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**English text only**

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

**ANNUAL REPORT ON COMPETITION LAW AND POLICY DEVELOPMENTS IN LITHUANIA**

**-- 2007 --**

*This report is submitted by the Lithuanian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 11-12 June 2008.*

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

1. The Government of the Republic of Lithuania on 24 October 2007 adopted the Resolution No 1140 on Amendment and Supplement of the Law on Competition that was submitted to the Seimas of the Republic of Lithuania for its consideration. The proposed amendments will help the Competition Council more efficiently to perform the tasks assigned to it.

2. Principal novelties proposed to the Law on Competition (hereinafter – LC):

1.the right to inspect private premises;

2.the right to seal the business premises used by undertakings;

3.elaboration of the provisions concerning the assumption of voluntary commitments;

3. Further are specified the new principal aspects proposed to introduce into the LC.

### ***1.1 The right to inspect private premises***

4. Under the currently effective LC officers of the Competition Council (hereinafter – CC) have a right to inspect only the premises used by the undertaking, without, however, the right to enter the private homes of the managers and employees of undertakings. In view of the infringements getting ever more complex and dangerous, a possibility is now being considered to introduce and establish this right of the officers in the law.

5. The officers would be authorised to enter the private premises and perform an inspection therein only subject to the authorisation of the court. Such inspection would be authorised only in the presence of a reasonable suspicion that books and other evidence which may be relevant to prove prohibited agreement or an abuse of a dominant position.

### ***1.2 The right to seal the premises***

6. In the course of the inspections it is not always possible to inspect all relevant documents within one day. Therefore it is very important that the officers are authorised to seal the premises and proceed with the inspection on the next day. The current LC does not provide for this possibility. A new provision giving a right to seal the premises in which the documents are kept for the period and to the extent necessary for the inspection and subject to the court is proposed to introduce in the LC.

### ***1.3 Elaboration of the provisions concerning the assumption of the commitments***

7. The possibility of the undertakings to offer voluntary commitments and on that basis request the CC to terminate its investigation is established in the current LC however, it is regulated only in very general terms. Having regard to the relevant provisions of the European Union (Article 9 of Council Regulation (EC) No. 1/2003), measures have been proposed to provide for the regulation of the procedure in a more detailed terms.

8. It was proposed to supplement the current LC with the new provision giving a possibility to the undertakings concerned not only offer and assume certain commitments not to perform certain actions in respect of which the investigation was initiated but also to offer any other pro-active commitments which would create preconditions to avoid infringements in the future. Such commitments assumed by

undertakings under consideration would become compulsory when they were included into the Resolution of the CC. Besides, the commitments of the undertakings should be made public.

## 2. Enforcement of Competition Laws and Policies

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

#### 2.1.1 Summary of activities of

- Competition authority

9. Acting in accordance with the LC the CC opened 75 new investigations in 2007. Total 84 resolutions were passed on the basis of the LC, including those in respect of investigations started in 2006. The Table below presents the summary data on the scope of the tasks performed by the CC while enforcing the LC in 2007.

	Decisions reached	New cases opened
Total number of cases	104	97
Prohibited agreements	7	9
Abuse of a dominant position	11	3
Concentration	75	78
Restrictive actions of public and local authorities	6	7
Unfair competition	5	-
<b>PROHIBITED AGREEMENTS</b>		
	Horizontal agreements	Vertical agreements
New cases opened	8	1
New investigations <i>ex officio</i>	4	-
New complaints	4	1
Decisions reached	3	4
Complaints rejected	1	4
Prohibitions with fines	2	
<b>ABUSE OF A DOMINANT POSITION</b>		
New cases opened		3
New complaints		3
Decisions reached		11
Complaints rejected		8
Prohibitions with fines		3
<b>CONCENTRATION</b>		
Decisions reached		75
Approvals		72
Conditional approvals		2
Disapproval		1

10. In 2007, the CC imposed fines totalling EUR 138 954 upon undertakings of which – EUR 49 751 for prohibited agreements, and EUR 89 203 for the abuse of a dominant position.

- Courts

11. In year 2007, national courts examined cases related to the undertakings appeals against Decisions passed by the CC in respect of the infringements of the Law on Competition. In 6 cases national courts upheld the CC decisions, in 1 case – the CC decisions were partly amended, and 2 CC decisions were overruled.

2.1.2 *Description of significant cases, including those with international implications:*

12. In all cases performed, the CC took decisions under Article 5 of the LC, since only the relevant markets of Lithuania were concerned.

