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

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

-- 2008 --

*This report is submitted by the Lithuanian Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 9-11 June 2009.*

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

### ***1.1 Summary of new legal provisions of competition law and related***

1. Several members of the Parliament (hereinafter – the Seimas) and later on the Economic Committee of the Seimas on 20 October, 2008, made a proposal to amend the Law on Competition of the Republic of Lithuania (hereinafter – the LC), Art. 3 item 11, regarding the definition of the dominant position.

2. In the proposal it is offered to amend the presumption of market share as regards the undertakings engaged in retail trade.

3. At present the voidable presumption provided for in the Art. 3 item 11 reads as follows:

4. “**Dominant position**” means the position of one or more undertakings in the relevant market directly facing no competition or enabling it to make unilateral decisive influence in such relevant market by effectively restricting competition. Unless proved otherwise, the undertaking with the market share of not less than 40% shall be considered to have a dominant position in the relevant market. Unless proved otherwise, each of a group of three or a smaller number of undertakings with the largest shares of the relevant market, jointly holding 70% or more of the relevant market shall be considered to enjoy a dominant position.

5. The intention of the amendment is to exclude undertakings engaged in retail trade from applicability of the abovementioned market share, and set lower bar for the dominant position to be established, accordingly, the market share should be not less than 30% when one undertaking is concerned, and, unless proved otherwise, each of a group of three or a smaller number of undertakings with the largest shares of the relevant market, jointly holding 55% or more of the relevant market shall be considered to enjoy a dominant position.

### ***1.2 Other relevant measures, including new guidelines***

#### ***1.2.1 Leniency system***

6. Having considered the practice exercised and the leniency program model developed by the EC, provisions of the LC, other legal acts and its own experience the Competition Council of the Republic of Lithuania (hereinafter – the CC) approved the “Rules on immunity from fines and reduction of the fines for participants of prohibited agreements”. The Rules govern the procedure for the exemption from fines of participants of agreements prohibited by Article 5 of the LC and Article 81 of the EC Treaty. The Rules explicitly identify the conditions in the presence whereof an undertaking may be exempted from a fine, or a fine imposed on it may be reduced; the Rules also govern in detail the procedure for acceptance, examination of the applications and the passing of the respective resolutions. With a view to ensuring a correct enforcement of the common leniency and the fine reduction policy in the entire EU in the cases covered by Article 81 of the EC Treaty, the Rules provide for a possibility for undertakings to file with the CC a simplified application concerning the exemption from a fine thus ensuring an equivalent protection of the interests of the undertakings supplying such applications in all EU Member States. The Rules have been adopted by the CC with a view to ensuring the compatibility of the national legislation and the EU competition law in the area of the formation of the leniency and fine reduction policy.

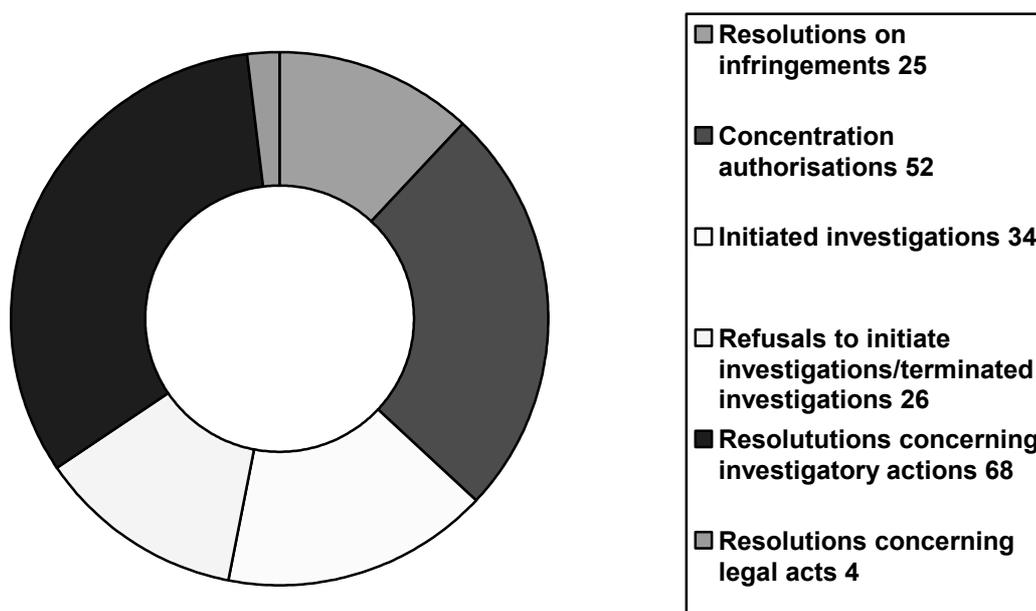
## 2. Enforcement of competition laws and policies

