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DAF/COMP/AR(2014)12

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

21-May-2014

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2014)12
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2013 --

18-19 June 2014

This report is submitted by Lithuania to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 June 2014.

JT03357748

Complete document available on OLIS in its original format

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EXECUTIVE SUMMARY

1. In 2013 the agency began reaping what had been sown in 2011 and 2012 – the two years marked by important legislative and organisational reforms.

2. The single most important change having effect on the Competition Council's (KT) activities has been the agency's ability, acquired in 2012, to prioritise its enforcement. Equipped with this tool, the KT has become more pragmatic in pursuing its strategic goals of maximising consumer welfare, strengthening the society's competition culture and the agency's administrative capabilities.

3. In 2013, according to the annual impact assessment report, our efforts translated in consumers getting around EUR 11.9 m direct and EUR 53.8 m indirect financial benefit resulting from our enforcement operations.

4. This has been achieved by closing a large number of investigations in 2011 and 2012 combined with opening and continuing a more manageable number of high-impact cases in 2013.

5. Among those, cases arising in the energy sector deserve a special mention. The year of 2013 started by the KT conclusively winning a long-lasting litigation against the sole domestic oil refinery found guilty of abusive pricing practices. *Lukoil Baltija*, a major retailer of petroleum products, was fined in one case and received a statement of objections in another – both in relation to mergers completed without the agency's approval. In February, the KT began investigating suspected foreclosure of the biofuel supply market, which might have led to higher energy prices for consumers. The agency also launched a probe into a suspected cartel between suppliers of co-generation power plants. Finally, the KT continued to examine the alleged breach of a conditional merger clearance issued to Gazprom, the sole supplier of natural gas to Lithuania, to acquire a Lithuanian natural gas importer and distributor. All three investigations are expected to be completed in 2014.

6. With this enforcement record, there are critics portraying the agency as being excessively tough on private firms, but that misrepresents our efforts in ensuring that public administrative bodies do not distort competition. Uniquely among its international peers, the Lithuanian competition authority can demand cessation of competition infringements committed by ministries, municipalities or other state bodies acting in their administrative capacity. In the past few years – 2013 being no exception – more investigations have been opened and infringement decisions issued against public administrative bodies than against private actors. In 2013 the agency intervened against municipalities giving preferential treatment to municipal-owned firms in the public transport and waste management sectors. Waste management has been particularly problematic in recent years, and a number of investigations in this sector are due for completion in 2014.

7. Good enforcement and effective advocacy support each other. Indeed, the two can hardly be separated, as sending a statement of objections in the *Strong Beer Cartel* case (the infringement decision issued in 2014) has demonstrated. Here, the KT made clear that it would not accept unsubstantiated claims, including those of "social responsibility", to justify cartel behaviour.

8. Advocacy was already high on the authority's agenda in 2012, but in 2013 we increased our efforts even further. In April, the KT issued guidelines – complemented by a series of seminars throughout the year – to trade associations helping them to comply with antitrust rules. We continued our engagement with antitrust practitioners via roundtable discussions on how the agency's work could be improved. This has encouraged us to launch a review of the agency's leniency, procedural and merger filing rules, all of which we expect to announce for public consultation in 2014.

9. The European Competition Day, held in Vilnius as part of the EU Presidency, represented the peak of advocacy events in 2013. Still, more important, though less publicly visible, was our agency representatives' work in chairing the EU working party drafting negotiations on the EU damages directive, which was approved by the EU Competitiveness Council in December.

10. With the agency's annual budget just above one million euros, the statement that all this has become possible by sheer dedication and skilfulness of our staff does not sound like an empty cliché. It is our people that I thank for their resilience and perseverance. It is my primary task to keep them at the KT, so that we all reap what we have together sown.

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

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

11. On 23 December 2013, the Parliament of the Republic of Lithuania adopted amendments to the Law on Competition (the Amendments) which entered into force on 8 January 2014.

