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**Purchasing Power and Buyers' Cartels – Note by Lithuania**

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More documents related to this discussion can be found at  
<https://www.oecd.org/daf/competition/purchasing-power-and-buyers-cartels.htm>

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## Lithuania

### 1. Introduction

1. The Note overviews the Lithuanian Competition Council's enforcement record related to buyers' cartels on fixing purchase prices in sports, energy and metal sectors. It shows the enforcer's position that such agreements restrict one of the essential elements of competition between undertakings, namely, competition at prices for the products. They restrict competition by object, without there being any need to prove negative effects on the market. The conspiracy to lower purchase prices is as harmful to competition and consumers as sellers' cartels and cartelists should be fined accordingly.

### 2. Recent Enforcement Record of the Lithuanian Competition Council Against Buyers' Cartels

2. In its enforcement practice the Lithuanian Competition Council investigated three buyers' cartels: a *Basketball case*<sup>1</sup> in sports sector, a *Scrap Metal Auction case*<sup>2</sup> – in metal industry and a *Manfula and Envija case*<sup>3</sup> – in energy sector. The cartelists coordinated their individual competitive behaviour as purchasers on the market and influenced the relevant parameters of competition through the fixing or coordination of purchase prices or parts thereof (including agreement not to pay salaries). Such anti-competitive agreements constituted an infringement of Article 5(1)(1) of the Lithuanian Law on Competition, which is a national equivalent of Article 101(1)(a) of the Treaty on the Functioning of the European Union<sup>4</sup>.

3. Most recently, the Lithuanian Competition Council examined the *Basketball case*. It found that the Lithuanian Basketball League and 10 Lithuanian basketball clubs concluded an anti-competitive agreement. They decided not to pay basketball players salaries or other financial remuneration for the rest of the season after the termination of the basketball championship 2019–2020 due to the COVID-19 pandemic.

4. The investigation was launched into a suspected anti-competitive agreement in April 2020 after the Lithuanian Competition Council's attention had been drawn to the public discussions held between the Lithuanian Basketball League and 10 basketball clubs

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<sup>1</sup> Decision of the Lithuanian Competition Council on the compliance of actions of the Lithuanian Basketball League and its basketball clubs with Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 of the Treaty on the Functioning of the European Union, [16 November 2021, No. 1S-124 \(2021\)](#).

<sup>2</sup> Decision of the Lithuanian Competition Council on the compliance of actions of the undertakings participating in a scrap metal sale auction with Article 5 of the Law on Competition of the Republic of Lithuania, [21 December 2017, No. 2S-12 \(2017\)](#).

<sup>3</sup> Decision of the Lithuanian Competition Council on the compliance of actions of the undertakings active in distribution of internal combustion engines and related activities with Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 of the Treaty on the Functioning of the European Union, [16 November 2021, No. 1S-124 \(2021\)](#).

<sup>4</sup> Article 101 of the Treaty on the Functioning of the European Union was also applied in parallel in the [Basketball case](#) and the [Manfula and Envija case](#).

on the payment of basketball players' salaries. The Council found that during the extraordinary meeting of the board, which took place on 13 March 2020, the Lithuanian Basketball League and 10 basketball clubs decided to terminate the 2019–2020 championship due to the coronavirus pandemic, applying the *force majeure* clause, and agreed not to pay salaries or other financial remuneration for basketball players for the rest of the championship, starting from 13 March 2020. The conclusion of the anti-competitive agreement was also evidenced by e-mail correspondence between the representatives of the clubs, which contained negative reactions to some of the clubs that deviated from the agreement.

5. In the *Scrap Metal Auction case*, the Lithuanian Competition Council found that UAB Norvesta and the German company Sypra concluded a cartel agreement while participating in the radioactive copper scrap sale auction conducted by Ignalina nuclear power plant. The investigation which was opened after receiving information from the Lithuanian Anti-Corruption Agency revealed that both firms coordinated their actions by agreeing in advance who would win the auction that took place in 2014.