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

#### 2.1.1 *Summary of activities of*

- Competition authorities

In 2008, the CC passed 209 Resolutions:



As regards the actions against anticompetitive practices, the CC investigated 10 cases in accordance with Article 5 of the LC concerning prohibited agreements (cartels): as a result, the CC established 3 infringements and imposed sanctions upon the infringing undertakings, 3 investigations were terminated, in 4 instances the CC refused to initiate the investigations.

In 2008, fines of LTL 2,427,000 (EUR 702,907) imposed for the proven infringements

In 2008, the CC investigated 7 cases in accordance with Article 9 of the LC concerning abuse of a dominant position: as a result, the CC established 1 infringement and imposed a fine upon the infringing undertaking, 1 investigation was terminated, in 5 instances the CC refused to initiate the investigations.

- Courts

In year 2008, 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 16 cases national courts upheld the CC decisions, in 3 cases – the CC decisions were partly amended, and 2 CC decisions were overruled (see the Table).

Judicial examination of Resolutions passed by the CC

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Total cases</b>	17	24	33	40
<b>Judicial decisions</b>	9	12	9	21
<b>resolutions upheld</b>	3	7	6	16
<b>partly amended</b>	4	3	1	3
<b>overruled</b>	1	2	2	2
<b>Cases of judicial examination in process</b>	8	12	24	19

The most important case of the court is provided for below.

Concerning a prohibition to exchange information

The CC concluded that undertakings engaged in the milk purchase and processing business – *AB Kelmės pieninė, UAB Kelmės pieno centras, UAB Marijampolės pieno konservai, UAB Modest, AB Pieno žvaigždės, AB Rokiškio sūris* and *AB Vilkyškių pieninė* and the Lithuanian Milk Producers' Association *Pieno centras* infringed Article 5(1) of the LC and imposed the pecuniary fines upon the infringing undertakings (28-02-2008, Resolution No. 2S-3).

*UAB Marijampolės pieno konservai* and *AB Rokiškio sūris* disagreeing with Resolution of the CC appealed it to the Vilnius Regional Administrative Court. The Court, in its ruling of 21 August 2008 supported the conclusions of the CC regarding the structures of the relevant markets, nature of information exchanged and restriction of competition. However, the undertakings objected the ruling of the Court and appealed to the Supreme Administrative Court of Lithuania (hereinafter – the SACL). The case is still pending the examination at the SACL.

The SACL is currently considering another case of a similar character related to the Resolution of the CC which recognised that a number of undertakings engaged in the paper trading activity – *UAB Antalis Lietuva, UAB Libra Vitalis, UAB Lukas, UAB MAP Lietuva, UAB Papyrus Distribution* and *UAB Schneidersöhne Baltija* by exchanging, on a quarterly basis, the information of confidential character about the market shares held in the paper market and the amounts of paper sales, restricted competition and thus infringed Article 5(1) of the LC and Article 81(1) of the EC Treaty (26-06-2008, Resolution No. 2S-13). As noted above, the SACL, in connection to the circumstances related to the case, decided to appeal to the European Commission asking for its opinion. The Commission's opinion has not yet been received.

