

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Cancels & replaces the same document of 9 June 2017

Annual Report on Competition Policy Developments in Lithuania

21-23 June 2017

This report is submitted by Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.

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Executive summary

1. As fun as competition enforcement may be, an agency must not operate in isolation. Individual achievements bring satisfaction, but by working together with allies we can take on bigger challenges and create more benefits for consumers and businesses.
2. Our traditional allies have been competition authorities of other countries, if only because working with like-minded people is easier. There is no better example of such cooperation than the European Competition Network. In place since 2004, the ECN has already exceeded many expectations – although further improvements can be made to ensure the network operates more effectively. To that end, in 2016 the Lithuanian Competition Council (Council, KT) presented its views on the European Commission’s initiative of empowering national competition authorities to become better enforcers.
3. Closer cooperation with our ECN peers should not prevent us from seeking partnerships on our home soil. Engagement with national authorities can be easily overlooked or taken for granted, but as our 2016 experience demonstrates such engagement contains huge – and yet unfulfilled – potential for a more effective competition enforcement and advocacy.
4. Our fight against bid rigging would have been less effective but for the support we received from Lithuania’s public procurement and anti-corruption authorities. With their help, we successfully completed three bid-rigging investigations, and our experiences working together led to the creation of an information exchange and resource sharing mechanism that will become fully functional in 2017.
5. In the 2016 market study of reimbursable pharmaceuticals, the Competition Council identified regulations as creating barriers to entry for cheaper generics. This study complemented another inquiry into the pharmaceutical sector completed by the State Audit Office in the same year. Findings and recommendations of both authorities are key drivers of a regulatory reform that the Ministry of Healthcare intends to carry in 2017.
6. The year of 2016 saw the authority involved in complex assessment of banks’ and insurance companies’ mergers. Some of that merger work, as well as one investigation into suspected abuse of dominance in the banking sector, will continue in 2017. Our experience has shown that getting expert assistance from the Central Bank – a regulator of both banking and insurance markets – can be a big advantage in making our competition assessments better and quicker. The 2016 cooperation agreement with the Central Bank envisages secondment opportunities as a way to share technical expertise between the authorities.
7. The stories of successful cooperation leave a lot to be desired. Nowhere the case for better cooperation is more pressing than municipalities’ activities. Some local government bodies treat disruptive forces of competition with scepticism, and there are those involved in outright competition restrictions that bring harm to consumers. All this presents challenges for us: understanding municipalities’ concerns and explaining to them the consumer benefits that come from their pro-competitive behaviour. To face that challenge, in 2017 we will leave the confines of the capital and embark on a competition road-show, visiting several municipalities and reaching out to representatives of both local governments and businesses. It will not be easy, but the benefits of cooperation are worth the efforts.

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

1.1. Summary of new legal provisions of competition law and related legislation

8. Proposed: Amendments to the Law on Competition concerning private damages claims and financing of the Competition Council from merger fees.
9. Enacted:
 - Revised Law on the Prohibition of Unfair Practices of Retailers entered into force.
 - Amendments to the Law on Competition were adopted. From now on KT has the right to fine public administration entities for infringements of the Law on Competition.
 - Amendments to the Law on Local Self-Government concerning the right of legal persons established by municipalities to engage in economic activities were adopted. These changes prevent municipalities or municipal companies from engaging freely in economic activities, which, so far, has often resulted in restrictions of competition.
 - Amendments to the Code on Railroad Transport *inter alia* regarding transfer of regulatory function of railway sector from KT to the Communications Regulatory Authority were adopted and entered into force.

1.2. Other relevant measures, including new guidelines

10. KT presented the Guidelines on Assessment of Misleading and Unlawful Comparative Advertising and Recommendations on comparing prices in advertising to bring more clarity for undertakings engaged in advertising activities.
11. KT prepared the Guidelines on Cooperation with Public Institutions which in January, 2017 was nominated among the best Soft Law projects worldwide. These guidelines aim to help companies and associations answer the questions that arise when cooperating with public institutions, and help public institutions evaluate whether their proposals or actions could create conditions for companies to violate competition rules.
12. New Merger Notification and Examination Procedure came into force on January 2016.

2. Enforcement of competition laws and policies

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

13. KT prioritises investigations based on the expected impact of its investigations on consumer welfare. Sector-wise, in 2016 KT focused on the following:

2.1.1. Waste management

14. KT closed four investigations into non-compliance with KT's obligations. KT found that municipalities chose service providers without a competitive procedure and favored some companies against the others.

