

Unclassified

CCNM/GF/COMP/WD(2004)1



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

09-Dec-2003

English text only

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

Cancels & replaces the same document of 03 December 2003

OECD Global Forum on Competition

**HOW ENFORCEMENT AGAINST PRIVATE ANTI-COMPETITIVE CONDUCT
HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT**

CONTRIBUTION FROM LITHUANIA

-- Session IV --

This contribution is submitted by Lithuania under Session IV of the Global Forum on Competition to be held on 12 and 13 February 2004.

JT00155631

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

CCNM/GF/COMP/WD(2004)1
Unclassified

English text only

**ENFORCEMENT AGAINST PRIVATE ANTI-COMPETITIVE CONDUCT
IN THE TELECOMMUNICATIONS SECTOR IN LITHUANIA**

**Contribution by the Competition Council of the Republic of Lithuania for the OECD Global Forum
(February 14-15, 2004)**

Privatisation and gradual liberalisation of the fixed-line telephony network

1. AB *Lietuvos telekomas* (public stock company *Lithuanian Telecom*) used to be the only company that could provide telephone calls services using public fixed-line telephony network in Lithuania. At the same time there were three providers of mobile telephone calls services. AB *Lietuvos telekomas* gained its monopoly position not only because of technological reasons but also because it was awarded exclusive rights by the State. On 9 June 1998, the Lithuanian Parliament passed a new Law on Telecommunications one month before the privatisation of AB *Lietuvos telekomas*. During the privatisation Scandinavian telecommunication companies *Telia* and *Sonera* acquired 60 per cent of shares for 510 million USD. The Law on Telecommunications contained a provision that granted exclusive rights to provide telephone calls services using public fixed-line telephony network to AB *Lietuvos telekomas* until 31 December 2002. Some commentators interpreted such legislation as an obvious intent to raise more revenue by making the aforementioned company more attractive to foreign investors. The others argued that exclusive rights of a limited duration (approximately four years) was a reasonable safeguard for a company which was supposed not only to meet universal service obligations but also had to fulfil other conditions of the privatisation agreement, mainly dealing with substantial modernization and only gradual downsizing of staff.

2. At present time the exclusive rights awarded to AB *Lietuvos telekomas* have expired and the net result of its privatisation seems to be positive. After privatisation the management focused at increase of productivity and modernization. At the end of this year the number of full-time employees should be reduced by three times compared to June 1998, however such huge reduction in work-force did not create any social tension. AB *Lietuvos telekomas* did not break its promises to make substantial investments in order to modernize the existing network and substantially improve quality of services. In late 2002 the rate of the network digitalization reached 88%. AB *Lietuvos telekomas* continued to develop its ADSL based access network, ADSL services are currently available to 85% of AB *Lietuvos telekomas*' customers. Nevertheless, AB *Lietuvos telekomas* repeatedly attempted to behave anti-competitively during the last several years. Too often private gain of the privileged incumbent seemed to outweigh social loss. Therefore effective enforcement of the competition law was necessary in order to achieve the goal of the genuine economic development in the telecommunication sector.

Attempt to exclude competition in the Internet service provision

3. The Law on Telecommunications envisaged a creation of the Telecommunications Regulatory Authority. However, its establishment was delayed until June 2000 and only in 2003 this agency received necessary powers to impose *ex ante* obligations and thereby preclude anticompetitive conduct in this

important sector. Therefore at that time the only agency capable to fight with anticompetitive conduct was the Competition Council, however, it could only apply the general principles of the competition law.

4. In 2000, the Competition Council received complaints from several Internet service providers (ISPs) that AB *Lietuvos telekomas* started to install filters that restricted available frequency of leased analogue lines. At that time AB *Lietuvos telekomas* had numerous lease agreements of analogue lines with independent operators that were using leased lines mostly for data transmission services including the Internet access services. The filters substantially reduced available bandwidth and made the lines unsuitable for high speed data transmission. AB *Lietuvos telekomas* argued that according to the legal acts the primary purpose of analogue lines was the transmission of voice signals. Therefore the company did not intend to degrade the product offered for a lease but only tried to comply with the existing standard for analogue lines.

5. It is worth reminding that a local analogue line is easily converted into digital subscriber line by connecting DSL modems to its ends. Complaining ISPs used to upgrade leased analogue lines with the help of such technology. On the other hand, AB *Lietuvos telekomas* began to offer DSL lines by itself and had to compete with existing independent ISPs. If there was no possibility to lease a suitable analogue line, then an independent ISP had to lease the digital line from AB *Lietuvos telekomas*. The latter product was more expensive and an independent ISP would have been hardly able to compete with AB *Lietuvos telekomas* in the data transmission market. Besides that, AB *Lietuvos telekomas* claimed that the company intended to install filters only to the newly leased analogue lines. In such case some individual undertakings operating in the data transmission market would have been put in a position of a competitive disadvantage since no filters were installed in the leased lines of other ISPs.

6. The Competition Council concluded that AB *Lietuvos telekomas* abused its dominant position in the market of lease of lines used for the transmission data by trying to exclude the competition. Such behaviour would have increased prices for Internet services and could have delayed technical progress. The new entrants into the market were discriminated if compared to those already operating in the market because they had to rent much more expensive digital lines from AB *Lietuvos telekomas* instead of having a possibility to upgrade the leased lines themselves.

7. The Competition Council imposed a fine upon AB *Lietuvos telekomas* in the amount of LTL 150 000 and obligated the company not to install filters restricting frequency transmission in the leased analogue dedicated lines. AB *Lietuvos telekomas* appealed the decision all the way up to the highest judicial level available for review of administrative decisions, however, the decision of the Competition Council was upheld at every instance.

Attempt to exclude competition in the provision Internet telephony services

8. The same year the Competition Council began another investigation concerning AB *Lietuvos telekomas*. UAB *Interprova* (closed stock company *Interprova*) filed a complaint that AB *Lietuvos telekomas* blocked the ISDN flow and terminated provision of telephone voice services. According to the complaint, AB *Lietuvos telekomas* tried to justify its actions by claiming that UAB *Interprova* violated the Law on Telecommunications by providing voice telephony services by using fixed public telephone network. As it was found during investigation AB *Lietuvos telekomas* took such actions not only against UAB *Interprova* but also against 30 more companies that attempted to provide phone services using the Internet. Until 31 December 2002 AB *Lietuvos telekomas* had exclusive right to be the sole provider of fixed public telephone services. UAB *Interprova* provided the Internet telephony services and AB *Lietuvos telekomas* interpreted the exclusive rights given by the Law on Telecommunications as covering not only voice telephone services of a guaranteed quality but also the Internet telephony. In spite of the rapid

technological progress in this area, at that time there seemed to be a consensus among the experts that the Internet telephony was unable to guarantee telephone conversation in a *real* time.

9. The Competition Council decided that AB *Lietuvos telekomas* did not have exclusive rights to provide Internet telephony services and therefore it did not have a right to exclude UAB *Interprova* from competition by blocking its ISDN flow and telephone lines. The Council qualified actions of AB *Lietuvos telekomas* as an abuse of a dominant position, obligated the company to resume the provision of services to UAB *Interprova*, and ordered to pay a fine of LTL 2 077 000 because of aggravating circumstances. AB *Lietuvos telekomas* appealed the decision all the way up to the highest judicial level available for review of administrative decisions. After extended litigation and careful review of several testimonies provided by the experts in the field of telecommunications the decision of the Competition Council was upheld.