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COMPETITION POLICY AND THE INFORMAL ECONOMY

Contribution from Lithuania

-- Session II --

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COMPETITION POLICY AND THE INFORMAL ECONOMY

--Lithuania--

1. In 2005, the Competition Council of the Republic of Lithuania (further – CCRL) conducted an investigation of a cartel agreement in the taxi passenger carriage service market in Vilnius. The entities operating in the market were established to have been engaged in practice which could be assessed from the point of view of “informal” economy. The CCRL conducted the investigation within the limits of its competence, i.e. exclusively on the basis of the provisions of the Law on Competition (LCRL) therefore the provisions and some of the considerations presented below concerning the informal economy may be considered as assumptions only, rather than as facts or an *a priori* evidence.

2. The investigation was started by the CCRL *ex officio* after, in September 2004, representatives of the Vilnius Association of Taxi Service Providers (VATSP) through mass media were publicly urging carriers of taxi companies to increase the taxi fares. The CCRL issued a written warning to the heads of the Association to the effect that such incitements contradicted provisions of the LCRL. Despite the warning, the passenger taxi fares were simultaneously and equally raised (the investigation established that the decisions to simultaneously increase the fares were passed in the meetings of the VATSP).

3. At the close of 2004, there were 60 taxi companies operating in Vilnius under the licence issued by Vilnius Municipality. At the time the companies were fiercely competing for passengers and as a result, many of them were charging fares below cost (taxi fares in Vilnius at that time were among the lowest in Europe). This could primarily be accounted for by their informal operations seeking to disguise the actual revenues thus avoiding paying the State taxes. In reality, very few of all legitimately operating companies were behaving in a “civilised” way, i.e. were in an orderly manner paying taxes to the State. The market leader UAB Martono Taksi had over 100 own vehicles complying with the relevant international standards in 2004, it was employing drivers, paying them regular salaries and was properly managing its accounting records. UAB Martono Taksi was among the founders of the VATSP. Surprisingly, it was this company that acted as an initiator of the cartel agreement. In its explanations to the Competition Council the company pointed out that the public inducement to increase the passenger carriage fares was a means to draw the attention of the respective institutions to the illegal operations of most of the taxi companies in Vilnius that do not pay the respective taxes to the State or salaries to the drivers they employ, i.e. are involved in informal activity.

4. In this respect it is notable that according to the then effective laws and the procedure governing the operations of passenger carriers that are assigned to the area of municipal regulation, taxi companies were still not subject to the requirements in compliance with the European Union standards. For instance, a taxi company holding an appropriate operating licence and registered as a private company (UAB) was not required to have own vehicles, i.e. the company could hire private carriers with their own vehicles. The make of vehicles and their manufacturing year (depreciation degree) were virtually not regulated. Such taxi drivers were required to pay to the private company a small (token) fee and could retain the balance of the fees received from the passengers without declaring the actual income. According to the Law on Value Added Tax effective at the time to acquire the status of a VAT payer the annual income of an operator must be not less than LTL 100,000 (EUR 28,962). Thus when approaching the threshold some informal taxi companies would wind up their operations and establish a new (subsidiary) company. Under the circumstances the initiator of the cartel agreement – UAB Martono Taksi was not in a position to compete on equal terms with other taxi firms acting informally.

5. Having completed the investigation in February 2005, the CCRL concluded that the Association of taxi service providers and some of the companies providing taxi services in Vilnius had infringed the

requirements of Article 5 of the LCRL – having concerted their actions in the beginning of October 2004 unanimously increased the passenger carriage fares, i.e. committed concerted actions that contradict the provisions of Article 5 of the LCRL. A total of ten taxi companies of Vilnius were acknowledged as having infringed the LCRL and were subject to fines for the committed prohibited actions – conclusion of agreements which aim to restrict competition or which may restrict competition including the agreements to directly or indirectly fix prices of goods (services) and fix other purchase or sale conditions. UAB Martono Taksi was acknowledged to have acted as an initiator of the prohibited agreement and was subjected to the largest fine.

6. The companies – members of the Association of Taxi Service Providers, in disagreement with the Resolution of the CCRL, appealed the Resolution to the court. The Supreme Administrative Court of the Republic of Lithuania that passed the final decision in the case ruled that the companies providing taxi services in Vilnius concluded, by means of concerted actions, a prohibited agreement concerning the service fares that distorted competition in the taxi service market and were damaging consumer interests.