



THE COMPETITION COUNCIL OF THE REPUBLIC OF LITHUANIA



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ANNUAL REPORT 2004

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Prepared by V. Aleksienė, A. Jankauskas, P. Kvietkauskienė
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FOREWORD

The year 2004 for every resident of Lithuania, as well as the Competition Council, was the year of Lithuania's entry into the European Union. The prominent changes related to this extremely important event in the history of the State are apparent not only from the point of view of the State's economic and business environment, but also in a number of other areas of activity. Enlarged markets and changes in economic conditions have created new grounds for the strengthening of competition. At the same time, the Competition Council, a public authority in charge of the enforcement of fair competition in Lithuania, has been playing an increasing role in the enforcement of the new competition rules of European Union.

The present Annual report has been designed to present an overall picture of the year's major attainments with a view to ensuring efficient competition, which eventually has an impact on prices, stimulates improvement in quality and diversification of the product range. Competition is a driving force in efforts to better meet customer needs, which contributes significantly to the enhancement of the public welfare. The adoption of amendments to the Law on Competition and other important legal acts, as well as the implementation of other measures, have been part of the efforts targeted to attain the objectives of efficient competition policy.

The analysis presented in the Report 2004 introduces to the reader the results of the activities of the Institution, its decisions passed following the relevant investigations, and the nature of infringements disclosed in accordance with the requirements of the Law on Competition and the Law on Advertising. In organising its activities the Competition Council has been guided to a very large extent by international practice. When assessing the accomplishments of the Competition Council during the year that passed and with a view to outlining the most important targets for the future, I would like to present a few theses specifically inherent to the operational strategy of the institution, the efficient implementation whereof is to help the Institution accomplish its mission.

Supervision of competition in the common EU area.
The wide-ranging preparatory activities focusing efforts on the transposition and adaptation of the EU requirements in the area of competition have created a solid basis for the continuity and modernisation of activities after the accession of Lithuania to the EU in May 2004. Joining the EU Common Market has brought about new challenges both for undertakings which need to comply with the new rules on trade with EU Member States and third countries, and, more importantly, upon the authorities in charge of overseeing competition in the Common Market. Since EU

competition rules and provisions of Articles 81 and 82 of the Treaty establishing the European Community started to apply directly and the relevant powers were delegated to the institution through the amendments of the Law on Competition, the Competition Council has become a partner to the European Commission as the authority to apply to above provisions has been vested both upon our Institution and the Lithuanian courts.

The relevance of the new regulations. We have been successfully operating in accordance with the new regulation effective as of May 2004, which has defined the terms of and procedures for the application of competition rules and laid down the foundation for the improvement of the supervision system. The liberalisation of control whereby undertakings were released from the obligation to apply to the Competition Council concerning the obligatory authorisations for individual exemptions, and were allowed to decide themselves whether the agreements concluded may fall into the category of prohibited agreements, or may qualify for an exemption, contributed significantly to the promotion of mutual confidence and simplified the procedures without compromising the level of responsibility. Other provisions of the regulation defining changes in the assessment of enterprise concentration prompted a more comprehensive assessment of the impact of enterprise merger upon market conditions in cases where the market share is below 40%.

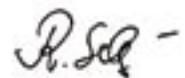
Analysis of competition processes. While conducting investigations it extremely important not limit the assessment to the existing situation; projections of possible development trends in the markets concerned make it possible to anticipate obstacles for competition and ensure sufficient preparedness to protect public interests. The enforcement of the Law on Competition, whose provisions have been amended to bring it into line with EU competition rules, provided a basis for somewhat more flexible investigation proceedings concerning possible infringements of the Law on Competition. Furthermore, undertakings have already benefited from the possibility to recourse to the Directorate-General for Competition for the protection of their rights in cases where an alleged infringement affects a territory geographically larger than Lithuania.

Objectivity in imposing economic sanctions. The amendment to the Law on Competition related to the system of sanctions necessitated the drafting of criteria which would facilitate the most objective imposition of sanctions for the infringements of the Law on Competition all related circumstances duly taken into consideration. The Law on Competition provides for the maximum amount of the sanction only – up to 10% of the gross annual income of the defaulting undertaking. The Rules on the determination of the amount of fines were approved by the Resolution of the Government of the Republic of Lithuania in late 2004. The approach underlying the Rules is very close to the methodology used by the European Commission in respect of fines for infringements of Articles 81 and 82 of the Treaty. The

imposition of fines governed by the approved procedure, as well as the regulated methodology for the determination of fines, will enable the authorities to thoroughly assess the impact of the actions of the undertaking and qualify the peculiarities of the infringement, taking into account all circumstances extenuating or aggravating the liability of the undertaking.

Quality of investigations conducted by CC. The quality of investigations conducted by the Competition Council becomes especially apparent in cases when undertakings decide to exercise their right to appeal to court a decision taken by the institution. The professional skills of specialists of the institution to collect the required evidence and correctly employ the necessary investigation proceedings and draw up duly grounded findings and conclusions have been confirmed on numerous occasions by judicial authorities, – the courts have approved and upheld over 90% of the decisions passed by the Competition Council. The professionalism and qualification of specialists become ever more important in investigations which fall within the sphere of the competence of the European Commission and competition authorities of other European States. Therefore, interactive cooperation within the virtual network of the European competition authorities will undoubtedly contribute to the improved quality of investigations. The uploading of investigations of relevance to the European Commission and other members to channels of the network has become a new instrument in the coordination of activities; it also facilitates the exchange of experience accumulated by colleagues as well as the exchange of information.

Peculiarities of competition culture. Efforts to further improve the environment for fair competition in Lithuania and the enlarged European market are inseparable from competition culture. Year after year we have seen competition culture enhanced not only among enterprises, but also consumers. But only provided we act in a modern and efficient way, impeccably from the point of view of the law, and place extra emphasis on educational activities, may we expect to see such tendencies strengthening.



Rimantas Stanikūnas
Chairman of the Competition Council



HIGHLIGHTS OF THE YEAR 2004

28 January

The Government of the Republic of Lithuania approved the draft Law on the Amendment and Supplement of the Law on Competition, which was submitted to the committees of the Seimas of the Republic of Lithuania for consideration.

12 February

R. Stanikūnas, Chairman of the Competition Council participated in the OECD Global Forum on Competition in Paris and made a presentation on the impact of competition in the Lithuanian telecommunications sector in one of the sessions of the Forum.

18 March

CC passed the decision to authorise *Gazprom* to acquire a holding of *AB Lietuvos dujos* on the condition that the implementation of concentration will ensure the undertakings a possibility to compete in the wholesale natural gas market.

18 March

CC authorised State aid to small and medium-sized enterprises in accordance with the notification of the Ministry of Economy of the Republic of Lithuania. The aid shall be granted in the form of subsidies from the EU Structural funds and the national cofinancing resources and is estimated in 2004-2006 to reach LTL 185.4 m.

15 April

Seimas of the Republic of Lithuania passed the Law on Amendment and Supplement of the Law on Competition, Declaration of the Law on Monitoring of State Aid to Undertakings Repealed and Amendment of Art.1 of the Civil Procedure Code of the Republic of Lithuania.

26 April

CC in cooperation with the Ministry of Economy and Labour of Germany hosted the seminar for specialists of ministries and other public institutions of the Republic of Lithuania in charge of State aid issues. The seminar introduced the developments in the area of monitoring of State aid, which will come into effect upon Lithuania's accession to the EU.

1 May

Amendments to the Law on Competition came into effect. Direct application of Articles 81 and 82 of the EC Treaty.

12 May

CC received a notification of *TeliaSonera AB* on the implemented obligations imposed upon the company in accordance with the decision of December 2003 concerning the permission to implement concentration.

27 May

Having examined the notification of *AB Alita* by acquiring the 100% holding of *AB Anykščių vynas* by way of privatisation the Competition Council authorised the concentration subject to certain terms and conditions.



- 30 June** A collection of regulations of the European Communities governing State aid control published in the Lithuanian language.
- 21 September** R. Stanikūnas, Chairman of the Competition Council participated in the Energy Day in Brussels dedicated to discuss the status of the energy sector of the European countries and prospects of developing competition in this sector. Also the Chairman participated in the meetings of Heads of the European competition authorities.
- 30 September** *UAB Baltijos mineralinių vandenų kompanija* subjected to a LTL 30,000 fine for failure to fulfil the Resolution of the Competition Council.
- 18 October** Valdas Adamkus, President of the Republic of Lithuania, signed a decree appointing Rimantas Stanikūnas as Chairman of the Competition Council for the second five years' term of office.
- 21 October** Following long lasting litigation proceedings the Supreme Administrative Court of Lithuania passed the final and unappealable judgement in favour of the Competition Council concerning the fine of LTL 100,000 upon *AB Mažeikių nafta*. The fine was imposed in 2000 for the infringement of Article 5 of the Law on Competition (prohibited agreements).
- 2 November** A delegation of specialists of Vietnam Ministry of Justice and Labour visited the Competition Council to learn from the experience of the CC in the development of the fundamentals of the national competition law.
- 11 November** Counterparts from the Estonian competition authority visited the Competition Council to share experience in the implementation of the administrative procedures of the CC.
- 19 November** Pecuniary sanctions imposed upon certain driving schools operating in Klaipėda for the implemented prohibited agreement.
- 26 November** *Tele 2* subjected to a fine of LTL 60,000 for having repeatedly infringed the requirements of the Law on Advertising in the course of the year.
- 6 December** The Government of the Republic of Lithuania passed the Resolution on the Rules for the determination of amounts of fines imposed for the infringements of the Law on Competition.

I. MODERNISATION OF THE COMPETITION LAW

The accession of Lithuania into the European Union and modernisation of the European competition rules, in particular the adoption of the Council regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (further – Council regulation No. 1/2003) and Council regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (further – Council regulation (EC) No. 139/2004) introduced some new changes in the Lithuanian competition law. On 15 April 2004, 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.

The Law on Amendments and Supplement of the Law on Competition, Declaration of the Law on Monitoring of State Aid to Undertakings Repealed and Amendment of Art. 1 of the Civil Procedure Code of the Republic of Lithuania was enacted on 1 May 2004.



1. Amendments to the Law on Competition

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 authorized 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.

Control of concentrations

- ◆ Liberalisation of time limits for the submission of a notification. The requirement to notify the concentration not later than within 7 days following the first action of concentration, and the requirements to suspend the concentration after such, pending the final decision of the Competition Council permitting the implementation of concentration have been abolished. Consequently were abolished the sanctions for failure to submit a concentration notification within the established timeframe.
- ◆ The four-months 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.

- ◆ A fee has been introduced for the submission and examination of the concentration notification.
- ◆ For the purpose of the assessment of concentrations of enterprises the dominance test has been supplemented by a test of substantial lessening 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 Law.
- ◆ 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 Competition Council 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 this 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 Competition Council, continuation of concentration within the period of its suspension, also infringement of concentration conditions or mandatory obligations established by the Competition 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

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.

2. Secondary legislation

Rules on the amounts of fines

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.



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

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. The approval of the terms for the reduction will induce the participants of the prohibited agreements to cease the infringements and cooperate with the CC assisting it in its efforts to reveal the most severe infringements of the LC.

Fee for the notification of concentration

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

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

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

Having regard to the relevant amendments to the LC as well as other legal acts governing the activities of the Competition Council (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

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

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. ACTIVITY OVERVIEW

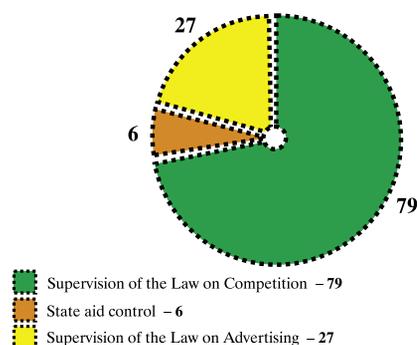
Year after year the scope of activity of the CC has been steadily expanding. The CC has been an active participant of public life and made its due contribution in a wide range of areas, including detection of infringements of law, identification and addressing problems related to competition policy, consulting undertakings and assessing draft rules and regulations from the competition point of view, as well as promoting the principles of fair competition.

