

REPUBLIC OF LITHUANIA
LAW
ON PROHIBITION OF UNFAIR PRACTICES OF RETAILERS

22 December 2009 No XI-626

Vilnius

(As last amended on 17 June 2021 – No XIV-410)

SECTION 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 with significant market power and to ensure the balance of interests between suppliers and retailers with significant market power.

2. Where a retailer with significant market power by the same actions infringes this Law and the Law of the Republic of Lithuania on Competition, which prohibits abuse of a dominant position, the retailer shall be held liable in accordance with the procedure laid down by the Law on Competition.

3. This Law shall not apply to relations between retailers with significant market power and suppliers whose sales income for the past financial year exceeds EUR 350 million. When determining the sales income of suppliers, the income of all associated undertakings shall be calculated.

4. This Law shall apply to the relations between retailers with significant market power and suppliers provided the retailer or supplier or both are established in the European Union.

5. This Law shall implement the legal acts of the European Union listed in the Annex to this Law.

Article 2. Definitions

1. ‘Retailer with significant market power’ (hereinafter: ‘a retailer’) means an undertaking engaged in retail trade in non-specialised stores predominantly selling food, beverages and tobacco

products, provided the undertaking, alone or together with associated undertakings, meets all of the following requirements:

1) at least 20 out of all the stores under the management of the undertaking(s) in the Republic of Lithuania have a sales area of not less than 400 sq. m.;

2) the sales income of the undertaking(s) for the past financial year amounts to not less than EUR 116 million.

2. 'Supplier of foodstuffs and/or beverages' (hereinafter: 'the supplier') means a producer of agricultural and/or food products, a natural or legal person, or any other organisation, irrespective of their place of establishment, engaged in selling to a retailer under a wholesale contract agricultural and food products and/or beverages intended for sale to the consumer. This concept also includes groups of producers of agricultural and/or food products or groups of natural and legal persons, producer organisations, supplier organisations and associations of these organisations.

3. 'Sales income' means receipts gained from ordinary economic activity of selling agricultural and food products and other goods and/or provision of services. Sales income shall exclude repayable amounts, value added tax, excise duties and customs duties.

4. 'Sales promotion' means the entirety of consumer-oriented actions aimed at creating more favourable conditions for the purchase of goods with a view to increasing the sales.

5. 'Associated undertakings' mean two or more undertakings which are considered to be a single entity due to their mutual control or interdependence and possible concerted practices. Unless proved otherwise, associated undertakings shall be considered to consist of each undertaking concerned and of the following undertakings:

1) undertakings in which the shareholding of 1/2 or more of the authorised capital or 1/2 or more of all the voting rights belong to the same natural person(s) as in the undertaking concerned;

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

3) undertakings in which the shareholding of the undertaking concerned accounts for 1/2 or more of the authorised capital, undertakings in which the undertaking concerned carries 1/2 or more of all the voting rights, undertakings with which the undertaking concerned has committed to co-ordinate decisions relating to its economic activity, undertakings in which the liability for meeting their obligations to third parties has been assumed by the undertaking concerned, or

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) undertakings in which the 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, undertakings with which the undertaking concerned has committed to co-ordinate decisions relating to its economic activity, undertakings which have assumed the liability for meeting the obligations of the undertaking concerned to third parties, or undertakings 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) undertakings that bear direct or indirect association through other undertakings with the undertakings referred to in points 1–4 of this paragraph in any of the ways specified in points 1–4 of this paragraph.

6. Other concepts used in this Law shall be interpreted as they are defined in the Law of the Republic of Lithuania on Prohibition of Unfair Trading Practices in the Agricultural and Food Supply Chain.

