

REPUBLIC OF LITHUANIA
LAW ON THE PROHIBITION OF UNFAIR PRACTICES OF RETAILERS

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Vilnius

CHAPTER ONE
GENERAL PROVISIONS

Article 1. Purpose of the Law

1. The purpose of this Law shall be to limit the use of market power by retailers having significant market power and to ensure the balance of interests between suppliers and retailers having significant market power.

2. If a retailer having significant market power by the same actions infringes this Law and Article 9 of the Law of the Republic of Lithuania on Competition, which prohibits abuse of a dominant position, it shall be held liable in accordance with the procedure set forth by the Law on Competition.

3. This Law shall not apply to relations between retailers having significant market power and suppliers whose aggregate income during the last financial year exceeds EUR 40 million.

Article 2. Definitions

1. **'Retailer having significant market power'** (hereinafter: a 'retailer') means an undertaking engaged in retail trade in non-specialised stores with food, beverages and tobacco products predominating which alone or together with associated undertakings engaged in the same activity meets all of the following requirements:

1) the sales area of at least 20 stores from all the stores under its/their management in the Republic of Lithuania is not less than 400 sq. m.;

2) its/their aggregate income in the last financial year is not less than EUR 116 million. Where a retailer is a foreign undertaking, the aggregate income shall be calculated as the total amount of income received in the Republic of Lithuania.

2. **'Food and beverage supplier'** (hereinafter: a 'supplier') means a person selling food and/or beverages intended for sale to consumers to a retailer under a wholesale sale and purchase agreement.

3. '**Sales promotion**' means the entirety of consumer-oriented actions creating more favourable conditions for the purchase of goods with a view to increasing the sale of goods.

4. '**Associated undertakings**' means two or more undertakings which, due to their mutual control or interdependence and possible concerted practices, are considered to be a single entity. Unless proved otherwise, associated undertakings shall be considered to be comprised of each undertaking concerned and:

1) of undertakings in which, as in the undertaking concerned, the shareholding of one and the same natural person or the same natural persons accounts for 1/2 or more of the authorised capital or carries 1/2 or more of all the voting rights;

2) of undertakings which are subject to joint management or have a joint administrative subdivision with the undertaking concerned or half or more of whose members of supervisory board, administrative board or other management or supervisory body are also members of the management or supervisory bodies of the undertaking concerned;

3) of undertakings in which the shareholding of the undertaking concerned accounts for 1/2 or more of the authorised capital or carries 1/2 or more of all the voting rights or which have a commitment to co-ordinate decisions relating to their economic activity with the undertaking concerned, or of undertakings in which the responsibility for meeting their obligations to third parties has been assumed by the undertaking concerned, or of undertakings which have committed to transfer all or part of their profit or have granted the right to make use of 1/2 or more of their assets to the undertaking concerned;

4) of undertakings whose shareholding in the undertaking concerned accounts for 1/2 or more of the authorised capital or carries 1/2 or more of all the voting rights or with which the undertaking concerned has committed to co-ordinate decisions relating to its economic activity, or of undertakings which have assumed the responsibility for meeting the obligations of the undertaking concerned to third parties, or to which the undertaking concerned has committed to transfer all or part of its profit or has granted the right to make use of 1/2 or more of its assets;

5) of undertakings connected directly or indirectly, i.e. through other undertakings, with the undertakings referred to in points 1, 2, 3 and 4 of this paragraph in any of the ways specified in points 1, 2, 3 and 4 of this paragraph.

CHAPTER TWO

UNFAIR PRACTICES AND SUPERVISION THEREOF

Article 3. Prohibition of unfair practices

1. Retailers shall be prohibited from carrying out any actions contrary to fair business practices whereby the operational risk of the retailers is transferred to suppliers or they are imposed additional obligations or which limit the possibilities of suppliers to freely operate in the market and which are expressed as requirements for the supplier:

1) to pay directly or indirectly or remunerate in any other way for consent to start trading in the supplier's goods ("entry" fees);

2) to compensate for the lost or smaller-than-expected income of the retailer from the sale of goods received from the supplier;

3) to compensate for the operational costs of the retailer related to equipping new stores or renovating the old ones;

4) to acquire goods, services or assets from third parties specified by the retailer;