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

- Prohibited agreements

#### Restriction of competition in the milk purchase and processing market

For the exchange in information of confidential nature on the volumes of the purchased raw milk, also the volumes of the individual kinds of dairy products produced and marketed among themselves and through third persons, the CC imposed the fines in the amount of LTL 2,236,000 (EUR 647,590) upon the following undertakings: AB Kelmės pieninė, UAB Kelmės pieno centras, UAB Marijampolės pieno konservai, UAB Modest, AB Pieno žvaigždės, AB Rokiškio sūris, AB Žemaitijos pienas and AB Vilkyškių pieninė. The investigation established that the undertakings had been, through the Lithuanian Milk Producers' Association Pieno centras on a monthly basis exchanging the information that enabled them to establish the volumes of sale and production of a specific undertaking, as well as the market share held by each undertaking, and, furthermore, the development of these indicators. Such agreements on exchange in information of confidential character significantly restricted competition between the undertakings, as they unavoidably lost some of their independence in taking decisions concerning their behaviours in the market affected by the information received from their competitors, and being aware that their competitors would receive the analogous information about them, as a result, significantly reducing any competition pressure in respect of each other.

When assessing the gravity of the infringement of the LC and the role of each undertaking in the committing of the infringement, as well as establishing the appropriate fines, the CC took into consideration some of the relevant circumstances. First, the established prohibited agreement in terms of its damage to competition and consumers was not as detrimental as classical cartels where undertakings conclude agreements on fixing prices for certain selected goods or the sharing a product market on territorial basis. The CC also duly considered the mitigating circumstances that significantly facilitated the proof of the infringement of the LC. Some of the undertakings – AB Pieno žvaigždės, AB Rokiškio sūris, AB Vilkyškių pieninė and UAB Modest acknowledged the facts established in the course of the investigation to the effect that through the Lithuanian Milk Producers' Association they had been exchanging with other members of the Association the confidential information on the volumes of the raw materials purchased and the sales of certain selected dairy products, i.e. restricted competition in the relevant raw milk purchase and dairy product markets in Lithuania, and thus infringed the LC. Also the termination of the infringement by the undertakings in the course of the investigation was considered as an alleviating circumstance.

28-02-2008, CC Resolution No. 2S-3

#### Agreements in public procurement tenders

For the agreement to submit the coordinated tender proposals for the public tender concerning the provision of the services related to implementation of the projects funded from the structural funds UAB Eurointegrecijos projektai, UAB EIP Vilnius, UAB EIP Kaunas, UAB Statybos strategija, and UAB Finsida were sanctioned in total for LTL 159,000 (EUR 46,049). These undertakings were frequent participants in the public procurement tenders for the drawing up of the projects to receive the financial support from the EU structural funds in accordance with a number of the measures under the Single Programming Document for Lithuania. The undertakings concluded the prohibited agreements by submitting the agreed tender prices and establishing the lowest price to be submitted by one of the competitors in three public

procurement tenders. In the course of the investigation all undertakings suspected confessed they had committed such infringements. When imposing the sanctions the CC considered that such agreed actions in respect of the public tenders in terms of the gravity of the infringement constituted severe infringements. While assessing other circumstances account was taken of the impact of individual undertakings upon the infringement – UAB EIP Vilnius and UAB EIP Kaunas were acknowledged the initiators of the prohibited agreements. On the other hand, the CC considered the circumstances that alleviated the liability – UAB EIP Vilnius, UAB EIP Kaunas, UAB Finsida and UAB Statybų strategija submitted their acknowledgements on participation in the infringement. The liability of some of the undertakings concerned was aggravated by their previous infringements – UAB Eurointegracijos projektai had been sanctioned for the infringement of the LC in 2006.

10-07-2008, CC Resolution No. 2S-16.