6. The auction participants only imitated competition as they coordinated their actions by agreeing in advance that Sypra would submit a bid of just over EUR 1.5 million and Norvesta would not bid higher thus allowing Sypra to win the auction. Besides, Sypra helped Norvesta to make an agreement with the company engaged in radioactive waste recycling, which was one of the necessary conditions for the participation in the auction.

7. In the *Manfula and Envija case*, the Lithuanian Competition Council found that two competitors UAB Lukrida and UAB Manfula fixed a part of the price of internal combustion engines purchased from a third-party company UAB Envija on the upstream market.

8. The investigation was opened in 2013 after receiving a leniency application from Lukrida concerning the price fixing agreement with its competitor Manfula. Both companies were active in the combined heat and power plants construction market. Controlling persons of Lukrida and Manfula established the third-party company Envija which was entitled to distribute internal combustion engines in Lithuania, Latvia and Estonia for the construction of plants. The aforementioned controlling persons were also appointed to its board members. Subsequently, Lukrida and Manfula coordinated their behaviour while participating in the adoption of Envija's board decision, which imposed a minimum profit margin of 10 percent on the internal combustion engines purchased by both competitors from Envija.

9. Thus, Lukrida and Manfula refused to make independent decisions regarding the price of internal combustion engines purchased from Envija. Moreover, as the acquired internal combustion engines were used in the construction of plants, the companies increased relevant construction costs on the downstream market. All three companies, including Envija, were found liable for the conclusion and implementation of the anti-competitive agreement.

10. The Lithuanian Competition Council considered conspiracy to agree on purchasing prices or not to pay salaries and other financial remuneration no less harmful to competition, consumers or employed persons than sellers' cartels. In all three cases the cartelists were fined for the serious infringements of competition law. In the *Manfula and Envija case* Lukrida was granted an immunity from a fine for reporting the cartel and cooperating with the Lithuanian Competition Council during the investigation.

11. Decisions of the Lithuanian Competition Council in all three cases were appealed to courts. The Supreme Administrative Court of Lithuania of final instance upheld the fines imposed and immunity granted from applicable fine in the *Scrap Metal Auction case* and

the *Manfula and Envija case*. The *Basketball case* is still pending before the Vilnius Regional Administrative Court<sup>5</sup>.

### 3. Legal Criteria for Enforcing Buyers' Cartels and Theories of Harm

12. While investigating buyers' cartels the Lithuanian Competition Council relied on the national and European Union competition law which prohibits agreements restricting competition on the fixing of prices for the sales as well as purchase of goods (services). An agreement fixing the purchase prices of goods (services) was regarded as restricting competition by object, and its anticompetitive effects were presumed without there being any need to prove negative effects on the market<sup>6</sup>.

13. In the *Basketball case*, the Lithuanian Competition Council considered that conclusion of the agreement not to pay players' salaries was the price fixing for the purchase of basketball players' services which restricted one of the essential elements of competition between undertakings, namely price competition for the purchase of players' services. Moreover, it stressed that competitors cannot use the COVID-19 crisis to justify cartels or other competition law infringements when these infringements seek to collectively mitigate the consequences of the crisis for undertakings at the expense of employed persons or consumers.

14. The theory of harm was that the Lithuanian Basketball League clubs' cartel evened out the positions of basketball clubs *vis-à-vis* basketball players, both after the termination of the basketball championship 2019–2020 due to the COVID-19 pandemic and before the next championship season, when the basketball clubs sought to sign new contracts for the upcoming season.

15. Usually, all the Lithuanian Basketball League clubs are in different positions in relation to the basketball players' contracts, both in terms of the salaries agreed and contract termination consequences. So, in the absence of the buyers' cartel, the consequences (e.g. financial, reputational) of the suspension of the basketball championship would have been different for each basketball club. The levelling down of players' salaries and remuneration conditions (i.e. non-payment of any remuneration after the termination of the championship) had to make a general impression for all basketball players that identical conditions apply in all the Lithuanian Basketball League clubs, which in turn had to reduce their abilities to negotiate individual financial conditions and minimise the likelihood of legal disputes.<sup>7</sup>

16. In the absence of agreed position on the payment of salaries and other financial remuneration after the termination of the championship, basketball players might have expected to receive a competitive remuneration and would have better chances to negotiate. These factors could have determined the players' decisions on the club's choice for the next Lithuanian Basketball League championship (especially given that the contracts are renewed yearly), and, consequently, different compositions and positions of the clubs in the new championship season.<sup>8</sup>

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<sup>5</sup> The court of first instance.

