

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Disentangling Consummated Mergers – Experiences and Challenges – Note by
Lithuania**

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1. Introduction

1. In Lithuanian jurisdiction examination of consummated mergers by the competition authority is available as a tool of ensuring competition following the mergers which do not exceed notification thresholds. As an outcome of such investigations, the merger can be cleared, prohibited as well as cleared subject to conditions.
2. From the standpoint of material assessment of completed mergers, for the most part, the assessment criteria are the same as in the case of ordinary merger review. However, as is illustrated by one of Lithuanian cases, the *ex-post* nature of the procedure enables additional criteria, such as actual price effects (or any other effects) on competition following the merger.
3. From the procedural side as well, there are many resemblances to the ordinary merger review. However, there are also some particularities, such as the need to set a deadline for submitting the merger notification.
4. In terms of judicial review, in cases on concentrations considered upon initiative of the Lithuanian Competition Council, judicial challenges of non-final decisions adopted during the procedure are very common, in contrast to ordinary merger review where such challenges are relatively rare.

2. Legal framework for investigations of consummated mergers in Lithuania

5. In Lithuania the Law provides¹ that the competition authority may impose an obligation on undertakings to notify a concentration and apply the procedure of merger control even though the notification thresholds are not exceeded where it is likely that concentration will result in the creation or strengthening of a dominant position or a substantial restriction of competition in a relevant market. However, this power persists only where no more than 12 months have passed since the implementation of the concentration.
6. The Competition Council is not empowered to review mergers which were previously notified and cleared but later resulted in competition concerns. However, if merging parties in the context of ordinary merger investigation provided incomplete or incorrect information, the authority may later change or annul its decision on that merger.
7. The outcomes of the investigation of a consummated merger can be the same as in cases on ordinary mergers: a) clearance without conditions; b) clearance with behavioural or structural conditions; c) prohibition of a merger. If a merger is not cleared unconditionally, the authority may require performing actions restoring the previous situation or eliminating the consequences of concentration, including obligations to sell the enterprise or part thereof, the assets of the undertaking or part thereof, shares or part thereof,

¹ Article 13 of the [Lithuanian Competition Law](#).

to reorganise the enterprise, to terminate or amend contracts, also to set the time limits and conditions for meeting the above obligations.²

8. The Lithuanian competition authority has applied the legal provisions on examination of consummated mergers which do not meet the turnover thresholds in practice in four cases. These cases are reviewed in the section below.

9. The Lithuanian Competition Council is also empowered³ to impose the same aforementioned remedies in cases where a merger should have been notified but was not notified and was consummated. During the last 10 years, another five investigations against this type of completed mergers have been launched⁴. However, the competition authority has no experience in applying in practice remedies in this type of cases since all the non-notified mergers were later cleared unconditionally. Despite the transactions being cleared, the Competition Council imposed fines on companies for gun jumping⁵. These cases are not further discussed in this Note. In the next section the cases on consummated mergers which do not exceed notification thresholds are described.

3. Cases in which consummated mergers not exceeding notification thresholds were examined in Lithuania

10. Altogether, there have been four cases in which Lithuanian Competition Council launched investigations into consummated mergers not exceeding notification thresholds. Investigations of consummated mergers not exceeding notification thresholds in Lithuania so far have been started based on information collected from the media or received from the interested parties.

11. The **first** case of this nature was launched in August 2013. In October 2014, the Competition Council cleared⁶ acquisition of *UAB Žirmūnų būstas* by *UAB Nemuno būsto priežiūra*.

12. *UAB Žirmūnų būstas* as well as the companies related to *UAB Nemuno būsto priežiūra* provided the services of administration of multi-storeyed houses in the city of Vilnius.

² See Article 35(1)(3) of the [Lithuanian Competition Law](#). In cases on consummated mergers the Lithuanian Competition Council applied remedies once in *Eesti Meedia* case (Lithuanian Competition Council's resolution of 5 May 2016, [No. 1S-59/2016](#)).

³ See Article 35(1)(3) of the [Lithuanian Competition Law](#).

