

Lithuanian Competition Council Newsletter no.13

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news



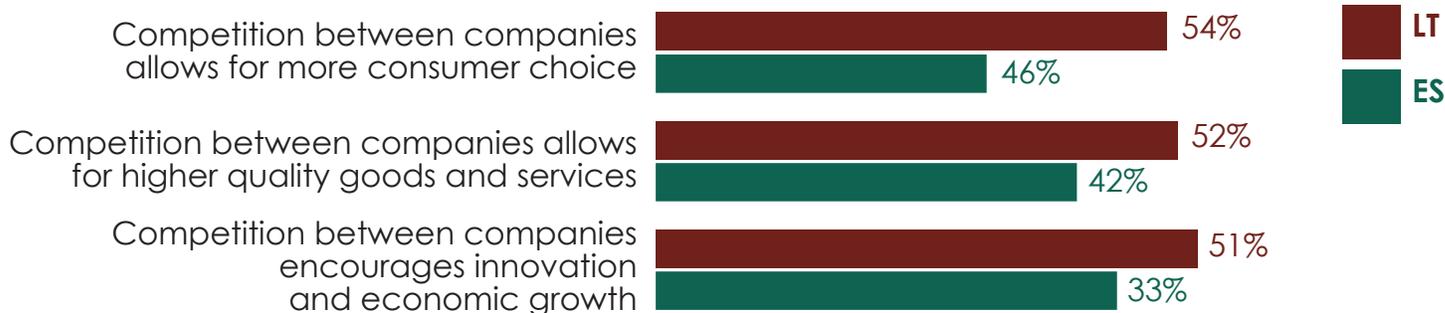
insights



facts



LITHUANIANS ENJOY BENEFITS OF COMPETITION, EUROBAROMETER REVEALS





mergers

On 10 February, the Council cleared an acquisition of the real and personal property of a bankrupt company *Volunta Parket* by *Parket Trade*.

On 3 February, the Council cleared an acquisition of 50 per cent of *Socialiniai sprendimai* shares by *Asetus*. The latter company together with G. Juknys and Š. Vilčiauskas gained joint control of *Socialiniai sprendimai*.

On 3 February, the Council cleared an acquisition of 100 per cent of *Motis Shipping Lithuania Limited* shares by *Cgates*. Hence, the latter company gained control of *Motis Shipping Lithuania Limited*.

Having evaluated all the circumstances related to the mergers, the Council acknowledged that the intended mergers will not create or strengthen the dominant position, or significantly restrict competition in the relevant markets.



Šiauliai City Municipality discriminated private manufacturers in the heat sector

On 31 March, the Council found that Šiauliai City Municipality prevented private manufacturers from entering heat market in Šiauliai city and, thus, breached Article 4 of the Law on Competition.

Municipal decisions created different competition conditions for private manufacturers willing to operate in Šiauliai City heat market and, eventually eliminated the competition in the mentioned market. Some of the manufacturers were forced to suspend their plans for heat production and sales

due to the Municipality's ignorance of the Law on Heat Sector and the National Strategy as well as ungrounded delays. Meanwhile, the municipal company *Šiaulių energija* continued active participation in the process of the heat sector renovation.

The Council obliged Šiauliai City Municipality to repeal competition-restricting decisions within one month after the Council's decision is published on the authority's website.

"Public concerns about consumer protection is nothing more than just a poorly disguised fear to let competition into the markets so far dominated by municipal companies. Thus anti-competitive decisions "safeguard" consumers only against competition benefits, simultaneously "safeguarding" municipal companies against bankruptcy."

- Šarūnas Keserauskas,
Chairman



advertising

On 24 March, the Council found that misleading reference pricing on an online shop *Pigu* could have created false impression of value of goods. The Council concluded that online advertisements could have created a false impression of substantially reduced prices and, thus, breach part 1 of Article 5 of the Law on Advertising.

The Council considered the advertisements misleading because the Company:

- referred to relatively old prices applied 1.5 or even 3 years ago;
- referred to prices applied just for a very short time in the past (in some cases less than few hours), thus, shaping false illusion of value;
- failed to prove that the reference price used in the advertisement of OBI shelf was not fake.

The Council took into consideration all the relevant circumstances including the fact that *Pigu* misled consumers by increasing the perceived value of the goods. The Council fined *Pigu* 7,630 euros.

On 10 February, the Council opened an investigation into a misleading advertising of perfume on the deal website beta.lt.

The website is owned by *Cherry Media LT*, a company already fined for misleading advertising on 12 June 2014.

Currently, the Supreme Administrative Court is examining the appeals filed by both, the Council and the Company.

On 24 February, the Council fined *Rimi* 3,140 euros for misleading advertising on the radio, TV and the Company's website.

The advertisement claimed: „This week 40 per cent discount for all toys

The Chairman noted that despite radio time limits radio advertisements have to be accurate and fair.

available with *Mano Rimi* loyalty card." Council concluded that, the aforementioned claim „all toys" could have given consumers a reasonable expectation of 40 per cent discount being applied to all the toys purchased using *Mano Rimi* loyalty card. *Rimi* representatives admitted that the additional terms and conditions of the campaign in the TV advertisements were not accurate.

2
ongoing investigations into allegedly misleading advertising

84
complaints about the suspected breaches of the Law on Advertising in **February** and **March**

26
warnings for improper advertising in **February** and **March**

53
warnings for the advertising incompatible with the requirements of euro adoption in **February** and **March**



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court rulings

On 6 March, the Supreme Administrative Court confirmed that Lithuanian Shipbrokers and Agents Association (the Association) and 32 Association members concluded anti-competitive agreement.

