

Competition Council Newsletter no. 28

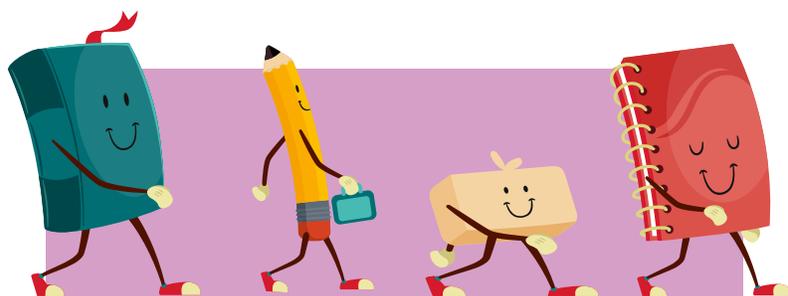
ELONAS ŠATAS WAS APPOINTED AS COUNCIL MEMBER FOR SECOND-SIX YEAR TERM

On July 18 the President of the Republic of Lithuania Dalia Grybauskaitė appointed Elonas Šatas as Council Member for the second six-year term starting on 24 August 2017 (► p. 2).



I am happy to be able to do what I love together with a great team for the sake of consumers.

Elonas Šatas, Deputy Chairman



COMPETITION ADVOCACY IN VILNIUS' SCHOOLS

During the school year the Council's experts will be visiting a number of schools in Vilnius to teach senior pupils the principles of effective competition, its benefits for consumers, as well as help them recognise anti-competitive agreements and misleading advertising, as part of the competition advocacy project "Competition Council goes to school".

On August 29 the Council's representatives and the Chairman Šarūnas Keserauskas met with Vilnius City Municipality and teachers of schools in Vilnius to present the project "Competition Council goes to school", during which the Council's employees will be giving lectures on competition.

"It is the Council's investment in the future. Pupils are future businessmen who will be competing for the market share and consumers, they are future politicians who will be adopting laws. Finally, they are all consumers who enjoy the benefits of effective competition", – said the Chairman.

After gaining a law degree, E. Šatas has been working in the Competition Council since 2003: starting as a Chief Expert in the Consumer Goods Division, in 2005–2007 he took over the position of the Head of State Aid Division, in 2008–2010 – Head of Law and Competition Policy Division. In addition, in 2010–2011 E. Šatas was teaching competition law at Mykolas Romeris University.

E. Šatas was appointed a Council Member on August 2011. Since May 2012 E. Šatas has been a Deputy Chairman supervising the activities of Unfair Commercial Practices Investigation Division, as well as Dominant Undertakings and Mergers Supervision Division.

Š. Keserauskas noted that encouraging the society's interest in competition and its benefits, as well as promoting intolerance towards competition law breaches is vital, therefore, a significant amount of attention should be given to competition advocacy already in school.



MERGERS

UAB AGROKONCERNO GRŪDAI RECEIVED MERGER CLEARANCE

On August 30 the Competition Council cleared the acquisition of elevators located in Rokiškis and Kretinga by *UAB Agrokoncerno grūdai*.

COMPETITION COUNCIL CLEARED MERGER RELATED TO SALE-PURCHASE OF UAB CGATES GROUP SHARES

On August 23 the Competition Council cleared the merger whereby the Latvian company *AS EuVECA Livonia Partners* and the Estonian company *AS LHV*

Varahaldus indirectly through *Silver Screen Holdings UAB* acquired 34,8 per cent of *UAB Cgates Group* shares and took joint control together with the *Estonian companies OÜ Polaris Invest* and *OÜ Com Holding*.

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

The intended merger must be notified to the Competition Council and clearance must be obtained if the combined aggregate income of the merging parties in the business year preceding the merger exceeds EUR 14.5 million and the aggregate income of each of at least two merging parties in the business year preceding the merger exceeds EUR 1.45 million.

UAB SPORTLAND LT RECEIVED MERGER CLEARANCE

On July 25 the Competition Council cleared the acquisition of commercial real estate located at Gedimino pr. 20, Vilnius by UAB SPORTLAND LT.

On 30 June 2017 the Competition Council received merger notification. No opinions or objections regarding the transaction were submitted to the Council by interested parties.