- Abuse of dominance

#### Actions of the Vilnius International Airport

Having completed the investigation started on the basis of the appeal by UAB Naftelf the State enterprise Vilnius International Airport (the airport) was sanctioned to LTL 171,000 (EUR 49,525) for the abuse of its dominant position by preventing UAB Naftelf from entering the markets for the supply of the aviation gasoline and jet fuels to air planes in the territory of the Vilnius airport. The Vilnius International Airport was obligated to terminate the illegal activities, i.e., not later than within 3 months to provide the possibility for UAB Naftelf to enter the market for the supply of aviation gasoline and jet fuels in the territory of the airport. Although UAB Naftelf had on more than one occasion applied to the Vilnius International Airport administration, the applicant was not provided any possibility to compete with the Airport and RSS UAB MOTORS in the market for the supply of aviation gasoline and jet fuels to airplanes in the Vilnius International Airport. The investigation established that the abuse of the dominant position could possibly affect trade among the Member States, therefore, it constituted an infringement of Article 82 of the EC Treaty. In view of the circumstances the infringement was assessed as severe, as having considered that it had lasted since 2006 until the completion of the investigation of the case, the fine was increased by 10 percent for a year of the duration of the infringement.

06-11--2008, CC Resolution No. 2S-23.

## **2.2 Mergers and acquisitions**

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

7. In 2008, the CC was lodged 54 notifications applying for authorisations to implement the concentration of market structures. In 50 instances the CC, by its resolutions authorised the intended concentrations, and in 2 cases the applicants were authorised to perform individual actions of concentration.

8. In the year reviewed in 2 cases the CC imposed economic sanctions for the delayed notification on concentration and the failure to fulfill the terms and obligations attached to concentration as imposed by the CC. The total amount of the sanctions imposed – LTL 170,000 (EUR 49,235).

9. The undertakings paid in total LTL 233,400 (EUR 67,597) in Stamp duty charge for the examination by the CC of the submitted concentration notifications.

- Development of concentration cases

<b>Year</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Notifications received</b>	56	64	61	78	54
<b>Authorisations issued</b>	54	59	59	74	52
<b>Of which the concentration authorisations for undertakings registered in foreign States</b>	15	22	15	14	13
<b>Authorisations subject to conditions and obligations</b>	5	4	1	2	4
<b>Refusals to issue authorisations</b>				1	

- Overview of concentration cases

Undertakings have been increasingly closely following actions of their competitors, as well as validity of the CC decisions, conditions and obligations imposed by the CC upon the undertakings in respect of a concentration authorisations (4 such cases in 2008). In one of such cases the CC approved the notification on intended concentration submitted by undertakings while imposing the obligations to refrain from using the voting rights, the right of the shareholders to receive the information concerned and other documents, related to the strategic decisions in the activities of the competitor.

With a view to more expediently addressing the applications of the undertakings to implement concentration transactions and having considered that the intended concentrations will not create any dominant position or significantly weaken competition, in two cases the Resolutions of the CC authorised individual concentration actions pending the taking of the final decisions.

In 2008, there had not been a single case of appeal of a resolution of the CC on concentration to courts. In four instances the concentration cases were or will be, directly or indirectly, examined by the Constitutional Court of the Republic of Lithuania.

In 2008, the number of authorisations issued by the CC to foreign undertakings remained unchanged. The concentrations implemented by foreign undertakings in 10 instances were assessed as horizontal concentrations which significantly increased the degree of concentration in Lithuania.

Concentration among the Lithuanian-registered undertakings was performed in 37 cases, of which on 8 occasions the authorisations were issued to undertakings controlled by foreign capital, and in 5 cases – to undertakings controlled by joint domestic and foreign capital. However, the number of concentration deals among the undertakings operating in the same markets was somewhat smaller, as only in 21 cases concentration was assessed as horizontal, as opposed to 38 in 2007.

- Concentration notifications: change in nature

The observable trend was the decline in concentration in the residential and commercial immovable property development markets with – 3 individual cases reported (13 in 2007). Horizontal concentration was not infrequent in trade sector (7 cases), industry (5), information technologies, public information and advertising sector – 2 cases, agricultural production and

purchase sector – 3 cases reported. In 4 cases concentration was assessed as vertical, in 2 cases the CC approved the establishment of new undertakings, and in many as 10 cases the concentration deals were assessed as conglomerate.

For the past several years the pattern of the development of concentration notifications was hardly changing. However, in 2008, the number of concentration notifications decreased, mostly in view of the strengthening recession in the market of construction of residential and commercial purpose and development of real estate. Essentially no concentration processes were taking place in the food processing sector. Hardly concentrated remains the meat processing sector with about 200 meat processing undertakings operating therein, where there was not a single case of acquisition or merger deal. The CC was continuously holding back the merger transactions among the major milk processing undertakings. In the food industry sector both the competition among the undertakings, and the competitiveness in general are to a very significant extent affected by the policies pursued by the Member States and the EU in the sector.