SECTION TWO

UNFAIR PRACTICES AND SUPERVISION

Article 3. Prohibition of unfair practices

1. Retailers shall be prohibited from carrying out any activities that compromise fair business practices, transfer the operational risk of retailers to suppliers, impose additional obligations on suppliers, or restrict the freedom of suppliers to freely operate in the market and translate into the following 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 retailer's loss of income or for receipt of smaller-than-expected income from the sale of goods received from the supplier;

3) to compensate for the retailer's operational costs 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 supply conditions and prices of goods supplied to the retailer to the supply conditions and prices for the goods applied by the supplier to third parties;

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

7) to accept the unsold food products returned without paying the supplier for those unsold products or without paying for removing those products or both, except for non-perishable packaged food products, provided they are safe, high-quality, have at least 1/3 of set shelf life to go before their expiry date or have no expiry date and there is a prior contract on their return;

8) to pay, directly or indirectly, a part of the costs of sales promotion carried out either by the retailer alone or together with the retailer or to cover such costs in any other way, except for the cases where there is a written contract between the retailer and the supplier regarding the costs to be covered and the sales promotion activities to be carried out;

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

10) to grant the retailer commercial rebates on goods, pay the retailer directly or indirectly or compensate the retailer in any other way for matters which have not been agreed upon in writing, by e-mail or other electronic means.

2. Where a supplier establishes in the contract 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 Article 3(1)(7)), 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 addition to the actions contrary to fair business practices, as specified in this Article, retailers shall also be prohibited from performing the unfair trading practices specified in the Law on Prohibition of Unfair Trading Practices in the Agricultural and Food Supply Chain. Where a retailer infringes by the same actions the provisions of this Law and/or the Law on Prohibition of Unfair Trading Practices in the Agricultural and Food Supply Chain, the retailer shall be held liable in accordance with the procedure laid down by this Law.

4. In the course of the investigation of infringements of this Law (hereinafter: 'investigation of an infringement'), the burden of proof that the contract referred to in Articles 3(1)(7–10) has been concluded and meets the set requirements shall fall on the retailer which has concluded such a contract.

5. Where a retailer requests a fee from a supplier in the context of provision of services to the supplier in the cases specified in Articles 3(1)(8–10) of this Law, the retailer must, at the supplier's request, provide the supplier with information in writing about payments for the sold

unit(s) of food products and beverages or the total amount of payments. In the cases specified in Articles 3(1)(9) and 3(1)(10) of this Law, the retailer must also provide the supplier with a written estimate of the costs and the justification for that estimate.

Article 4. Functions and rights of the authority for supervision of unfair practices

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 engage in the following:

1) supervise adherence to the requirements of this Law and the Law on Prohibition of Unfair Trading Practices in the Agricultural and Food Supply Chain insofar as they apply to retailers;

2) investigate infringements, examine cases of infringement of this Law (hereinafter: ‘a case’) and apply sanctions provided for in this Law;

3) monitor the implementation of this Law;

4) examine, in accordance with the procedure established by the Competition Council, the contracts concluded between retailers and suppliers and actions that may be contrary to fair business practices, as specified in Articles 3(1–3) of this Law, and that are carried out before and after the conclusion of these contracts;

5) cooperate with state institutions and agencies of the Republic of Lithuania in charge of supervision of the Law on Prohibition of Unfair Trading Practices in the Agricultural and Food Supply Chain, the European Commission, and supervisory authorities of other Member States of the European Union by providing mutual assistance in exchanging information and carrying out investigations with cross-border implications;

6) perform other functions laid down in this Law.

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

1. Protection of commercial secrets during supervision of 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 shall not be disclosed. When submitting the application, the applicant shall specify the information to be kept confidential.

SECTION THREE

PROCEDURE FOR IMPOSING LIABILITY FOR INFRINGEMENTS OF THIS LAW

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

1. Suppliers, producer organisations, other organisations of suppliers and associations of such organisations whose interests have been violated (hereinafter collectively: 'an applicant') shall be entitled to request the Competition Council to open an investigation of an infringement and to submit an application at the request of one or several of their members whose interests have been violated. Other organisations with a legitimate interest to represent the suppliers shall be entitled to submit an application at the supplier's request and in the supplier's interest, provided such organisations are non-profit legal persons and bear no association with retailers.