⁴ Two *UAB „Lukoil Baltija“* cases: Lithuanian Competition Council's resolutions of 18 April 2013 [2S-4](#) and of 12 May 2014, No. [2S-2/2014](#). See also press releases in English [here](#) (2013) and [here](#) (2014). *Lindo UAB* case: Lithuanian Competition Council's resolution of 9 September 2015, No. [2S-11/2015](#). *AB „Kauno grūdai“* case: Lithuanian Competition Council's resolution of 9 June 2017, No. [2S-3 \(2017\)](#). See also press release in English [here](#). *UAB koncernas „Achemos grupė“* case: Lithuanian Competition Council's resolution of 1 August 2017, No. [2S-4 \(2017\)](#). See also press release in English [here](#).

⁵ In Lithuania the fine of up to 10 % of the annual turnover is available for gun jumping. *UAB „Lukoil Baltija“* fined 1 177 600 Eur in 2013 and 11 817 700 Eur in 2014; *Lindo UAB* fined 5000 Eur; *AB „Kauno grūdai“* fined 947 700 Eur; *UAB koncernas „Achemos grupė“* fined 54 700 Eur.

⁶ Lithuanian Competition Council's resolution of 16 October 2014, [No. 1S-165/2014](#). See also press release in English [here](#).

13. The competition authority found that the choice of apartment owners determines intensity of the competition among the providers of property administration services. Legal framework determines the incentives of consumers to benefit from the existing competition.

14. Having evaluated the merger, the Lithuanian Competition Council acknowledged that the intended merger would not create or strengthen the dominant position, or significantly restrict competition in the relevant markets. The Lithuanian Competition Council also noted that the merger would not limit the possibilities for consumers to choose other providers of property administration services. There had been at least 20 of them operating in the market.

15. The **second** case was launched in July 2015 obliging the acquirer Estonian company *AS Eesti Meedia* to submit the merger notification. In May 2016, the Competition Council prohibited⁷ a merger whereby in 2014 *AS Eesti Meedia* acquired *AllePAL OÜ*, *UAB Plius* and *UAB Vertikali medija*, which were related to *AS Eesti Meedia*, and *UAB Diginet LT*, which was related to *AllePAL OÜ*, were the biggest managers of classified ads websites for real estate and vehicles in Lithuania.

16. In its assessment of the effects of this merger on competition, the Lithuanian Competition Council considered the following: a) very large market shares of the merged parties⁸; b) the fact that merged entities were close competitors; c) limited possibilities of customers to switch to other service providers; d) unlikelihood that other competitors would increase supply of services in case of price increase by the merged entities; e) the fact that the merged firms could foreclose competitors; f) the fact that the merger removed an important competitive force; g) the unlikelihood of countervailing buyers' power; h) the unlikelihood that the new market player would emerge.

17. Besides the abovementioned criteria which are typical to any procedure of merger review (including the one applied by the European Commission at EU level), the Competition Council assessed one additional factor which was considered specifically because the case concerned the consummated merger. Namely, the competition authority observed that following the merger the merged parties actually increased prices for their services by 20 to 100 %. However, even after this step customers did not switch to the services provided by competitors of the merged parties. Thus, this was considered as an actual negative consequence of the merger. In ordinary procedure of merger review the assessment of the effects on competition is prospective and conducted *ex ante* when none of the effects have materialised yet. Meanwhile, in *Eesti Meedia* case the negative effects of the merger in the form of increased prices had been already actually enacted at the moment of investigation without any evidence of switching on the part of customers.

18. Thus, having examined the notification, the competition authority found that the merger eliminated competition among classified ads websites and increased prices of classified ads for real estate and vehicles. By prohibiting the merger in 2016, the Competition Council obliged *AS Eesti Meedia* to take actions in order to re-establish the state prior to the merger or to eliminate the identified competition concerns.

19. The competition authority collected and analysed the data related to the implementation of the set obligations, and eventually, in August 2018, according to the

⁷ Lithuanian Competition Council's resolution of 5 May 2016, [No. 1S-59/2016](#). See also press release in English [here](#).

⁸ They were between 80 % and 100 % on the market of classified ads for real estate and between 90 % and 100 % on the market of classified ads for vehicles.

information available to it, acknowledged⁹ that *AS Eesti Meedia* properly implemented obligations imposed by transferring part of its classified ads websites, i.e. *autogidas.lt*, *domoplius.lt* and *plius.lt*, to the unrelated undertaking *Vertikali medija*.

20. The **third** case was initiated in May 2017. Following the merger of two tickets distributors, the Competition Council applied the merger control procedure on its own initiative after suspecting that the transaction might have created or strengthened a dominant position or significantly restricted competition in the market for the distribution of tickets in Lithuania.