15. KT closed one investigation into an anti-competitive agreement in the waste management sector. For the anti-competitive agreement, KT fined *UAB Ekoaplinka* EUR 4100, *UAB Ecoservice* EUR 601 700 and *UAB Marijampolės švara* – EUR 48 500.

2.1.2. Food

16. KT completed an investigation regarding an unnotified merger whereby *AB „Kauno grūdai“* acquired 51 per cent of *AB Vievio paukštynas* shares. Statement of objections has been sent to the parties concerned.

2.1.3. Heavy industry

17. KT terminated two investigations regarding a suspected anti-competitive agreement and unnotified merger between companies engaged in cement production and trade. KT suspected that by acquiring the shares of *AB Akmenės cementas*, as well as the right to veto certain board decisions, *HeidelbergCement Northern Europe AB* implemented an unnotified merger. KT also sought to find out whether *AB Akmenės cementas* disclosed strategic information regarding company activities to a *HeidelbergCement* representative who is also a member of *AB Akmenės cementas* board. KT also aimed at identifying whether such actions could be considered an anti-competitive agreement. Having evaluated that *HeidelbergCement* did not exercise its veto rights and proved that the scope of shares owned by the aforementioned representative has been limited and following a replacement of the board member of *AB Akmenės cementas* by a person in no way connected to *HeidelbergCement*, KT terminated the investigation.

18. KT closed an investigation into the actions of *Concretus Materials, UAB*. KT found that the company provided incorrect and incomplete information necessary for the examination of the merger.

19. Ongoing investigation concerning the failure to notify a merger by the biggest nitrogen fertilizers and chemical products producer. The decision *ACHEMOS GRUPĖ*, is expected by 2Q of 2017.

2.1.4. Bid rigging in public procurement

20. Two closed investigations regarding bid rigging in public procurement:

- for the purchase of municipal waste collection and transportation services
- for the purchase of a biomass chipper with a manipulator.

21. One more investigation was completed in 2016, but the decision was adopted and the companies were fined in the beginning of 2017.

2.1.5. Summary of activities

Competition Authority

22. In 2016 KT launched 14, continued 8 investigations, issued 10 decisions.

	Investigations		Decisions issued
	Launched	Continued	
Anti-competitive agreements	5	2	2
Abuse of dominance	3	1	0
Un-notified mergers	0	2	0
Merger violation	0	1	0
Breach of mergers conditions	0	0	0
Anti-competitive actions by public administrative bodies	2	1	2
Non-compliance with the Council's obligations by public administrative bodies	4	0	4
Obstruction of investigation	0	1	1
Identified merger violation	0	0	1
Total	14	8	10

Courts

23. According to national laws, KT's decisions may be appealed both on procedural and substantive grounds. As of December 31, 2016 there were 28 decisions, including those of procedural nature, under examination at courts of various instances.

24. In 2016:

- 9 KT's decisions were appealed.
- 8 decisions were upheld by courts.
- 3 decisions were partly amended.
- 2 decisions were annulled.
- 2 cases were terminated.

2.1.6. Description of significant cases, including those with international implications.

25. The Supreme Administrative Court of Lithuania passed two rulings upholding the KT's decisions whereby *Kaišiadoriai regional municipality* and *Vilnius regional municipality* granted privileges to certain undertakings and discriminated against other undertakings willing to provide waste management services.

26. Following the ruling of the Court of Justice of the European Union, the Supreme Administrative Court of Lithuania upheld the KT's decision in *E-turas case* whereby 29 travel agencies used online booking system E-TURAS to concert practices when applying discounts to bookings and, thus, breached competition law.

27. The Supreme Administrative Court of Lithuania upheld the KT's decision in *Maxima/Mantinga case* whereby food retail chain *MAXIMA LT*, *UAB* and frozen bakery producer *UAB Mantinga* had been engaged in a 10 year-long anticompetitive resale price maintenance agreement.

28. The Supreme Administrative Court of Lithuania upheld the KT's decision in *Gazprom case* whereby *Gazprom's* refusal to negotiate on the natural gas swap agreement breached the merger condition envisaged in the Competition Council's clearance of the merger.

29. Vilnius Regional Administrative Court upheld the KT's decision in *Public procurement case* whereby three undertakings participating in the public procurement procedure for acquiring software developing works entered into an anti-competitive agreement.

30. Vilnius Regional Administrative Court upheld the KT's decision in *Forum cinemas case* whereby three cinema operators, namely *Forum Cinemas*, *Multikino Lietuva* and *Cinamon Operations*, were found to have been fixing prices of cinema tickets as part of two separate cartel agreements.