5) to tie the prices of goods supplied to the retailer as well as the supply conditions to the supplier's prices of goods and supply conditions applied to third parties;

6) to change the basic supply procedures or goods specifications without notifying the supplier thereof within the time limit specified in the agreement, which may not be shorter than ten days;

7) to accept unsold food products, except for non-perishable packaged food products if they are safe, high-quality and at least 1/3 of time before their expiration date remains or they have no expiration date and there is a prior agreement in relation to their return;

8) to pay directly or indirectly a part of the costs of sales promotion carried out by the retailer or together with it or to compensate for such costs in any other way, except for the cases where there is a written agreement between the retailer and the supplier regarding the amount of costs to be paid and sales promotion activities to be applied;

9) to compensate for the expenses incurred while investigating consumer complaints, except for the cases where a justified consumer complaint was due to the circumstances which are the responsibility of the supplier. In this case, the amount of expenses which the retailer requests the supplier to compensate for must be substantiated by the actual expenses of the retailer;

10) to pay directly or indirectly or to compensate for the arrangement of goods, except for the cases where there is a written agreement between the retailer and the supplier regarding payment for the arrangement of goods;

11) To grant commercial discounts on goods, to pay directly or indirectly, or to compensate in any other way to the retailer for everything that has not been agreed upon in writing, by e-mail or by other means of electronic communication.

2. Where a supplier establishes in the agreement a commercial rebate expressed as a fixed amount of money which is not tied to the sale, quality, logistics (distribution and delivery of goods), sales promotion and/or other conditions of purchase and sale of the goods and where a retailer requests to accept the unsold food products (acceptance of which is not prohibited under point 7 of this paragraph), for which the commercial rebate on such products expressed as a fixed amount of money has already been received, the retailer shall be prohibited from refusing to return to the supplier the share of the commercial rebate, expressed as a fixed amount of money, in proportion to the returned food products.

3. In the course of investigation of infringements of this Law (hereinafter: 'investigation of an infringement'), the duty to prove that the agreement referred to in points 7, 8 10 and 11 of paragraph 1 of this Article has been concluded and meets the set requirements shall fall on the retailer which has concluded such an agreement.

4. Retailers shall be prohibited from applying measures of negative effect on the supplier because the latter has approached the court regarding the retailer's actions or requested the authority supervising compliance with the provisions of this Law to investigate the infringement or has cooperated with such authority.

5. Where, upon application of the measures of negative effect to the supplier a dispute arises, the retailer shall have to prove that the supplier has suffered negative consequences not due to the supplier's actions specified in paragraph 4 of this Article.

Article 4. Authority supervising unfair practices; its functions and rights

1. Supervision of compliance with the provisions of this Law shall be exercised by the Competition Council of the Republic of Lithuania (hereinafter: 'the Competition Council').

2. The Competition Council shall:

1) supervise how retailers meet the requirements of this Law;

2) carry out investigation in relation to infringements, examine cases with regard to infringement of this Law (hereinafter: a 'case') and apply sanctions provided for in this Law;

3) carry out monitoring of this Law and submit a report on the monitoring of the implementation of this Law to a Government-appointed institution which coordinates the monitoring of legal regulation;

4) conduct unplanned examinations of the agreements between retailers and suppliers in accordance with the procedure laid down by the Competition Council before and after the agreements according to Article 3 (1), (2), (4) and furnish the results of such examinations together with the report on the monitoring of this Law to the Government-appointed institution which coordinates the monitoring of legal regulation;

5) perform other functions set out in this Law.

3. When performing the functions set out in this Law, the Competition Council shall have the right to:

1) give obligatory instructions to retailers, suppliers, other persons and public administration entities to submit documents, including documents containing commercial secrets, as well as other information required for performance of its functions set out in this Law;

2) interview persons related to investigated actions of the retailers, obtain written statements from such persons; to invite them to give statements in the office of an authorised official conducting the investigation of the infringement.

Article 5. Protection of commercial secrets and the data identifying the supplier

1. Protection of commercial secrets when supervising the compliance with the provisions of this Law shall be defined by the Law on Competition.

2. Upon a request of a supplier who has submitted to the Competition Council the application specified in Article 8(1) of this Law and/or the documents and other information necessary for performing the functions of the Competition Council, the data identifying the supplier shall not be made public and disclosed.