2. The Competition Council shall have the right to open an investigation of an infringement on its own initiative by adopting a reasoned decision. The Competition Council shall also have the right to open an investigation of an infringement on its own initiative by adopting a reasoned decision on the basis of the information provided by a whistle-blower or received anonymously.

Article 7. Investigation of infringements of this Law and examination of cases

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

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

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

2) experts, professionals and other persons specified under the decision of the Competition Council.

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 and present additional information and other documents. The parties to the proceedings shall also have the right to call their own witnesses.

4. Following completion of the investigation, the participants in the proceedings shall be entitled to access 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 secret, official, commercial or professional secret. In order to access the documents containing a professional or

commercial secret, consent must be obtained from the person whose documents contain professional or commercial secrets.

5. Where new evidence is presented during the examination of a case, a retailer suspected of having committed an infringement of 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 an additional investigation of the infringement, must be completed, and the Competition Council must adopt the decision specified in Articles 10(6)(1) or 10(6)(2) of this Law not later than within six months from the adoption of the decision by the Competition Council specified in Article 8(3) of this Law on opening an investigation of an infringement. The said period may be extended twice, each time for six months at most, by a reasoned decision of the Competition Council.

Article 8. Submission and consideration of applications for investigation of an infringement

1. In order to open an investigation of an infringement, an applicant must submit to the Competition Council a written application for an investigation of an infringement (hereinafter: ‘an application’). The application must specify the following:

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

2) the name and, if known, the address of the head office of a retailer whose actions has led to submitting an application;

3) the specific contested actions of the retailer, date of such actions and, where the infringement is continuous or recurrent, the date when the applicant first learned about the infringement;

4) factual circumstances of the unfair practices known to the applicant and constituting the basis for the application as well as the supporting documents and other evidence, forenames and surnames of witnesses, their contact information, and the addresses of their places of residence.

2. The Competition Council shall adopt a reasoned decision to refuse to open an investigation of an infringement under the following circumstances:

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 the Competition Council has already adopted a decision or a court decision has come into force concerning the issue;

3) *repealed as of 1 November 2021;*

4) the application fails to meet the requirements specified in Article 8(1) and the applicant fails to eliminate the identified shortcomings within the period of not less than five working days set by the Competition Council. The refusal by the Competition Council to accept the application shall not preclude an applicant from submitting the same application to the Competition Council again, provided that the circumstances which had prevented the acceptance of the application have been removed or have ceased to exist;

5) the actions contested in the application no longer occur, are neither continuous nor recurrent, or are 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 Article (8)(1) of this Law; and, if the infringement is continuous or recurrent, more than one year has passed since the date of transpiration of the infringement;

7) the factual circumstances indicated in the application are attributable to possible minor violations and fall outside the administrative priorities approved by the Competition Council.

3. The Competition Council must examine the application and adopt, not later than within 30 days from the receipt of the application meeting the requirements referred to in paragraph 1 of this Article, a reasoned decision on either opening an investigation of an infringement or refusal to open the investigation. Where the grounds for the refusal to open an investigation of an infringement referred to in Article 8(2)(4) of this Law are established, the Competition Council must adopt, not later than within five working days from the expiration of the specified period for eliminating the shortcomings, a reasoned decision on the refusal to open an investigation of an infringement.

4. Where the supplier, together with the application for the Competition Council, has submitted a request regarding the protection of the data identifying the supplier, it shall be deemed, upon adoption by the Competition Council of the reasoned decision to open an investigation of an infringement, that the investigation of the infringement has been opened on the initiative of the Competition Council and the supplier 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 decision to open an investigation of an infringement.

5. Upon adoption, by the Competition Council, of the reasoned decision to open an investigation of an infringement, a copy of this decision shall be forwarded to the parties to the

proceedings not later than within three working days from its adoption. A copy of the decision shall be sent to the parties to the proceeding within three working days following the commencement of the investigation of the infringement, where, taking into account the nature of the infringement, the notification of the opening of the investigation of the infringement before any actions to investigate the infringement are taken could compromise the investigation of the infringement, because there is a reasonable risk that the retailer suspected of having committed an infringement of this Law may conceal or destroy the documents necessary for the investigation of the infringement, or because there are any other circumstances that would make the investigation of the infringement impossible or particularly difficult.