The scope of the work carried out by the CC during 2004 is summarised in the table below:

Total resolutions of CC passed in 2004	206
Of which:	
- according to the received notifications and complaints	97
- concerning investigations initiated <i>ex officio</i>	13
- concerning refusal to initiate an investigation	21
- concerning regulations, extension of investigation, etc.	75
Comments to draft laws and Resolutions of the Government	22
Comments to draft regulations of other institutions	54
Written responses to inquiries	187
Provided consultations in writing	154
Approved prices and rates	220
Approved procedures and methodologies for application of prices and rates	5

During 2004, as in previous years, the CC has been focusing its efforts upon the enforcement of the Law on Competition. Furthermore, the CC has been the authority in charge of the surveillance of misleading and comparative advertising in accordance with 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. The diagram presented below shows the breakdown of Resolutions adopted by the CC in the three main areas of its supervisory activities. The most important investigations conducted by the institution are described in detail in further sections of the Report.

RESOLUTIONS PASSED BY THE CC IN 2004



1. Enforcement of the Law on Competition

During 2004, in accordance with the requirements of the LC the CC initiated 69 investigations concerning the possible infringements of the LC. These included 6 investigations started *ex officio*, the rest initiated upon applications lodged by various undertakings. Having applied the relevant provisions of the LC the institution passed 79 resolutions, including those in respect of completed investigations started back in 2003.

Prohibited agreements

◆ The cartel agreement in the area of waste management projects

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.

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.

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 is



the territory of Lithuania since this specific market is related to problems inherent to municipal territories.

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%.

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**

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.



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 Alvidika*, *UAB Darbo rinkos mokymo centras*, *UAB Particula*,

UAB Kalbų gama, *UAB Kerulis ir partneriai*, *A. Andrijauskas PE*, *J. Gelumauskas 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.

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 mounted to LTL 13,500).

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.

Investigations on alleged cartel agreements in progress:

◆ **Investigation in the market for horizontal marking of roads**



The investigation concerning an alleged prohibited agreement was initiated in July 2004, upon receipt of the information filed by the Public Procurement Office under the Government of the Republic of Lithuania on two tenders of 2004 for horizontal marking of roads of national significance. *UAB Biseris* and *UAB Kasandros grupė* were two tendering companies; the tender organizer and the contracting authority was the Lithuanian Road Administration under the Ministry of Communications. The information concerning tenders organized in 2004 collected in the course of the investigation gave grounds to a suspicion that the prohibited agreement could have been in operation in the period from 2001 until 2004. Since it was deemed necessary to examine and assess actions of the companies more thoroughly, collect additional information, seek and obtain explanations from the undertakings involved, it was decided to extend the term of the investigation.

◆ Investigation in the paper market

The investigation was started *ex officio* seeking to clarify the reasons and the situation causing continuous increase in price in the paper market, also was prompted partly by a suspicion that the major players in the paper market might be fixing and dictating prices of different types of paper. The investigation is still in progress due to its wide scope and complexity.

◆ Investigation in the taxi services market

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.

Terminated investigations:

◆ Investigation in the fuel markets

During the year 2004 the CC was continuing the investigation started in late 2003 "On the compliance of actions of undertakings trading in vehicle gas with Art. 5(1)(1) of the LC", with a view to determining possible agreement in this market with a view to directly or indirectly fixing prices of certain goods or other conditions of sale or purchase. This particular investigation had become a constituent part of a complex in-depth investigation in the market of different types of fuel in Lithuania intended to determine whether the ongoing fixing and maintaining of equal prices in gas stations of major cities could have resulted from the agreement and concerted actions among the undertakings. The investigation, however, did not produce any direct or indirect evidence able to confirm the established casual relations among the companies allegedly resulting from concerted actions seeking to establish the gas prices in major cities and certain regions. In April 2004, in view of insufficient material evidence, the CC decided to terminate the investigation.

◆ Investigation in the market of equipment of compost sites

In June 2004, there being no sufficient material evidence of an infringement, the CC terminated an investigation started back in March. The investigation was intended to determine the compliance of actions of participants of the tender administered by the Environmental Projects Management agency for the equipment of a compost site in Šiauliai with the provisions of Art. 5 of the LC.

Exemptions

◆ Motor vehicle market

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".



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.

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.

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

Investigations in progress:

◆ Concerning actions of *AB Mažeikių nafta*

In December 2004, considering the scale and complexity of the case initiated in accordance with the Resolution of the CC on 15 July 2004 "Concerning the compliance of actions of *AB Mažeikių nafta* with Art. 5 and 9 of the LC", the CC decided to extend the term of the investigation.

◆ Concerning actions of the *SE Lietuvos paštas (the Lithuanian Post Office)*

UAB Vilniaus energija had offered the undertakings to participate in the procurement of services related to printing, folding, putting into envelopes and delivery of bills to addressees. *UAB Biznio mašinių kompanija* (further - *BMK*) offered the *SE Lietuvos paštas* to participate together in the tender and jointly submit an offer for rates of delivery of the bills within Vilnius, but the *SE Lietuvos paštas* refused the offer.

BMK claims that as of 1 May 2004, since the new wording of the Law on Post came into effect, the *SE Lietuvos paštas* actually acquired the monopoly of the post parcel delivery market, since any letters delivered by post are normally less than 100 (one hundred) grams in weight, and there are no other providers of universal postal services authorised by the Government in the territory of the Republic.

Based on the initial information it was decided that the above actions of the *SE Lietuvos paštas* could be considered as abuse of the dominant position in the post services market.

◆ Concerning actions of *LKAB Klaipėdos Smeltė*

The CC received a request filed by *UAB Klaipėdos šaldytuvų terminalas* to investigate actions of the *LKAB Klaipėdos Smeltė* in the market for port stevedoring services. *UAB Klaipėdos šaldytuvų terminalas* operating in the market for refrigerated storage and seeking to operate in the market of port stevedoring was forced to

conclude a contract with *LKAB Klaipėdos Smeltė* concerning the procurement of stevedoring and other services. Taking advantage of the right granted to it by law *LKAB Klaipėdos Smeltė* was charging excessively high charges for the permits to pass its territory (which is necessary to access the refrigerators of *UAB Klaipėdos šaldytuvų terminalas*). The claimant also indicated that by charging for the use of the infrastructure *LKAB Klaipėdos Smeltė* was abusing its dominant position.

The CC resolved that the facts available give grounds to an assumption that actions of *LKAB Klaipėdos Smeltė* have traits of prohibited agreements defined in Art. 9(1) of the LC and initiated the investigation to that effect.

Termination of the investigation by accepting commitments:

◆ Concerning actions of *UAB Švyturys – Utenos alus*

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.

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.

Terminated investigations:

◆ **Concerning actions of SE Registrų centras**

The investigation of actions of *SE Registrų centras* in the cadastre measurements market was initiated on the basis of request of 7 claimants. Having conducted the investigation the CC established that the *SE Registrų centras* being the cadastre manager had established and was applying the equivalent payment terms for the verification of cadastre measurement data (completed cadastre measurement approval service) in respect of both its own branches and other applicants. Such actions did not constitute an infringement of requirements of Art. 9 of LC, therefore the investigation concerning actions of *SE Registrų centras* was terminated.

Apart from those referred above, in the period under consideration the CC terminated three other investigations concerning the alleged abuse of a dominant position. These were initiated in the telecommunications, trade in oil products and sugar markets.

Concentration control

General overview

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 lessen 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.

Permissions to foreign undertakings

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.

Permissions to Lithuanian undertakings

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.

The data presented in the table show that in the course of the last several years the dynamic of notifications on concentration has not changed significantly.

Development of concentration cases

Year	2000	2001	2002	2003	2004
Notifications received	57	47	52	54	56
Authorisations granted	48	43	48	52	54



Assessment of concentration processes

The analysis of concentration processes shows that, as compared to previous years, there are 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.

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.



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.

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.

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.

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.

Concentration and the commodity market

While examining concentration, in certain cases it was found difficult to define the commodity market or the substitutability of goods. Therefore, prior to issuing permits to *UAB ZIP3* to acquire *UAB Vesiga* (mayonnaise and food relish market), or *AB Alita* to acquire *AB Anykščių vynas* (market of alcoholic beverages and wines of the same segment) the CC used the findings of sociological surveys conducted by professional sociological survey institutions as commissioned by interested undertakings. After Lithuania's accession into the EU in 2004, in certain cases permits for concentration were issued upon due consideration of changes in the geographical market, and the removal of administrative barriers (duties, non-tariff measures, etc.). The latter, however, did not affect the decisions to any more tangible degree, since essentially changes were limited to the geographical markets. Lithuania became member of the EU only on 1 May 2004, while undertakings ordinarily conclude long-term supply contracts in advance; certain time period is needed for search for new markets, etc.

The CC has been regularly encouraging undertakings and legal consulting firms representing them, prior to submitting the notifications on concentration, to seek advice from specialists of the CC. Thus, it has been increasingly often becoming a case where

upon learning of a possibility of creation of a dominant position or lessening of competition, undertaking would abandon their intentions to implement concentration. Over 2004, responding to applications, the CC submitted appropriate explanations on concentration to 19 undertakings. Undertakings regularly seek advice from and are provided verbal consultations by specialists of the CC.

Establishment of assumptions for competition

The CC decisions on concentration in certain individual markets strengthen competition. Lately, competition has been particularly fierce among the mobile telecommunications operators, which resulted in some lower tariffs. Furthermore, creation of acceptable conditions and assumptions for effective competition encouraged new telecommunications companies operating in certain segments of the service to enter the market.

The creation of conditions for efficient competition to a large extent depends not only on the activities of the CC, but also on a properly coordinated operation of all public institutions, since not infrequently such institutions pass decisions contradicting the provisions of the LC, in one way or another restricting competition, benefiting individual companies or business sectors, to the disadvantage of consumers.

Seeking to ensure non-discrimination and transparency in relevant markets, creation of appropriate prerequisites for competition, and avoiding the cross-subsidising of goods, strengthening of economic power, or possible concerted actions of competitors, which can result in restriction of competition, in some cases the CC issued permits to implement concentration subject to certain obligations and conditions.

Natural gas market

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

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.

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:

1. 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.

2. 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.

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.

Harmonisation of legal acts and promotion of competition culture

During 2004, the CC was an active participant of the law making process by providing comments and proposals to draft legislation prepared by other institutions. Over the year the CC assessed 76 draft laws and other legal acts.

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.

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.



Comments were submitted to the Law Supplementing Art. 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.

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 Registrijų centras*, which obtain all necessary data at no charge. In the opinion of the CC, *SE Registrijų 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 Registrijų centras* should implement a transparent cost distribution scheme.

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).

Actions of public and local authorities restricting competition

◆ Order of the Ministry of Health

On the basis of the application lodged by the *UAB Gelsvės vaistinė* the CC launched an investigation intended to establish the compliance of the Procedure approved by Order No. 69 of 11 February 1999 of the Minister of Health "Concerning the provision of residents of rural areas with medicines and pharmacy goods through the institutions of primary health care" with the requirements of Art. 4 of the LC". The investigation established that the Procedure provided for the priority criteria while issuing to pharmacies the Ministry's of Health permits to engage in the provision of residents of the rural areas with medicines through institutions of primary health care (further – PHC) depending on whether such pharmacies had previously engaged in such provision through the municipal or county PHC create different competitive conditions for engagement in pharmaceutical activities in rural areas. The procedure also provided that such permissions to engage in the provision of residents of rural areas with pharmaceutical products via the PHC were issued for the entire period of validity of the license of pharmaceutical activity. Consequently, pharmacies having once obtained such permissions were secured more advantageous terms for trading in medicines in rural areas as compared to pharmacies which did not hold such permits, and the above arrangement severely restricted the possibilities of the latter to engage in trade in pharmaceutical products any time in the future. The CC concluded that such provisions contradicted

Art. 4(2) of the LC, and obligated the Ministry of Health to modify them. In compliance with such obligation the Ministry of Health drafted and approved the new Rules on the provision of residents of rural areas with medicines and pharmacy goods through the institutions of primary health care having removed from them the restricting provisions.

