

IN 2016 ONE EURO INVESTED IN COMPETITION COUNCIL BROUGHT ALMOST 8 EUROS IN RETURN

On June 14 the Chairman Šarūnas Keserauskas presented the Competition Council's annual report to the members of the Cabinet.

The Chairman noted that the Council, which acts as an independent budgetary institution, seeks to bring considerable benefits to consumers, which also contributes to the objectives of the Programme of the Government, for example, lower prices of pharmaceuticals.

The Council has made a commitment to create consumer benefits which, calculated according to the OECD methodology, would exceed the authority's budget five times. In 2016 the commitment was fulfilled substantially – one euro invested in the Council brought almost 8 euros in return.

Šarūnas Keserauskas also highlighted that the institution's budget remains one of the smallest compared to such regulatory and supervisory authorities as the Communications Regulatory Authority, the National Commission for Energy Control and Prices or the Public Procurement Office. Better funding could help the Council acquire equipment and software necessary for conducting investigations and staying on par with competitors in attempt to attract and maintain qualified professionals.



COMPETITION COUNCIL'S CHAIRMAN RECEIVES AN AWARD FOR MERITS TO LITHUANIA

On the eve of King Mindaugas' Coronation Day in Lithuania, the President of the Republic of Lithuania awarded the Competition Council's Chairman Šarūnas Keserauskas the Medal of the Order for Merits to Lithuania.

According to Šarūnas Keserauskas, the award is an evaluation of the Council's team work and efforts that will serve as an encouragement to continue creating benefits for consumers.

The Medal of the Order for Merits to Lithuania is bestowed upon the citizens of Lithuania and other nations for promoting Lithuania, developing and strengthening international relations, providing humanitarian aid, for merits in civil service, culture, science and education, business and production, health and social security, military science, sports, economy and other fields.

On the occasion of Lithuania's National Day, awards were granted to 41 person.

COMPETITION COUNCIL FINED AB KAUNO GRŪDAI FOR UNNOTIFIED MERGER

The Competition Council found that having acquired about 51 per cent of *Vievio paukštynas* shares and gained control over the company, *Kauno grūdai* implemented unnotified merger. For the infringement of the Law on Competition, the Council fined *Kauno grūdai* EUR 947,700.

The Council opened the investigation on 21 April 2015 in accordance with the ruling of 15 October 2014 of the Court of Appeal of Lithuania. The Court found that by entering into fictitious transactions, on 12 April 2011 *Kauno grūdai* acquired about 51 per cent of *Vievio paukštynas* shares. As a result of these transactions, the real party of the transaction – *Kauno grūdai* – was concealed in order to avoid merger control procedure set by the Law on Competition.

During the investigation the Council found that having acquired about 51 per cent of *Vievio paukštynas* shares, *Kauno grūdai* gained the right to appoint the majority of board members of *Vievio paukštynas*, ability to make strategic decisions related to the economic activity of the undertaking, actions undertaken by the company's governing bodies and the composition of personnel. In addition, *Kauno grūdai* retained the acquired control during the bankruptcy proceedings of *Vievio paukštynas*.

According to Šarūnas Keserauskas, Chairman of the Council, when imposing the fine, the fact that *Kauno grūdai* concealed the committed infringement, was considered an aggravating circumstance.

The Chairman noted that some business representatives still treat merger notifications as a formal procedure: "Even if the transaction had not had any considerable influence on the market or if, as in *Vievio paukštynas* case, the acquired undertaking would be later subject to bankruptcy proceedings, merger



The courts found that by making fictitious transactions *Kauno grūdai* sought to avoid merger control procedure. The protégés signed the share acquisition agreements only formally, however, by doing so *Kauno grūdai* became the real acquirer of the rights and duties of the shareholder.

Šarūnas Keserauskas, Chairman

notification is not just a formality. Companies are often trying to avoid merger control procedure and fail to notify mergers, however, as the competition culture gets stronger, unnotified mergers are more and more difficult to conceal. Irrespective of whether the Council would clear the merger or not, failing to notify a merger in time is a serious infringement."

