

Unclassified

DAF/COMP(2007)11



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

27-Apr-2007

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

**DAF/COMP(2007)11
Unclassified**

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2006 --

This annual report is submitted by the Delegation of Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-7 June 2007.

JT03226167

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LITHUANIA

2006

Executive Summary

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

1. Late in the year 2006, the Amendments of the Law on Competition were drafted and submitted to the relevant ministries for remarks and proposals.

2. Having considered certain problems of practical character arising in relation to the application of the norms of competition law, also with a view to ensuring a more efficient control of the infringements of the Law on Competition, the Competition Council of the Republic of Lithuania (hereinafter – the CC) drafted the Law on the Amendment of the Law on Competition (hereinafter – the LC). The proposed amendments will help the CC more efficiently to perform the tasks assigned to it.

3. The following principal novelties are proposed to the Law on Competition:

- 1) the right to inspect private premises;
- 2) the right to seal business premises;
- 3) more detailed provisions concerning the assumption of voluntary commitments;
- 4) structural remedies.

4. Principal aspects and foreseeable problems in relation to the proposed novelties of the Law on Competition as proposed above are specified below.

1.1 *The right to inspect private premises*

5. Under the currently effective legal acts of the Republic of Lithuania officers of the CC have a right to inspect only the premises used by undertakings, without, however, the right to enter private homes of managers and employees of undertakings. In view of the infringements getting ever more complex and dangerous, a possibility is now being considered to introduce and establish this right of the officers in the law.

6. The officers would be authorised to enter private premises and perform an inspection therein only subject to the court warrant. Such inspection would be authorised only in the presence of a reasonable suspicion that books and other evidence found there might be relevant to prove prohibited agreement or an abuse of a dominant position.

7. In the course of the consideration of the proposed draft law an issue concerning the compliance of the amendments with the Constitution was raised. The Constitution of the Republic of Lithuania establishes the principle of inviolability of private housing therefore opinions have been expressed that such extension of the rights of the CC officers may come counter to this fundamental human right. The Constitution stipulates that entrance into a dwelling place is permitted when the objective of such an action

is to protect public order, apprehend a criminal, or save a person's life, health, or property. In this respect it is not quite clear whether proposed powers of the officers of the CC fall under any of such exemptions.

8. It is quite believable that in respect of the proposed rights of the officers of the CC to enter the private premises discussions may arise when considering the draft Law on Amendments in the Government and in the Parliament.

1.2 The right to seal business premises

9. In the course of the inspections it is not always possible to inspect all relevant documents within one day. Therefore it is very important that the officers are authorised to seal the premises and proceed with the inspection on the next day. The current Law on Competition does not provide for this possibility.

10. In the course of the consideration of the proposed amendments a question was raised concerning the possibility of the CC officers to abuse the right vested to them in cases no court warrant is required for its exercising. For instance, the premises could be sealed first and the inspection to be performed only subsequently, upon a receipt of the court warrant. Therefore, it is proposed that when issuing the search warrant the court simultaneously issues a warrant for the inspection of the premises.

1.3 More detailed provisions concerning the assumption of the commitments

11. The possibility of undertakings to offer voluntary commitments and on that basis request the CC to terminate its investigation is established in the Law on Competition; however, it is regulated only in very general terms. Having regard to the relevant provisions of Article 9 of Council Regulation (EC) No. 1/2003, measures have been proposed to provide for the regulation of the procedure in more detailed terms.

- 1) It shall be sought to provide that the undertakings concerned could not only offer and assume certain commitments not to perform certain actions in respect of which the investigation was initiated but also a possibility for them to offer any other pro-active commitments.
- 2) Under the current Law the investigation is terminated where an undertaking offers its commitments provided the actions have not caused any substantial damage to the interests protected under the Law. Among the issues discussed in this respect a possibility was discussed to grant the CC wider discretion in the assessment of the appropriateness of the commitments in a specific situation (the Law should provide for a possibility rather than an obligation to terminate the investigation).
- 3) Another issue discussed was the possibility to provide in the Law for cases where the commitments could not be accepted (should the condition of the absence of substantial damage be waived?)
- 4) The commitments of the undertakings should be made public.