◆ Decision of the Alytus Region Municipality

Another investigation conducted by the CC was launched on the basis of an application lodged by a private company. The purpose of the investigation was to establish the compliance of actions of Alytus Region Municipality while issuing permits to trade during the Statehood Day and the "Žolinės skrynia" holiday, and the provisions of the "Rules on trade and provision of services in public places of the Alytus Region Municipality" approved by the Decision No. 28 of 10 February 2000 of the Alytus Region Municipality with the relevant provisions of the LC. The Rules stipulated that trading in food and non-food products from mobile stores was allowed only in those villages which did not have any stationary stores. The investigation revealed that while passing decisions concerning the permits to trade during the Statehood Day and the "Žolinės skrynia" holiday Alytus Region Municipality issued such permission to one undertaking only, – *UAB VP Market*. While the competitor in the relevant market, the PE of Dalė Alijošaitienė was refused such permission. The latter undertaking thus was discriminated and placed under different and disadvantageous competitive conditions. The investigation also established that item 6 of the above Rules grants certain advantages to the stationary stores located in rural settlements and restricts the possibilities to engage in trade for traders from mobile stores competing with the former on the relevant market, which are thus placed in a competitive disadvantage. The CC completed the investigation in 2004, although the decision to this effect will be passed later in 2005.

Terminated investigations:

◆ Concerning actions of Vilnius City Municipality

UAB Union Clinic Vilnius applied to Vilnius City Municipality with a request to be issued a permission to establish a branch of the primary health care institution. Vilnius City Municipality responded that permissions to establish institutions of primary health care and their branches are issued according to the Resolution of the Council of the Municipality and in the procedure approved thereby. The procedure stipulates that permissions to establish such institutions are issued provided they are established in the territories recommended in the primary health care development program. Having considered that the area in which *UAB Union Clinic Vilnius* intended to establish the institution of primary health care was not included into the list of recommended areas, the Municipality refused to satisfy the request.

The investigation conducted by the CC established that requirements of Art. 4 of LC were not violated, therefore the investigation was terminated.

◆ Concerning actions of the National Examination Centre

UAB Eniro Infomedia applied to the CC with a request to examine and assess actions of the National Examination Centre, which refused to provide information on school graduation exams. *UAB Eniro Infomedia* is a company engaged in provision of information by telephone. In this capacity it receives numerous inquiries by short telephone number 1588 concerning the school graduation exams and their results. *UAB Eniro Infomedia* had applied to the National Examination Centre with a request to conclude an agreement on personal data provision whereby the company could provide information on the school graduation exams. The National Examination Centre refused to conclude such agreement and informed that it had no intentions to expand the scope of information provision services. The CC did not establish any violations of Art. 4 of the LC, and terminated the investigation.

Refusals to initiate investigations:

◆ Concerning the organisation of an action

Several veterinary clinics applied with a request to examine actions of Vilnius City Municipality while organising the action "Stop to rabies" whereby pets were vaccinated against rabies at no charge, therefore the clinics lost their clientele and income. The CC established that Vilnius City Municipality organised a tender for the procurement of services and selected the service provider who offered the lowest price. Based on such conclusions the CC refused to initiate an investigation concerning the compliance of actions of Vilnius City Municipality with the provisions of Art. 4 of the LC.

Market research and other activities

When after 1 May 2004 prices of certain foodstuffs had raised, upon the request of the Government, the CC conducted the analysis of the changes in prices of certain *staple food products*. The CC analysed the data of the major bread makers, grain, milk and meat processors and the sale prices of the major trade centres. It has been established that the surge in prices was basically caused by the increase of prices of raw materials and fuel, also labour costs and the enlarged expenses in relation to more stringent quality standards, i. e., objective economic reasons. The conclusions and findings of the investigation were submitted to the Government.



Another investigation conducted in the course of 2004 was that in the market of *cargo transport by motor vehicles*. The CC was monitoring changes taking place in this market and collecting data on actions of the Lithuanian National Road Carriers' Association *Linava* and its members.

For the purpose of enforcement of the Law on Prices and supervision of Resolutions of the Government related to regulation of prices and tariffs, the CC was, within the limits of its competence, monitoring changes in the *monopolistic commodity and service markets*, analysing the fluctuations in prices and tariffs in such markets, also coordinating prices and tariffs of monopolistic goods and services, and the procedure for the establishment of such prices.



2. Monitoring of State Aid to Undertakings

Drafting of legal acts in the area of State aid

Until 1 May 2004, all State aid granted in Lithuania was assessed in accordance with Art. 64 of the Europe Agreement establishing an association between the European Communities and their Member States, on the one part, and the Republic of Lithuania, on the other part and the Law on Monitoring of State Aid to Undertakings of the Republic of Lithuania. In accordance with the provisions of the then effective regulations, the CC was a public authority responsible for monitoring of State aid. Upon Lithuania's entry into the EU, the Law on Monitoring of State Aid to Undertakings was repealed. In the EU State aid is monitored by the EC, since in accordance with Art. 88 (ex 93) of the Treaty establishing the European Community the EC has been granted the appropriate authority to decide on the compatibility of State aid with the common market and the requirements of the EC law. As of 1 May 2004, the Treaty as well as Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty are directly applicable in Lithuania.

Having taken into account the above material changes in the area of monitoring of State Aid in 2004 the CC prepared appropriate amendments to the LC. Through supplementing the Law by Art. 48 the CC was assigned new functions in the area of State aid. The Article provides that the Competition Council is a coordinating institution in matters related to State aid subject to the European Union State aid rules. In accordance with the provisions of the said Article the Council shall perform the expert examination of State aid projects, submit to State aid providers conclusions and recommendations, accumulate information on State aid granted to undertakings of Lithuania and submit such information to the European Commission and to other institutions concerned, and manage the State aid Registry subject to the Rules of the EU, as well as the *de minimis* aid.

Within the framework of performing the new functions assigned to it during the accounting period the CC drafted the Resolution of the Government "On the approval of Rules for the performance of expert examination of State aid projects, submission of conclusions and recommendations to State aid providers, and submission of State aid notifications and other information related to State aid to the European Commission and other institutions concerned". The Government approved the Resolution on 6 September 2004 (Official Gazette, 2004, No.137-4987). Also for the purpose of implementing Art. 48(3) of the Law on Competition the CC drafted the Resolution of the Government "On the establishment of the State aid Registry, approval of the Regulations and the date for the beginning of operation of such Registry". The purpose of the Resolution is to establish the Registry of the provided State aid, approve Regulations of such Registry and fix the date of the beginning of its operation. Seeking to ensure the proper implementation of the provisions of the Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings (with subsequent amendments), in cooperation with the Ministries of Finance, Economic and Communications, as well as other public authorities the CC has identified the legal acts of the Republic of Lithuania pertaining to the area concerned and established that provisions of the above directive have not been fully transposed to the national law. Therefore the CC drafted the Resolution of the Government „Concerning the accumulation of information on certain undertakings and the relations between public authorities and public undertakings“.

Enforcement of State aid monitoring

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.

The Table below summarises the data on the assessed State aid projects during the year 2004.

Notifications on State aid and assessed projects of State aid:	52
Of which:	
Decisions passed by the CC:	6
of which:	
The CC authorised the State aid	5
The CC authorised the State aid subject to certain conditions	-
Authorisation of State aid refused by the CC	1
Other draft legal acts examined in respect of which the CC submitted comments and proposals, also other inquiries by State aid providers and recipients, other cases examined	46

According to the notifications submitted in 2004, the most frequent type of intended State aid was aid to restructuring of enterprises. The Section below contains a detailed description of State aid cases assessed by the CC during the accounting period.

◆ Notification on State aid to *DKAB Jiesia*

The Ministry of Finance submitted a consolidated notification on State aid to the ceramics and china factory *Jiesia* (further - *DKAB Jiesia*) undergoing bankruptcy. In accordance with the submitted notification part of the indebtedness of *DKAB Jiesia* to public authorities had to be written-off, alongside with extending the time limits for the repayment of the balance of the debt to the Ministry of Finance and the State Social Insurance Fund. According to the submitted plan for the restructuring of *DKAB Jiesia* the company intended, in the period from 2004 to 2007, to implement the measures necessary for the restoration of the solvency of the company. Within the period concerned the company was planning to reschedule its financial obligations, rationalise its operations and implement investments into the company. As indicated in the material submitted by the State aid provider, within the period of

the restructuring of the company, and due to the growing volumes of the production and sales, the operations of the company will become profitable and, by the end of the restructuring period, the financial indicators of the company would become positive. Having conducted the investigation the CC concluded that the implementation of the measures intended for the restructuring of the company would lay down the realistic conditions for the restoration of the long-term solvency of the company. The funding of restructuring as provided in the plan is proportionate to the costs of such operations, while the contribution of the aid recipient is considered significant. On 8 April 2004, having regard to the above considerations the CC passed the decision to authorise State aid to *DKAB Jiesia* in accordance with the consolidated notification of the Ministry of Finance.

◆ Notification on State aid to *AB Vingriai* undergoing restructuring

On 29 April 2004, the CC authorised State aid to *AB Vingriai* in accordance with the notification on State aid of 30 May 2003 submitted by the Ministry of Finance. The restructuring plan of *AB Vingriai* submitted to the CC covers a period from 2004 until 2009. The plan provided not only for financial measures related to meeting the creditor claims in respect of the Ministry of Finance and the Vilnius branch of the Board of the State Social Insurance Fund; it also specified the operations' restructuring measures as well as anticipated investment. The plan for the restructuring of *AB Vingriai* contained the analysis of the financial status of the company by specifying the reasons that have caused the economic difficulties, description of strengths and weaknesses of the company, accompanied with a detailed plan and the schedule for the restructuring. Having conducted the investigation, the CC established that by implementing the measures envisaged in the restructuring plan, the company would ensure the conditions for the restoration of its long-term solvency. Funding the restructuring operations of *AB Vingriai* is proportionate to the expenses of the restructuring, and the contribution of the owners of the company is significant.

◆ Notification on State aid to the glass factory *AB Aleksotas*

On 28 January 2004, the CC started the assessment of State aid in accordance with the notification submitted by the Kaunas County State Tax inspectorate on State aid to the glass factory *AB Aleksotas*. In accordance with the submitted notification the Kaunas County State Tax Inspectorate intended to write-off part of the indebtedness of the company, and postpone the term for the repayment of the remaining part of the indebtedness.



Having conducted the investigation the CC concluded that the plan for restructuring of *AB Aleksotas* did not specify the measures or stages of the restructuring of the company; neither did the plan specify costs of the restructuring and the sources of funding of such costs, the contribution of the recipient of State aid to the restructuring of the company was not clearly defined. The restructuring plan did not contain information on the changes in the demand and prices of the products, as well as production capacities in the course of the forthcoming five years in the EU and in Lithuania. The company did not provide for any substantiation of the attainment of its marketing targets, or any measures ensuring the long-term viability of the company. Having regard to all the above considerations the CC, by its Resolution of 25 March 2004, refused to authorise the State aid to *AB Aleksotas*.

◆ **Notification on State aid under the scheme “Aid to small and medium-sized enterprises”**

On 18 March 2004, the CC authorised the State aid in accordance with the notification on aid scheme submitted by the Ministry of Economy “Aid to small and medium-sized enterprises”. The purpose of the aid is to promote the activities of small and medium-sized enterprises listed under measures 3.1 and 3.2 of the Single Programming Document of Lithuania for 2004-2006. The support shall be granted in the form of subsidies from the EU Structural funds and the national cofinancing resources. Under the intended aid scheme the intensity of aid to tangible and intangible investment may not exceed 65%. Under the scheme the aid shall be provided in the entire territory of Lithuania excluding those falling under the category of undertakings in economic difficulties, or those operating in the motor vehicle and ship-building sector. While granting the support under the scheme the amount of subsidies allocated to small and medium-sized enterprises shall not exceed LTL 50m for a specific project, and the eligible costs shall not exceed LTL 86m.

◆ **Notification on State aid under the scheme “Regional aid”**

On 25 March 2004, the CC authorised the State aid under the scheme “Regional aid” notified by the Ministry of Economy. The support shall be granted in the form of subsidies from the EU Structural funds and the national cofinancing resources. The aid under the scheme will be granted to investment necessary for the acquisition of fixed assets by a new company, expansion of the existing company, and production of new goods and introduction of modern technologies. Furthermore, under the scheme the aid shall be granted to other purposes, which will include the increase of the number of jobs, the improvement in the quality of the product or services produced, efficiency, improvement of the process of the supply of goods or services, facilitation of introduction of

environmental measures in the undertaking’s activities. Under the aid scheme the intensity of State aid shall not exceed 65% (in case of small and medium-sized enterprises), and 50% for a large enterprise. The undertakings benefiting from the scheme shall be obligated to ensure the viability of the investment project and shall provide funding for not less than 25% of the total project costs. Furthermore, the undertakings benefiting from regional aid will be obligated to maintain the investment in the undertaking for not less than five years.