12. In the event of appeal against a Competition Council decision, the Amendments provide for the possibility not to pay the fine imposed by the Council until the final ruling of the court is delivered. However, if the court upholds the Council's decision, undertakings will have to pay both the fine and 6% annual interest. The interest is to be calculated for the entire period of the court proceedings, starting from the first day after the end of the three-month period after publication of the decision within which undertakings have to pay the fine.

13. Previously, the courts could, upon an undertaking's request, suspend the obligation to pay the fine until a final ruling had been adopted and this without any further consequences for the undertakings. As a result, undertakings were taking advantage of the situation and lodging appeals against the Council's decisions in order to, among other reasons, request suspension of the payment of fines.

14. With this amendment, undertakings are encouraged to decide whether they actually want to appeal the decision of the Council for reasons other than benefitting from a suspension of the payment.

15. If they appeal, undertakings may pay the fine within the three-month period, thus avoiding paying the interest if the appeal is dismissed. If an undertaking pays the fine before the final ruling of the court comes into force and the court decides to reduce or annul the fine, the undertaking is refunded according to the provisions set out in the Law on Tax Administration.

16. This amendment brings the situation in Lithuania more in line with the European system.

1.2. Other relevant measures, including new guidelines

17. The Council is currently revising the existing Leniency Guidelines in order to introduce more transparency and clarity to the leniency process. OECD guidelines and reports on the issue also serve as the source of reference and inspiration.

18. After consultations with law practitioners and businesses, merger notification process is under revision. It is worth mentioning that since 2011 length of clearing a regular merger was reduced from 42 to 30 days.

19. In April 2013 the Council issued guidelines to trade associations helping them to comply with antitrust rules, in particular in relation to exchange of information. This was complemented by a continuing series of seminars – addressed at trade associations and designed to increase their awareness of and compliance with the antitrust rules. OECD Policy roundtable discussion on Price Transparency and other OECD documents served as the source of reference and inspiration while drafting the guidelines.

2. Enforcement of competition laws and policies

20. The Council prioritises investigations based on the expected impact of its interventions on consumer welfare

21. Sector-wise, in 2013 the Council focused on the following:

22. Energy sector:

- investigation of a suspected breach by Gazprom of a conditional merger clearance to acquire a Lithuanian natural gas importer and distributor;
- investigation of a suspected anti-competitive agreement between large bio fuel suppliers and buyers;
- investigation of a suspected cartel in supplying cogeneration power plants;
- one established infringement and one ongoing investigation of suspected acquisitions of petrol stations by Lukoil without Council's clearance.

23. Construction sector: two bid rigging cases;

24. Waste management sector:

- One established infringement granting preferential treatment to municipal-owned suppliers of waste management services;
- Four ongoing investigations of suspected infringements by municipalities

25. Consumer welfare will remain at the core of prioritising investigations.

26. In terms of sectoral priorities for 2014, the Council will focus on the following:

- Investigations into energy sector (especially to complete those rolling over from 2013);
- Waste management: to complete the market study and to present proposals for proper arrangement of waste management in Lithuania from the perspective of competition;
- Due to imposed duties The Council will also focus on:
- Competition infringements by public administrative bodies: advocacy, compliance with cease and desist order, open discussion on more effective deterrence measures (including publicity, cooperation with a think tank that annually rates municipalities – already agreed to include (non)compliance with competition rules as one of rating criteria);
- Bid rigging;
- Modernisation of state aid procedures;

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

2.1.1. Summary of activities

27. In 2013 the Council (KT) launched 15, continued 19 and closed 9 investigations.

2.1.1.1 Launched:

- Anti-competitive agreements – 4
- Abuse of dominance – 1
- Unnotified mergers – 1
- Infringements of procedural nature – 2
- Competition restricting actions by public administrative bodies – 5
- Failure to comply with cease and desist order by public administrative bodies – 2