1.4 Structural remedies

12. Under the current provisions structural remedies may be imposed only in cases of unlawful concentration. It has been proposed to provide for a possibility to exercise such remedies also in cases of other infringements of the LC. Numerous comments were received in respect of this proposal from interested persons. First, a question was raised as to the necessity of structural remedies in a small market like Lithuania. Also a possible response on the part of the business community to such amendment was widely discussed, as well as the possible impact thereof upon their market conduct (i.e., apprehension of such measures will not promote the business development). Such legal norms may be expected to trigger

wide-scale discussions. Nonetheless, the introduction of structural remedies in the Law could become an efficient preventive measure.

13. The draft Law on Amendments in the very near future will be submitted for consideration to the Government. The CC expects that the anticipated amendments and supplements of the Law will become an efficient tool in counteracting the infringements of the competition rules.

14. Besides, seeking to strengthen investigations of cartel agreements and to perform their prevention, early in the year 2006 the structure of Lithuanian Competition Council was modified transforming the former Industry Division into the Cartel Division, and the Transport and Economic Analysis Division into Industry and Transport Division.

2. Enforcement of Competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of a dominant position

2.1.1 Summary of activities of

Competition authority

15. Acting in accordance with the LC the CC initiated 75 investigations including those started *ex officio* and others on the basis of complaints filed by undertakings. Total 84 resolutions were passed on the basis of the LC, including those in respect of investigations started in 2005. The Table below presents the summary data on the scope of the tasks performed by the CC while enforcing the LC in 2006.

	Decisions reached	New cases opened
Total number of cases	84	75
Prohibited agreements	5	3
Abuse of a dominant position	6	8
Concentration	60	61
Restrictive actions of public and local authorities	10	3
Unfair competition	3	

PROHIBITED AGREEMENTS		
	Horizontal agreements	Vertical agreements
New cases opened	2	1
New complaints	2	1
Decisions reached	4	1
Complaints rejected	2	1
Prohibitions with fines	2	

ABUSE OF A DOMINANT POSITION	
New cases opened	8
New complaints	8
Decisions reached	6
Complaints rejected	4
Prohibitions with fines	2

CONCENTRATION	
Decisions reached	60
Approvals	59
Conditional approvals	1

16. In 2006, the CC imposed fines totalling EUR 1 105 628 upon undertakings of which – EUR 210 413 for prohibited agreements, and EUR 895 215 for the abuse of a dominant position.

Courts

17. In year 2006, as well as in previous years national courts examined cases related to the undertakings appeals against Decisions passed by the CC in respect of the infringements of the Law on Competition. In 5 cases national courts upheld CC decisions, in 3 cases – CC decisions were partly amended, and 2 CC decisions were overruled.

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

Prohibited agreements

- Cartel agreement in the paper market

18. On 26 October 2006, the CC took a decision under Article 5(1) of the Lithuanian LC and Article 81(1) of the EC Treaty against 5 companies having operated in the paper market of Lithuania and having affected trade between Lithuania, Latvia and Estonia by the agreement to periodically exchange information of a kind normally regarded as business secrets regarding their market shares.

19. The CC imposed fines totalling EUR 197 196 on UAB “Antalis Lietuva” (EUR 19 358), UAB “Libra Vitalis” (EUR 56 432), UAB “Lukas” (EUR 6 583), UAB “MAP Lietuva” (EUR 46 666) and UAB “Schneidersohne Baltija” (EUR 812 547). The agreement lasted from 1999 to 2004. The companies also were obliged to cease the actions constituting the infringement.

Cartel agreement in the consultancy for the EU structural funds market

20. On 22 June 2006, the CC took a decision under Article 5(1) of the Lithuanian LC against 3 companies having participated in the public procurement tender concerning the developing of the projects supported by the EU structural funds and having concluded the prohibited agreement.