On 8 December 2011, the Council found that the Association and 32 shipping companies set minimum tariffs for agency services and, thus, breached Article 5 of the Law on Competition and Article 101 TFEU. The cartel agreement had been in effect for more than a decade. Having set the prices, the cartel participants announced them in leaflets and on the Association's website. Moreover, the Association's Code of Ethics introduced sanctions for the application of notably lower than the recommended tariffs.

On 7 April 2014, the Supreme Administrative Court upheld the Council's de-

cision and noted that free competition on prices is one of the major forms of fair competition, whilst price fixing impedes the development of results achieved through competitive processes.

30 out of 32 contractors appealed against the Council's decision to the Supreme Administrative Court but the latter held that all 30 participated in the cartel. Even though the fines imposed on some of the contractors were reduced, the Court upheld strict Council's position regarding the illegitimacy of the agreement.

On 5 March, the Constitutional Court of the Republic of Lithuania ruled out that municipalities can authorise a municipal company to provide waste management services without a competitive procedure, only in exceptional cases, when continuous, high quality and well-accessible waste manage-

ment services could not be ensured otherwise.

The sector of waste management still remains a serious matter that receives a lot of Council's attention. During 2014 alone, the Council found 3 breaches

Municipalities have to ensure fair competition in the waste management sector.
- Constitutional Court

in the waste management sector. The support of the Constitutional Court is extremely important in changing faulty municipal practice that limits consumer opportunities to receive high quality services for reasonable prices.

anti-competitive agreement

On 11 February, the Council found that *Lukrida* and *Manfula* sought to restrict competition in the market of combined heat and power plant construction. The companies used a third-party company *Envija* to fix a part of the price for internal combustion engines. *Lukrida* and *Manfula* set the minimum price for internal combustion engines sold to the two companies by *Envija*. Hence, the 3 companies breached Part 1 Article 5 of the Law on Competition and Part 1 Article 101 TFEU.

The Council found that the controlling persons of *Lukrida* and *Manfula* established the third-party com-

pany *Envija* and concerted actions in the relevant market. The collected data proved that the aforementioned controlling persons participated in the shareholders' meetings of *Envija*, exchanged information and agreed on the minimum margin of 10 per cent applied to combustion

engines purchased from *Envija*.

For a 2.5 year-long cartel the Council fined *Manfula* 333,900 euros and *Envija* 303,600 euros. *Lukrida* filed leniency application and, thus, received a total immunity from the fine of 656,600 euros.

“ It is one of the few cases when the Council opens an investigation following the testimony of a whistleblower. We strongly encourage businesses not to breach the Law on Competition, but if cartel has already taken place, we invite to seek leniency and avoid fines. ”
- Šarūnas Keserauskas, Chairman



Efficient supervision of retailers helped to stay in the market and to invest incomes into new products.

- a supplier, who took part in the Council's survey on retail

Suppliers feel back up from the Council, however, pressure of retailers remains strong

In March the Council launched a traditional annual report on the situation in Lithuanian retail market. This report is based on provisions of the Law on Prohibition of Unfair Practices of Retailers. The Law aims to prevent retailers with significant market power from misusing it. In the meantime four companies running four biggest retail chains (MAXIMA, IKI, RIMI and NORFA) are deemed to have significant market power.

In 2014 Council's experts carried out two surveys:

- a survey on fines imposed by retailers, including frequency, reasons and other aspects;
- a survey on cooperation between biggest retail chains and suppliers, including supply procedures and other aspects.

70 out of 100 suppliers and 4 retailers responded to the survey on fines and 82

out of 120 respondents took part in the survey on cooperation.

Most suppliers have noted the positive effect of the Law as fines by retailers have become less common and interest of both suppliers and retailers more balanced. In January 2015 the draft amendments to the Law, aiming for even better balance of interests of both suppliers and retailers, was presented to the Parliament and is due for consideration in late April. The Government proposal to the Parliament includes the following suggestions by the Council:

- to carry out the survey every second year instead of annually and, thus, reduce the administrative burden to market participants;
- to safeguard suppliers from possible pressure related to pricing and other conditions applied to third parties;
- to classify identity of suppliers reporting to the Council.

Even 20 per cent of suppliers noted that in 2014 they felt stronger when negotiating with retailers though back in 2013 so felt only 10 per cent of suppliers.

“One of the suppliers, who took part in the survey marked that effective supervision of retailers helped him to stay in the market and to invest incomes into new products. This particular case as well as overall situation proves the efficiency of the Law”, says Elonas Šatas, Deputy Chairman of the Council.

The suppliers reported two major problems related to fines:

- retailers impose fines unilaterally;
- fines imposed by retailers against suppliers are often too high.

However retailers claim that they impose fines only in order to ensure proper supply of goods and to discipline some misbehaving suppliers. Retailers also noted that they fine undisciplined suppliers for the sake of consumer interests.

Seimas will consider amendments to the Law on Prohibition of Unfair Practices of Retailers

On 17 March, the Parliament agreed to consider draft amendments to the Law on Prohibition of Unfair Practices of Retailers.

New version of the Law foresees a possibility for the Council to classify identity of the suppliers reporting to the authority, carry out the survey every second year and receive all the required information and data from the retail companies and suppliers. The Parliament will consider the aforementioned amendments in late April.