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DAF/COMP/AR(2016)12

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

12-May-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)12
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2015 --

15 - 17 June 2016

This report is submitted by Lithuania to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 15 - 17 June 2016

JT03395851

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EXECUTIVE SUMMARY

1. Competition agencies are busy. Just ask any of them and they will provide you with plenty of numbers to prove that. In the environment we operate, numbers matter, but so do stories – and people creating those stories.
2. In a time-honoured fashion people receive the acknowledgment of their efforts in the last paragraphs of speeches. Readers can see the thank-you-note coming from a distance, as it is usually preceded by an introductory and tired “last but not least” phrase.
3. Let me reverse that order.
4. Every enforcement action and each advocacy initiative that our authority takes begins with someone assessing the facts, someone else reviewing the assessment and coming to a decision, which is then presented to the public and, if necessary, defended in courts. There is yet another group of people providing support to those involved in decision-making. Together they form our team capable of producing outstanding work.
5. For how effective and relevant – for consumers and businesses alike – the work of our team can be, one must only look at some of the stories of 2015.
6. Lithuania is a country with a long central-heating season, which makes heat supply prices a very sensitive topic for many households. Our intervention against an exclusivity arrangement between a major biofuel supplier and the largest heat producer in the capital city of Vilnius has exposed a scheme under which the heat producer was passing on higher biofuel prices towards consumers.
7. Cinema going is one of the favourite pastimes of many people. Their experience may have been somewhat diminished once they found – after the Competition Council’s intervention triggered by whistle-blowing – they had been paying higher ticket prices because of a cartel of three cinema operators in the capital and the second largest city of Lithuania.
8. Dairy is the sector in crisis all over the world, and especially so in Lithuania, a country in which three quarters of dairy farms have no more than five cows and are hardly capable of weathering the storm of markets. Complaints over low raw milk procurement and high retail prices abound. With tensions among farmers, dairy product makers, retailers and politicians rising, in 2015 our authority carried a market study identifying better cooperation among farmers as the way of reducing inefficiency of small dairy farms and becoming more competitive. In parallel to this study, we have successfully advocated against several attempts to introduce price regulation in the dairy sector.
9. Other enforcement stories of 2015 include a continuing trend of complicated mergers (one of which, in the malt market, was blocked) and winning three important cases in courts: against Gazprom (breach of merger conditions) and Maxima/Mantinga (RPM) at the court of first instance, and against Lukoil (consummation of un-notified merger) at the Supreme Administrative Court.

10. On the legislative front, last year our authority published a substantially renewed merger notification procedure and contributed to the draft statutory amendments introducing financial penalties for competition-restricting administrative acts of state and municipal bodies.

11. Reading these stories shows us how important it is to keep our team intact. In a competitive market that we as the competition authority ourselves promote, it is inevitable that we may lose, as we did, people to our competitors, ranging from law firms to other competition agencies in the EU. Sad as it may be, this is part of our professional life, and it pushes us, managers and team leaders, to become better at managing and leading. It also reminds the country policy makers that a competition authority must be well-funded to stay on par with competitors in its attempt to attract and maintain suitable professionals so that they could continue producing good enforcement stories for the benefit of consumers, businesses and economy in general.

12. And what about the numbers? Here is the bottom line: in 2015, one Euro invested in our operations brought a nine-fold direct financial benefit to consumers.

1. Changes to competition laws and policies, proposed or adopted

1.1 *Summary of new legal provisions of competition law and related legislation*

Proposed:

- Amendments of the Law on Competition concerning financial sanctions to the public administrative bodies for infringements of the competition law.
- Amendments of the Code on Railroad Transport inter alia regarding withdrawal of regulatory function of railway sector from the Lithuanian Competition Council (hereafter – Competition Council, Council or KT).
- Amendments of the Government resolution on State aid Register.
- Amendments of the Government ruling regarding the coordination of price level of state registers and information system.

Enacted:

- The law abolishing the Law on Prices entered into force.
- Recast of the Law on the Prohibition of Unfair Practices of Retailers.
- Adoption of the Law on the Prohibition of Unfair Practices of Undertakings Trading in Raw Milk and Dairy Products. Initial draft version of this law included provisions regarding regulatory functions of the Competition Council. These provisions were removed from the final draft and the enacted version of this law.