CHAPTER THREE

PROCEDURE FOR IMPOSING LIABILITY FOR INFRINGEMENTS OF THIS LAW

Article 6. Right of initiative for examining infringements of this Law

1. The right to request the Competition Council to open an investigation of an infringement shall be enjoyed by suppliers whose interests have been violated and by associations representing the interests of the suppliers (hereinafter collectively: an 'applicant').

2. The Competition Council shall have the right to open an investigation of an infringement on its own initiative by adopting a reasoned resolution.

Article 7. Procedure of investigation of infringements of this Law and examination of cases

1. Infringements of this Law shall be investigated and the cases shall be examined in accordance with the procedure laid down by this Law.

2. The following shall participate in an investigation of an infringement and an examination of a case:

1) a retailer suspected of having infringed this Law and an applicant or representatives of the applicant, if an investigation of the infringement is initiated by the applicant (hereinafter collectively: 'parties to the proceedings');

2) by the decision of the Competition Council – experts, professionals and other persons.

3. During the investigation of the infringement and the examination of the case, the parties to the proceedings and the experts, professionals and other persons invited by the decision of the Competition Council (hereinafter collectively: 'participants in the proceedings') shall have the right to give written and oral explanations, present additional information and other documents. The parties to the proceedings shall also enjoy the right of proposing their own witnesses.

4. Following completion of the investigation, the participants in the proceedings shall be entitled to get access to the statement of objections regarding the alleged infringement (hereinafter: 'statement of objections'); the parties to the proceedings shall also be entitled to get access to the case material, with the exception of the documents which constitute a state, official, commercial or professional secret. In order to access the documents containing a professional or commercial secret, the consent of the person whose documents containing professional or commercial secrets are sought to be accessed must be obtained.

5. If during the examination of a case, new evidence is presented, a retailer which has allegedly infringed this Law shall have the right to get access to such evidence and to give its explanations related thereto within not less than five working days from the receipt of the new evidence.

6. The investigation of the infringement, including additional investigation of the infringement, must be completed and the Competition Council must adopt a resolution specified in Article 10(6)(1) or (2) of this Law not later than within six months from the adoption of the resolution by the Competition Council specified in Article 8(3) of this Law to open an investigation of an infringement. The said time limit may be extended twice (each period not exceeding six months) by a reasoned resolution of the Competition Council.

Article 8. Submission of an application for investigation of an infringement and its consideration

1. An applicant who wishes to initiate an investigation of an infringement must lodge with the Competition Council a written application for an investigation of an infringement (hereinafter: an 'application'). The application must specify the following:

1) in case of the applicant being a natural person – the forename, surname, address of the place of residence and contact information; in case of the applicant being a legal person – the name, address of the head office and contact information;

2) the name and, if it is known, the address of the head office of a retailer with regard to the actions of which the application is being lodged;

3) the concrete contested actions of the retailer, date of such actions and where the infringement is single or continuous, the date of transpiration of the infringement;

4) factual circumstances of the unfair actions which are known to the applicant and on which he bases his application as well as the supporting documents and other evidence, forenames, surnames of witnesses, contact information and addresses of the place of residence.

2. The Competition Council shall adopt a reasoned resolution to refuse to open an investigation of an infringement if:

1) the investigation of the infringement specified in the application is outside the remit of the Competition Council;

2) the facts specified in the application have already been investigated and a resolution of the Competition Council has already been adopted on the issue or there is an effective decision of the court;

3) there are no factual data which would allow to reasonably suspect that this Law has been infringed;

4) the application does not meet the requirements specified in paragraph 1 of this Article and the applicant fails to eliminate the specified shortcomings within the time limit set out by the Competition Council which is of at least five working days;

5) the actions contested in the application are complete and neither single nor continuous, and of minor significance due to their nature, duration, scope or other specific features;

6) more than one year has passed since the date of the infringement and the date of the receipt of the application meeting the requirements referred to in paragraph 1 of this Article, and where the infringement is single or continuous, more than one year has passed since the date of transpiration of the infringement.