#### Prohibited agreements

##### Cartel agreement in the energy equipment operation and maintenance market

13. On 15 March 2007, the CC took a decision under Article 5(1) of the LC against 3 companies having participated in the public procurement tenders called by the Maintenance service of educational institutions of the Klaipėda municipality and having concluded the prohibited agreement.

14. The analysis of 15 public procurement tenders organised by the Maintenance service of educational institutions of the Klaipėda municipality showed that 3 companies under consideration, the participants in tenders, - *UAB Lamberta*, *UAB Sobo sistemas* and *UAB Termofora* were coordinating their tenders and assisting each other in price calculations. Such activities to a large extent facilitated the companies to win the tenders. *UAB Lamberta* was a regular winner in tenders for renovation works in the school buildings and *UAB Sobo sistemas* – of pre-school educational institutions. *UAB Termofora* would often offer higher prices thus creating an impression of competition, though it was never awarded a tender allowing other bidders to win. As a result *UAB Lamberta* was awarded two tenders to perform the works in general education schools, and *UAB Sobo sistemas* was announced a winner in tenders for the pre-school educational institutions on 13 occasions.

15. For this infringement the CC imposed fines totalling EUR 41 063 of which EUR 18 181 on *UAB Sobo sistemas*, EUR 20 781 on *UAB Lamberta* and EUR 2 100 on *UAB Termofora*.

##### Cartel agreement in the audit services market

16. On 21 June 2007, the CC took a decision under Article 5(1) of the Presidium of the Lithuanian Chamber of Auditors (LCA) having established the minimum audit rates, minimum labour costs and the minimum hourly rates in respect of the EU structural support funds whereby directly imposing upon other auditors the unjustified rates for the provision of audit services.

17. For this infringement the LCA was fined EUR 8 689 and was obligated to terminate the actions infringing the requirements of the LC.

#### Abuse of a dominant position

##### Actions of Vilnius International Air Port restricting competition

18. On 7 June 2007, the CC took a decision under Article 9 of the LC against *the State Enterprise Vilnius International Airport* dominating in the market for the management and organisational services in *Vilnius International Airport* for abusing its dominant position by making influence in the related market – that for the supply of jet fuels to airplanes.

19. For the infringement the CC fined the company EUR 14 481.

The unfair rates for the lease of communications tunnels

20. On 13 September 2007, the CC took a decision under Article 9 of the LC against *UAB Vilniaus energija* for abusing its dominant position in the market for the lease of the underground technical corridors in Vilnius by applying unfair prices in respect of the lessees.

21. For this infringement the CC fined *AB Vilniaus energija* EUR 51 552 and obligated to cease the actions prohibited by the LC.

## **2.2 Mergers and acquisitions**

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

22. During 2007, the scope of the activity of the CC in the area of concentration control had largely increased: the competition authority was lodged 78 notifications applying for authorisations to implement the concentration of market structures. In 74 instances the CC, by its resolutions authorised the intended concentrations, and in one case the authorisation was refused. In 3 cases the examination of the applications was terminated in response to the requests of the applicants, and in 3 cases the resolutions authorising the concentrations established certain conditions and obligations in respect of the applicant undertakings. In the course of the year the CC was proceeding with the investigation concerning the possible failure to fulfil the obligations and conditions imposed by Resolution of the CC of 27 October 2005 upon *Rautakirja Oy*, and the compliance of the actions of *Rautakirja Oy* (the undertakings controlled thereby) with the requirements of Article 9 of the LC. With a view to ensuring that the existing competitive situation is maintained and any significant damage or irreparable consequences to other undertakings are prevented, the CC, on three individual occasions, extended the application of interim measures upon the merging undertakings.

23. On five occasions, seeking to more expediently authorise applications of the undertaking to implement the concentration and having concluded that the intended deal will not result in a creation or strengthening of a dominant position, on the basis of Article 12(3) of the LC, by its appropriate resolutions the CC authorised the implementation of individual actions of concentration pending the final decision.

### Authorisations to foreign undertakings

24. The number of authorisations issued to foreign undertakings did not change since the previous year -14 (see the Table), of which only in 4 cases the concentration was implemented between the undertakings registered in foreign countries at the same time operating in the Lithuanian commodity markets. The concentrations implemented by foreign undertakings in 9 instances were assessed as horizontal concentrations which significantly increased the degree of concentration in Lithuania. During 2007, 2 Lithuanian-registered undertakings were incorporating joint ventures in foreign States.