◆ **Notification on State aid scheme “Promotion of Research and Development”**

On 8 April 2004, the CC authorised the State aid according to the notification of the Ministry of Economy on aid for promotion of research and development. Under this aid scheme support shall be granted from the EU Structural funds and the national cofinancing resources. The aid shall be intended for undertakings engaged or capable of engaging in economic activities in Lithuania provided such undertakings intend to create new or improve the existing products or services, or increase the volumes of production or services. The provision of the State aid will facilitate the cooperation between undertakings and research institutions (private and public), where they will jointly conduct the applied research activities and engage in the development of technologies. According to the aid scheme the intensity of aid shall not exceed 60% of eligible costs, in case of aid to research, and 35% of eligible costs where aid is granted to development. Furthermore, while granting aid to applied research and development necessary for the conducting of the feasibility analysis of the project, the maximum permissible intensity of the State aid shall not exceed 75% of eligible costs (where the aid is granted to studies related to applied research activities), and 50% of eligible costs (for aid to feasibility studies necessary for the technological development).

◆ **Other cases of State aid examined by the CC**

During the reporting period the CC also assessed and examined draft legal acts prepared by the Ministries of Finance, Agriculture, Economy, Communications, Science and Education, Environment and Social Protection and Labour. Specialists of the CC examined 24 draft legal acts, which were subsequently amended and supplemented. The CC submitted comments and proposals in respect of 5 such drafts.

During 2004, specialists of the CC participated in consulting meetings hosted by the Ministries of Economy and Finance, the agenda whereof included the examination of State aid to individual projects, and examination of issues related to free economic zones. On 22 July 2004, specialists of CC participated in a bilateral meeting hosted by the Ministry of Economy between the EC and authorities of the Republic of Lithuania concerning the implementation of the Chart of Small Enterprises. Another meeting attended by specialists of the CC was that arranged by the Ministry of Communications

which discussed the provision of State aid in the area of maritime transport. During the reporting period when examining and assessing State aid projects the CC specialists submitted a number of comments and proposals to the State Loan Commission.

Implementation of new functions in the area of State aid

As of 1 May 2004, functions of the CC in the area of monitoring of State aid have essentially changed. The CC is now in charge of submitting notifications on State aid prepared by State aid providers to the EC, and acts as a coordinating institution in matters related to State aid. Within the period under consideration the CC submitted to the EC 7 notifications on State aid prepared by State aid providers:

- notification on State aid to *AB Alytaus tekstilė* undergoing restructuring;
- notification on State aid in Kaunas Free Economic Zone;
- notification on State aid to *AB Vingriai* undergoing restructuring;
- on 18 August 2004, – the list of State aid measures for the agricultural sector drawn up in accordance with the provisions of Section 4 of Annex IV of the Act of Accession;
- In September 2004 – information prepared by the Ministry of Agriculture on State aid to investment into forest cutting and the improvement and rationalisation of the production of timber;
- information on State aid to the promotion of rural tourism and crafts;
- in October 2004 – new State aid measure intended for implementation by the Ministry of Agriculture. Under this measure aid shall be provided to agricultural undertakings, which suffered losses because of spring frost in 2004.

The CC submitted comprehensive comments in respect of aid projects provided for in the Law on Social Enterprises and notified to the EC by the Ministry of Social Insurance and Labour in accordance with Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment.

It is particularly important that the new State aid projects are prepared in accordance with the effective EU State aid rules. In this respect the CC was providing written and verbal consultations (both for the purpose of preparation of the State aid notifications, as well as other purposes) to State aid providers. Written explanations were submitted to the Lithuanian Environmental Investment Fund, the State Tax Inspectorate under the Ministry of Finance, *SE Koordinacinis medienos technologijų tyrimo ir plėtros centras* (Timber technology research and development coordination centre), Kaunas branch of the State Social Insurance Fund Board concerning state aid to *UAB Kauno autobusai*, the Ministry of Finance concerning tax relief to strategic investors and the support project to *UAB Akmenės energija* and other institutions.



The CC sought to ensure that State aid providers are secured all possibilities to familiarise themselves with the new State aid monitoring system in Lithuania and application of the updated regulations in practice. Specialists of the State aid department of the CC organised workshops in Kaunas, Marijampolė, Alytus, Utena, Telšiai, Tauragė and Šiauliai Counties the subject matter whereof was “The new State aid monitoring system in Lithuania“. Specialists of the County Administrations, the Municipalities, the territorial divisions of State Tax Inspectorates and the Social Insurance Fund Board attended such workshops. At the workshops State aid providers were introduced to the most important changes in the area of monitoring of State aid which came into effect upon Lithuania’s accession into the EU, provided detailed information on the procedure for the submission of State aid notifications to the EC, and responded to various inquiries placed by State aid providers.

During the reporting period the CC in cooperation with P. Schutterle, expert of State aid law from the Ministry of Economics and Labour of Germany compiled the publication „State aid control. Legal acts“ containing selected rules and regulations governing the provision of State aid. The publication was distributed among the State aid providers.

In 2004, for the purpose of the enforcement of the Law on Monitoring of State Aid to Undertakings the CC continued to accumulate and systemize the State aid data base, - the State aid Registry. As of now the State aid Registry contains the data on State aid provided to Lithuanian undertakings in 1996-2003.

An annual report based on the data of the State Aid Registry was drawn up and submitted to the EC. According to the preliminary data State aid granted in Lithuania during 2003 totals LTL 140.34 m (MEUR 40.67).

In 2003, the national State aid accounted for 0.25% of the national GDP (at current prices), i.e. LTL 97.57 per one working person, on average. In 2003, the GDP of Lithuania increased by 8.7% as compared to the level of 2003 (at current prices), while the inflation rate declined from 2% in 2002 to 1.3% in 2003. The data presented in the Tables of the Annex clearly show that the volumes of the provision of State aid in the period 1996-2003 were diminishing. In 1996, the granted State aid amounted to LTL 904.42m, the amounts further decreasing to LTL 140.34 in 2003. Accordingly, the indicator of State aid per one working person fell from LTL 545.04 in 1996 down to LTL 97.57 in 2003.

In the period under review, the provision of State aid to the manufacturing industry and services was somewhat fluctuating in terms of the volumes of aid. In 2003, State aid to manufacturing industry and services constituted the major part of the total national State aid, accounting for as much as 62.84%. In 2003, State aid to the manufacturing industry and services was provided for the following purposes: research, development and innovations, trade, rescue and restructuring of enterprises, ship-building and regional development. The major part of State aid to the manufacturing industry and services, was allocated to enterprise rescue and restructuring operations (83.29% of the total aid). The data on the breakdown of State aid by main sectors of economy are presented in the Annex to this Report.

3. Enforcement of the Law on Advertising

During the year 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. Below is presented the description of major cases of infringements of the LA investigated by the CC.

Misleading advertising

◆ Concerning the weight-loss method

The investigation was initiated by the CC *ex officio* and was aimed at establishing the compliance of the weight-loss method advertised by *UAB Porektus* with the requirements of Art. 5 of the LA. While advertising in Lithuanian dailies the weight-loss method of Margarita Drozd the company was using the advertising statements the accuracy whereof it was not able to substantiate. Claims that using the method the body weight will reduce by 3-5 kg per week during the first 4 weeks and subsequently 2-3 kg per week could have induced the users of the advertising desiring to lose weight

to purchase the method advertised. Besides, while advertising the method the company omitted part of the information the provision whereof, taking into account other information presented in this advertising is certainly needed in order to avoid misleading of the consumers of the advertising. They were not informed that where they choose Margarita Drozd weight-loss method they will have to buy a book of 100 pages, and green tea capsules which are a composite part of the method and necessary in order to make the method work efficiently. Neither were the consumers informed that the green tea capsules cost LTL 69 or 99 depending on the course of the treatment chosen, and that they will have to comply with product consistency and other rules.

The advertising of the weight-loss method by *UAB Porektus* was recognised as misleading advertising. The company was obligated to forthwith cease the use of the misleading advertising, and subjected to a fine in the amount of LTL 30,000.

◆ Concerning prices of *UAB Tele2* services

In May 2004, the mobile telecommunications company *UAB Tele2* in the press, the Internet and TV channels was advertising its mobile telecommunications services by publishing different advertising claims such as: “*Tele2* clients are happy with the lowest prices. They may make calls at lowest leisure time rates to all networks in Lithuania, – only LTL 0.25/min.”; “*Tele2* clients are happy with the lowest prices. Twenty four hours a day they may send SMS to all networks at the lowest price in Lithuania – only LTL 0.10/message”; “*Tele2* clients are happy with the lowest prices. Twenty four hours a day they may make calls to over one third users of telecommunications services at the lowest rate – only LTL 0.20/min.”

On the basis of the application filed by *UAB Omnitel* concerning the compliance of such advertising claims with the LA, the CC launched the investigation and established that the company did not highlight in its advertising the special additional conditions applied, and the advertised rates are valid only provided such conditions are met. The advertising claims omitted part of the information necessary to avoid misleading of consumers of advertising. Since the information omitted in the advertising claims could have affected the economic decision while selecting the telecommunications services providers, the advertisement was acknowledged misleading. The CC obligated *UAB*

Tele2 to immediately cease the use of the misleading advertising, publish corrective statements in respect of such claims and, finally, subjected the company to a pecuniary fine in the amount of LTL 60,000.



◆ **Concerning the service *Mažylis* provided by *UAB Tele2***

The mobile telecommunications company *UAB Omnitel* filed a request to carry out an investigation in order to determine whether the advertising of the mobile telecommunications pre-paid service *Mažylis* by *UAB Tele2* complied with the requirements of the LA. Having conducted the investigation the CC established that the advertising claims by *UAB Tele2* published in May-June 2004 in outside advertising boards, TV and radio channels and highlighting the advantages of the pre-paid service *Mažylis*, failed to comply the requirements of the LA in respect of the misleading or comparative advertising and thus infringed Art. 5 and 6 of the LA. By advertising the service the company provided incomplete information on the call and SMS rates, omitted part of the information on the term of validity of the rates indicated in the advertising. The provision of such information, having regard to other claims contained in the advertising was absolutely necessary in order to avoid misleading of the consumers. The investigation further established that while advertising the pre-paid service *Mažylis* *UAB Tele2* violated the terms under which the comparative advertising is permitted, since the advertising, in a very biased manner, was comparing one or more important and inherent features of the services being advertised. Furthermore, the advertising actually was a specific offer, however, the company has not indicated the term of validity of the offer. For the use of the prohibited misleading and comparative advertising the CC subjected the company to a pecuniary fine of LTL 60,000.

The prohibited comparative advertising

◆ **Concerning the rates of the mobile telecommunications provided by *UAB Omnitel***

The investigation was prompted by a request of *UAB Tele2* and aimed at establishing the compliance of the comparative advertising disseminated by *UAB Omnitel* with the requirements set forth by the LA. The investigation concluded that on 20-28 April 2004 *UAB Omnitel* was advertising its services by publishing, in the major dailies *Lietuvos rytas* and *Respublika*, the national and regional TV channels and outside boards, the following advertising claims: „Fact in black and white. *Omnitel* price is the best! The price has been calculated on the basis of data of the Communications Regulatory Authority under the Government of the Republic of Lithuania”. The advertising, in the graphic form, showed poles each representing *Omnitel*, and the competing operators *Bitė* and *Tele2*, and indicating the respective rates: *Omnitel* – LTL 0.51, *Bitė* – LTL 0.56, *Tele2* – LTL 0.65. The CC resolved that the rates of the mobile telecommunications indicated in the advertising are incorrect. They have been calculated by dividing the revenue from all services by only one service indicator – the duration of the subscriber’s call. The derivative indicators calculated in this way do not reflect the actual price of the service, therefore certainly not providing the

objective comparison of competitors’ prices, in addition to being not accurate. The advertising disseminated by *UAB Omnitel* was acknowledged to be the prohibited comparative advertising, the company was obligated to forthwith cease the use of the advertising claims and was subjected to a pecuniary fine of LTL 30,000.