### 2.2.2 *Summary of significant cases:*

- Enforcement of obligations imposed

In November 2008, Rautakirja OY was subjected to LTL 70,000 (EUR 20,273) fine for the infringement of certain obligations and conditions attached to the concentration authorisation. Any obligations and conditions established by the CC as attached to the concentration authorisation are obligatory to undertakings participating in any concentration deals. Any failure to fulfil such obligations is considered to constitute an infringement of the LC.

A Finnish company Rautakirja OY is a principal distributor of press in the Lithuanian market that operates through its subsidiary companies the Vilnius agency of UAB Lietuvos spauda and UAB Impress Teva. With a view to preventing the market leaders to abuse their dominance in the market the CC imposed certain operating conditions upon the companies (“market behaviour”).

In December 2007, the CC when granting the authorisation to Rautakirja Oy to acquire 100 percent of the shares of UAB Impress Teva imposed conditions and obligations with a view to controlling the performance of Rautarkirja Oy in the wholesale publication distribution market and ensuring that the operations of these undertakings comply with competition rules. When passing this decision the CC took duly into account its previous experience in addressing the competition problems in the press distribution market and established a function of an independent observer. The independent observer was charged with a supervisory function designed to ensure the efficiency of the enforcement of the obligations imposed by the CC and facilitate the settlement of disputes between publishers, publishing houses, press distributors and UAB Impress Teva and/or the Vilnius agency of UAB Lietuvos spauda. The important consideration concerned a prohibition in the course of dispute resolution to terminate the then effective distribution agreements. The independent observer is obliged, in an established procedure, to draw up reports on the course of the fulfilment of the obligations, the actions taken and the course of dispute settlement and, where so requested by the publication suppliers, provide the requested information to them in writing.

Rautarkirja Oy was subjected to a fine for the failure to fulfil the obligations and conditions attached to the concentration authorisation in relation to the appointment of the observer. In the context of the settlement of the disputes between the publishers and the distributors the active and timely involvement and the proper fulfilment of the functions assigned to the independent observer UAB KPMG Baltics are of vital significance.

11-11--2008, CC Resolution No. 2S-22.

- Obligation to remove the outcomes of concentration

When passing the resolution concerning the authorisation to Maxima LT, UAB to implement concentration the CC concluded that in Vilnius, Klaipėda and Marijampolė geographic markets Maxima LT, UAB had a sufficiently large market share. With an increase in the market share of Maxima LT, UAB as a result of concentration (increase up to 5 percent), a dominant position could have been created in these markets or competition in the retail markets for foodstuff trade could have been significantly weakened. Furthermore, it has been established that although the possibilities of any new market participant to enter the retail food product market is neither directly nor implicitly restricted by any statutory requirements, the entry is impeded by the administrative restrictions in respect of the construction of new trade centres (shops), significantly increased prices for the lease of trading space, etc. In the course of the past 5 years there has not been a single significant entry into the market (note, LIDL had abandoned its intentions to enter the retail food product market). Furthermore, any new market participants are discouraged from entering the market by virtue of the market power exercised by UAB Maxima LT in their negotiations with suppliers, specifically the food producers in Lithuania who are conventionally focusing on food product production for domestic market and therefore are able to negotiate more favourable terms for the supply of their products to the trading centres. The CC obligated UAB Maxima LT to remove the consequences of concentration in Klaipėda and Vilnius city and Marijampolė municipalities – extinguish the lease agreements for the commercial premises in which UAB Maxima LT has been conducting its retail trade activities in food products and house-wares, or to transfer the ownership rights in respect of such premises.

When passing any decisions concerning specific concentrations the CC is not entitled to impose any obligations that would in any way go beyond an objective to address the specific competition problems caused by market concentration. Therefore, the obligations imposed by the CC in the municipalities concerned were considered sufficient for the purpose of responding to competition problems in the relevant markets as they facilitated the reduction in the level of concentration down to the previous level in these local markets.