2.1.1.2 Continued:

- Anti-competitive agreements - 4

- Abuse of dominance – 1
- Unnotified mergers – 3
- Infringements of procedural nature (breach of commitments) – 2
- Competition restricting actions by public administrative bodies – 8
- Failure to comply with cease and desist order by public administrative bodies – 1

2.1.1.3 Closed:

- Anti-competitive agreements – 2
- Unnotified mergers – 2
- Competition restricting actions by public administrative bodies – 5
- Failure to comply with cease and desist order by public administrative bodies – 1

2.1.1.4 Courts:

- According to national laws the Council's resolutions may be appealed both on procedural and substantive grounds.
- 10 Competition Council decisions were appealed in 2013. As of December 31, 2013 there were 26 Council decisions, including those of procedural nature, under examination at courts of various instances.

2.1.1.5 In 2013:

- 11 Competition Council decisions were upheld by courts.
- 1 partly amended;
- 1 annulled.

2.1.1.6 Brief on certain court cases:

- **In January** 2013, the Supreme Administrative Court upheld the Council's decision imposing a fine of nearly 2.3 million EUR upon an oil refinery *Orlen Lietuva* for abuse of dominant position that foreclosed the market to its competitors. It was one of the longest court cases in the history of the Council that lasted 7 years.
- **In April** the Supreme Administrative Court of Lithuania upheld the Competition Council's decision to impose a fine of LTL 110,000 (approx. EUR 31,858) on *Corporation of European Pharmaceutical Distributors N.V. (CEPD)* for implementing a merger without clearance.
- **On April 15**, the Supreme Administrative Court upheld the Council's decision concluding that the decisions by *Kazlų Rūda Municipality* restricted competition. The Supreme Administrative Court confirmed the Council's conclusions that the Municipality had granted privileges to *UAB Litesko* until 2030 without any competitive procedure and regardless of the tender provisions stating that the longest possible extension could be until 2025.
- In June, the Council's December 2012 decision to intervene into the cash handling services market (the *G4S/DNB et al* case) was upheld by first instance courts. The intervention encouraged the investigated service provider and three largest banks to terminate (even prior to issuing an infringement decision) exclusivity arrangements responsible for creating entry barriers to competing service providers.

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

28. **On February 15**, the Council terminated almost a two-year long investigation into suspected anti-competitive agreements in the banking sector. The investigation did not disclose any circumstances proving that banks in Lithuania agreed on interchange fees. Also, there were no factual circumstances proving that these banks agreed on tariff rates for other services provided by banks (e.g. by increasing tariff rates for the services of online banking, account management, etc.).

29. The Council supports European Commission's (EC) initiative to regulate interchange fees in the EU and to establish other means of ensuring effective competition within the payment market.

30. **On February 28**, the Council terminated the investigation concerning Vilnius municipality failure to comply with the obligations imposed by the Council after the Municipality cancelled its agreements with *UAB JCDeaux*. *UAB JCDeaux* had been granted the right to control, supervise and exploit a certain number of bus shelters, city lights, columns and city WCs and to use these objects for outdoor advertising without any competitive procedure.

31. **On April 18**, the Council terminated the investigation on *APB Apranga*, *UAB Apranga BPB LT*, *UAB Apranga PLT*, *UAB Apranga LT*, *UAB Apranga SLT* and *UAB Apranga MLT* failure to comply with the requirements of the provisions of the Law on Competition and the Treaty on the Functioning of the European Union whereby companies are prohibited from concluding agreements that restrict competition. Having evaluated the agreements signed between the aforementioned companies and the suppliers of outfit and other articles of clothing, the Council determined that these agreements established agency agreements. With regard to this, there were no grounds to conclude that these agreements infringed the competition rules.