6. If the Competition Council adopts a reasoned decision on the refusal to open an investigation of an infringement, a copy of the decision shall be forwarded to the applicant not later than within three working days from its adoption.

Article 9. Rights and duties of authorised officials of the Competition Council in carrying out an investigation of an infringement

1. In carrying out investigations of infringements of this Law, the authorised officials of the Competition Council shall have the following rights:

1) to examine the documents necessary for an investigation of an infringement (irrespective of the medium on which they are stored), obtain their copies and extracts, gain access to the retailer employees' notes related to the business, and copy the above notes as well as the information stored in computers and on any other media;

2) to obtain oral and written explanations from persons who may have any information relevant to the investigation, including explanations concerning facts and documents from persons linked to the economic activities of the retailer under investigation, and request them to appear before the authorised official in the official premises in order to provide explanations;

3) to obtain from the retailer, other natural and legal persons and entities of public administration the documents, data and other information necessary for conducting an investigation of an infringement. These undertakings and persons shall also have the right to submit such information and statements on their own initiative to the authorised officials of the Competition Council;

4) to seize any documents and articles having evidential value in the investigation of the case;

5) to enlist the assistance of professionals and experts in carrying out the investigation of an infringement;

6) to use technical measures in the course of the investigation of an infringement;

- 7) to document the facts;
- 8) to use, for investigation purposes, the information obtained by the Competition Council during other investigations or proceedings;
- 9) to enter the premises and territory of the retailer under inspection without prior notice in the course of the investigation of infringements. Access to the territory and premises of the retailer under inspection shall be permitted only during the working hours of the retailer under inspection and upon producing authorisations, identity documents and a court ruling authorising entry to the premises.

2. Before carrying out the actions specified in this Article, the authorised officials of the Competition Council must produce a document issued by the Competition Council to confirm their powers and the purpose and period of the investigation of an infringement.

3. While exercising their rights granted by this Law and the Competition Council, the authorised officials of the Competition Council shall document the investigative actions by drawing up acts, minutes, requests, etc. The form and the filling procedure of the above documents shall be established by the Competition Council.

4. The requests expressed by the authorised officials of the Competition Council when carrying out the actions specified in Article 9(1) shall be mandatory. Failure to comply with these requests shall incur the sanctions specified in this Law.

5. The authorised officials of the Competition Council carrying out the investigation of an infringement shall warn in writing the persons providing explanations of their liability for providing false information or refusal to provide information to the Competition Council.

Article 9¹. Division (combination), termination, and resumption of an investigation of an infringement

1. In the interests of efficiency and cost-effectiveness of an investigation of an infringement, the Competition Council shall have the right to adopt a decision to divide the investigation of an infringement into separate investigations or combine separate investigations of an infringement into one.

2. An investigation of an infringement shall be deemed completed when the Competition Council approves a statement of objections on the investigation carried out by authorised officials. In that case, the actions specified in Article 10 of this Law shall be performed.

3. The Competition Council shall adopt a decision to terminate an investigation of an infringement under the following circumstances:

- 1) it transpires in the course of an investigation of an infringement that there is no infringement of law;

2) the circumstances referred to in Article 8(2) of this Law arise or transpire in the course of an investigation of an infringement;

3) an investigation of an infringement poses a risk of disclosing the identity of an applicant or any other information the disclosure of which, in the opinion of the applicant, harms the applicant's interests, the applicant requests that the information be kept confidential, yet the Competition Council is unable to ensure the implementation of the provisions of Article 5(2) of this Law.

4. Where new circumstances transpire, the Competition Council shall be entitled to adopt a decision to resume the terminated investigation of an infringement.

Article 9². Notification of a statement of objections on an infringement

Upon completion of an investigation of an infringement, not later than 21 days prior to the examination of the case at the meeting of the Competition Council, a statement of objections shall be sent by registered mail to the participants in the infringement proceedings, notifying them about the venue, the time and the procedure of the examination of the case (oral or written proceedings) and offering them to provide written explanations concerning the statement of objections not later than seven days prior to the examination of the case at the meeting of the Competition Council.