21. The UAB Eurointegracijos projektai, PI „Perspektyvių inovacijų agentūra and UAB MAG Solutions were tendering for the consultancy services projects to be funded from the EU structural funds under measure 1.2 of the SPD "Ensuring of Energy Supply Stability, Accessibility and Increased

Efficiency”. The undertakings submitted agreed tender bids having in advance agreed upon the anticipated tender winner.

22. The CC imposed fines totalling EUR 13 217 of which EUR 12 070 on *UAB Eurointegracijos projektai*, EUR 857 on *PI Perspektyvių inovacijų agentūra* and EUR 290 on *UAB MAG Solutions*.

- Abuse of a dominant position

Actions of AB Lietuvos paštas

23. On 5 January 2006, the CC took a decision under Article 9 of the LC of the Republic of Lithuania against *AB Lietuvos paštas* for abusing its dominant position by establishing dissimilar delivery services prices.

24. The investigation established that apart from *AB Lietuvos paštas*, several other companies operating the necessary equipment could provide invoice printing, folding and enveloping services. However, such companies must provide another, very closely related service, - the delivery of invoices to the customers at a triple price in cases where the weight of the mail parcel fall within the limit reserved for *AB Lietuvos paštas*. The prices of universal services are approved by the Resolution of the Government of the Republic of Lithuania; and the Director of *AB Lietuvos paštas* approves the specific rates for major customers. Therefore, the only way for such companies to participate in the tender and compete with *AB Lietuvos paštas* was to purchase the service of the delivery of mail of established weight from *AB Lietuvos paštas* which was able to provide such services at lower rates.

25. Companies participating in the tender launched by *UAB Vilniaus energija* could submit rates consisting of two parts: the rates for printing, folding and enveloping of invoices to be performed by the tendering companies themselves and the rate for the delivery of the parcel offered to the tendering companies by *AB Lietuvos Paštas*. *AB Lietuvos paštas*, having offered the price for the printing, folding and enveloping of mail similar to that of its competitors, offered a 1,5 times lower delivery rate. *AB Lietuvos paštas* was able to offer a rate more attractive than that of its competitors being aware of the rates that could be offered by the other two tendering companies those being parties to the agreement on the universal post services concluded with *AB Lietuvos paštas*.

26. Thus *AB Lietuvos paštas* could acquire a significant advantage by virtue of its ability to offer much more attractive rates than those offered by other tenderers subject to the bidding agreement with *AB Lietuvos paštas* on the provision of mailing services.

27. The CC concluded that by such actions *AB Lietuvos paštas* was abusing its dominant position in the market for the reserved post services and was seeking to strengthen its position in the post services market while foreclosing in respect of its competitors another closely related market, – that of printing, folding and enveloping of invoices. For this infringement *AB Lietuvos paštas* was fined EUR 23 170.

Actions of AB Lietuvos telekomas

28. On 5 October 2006, the CC adopted a decision under Article 9 of the LC of the Republic of Lithuania regarding *AB Lietuvos telekomas* pricing strategy for its ADSL services.

29. In the conclusions of the investigation that covered the period of 2002–2004 and 1Q 2005 the CC established that during the period surveyed actions of *AB Lietuvos telekomas* (currently *AB TEO LT*) in the relevant markets resulted in the imposition of unfair prices referred to as „price squeezing“. One of the major objects of the investigation was the provision of the ADSL (the digital subscriber line that allows

more bandwidth downstream, – from the network to the customer site – than upstream) Internet access service to the final users.

30. The services were provided on the basis of the wholesale *AB Lietuvos telekomas* ADSL Internet access framework. The comparison of the prices for services provided by undertakings operating in the market revealed that in the retail market *AB Lietuvos telekomas* was rendering certain ADSL internet access services to its final users (households and business customers) at the prices that would be lower than the prices offered to other customers in the wholesale market. Such actions are to be treated as abuse of the dominant position by using „price squeezing“. The CC assessed such actions of *AB Lietuvos telekomas* as abuse of the dominant position in the relevant wholesale ADSL Internet access market. Such actions restricted the possibilities for other companies to compete over prices when providing services in the retail market to the final consumers.