18-09-2008, CC Resolution No. 2S-118.

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

10. 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.

11. The presence and the development of the conditions for effective competition depend not only upon the CC, but to an equal extent upon the concerted actions of all institutions, since not infrequently institutions and authorities pass decisions that obviously contradict the LC, in one way or another distort competition, or the resolutions that are beneficial to certain undertakings, business sector, however, disadvantageous in respect of consumers. This has been clearly supported by the observation that in 2008 the number of investigations by the CC acting in accordance with Article 4 of the LC concerning possible restrictions of competition caused by individual provisions of the legal acts and regulations passed by public authorities was larger than in previous years.

12. In 2008, the CC examined 19 cases in accordance with the requirements of Article 4 of the LC, infringements were established in 9 cases and in 10 cases the authority refused to initiate investigations.

13. Several examples of most important cases are provided for below:

### ***3.1 As concerns the Vilnius City Municipality***

14. The decision of the Council of the Vilnius City Municipality to approve the agreement between the Vilnius City Municipality and *UAB JCDecaux Lietuva* and the agreement concerning the advertising on outdoor installations for the events related to the “Vilnius – European capital of culture 2009” campaign in foreign States acknowledged as infringing Article 4 of the LC. The agreement was concluded without having arranged a tender procedure, thus failing to ensure a competitive environment for economic activity and equal possibilities for other undertakings to operate on equal terms in the relevant market for the supply and the installation of the equipment for outdoor advertising in Vilnius; the arrangement was put in place having eliminated all offers submitted by other undertakings. Under the agreement the Municipality, in exchange for the possibility to advertise in the stands managed by *UAB JCDecaux Lietuva* had granted the company a right to arrange and maintain the advertising boards on bridges and viaducts having disregarded that this could equally be performed by other companies operating in the relevant market. The agreement also provided for the extension of the permits for a period of 10 years thus granting privileges to a single company and discriminating other companies. 12-06-2008, CC Resolution No. 2S-12.

15. The Resolution of the Council of the Vilnius City Municipality approved a condition of the tender for the selection of the public waste management service provider establishing that any waste manager intending to provide waste management services (collection, transporting and transfer for recycling or disposal) in the territory of the Vilnius City Municipality must be a holder of the licence for hazardous waste management. This condition of the tender was recognised as contradicting Article 4 of the LC. The requirement to hold a licence for hazardous waste management established as a condition of the tender for municipal waste management services discriminated the undertakings not holding such licence. The management of non-hazardous waste has been groundlessly linked to the management of hazardous waste – there is no statutory requirement for all waste managers to be holders of hazardous waste management licence, as the latter activity is subject to specific requirements. The requirement to be a holder of the licence concerned prevents other undertakings from entering and operating in the municipal waste management market of the city of Vilnius. 05-06-2008, CC Resolution No. 2S-11.

### ***3.2 As regards legal acts of public authorities***

#### ***3.2.1 Order of the Minister of Health***

16. Certain provisions of the Order for the charging for health services approved by the Minister of Health applicable to specialised in-house services were recognised as contradicting Article 4 of the LC. When allocating the funds of the Mandatory Health Insurance Fund the Kaunas Patients' Fund acted in accordance with the provisions of the Order approved by the Minister of Health, i.e., the funds were allocated in advance on the basis of the established criteria specifying the amounts to be allocated to a specific institution. Such up-front allocation of funds, however, caused discrimination of some health care institutions and created different competition terms for undertakings providing certain health care services. 13-03-2008, CC Resolution No. 2S-4.

#### ***3.2.2 Legal acts passed by the Ministry of Agriculture and the Fisheries Department***

17. Certain provisions of the regulations and decisions passed by the Ministry of Agriculture and the Fisheries Department under the Ministry of Agriculture governing fishing operations in the Baltic Sea were recognised as contradictory to the requirements of Article 4 of the LC.