◆ **Concerning advertising claims of *UAB Eurocom***

In June-May 2004, the mobile telecommunications company *UAB Eurocom* was, through the national dailies, also TV channels and the Internet website, publishing the advertising which stated: “*Omnitel* is misleading you! Calculation of prices of mobile telecommunications operators on the basis of the Communications Regulatory Authority data show – *Eurocom* price is the best!” In addition, the advertising text contained a comparison, in graphic form, of prices of services provided by the mobile telecommunications providers *Eurocom*, *Omnitel*, *Bitė GSM* and *Tele2*, which were presented, respectively, as LTL 0.36, LTL 0.51, LTL 0.56 and LTL 0.65. The investigation allowed a conclusion, that the rates indicated in the advertising text are not correct and on the whole do not represent the prices of the companies compared. The rates of the mobile telecommunications were computed without taking into account all material aspects, which have an impact upon the rates. The rates indicated in the advertising text did not reflect the actual fee paid by the subscribers for the services provided, therefore such advertising claims are misleading and may potentially have an impact upon the decisions of the users of the advertising when choosing a mobile telecommunications operator. The CC acknowledged that the advertising published by *UAB Eurocom* failed to comply with the requirements prescribed by LA in respect of comparative advertising and imposed upon the company the fine in the amount of LTL 16,000.

◆ **Concerning the comparison of prices by *AB Lietuvos dujos***

In 2002, *AB Lietuvos dujos* (the Lithuanian Gas Company) published a brochure “More than simply heat” which contained the following advertising: „Heating of premises by natural gas is twice as cheap as the heat supplied by district heating. Heating of water by natural gas is likewise twice as cheap as the hot water supplied from a centralised source”. The text also included two tables representing a comparison of the prices of heating of on



cubic meter of household water using different energy sources. A similar advertising text was published in a publication of 2003 "Natural gas: the best choice". The analysis of the compatibility of such advertising claims with the requirements of LA established that *AB Lietuvos dujos* had violated the requirements of the Law prescribed in respect of comparative advertising. The advertising was unobjectively comparing the prices of heat units and that of heating of one cubic meter of water using different energy sources. For this infringement of the LA *AB Lietuvos dujos* was fined by LTL 5,000.

4. Judicial practice

During 2004, courts of the Republic of Lithuania examined 8 cases related to the decisions passed by the CC; proceedings in respect of two cases are still in progress. Over the year 2004, examination of 6 cases was completed and the final decisions passed to that effect, including 5 rulings of the court upholding decisions of the CC.

Court cases

1. The Vilnius Regional Administrative Court having examined the appeal of *UAB Porektus* dismissed the appeal by ruling of 30 July 2004 that the CC had justly acknowledged the advertising used by *UAB Porektus* as misleading, since „<...> the advertising failed to comply with the criteria of accuracy and comprehensiveness, was misleading or could mislead the users of the advertising, and due to its misleading nature could have an impact upon the economic behaviour of the user of the advertising<...>“.

2. Decision No. 8/b of 18 May 2001 of the CC "Concerning the compliance of actions of *AB Mažeikių nafta* and undertakings trading in oil products with the requirements of Art. 5 of the Law on Competition" established that *AB Mažeikių nafta* and *UAB Lukoil Baltija*, *UAB Lukoil Baltija Servisas*, *UAB Lietuva Statoil*, *UAB Pakrijas*, *UAB Uotas* and *UAB Vaizga* had concluded agreements containing vertical restrictions and thereby infringed Art. 5(1) of the LC.

By its ruling of 11 September 2003 the Vilnius Regional Administrative Court satisfied the appeal of *AB Mažeikių nafta* and revoked the fine, appeals of *UAB Lukoil Baltija*, *UAB Lietuva Statoil*, *UAB Pakrijas*, *UAB Uotas* and *UAB Vaizga* were partly satisfied by reducing the amounts of pecuniary fines imposed by the CC upon the complainants.

By the ruling of 26 January 2004, the Supreme Administrative Court of Lithuania dismissed the appeals and upheld the ruling of the First instance court. The Court ruled that by establishing in the agreements concluded by *AB Mažeikių nafta* and *UAB Lukoil Baltija*, *UAB Lukoil Baltija Servisas*, *UAB Lietuva Statoil*, *UAB Pakrijas*, *UAB Uotas* and *UAB Vaizga* prohibitions to import and distribute oil products the contracting undertakings infringed Art. 5 of the LC; the Court, however, noted, that by Decision No. 8/b of 18 May 2001 *AB Mažeikių nafta* was repeatedly sanctioned for the

same infringements in respect of which a fine was imposed upon the company by Decision No. 11/b of 10 July 2000, and abolished the pecuniary fine.



Upon filing by the CC a request to renew the case resolved by the Supreme Administrative Court of Lithuania of 26 January 2004, the Court renewed the case on 3 June 2004.

By its ruling of 21 October 2004, the Supreme Administrative Court of Lithuania established that by Decision No. 8/b of 18 May 2001 of the CC *AB Mažeikių nafta* was sanctioned for different actions committed in different period than those in respect of which the CC had passed its Resolution No. 11/b of 10 July 2000, and upheld the part of the Decision No. 8/b of 18 May 2001 of the CC concerning the fine imposed upon *UAB Mažeikių nafta*.

3. By its letter of 18 July 2003, the CC responded in writing to *UAB Žalmargės pienas* concerning its inquiry of 30 June 2003, and proposed the company to apply with the inquiry to the Ministry of Agriculture. *UAB Žalmargės pienas* appealed the response by the CC to the Vilnius Regional Administrative Court requiring the Court to acknowledge that actions of the CC were unlawful and obligate the CC to initiate an investigation concerning the issues laid down in the letter of 30 June 2003 of *UAB Žalmargės pienas* or refuse to initiate the investigation.

By its decision of 8 December 2003 the Vilnius Regional Administrative Court dismissed the appeal ruling that the CC had no authority to pass decision concerning the requirement specified in the claimant's letter to obligate the Ministry of Agriculture to include *UAB Žalmargės pienas* into Annex 1 of the "Rules on the provision of support to milk processing undertakings to maintain the milk purchase prices" approved by Order No. 3D-236 of 16 June 2003 of the Minister of Agriculture, thus the CC had not infringed any rules or regulations, or the rights of the claimant, neither the CC was under obligation in that specific case to pass a decision under Art. 25 of LC.

The ruling of 6 May 2004 of the Supreme Administrative Court of Lithuania, upon examining the appeal of *UAB Žalmargės pienas* concluded that the CC was obligated, according to the application of *UAB Žalmargės pienas* to pass a decision to initiate the investigation



or refuse to initiate the investigation. Having regard to the above considerations the Supreme Administrative Court complied with the appeal of *UAB Žalmargės pienas* and obligated the CC, not later than within 14 days from the date of the coming into effect of the ruling of the Court start the investigation concerning the facts indicated in letter of 30 June 2003 of *UAB Žalmargės pienas* or refuse the start the investigation.

4. Decision No. 2S-7 of 18 June 2004 of the CC "Concerning the compliance of actions of *UAB Saulės spektras* with the requirements of Art. 5 and 6 of the LA", concluded that by advertising business information services provided thereby *UAB Saulės spektras* was using incorrect statements which could have an impact upon the economic behaviour of the users of the advertising, therefore such advertising was acknowledged to be misleading. The decision also concluded that in its advertising claims *UAB Saulės spektras* was, in a subjective manner, comparing different catalogues by methods of finding information in such catalogues, therefore the advertising was recognised as prohibited comparative advertising.

Vilnius Regional Administrative Court, having examined the appeal of *UAB Saulės spektras* passed, on 4 October 2004, the ruling whereby it dismissed the appeal, by resolving that the CC had correctly assessed the entirety of all circumstances and facts established in the course of the investigation and passed a grounded decision.

5. By its Decision No. 1S-110 of 9 October 2003 "Concerning the discontinuation of the investigation regarding the compliance with Art. 4 of the LC of Resolution No. 857 of 30 June 2003 of the Government of the Republic of Lithuania "Regarding the Amendment of Resolution No. 851 of 7 June of 2002 of the Government of the Republic of Lithuania "On the approval of the list of sugar and products containing sugar manufactured in Lithuania or imported from abroad" the CC decided to terminate the investigation aiming at establishing whether by passing its Resolution No. 857 of 30 June 2003 the Government had infringed the requirements of Art. 4 of the LC. The CC concluded that the above Resolution of the Government was passed within the framework of the Law on Sugar therefore qualified for an exemption stipulated in Art. 4 of the LC.

Vilnius Regional Administrative Court, having examined the administrative case initiated according to the complaint filed by *UAB Lavisos agrogrupė* passed, on 2 February 2004, a ruling whereby the Court resolved that the effective Lithuanian legislation did not authorise the CC to assess the validity of resolutions of the Government, therefore by passing Decision No. 1S-110 of 9 October 2003 the CC exceeded its authority. Having regard to all the considered circumstances, Vilnius Regional Administrative Court overruled the decision of the CC.

Having examined the appeals lodged by the CC and *UAB Lavisos agrogrupė* the Supreme Administrative Court of Lithuania passed a ruling of 27 May 2004 whereby the Court concluded that Art. 19 (1)(4) of the LC established the right and the duty of the CC to examine the compliance of, *inter alia*, resolutions of the Government of the Republic of Lithuania with the principle of fair competition. Therefore by passing its decision the CC did

not exceed its competence. The Supreme Administrative Court of Lithuania decided to overrule the decision of 2 February 2004 of the Vilnius Regional Administrative Court and refer the case to the First instance court for a repeated examination.

Having examined the administrative case, in its decision of 2 September 2004 Vilnius Regional Administrative Court concluded that Decision No. 1S-110 of 9 October 2003 of the CC is lawful and substantiated, since it was passed by a competent administrative authority having duly considered all circumstances, and, as a result, rejected the appeal of *UAB Lavisos agrogrupė*.

6. In its Decision No. 1S-78 of 20 May 2004 "Concerning the refusal to initiate the investigation concerning the compliance of item 17.6 (version of 19 December 2003) of the Technical construction regulation STR1.11.01:2002 "The procedure of recognition of the structures suitable for use" approved by Order No. 242 of 14 May 2002 of the Minister of Environment of the Republic of Lithuania" with the provisions of Art. 4 of the LC" established that the said item 17.6 of the Technical regulation is applicable to all undertakings competing in the relevant market, therefore, since no evidence of granting of privileges or discrimination has been established, refused to initiate the investigation.

By its decision of 20 September the Vilnius Regional Administrative Court rejected the appeal of *UAB Mabilta* regarding the validity of the above decision of the CC.

Having examined the appeal of *UAB Mabilta* the Supreme Administrative Court of Lithuania ruled, on 28 December 2004, to reject the appeal by concluding that the Decision No. 1S-78 of 20 May 2004 of the CC was legitimate and duly grounded.

Cases under consideration

1. The CC by its Decision No. 1S-53 of 1 April 2004 "Concerning the discontinuation of the investigation regarding the compliance with Art. 4(2) of the LC of "Rules on the provision of support to milk processing undertakings to maintain the milk purchase prices" approved by Order No. 3D-236 of 16 June 2003 of the Minister of Agriculture" discontinued the investigation initiated in accordance with the appeal filed by *UAB Žalmargės pienas*.

The Vilnius Regional Administrative Court is in the process of examining of the administrative case in accordance with the appeal by *UAB Žalmargės pienas* concerning the overruling of the Decision No. 1S-53 of 1 April 2004 of the CC.

2. Decision No. 2S-11 of 30 September 2004 of the CC "On the compliance of actions of *UAB Baltijos mineralinių vandenų kompanija* with the requirements of Art. 5 of the LA" concluded that *UAB Baltijos mineralinių vandenų kompanija*, disregarding the obligations imposed by the CC by its Decision No. 2S-6 of 27 March 2003 of the CC to cease the use of the misleading advertising, continued to act in violation of the provisions of Art. 5 of the LA by selling soft drinks labelled with the advertising text "containing no sweeteners harmful to human health" which had been acknowledged as misleading statement. The CC obligated



UAB Baltijos mineralinių vandenių kompanija to forthwith cease the use of the misleading advertising and subjected the company to a pecuniary fine.

The Vilnius Regional Administrative Court is currently examining the administrative case in accordance with the appeal filed by *UAB Baltijos mineralinių vandenių kompanija* concerning the overruling of the Decision No. 2S-11 of 30 September 2004 of the CC.