COURT REJECTED COMPLAINT BY CARTEL PARTICIPANT *UAB VORTEX CAPITAL*

Vilnius Regional Administrative Court upheld the Council's decision, according to which *UAB Elmis*, *UAB LEDEVILA* and *UAB Vortex Capital* were fined for bid-rigging in the public procurement for the purchase of construction and installation works.

The Court rejected the complaint by *UAB Vortex Capital*, whereby the company asked to repeal the Council's decision or reduce the imposed EUR 12,600 fine, and confirmed that the Council identified indisputable factual circumstances proving the anti-competitive agreement, properly

evaluated the actions of the applicant and imposed a proportionate fine. Changes related to the manager and shareholders of *UAB Vortex Capital* did not constitute sufficient grounds for the exemption from fine.

The Council's experts found that the companies rigged their bids (including the price) and created favorable conditions for *Vortex Capital* to win the tender. For the anti-competitive agreement, the Council fined *LEDEVILA* EUR 2,100, *Vortex Capital* – EUR 12,600.

SUPREME ADMINISTRATIVE COURT UPHELD COUNCIL'S DECISION ON CARTEL IN ENERGY SECTOR

The Supreme Administrative Court of Lithuania upheld the Competition Council's decision of 11 February 2015, according to which two competitors *UAB Lukrida* and *UAB Manfula* fixed the prices of internal combustion engines purchased from *UAB Envija* and restricted competition in the combined heat and power plants construction market.

The Court agreed that the companies infringed the Law on Competition and the Treaty on the Functioning of the European Union. The conclusion was drawn in light of the Council's arguments, according to which *Lukrida* and *Manfula* coordinated their behaviour through *Envija* and refused to make independent decisions regarding the price of internal combustion engines purchased from *Envija*. The agreement might have resulted in higher prices of combined heat and power plants construction works where internal combustion engines are used.



The Council opened the investigation in 2013 after receiving a leniency statement from *Lukrida* concerning the price fixing agreement with its competitor *Manfula*.

The Supreme Administrative Court of Lithuania upheld the fines which the Council imposed

on the Companies: *Manfula* – EUR 333,900, *Envija* – EUR 218,696. The Court also confirmed that the Council made the right decision on immunity from EUR 656,600 fine applicable to *Lukrida* after the company applied for leniency. According to the Council’s leniency programme, a cartel participant

who first submits information available to him and collaborates with the Council during the investigation, may be granted immunity from a fine or offered up to 75 per cent reduction in fine.

SUPREME ADMINISTRATIVE COURT DENIED GAZPROM’S APPLICATION TO RENEW COURT PROCEEDINGS

The Supreme Administrative Court of Lithuania (Court) denied *Gazprom’s* (Company) application to renew court proceedings and upheld the Competition Council’s decision, according to which the Company breached merger condition.

In 2004 the Council cleared the merger whereby the Company acquired *AB Lietuvos dujos* shares on condition that it would not pre-

vent Lithuanian buyers to purchase natural gas from other suppliers. Having received the complaint from *AB Lietuvos energijos gamyba*, in 2012 the Council opened an investigation. The Council’s experts found that the Company’s refusal to negotiate with *AB Lietuvos energijos gamyba* on the natural gas swap agreement for 2013–2015 breached the merger condition envisaged in the clearance of 2004. For the breach the Council fined the Company EUR 35.65 million.

The Company appealed the Council’s decision of 2014 to Vilnius Regional Administrative Court. Having its appeal refused, the Company appealed the decision of Vilnius Regional Administrative Court to the Supreme Administrative Court. On 22 December 2016 the latter Court upheld the Council’s decision and the imposed fine. The Company tried to renew court proceedings, however, the Company’s application was denied.