21. One of the merged parties, *Nacionalinis bilietu platintojas*, as prior to the implementation of the merger provided ticket distribution services in Lithuania.

22. The companies managed by another merged Estonian company *Baltic Ticket Holdings* provided ticket distribution services in Lithuania, Latvia, Estonia and Belarus. Prior to the implementation of the merger, the Estonian company carried out its activities in Lithuania through the company *Bilietu pasaulis*, which during the merger investigation was not engaged in any business activities.

23. Having evaluated the circumstances related to the transaction, the authority acknowledged that the intended merger would not create or strengthen the dominant position, or significantly restrict competition in the relevant markets. Thus, as a result of the procedure, the Lithuanian Competition Council cleared the acquisition of *UAB Nacionalinis bilietu platintojas* by the Estonian company *Baltic Ticket Holdings*.¹⁰

24. The **fourth** case which was started in October 2021 is still ongoing¹¹. In this case a merger of ticket distributors is being considered again. The Lithuanian competition authority has decided to apply the merger control procedure on its own initiative and assess whether the acquisition of 100 per cent of the shares of the Lithuanian ticket distributor *Tiketa* by the Estonian company *Piletilevi Group* has created or strengthened a dominant position or significantly restricted competition in the ticket distribution market in Lithuania. Following the merger *Piletilevi Group* owns two of the largest ticket distributors in Lithuania, namely *Tiketa* (which was acquired) and *Nacionalinis bilietu platintojas* (the latter owns the ticket distribution platform *bilietai.lt*). *Piletilevi Group* had been obliged to submit the merger notification. The final decision in this case is still not taken.

4. Investigating consummated mergers: benefits and trends

25. The power of the competition authority to investigate consummated mergers brings several benefits in terms of protection of competition.

26. Firstly, especially in small countries as Lithuania, where relevant markets are usually national or local, a merger of undertakings with significant market power may be non-notifiable due to insufficient turnover. However, as the above-mentioned case of *Eesti Meedia* shows, such mergers may cause serious competition concerns. Therefore, the respective power conferred upon the Lithuanian competition authority is beneficial in assessing mergers in markets where turnovers of undertakings are rather low.

⁹ See press release regarding fulfilment of obligations in English [here](#).

¹⁰ Decision of the Lithuanian Competition Council of 13 July 2018, [No. 1S-100 \(2018\)](#). See press release in English [here](#).

¹¹ See press release in English [here](#).

27. Secondly, this power could be useful in assessing killer acquisitions or other novel types of theories of harm where problematic mergers do not reach notification thresholds. While in some other jurisdictions new types of thresholds are introduced¹², in Lithuania the same goals may be achieved by applying *ex-post* examination of consummated mergers. However, in practice the Lithuanian competition authority has not used its respective powers in this way yet. Still, what is seen from the decision-making practice of the Lithuanian Competition Council in the cases on consummated mergers is that the need to use this power is especially relevant in digital markets – three of four Lithuanian cases of consummated mergers described above concern primarily digital or exclusively digital services markets.

28. According to national courts, a decision of the Lithuanian competition authority to launch the merger control procedure on its own initiative is not subject to appeal¹³. Notwithstanding this, judicial challenges are common in this type of cases – they are much more frequent than in ordinary merger review cases. Matters that have been subject to challenge include the deadline for submission of a merger notification, authority's requests to supplement the notification, deadline and content of requests for information. This might be explained by the fact that in an ordinary merger case parties are interested in the decision of the authority to be adopted as soon as possible so that the planned merger can go ahead, while this might not be the case in an investigation of a consummated merger, as a result of which not only the merger risks being banned but also the state prior to the merger has to be re-established.

29. The crucial part of the procedure of review of completed mergers is setting of the appropriate deadline for merged entities to submit the merger notification. This is an indispensable step in ensuring effective consideration of the consummated merger since if too much time passes after the consummation, it may become difficult to collect information necessary for investigation and in case of prohibition it may also be difficult to disentangle the merger by remedies due to the integration of merged undertakings that already took place.

30. Otherwise, the procedure of investigating consummated mergers is very similar to the ordinary procedure of the pre-notified merger review.

¹² E.g., transaction value or thresholds related to market shares.

¹³ Decision of Lithuanian Supreme Administrative Court of 10 December 2020, case No. [eA-3144-822/2020](#), *AS „Baltic Ticket Holdings“ v Competition Council*.