### Concentration of Lithuanian entities

25. Concentration among the Lithuanian-registered undertakings was performed in 62 cases, of which on 11 occasions the authorisations were issued to undertakings controlled by foreign capital, and in 4 cases – to undertakings controlled by joint domestic and foreign capital. There has been an obvious increase in the degree of concentration among entities operating in the same markets. In as many as 38 cases concentration was assessed as horizontal.

26. The continued observable trend was the concentration in the residential and commercial immovable property development markets with 12 individual cases reported (13 in 2006). Horizontal concentration was recorded in the trade sector (4 cases), industry – 7, transport and service sector – 7, 6 concentrations were reported in the information technologies, public information and advertising sectors, and 2 in the agricultural products production and purchase sectors.

27. In as many as 18 cases concentration was assessed as vertical, and in 11 cases the CC issued the authorisations for the joining of new undertakings.

28. In 2007, the market observed a trend of large business groups acquiring the mass media sectors – publication of newspaper and magazines, and the TV stations. These trends in the long run may be justifiably expected to create problems regarding the objective public information since this area of activity is subject to competition rules identical to those applicable in other commodity (service) markets.

#### Concentration cases: statistics

29. The data presented in the Table show that the number of concentration notifications remained nearly stable in the course of the several previous years, with a significant increase in 2007 due to the intensified conglomerate (capital) concentrations and still not alleviating concentration processes in the residential and commercial purpose construction and immovable property development markets. Hardly concentrated remains the meat processing sector with about 200 meat processing undertakings operating therein. The milk purchasing and processing sector has been observing the growing significance of undertakings controlled by large or foreign capital, such as *Alytaus pieninė*, *UAB Varėnos pienelis*, *UAB Marijampolės pieno konservai* and others. The major milk processing enterprises have been purchasing increasing amounts of milk in Latvia.

30. According to the data of the Department of Statistics, in 2007, in Lithuania there were about 82,000 operating companies, of which over 700 companies reported the gross annual turnover in excess of EUR 1 448 100, and over 400 undertakings indicated their gross annual turnover of EUR 8 688 600. This means that the undertakings that according to the provisions of the LC could possibly fall within the scope of concentration control accounted for as little as 0.8 percent of all operating undertakings. Therefore in 2007, less than 0.1 percent of total operating Lithuanian companies were subjected to concentration control enforced by the CC.

#### Development of concentration cases

Year	2002	2003	2004	2005	2006	2007
Notifications received	52	54	56	64	61	78
Authorisations issued	48	52	54	59	59	74
Of which the concentration authorisations for undertakings registered in foreign States	15	10	15	22	15	14
Authorisations subject to conditions and obligations	5	6	5	4	1	2
Refusals to issue authorisations						1

31. In 2007, the undertakings paid the total of EUR 92 620 in stamp duty for the examination of concentration notifications.

## 2.2.2 Summary of significant cases

### Road building market

32. On 19 July 2007, the CC refused the authorisation for the concentration intended by *UAB Šiaulių plentas*, *UAB Alkesta* and *AB Kauno tiltai* by incorporating the consortium *Titra* of *AB Kauno tiltai*, and obligated the undertakings participating in the concentration to perform actions ensuring the restoration of the previous situation. This obligation was fulfilled by the undertakings within the time limit established by the Resolution of the CC.

33. The principal activity of *UAB Alkesta*, *AB Kauno tiltai* and *AB Šiaulių plentas* is building and repair of highways and roads, also construction of bridges, viaducts and other major objects. At the time of the examination of the concentration *Alkesta* withdrew from the newly incorporated undertaking. All undertakings participating in the concentration were also operating the asphalt concrete production facilities in different locations in Lithuania and Poland.

34. The analysis of the road building, repair, construction and the associated markets showed *UAB Šiaulių plentas*, *AB Kauno tiltai*, *UAB Alkesta* and *AB Panevėžio keliai* as the major participants of the markets. All other undertakings are notably smaller, and the State enterprises in most cases operate only on the level of an individual municipality or region, and are essentially involved in minor operations related to road maintenance.

35. Furthermore, it was established that virtually no tenders called by the Lithuanian Road Administration for construction of roads and other major objects have ever been awarded to any foreign undertakings, in nearly all cases the winner being the participants of the consortium *Titra* and *AB Panevėžio keliai*. Quite often the undertakings of the group were also participating as sub-contractors in the process of the project execution.