Decisions of the Chief Administrative Disputes Commission

During 2004, the Chief Administrative Disputes Commission examined 2 appeals concerning actions (omission) of the CC.

The Commission examined the actions of CC whereby the CC refused to initiate an investigation concerning restrictive actions in accordance with the request filed by the Hunters' Club *Illtis*. The Commission by its Decision No. 2004/05-4R-43 of 30 March 2004 rejected the appeal, on the grounds that the facts indicated in the appeal relate to the dispute between natural persons and the municipal authorities concerning the formation of a unit of hunting area, rather than infringement of the LC.

Another appeal challenged the response submitted by the CC concerning the use of electricity meters (the issue beyond the scope of the competence of the CC), claiming that the response failed to comply with the requirements of the Law on Public Administration and other legal acts. The Commission by its Decision No. 2004/03-4R-200 of 30 December 2004 rejected the appeal.

III. INTERNATIONAL RELATIONS

European competition work

Similarly to previous years, during 2004, and in particular with only four months preceding the accession of Lithuania into the EU, the activity of the CC in the area of competition law and its implementation in the pre-accession context was particularly intense. On 15 April 2004, the Seimas of the Republic of Lithuania approved the amendments to the 1999 LC, which came into effect on 1 May 2004. All rules and regulations previously adopted by resolutions of the CC were subject to revision and brought into line with the amended provisions of the LC.

In the view of coming into effect, as of 1 May, of the new system for the application of Articles 81 and 82 of the Treaty which is governed by Council Regulation 1/2003 and other regulations passed by the European Commission, also referred to as "modernisation

package" comprised of the implementing regulation of the European Commission and six notices, the specialists of the CC considered it a task of particular importance to ensure proper preparedness for the application of this new system. In connection to that, representatives of the CC were participating in the working groups set up by the European Commission specifically for the purpose of the implementation of the system. The specialists were invited to five plenary meetings arranged by the "European Competition Network" (further – the ECN) and one meeting hosted by the ECN subgroup "Exchange of information". The meetings were dedicated to the discussion of issues pertaining to the implementation of the new Council Regulation 1/2003. The exchange of information was to a largest extent effected via the internal network of the ECN „CIRCA" established by the European Commission.



The preparation for the implementation of the provisions of the new Regulation and cooperation within the ECN necessitated certain organisational and structural adjustments, – the CC appointed an ECN administrator, contact persons and those in charge of specific issues.

Considerable attention was devoted to the strengthening of administrative capacities of the CC necessary for the implementation of the new regulation. The specialists of the CC were invited to a workshop, the entire agenda whereof was dedicated to the comprehensive analysis of the mechanism for the practical implementation of the new regulation.

Activities of the CC related to the explanation of the application of the new competition regulations benefited significantly from the contribution made by competition experts from Germany who were working in Lithuania under a PHARE Twinning - Light Technical assistance project, and had been directly involved in the development of the "Modernisation package". Also within the framework of the project several specialised seminars and workshops were organised for specialists of the CC and judges.

Prior to the accession of Lithuania into the EU, and immediately after the accession specialists of the CC were actively participating in the activities of the EU institutions. In the period from 1 May 2004 until 31 December 2004, specialists of the CC participated in the activity of 19 advisory committees, of which 12 dealt with the issues of restrictive activity and dominance, 4 – dealt with concentrations and in 2 cases – the committees dealt with agreements and dominance in maritime transport, in one case it considered State aid issues. Another form of such participation was

the administration of the information received by using LINESIS the Lithuanian membership in the EU information system. The channels of this information system are used to receive the information documents of the EU; legislation proposals, strategic documents in respect of which Lithuania drafts its position; other important information.

The CC within its competence was preparing its position in respect of the negotiation position 06 of Romania and Bulgaria, also the White Paper on services of general interest, was participating in the preparation of other positions submitted to the Government of the RL by relevant ministries.

The CC was submitting, on a regular basis, information to the Chancellery of the Government of the RL concerning the relevant national implementing measures in respect of Chapter 06 "Competition policy" of the new *acquis* of the EU, where such measures are necessary for the implementation of the a specific piece of legislation, as well as reports on the implementation of the *acquis*.

The CC submitted material to the Competitiveness Council held on 17-18 May 2004 concerning the Communication from the Commission "A pro-active Competition Policy for a Competitive Europe", and the report of the EC on State aid.

The Directorate - General for Competition was submitted a general report on the enforcement of the LC during 2003, as well as the monitoring report on the preparedness for the EU membership from the EU competition policy point of view.

During the year 2004, due consideration has been given to supplementing and updating of PROGRESS data base (harmonogram) that has been structured by TAIEX Bureau under the European Commission to facilitate harmonisation of the national law with the EU law. A new database on the transposition of Internal Market directives into the national law has also been launched.

Chairman of the CC was invited to participate in the annual meeting of the heads of the European competition authorities, held in Brussels on 22 September, following his participation in the European Energy Day, also attended by officials of the energy regulatory institutions. The agenda of such events included the discussions on the further priorities of the area, and the role of competition and regulatory authorities in promoting and developing competitiveness of the energy market.

Similarly to previous years, information was being provided to the chapters "State Competition Policy" of the Lithuanian Cardiff and convergence program, which includes a description of changes in the competition law that have occurred during the year and the implementation of the law.

International cooperation

During the year 2004, the CC was further continuing its cooperation with the ICN (International Competition Network) – an informal information network designed to facilitate the cooperation between the competition authorities of the developed and developing countries with a view to enforcing competition

policy and the common interests in the areas subject to competition rules. The CC was providing the network with the most updated information on the competition legislation effective in Lithuania with a special focus placed upon the concentration control enforced by the CC, cartel prevention and promotion of competition culture in Lithuania.



Chairman of the CC participated in the Third ICN Conference held on 19-22 April in Seoul, Korea. The principal objectives of the Conference was to present plans for the future, and discuss the issues of greatest concern to the competition authorities, – merger control, prevention of cartels, and the competition advocacy.

The Chairman was also invited and participated in the traditional annual ECA (European Competition Authority) Conference on competition issues held on 6-7 May in Germany and Luxemburg. The agenda of the Conference included the discussion of the important issues of competition law, and the challenges of application of competition legislation in the fields of air transport and health care, considerable time was devoted to discussions on the new Council Merger regulation.

During the year under review the CC continued its cooperation with OECD (Organisation for Economic Cooperation and Development). Members of the CC were regular participants in meetings of the OECD Competition Committee and its working group No. 2 "Competition and regulation" and the working group No. 3 "International cooperation". The specialists of the CC were also invited to the Global Forum on Competition in Paris. Representatives of the Lithuanian competition authority were making presentations on the objectives of the CC, optimisation of the structure of the competition authority, harmonisation of procedures for merger control, and offering their comments on other important competition issues.

Within the framework of the OECD Baltic Regional program, a workshop "Competition policy" was held on 25-26 May in Tallinn. The most important issues on the agenda of the Conference were competition policy and regulation, and strengthening of resources of competition authorities, and included four presentations made by specialists of the CC.

On the request of the OECD Competition Committee the CC drew up the Report on the Lithuania competition policy development in 2003 covering the principal changes in the competition law and policy, most important aspects of the activities of the CC and the description of most important investigations.

Furthermore, one specialist of the CC attended a two-weeks'



training session on competition issues organised by the OECD and held in Joint Vienna Institute in Vienna.

As every year, on the request of UNCTAD (the United Nations Conference on Trade and Development) the CC submitted information necessary for the documents in the area of competition policy and law prepared by this organisation.

In 2004, the CC launched cooperation with ACE (Association of Competition Economists). Chairman of the CC was a participant of the Second Annual Conference of the Association held in Sienna, Italy.

In 2004, for the third time in succession and on the invitation of the Irish Institute of Public Administration, specialists of the CC were enrolled in the training courses on the EU competition policy, that were arranged on 21-31 March in Dublin and Brussels.

On 10 June 2004, a public official from the Ukraine who was interested in issues related to competition law and the development of its implementation in Lithuania visited the CC. The visit was organised within the framework of the Canadian-Ukraine-Baltic States economic management-training program.

On 2-3 November 2004, the CC hosted a delegation of public servants from Vietnam visiting Lithuania under a program supported by the Swedish Government and implemented by the Law Department of the Umea University of Sweden. During this traineeship tour the public servants from Vietnam were offered all possibilities to familiarise themselves with the framework competition law of Lithuania and enforcement of such competition law, they also were introduced to the principles of the procedures of the investigation of competition cases. For that purpose the guests were visiting Vilnius Regional Administrative Court and a private lawyers' firm.

Within the framework of the EC competition authorities officials exchange program on 9-21 December 2004, the CC was hosting an official of the EC Directorate-General for Competition. The guest was familiarised with the activities of the institution and consulted the specialists of the CC on issues related to the enforcement of the provisions of the Council Regulation 1/2003.

Technical assistance

In February-July 2004 PHARE Twinning - Light Technical assistance project "Reinforcement of the Competition Council in the area of competition" was implemented in the CC. The project partner and the implementing authority was the Federal Ministry of Economics and Labour of Germany. Tasks envisaged under the project including the preparation for work in the EU legal environment, direct application of relevant EU competition rules, cooperation with the EC and other national competition authorities while investigating competition cases subject to the EU competition law were successfully fulfilled.

In May, within the framework of this PHARE project four specialists of the CC visited the German Bundeskartellamt and the Federal Ministry of Economics and Labour of Germany.

IV. PUBLIC RELATIONS

In 2004, for the purpose of the improvement of the dissemination of information and the development of public relations stronger emphasis during the year 2004 was placed on planning of public relations activity. Information published in advance on issues discussed in meetings or completed investigations, also comments offered to journalists by specialists of the CC have become powerful channels and means for the expedient dissemination of information in the news media. The information on competition issues, the operations of the institution and decisions taken thereby so comprehensively presented to the public facilitated the creation of the positive image of the CC in the public and reinforced the public confidence in the institution successfully tackling competition problems. While developing public relations efforts were made not to limit the undertakings to relations with the news media, much was done to improve and develop the internal communications, image building and strategic planning of operations.

Another important area of public relations development targeting public awareness and education also yielded some tangible results; the public awareness of competition issues has significantly improved followed by enhanced understanding and awareness of benefits brought about by successful development of competition in individual markets. Efficient crisis management performance contributed to the building of the image of the CC the institution capable of efficiently coping with the tasks assigned to it. The CC has been expediently and openly expressing its position on the most burning issues causing the hottest discussions in the news media; this being done routinely contributed significantly to the formation of the public view of existing problems and the ways and methods of addressing them.

News media interests

The activities of the CC, the course of the investigations and their outcome have always been in the focus of the journalists representing both national and regional publications, TV stations and radio channels. Several subjects have received wide coverage in the news media where of special interest to the public were actions of the CC having an impact upon the situation in individual markets. The investigation launched last July by the CC concerning the compliance of actions of *AB Mažeikių nafta* with the requirements of the LC and actions of the CC officials have become an area of special public interest. The relations between *AB Mažeikių nafta* and Lithuanian undertakings trading in oil products assessed in the course of the investigation from the competition point of view have become a subject matter of hot public discussions while assessing the situation in the market, in particular in moments of fuel price surges. Another subject of enhanced public interest was the situation in the retail trade market, expansion of the major trade

networks and their relations with suppliers. With the breakout of "price war" between operators of the mobile telecommunications one of the hottest and recurring subjects for the news media was the course of investigations conducted by the CC and the decisions passed by the authority.

The CC has continued its cooperation with the news agencies ELTA and BNS, which were expediently disseminating information on issues discussed at the meetings of the CC and the passed decisions. Close relations with TV journalists working for business programs have become the means for an expedient publication of the CC's press releases. Business programs of the Lithuanian radio I program were not infrequently broadcasting the interviews with specialists of the CC. The National TV channel prepared a series of 8 interviews with specialists of the CC for the analytical publicist program *Pinigų karta*.

Information related to the topicalities of the competition policy and implementation of the new relevant requirements upon Lithuania's entry into the EU has been provided in cooperation with the Press Service of the Government and the Public Relations department of the Ministry of Economy.

