



**Competition Law Compliance Programmes in Lithuania:
What Could be Done by the National Competition Authority
For a More Effective Prevention of Anti-competitive
Behaviour?**

Dr Lauras Butkevičius

29 September 2011
Regional Competition Conference, Vilnius

www.sorainen.com

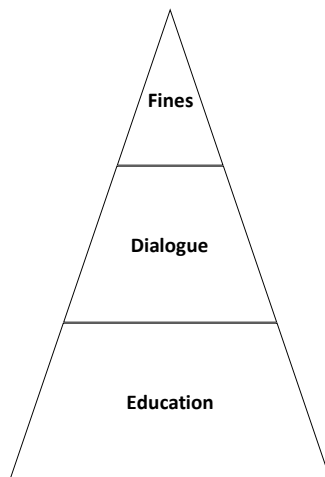
- Drivers for competition compliance
 - Fear for punishment vs. corporate culture in relation to general compliance
 - Difference between international and local undertakings
 - Increased number of investigations and higher fines
 - Increased awareness of competition rules
 - Demand for educational measures
 - Interest in compliance programmes
- Customized and sophisticated compliance programmes are not very common in Lithuania
- Problems related to the analysis of effectiveness of such programmes
 - Absence of any studies and research
 - How do Lithuanian businesses think about the costs and benefits of competition compliance?

- It is not clear whether the Law on Competition allows taking into account compliance programmes
 - Absence of relevant administrative practice and case-law
- Existence of compliance programme as a mitigating or an aggravating factor when setting a fine amount
 - Effective programme → lower fine?
 - Ineffective programme → higher fine?
 - The end list of mitigating and aggravating factors established in the Law on Competition
 - The Draft Rules on the Method of Setting of Fines for the Infringement of the Law on Competition
 - Absence of any guidance
- How should compliance programmes be treated when establishing managers' liability?
 - “Did not know but ought to have known of the breach”
 - Compliance programme could play a central role in such instances

- Clear position as to how compliance programmes are treated by the NCA
 - Non-binding instruments
 - Press release, statement in annual report etc.
 - Legislative instruments
 - The Draft Rules on the Method of Setting of Fines for the Infringement of the Law on Competition
- Compliance programmes should be encouraged by the NCA
 - European Parliament resolution of 9 March 2010 on the Report on Competition Policy 2008 (2009/2173(INI)):
 - “45. <...> calls for the development of a wider range of more sophisticated instruments, covering such issues as <...> corporate compliance programs; <...> favours a ‘carrot-and-stick’ approach with penalties that serve as an effective deterrent, in particular for repeat offenders, while encouraging compliance”
 - “48. Calls on the Commission to consider the role of compliance programmes as an instrument in the fight against anti-competitive behaviour”

Is compliance a matter of private undertakings only? 1/2

- Functions of the NCA
 - Enforcement function
 - Advocacy function
 - Education and prevention of antitrust violations
- Education should be undertaken by both the NCA and the undertakings themselves