Article 9³. Interim measures

1. In urgent cases, where there is sufficient evidence of an infringement of this Law, the Competition Council shall have the right to adopt, under the principle of proportionality, a decision to apply interim measures in order to avoid substantial damage or irreparable consequences for the interests of undertakings or for the public interest.

2. In cases provided for in Article 9³(1) of this Law, the Competition Council shall be entitled to apply the following interim measures in respect of a retailer suspected of having committed an infringement of this Law:

- 1) to require the retailer to bring the potentially unlawful practice to an end;
- 2) to require the retailer to perform certain actions where failure to perform them would result in serious damage to other undertakings or public interests, or produce irreparable consequences.

3. Before adopting a decision to apply interim measures, the Competition Council must offer the retailer suspected of having committed an infringement of this Law an opportunity to provide explanations within the set period of no less than seven working days.

4. By a decision of the Competition Council, interim measures may be applied for a maximum period of 12 months; this period may be further extended by a decision of the

Competition Council. Where necessary, interim measures shall continue to apply until the Competition Council has taken a final decision on the infringement.

5. A decision of the Competition Council on applying interim measures may be appealed against to Vilnius Regional Administrative Court within ten calendar days from the date of serving this decision on a respective person. The filing of an appeal shall not suspend the application of interim measures. The appeal must be examined and the decision on the appeal taken within 45 calendar days from the date of receipt of the appeal. The decision of Vilnius Regional Administrative Court may be appealed against to the Supreme Administrative Court of Lithuania within seven calendar days from the publication of the decision in accordance with the procedure laid down by the Law of the Republic of Lithuania on Administrative Proceedings. The Supreme Administrative Court of Lithuania must examine the appeal against the decision of Vilnius Regional Administrative Court and adopt a decision thereon within 45 calendar days from the day of receipt of the case by the court.

Article 9⁽⁴⁾. Procedure for obtaining court orders to enter the premises and territory of the retailer under inspection

1. After the Competition Council adopts a decision regarding the investigative actions provided for in Article 9(1)(9) of this Law, an authorised officer of the Competition Council shall file with Vilnius Regional Administrative Court an application for a court order to enter the premises and territory of a retailer under inspection.

2. An application for a court order to enter the premises and territory of a retailer under inspection must contain the name of the retailer, the nature of alleged infringements and the intended investigative actions.

3. Vilnius Regional Administrative Court shall examine an application for issuing a court order to enter the premises and territory of a retailer under inspection and hand down a reasoned ruling on satisfying in full or in part or rejecting an application for issuing a court order to enter the premises and territory of the retailer under inspection.

4. An application for a court order to enter the premises and territory of a retailer under inspection must be examined and a ruling thereon must be handed down not later than within 72 hours from the filing of an application for a court order to enter the premises and territory of a retailer under inspection.

5. The Competition Council shall have the right to appeal, within seven days from the date of publication of the ruling, to the Supreme Administrative Court of Lithuania against the ruling of Vilnius Regional Administrative Court, whereby the application for a court order to enter the premises and territory of the retailer under inspection is dismissed or satisfied in part.

6. The Supreme Administrative Court of Lithuania must hear the appeal against the ruling of Vilnius Regional Administrative Court not later than within seven days from the date of receipt of the appeal. The representative of the Competition Council shall have the right to participate in the oral hearing on the appeal.

7. The rulings of the Supreme Administrative Court of Lithuania shall be final and not subject to appeal.

8. When examining applications for and appeals against a court order to enter the premises and territory of the retailer under inspection, courts must ensure the confidentiality of the provided information and intended actions.

Article 10. Hearing of cases

1. A case shall be heard in either written or oral proceedings, based on the decision of the Competition Council.

2. Where a case is heard in written proceedings, the participants in the proceedings shall not be invited and the proceedings shall be conducted in their absence.