1.2 *Other relevant measures, including new guidelines*

- Government expanded the functions of the Register of granted state aid and *de minimis* aid; the comprehensive data about all granted state aid and *de minimis* aid in Lithuania should be registered since 2Q.
- Ministry of Economy launched a preparation of the draft amendment of Law on Competition implementing Directive **2014/104/EU**; **Public consultation launched 1Q of 2016**.
- New Merger Notification and Examination Procedure created and had come into force January 2016. Online processing of merger filling forms to be launched by 3Q of 2016.
- System for screening public procurement data is under development.
- The Council continues to revise the existing Leniency Guidelines in order to introduce more transparency and clarity to the leniency process.

1.3 *Government proposals for new legislation*

- The President Dalia Grybauskaitė proposed to amend the Law on Competition and the Law on Local Self Governance after meeting the Chairman of Competition Council and representatives from Lithuania's public bodies to discuss transparency of municipal and state owned enterprises in November 2015.

2. **Enforcement of competition laws and policies**

The Council prioritises investigations based on the expected impact of its interventions on consumer welfare. Sector-wise, in 2015 the Council focused on the following:

Transport:

- KT found that Švenčionys District Municipality authorised a municipal company *Svirka* to provide public transport services on suburban regular passenger routes without a competitive procedure and, thus, discriminated against other companies
- KT issued SO against Šiauliai municipality suspected of authorising a municipal company *Busturas* to provide public transport services without a competitive procedure and preventing other market players from entering the market. The infringement decision was issued on 7 January 2016;
- KT found that Klaipėda City Municipality restricted entry into the market for taxi services by authorising five selected companies (*Audresta, Aštuoniukė, Devintoji banga, Aisčiai* and *Dešimtas maršrutas*) to provide shared taxi services without a competitive procedure.

Waste management:

- KT found that Panevėžys City Municipality restricted competition within waste management sector. The Municipality authorised a municipal company *Panevėžio specialus autotransportas* to provide waste management services in Panevėžys without a competitive procedure and, thus, breached Article 4 of the Law on Competition.
- In 2012 KT found that Joniškis District Municipality granted exclusive rights to provide waste management services to a municipal company *Joniškio komunalinis ūkis*. Though Municipality repealed the anti-competitive contract, in 2013 it contracted the same company without a tender again. In 2015 KT referred this non-compliance with the findings of the 2012 KT decision to the court.

Energy:

- Following a leniency application, KT imposed a total fine of 637,500 EUR on three suppliers of electricity cogeneration plants engaged in a cartel.
- KT imposed a total fine of 22.53 million EUR for a long term exclusive purchase agreement concluded between heat supplier *Vilniaus Energija* and biofuels producer *Bionovus*.
- KT found that Šiauliai City Municipality favoured municipal company *Šiaulių Energija* and prevented private manufacturers from operating in Šiauliai City heating market.

- KT found that Alytus City Municipality restricted competition within heat modernisation process market by extending modernisation and property leasing contracts with *Litesko* without any competitive procedure.

Bid rigging in public procurement

- KT found 2 cartels in a bid for procuring public relations services.
- 3 investigations are in the pipeline.
- System for screening public procurement data is under development and already used for detection of bid-rigging indicators.

State aid

- KT organised first-ever conference in Lithuania focusing solely on state aid issues in 4Q of 2015.
- Pool of local state aid experts to exchange the most recent state aid issues started functioning since 2Q 2015.
- 115 consultations on State aid provided to both business and public bodies.
- KT issued 2 public opinions addressing possible improper allocation of state aid.

Market Studies

- Household waste market inquiry was launched in response to a high number of investigations into municipal decisions concerning waste management. The aim of the inquiry was to analyse the sector and to suggest improvements to the waste management system in Lithuania.
- Dairy products market inquiry aimed to analyse all four levels of dairy industry – raw milk production, purchase, processing and distribution – in order to find out reasons of inadequate price changes in dairy products supply chain and applicability of best EU practices in Lithuania.
- Compensatory medicines market inquiry aims to assess the impact of regulatory provisions on the market, complete compensatory medicines market analysis, identify potential competition problems and bring suggestions (ongoing).

