

COMPETITION AND SPORTS – NOTE BY LITHUANIA

I. Introduction

1. This Note overviews the Lithuanian practice of the application of competition rules to the undertakings operating in sports industry. The Note touches upon the legal framework relevant to the evaluation of their actions for the purposes of competition law. It also discusses whether the described examples of the case law demonstrate that specificities of sports, such as the special link with social and cultural life, make an impact on the application of competition rules to the sports.
2. In the view of the Lithuanian Competition Council, the current Lithuanian case law suggests that although no exemptions of competition law are established for economic activities related to sports industry, national courts consider (explicitly or implicitly) the peculiarities of sports sector when applying competition rules.

II. Legal Framework

3. The Lithuanian Law on Competition establishes the prohibition of anti-competitive agreements¹. This provision essentially corresponds to the one established in the Article 101 of the Treaty on the Functioning of the European Union (hereinafter – **the Treaty**), which the Lithuanian Competition Council is also entitled to apply in its decisions in parallel to the national law.
4. The European Court of Justice (hereinafter – **the ECJ**) in its landmark *Meca-Medina*² decision concluded that sports activities are subject to the European Union law in so far as they constitute an economic activity³ and that these activities do not necessarily fall outside the scope of Articles 101 and 102⁴ of the Treaty⁵. In its subsequent jurisprudence, the ECJ adopted more decisions on compliance of various practices related to the sports activities with the competition rules.
5. There are neither specific competition-related legal rules for economic activities related to sports established in the Lithuanian national laws, nor any exemptions from competition rules for such activities. Therefore, the legality of such activities shall be evaluated in the light of the national and European Union legal provisions indicated in the Paragraph 3 as well as the jurisprudence of the ECJ.

¹ Article 5 Part 1 stipulates that all agreements which have the purpose of restricting competition or which restrict or may restrict competition shall be prohibited and shall be void from the moment of conclusion thereof, including:

1) agreements to directly or indirectly set (fix) prices of certain goods or other conditions of purchase or sale;
2) agreements to share the product market on a territorial basis, according to groups of buyers or suppliers or in any other way;
3) agreements to fix production or sale volumes for certain goods as well as to restrict technical development or investment;
4) agreements to apply dissimilar (discriminating) conditions to equivalent contracts with individual undertakings, thereby placing them at a competitive disadvantage;
5) agreements to require other undertakings to assume supplementary obligations which, according to their commercial nature or purpose, have no direct connection with the subject of the contract.

² Judgement of the ECJ of 18 July 2006, Case C-519/04 P.

³ See para. 22.

⁴ Article 102 establishes a prohibition of the abuse of dominant position.

⁵ See para. 31-33.

III. Lithuanian Experience related to Wage Fixing: The Basketball Case

6. In 2021, the Lithuanian Competition Council adopted a decision⁶ establishing that the Lithuanian Basketball League (hereinafter – **LKL**) and 10 basketball clubs (members of LKL) entered into anti-competitive agreement and infringed the national and the European Union competition law, when they jointly decided not to pay basketball players salaries⁷ or other financial compensations for the rest of the basketball championship of 2019–2020 after its early termination due to the Covid-19 pandemic⁸. The established infringement was considered to constitute a restriction of competition “by object”⁹ by the Competition Council.
7. LKL and basketball clubs appealed the Competition Council’s decision and their appeal was upheld by the national court of first instance¹⁰. The main grounds presented by the court were the following: (i) the court was not convinced that there was an agreement concluded between LKL and basketball clubs¹¹. E. g., the court stated that discussions within the association on the early termination of championship due to the pandemic were absolutely normal in the existing circumstances and that the issue of payments was related to that broader topic; (ii) the court disagreed that the actions of LKL and basketball clubs resulted in the competition law infringement “by object” and considered that the Competition Council had to analyse effects of the agreement; (iii) the court emphasised that the sports activities are different from other economic activities and held that the goal to protect basketball clubs’ financial stability in the context of pandemic might be considered a legitimate objective; (iv) the court was not convinced that the discussed situation could be considered wage fixing since players’ wages were set at the beginning of the season. The Competition Council appealed the mentioned decision to the Lithuanian Supreme Administrative Court. No final court’s decision has been adopted yet in this case.
8. The *Basketball* case was the first case of the Competition Council related to the sports industry as well as the first case related to the labour markets. Relying on the analysis carried out in the *Basketball* case and a subsequent adopted decision related to the real estate sector, the

⁶ The Competition Council resolution of 16 November 2021, No. 1S-124 (2021). Available online: https://kt.gov.lt/uploads/docs/docs/5028_43656a32d64ad45f1a1545d6fb2a8261.pdf.

⁷ The basketball clubs and players usually enter into sports activities contracts establishing that the player shall prepare for sports events and participate in it following the internal procedure of the club and the club shall pay the remuneration to the player for sports activities, provide the conditions to prepare and participate in sporting events.