18. The clause of the Rules on the Allocation of Fishing quotas in the Baltic Sea approved by the Ministry of Agriculture provided that the new fishing resource users in the Baltic Sea or the coastal areas of the Baltic Sea could receive the requested fishing quotas only subject to the approval by more than half of the companies fishing in those water bodies or the organisations representing them. This significantly restricted the possibilities of any new undertakings to enter the market and privileged those already operating in the market. Furthermore, the linking of a fishing vessel segment with the body water segment and the segmentation of the water body into individual sections allocated to a specific coastal fishing undertaking definitely caused differences in the operating conditions for fishing undertakings. *10-07-2008, CC Resolution No. 2S-17.*

### **3.3 *Harmonization of legal acts***

19. During 2008, the CC was, already traditionally, an active participant in the legislative process; the Authority analysed and assessed from competition law perspective 23 draft laws and their amendments, 32 draft Resolutions of the Government, and 3 other legal acts and regulations. The CC submitted comments concerning the draft Law on the amendment of the Law on Audit, pointing out that the Law should be avoiding the evaluation of the audit service price as an independent indicator of the audit service quality, or a basis to impose disciplinary sanctions. In the opinion of the CC such provisions of the Law could serve as an incentive to auditors and the organisations of audit companies to draft guidelines concerning the rates for audit services and prompt auditors to concert their actions, and groundlessly increase their rates which would eventually harm consumer interests. This position of the CC was equally supported by the previous experience whereby following the completed investigation the CC acknowledged that the Lithuanian Court of Auditors had infringed the requirements of Article 5(1)(1) of the LC, by having approved the recommended rates for the costs of an auditor's engagement, and the minimum hourly rates. Following the comments by the CC the provisions concerned were removed from the draft Law.

20. The CC submitted its conclusions concerning the draft Law on the amendment of Articles 3, 4, 5, 6 and 13 of the Law on State Stocks of Petroleum Products and Crude Oil. The provisions of the draft Law sought to provide for an exclusively State budgetary funding for the accumulation and management of petroleum product stocks, exempting the undertakings from the duty to accumulate an established share of the stocks at own account. The CC noticed that any costs incurred in relation to the accumulation of petroleum could potentially affect the price of oil products, however, the delegation to the State of the duty to finance the accumulation and management of the entire stockpile would not necessarily result in any reduction in the consumer prices; the incentives for the prices to decline are triggered by competition (its level) in the market. For that reason it is important to take all possible measures to enhance competition by removing any possible market entry barriers.

### **3.4 *Opinions presented to the Constitutional Court***

21. In 2008, the CC, acting within the limits of its competence, on four occasions submitted its opinions to the Constitutional Court concerning the cases considered by the Court. The principal issues on which the CC submitted its position were related to the energy supply sector and the natural gas sector. In the opinion of the CC the principal goal of competition is to ensure an efficient use of certain resources and enhance the consumer welfare. However, in certain cases such objectives may be attained even in the presence of certain restriction of activities. Both the supply of natural gas and the supply of electric energy are very particular areas of activity in which certain restrictions of activities of undertakings, or even the authorisation to operate under exclusive rights may be justified in view of ensuring the efficient provision of the services concerned and, at the same time, the protection of consumer interests. On the other hand, in the opinion of the CC, when granting certain rights to a single undertaking, measures must be taken to ensure equal possibilities to all undertakings interested to compete for being granted the rights concerned.

However, in certain cases a restriction of the principle of freedom of fair competition may be justified in view of the peculiarities of a specific situation (e.g., in certain cases granting of exclusive rights is necessary in order to ensure effective conduct of certain activities which cannot be ensured under the conditions of unrestricted competition among the undertakings).

#### **4. Resources of competition authorities**

##### **4.1 Recourses overall (current number and change over previous year)**

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

- LTL 3,99 million (USD 1,83 or EUR 1,15 million at the currency rate of early 2008) in 2007,
- LTL 4,59 million (USD 1,74 or EUR 1,33 million at the currency rate of early 2009) in 2008.