The Council acknowledged that the intended merger will not restrict competition in the market of commercial real estate lease, and cleared the merger. SPORTLAND LT is engaged in the retail trade of sportswear, leisurewear, footwear and accessories.

The Council rarely examines mergers related to the acquisition of real estate.

” In this case real estate is a separate economic unit which occupies a particular market share and generates income in the lease market, thus, the acquisition of such estate is considered a merger. Since the income of the buyer and the income received from real estate lease exceeded merger notification thresholds, merger clearance was required.

Elonas Šatas, Deputy Chairman

UAB KONCERNAS ACHEMOS GRUPĖ FINED FOR UNNOTIFIED MERGER

The Competition Council found that UAB *koncernas Achemos grupė* implemented an unnotified merger by acquiring sole control of UAB *Jūros vartai* and AB *KLAIPĖDOS LAIVŲ REMONTAS*. For the infringement of the Law on Competition, the Council fined Achemos grupė EUR 54,700.

During the investigation the Council found that *Achemos grupė*, which acquired control of the aforementioned companies, submitted a merger notification only a year and a half after the merger had been implemented. Having examined the merger notification, the Council granted clearance. For an unnotified merger *Achemos grupė* received EUR 54,700 fine.

The Deputy Chairman Elonas Šatas noted that while imposing the fine the Council took into consideration the fact that *Achemos grupė* informed the Council about the infringement of the Law on Competition and later acknowledged it.

He noted that merger notification is not just a formal procedure since market changes influenced by the merger might restrict or weaken competition and negatively affect consumers. In order to prevent the aforementioned consequences, mergers can only be implemented if the clearance has been obtained. The Deputy Chairman emphasised that implementing an unnotified merger is a serious infringement, irrespective of whether the Council would grant clearance or not.

COURT DECISIONS

COURT: THERE WAS LEGITIMATE BASIS TO IMPOSE FINES ON BID RIGGING PARTICIPANTS

Vilnius Regional Administrative Court (Court) upheld the Competition Council's decision, according to which a bid rigging agreement was concluded by the companies acting in the municipal waste collection and transportation sector. The infringement of the Law on Competition resulted in fines.

On 8 December 2016 the Council found that in 2015 *UAB Ekoaplinka*, *UAB Ecoservice* and *UAB Marijampolės švara* concluded a collusive bidding agreement while participating in the public procurement for the purchase of municipal waste collection and transportation services, which was organised by *UAB Marijampolės apskrities atliekų tvarkymo centras*. Such restriction of competition might have resulted in higher prices of municipal waste collection and transportation services for consumers.

The Council's experts found that a representative of *Ecoservice*, acting upon the knowledge of *Marijampolės švara*, prepared the project of a bid for *Ekoaplinka*, including the price and its calculations. *Ekoaplinka* submitted the bid to *Marijampolės apskrities atliekų tvarkymo centras* with no modifications to the bid price or its calculations, except for a few minor changes. Besides, *Marijampolės švara* and *Ecoservice* provided consultations to *Ekoaplinka* prior to the submission of the bid, as well as after bid opening.

For the anti-competitive agreement, the Council fined *Ekoaplinka* EUR 4,100, *Ecoservice* EUR 601,700 and *Marijampolės švara* – EUR 48,500.

Ekoaplinka did not appeal the Council's decision to Court and paid the fine. Although the other two companies acknowledged the infringement, they decided to challenge the fine imposed by the Council. The Court rejected the complaints by the companies and stated that there was no legitimate basis for reducing the fines. Following the case law of the Court of Justice of the European Union, the Court noted that the definition of the income related to the infringement, which is used to determine the basic amount of the fine, cannot be unduly narrowed. The Court agreed with the Council's position that in this particular case the income received from the activities of mixed municipal waste collection and transportation services in Lithuania, not just in the region of Marijampolė, had to be included while setting the fines.

SUPREME ADMINISTRATIVE COURT: ALYTUS CITY MUNICIPALITY GRANTED PRIVILEGES TO UAB LITESKO

The Supreme Administrative Court of Lithuania (Court) rejected the appeal by *Litesko* and upheld the Council's decision, according to which Alytus City Municipality restricted competition.

On 9 September 2015 the Council found that the Municipality adopted decisions which created different market conditions to undertakings willing to participate in the process of modernisation of heat supply infrastructure in Alytus City.