3. The Competition Council must examine the application and adopt a reasoned resolution to open an investigation of an infringement or to refuse to open the investigation not later than within 30 days from the receipt of the application meeting the requirements referred to in paragraph 1 of this Article. In the event that the grounds for refusing to open an investigation of an infringement referred to in point 4 of paragraph 2 of this Article are established, the Competition Council must adopt a reasoned resolution to refuse to open infringement

investigation not later than within five working days from the expiration of the specified time limit for eliminating the shortcomings.

4. Upon adoption by the Competition Council of the resolution to open an investigation of an infringement, where the supplier, together with the application for the Competition Council, has lodged a reasoned request regarding the protection of the data identifying it, it shall be deemed that the investigation of the infringement has been opened on the initiative of the Competition Council and the applicant shall be notified in writing about the opening of the investigation of the infringement not later than within three working days from the adoption of the resolution to open an investigation of an infringement.

5. Upon adoption by the Competition Council of the reasoned resolution to open an investigation of an infringement, a copy of this resolution shall be forwarded to the parties to the proceedings not later than within three working days from its adoption. If, taking into consideration the nature of the infringement, notification about the opening of the investigation of the infringement before the commencement of the investigative acts could interfere with the infringement investigation (there exists a real risk that a retailer which has allegedly infringed this Law may hide or destroy the documents necessary for the infringement investigation or there are other circumstances the violation of which would make the infringement investigation impossible or the conduct of such investigation would become particularly burdensome), a copy of the said resolution shall be forwarded to the parties to the proceedings within three working days from the commencement of the investigative acts.

6. If the Competition Council adopts a reasoned resolution to refuse to open an investigation of an infringement, such resolution shall be published on the website of the said institution not later than within three working days from its adoption and a copy of the resolution shall be forwarded to the applicant.

Article 9. Rights and obligations of the authorised officials of the Competition Council when conducting the investigation of the infringement

1. When conducting the investigation of the infringement of this Law the authorised officials of the Competition Council shall have the right:

1) to revise the documents necessary for the investigation (regardless of the medium in which they are stored), obtain their copies and extracts, have access to the notes of the retailer's employees related to work activities, and make their copies and copies of the information held in computers and any media;

2) to obtain oral and written explanations from persons who may have information significant for the investigation, including explanations regarding facts and documents from

persons related to activities of the retailer subject to investigation, to require that they arrive to give explanations to the office premises of the authorised official who conducts the investigation;

3) to obtain from the retailer, other natural and legal persons and entities of public administration documents, data and other information necessary for conducting the investigation of the infringement. Such information and explanations may also be submitted to the authorised officials of the Competition Council by those entities and persons on their own initiative;

4) to take the documents and items that have evidentiary value for the investigation of the case;

5) to involve specialists and experts for conducting the investigation of the infringement;

6) to use technical means during investigation of the infringement;

7) to register the facts;

8) to use for the investigation of the infringement the information available to the Competition Council obtained during other investigations or hearings.

2. The authorised officials of the Competition Council, prior to carrying out the actions referred to in this Article, shall present the document issued by the Competition Council confirming their powers, purposes and time limits of the investigation of the infringement.

3. The authorised officials of the Competition Council, in exercising the rights conferred to them under this Law and by the Competition Council, shall document in writing the actions of the investigation of the infringement – draw up the documents (acts, protocols, requests, etc.). The form and procedure of completion of these documents shall be established by the Competition Council.

4. Requests of the authorised officials of the Competition Council when carrying out the actions referred to in paragraph 1 of this Article shall be mandatory. For the failure to fulfil such requests the sanctions provided for in this Law shall be applied.

5. The authorised officials of the Competition Council conducting the investigation of the infringement shall warn in writing the persons who give explanations about liability for the provision of false information or for the refusal to provide the information to the Competition Council.

Article 9¹. Splitting up (joining), terminating and reopening of the investigation of the infringement

1. With a view to ensuring expeditious and cost-efficient investigation of the infringement the Competition Council shall have the right to adopt a resolution to split up the investigation of the infringement into separate investigations of infringements or to join separate investigations of infringements into one.

2. The investigation of the infringement shall be considered to be finished when the Competition Council approves the findings of the investigation of the infringement conducted by the authorised officials. In such case, the actions established in Article 10 of this Law shall be carried out.