3. A case shall be heard in oral proceedings at a public hearing in the presence of the participants in the proceedings. When hearing a case in oral proceedings, the Competition Council may, on its own initiative or at the request of the participants in the proceedings, declare the hearing or a part thereof to be closed, where this is necessary with a view to protecting a state secret, official, professional or commercial secret. Where witnesses are examined at a hearing, 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 hearing of the case in oral proceedings, the case may be heard only where there is information that the parties to the proceedings have been properly and timely notified of the time and venue of the hearing of the case and where, before the beginning of the hearing 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 substantive. Vacations, business trips, busy schedule and other similar circumstances shall not be considered as substantive reasons. Absence due to disease or involvement of a representative of the party to the proceedings in other cases shall not normally be considered as substantive reasons.

5. For legal persons, 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 or notification sent to the electronic consignment delivery address of the party to the proceedings specified in the Register of Legal Entities shall be deemed to constitute an appropriate notification about the time and venue of the hearing of a case for the party to the proceedings, with the exception of the cases where the

party to the proceedings indicates another mailing address. Where the party to the proceedings is a natural person, a notification sent by registered mail to the address of the place of residence shall be deemed to constitute an appropriate notification about the time and venue of the hearing of a case, 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 decision:

1) to impose the sanctions laid down by this Law, where the Competition Council finds that this Law has been infringed;

2) to terminate the examination of the case, where 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 where new circumstances which are relevant for adoption of the decision referred to in points 1 or 2 of this paragraph arise or transpire.

7. The decision specified in Article 10(6) 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 decision; the article of this Law the infringement of which is subject to liability and the article laying down liability for the infringement, the period and procedure for appealing against the decision, for decisions referred to in Article 10(6)(1); the period and procedure for appealing against the decision, for decisions referred to in Article 10(6)(2); and the date of the next meeting of the Competition Council, for decisions referred to in Article 10(6)(3).

8. Where the Competition Council adopts a decision 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 periods set out in Articles 7 and 9 of this Law as well as in this Article.

9. The decision referred to in Article 10(6) 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 decision of the Competition Council contains sensitive data (state secrets, official, professional or commercial secrets or personal data which are considered sensitive pursuant to the requirements of legal acts on the protection of personal data), a version of the decision to be published shall be prepared, excluding the sensitive data.

10. The decisions referred to in Articles 10(6)(1) and 10(6)(2) of this Law must be adopted not later than within two years from the commitment of the infringement; or from the date of transpiration of the infringement where the infringement is continuous or recurrent.

Article 11. Appealing against the decisions of the Competition Council

The decisions of the Competition Council adopted pursuant to Article 8(2), Article 9¹(3), Article 10(6)(1) and 10(6)(2) of this Law may, within 30 days from serving them on a respective person, be appealed against to the court under the Law of the Republic of Lithuania on Administrative Proceedings.

Article 12. Sanctions

1. Retailers shall be imposed a fine of up to 0.7 % of their sales income for the preceding financial year for the prohibited unfair practices specified in Articles 3(1–3) of this Law, with the exception of the infringements specified in Articles 4(1) and 4(2) of the Law on Prohibition of Unfair Trading Practices in the Agricultural and Food Supply Chain. The Competition Council shall be entitled to impose an obligation on a retailer to terminate the unfair practices specified in this Law or an obligation to perform actions restoring the previous situation or eliminating the consequences of the infringement, including amendment of the contract.

2. The fine shall be calculated under the following procedure:

1) the initial amount of the fine shall be set at 0.05 % of the sales income for the preceding financial year;

2) the basic amount of the fine shall be set, which shall be calculated by increasing or reducing the initial amount of the fine depending on the nature, duration and extent of the infringement. The initial amount of the fine shall be multiplied by the coefficient which is established for each of the criteria (nature, duration and extent) of the infringement and may vary from 0.22 to 1.78;

3) the basic amount of the fine as calculated in point 2 of this paragraph shall be increased or reduced by up to 50 % taking into account the mitigating/aggravating circumstances. Where an aggravating circumstance is established, i.e. a retailer repeatedly commits the same infringement within one year from imposing the fine specified in this Law, the basic amount of the fine shall be increased up to 100 %.