Pyramid model and horizontal supervision

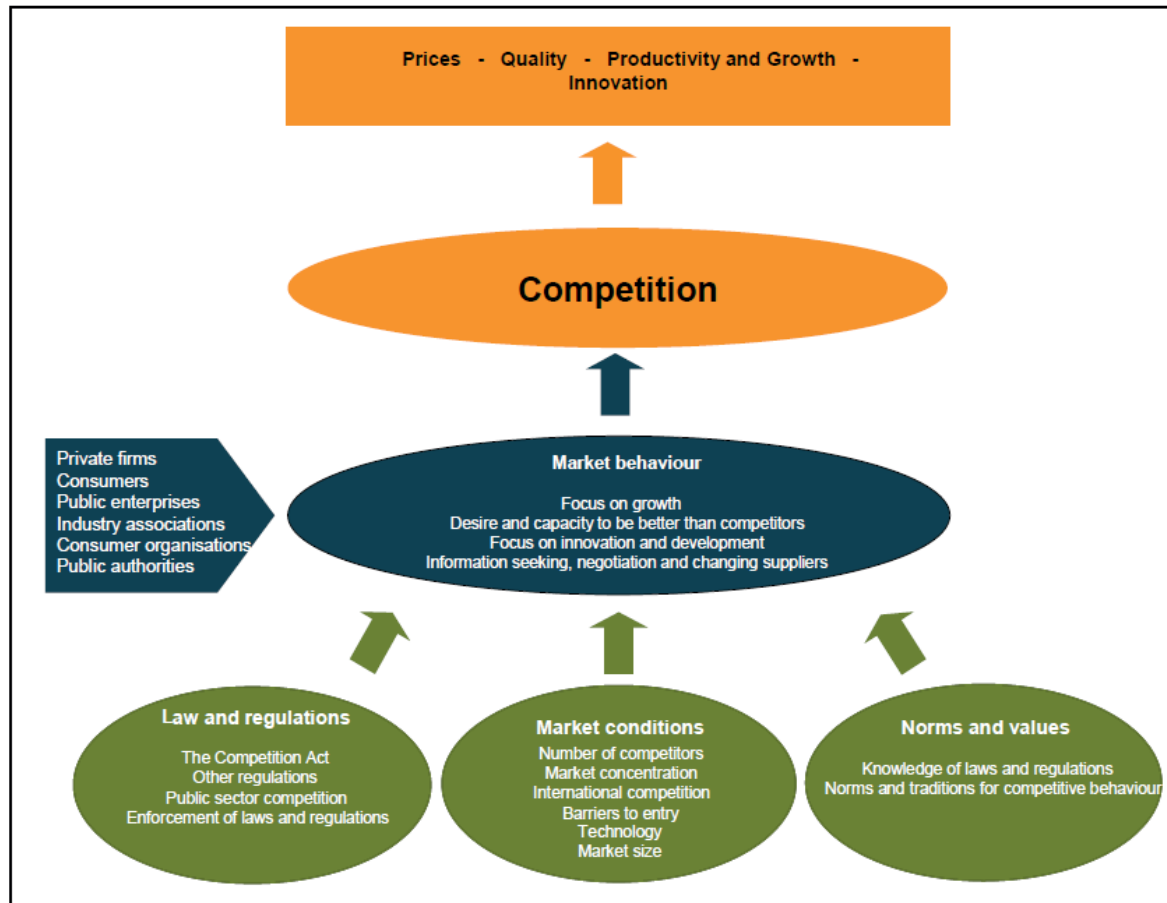
- Purpose of horizontal (cooperative) supervision
 - to ensure compliance
- Base of pyramid – the most co-operative instruments intended for ensuring compliance

Source: Ottow. Enforcement by Regulators through Self Regulation and Compliance Programs (2009)

See also: Ayres & Braithwaite. Responsive Regulation: Transcending the Deregulation Debate (1992)

Is compliance a matter of private undertakings only? 2/2

- Effectiveness of competition policy should not be measured only by number of fines imposed and number of undertakings sanctioned
- Ultimate goal
 - Compliance and understanding value of competition and its benefits
- Mere fear of being caught cannot result in strong commitment to compliance in a long term perspective
- Benefits of compliance programmes
 - Quantifiable benefits
 - (Possibly) lower fines
 - Non-quantifiable benefits
 - Deterrence of violations
 - Detection of violations
 - Knowing how to behave in case of an infringement
 - Application for leniency
- Compliance programs should be considered in a wider context, i.e. as an integral part of the overall competition culture development process



Source: Danish Competition Authority. Competition Culture (2010)

Thank You!

Dr Lauras Butkevičius

Senior Associate at SORAINEN

Lecturer at Vilnius University

lauras.butkevicius@sorainen.com

Estonia

Pärnu mnt 15

10141 Tallinn

phone +372 6 400 900

fax +372 6 400 901

estonia@sorainen.com

Latvia

Kr. Valdemāra iela 21

LV-1010 Riga

phone +371 67 365 000

fax +371 67 365 001

latvia@sorainen.com

Lithuania

Jogailos 4

LT-01116 Vilnius

phone +370 52 685 040

fax +370 52 685 041

lithuania@sorainen.com

Belarus

ul Nemiga 40

220004 Minsk

phone +375 17 306 2102

fax +375 17 306 2079

belarus@sorainen.com