In 2005 Alytus City Municipality extended the contracts with *Litesko* for an additional 10-year term without a competitive procedure (the contracts were originally signed for a 15-year term without the possibility of extension). In 2007 the Municipality also decided, unilaterally, to change the provisions regarding the transfer of investment and property by *Litesko*. The Court agreed that by doing so the Municipality granted privileges to the company and

thus discriminated against other market players.

CONSTRUCTION COMPANIES DID NOT ESCAPE FINES FOR IMITATING COMPETITION

The Supreme Administrative Court of Lithuania (Court) upheld the Competition Council's decision, according to which in 2011–2012 construction companies concluded bid rigging agreements.

In 2014 the Council found that in 2011 and 2012 *UAB Baltic Transport Service* initiated public procurements for the purchase of construction works and agreed with other cartel participants in advance who will submit the winning bids, in this way imitating competition.

For the anti-competitive agreements the Council imposed the following fines on the companies: *UAB Convertus* – EUR 7,240, *UAB Gedarta* – EUR 6,024, *UAB UGNA* – EUR 2,259, *UAB Aestus* – EUR 347. The Council took into consideration the fact that the procurement initiator, namely, *Baltic Transport Service* actively contributed to the bid rigging agreements concluded by the suppliers, thus the company has been acknowledged as one of the cartelists. Due to the fact that in 2011–2012 *Baltic Transport Service* did not receive any income, the Council was not able to fine the company.

Baltic Transport Service, *Convertus* and *Gedarta* appealed the Council's decision to court, however, both Vilnius Regional Administrative Court and the Supreme Administrative Court of Lithuania upheld the Council's decision and confirmed that

the Council proved the infringement of the Law on Competition and legitimately imposed fines on the companies.

While adopting the decision, the Council relied on information which the Financial Crime Investigation Service gathered during the pre-trial investigation. The Court confirmed in its decision that the Council may use pre-trial investigation material while proving the infringement, and it does

not violate the presumption of innocence. The Court also stated that if competition law infringements identified by the Council are not identical to the criminal offence examined in criminal proceedings, the applicants are not to be considered as fined twice for the same infringement.

ALBANIAN DELEGATION LEARNED ABOUT CONSUMER PROTECTION IN ADVERTISING

Chief Experts of Unfair Commercial Practices Investigation Division shared the Competition Council's experience on misleading and prohibited comparative advertising with the Albanian Consumer Protection Commission.

The Albanian delegation learned about the key provisions of the Law on Advertising which determine the right of advertisers to use correct and accurate advertising claims. The Council's experts shared their experience regarding consumer protection in the field of advertising and talked about the findings of the Council's recent investigations.

In 2016 the Council analysed 292 complaints related to possibly misleading advertising, examined 107 ads on its own initiative and sent 158 notifications

to advertisers regarding suspected misleading advertising. Failure to terminate allegedly misleading advertising or repeated use of misleading claims may lead to an investigation and, in cases of infringement, fines for the companies. Last year the Council found 5 breaches of the Law on Advertising and imposed fines varying from EUR 4,938 to EUR 8,688.

The study visit of the Albanian Consumer Protection Commission and its Technical Secretariat was hosted by the Ministry of Justice and the State Consumer Rights Protection Authority of the Republic of Lithuania as part of the EU Twinning Project.



EGYPTIAN PUBLIC PROSECUTION OFFICE LEARNED ABOUT COMPETITION COUNCIL'S ACTIVITIES

On 1–3 August representatives from the Egyptian Public Prosecution Office learned about the Competition Council's experience while ensuring effective competition for the benefit of consumers.

The delegation from Egypt got acquainted with the activities of the Council, competition law enforcement, and the issue of bid rigging in particular.

The experts of Anti-competitive Agreements Investigation Division presented the Lithuanian practice on cartel investigations, talked about cartel sanctions and recent collaboration experience

with other institutions responsible for supervising public procurement. The Council Member Jolanta Ivanauskienė noted that effective interinstitutional collaboration is an essential tool which can be used to identify more anti-competitive agreements.

The experts from the Egyptian Public Prosecution Office also had an opportunity to meet representatives from the Public Procurement Office and Special Investigation Service.

2016

EUR
18.7
million

by September 1
2017

EUR
4.5
million

FINES PAID BY INFRINGERS