31. The Resolution of the CC obligated *AB TEO LT* to terminate the actions constituting an infringement of the LC and adjust the terms for the provision of the ADSL access so that the direct or indirect imposition of unfair prices or other terms for the purchase of the service are eliminated. For the infringement the Company was fined EUR 872 046.

2.2 Mergers and acquisitions

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

32. During 2006, the CC received total 61 notifications applying for authorisations to implement the concentration of market structures. In 59 instances, the CC by its resolutions, authorised the intended concentrations. On a single occasion the CC decided to impose interim measures seeking to maintain the existing competitive situation in the market and prevent any significant competitive harm to other undertakings or public interests or any appearance of irreparable consequences. On six occasions, seeking to more expediently authorise applications of the undertaking to implement the concentration and having concluded that the intended deal will not result in a creation or strengthening of a dominant position, on the basis of Article 12(3) of the LC, by its appropriate resolutions the CC authorised the implementation of individual actions of concentration pending the final decision.

Authorisations to foreign entities

33. In 2006, there were fewer authorisations to perform concentration granted to foreign entities as compared to the previous years (15, as compared to 22 in 2005, and 15 in 2004). In nine cases concentration was performed among entities registered in foreign States which were also operating in the Lithuanian commodity markets, and the concentration deals resulted in a certain increase in the concentration in the Lithuanian markets. In eight cases the concentrations executed in foreign States were assessed as horizontal concentrations, in six cases foreign entities acquired the entities registered in Lithuania.

Authorisations to Lithuanian entities

34. Concentration among the Lithuanian-registered undertakings was performed in 44 cases, of which on 7 occasions the authorisations were issued to undertakings controlled by foreign capital, and in 9 cases – to undertakings controlled by joint domestic and foreign capital. There was an obvious increase in the degree of concentration among entities operating in the same markets. In 34 cases concentration was assessed as horizontal. This included the following cases: 13 cases in the market for the construction of residential and commercial objects and the development of real estate; 11 cases – in trade sector including the retail trade in medicines and medicinal preparations, in 6 cases – in the industry sector (food industry), in 3 cases concentration was implemented in the transport and service sector, one case was recorded in

each of the information technologies and press publication sector. In 8 cases the concentration was assessed as conglomerate and in two cases the CC authorised the incorporation of new entities.

Development of concentration cases

35. The data of the Table show that for the several years the development of concentration notifications remain nearly unchanged; although, starting from 2006 there has been a notable acceleration of concentration processes in the markets for the construction of residential and commercial objects and the real estate development.

Years	2002	2003	2004	2005	2006
Notifications received	52	54	56	64	61
Authorisations granted	48	52	54	59	59
Of which authorisations to foreign entities	15	10	15	22	15
Authorisations subject to conditions and obligations	5	6	5	4	1

36. The data presented in the Table show that in the last five years 21 authorisation was granted subject to conditions and obligations which accounts for 7.7 % of all authorisations during the relevant period.

37. In 2006, the undertakings paid the total of EUR 71 391 in stamp duty for the examination of concentration notifications.

2.2.3 Summary of significant cases:

38. Late in 2005, acting in accordance with the provisions of the LC, the CC authorised the concentration to be implemented by *Elion Ettevõtte AS*, one of the largest telecommunications and information technologies service provider in Estonia by acquiring a 100 % holding in *Microlink AS* under the obligation to *AB Lietuvos telekomas* to sell *UAB Microlink Lietuva*. The latter company was disposed of prior to the established term and late in 2006 *UAB Microlink Lietuva* offered to the market a fixed telecommunications service „Metro Tel“ thus entering into competition with *TEO LT*, *AB* (former *AB Lietuvos telekomas*).