3. The Competition Council shall adopt a resolution to terminate the investigation where:

1) during the investigation of the infringement it transpires that there is no infringement of law;

2) during the investigation of the infringement the circumstances referred to in Article 8(2) of this Law transpire or emerge.

4. If any new circumstances transpire the Competition Council shall have the right to adopt a resolution to reopen the terminated investigation of the infringement.

Article 9². Notification about findings of the investigation of the infringement

After completion of the investigation of the infringement, not later than 21 days before the day of hearing of the case at the meeting of the Competition Council, participants of proceedings shall be provided by registered mail with findings of the investigation of the infringement, notified about the venue, time and procedure (oral or written proceedings) of hearing of the case, and offered to give their written explanations regarding the findings of the investigation of the infringement not later than 7 days before the day of hearing of the case at the meeting of the Competition Council.

Article 10. Examination of cases

1. By the decision of the Competition Council a case shall be examined in written or oral proceedings.

2. When examining a case in the written proceedings, the participants in the proceedings shall not be invited and the case shall be examined without their participation.

3. A case shall be examined in the oral proceedings at a public sitting attended by the participants in the proceedings. When examining a case in the oral proceedings, the Competition Council may, on its own initiative or at the request of the participants in the proceedings, declare the sitting or a part thereof to be closed, where this is necessary with a view to protecting a state, official, professional or commercial secret. If witnesses are examined at a sitting, the participants in the proceedings shall also have the right to examine them.

4. Where the parties to the proceedings are not participating in the examination of the case in the oral proceedings, the case may be examined only if there is information that the parties to the proceedings have been properly and timely notified of the time and venue of the

examination of the case and if, before the beginning of examination of the case, the said parties to the proceedings have not produced the documents justifying their absence and indicating the reasons for absence which the Competition Council recognises as important. Vacations, business trips, busy schedule and other similar circumstances shall not be considered as substantive reasons. Absence due to sickness or involvement of a representative of the party to the proceedings in other cases shall not normally be considered as important reasons.

5. An appropriate notification about the time and venue of the examination of a case for the party to the proceedings which is a legal person shall be considered a notification sent by registered mail to the address of the head office of the party to the proceedings specified in the Register of Legal Entities, with the exception of the cases where the party to the proceedings indicates another mailing address, or the notification has been sent to the electronic consignment delivery address of the party to the proceedings specified in the Register of Legal Entities. If the party to the proceedings is a natural person, an appropriate notification about the time and venue of the examination of a case shall be considered a notification sent by registered mail to the address of the place of residence, with the exception of the cases where the natural person indicates another mailing address.

6. Upon completion of the examination of the case, the Competition Council shall adopt the following reasoned resolution:

1) to impose the sanctions laid down by this Law, if the infringement of this Law has been established;

2) to terminate the examination of the case if no infringement of this Law has been established;

3) to defer the examination of the case and to carry out additional investigation of the infringement if new circumstances which are relevant for adoption of the resolution referred to in points 1 or 2 of this paragraph arise or transpire.

7. The resolution specified in paragraph 6 of this Article must indicate the following: the information about the participants to the proceedings; description of the circumstances established during the examination of the case as well as the reasoned evaluation thereof; the grounds for the adopted resolution; where the resolution referred to in point 1 of paragraph 6 of this Article is adopted, the Article of this Law the infringement of which is subject to liability, the Article laying down liability for the infringement, the time limit and procedure for appealing against the resolution; where the resolution referred to in point 2 of paragraph 6 of this Article is adopted, the time limit and procedure for appealing against the resolution; where the resolution referred to in point 3 of paragraph 6 of this Article is adopted, the date of the next sitting of the Competition Council.

8. If the Competition Council adopts a resolution to defer the examination of the case and to carry out additional investigation of the infringement, additional investigation of the infringement and examination of the case shall be carried out in accordance with the procedure and time limits set out in Articles 7 and 9 of this Law as well as in this Article.

9. The resolution referred to in paragraph 6 of this Article shall, within three working days from the adoption thereof, be published on the website of the Competition Council in accordance with the procedure laid down by the said Council and shall be forwarded by registered mail to the parties to the proceedings. Where the resolution of the Competition Council contains sensitive data (state, official, professional or commercial secrets or personal data which are considered sensitive pursuant to the requirements of legal acts pertaining to protection of personal data), a version of the resolution to be published shall be prepared, excluding the sensitive data.