Scope of dissemination of information

During the year 2004, the CC prepared and published 75 press releases on the decisions passed by the institution, also initiated investigations, their course and other events. Year after year the scope and number of such press releases have been increasing. Similarly, the CC has been enhancing the volumes of publications on a range of issues related to the activity of the institution basically by publishing more articles and information notices in the regional press.

NOTICES TO NEWS MEDIA		PUBLICATIONS
2004	75	466
2003	64	420
2002	62	350

Specialists of the CC have prepared 5 analytical articles specifically intended for specialised publications, where they covered the peculiarities of the application of the LC, and introduced the conclusions and findings of completed investigations, also commented on the amendments of the LC and requirements of the EC in the area of competition policy. On 50 occasions specialists were interviewed by TV and radio journalists and participated expressing their expert opinion on the assessment of the situation in individual market from the competition point of view.

Management of the CC website

Invariably, the Internet website of the CC has been improved with a view to uploading more abundant and comprehensive

information and ensuring that the website is managed in accordance with the updated requirements to websites of public authorities as defined by the Government of the LR. The website has become a channel for publishing the press releases, draft legislation, received notifications of undertakings to implement concentration. Visitors of the website may familiarize themselves with the text of resolutions passed by the meetings of the CC and resolutions on concentration. Upon publication of drafts of regulations – amendments to the LC, also draft Resolution of the Government "On the approval of rules for the determination of the amount of fines for the infringement of the Law on Competition of the Republic of Lithuania", and others, the CC received quite a number of comments from interested agencies and persons, who had acquainted themselves with the draft pieces of legislation in the CC Internet website. This practice will be further continued and developed. The institution is considering possibilities to increase the volume of information published in the CC website in English.

The website is becoming increasingly popular which is easily concluded from larger number of its visitors, also numbers of received proposals and comments on the contents of the published information.

Image improvement

With a view to improving the image of the new Member States, the quality of public relations of public authorities and enhancing the image formation skills, at the initiative of the Netherlands presiding over the EU, a three-weeks' training course was arranged in the Hague. Participants of the training course were enrolled by way of a competition. The competition was organised by the Information Service of the Netherlands Government, and included the assessment of the presentations of the applicants covering topics related to public relations. The Press Officer of the CC was also selected as a successful participant of the course.

The training course "Public relations" in the Netherlands was designed specifically to facilitate accumulation of the experience in the development of direct relations with the European Parliament and the EC. They presented an awarding possibility to learn about the attainments in the public relations area of the Government of the Netherlands, individual ministries and other public authorities, acquire new skills in communicating with the news media, and crisis management. The training course included theoretical presentations and practical workshops and upon a successful completion of the graduation tasks the participants were issued the qualification certificates.

Seeking to enhance skills and improve qualifications in the area of public relations specialists of the CC were participating in various seminars and workshops dealing with issues of communication with the news media and the quality of provision of information, they also prepared numerous presentations for seminars and conferences where specialists were often inquired by participants on peculiarities of competition in the radio and television markets, and other challenges in assessing misleading or comparative advertising on the basis of the conducted investigations.

V. ANNEXES

ENFORCEMENT OF THE LAW ON COMPETITION (2004)

	Decisions reached	New cases opened
Total number of cases	79	69
Prohibited agreements	7	8
Abuse of a dominant position	5	4
Concentration	54	54
Restrictive actions of public and local authorities	6	3
Unfair competition	7	–
PROHIBITED AGREEMENTS		
	Horizontal agreements	Vertical agreements
New cases opened	7	1
New notifications	–	–
New investigations <i>ex officio</i>	4	1
New complaints	3	–
Decisions reached	6	1
Complaints rejected	4	–
Exemptions	–	1
Prohibitions	–	–
Prohibitions with fines	2	–
ABUSE OF A DOMINANT POSITION		
New cases opened	4	–
New investigations <i>ex officio</i>	1	–
New complaints	3	–
Decisions reached	5	–
Complaints rejected	5	–
Prohibitions	–	–
Prohibitions with fines	–	–
CONCENTRATION		
Decisions reached	54	–
Approvals	50	–
Conditioned approvals	3	–
Infringement of LC (failure to notify)	1	–

DECISIONS REACHED AND FINES IMPOSED BY THE COMPETITION COUNCIL IN 2004

ENFORCEMENT OF THE LAW ON COMPETITION		
Concerning regulations passed by public and local authorities (6)		
Established infringements (1):		
27-05-2004 No. 2S-6	Concerning the compliance of the provisions of Order No. 69 of 11 February 1999 of the Minister of Health "Concerning the provision of residents of rural areas with medicines and pharmacy goods through the institutions of primary health care" with the requirements of Art. 4 of the LC	
Refusals to initiate investigations (2)		
Cases closed (3)		
Concerning prohibited agreements (7)		
Established infringements (2):		
19-11-2004 No. 2S-12	On the compliance of actions of undertakings providing the drivers' training services and the Lithuanian Association of drivers' training and improvement of qualification with the requirements of Art. 5(1)(1) of the LC: <i>UAB Particula</i> <i>UAB Alyridika</i> <i>UAB Klaipėdos darbo rinkos mokymo centras</i> <i>UAB Kalbų gama</i> <i>E. Matuzevičius PE</i> <i>A. Andrijauskas PE</i> <i>UAB Kerulis ir partneriai</i> <i>J. Gelumbauskas PE</i> <i>V. Volikas firm</i> <i>A. Strižak PE</i>	LTL 5,000 LTL 1,000 LTL 1,000 LTL 1,000 LTL 1,000 LTL 1,000 LTL 1,000 LTL 1,000 LTL 1,000 LTL 500
24-11-2004 No. 2S-13	Concerning the compliance of undertakings participating in the tender No. ĮSPA/8/SV/LT administered by the Environmental Project Management agency "Development of waster recovery system" with the requirements of Art. 5 of the LC: <i>UAB Ekoprojektas</i> <i>UAB Ekobaltas</i>	LTL 20,000 LTL 3,000
Exemptions (1):		
15-01-2004 No. 1S-9	Confirmation that the agreement between <i>Auto Riga SIA</i> and <i>UAB Keturi žiedai</i> and <i>UAB Klastera</i> qualifies for a block exemption	
Cases closed (4)		

Concerning abuse of a dominant position (5)		
Cases closed (5)		
Concerning concentration control (59)		
Permissions to implement concentration (53):		
08-01-2004 No. 1S-1	<i>UAB MG Baltic Investment</i> to acquire a 100% holding of <i>UAB Marieberg Media</i>	
08-01-2004 No. 1S-2	<i>BP p.l.c.</i> , <i>Alfa Finance Holdings SA</i> , <i>AI Petroleum Holdings LLC</i> , <i>Renova Holding Ltd.</i> , <i>AO Siberian Oil Company</i> to acquire joint control over <i>JSC Slavneft</i>	
22-01-2004 No. 1S-10	<i>A. Trumpa</i> , <i>UAB Survesta</i> , <i>UAB Pieno pramonės investicijų valdymas</i> , <i>UAB Snavesta</i> to acquire up to a 100% holding of <i>AB Rokiškio sūris</i> and acquire the joint control over it	
22-01-2004 No. 1S-11	<i>UAB Vinukas</i> to acquire a 100% holding of <i>UAB Rubikon prodimpeksas</i>	
29-01-2004 No. 1S-14	<i>3i Group plc</i> , <i>Profita Fund II Ky</i> , <i>Power Contractor Oy</i> to acquire a 100% holding of <i>Empower Holding Oy</i> through the newly established company <i>Special Purpose Vehicle NO 1 OY</i>	
19-02-2004 No. 1S-25	<i>UAB Rubikon apskaitos sistemos</i> to acquire a 51% holding of <i>UAB Livesta serviso centras</i>	
19-02-2004 No. 1S-26	<i>UAB Vinvesta</i> to acquire a 100% holding of <i>UAB Kautra</i>	
12-03-2004 No. 1S-34	<i>Powszechny Zakład Ubezpieczeń S.A.</i> to acquire a 100% holding of <i>UAB DK Lindra</i> , a 100% holding of <i>UAB Nord/LB draudimas</i> and a 100% holding of <i>UAB Nord/LB Gyvybės draudimas</i>	
12-03-2004 No. 1S-35	<i>UAB Rubikon apskaitos sistemos</i> to acquire a 51% holding of <i>UAB Kutra</i>	
18-03-2004 No. 1S-38	<i>OAQ Gazprom</i> to acquire a 34% of <i>AB Lietuvos dujos</i> and jointly with <i>SE Valstybės turto fondas</i> , <i>Ruhrigas Energie Beteiligung AG</i> and <i>E.ON Energie AG</i> acquire control over <i>AB Lietuvos dujos</i>	



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18-03-2004 No. 1S-39	<i>Sampo Oyj</i> to acquire up to a 100% of holding of <i>IfSkadeforsakring Holding AB</i>	
25-03-2004 No. 1S-46	Lithuanian and American <i>UAB Bennet distributors</i> to acquire up to a 100% holding of <i>AB Sema</i>	
01-04-2004 No. 1S-51	<i>UAB Rubikon apskaitos sistemos</i> to acquire up to a 100% holding of <i>AB Kazlų Rūdos metalas</i>	
01-04-2004 No. 1S-60	<i>UAB Vilniaus duona plus</i> to acquire up to a 100% holding of <i>AB Panevėžio duona</i>	
2004-04-29 Nr. 1S-69	<i>UAB Arijus</i> to acquire a 100% holding of <i>AB Aviakompanija Lietuva</i>	
20-05-2004 No. 1S-77	<i>The European Reconstruction and Development Bank</i> to acquire a 30% holding of <i>UAB Litesko</i>	
27-06-2004 No. 1S-80	<i>AB Alita</i> to acquire a 100% holding of <i>AB Anykščių vynos</i>	
03-06-2004 No. 1S-85	<i>UAB Falck Security</i> to acquire a part of the assets of <i>AB bankas Nord-/LB Lietuva</i>	
03-06-2004 No. 1S-86	<i>UAB Pozityvios investicijos</i> to acquire up to a 100% holding of <i>AB Minija</i>	
03-06-2004 No. 1S-87	<i>AB Sanitas</i> to acquire up to a 100% holding of <i>AB Endokrininiai preparatai</i>	
03-06-2004 No. 1S-88	<i>AB Alna</i> to acquire up to a 100% holding of <i>UAB Sonex sistemos</i>	
03-06-2004 No. 1S-89	<i>UAB Sonex grupė</i> to acquire up to a 100% holding of <i>UAB Almos infrastruktūros sprendimai</i>	
03-06-2004 No. 1S-90	<i>Kemira GrowHow OY</i> to acquire a 100% holding of <i>UAB Kemira-Lifosa</i>	
10-06-2004 No. 1S-91	<i>UAB Baltisches haus</i> to acquire a 100% holding of <i>UAB Limada</i>	
10-06-2004 No.1S-92	<i>AB Žemaitijos pienas</i> to acquire a 100% holding of <i>AB Kelmės pieninė</i>	
23-06-2004 No. 1S-99	<i>Partek Insulation AB</i> to acquire up to a 100% holding of <i>UAB Paroc</i>	
01-07-2004 No. 1S-101	<i>UAB Konversbank</i> and <i>AB Incorion Investment Holding Company</i> to acquire up to a 100% holding of <i>AB Snoras</i> and acquire joint control over it	
01-07-2004 No. 1S-102	<i>UAB Baltisches haus</i> to rent the premises from <i>UAB Alvanora</i>	