39. In October 2005, in order to avoid the creation or strengthening of a dominant position, the Finnish company *Rautakirja Oy* was granted an authorisation to perform concentration by acquiring 100% of shares of the Vilnius agency of *UAB Lietuvos spauda* subject to certain conditions and obligations. Some of the obligations were fulfilled within the established time limits (selection and approval of an independent observer, removal of provisions restricting competition from total of 26 contracts, etc.). Audit company, having analysed the contracts with the suppliers and the retailers concluded by *UAB Impress Teva* and the Vilnius agency *UAB Lietuvos spauda*, identified that on 26 occasions the contracts contained restricting provisions:

- an exclusive right to sell the publications to designated buyers;
- commitment by the publisher not to sell the publications neither directly nor indirectly to other buyers;

- possibility of the publisher to sell the publications only to the distributor for resale in designated resale points;
- commitment by the publisher not to sell the publications to the sale point directly and not to grant such right to the other parties;
- obligations imposed by *UAB Impress Teva* upon retailers and other buyers not to supply the publications to any points of sale other than agreed.

40. At the close of 2006, responding to the complaints from publishers and competitors concerning a possible non-compliance with the obligations and conditions the CC initiated an investigation seeking to detect a possible infringement. Simultaneously, the CC resolved to impose the interim measures in order to maintain the competitive situation in the market and prevent any significant competitive harm or irreparable consequences upon other undertakings.

Concentration in the passenger carriage market

41. Having examined the application filed by *UAB Kautra* to implement the concentration by acquiring a 100 % holding of *UAB Tolimojo keleivinio transporto kompanija* (TOKS), the CC resolved to authorise the concentration in accordance with the submitted notification.

42. The concentration in this particular case was assessed as a horizontal concentration in the relevant market of passenger carriage by busses on scheduled local, long-distance and international routes. Having thoroughly assessed the situation in the relevant markets a conclusion was drawn up that the intended concentration would not result in the creation or strengthening of dominance or any significant lessening of competition in the markets concerned. The decision was passed having considered that in Lithuania passenger carriage by busses on scheduled local, long-distance and international routes is regulated by public authorities – the Ministry of Communications and the State Price and Energy Control Commission, and the international carriage in the territory of EU is governed in accordance with the relevant regulations of the European Council and the rules approved by the Ministry of Communications of the Republic of Lithuania.

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

43. Article 4 of the LC empowers the CC to examine the conformity of legal acts or other decisions adopted by public and local authorities with the requirements of the LC and to require public and local authorities to amend or revoke legal acts or other decisions restricting competition.

44. During the year 2006, the CC passed 4 decisions in cases concerning restrictive actions of public and local authorities. As an example whereof could be the case regarding the decisions of the Ministry of Health and the State Patients' Fund restricting competition in the relevant market for the production and marketing of orthopaedic devices. It was established that the procedure for compensations of the provision of the public by orthopaedic devices approved by the Ministry of Health and the requirements to entities seeking to conclude contracts concerning the provision of the public with the orthopaedic devices approved by the State Patients' Fund created different competition conditions for undertakings operating in the market concerned. Some privileged conditions were granted to the part of the entities in the market since they were regularly allocated a fixed amount of funds, thus within a certain time period for which the funds had been allocated companies could successfully operate in the market being assured of the part of income. In the meantime, entities novice to the market or newly entering the market concerned had encountered significant obstacles being not able to develop their activities under the same conditions as they were not granted any allocations from the Mandatory Health Insurance Fund, and thus eventually, they were

deprived of a possibility to successfully compete in the market. The unequal competition conditions to different entities caused a situation where the services of the entities reimbursed for the acquired orthopaedic devices turned significantly more attractive to the consumers. The conclusion by the CC was that the decisions concerned contradicted Article 4 of the Law on Competition.

45. The CC, seeking that the newly drafted legislation should in no way restrict or weaken competition, but by all possible means liberalise the market entry possibilities, promote competition among economic entities, intensify competition thus ensuring the maximum possible benefit to consumers, within its competence examined draft laws and other regulations drafted by ministries and other authorities, submitted comments and conclusions to the Seimas and the Government of the Republic of Lithuania on competition implications of such legal acts and regulations. During 2006, the CC actively participated in the legislation process, having analysed and assessed from the competition point of view 16 draft laws and 60 drafts of other legal acts.