31. Vilnius Regional Administrative Court upheld the KT's decision in *Vilniaus Energija/First Opportunity Oü case* whereby *UAB Vilniaus Energija* and *First Opportunity Oü* entered into anticompetitive agreement, under which *UAB Vilniaus Energija* undertook a long term obligation to buy biofuels for heat production only from *First Opportunity Oü*.

32. Vilnius Regional Administrative Court upheld KT's decision in *Lukoil II case* whereby *UAB Lukoil Baltija* implemented a non-notified merger by acquiring 15 petrol stations and thus breached the Law on Competition.

2.2. Mergers and acquisitions

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

33. KT received 39 filings between 1 Jan and 31 Dec 2016: 9 mergers led to an in-depth review (2 were notified in 2015, 7 – in 2016).

	2016	2015	2014
Received filings	39	38	52
Mergers cleared	37	36	49
Mergers cleared with remedies and commitments	1	0	2
Challenged mergers	2	3	3
Mergers withdrawn	1	1	1
Partly cleared mergers (permission to individual concentration actions)	0	0	0

2.2.2. Summary of significant cases

34. 18 August, KT cleared the acquisition of 100 per cent of *BTA Baltic Insurance Company AAS (BTA)* shares by *VIENNA INSURANCE GROUP AG (VIG)* on condition that *VIG* will sell the part of business of *Compensa Vienna Insurance Group*, *UADB* and (or) *BTA* branch in Lithuania related to the motor third party liability insurance of international carriers. Having examined the proposed merger, KT submitted its preliminary assessment to *VIG* stating that the intended merger might create or strengthen a dominant position or significantly restrict competition in the relevant market. As a result, *VIG* submitted written obligations. KT determined that the obligations proposed by *VIG* are sufficient enough to remove competition concerns and, therefore, cleared the merger.

35. 6 May, KT prohibited a merger whereby in 2014 *AS Eesti Meedia* acquired 100 per cent of *AllePAL OÜ* shares. KT found that the merger restricted competition in the Lithuanian markets of classified ads for real estate and vehicles. *UAB Plus* and *UAB*

Vertikali medija, which are related to *AS Eesti Meedia*, and *UAB Diginet LT*, which is related to *AllePAL OÜ*, are the biggest managers of classified ads websites for real estate and vehicles in Lithuania. Having suspected that the merger might have created or strengthened a dominant position or restricted competition in the relevant markets, KT obliged the merging parties to submit a merger notification. Having examined the notification, KT found that the merger implemented in 2014 eliminated competition among classified ads websites and increased prices of classified ads for real estate and vehicles.

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

36. According to the Law on Competition, KT is empowered to carry out expert examination of draft laws and other legal acts, issue opinions regarding the effect on competition to the Parliament of the Republic of Lithuania and the Government of the Republic of Lithuania, as well as submit proposals to the Government of the Republic of Lithuania to amend legal acts restricting competition.

37. KT sent official letters including comments and responses:

- To the Ministry of Agriculture regarding regulation of milk sector, including regulation of prices and certain prohibitions on sales of raw milk and dairy products. KT explained that economic activity should not be restricted and instead of that cooperation between milk producers must be promoted.
- To the Ministry of Agriculture in response to the proposed regulation on thresholds for establishing the dominant position. KT explained that there are no grounds to initiate amendments of the Law of Competition regarding threshold of the presumption of dominance.
- To the Ministry of Agriculture in response to the proposed regulation regarding prohibition of unfair practices of undertakings trading in raw milk and dairy products. KT expressed its concerns that proposed amendments may be harmful to milk producers and highlighted that economic activity should not be restricted and instead of that cooperation between milk producers must be promoted.
- To the Parliament in response to the proposal to conduct analysis of in-house contracts in the sector of electrical energy. KT explained that in-house contracts have negative effects on competition, prices of services and are harmful to consumers and, therefore, should be prohibited.
- To the Parliament regarding amendments of the Law on Public Procurements and Law of Procurements in the sectors of water management, energy, transportation and postal services. KT submitted analysis showing why in-house contracts restrict competition.
- To the Ministry of Justice regarding amendments of Law on Competition. KT presented arguments supporting imposition of fines to public administrative bodies.
- To the Ministry of Transport and Communication regarding air transportation agreement between Republic of Lithuania and State of Qatar. KT proposed to include provision into agreement, according to which provisions of agreement shall not restrict powers of competition authorities and courts to enforce competition rules.