Gazprom had to pay the fine by 10 September 2014. Due to the litigation process, the enforced recovery of the fine and the interest was suspended. Since the company did not pay the fine and interest after the final ruling of the Supreme Administrative Court of Lithuania of 22 December 2016, the Council decided to transfer the enforcement to the bailiffs.



In total *Gazprom* shall pay
EUR 41,586,143 – a fine of
EUR 35,651,268 and EUR 5,934,875 of interest

UAB KONCERNAS ACHEMOS GRUPĖ SUSPECTED OF HAVING IMPLEMENTED UNNOTIFIED MERGER

The Council completed an investigation into suspected unnotified merger by *koncernas Achemos grupė*. According to the Council's preliminary findings, in 2013 *koncernas Achemos grupė* acquired sole control of *UAB Jūros vartai* and *AB Klaipėdos laivų remontas* and by doing so implemented unnotified merger.

In 2014 the Council cleared the merger whereby *koncernas Achemos grupė* acquired 50 per cent of *UAB Jūros vartai* shares and 18,46 per cent (together

with the currently owned shares – 37,79 per cent in total) of *UAB Klaipėdos laivų remontas* shares and sole control of both companies. During the examination of merger notification the Council found that *koncernas Achemos grupė* might have implemented a merger prior to its notification to the Council. As a result, the Council opened an investigation, the preliminary findings of which showed that *Achemos grupė* did fail to notify the merger to the Council and obtain clearance.

UAB AMIC LIETUVA PAID A FINE FOR COMPETITION LAW INFRINGEMENT

After the final ruling of the Supreme Administrative Court of Lithuania, *UAB AMIC Lietuva* (former *UAB Lukoil Baltija*) paid a fine of EUR 3,297,700 and EUR 536,339 of interest.

The company was fined after the Council had found that in 2003 *AMIC Lietuva* signed a joint venture agreement with *AB Baltic Petroleum* and acquired control over 15 fuel stations. By doing so *AMIC Lietuva* implemented unnotified merger and thus infringed the Law on Competition.

The Court confirmed that the Council legitimately imposed a fine of almost EUR 3.3 million on the infringer.

In April–June *AMIC Lietuva* paid the fine and interest – EUR 3,834,040 in total.

SUPREME ADMINISTRATIVE COURT: KLAIPĖDA CITY MUNICIPALITY BREACHED COMPETITION LAW

The Supreme Administrative Court of Lithuania upheld the Competition Council's decision, according to which Klaipėda City Municipality breached the Law on Competition by authorising five municipal companies to provide shared taxi services without a competitive procedure.

On 6 October 2015 the Council found that in 2012 some of the shared taxi routes were cancelled, while the other ones continued being served by the authorised service providers. Having awarded shared taxi service providers *UAB Audresta*, *UAB AŠTUONIUKĖ*, *UAB DEVINTOJI BANGA*, *UAB Aisčiai*, *UAB DEŠIMTAS MARŠRUTAS* with five-year contracts without a tender or other competitive procedure, the

Municipality discriminated against other undertakings and thus breached the Law on Competition. The final and binding decision of the Court confirmed

that the Council legitimately obliged the Municipality to repeal the contracts signed with municipal companies.

VILNIUS REGIONAL ADMINISTRATIVE COURT: *UAB ŽAGARĖS INŽINERIJA* AND *UAB ROVALTRA* RIGGED THEIR BIDS

Vilnius Regional Administrative Court upheld the Competition Council's decision of 5 December 2016, according to which *UAB Žagarės inžinerija* and *UAB Rovaltra* (Companies) rigged their bids in the public procurement for the purchase of machinery organized by *UAB Fontas LT* and confirmed that the Council legitimately imposed the fines on the Companies.

The Court agreed that bid-rigging is one of the most serious breaches of competition law, which causes serious harm to the country's economy and, thus, should be fined heavily. The Court upheld the fines which the Council imposed on the Companies: *UAB Rovaltra* – EUR 70,400, *UAB Žagarės inžinerija* – EUR 33,400.



In 2016 the courts upheld
85 per cent of the
Council's decisions