32. **On June 3**, the Council terminated the investigation on suspected bid rigging by *UAB LitCon*, *UAB Rekreacinė statyba*, *UAB Meliovesta* and *TŪB Virmalda* in public procurement for carrying out building installation works. Having found no proof that the companies had rigged their bids the Council terminated the investigation. However, the Council imposed the fine of LTL 615 000 on *UAB LitCon* for obstructing the inspection and, thus, impeding the investigation.

33. **On September 10**, the Council terminated the investigation on suspected bid rigging by *AB Kauno tiltai*, *AB Panevėžio keliai*, *UAB Alkesta* and *AB Eurovia Lietuva* in public procurement for carrying out *Rail Baltica* rail line construction works. Having found no proof that the companies had rigged their bids the Council terminated the investigation.

34. **On December 23**, the Council closed the investigation into a suspected anti-competitive agreement between the members of the Lithuanian Guild of Breweries (the Guild). According to the preliminary evaluation, the Guild and its members had infringed the requirements of competition law by concluding an agreement restricting the production of certain strong beer.

35. By issuing the SO in the Strong Beer Cartel investigation (followed by the infringement decision in March 2014), the Council made clear that it would not accept unsubstantiated claims, including those of "social responsibility", to justify agreements among competitors to limit production or other cartel behaviour.

36. **On December 23**, the Council terminated the investigation on suspected bid rigging by *UAB Milsa* and *UAB Torita* in public procurement for the supply of crushed granite stones organised by *AB Lietuvos geležinkeliai*.

37. The Council established that the same shareholders control the majority of *UAB Milsa* and *UAB Torita* shares, the companies are closely related, and therefore, when submitting bids they did not operate as two independent companies. With regard to this, there were no grounds to claim that *UAB Milsa* and *UAB Torita* had concluded an anti-competitive agreement. Agreements that are restrictive of competition and, therefore, prohibited can be concluded only between two companies competing independently.

38. After this investigation, the Council proposed to the Ministry of Economy and the Public Procurement Office to review the terms of related companies' participation in public procurement.

39. The Council was consistent in sending a message – both to firms and public administrative bodies – that failure to cooperate with the authority and comply with its mandatory requests would be prosecuted.

40. **In July** the Competition Council imposed a fine of LTL 615 000 (~EUR 178,116) on *LitCon* for obstructing the inspection and thus impeding the investigation.

41. The Council also started two investigations against two municipalities and one investigation against the Ministry of Health regarding failure to comply with cease and desist order.

2.2. *Mergers and acquisitions*

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

42. The Council was more efficient in reviewing mergers: the average length of non-in-depth merger review was cut down from 32 to 30 days, the average length of an in-depth review is 4 months.

43. KT received 31 filing between 1 Jan and 31 Dec 2013:

44. 2 mergers led into an in-depth review and were abandoned by merging parties, 29 mergers were cleared.

	2013	2012	2011
Received filings	31	31	46
Mergers cleared	29	29	49
Mergers cleared with remedies and commitments	0	0	1
Challenged mergers	0	0	0
Mergers withdrawn	2	2	0
Partly cleared mergers	1	0	7

2.2.2. *Summary of significant cases.*

45. The Council challenged two mergers that would have resulted in significant impediment of effective competition in [book-selling](#) and manufacture and trade of [cement products](#). In both cases, the transactions were abandoned, thus preventing consumers from being harmed.

46. The Council continued its strong stance against unnotified mergers:

47. In April the Council imposed a fine of LTL 1,177,600 (approx. EUR 341,057) on petrol retailer *Lukoil Baltija* for implementing mergers without clearance.

48. In November the Council sent a Statement of Objections to *Lukoil Baltija* suspected of having gained control over 16 petrol stations without Council's clearance.

49. The Council further investigated into a suspected breach of merger conditions by Gazprom.

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

50. June to December 2013 the Council representatives successfully chaired the EU working party drafting the EU directive on actions for recovery of damages. It was approved by the EU Competitiveness Council on 2 December 2013 (adopted by the European Parliament on 17 April 2014);

51. According to the Law on Competition the 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.

52. The Council closely kept an eye on national legislation and having reviewed 147 legal drafts had examined 15 more at its own initiative. Nearly half of legal drafts tend to conflict with competition regulations and the KT issued a great number of opinions and proposals to amend the competition restricting legal acts.