10. The resolutions referred to in points 1 and 2 of paragraph 6 of this Article must be adopted not later than within two years from the commitment of the infringement, and where the infringement is single or continuous – from the date of transpiration of the infringement.

Article 11. Appealing against the resolutions of the Competition Council

The resolutions of the Competition Council adopted pursuant to Article 8(2), Article 9(2) and Article 10(6)(1) and (2) of this Law may, within 30 days from the adoption thereof, be appealed against to the court in accordance with the Law of the Republic of Lithuania on Administrative Proceedings.

Article 12. Sanctions

1. A fine of up to EUR 120 000 shall be imposed on retailers for the prohibited unfair practices specified in Article 3(1) and (4) of this Law. A fine may be accompanied by an obligation to terminate the unfair practices defined in this Law or an obligation to perform actions restoring the previous situation or eliminating the consequences of the infringement, including amendment of the agreement.

2. A fine of ten thousand euro shall be imposed on retailers, suppliers and other persons for the non-fulfilment of requests of the authorised officials of the Competition Council when carrying out the actions specified in Article 9(1)(1–7) of this Law.

3. A fine of EUR 300 shall be imposed on retailers, suppliers or other persons for each day of non-compliance in a timely manner with the instructions of the Competition Council to provide information.

4. A fine of EUR 300 shall be imposed on retailers for each day of commitment (continuation) of infringement in the event of failure to comply or failure to comply in a timely manner with the obligations of the Competition Council to terminate the prohibited unfair practices, to perform actions restoring the previous situation or eliminating the consequences of the infringement.

5. The amount of the fine imposed by the Competition Council shall depend on the nature of an infringement, its duration and scope as well as mitigating and aggravating circumstances.

6. The court hearing the complaint concerning the resolution of the Competition Council, taking into account mitigating and any other circumstances (due to which a respective fine would be too large because it would be disproportionate to the committed infringement and therefore unfair) and acting in compliance with the criteria of fairness and reasonableness, shall have the right to impose a fine smaller than the fines provided for in this Article.

7. Mitigating circumstances shall include actions of retailers, suppliers or other persons who have committed an infringement, taken to voluntarily prevent the harmful consequences of the infringement, to provide assistance to the Competition Council during the investigation, to compensate for losses or eliminate the damage incurred.

8. Aggravating circumstances shall include actions of retailers, suppliers or other persons impeding the investigation, continuing the infringement despite the obligation to terminate it, where damage has been caused or the infringement is repeated within one year from the imposition of the fine specified in this Law.

9. The fine imposed by the Competition Council shall be paid to the state budget not later than within three months from the receipt by the violator of this Law of the resolution on the imposition of the fine. In the event of appealing against such a decision, the fine must be paid not later than within one month from the coming into effect of a court decision dismissing the appeal.

10. At a reasoned request of the violator of this Law, the Competition Council shall have the right to defer the payment of a fine or a part thereof for a period of up to six months, provided that the violator of this Law is unable to pay the fine in time for objective reasons.

11. A resolution of the Competition Council on the imposition of a fine shall be an enforceable document subject to execution in accordance with the procedure laid down by the Code of Civil Procedure of the Republic of Lithuania.

Article 13. Administrative liability

Infringements of this Law shall incur administrative liability established by this Law.

Article 14. Compensation for damage

1. Persons shall have the right to apply to court in accordance with the procedure laid down by law for the compensation for damage resulting from the infringement of this Law.
2. Damage caused to persons by unlawful actions of the Competition Council or its officials shall be compensated in accordance with the procedure established by law.

**CHAPTER FOUR
FINAL PROVISIONS**

Article 15. Monitoring of implementation of this Law

The Competition Council shall, every two years, carry out monitoring of the implementation of this Law in accordance with the procedure laid down by legal acts and shall, before 1 June of a given year, submit a report on the two-year monitoring of this Law to the Government-appointed institution which coordinates the monitoring of legal regulation.

I promulgate this Law passed by the Seimas of the Republic of Lithuania.

PRESIDENT OF THE REPUBLIC

DALIA GRYBAUSKAITĖ