2.1 *Summary of activities of:*

In 2015 the Council (KT) launched 8, continued 15 investigations. Issued 14 decisions.

Launched:

- Anti-competitive agreements – 5
- Abuse of dominance – 0
- Unnotified mergers – 3
- Anticompetitive actions by public administrative bodies – 0

Continued:

- Anti-competitive agreements – 4
- Abuse of dominance – 1
- Unnotified mergers –1
- Breach of merger conditions – 0
- Anticompetitive actions by public administrative bodies – 8
- Failure to comply with cease and desist order by public administrative bodies – 1

Decisions issued:

- Anti-competitive agreements – 1 and 3 cartels
- Unnotified mergers –3
- Identified merger violation – 1
- Competition restricting actions by public administrative bodies – 6

According to national laws the Council's resolutions may be appealed both on procedural and substantive grounds.

16 Competition Council's decisions have been appealed in 2015. As of December 31, 2015 there were 33 Council decisions, including those of procedural nature, under examination at courts of various instances.

In 2015:

- 14 Competition Council decisions were upheld by courts in 2015;
- 2 partly amended;
- 1 annulled;
- 6 cases terminated.

2.1.1. Brief on certain court cases:

- 15 January and 5 March, the Constitutional Court issued two rulings supporting more competition in markets investigated by KT. The Court ruled that municipalities might have authorised a municipal company to provide waste management services without a competitive procedure only in exceptional cases, when continuous, high quality and well-accessible waste management services may not be ensured otherwise. The Court sent the same message in its ruling concerning transport services.

- 6 March, the Supreme Administrative Court of Lithuania confirmed Competition Council's decision that Lithuanian Shipbrokers and Agents Association and 32 Association members concluded anti-competitive agreement.
- 18 May, Vilnius Regional Administrative Court upheld Council's decision finding that food retail chain *MAXIMA LT* and frozen bakery producer *Mantinga* had been engaged in RPM for a decade. For a decade long breach *MAXIMA LT* was fined 16.8 million EUR and *Mantinga* 4.4 million EUR.
- 17 June, the Supreme Administrative Court of Lithuania ruled that Klaipėda and Šiauliai municipal decisions whereby regional waste management centres (RATC) were authorised to provide household waste management services without a competitive procedure breached Article 4 of the Law on Competition.
- 17 July, CJEU's Advocate General delivered his opinion on the case concerning an anti-competitive agreement between Lithuanian travel agencies: On 7 June 2012, the Competition Council found that 29 travel agencies used online booking system E-TURAS to concert practices when applying discounts to bookings and, thus, breached competition law. For the breach, the Council imposed fines totalling ~1.5 million EUR. The companies appealed against the Council's decision to the Supreme Administrative Court of Lithuania. The Court decided to refer the case to CJEU for a ruling on the liability of the contractors. Having taken into account all the circumstances, Advocate General Maciej Spunzar concluded that „[...] The undertakings which become aware of that illicit initiative and continue to use the system, without publicly distancing themselves from that initiative or reporting it to the administrative authorities, are liable for participating in that concerted practice.“
- 9 November, Vilnius Regional Administrative Court upheld Council's decision to impose a fine of 35.65 million EUR on Gazprom for the failure to comply with merger conditions.
- 18 December, the Supreme Administrative Court of Lithuania upheld the Competition Council's decision as of April 18, 2013 to impose a fine of 341,057 EUR on JSC *Lukoil Baltija* for implementing non-notified mergers.