⁸ After analysing the minutes of the LKL irregular meeting that took place on 13 March 2020, the Competition Council established that LKL and 10 basketball clubs not only decided to terminate the championship earlier, but also discussed the issue of basketball players’ salaries and jointly decided to withhold their payment. Some of the clubs expressly agreed not to pay the basketball players, while others remained silent, but not one of the meeting participants distanced themselves from the agreement. Later some of the clubs’ representatives emailed all the other clubs that participated in the meeting and expressed their disappointment that some of the clubs broke the agreement and individually negotiated financial compensations with their players.

⁹ I.e., according to EU competition law, the competition authority was not required to demonstrate the negative effects on competition of the actions of economic entities.

¹⁰ Vilnius Regional Administrative Court decision of 7 June 2022, Case No. eI4-2209-816/2022. Court’s press release on the grounds of the decision available online: [Teismas panaikino Konkurencijos tarybos nutarimą dėl sankcijų skyrimo krepšinio klubams | Vilniaus apygardos administracinis teismas](#).

¹¹ The court’s interpretation of facts of the case was completely detrimental to the one of the Competition Council’s. The Competition Council held that the electronic communication, in which competitors accused each other of breaching the agreement, confirmed the fact of the agreement, whereas the court evaluated the same communication together with the fact that some clubs started negotiations on salaries with their players as proving that no agreement was reached among the clubs.

Competition Council adopted guidelines on the evaluation of companies' agreements in the labour markets¹².

9. In the Competition Council's view, the *Basketball* case possibly demonstrates that the national court was reluctant to adopt an infringement decision against LKL and national basketball clubs in the context of Covid-19 pandemic and hardships caused by it to the sports industry as the protection of other lawful interests (such as basketball clubs' financial stability) prevailed in the court's decision. Furthermore, as it was already mentioned, the *Basketball* case is the first case of the Competition Council related to the sports industry and the labour markets. Therefore, it holds great significance which decision will be taken by the Supreme Administrative Court in this case, e. g. whether the anticompetitive agreements in the labour markets should be considered an infringement "by object". The Competition Council is also looking forward to the future decisions of the European Union courts concerning the labour markets (and namely the wage fixing).

IV. Association's exclusionary practices: The Hockey Case

10. In 2022, the Court of Appeal of Lithuania adopted a decision¹³ stating that the national hockey association (hereinafter – **the Association**) and two undertakings carrying out hockey events on behalf of the Association infringed the national law prohibiting anti-competitive agreements by adopting decisions preventing the hockey clubs and schools financed from the state budget to participate in the hockey events organised by the Association¹⁴.
11. The Court of Appeal of Lithuania upheld the findings of the court of first instance and concluded that the goal of the evaluated decisions was to restrict competition between the hockey clubs and schools, i. e. the infringement "by object" was established. The Court of Appeal of Lithuania also stated that the mentioned decisions restricted the right of the persons belonging to the clubs and schools financed from the state budget to participate in the hockey events organised by the Association. The court rejected the arguments presented by the defendants, such as allegedly too broad market definition¹⁵, defendants' views that their decisions were not capable of restricting competition and that the effects analysis was necessary, etc. The court also stated that the evaluated decisions resulted in discrimination of persons belonging to the hockey schools and clubs financed from the state budget and to the infringement of the principle of equal treatment.
12. In the view of the Competition Council, the decision adopted in the *Hockey* case was also influenced by the specificities of sports activities and some broader social considerations (such as principles of non-discrimination and equal treatment) rather than just strict adherence to the competition rules. In contrast to the *Basketball* case, in the *Hockey* case the mentioned broader considerations induced the court to establish the infringement.

¹² Available online: [https://kt.gov.lt/uploads/documents/files/Atmintin%C4%97\(3\).pdf](https://kt.gov.lt/uploads/documents/files/Atmintin%C4%97(3).pdf).

¹³ The decision of 5 May 2022, Case No. e2A-301-302/2022. Available online: <https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=698c691c-fd90-4c1f-9be8-4ea175d80ce7>. The Lithuanian Competition Council participated in the case as *amicus curiae*.

¹⁴ The case was initiated by a hockey school financed from the state budget, who asked to declare the decisions preventing it from participating in hockey events together with private hockey schools void on the basis that the mentioned decisions contradicted the prohibition of anti-competitive agreements and the prohibition of discrimination.

¹⁵ The court defined the relevant market as hockey activities and related services in the Republic of Lithuania.

V. Conclusions

13. In the view of the Lithuanian Competition Council, despite the jurisprudence of the ECJ stating that the economic activities related to sports fall into the scope of the European Union competition law, when deciding individual cases, the national courts may take into account the specificities of sports industries as well as broader public interests (e. g., financial state of the sports clubs, principle of non-discrimination of the individuals engaged in the sports activities, etc.) and such “plus factors” may determine the results of judicial review.
14. Concerning the infringements of competition law in the sports industries related to the labour markets (wage fixing, no-poach agreements, etc.), in the view of the Competition Council, the clear jurisprudence on the European Union level would be helpful in guiding the national courts and competition agencies on how to evaluate such agreements from the perspective of competition rules.