36. Having considered that the participants of the consortium *Titra* included 2 major market participants (each holding 15 percent of the market), that are economically linked to 2 other major market players (that hold, respectively 15 and 10 percent of the market), an assumption seemed justified that such concentration could have created conditions specifically conducive to restriction of competition in road building and repair, construction of bridges and other major objects and the related markets. The situation could facilitate concerting of certain actions (due to the economic relations as mentioned above) when participating in tenders, or jointly performing tasks through the provision to each other subcontracting services. Besides, each of the major undertakings was seeking to strengthen its position in the market by acquiring the smaller undertakings, attracting large and financially sound companies to acquire a participation in the capital of its companies, and participating in the joint management of consortia and other undertakings.

### Communications and television sector

37. *TEO LT, AB* was granted the authorisation to implement the concentration by acquiring up to 100 percent holding in *UAB Nacionalinė skaitmeninė televizija* according to the submitted notification, subject to the obligation within one month to put in place and make operational segregated accounting arrangements for the digital television services.

38. In its notification on concentration *TEO LT, AB* indicated that the principal purpose of the intended concentration was to acquire the business of the rebroadcaster of the terrestrial digital television (DBV-T) and thus integrate the retail and wholesale DBV-T services. *TEO LT, AB* had envisaged the development of associated and technologically intensive businesses including in the area of television signals broadcasting networks and the multi-channel subscriber television broadcasting.

39. When examining this concentration the CC distinguished and defined two markets affected by the concentration: the wholesale market for the television signal transmission in the Republic of Lithuania and the retail subscriber multi-channel television services provision market in the Republic of Lithuania. In terms of the nature of the provided services the two markets are vertically related.

40. At the time the notification was examined the terrestrial digital television (DVB-T) program transmission services in Lithuania were provided by two broadcasters: the *Lithuanian Radio and Television Centre* and *TEO LT, AB*.

41. There were in excess of 50 undertakings operating in the multi-channel subscriber television market in Lithuania.

42. The investigation established just a negligent movement of concentration degree in the relevant retail multi-channel subscriber television services market. However, having considered that *TEO LT, AB* is currently operating a well developed fixed telephone network and the fixed data transmission infrastructure with the Lithuania-wide coverage, furthermore, the company is dominant in the broad band access and the leased line service market, *TEO LT, AB*, in cooperation with other associated undertakings is developing the alternative internet access and data transmission technologies, it was concluded that following the concentration the company will potentially cover a more significant share of the relevant market for the retail pay-TV services. Furthermore, while developing the new digital television services and networks, *TEO LT, AB* with associated undertakings has a potential to strengthen its position in certain service markets, specifically in the markets currently dominated thereby and render the fixed telecommunications, internet access, internet television services and intends in the future to provide the DBV-T services packages. Since *TEO LT, AB* intends to become both the broadcaster of television signals and the rebroadcaster of television programmes, it was absolutely vital to segregate the digital television activities in order to avoid the cross-subsidising of services and any abuse in fixing the rates. For that purpose the retail digital terrestrial television services shall retain the separate income and expenses accounting, in addition to a segregated accounting of income and expenses of all other digital television services including the wholesale terrestrial television broadcasting and the internet television services.

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

43. Article 4 of the LC empowers the CC to examine the conformity of legal acts or other decisions adopted by public and local authorities with the requirements of the LC and to require public and local authorities to amend or revoke legal acts or other decisions restricting competition.

44. During the year 2007, the CC passed 4 decisions in cases concerning restrictive actions of public and local authorities. As an example whereof could be the case regarding the Resolution of the Council of the Vilnius Municipality „On the procurement of services from *UAB Rubicon Eventus*, for the purpose of organising the non-commercial events of non-government and other organisations“ and the subsequently concluded premises lease agreement between the Administration of the Vilnius Municipality and *UAB Rubicon Eventus*. The Administration of the Vilnius Municipality was obligated to terminate the concluded lease agreement, or, alternatively, amend the provisions of the agreement to bring it into line with Article 4 of the LC.

45. In the course of the investigation the CC established that the Council of the Vilnius Municipality, by obligating its Administration every year to procure services from *UAB Rubicon Eventus* for EUR 434 430, thus securing certain regular revenues for a single selected undertaking, created different competition conditions for undertakings operating in the relevant market. The CC duly considered other undertakings operating in the same service market and providing similar services. Therefore, for the purpose of hosting

non-commercial events, the Vilnius City Municipality could lease premises not only from the multi-purpose "Siemens" arena managed by UAB Rubicon Eventus, but likewise, from other undertakings. Since the agreement concerning the procurement of services from UAB Rubicon Eventus is to be assessed as a long-term undertaking (up to 2010), the agreement can possibly have an impact upon other undertakings operating in the same markets. Furthermore, one company had been definitely granted some exceptional terms since it did not have to compete in terms of quality or prices in respect of a certain share of its revenues.