46. As an example of the CC opinion expressed regarding the proposals of legislation could be the conclusions made in respect to the Draft Law on the Amendment of Article 9 of the Law on Immovable Property Tax submitted to the Board of the Seimas of the Republic of Lithuania. The draft law proposed to supplement Article 9(2) of the Law on Immovable Property Tax with a new item 2 wherein the immovable property used as hotels is excluded from other immovable property for commercial use, establishing that the immovable property used for hotels is valued on the basis of the value-in-use method applying mass valuation of the immovable property (such law being enacted, owners of hotels could enjoy a lower immovable property tax). In the opinion of the CC, in the absence of a clear and uniform definition of the immovable property used for hotels difficulties may arise in separating the hotel activities (accommodation services) from other activities that the same entity may be engaged in the same premises (for example, the catering services) and addressing the issue of evaluation of such immovable property (that is also used for other than accommodation purposes). Such uncertainty in respect of the concept of the immovable property used for hotel purposes could have a consequence of different competition conditions for undertakings operating in the relevant market (for example, the value of the immovable property used by restaurants operating in hotels would be established according to the value-in-use method, while a comparative value method could be used in case of valuation of other immovable property used for the provision of catering services).

47. During 2006, while enforcing the Law on Advertising (hereinafter – LA) the CC examined 16 cases related to the use of misleading and comparative advertising. In five cases the CC concluded infringements of the LA, in eight cases the CC decided to refuse to initiate investigations and on three occasions the investigations were closed due to insufficient evidence of the infringement. Having examined the propositions of the advertising statements published in media due to the insignificant character of possible infringements preventive measures were applied – upon being issued written warnings 11 advertising providers ceased the use of misleading advertising. In the view of possible use of misleading and prohibited comparative advertising 82 complainants were consulted and explained in writing on the requirements of the LA and their application in practise, explained the procedure of submission of the data necessary to start an investigation and the liability for the failure to fulfil the requirements of the Law.

48. In 2006 the CC imposed fines totalling EUR 19 115 upon undertakings for the infringements of the LA.

49. According to Article 48 of the Law on Competition, the CC shall coordinate issues of State aid to which EU State aid rules apply, perform the expert examination of State aid projects, submit conclusions and recommendations to State aid providers, participate in submitting notifications on State aid to the European Commission. Furthermore, the CC manages the Register of State aid and accumulates

information on State aid provided to undertakings, as well as forwards this information to the European Commission and other interested institutions.

50. Within the framework of its functions as an institution coordinating the issues of State aid the CC closely cooperated with State aid providers in the process of drafting State aid notifications to the European Commission, and providing other information about the State aid. Within the accounting period, State aid providers submitted in total 5 notification on State aid under aid schemes.

51. According to the data available the total State aid provided in Lithuania during the year 2005 amounted to EUR 119.16 million).

52. In 2005, the national State aid accounted for 0.58% of the national GDP (at current prices). In 2005, State aid to the manufacturing and service sector amounted to EUR 25.66 m). During the reporting period within the manufacturing and service sectors aid was granted to SMEs, R&D, and innovations, environmental protection, employment programs, trade and restructuring of enterprises.

4. Resources of competition authority

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

4.1.1 Annual budget (in your currency and USD)

LTL 3.6 million (USD 1.27 million) in 2005

LTL 4.1 million (USD 1.61 million) in 2006

4.1.2 Number of employees

- economists 24
- lawyers 13
- other professionals 8
- support staff 16
- all staff combined 61

4.2 Human resources (persons) applied to

- enforcement against anticompetitive practices 22
- merger review and enforcement 4
- advocacy efforts 6

4.3 Period covered by the above information – 2006

5. Summaries of or references to new reports and studies on competition policy issues

Addresses of Annual Reports of the CC in the website:

http://www.konkuren.lt/english/annual/2005_eng.pdf

and of press releases:

<http://www.konkuren.lt/english/information/press.htm>