###### **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-year) applied to**

- Enforcement against anticompetitive practices – 31
- Merger review and enforcement – 10
- Advocacy efforts – 6

##### **4.3 Period covered by the above information – 2008**

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

22. Addresses of Annual Reports of the CC in the website (report for the year 2008 not available yet) – <http://www.konkuren.lt/en/index.php?show=anual> and of press releases - [http://www.konkuren.lt/en/index.php?show=pr\\_metai&metai=2008](http://www.konkuren.lt/en/index.php?show=pr_metai&metai=2008)

23. A market research is provided for below as well.

##### **5.1 Market research**

###### **5.1.1 Retail trade networks**

24. For the purpose of the implementation of the obligations by the Government of the Republic of Lithuania in 2008, the CC carried out the analysis of the market in retail trade in food products whereby the competition authority established that in 2004-2007 the market share of the four major trade networks

in the market increased from 61.9 to 72.1 percent. *Maxima LT, UAB* was the leader in terms of strengthening its market position in the period concerned having increased its market share from 31.1 to 35.2 percent, *IKI* – from 14.1 to 17.1 percent, *RIMI* – from 6.2 to 8.1 percent, *NORFA* – from 10.5 to 11.7 percent. The assessment of the market position held by the major trade networks in municipal territories that from the consumer view point may be defined as local market yielded an observation that in 2007, the operating strategy of the networks was mainly targeting expansion in regional centres and major settlements. In 2007, in five major cities of Lithuania – Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys the major trade networks were owners of 47 percent of all stores managed thereby, while in 2006 – 50 percent. In 2007, in major cities there has been an observable trend of the increase in the number of independent stores, or those run by smaller trade networks or other structures – the number of such stores increased from 1785 to 1828.

25. The trade networks are distinguished from other stores not only by a large range of merchandise offered (from 30,000 to 60,000 product names); such networks offer a range of other advantages: the stores are located in venues convenient for reaching by vehicles, the networks as well as other undertakings operating in the premises of the networks offer a wide range of additional services. Therefore buyers can not only acquire the goods they need, but also avail themselves of a number of additional services, as well as spend their leisure time – this all in combination makes the trade networks a place of major attraction for consumers. For all reasons above both producers and suppliers are interested in supplying their merchandise to such stores. The major suppliers of food products to such trade networks are Lithuanian producers and suppliers: 92-97 percent of bread and bakery products, milk, meat and fish products, confectionary and pastry products, and 34-70 percent of fruits and vegetables are supplied to the network stores by domestic suppliers. These factors grant to retailers some material advantage in negotiations with producers and suppliers.

26. In the retail trade sector there is a material bilateral dependence between the product sale market and the product purchase market. The strengthening concentration in the retail trade market causes an increase in the buyer's purchasing power. The increasing purchasing power is an incentive to retailers to impose upon the suppliers smaller prices on the goods, also to require some economically ungrounded discounts and a range of payments, i.e., establish unfair supply terms. By making appropriate inquiries among the major meat product manufacturers, poultry farms, bread and bakery producers who are the major suppliers of the products to the trade networks, the CC sought to identify the terms imposed upon the suppliers by the networks that, in the opinion of the undertakings, are unfair, restricting their business possibilities or are otherwise discriminating. In their responses the undertakings were in most cases referring to the extensively long settlement for the produce supplied, inadequate fines and sanctions for any failure to supply the products that cannot be justified by any business logics, significant marketing charges for trading in the networks and the required discounts.

27. The impact of the major trade networks upon competition in the retail trade sector can be assessed from two different view points: first, from the point of view of smaller trade undertakings that operate independently from the major networks, and second – from the consumers' perspective. Due to their extensive capacities major trade networks acquire a significant advantage in respect of the smaller trade undertakings both in terms of consumers; they also have significant advantages in their negotiations with the suppliers concerning production prices, discounts and other supply terms. Due to the more favourable terms of merchandise supply the networks are enabled to ensure higher profit margins or fix lower sale prices which eventually grant them significant competitive advantage in respect of smaller retailers. On the other hand, the capacities operated by and facilities offered by trading networks are highly beneficial to consumers who can purchase all their necessities in a single place, are offered a wider assortment of merchandise; in a number of cases the prices of a number of products are smaller than those in smaller shops.