08-07-2004 No. 1S-109	<i>Nordea Bank Finland Plc</i> to acquire a part of the assets of <i>Kredyt Bank S.A. Vilnius division</i>	
15-07-2004 No. 1S-111	<i>The European Reconstruction and Development Bank</i> to acquire up to a 36% holding of <i>UAB Sonex grupė</i>	
15-07-2004 No. 1S-112	<i>UAB ZIP3</i> to acquire a 100% holding of <i>UAB Vesiga</i>	
15-17-2004 No. 1S-113	A.Vyniautas, V.Čelutka and the Lithuanian and German <i>UAB Stilsas</i> to establish <i>UAB AVS prekyba</i>	
15-07-2004 No. 1S-114	<i>UAB Tamro</i> to acquire up to a 100% holding of <i>UAB Farmacijos projektai</i>	
26-08-2004 No. 1S-125	<i>AB Achema</i> to acquire a 50% holding of <i>UAB Casino Planet</i>	
26-08-2004 No. 1S-126	<i>UAB Konzernas Achemos grupė</i> to acquire a 100% holding of <i>UAB Baltijos TV</i>	
02-09-2004 No. 1S-130	<i>Baltic Investment Fund III L.P.</i> and <i>Baltic Investment Fund III C.V.</i> to acquire a 35,01% holding of <i>UAB Almos biuro sistemos</i>	
09-09-2004 No. 1S-133	<i>AB Malsena</i> to acquire a 50% holding of <i>UAB Gintarinis amžius</i>	
16-09-2004 No. 1S-135	<i>TietoEnator Oyj</i> and <i>AS Hansapank</i> to establish a new company <i>TietoEnator Support Ou</i>	
16-09-2004 No. 1S-136	<i>AB Klaipėdos jūrų krovinių kompanija</i> to acquire a 100% holding of <i>UAB Transfosa</i>	
23-03-2004 No. 1S-143	<i>UAB Pozityvios investicijos</i> to acquire up to a 100% of <i>AB Vilmakas</i>	
23-09-2004 No. 1S-144	<i>AB Lietuvos telekomas</i> to acquire up to a 100% holding of <i>UAB Voicecom</i>	
21-10-2004 No. 1S-151	<i>UAB MG Baltic Investment</i> to acquire up to a 100% holding of <i>AB Lėvuo</i>	
21-10-2004 No. 1S-152	P.Krištopaitis, S.V.Anužis to acquire up to a 100% holding of <i>UAB Simpras</i> and up to a 100% holding of <i>UAB Rokų keramika</i> ad acquire joint control over the companies	
28-10-2004 No. 1S-155	<i>Litis ehf</i> to acquire a 100% holding of <i>UAB Lucerna</i>	
28-10-2004 No. 1S-156	<i>UAB Vakarų Lietuvos pramonės ir finansų korporacija</i> to acquire a 97% holding of <i>AB Suskystintos dujos</i>	

04-11-2004 No. 1S-158	<i>UAB Eika</i> and <i>AB Achema</i> to acquire up to a 100% holding and acquire joint control over <i>AB Klaipėdos laivų remontas</i> through the newly established and fully controlled <i>UAB Jūros vartai</i>	
11-11-2004 No. 1S-159	<i>UAB Baltic Metal</i> to acquire up to a 100% holding of <i>AB Vilniaus specialusis autotransportas</i>	
18-11-2024 No. 1S-163	<i>UAB Silberauto</i> to acquire a part of assets of <i>UAB Kauno autokompleksas</i>	
16-12-2004 No. 1S-173	<i>UAB Rubikon apskaitos sistemos</i> to acquire up to a 100% holding of <i>UAB Vienituras</i>	
16-12-2004 No. 1S-174	<i>UAB Sanitex</i> to acquire up to a 35% holding of <i>UAB Hermis Capital</i>	
23-12-2004 No. 1S-180	<i>UAB Aistensita</i> to acquire <i>AB Utenos elektrotechnika</i> and <i>AB Umega</i> by way of merger	
23-12-2004 No. 1S-181	<i>UAB Tamro</i> to acquire a 100% holding of <i>UAB Vognė</i>	
30-12-2004 No. 1S-185	<i>Rautakirja Oy</i> to acquire a 51% holding of <i>UAB Impress Teva</i>	
Permissions to perform individual actions of concentration (4):		
09-01-2004 No. 1S-5	<i>A. Trumpa</i> , <i>UAB Survesta</i> , <i>UAB Pieno pramonės investicijų valdymas</i> , <i>UAB Snavesta</i> by acquiring up to a 100% holding of <i>AB Rokišio sūris</i> and acquiring joint control over it	
29-01-2004 No. 1S-13	<i>UAB Vinvesta</i> by acquiring a 100% holding of <i>UAB Kautra</i>	
26-02-2004 No. 1S-30	<i>Powszechny Zakład Ubezpieczeń S.A.</i> by acquiring a 100% holding of <i>UAB DK Lindra</i> , a 100% holding of <i>UAB Nord/LB draudimas</i> and a 100% holding of <i>UAB Nord/LB Gyvybės draudimas</i>	
15-07-2004 No. 1S-115	<i>UAB Švyturys-Utenos alus</i> , <i>AB Kalnapilio-Tauro grupė</i> , <i>AB Ragutis</i> , <i>AB Kauno alus</i> and <i>Cygas-Kalkis TUB Rinkuškiai</i> by establishing <i>VŠĮ Desa</i>	
Refusal to authorise individual actions of concentration (1):		
01-04-2004 No. 1S-50	<i>AB Alita</i> by acquiring 100% holding of <i>AB Anykščių vynas</i>	
Established infringements (1)		
27-05-2004 No. 2S-5	Concerning actions of <i>UAB Rubicon apskaitos sistemos</i> acquiring over 1/4 of the authorised capital of <i>UAB Katra</i> without notifying the Competition Council and obtaining the authorisation for concentration	LTL 3,000

Concerning actions of unfair competition (7)		
Refusals to initiate investigations (7)		
ENFORCEMENT OF THE LAW ON ADVERTISING		
Concerning misleading and comparative advertising (27)		
Established infringements (12):		
18-03-2004 No. 2S-1	<i>UAB Lukoil Baltija servisas</i> advertising campaign "Lukoil prize September "	
18-03-2004 No. 2S-2	<i>UAB Tele2</i> advertising of mobile telecommunication services	
29-04-2004 No. 2S-3	Advertising of <i>AB Lietuvos draudimas</i>	LTL 10,000
29-04-2004 No. 2S-4	<i>UAB Porektus</i> advertising statements about the weight-loss method	LTL 30,000
18-06-2004 No. 2S-7	Advertising published by <i>UAB Saulės spektras</i>	LTL 1,000
09-09-2004 No. 2S-9	Advertising published by <i>AB Lietuvos dujos</i>	LTL 5,000
30-09-2004 No. 2S-11	Advertising campaign of <i>UAB Baltijos mineraliniai vandenys</i>	LTL 30,000
26-11-2004 No. 2S-14	Advertising published by <i>UAB Omnitel</i>	LTL 30,000
26-11-2004 No. 2S-15	<i>UAB Tele2</i> advertising of pre-paid service "Mažylis"	LTL 60,000
02-12-2004 No. 2S-16	<i>UAB Tele2</i> advertising campaign	LTL 60,000
16-12-2004 No. 2S-17	<i>UAB Bitė GSM</i> advertising of the service "Šeima"	
16-12-2004 No. 2S-18	<i>UAB Eurocom</i> advertising campaign	LTL 16,000
Refusals to initiate investigations (12)		
Cases closed (3)		
Total fines imposed in 2004		LTL 281,500

TOTAL NATIONAL STATE AID IN LITHUANIA IN 2003¹

Sector	Aid forms	A1	A2	B1	C1	C2	D1	Total (LTLm)	Total (MEUR)
1.1. Agriculture*.**		2.56						2.56	0.74
1.2. Fisheries									
2. Industry/services		47.47	46.22	11.62	0.34	32.13	0.00	137.78	39.93
2.1. Horizontal aid		2.11	40.49	11.62	0.34	31.57		86.13	24.96
2.1.1. R&D, and innovations		1.04						1.04	0.30
2.1.2. Environmental protection									
2.1.3. SMEs									
2.1.4. Trade		1.07						1.07	0.31
2.1.5. Energy efficiency									
2.1.6. Investment			10.56					10.56	3.06
2.1.7. Employment programs									
2.1.8. Improvement of qualifications									
2.1.9. Privatisations									
2.1.10. Rescue/restructuring			29.93	11.62	0.34	31.57		73.46	21.29
2.2. Sectoral aid		45.36	3.81			0.56	0.00	49.73	14.41
2.2.1. Steel industry									
2.2.2. Ship-building			0.14			0.00		0.14	0.04
2.2.3. Transport		45.36	3.67			0.56	0.00	49.59	14.37
2.2.4. Coal industry									
2.2.5. Synthetic fibre									
2.2.6. Other sectors									
2.3. Regional aid			1.92					1.92	0.56
TOTAL:		50.03	46.22	11.62	0.34	32.13	0.00	140.34	40.67
Manufacturing and services:		2.11	42.55	11.62	0.34	31.57	0.00	88.19	25.56

¹ Preliminary data.

* The Table presents the preliminary data on State aid granted from the State and municipal budgets.

** The data on State aid to agriculture not broken down by methods of the State aid.

SYMBOLS:

A1 – grants, subsidies

A2 – tax exemptions, tax reliefs, write-off of late interest and penalties, other exemptions

B1 – different types of increase of the state-owned equity at enterprises or increase of its value

C1 – soft loans

C2 – tax deferrals

D1 – State guarantees

TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000-2003* (MEUR)

Indicators	Year	2000	2001	2002	2003
Total national State aid		68.70	39.73	74.96	40.67
Of which:					
- manufacturing and services		42.07	17.26	44.03	25.56
- agriculture [†]		0.43	0.82	1.43	0.74
- transport		26.20	21.65	29.50	14.37

* The table includes data on State aid granted from the State and municipal budgets without the resources available under the Rural Support Programme.

TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000-2003*

Indicators	Year	2000	2001	2002	2003
MEUR		68.70	39.73	74.96	40.67
EUR per one employee		43.32	26.11	53.31	28.28
% of GDP (at current prices)		0.57	0.29	0.51	0.25
% of national budget expenditures		2.81	1.36	2.22	1.12
% of national budget deficit		66.50	13.21	23.50	12.42
Population (m)		3.70	3.48	3.47	3.46

* The Table includes data on State aid granted from the State and municipal budgets without the resources available under the Rural Support Programme.

METHODS OF NATIONAL STATE AID IN 2000-2003

	A1	A2	B1	C1	C2	D1	Total (LTL m)	Total (MEUR)
State aid 2000	225.55	7.45	0.06	0.01	0.07	22.48	255.62	68.70
State aid 2001	87.99	24.50	0.00	0.07	27.54	0.00	140.10	39.73
State aid 2002	93.09	127.19			38.45	0.07	258.8	74.96
State aid 2003	50.03	46.22	11.62	0.34	32.13	0.00	140.34	40.67

SYMBOLS:

A1 – grants, subsidies

A2 – tax exemptions, tax reliefs, write-off of late interest and penalties, other exemptions

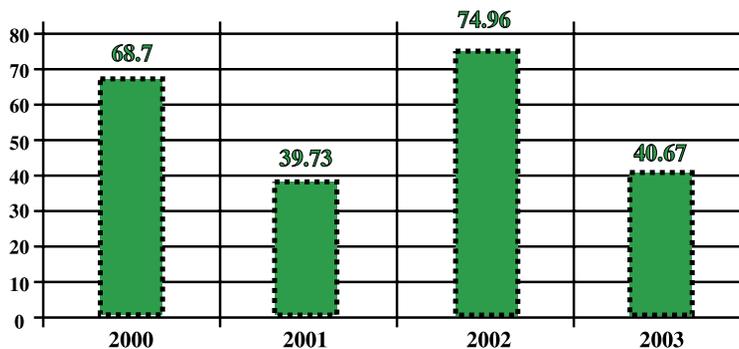
B1 – different types of increase of the state-owned equity at enterprises or increase of its value

C1 – soft loans

C2 – tax deferrals

D1 – State guarantees

TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000-2003 (MEUR)



STATE AID ASSESSED BY RESOLUTIONS OF THE COMPETITION COUNCIL IN 2004

Notification received	Aided undertaking, State aid scheme	CC Resolution No., date	Decision
2003-05-30	AB Vingriai	CC Resolution No. 1S-67, 29-04-2004	Approved
2003-07-21	AB Jiesia	CC Resolution No. 1S-56, 08-04-2004	Approved
2003-09-16	Glass factory AB Aleksotas	CC Resolution No. 1S-45, 25-03-2004	Disapproved
2004-01-29	State aid scheme – State aid to SMEs	CC Resolution No. 1S-42, 18-03-2004	Approved
2004-01-29	State aid scheme – Regional aid	CC Resolution No. 1S- 44, 25-03-2004	Approved
2004-03-24	State aid scheme – Promotion of R&D	CC Resolution No. 1S-57, 08-04-2004	Approved

Total notifications received – 6, approved – 5, refused approval – 1.

ORGANISATIONAL STRUCTURE OF THE COMPETITION COUNCIL