46. The CC, seeking that the newly drafted legislation should in no way restrict or weaken competition, but by all possible means liberalise the market entry possibilities, promote competition among economic entities, intensify competition thus ensuring the maximum possible benefit to consumers, within its competence examined draft laws and other regulations drafted by ministries and other authorities, submitted comments and conclusions to the Seimas and the Government of the Republic of Lithuania on competition implications of such legal acts and regulations.

47. During 2007, the CC actively participated in the legislative process, having analysed and assessed from competition point of view 23 draft laws and their amendments, 24 draft Resolutions of the Government, and 19 other legal acts and regulations.

48. As an example of the CC opinion expressed regarding the proposals of legislation could be the conclusions made in respect to the Draft Law on the Amendment of Article 3 and 8 of the Postal Law prepared by the Ministry of Communications of the Republic of Lithuania. The draft provided for a possibility to compensate the costs related to the delivery of newspapers and magazines to rural areas as a universal postal service. In its comments the CC maintained that any reimbursement of the delivery costs could potentially distort the competitive conditions between the universal service provider who acts under obligation to provide the services in rural areas and other entities rendering the same services. Furthermore, such reimbursement may correspond to the criteria of State aid within the meaning of Article 87(1) of the EC Treaty. Any implementation of the State aid measure provided for in the draft Law should be preceded by the submission of the relevant notification to the European Commission and the authorisation in respect of the measure as provided for in Article 88(3) of the EC Treaty.

49. With a view to fulfilling its functions to enforce the provisions of the Law on Advertising (LA) on misleading and comparative advertising, in 2007 the CC examined 33 cases related to the use of misleading or impermissible comparative advertising. In 16 cases the CC established the infringements and applied sanctions, in 6 cases the CC refused to initiate the investigation and in 5 cases the investigations were terminated without having collected the sufficient evidence of the violation of the LA. Six investigations are still in progress. Having assessed the statements included in public communications and in the view of the negligent character of possible infringements the CC applied preventive measures – on 12 occasions, the advertising providers were warned in writing and ceased the use of misleading advertising. In the view of possible use of misleading and impermissible comparative advertising on 105 occasions applicants were consulted and explained in writing on the requirements of the LA and their application in practise, explained the procedure of submission of the data necessary to start an investigation and the liability for the failure to fulfil the requirements of the LA.

50. In 2007 the CC imposed fines totalling EUR 179 067 upon undertakings for the infringements of the LA.

51. According to Article 48 of the Law on Competition, the CC shall coordinate issues of State aid to which EU State aid rules apply, perform the expert examination of State aid projects, submit conclusions and recommendations to State aid providers, participate in submitting notifications on State aid to the European Commission. Furthermore, the CC manages the Register of State aid and accumulates

information on State aid provided to undertakings, as well as forwards this information to the European Commission and other interested institutions.

52. Within the framework of its functions as an institution coordinating the issues of State aid the CC closely cooperated with State aid providers in the process of drafting State aid notifications to the European Commission, and providing other information about the State aid. Within the accounting period, State aid providers submitted in total 32 notifications on State aid under aid schemes.

53. According to the data available the total State aid provided in Lithuania during the year 2005 amounted to EUR 128.27 million and accounted for 0.54% of the national GDP (at current prices).

#### **4. Resources of competition authority**

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

###### **4.1.1 Annual budget (in your currency and USD)**

- LTL 4.1 million (USD 1.27 million at the currency rate of early 2007) in 2006
- LTL 3.99 million (USD 1.83 million at the currency rate of early 2008) in 2007

###### **4.1.2 Number of employees (person-years):**

- Economists 31
- Lawyers 12
- Other professionals 8
- Support staff 9
- All staff combined 60

###### **4.2 Human resources (person-years) applied to**

- Enforcement against anticompetitive practices 24
- Merger review and enforcement 10
- Advocacy efforts 6

###### **4.3 Period covered by the above information – 2007**

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

Addresses of Annual Reports of the CC in the website – <http://www.konkuren.lt/english/annual/> and of press releases - <http://www.konkuren.lt/english/information/press.htm>