<sup>6</sup> [Basketball case](#), paragraphs 334, 341-343; [Scrap Metal Auction case](#), paragraphs 159-163; [Manfula and Envija case](#), paragraphs 163-165, 167.

<sup>7</sup> [Basketball case](#), paragraph 349.

<sup>8</sup> [Basketball case](#), paragraph 351.

17. As a result of the disguised cartel, the basketball players could have lost a particularly significant part of their income. While they normally were supposed to receive salaries for 9–10 months per championship season, they would have lost their salaries for 2–3 months, ranging from EUR 4 320 – EUR 52 000 (for 2 months) to EUR 6 480 – EUR 78 000 (for 3 months).<sup>9</sup>

18. Further, in the *Basketball case*, the legal standard of distancing from the buyers' cartel was challenged<sup>10</sup>. Three Lithuanian Basketball League clubs argued that they had distanced from the buyers' cartel as they hadn't agreed or expressed a clear position during the board meeting.

19. However, the Lithuanian Competition Council concluded – referring to the case-law of the Lithuanian and the European Union courts – that all Lithuanian Basketball League clubs should be considered members of the buyers' cartel, irrespective of whether their support for the agreement was clearly expressed or implied.

20. The basketball clubs willing to distance themselves from an anti-competitive agreement had to express their position firmly and clearly so that other members of the cartel understood their intentions. The other participants in the cartel had to be aware of the fact that the basketball club was withdrawing from the agreement and the latter had to provide evidence of the fact that others understood it. However, there was no evidence that any of the clubs clearly distanced themselves from a cartel. Silence at the meetings where buyers' cartel discussions took place was not considered to be a proper distancing.

21. As regards the theory of harm in the *Scrap Metal Auction case*<sup>11</sup>, due to the buyers' cartel concluded between the undertakings during radioactive copper scrap sale auction, its organiser Ignalina nuclear power plant could not get the best offer in terms of price and ensure that the state resources were used efficiently. Sypra, which ultimately won the auction, submitted only a starting bid which was just over EUR 1.5 million. If the companies had submitted separate bids, Ignalina nuclear power plant could have sold the state-owned copper scrap at a higher price.

22. In the Lithuanian Competition Council's assessment, since the price of products or services is one of the main aspects of competition, price-fixing cartels are considered one of the most serious competition law infringements. Businesses have to make individual decisions not just about the sales price, but also about the purchase price.

23. This case clearly illustrates that the legal assessment of the cartel between buyers was conducted in much the same way as between sellers. Examining the *Scrap Metal Auction case*, the Lithuanian Competition Council was referencing to its decisions and the case-law concerning bid-rigging. An auction for the sale of goods is similar in nature and substance to public procurement. The aim of public procurement is to obtain the best bid for the purchase of goods or services (usually, the lowest in price) and thus to make the rational use of state budgetary resources. Similarly, the aim of auction is to obtain the best offer for the sale of goods or services (usually, the highest in price), thus ensuring that the public or private assets are managed rationally. Both public procurement and auction include a competitive procedure in which undertakings should compete by submitting their bids or offers with the aim of providing the best one and winning<sup>12</sup>.

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<sup>9</sup> [Basketball case](#), paragraph 352.

<sup>10</sup> [See paragraphs 260, 285-288, 299-300, 315, 317, 322, 328, 448.](#)

<sup>11</sup> [See paragraphs 22, 166-170.](#)

<sup>12</sup> [Scrap Metal Auction case](#), paragraph 103.

24. The *Manfula and Envija case* demonstrates how the buyers' cartel might restrict competition on the upstream purchasing market and increase prices on downstream market<sup>13</sup>. Competitors Lukrida and Manfula agreed on the margin of at least 10 percent to be applied to the internal combustion engines on the upstream market purchased from Envija which also participated in the agreement. Such an agreement was applied in practice and it restricted one of the essential elements of competition between undertakings, namely price competition.