2.1.2 Description of significant cases, including those with international implications:

- 11 February, KT found cartel in cogeneration plant construction market. KT 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. For a 2,5 year-long cartel KT fined *Manfula* 333,900 EUR and *Envija* 303,600 EUR. *Lukrida* filed leniency application and, thus, received a total immunity from the fine of 656,600 euros.
- 5 November, KT found two cartels in public procurement. Companies *Ministerium*, *Nebūk briedis* and *TV Europa* entered into a cartel to win a public tender of software production, while *Nebūk briedis* and *Media medis* to win a public tender for infographics production. Hence, all five companies have breached Article 5 of the Law on Competition.
- 2 December, KT found anticompetitive agreement in energy sector. KT found that *Bionovus* and *Vilniaus Energija* concluded a long term exclusive purchase agreement, including commitment of *Vilniaus Energija* to purchase biofuel that is used in heat production exclusively from *Bionovus*. Competition Council experts found that due to the infringement *Vilniaus Energija* paid for

biofuel around 15 percent more than other heat producers in Vilnius. Also, biofuel cost was included in the heat supply bills for consumers. For almost 2.5 year-long violation of competition rules KT imposed 19 million EUR *fine on Vilniaus Energija* and 3.53 million EUR fine on *First Opportunity OU* (successor of *Bionovus*).

- 18 December, KT found two cartels by cinema operators. KT found that three cinema operators, *Forum Cinemas*, *Multikino Lietuva* and *Cinamon Operations*, had been fixing prices of cinema tickets as part of two separate cartel agreements. Companies agreed to refrain from applying discounts to blockbuster movies during the first two weeks of screenings. The investigation was started after one company filed leniency application.

2.2 *Mergers and acquisitions*

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws;

KT received 38 filing between 1 Jan and 31 Dec 2015:

5 mergers led into an in-depth review, 36 mergers were cleared.

	2015	2014	2013
Received filings	38	52	31
Mergers cleared	36	49	29
Mergers cleared with remedies and commitments	0	2	0
Challenged mergers	3	3	2
Mergers withdrawn	1	1	2
Partly cleared mergers (permission to individual concentration actions)	0	0	1

2.2.2 Summary of significant cases.

- 7 April, the Competition Council cleared the acquisition of 99.879 per cent of insurance company *PZU Lietuva* shares by *Gjensidige Forsikring ASA*. Having evaluated all the circumstances related to the merger, the Council acknowledged that the intended merger will not create or strengthen a dominant position, or significantly restrict competition in the insurance sector.
- 21 April, the Council cleared the acquisition of 98,12 per cent of *Specializuotas transportas* shares by *Ecoservice*. The Council acknowledged that dominant position will not be created and competition will not be significantly restricted within the markets of municipal waste collection and transportation, wastewater collection and transportation, construction waste and collection, and environmental services.
- 30 September, *MAISTAS LT* acquired 100 per cent of *PONTEM* shares. After having found that the intended merger will not create or strengthen a dominant position, or significantly restrict competition in the provision of catering services, as well as in the wholesale and retail trade of food products, the Council decided to clear the merger.
- 15 October, the Competition Council prohibited the acquisition of 100 per cent of *Maltosa* shares by *Viking Malt Oy*. The Council found that the merger will restrict competition in the market of pilsen malt production. *Viking Malt Oy* and *Maltosa* are the only producers and distributors of pilsen malt in Lithuania. According to the Council, the merger would eliminate effective competition, therefore, the prices of pilsen malt could rise, which could in turn result in higher

beer prices for consumers. The Council also took into consideration the obligations offered by *Viking Malt*. The authority decided that the obligations would not eliminate negative consequences arising from the merger and would not ensure effective competition in the market of pilsen malt production and distribution.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

According to the Law on Competition the KT is empowered to carry out expert examination of draft laws and other legal acts, issue opinions regarding the effect on competition to the Parliament of the Republic of Lithuania and the Government of the Republic of Lithuania as well as submit proposals to the Government of the Republic of Lithuania to amend legal acts restricting competition.

KT sent 84 official letters including comments and responses on the following issues:

- to the Parliament:
 - in response to the proposed regulation on the prohibition of unfair practices of undertakings trading in raw milk and dairy products the KT submitted analysis why regulation of milk sector, which included regulation of prices and certain prohibitions on sales of raw milk and dairy products would be disproportionate and would not reach objectives pursued;
 - in response to the proposed amendments of the Law on Competition KT submitted analysis why thresholds for establishing the dominant position in the banking sector, would be disproportionate and would not reach objectives pursued.
- to the Ministry of Economy:
 - regarding the implementation of better regulatory initiatives for undertakings under the Better Regulation Programme enacted by the Ministry of Economy. Competition Council submitted information regarding the supervision of business practices and means of reducing administrative burden for undertakings in its activities.
 - regarding implementation of the Damages Directive.
 - to the National Audit Office regarding regulation of base prices of orthopedic technical articles compensated by the State Patient Fund. Competition Council suggested to remove effects caused by the anticompetitive agreement of manufacturers of orthopedic technical articles and enact measures with a view to preventing distortions of competition regarding orthopedic technical articles.
 - to the Ministry of Agriculture regarding the proposed amendments to the Law on the Prohibition of Unfair Practices of Retailers. KT submitted arguments why regulating agricultural agreements would not reach objectives pursued by this regulation.

- to others:
 - Informal written comments to the Ministry of Foreign Affairs on the part of Transatlantic Trade and Investment Partnership (TTIP) proposal, relating to competition on competition of the
 - Public address to the Minister of Agriculture calling to stop “hunting” alleged cartels in the milk sector via media. The address also explained the standards of proof and the principles of investigation applied by KT.

Advocacy and Enforcement vis-à-vis public administrative bodies were in the focus of KT attention in 2015:

- KT experts organised 2 workshops for municipalities on benefits of competition;
- Gave 6 public talks in local and international conferences and 4 public talks on KT advocacy achievements, both in Lithuania and abroad.
- Publicised 8 op-eds in media on most urgent competition issues.
- Jūratė Šovienė, Deputy Chairwoman, contributed as a co-author to the book *Impact of Cartels on National Economy and Competitiveness. A Lithuanian Case study* published in 2015 by Springer. The book was awarded as the best publication in the field of economics by the Research Council of Lithuania in January 2016.
- In May 2015 Competition Council won the national PR Impact award for the Press Release of the Year (which was part of advocacy campaign against repetitive anticompetitive behaviour by Vilnius Municipality) and joined the club of Lithuanian organisations with the most efficient communication.
- 5 infringement decisions against public administrative bodies.
- 1 infringement decision against public administrative body for non-compliance with KT obligation, 1 in the pipeline (SO sent in February 2016)

4. Resources of competition authorities

The Council allocates its resources with the view of maximising consumer welfare. According to the 2012 Council’s Notice on Enforcement Priorities, in order to decide whether a matter constitutes an enforcement priority, the Council assesses three principles:

- the expected impact of its intervention on effective competition and consumer welfare,
- the intervention’s strategic importance;
- the rational use of resources (the resources need are compared to the expected success of the intervention).

Similar prioritising tool is being used in advertising cases since 2013.

4.1 Resources overall (current numbers and change over previous year):

4.1.1 Annual budget (in your currency and USD):

EUR 1.69 m, USD 1.93 m (2015)

EUR 1.61 m, USD 1.75 m (2014)

4.1.2 Number of employees (person-years):

- economists: 6 The Council employed three dedicated economists as of 31 December 2015. One of them is the Head of Economic Analysis Group and holds a PhD in Economics, while the other two were embedded within the investigative divisions. In addition, three more economists worked as case-handlers.
- lawyers: 36
- other professionals: 7
- support staff: 17
- all staff combined: 66 (including the Chairman and 3 Council members)

4.2 Human resources (person-years) applied to:

- Enforcement against anticompetitive practices: 44

Among them:

- Merger review and enforcement of abuse of dominance:10
- Anti-cartel:10
- Advocacy efforts and other:
 - Chairman and 3 Council members (all areas)
 - 1 Chief economist
 - 2 IT specialists (mostly anti-cartel, but also dominance and mergers)
 - 8 lawyers in the Legal Division (all areas)
 - 9 members of staff dealing with competition restrictions imposed by public administrative bodies

4.3 Period covered by the above information:

1 January 2015 to 31 December 2015

**SUMMARIES OF OR REFERENCES TO NEW REPORTS AND STUDIES ON COMPETITION
POLICY ISSUES**

Annual report 2015: http://kt.gov.lt/en/annual/2015_eng_short.pdf

Sector inquiry into raw milk and dairy
market,2015(summary):http://www.kt.gov.lt/en/antitrust/Milk_summary.pdf