53. **E.g. KT had opened an** investigation on the rules of setting and distributing quotas for fishing in inland waters. KT terminated the investigation as the Ministry of Environment prepared a new Description of setting and distributing quotas wherein the conclusions of the Council's investigation were taken into account.

54. 35 per cent of investigations opened by KT in 2013 were against public administration bodies. Thus, health care and competition restricting decisions by municipalities were in the focus of KT attention in 2013:

- KT experts conducted a market study on parallel import of drugs;
- KT experts examined and issued opinions on 4 legal drafts by the Ministry of Health of Lithuania
- KT opened investigation against the Ministry of Health of Lithuania regarding failure to comply with cease and desist order
- KT opened an investigation against two municipalities regarding failure to comply with cease and desist order
- KT established that Vilnius Municipality discriminated private carriers and granted exclusive rights to municipality owned public transport company. The KT ordered the Municipality to repeal or amend competition restricting contracts. After the KT's intervention, Vilnius Municipality announced a competition for private carriers willing to integrate into Vilnius public transport system in the Official Journal of the EU.
- **KT** established that Vilnius District Municipality had granted exclusive rights to municipality owned *JSC Nemėžio komunalininkas* to provide services of waste management without a competitive procedure. The KT ordered the Municipality to repeal or amend competition restricting contracts. However, Vilnius District Municipality appealed the KT's resolution to the Court, consequently, the implementation of the resolution was suspended.

- KT opened investigations against Molėtai and Kaišiadorys municipalities having suspected that exclusive waste management rights were granted to municipality owned enterprises.
- KT launched a great number of advocacy initiatives addressed to municipalities: seminars to present the Guidelines for Assessing Impact of Draft Decisions to Competition; letters to municipal authorities indicating competition restrictions and advising to amend competition restricting decisions; cooperation with a think-tank rating municipalities and agreement to include competition compliance among rating criteria.

4. Resources of competition authorities

55. 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).

56. 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):

57. LTL 4.4 m, USD 1.76 m (2013)

58. **LTL 4.41 m**, USD 1.65 m (2012)

4.1.2. Number of employees (person-years):

- Economists: 8 The Council employed three dedicated economists as of 31 December 2013. One of them is the Head of Economic Analysis Group and holds a PhD in Economics, while the other two were embedded within the investigative divisions. In addition, five more economists worked as case-handlers.
- Lawyers: 29
- Other professionals: 6
- Support staff: 25
- All staff combined: 64 persons and 4 Council members (including the Chairman)

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

59. Enforcement against anticompetitive practices: 42 (Council members including)

60. Among them:

- Merger review and enforcement: 9
- Anti-cartel: 9

- Advocacy efforts and other:
- 4 Council members (all areas)
- 2 IT specialists (mostly anti-cartel, but also dominance and mergers)
- 7 lawyers in the Legal Division (all areas)
- 5 lawyers in the Division of Unfair Commercial Practices
- 1 Chief Economist (all areas)
- 6 members of staff dealing with competition restrictions imposed by public administration bodies

4.2. Period covered by the above information:

61. 1 January 2013 to 31 December 2013.

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

62. Annual report 2013: http://kt.gov.lt/en/annual/2013_eng.pdf

63. Market study on the parallel import of drugs:
http://kt.gov.lt/en/index.php?show=news_view&pr_id=1308

64. Impact assessment: http://kt.gov.lt/en/index.php?show=news_view&pr_id=1128

65. Press-releases on most of the cases: http://kt.gov.lt/en/index.php?show=pr_metai&metai=2013

66. Monthly newsletters: <http://kt.gov.lt/en/index.php?show=newsletters>