25. As a result, the buyers' cartel made it possible to increase the price of the goods purchased from Envija by excluding the possibility of applying a lower profit margin. The reasonably likely consequence of the cartel was an increase in the prices of internal combustion engines purchased from Envija on the upstream market. Ultimately, the higher costs would have had to be borne by Lukrida's and Manfula's customers on the downstream market where engines were used for combined heat and power plants construction. The internal combustion engine is an essential element of the combined heat and power plant and may, in some cases, play a crucial role in the general costs of its construction.

#### 4. Approach to Defining the Relevant Market

26. While examining buyers' cartels, the Lithuanian Competition Council applied minimum criteria for the definition of the relevant product and geographic market<sup>14</sup>. In the event of prohibited agreements restricting competition by object (such as buyers' cartels), it was sufficient to establish that the undertakings were competitors since an agreement on price coordination between competitors was in itself an infringement. So, there was no need for a definitive and precise definition of the market with a detailed analysis.

27. Using the abovementioned methodology, in *the Basketball case* the Lithuanian Competition Council defined the relevant market as professional basketball players' services market in the territory of the Republic of Lithuania; in *the Scrap Metal Auction case* – as radioactive copper scrap purchase market at least in the territory of the Republic of Lithuania; in *the Manfula and Envija case* – as combined heat and power plants construction market at least in the territory of the Republic of Lithuania<sup>15</sup>.

#### 5. Sanctions and Leniency

28. The Lithuanian Competition Council considered buyers' cartels on price fixing to be serious breaches of the competition law, which were subject to fines. Having assessed the turnover, gravity and duration of the infringement in *the Basketball case* concerning the anti-competitive agreement not to pay the basketball players salaries and other financial remuneration, it fined the Lithuanian Basketball League EUR 3,440 and imposed a total of EUR 36,640 in fines on 10 basketball clubs ranging from Eur 1,070 to EUR 16,510.

29. The Lithuanian Basketball League and different basketball clubs requested the application of mitigating circumstances or leniency on the grounds, such as termination of

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<sup>13</sup> [See paragraphs 155, 157-159, 166-168, 170, 175.](#)

<sup>14</sup> [Basketball case](#), paragraphs 234, 235; [Scrap Metal Auction case](#), paragraph 102; [Manfula and Envija case](#), paragraphs 106, 107.

<sup>15</sup> [Basketball case](#), paragraphs 243, 251; [Scrap Metal Auction case](#), paragraph 107, 110; [Manfula and Envija case](#), paragraphs 106, 107.

the infringement on their own initiative, non-engagement in agreed anti-competitive practices, very difficult basketball club's financial situation, co-operation and help during the investigation. However, the Lithuanian Competition Council rejected all those arguments as unfounded and refused to reduce the imposed fines<sup>16</sup>.

30. In the *Scrap Metal Auction case*, Norvesta and Sypra were fined EUR 27,500 and EUR 27,100 respectively for the cartel agreement participating in the radioactive copper scrap sale auction. Norvesta argued that application of liability by the Lithuanian Competition Council would undermine the constitutional principle of double jeopardy (*non bis in idem*). In its view, the former director of Norvesta was subject to pre-trial investigations in the context of criminal proceedings. So, the repeated prosecution and conviction was not possible<sup>17</sup>.

31. According to the information available to the Lithuanian Competition Council Sypra and Norvesta were not the subject of allegations raised in the course of the criminal proceedings, nor had any such evidence been presented by Norvesta or Sypra. Therefore, the imposition of penalties on those undertakings by the Lithuanian Competition Council could not infringe the *non bis in idem* principle.

32. In the *Manfula and Envija case*, cartelists were fined for fixing internal combustion engines purchase prices and restricting competition on the downstream market of combined heat and power plants construction. The following fines were imposed: Manfula – EUR 333,900, Envija – EUR 303,600. Lukrida received a total immunity from the fine of EUR 656,600, as the company applied for leniency.

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<sup>16</sup> [Basketball case](#), paragraphs 419-443, 451.

<sup>17</sup> [Scrap Metal Auction case](#), paragraphs 184, 186, 219.