB Survesta, UAB Snavesta* to implement individual actions of concentration in accordance with the submitted notification pending the final decision to be passed by the CC.

52. Taking into account the undertaking assumed by *UAB Vinvesta* and with a view to avoiding a possible creation of dominant position in the relevant milk purchase market, the permit to implement individual actions of concentration was issued subject to certain conditions and obligations, including the obligation imposed upon *UAB Vinvesta* to sell all shares of *AB Kelmės pieninė* held thereby.

53. For the purpose of taking the decision account was taken of the fact that the share of *AB Rokiškio sūris* in the milk purchase market was persistently increasing. Although the company was exporting about 70% of its dairy products, the milk purchase prices were steadily decreasing. *AB Rokiškio sūris* group, holding about 40 % of the milk purchase market could cause an overall price undercutting in the entire milk purchase market. Differently from other countries, in Lithuania State support to milk producers was quite insignificant, no support was granted to export of dairy products, and the milk production in Lithuania was twice exceeding its consumption. The average milk purchase prices were nearly twice as low as those in the EU and significantly lower than in the East and Central Europe and the other Baltic States, – Latvia and Estonia.

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

54. In 2004, the CC examined 6 cases concerning the compliance of the provisions of regulations passed by public and local authorities with the requirements of Article 4 of the LC.

55. During 2004, the CC examined 52 cases of the provision of State aid, and numerous draft regulations pertaining to the area of State aid prepared by State authorities and notifications on State aid. In certain cases the CC, acting in accordance with the powers assigned thereto passed the appropriate decisions, in other cases offered its comments and proposals. Resolutions of the CC were passed in respect of 6 cases of State aid. In five cases the intended State aid was approved unconditionally, in one case the CC refused to approve the intended State aid, in 9 cases it was established that the support measures indicated in the notifications did not constitute State aid or the State aid intended is the *de minimis* aid, in respect of which authorisation by the CC is not required.

56. In 2004, the CC examined 12 cases related to the use of misleading or comparative advertising and established several infringements of the Law on Advertising (further – LA). In 9 cases undertakings, acknowledged as having infringed the requirements of the law, were subjected to fines. In 12 cases the CC refused to initiate the investigation in the absence of grounds to assess the advertising as misleading or comparative, and in 3 cases the investigations were discontinued. In certain selected cases preventive

measures were applied in view of small influence of the infringements, – upon a written warning 4 undertakings ceased the use of the misleading advertising. 43 applicants allegedly engaging in unfair competition and using the prohibited misleading or comparative advertising were submitted explanations in writing on the requirements of the LA and the application of the provisions of the Law in practice. The explanations also dealt with the procedure for the submission of the data required for the initiation of an investigation, and the liability for the failure to comply with the requirements of the Law.

57. 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. Over the year the CC assessed 76 draft laws and other legal acts.

58. The CC submitted its comments to the draft Law on the Amendment and Supplement of the Law on the Payment for Agricultural Products; draft Law on Amendment of Art. 30 of the Law on Waste Management, draft Law on Natural Gas, etc.

59. Comments were also made in respect of the Law on the Principles of Property and Business Valuation. In its conclusion the CC underlined that different requirements in respect of foreign and national undertakings performing property valuation is conducive to embedding discrimination and difference in competitive conditions.

60. Comments were submitted to the Law Supplementing Article 17 of the Law on Local Government, and the Resolution of the Government “On the reorganisation of administrative units of the territory of the Republic of Lithuania, reorganisation of the State Registry of Residential Areas and Streets, and the Establishment of the Address Registry of the Republic of Lithuania”. In the opinion of the CC, item 42 of the Regulations of the Address Registry, stipulating that users of the Registry data shall be precluded from transferring the data to third persons without consent of the Registry management enterprise may cause restrictions of competition.

61. Comments were also submitted regarding the draft Amendment of the Resolution No. 534 of 15 April 2002 of the Government “On the Approval of the Regulations of the Cadastre of Immovable Property”. The CC noted that the entirety of the provisions of the above Resolution is likely to create a situation under which undertakings wishing to provide a service of the identifying of data of an immovable property will be forced to pay for obtaining the necessary data, or for the approval of the file of the immovable property cadastre data to its competitor - *SE Registrų centras*, which obtain all necessary data at no charge. In the opinion of the CC, *SE Registrų centras* has a potential to acquire a competitive advantage in respect of other undertakings. Having regard to the above considerations the CC concluded that the conditions of the Regulations create preconditions for the infringements of the principle of freedom of fair competition established in Art. 46 of the Constitution of Lithuania and Art. 4 of the LC. In order to avoid this situation, the undertaking performing the functions of the cadastre manager should not be allowed in a relevant market to act as undertaking competing with those undertakings, goods or services prices of which are affected by cost incurred for obtaining the data managed by the cadastre, registration of such data, etc. *SE Registrų centras* should implement a transparent cost distribution scheme.

62. Some important comments were submitted regarding the draft Law on Water Supply and Wastewater Management. The CC draw the attention of those in charge of the preparation of the draft law, that appointment of one undertaking in the market as proposed in the draft Law and granting thereto exclusive rights to operate for an unlimited period of time, as well as certain other provisions of the law are to be assessed as eliminating competition due to their potential to establish local monopolies and create conditions for abuse of a dominant position. Such provisions are incompatible with the principle of freedom of fair competition established in Art. 46(3) of the Constitution of the Republic of Lithuania. Moreover, it has been noted that where in view of technical, economic or social reasons merging of the

existing water supply undertakings into larger regional companies is necessary or inevitable, and the market could not be liberalised, the preamble of the draft law should provide a detailed and clear substantiation that such regulation of the economic activity serves the general welfare of the people and protects the interests of the consumers (Art. 46(3) and (5) of the Constitution).

IV. Resources of competition authorities

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

a) Annual budget (in your currency and EUR):

LTL 2,505 thousand (EUR 726 thousand) in 2003²

LTL 3,449 thousand (EUR 999 thousand) in 2004

b) Number of employees (person-years):

Economists	34
Lawyers	8
Other professionals	2
Support staff	15
All staff combined	59

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

a) Enforcement against anticompetitive practices: 23

b) Merger review and enforcement: 4

c) Advocacy efforts: 6

3. Period covered by the above information: 2004

² Exchange rate as of April 1, 2003; 1 Euro = 3,4528 LTL