3. For the infringements referred to in Articles 4(1) and 4(2) of the Law on Prohibition of Unfair Trading Practices in the Agricultural and Food Supply Chain, a fine shall be imposed on a retailer in the amount of not less than EUR 200, but not in excess of 20 % of the total amount of overdue debts to the supplier. The fine shall be calculated under the following procedure:

1) the initial amount of the fine shall be set at 7 % of the total amount of overdue debts to the supplier;

2) the basic amount of the fine shall be calculated taking into account the duration of the infringement:

a) where the delay in payment to a supplier ranges from 1 to 30 calendar days inclusively from the expiry of the established period for payment, the initial amount of the fine shall be increased by up to 25 %;

b) where the delay in payment to a supplier ranges from 31 to 60 calendar days inclusively from the expiry of the established period for payment, the initial amount of the fine shall be increased by up to 50 %;

c) where delay in payment to a supplier exceeds 60 days from the expiry of the specified period for payment, the initial amount of the fine shall be increased by up to 100 %;

3) the amount of the imposed fine shall be calculated taking into account the mitigating/aggravating circumstances specified in Article 12(2)(3) of this Law. Upon establishing the mitigating/aggravating circumstances and assessing their number and significance, the basic amount of the fine shall be reduced by up to 50 % or increased by up to 50 %; however, the amount of the imposed fine may not be less than EUR 200 and may not exceed 20 % of the total amount of overdue debts to the supplier.

4. The procedure for calculating the amount of the fine shall be laid down in the Description of the Procedure for Imposing Fines for Violations of the Law of the Republic of Lithuania on Prohibition of Unfair Practices of Retailers, as approved by the Government of the Republic of Lithuania.

5. A fine of EUR 300 shall be imposed on retailers for each day of infringement where retailers fail to comply in a timely manner with the obligations imposed by the Competition Council to terminate the prohibited unfair practices, to perform actions restoring the previous situation or to eliminate the consequences of the infringement.

6. A fine of up to EUR 10,000 shall be imposed on retailers, suppliers or other persons for failure to comply with the requirements of the authorised officials of the Competition Council when they take the actions specified in Articles 9(1)(1–7) and 9(1)(9) of this Law.

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

8. Aggravating circumstances shall include steps by retailers, suppliers or other persons to obstruct the investigation, continuation of the infringement despite the obligation to terminate it, causing damage, or recurrence of the infringement within one year from imposing the fine laid down by 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 infringer of this Law, of the decision on imposing 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 infringer 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 infringer of this Law is unable to pay the fine in time for objective reasons.

11. A decision of the Competition Council on imposing a fine shall be an enforceable document subject to execution under 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 and alternative dispute resolution

1. Persons shall have the right to apply to court under 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 for under the procedure laid down by law.

3. The right of retailers and suppliers to settle disputes over unfair practices through alternative dispute resolution shall be regulated by the Law on Prohibition of Unfair Trade Practices in the Agricultural and Food Supply Chain.

SECTION FOUR FINAL PROVISIONS

Article 15. Submission of annual reports

By 1 February each year, the Competition Council shall submit information on the activities of the Competition Council in relation to the supervision of this Law and indicate the number of complaints received and the number of investigations initiated or completed during the previous year to the public establishment Rural Business and Markets Development Agency in charge of coordination of the monitoring of the legal regulation under Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. This information shall involve a summary of each completed investigation, the results of the investigation and, where applicable, the decision taken. This shall take account of the confidentiality requirements laid

down in Article 5 of this Law. Proposals, if any, regarding the need for improvement of the regulatory framework shall also be submitted.

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

PRESIDENT OF THE REPUBLIC

DALIA GRYBAUSKAITĖ

Annex to the Republic of Lithuania
Law on Prohibition of Unfair Practices of Retailers

LEGAL ACTS OF THE EUROPEAN UNION IMPLEMENTED BY THIS LAW

1. Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.