- To the Government and the Ministry of Agriculture regarding public disclosure of information on the buying up price for the raw milk.
- To the Ministry of Agriculture regarding the conclusions of the dairy market study conducted by KT.
- To the Ministry of Economy regarding the application of state aid rules in the financing of infrastructure.
- To the Ministry of Health and National Health Insurance Fund regarding base price calculation for orthopedic instruments.
- To the Ministry of Health regarding the minimal 60 square meters' area requirement for pharmacies.
- To the Lithuanian Government, Ministry of Finance, Ministry of national Defence, Ministry of the Interior, the Ministry of Transport and Communications regarding state data transmission network.
- To the National Audit office regarding work conditions of the forensic experts working for Forensic institutions.
- To the Parliament, Lithuanian Government, the Ministry of Health and the President of the Republic of Lithuania with recommendations after conducting a Reimbursable medicines market study.
- To the Ministry of Transport and Communications regarding the application of state aid rules for infrastructural developments in the port of Klaipėda.

3.1. Market studies

38. In 2016, KT completed a market study on reimbursable pharmaceuticals. The findings of the study showed that current legal regulation in the market of reimbursable pharmaceuticals is inefficient since it restricts the entry of analogous but cheaper pharmaceuticals. Besides, legal regulation creates favourable conditions for the manufacturers who offer more expensive pharmaceuticals compared to their competitors, which results in weak competition in the market.

39. In 2015, KT initiated the market study by taking into account the high importance of the market of pharmaceuticals for consumers, as well as aiming to find out if current legal regulation creates favourable conditions for effective competition in the reimbursable pharmaceuticals market. Effective competition in the market contributes to a bigger variety of pharmaceuticals and helps to save money for both, consumers and the state.

40. Advocacy vis-à-vis public administrative bodies and businesses were in the focus of KT attention in 2016:

41. KT delivered 68 public talks in local and international conferences, organised 24 seminars and conferences, including:

- competition roadshow – a series of seminars in different regions on two major topics – state aid and anti-competitive agreements for both private and public sector;
- #OpenWithKT – a project carried out in partnership with the biggest law firms in Lithuania to strengthen the dialogue with competition law practitioners and business community;

42. Deputy Chairperson Mrs. Jūratė Šovienė, published six op-eds on competition-related issues in the national business daily “Verslo žinios” and a leading weekly “Veidas”.

43. KT prepared the guidelines on cooperation with public institutions which in January, 2017 was nominated among the best Soft Law projects worldwide. In addition, KT presented the Guidelines on Assessment of Misleading and Unlawful Comparative Advertising and Recommendations on comparing prices in advertising to bring more clarity for undertakings engaged in advertising activities.

44. The World Bank Group and the International Competition Network (ICN) announced the Lithuanian Competition Council among the winners of the 2015-2016 Competition Advocacy Contest. According to the World Bank Group, Lithuania undertook comprehensive, targeted advocacy campaign involving stakeholder engagement as well as media outreach to address anticompetitive conduct by municipalities.

4. Resources of competition authority

45. The Council allocates its resources with the view of maximising consumer welfare. According to the 2012 Council’s Notice on Enforcement Priorities, in order to decide whether a matter constitutes an enforcement priority, the Council assesses three principles:

- the expected impact of its intervention on effective competition and consumer welfare;
- the intervention’s strategic importance;
- the rational use of resources (the resources need are compared to the expected success of the intervention).

46. Similar prioritising tool is being used in advertising cases since 2013.

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

4.1.1. Annual budget (in your currency and USD):

EUR 1,70 m, USD 1,86 (2016)

EUR 1,69 m, USD 1,85 (2015)

4.1.2. Number of employees (person-years):

- Economists: the Council had 4 dedicated economists as of 31 Dec 2016. One of them worked as Adviser on Economic Analysis holding a PhD in Economics, while the other 3 were embedded within the investigative divisions.
- Lawyers – 34;
- other professionals – 6;
- support staff – 18;
- all staff combined 62 (including the Chairman and 4 Council Members).

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

- Enforcement against anticompetitive practices: 38
Among them:
 - Merger review and enforcement: 10
 - Anti-cartel: 7

- Advocacy efforts and other:
 - Chairman and 4 Council Members
 - 1 Adviser on Economic Analysis
 - 7 lawyers in the Legal Division (all areas)
 - 8 members of staff dealing with competition restrictions imposed by public administrative bodies

4.3. Period covered by the above information: 1 Jan 2016 to 31 Dec 2016.

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

Market study on reimbursable pharmaceuticals, 2015 (press release):
<http://kt.gov.lt/en/news/final-conclusions-of-market-study-on-reimbursable-pharmaceuticals>

Annual report for 2016 by the Lithuanian Competition Council (short version):
http://kt.gov.lt/uploads/publications/docs/2982_c4ee36b83a02e0c723d2c7614852685d.pdf