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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2009 --

This report is submitted by Lithuania to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16-17 June 2010.

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Executive Summary

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

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

1. The laws passed on 9 April 2009 and 24 September 2009 enacted the amendments of the Law on Competition (hereinafter – LC) designed to ensure enhanced legal clarity and a more efficient protection of competition both in terms of the investigative procedures and other legal norms governing competition relations. The introduced amendments will help the Competition Council of the Republic of Lithuania (hereinafter – CC) more efficiently to perform the tasks assigned to it.

2. The most important issues that have been introduced or updated by the Law on the Amendments of 9 April 2009 are the following:

- First of all, the competence of the Competition Council has been expanded. The power for the investigators to seal the premises of the undertaking, to enter and check any premises, including private premises, if there is substantial reason to suspect important documents for the investigation to be held there, have been introduced.

- With a view to ensuring the efficiency of the checks and other investigation actions in collecting the evidence, according to the provisions of the LC the CC now has the right to consider resolutions related to the investigation confidential until any threat to the course of the investigation is eliminated.

- The function of the Competition Council to investigate the acts adopted by entities of public administration as regards their duty to ensure fair competition (Art. 4 of Law on Competition) has been more clearly defined.

- Commitments provided by undertaking to carry out actions that would eliminate the infringement of competition have been introduced as a basis for the termination of investigation.

- The list of extenuating circumstances has been expanded, however, it is now exhaustive.

- Some aspects regarding the term of office of the members of the Competition Council have been changed, as well as some other less important amendments to the Act of corrective nature.

3. A special mention should be made of the amendment to the LC related to the assessment of a dominant position of undertakings. On 24 of September 2009, the Seimas of the Republic of Lithuania adopted the Law on the Amendment of Article 3(11) (definition of a dominant position) of the LC which came into force on 1 January 2010. Having considered that undertakings engaged in retail trading may acquire market power even before they reach the 40 percent relevant market share threshold established in the LC, the exceeding whereof gives ground to the presumption of the dominance, in respect of retailers the threshold was established at the level of the 30 percent share of the relevant market. In respect of these undertakings the threshold demonstrating collective dominance was thus reduced to 55 percent. Nevertheless, having regard to the concept of a dominant position, the market share held, in case it exceeds the threshold established in the LC, by itself does not mean the dominance of the undertaking where other circumstances are established that the undertaking is still facing competition in the market and is in no position to exercise a unilateral decisive influence on it.

4. In order to ensure the balance between the interests of the suppliers and retail trade undertakings enjoying a significant market power late in 2009 the Seimas of the Republic of Lithuania passed the Law on Prohibition of Unfair Operations by Retail Trade Undertakings that prohibits retail trade undertakings to perform any actions contradictory to the fair business practice that result in the transfer the operating risk of trading undertakings upon their suppliers, or additional obligations are imposed upon the latter, or which restrict the possibilities of the suppliers to freely operate in the market.

2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities of:

- **competition authorities:**

  In 2009, the CC passed 233 Resolutions. 72 Resolutions of the CC were passed concerning investigation actions, and 2 in respect of legal acts. Total sanctions were imposed upon 52 undertakings (total fines imposed – LTL 4 393 000 or EUR 1 272 301).

  In 2009, the CC commenced 4 investigations in accordance with Article 5 of the LC concerning prohibited agreements (cartels). In three cases having established infringements of the LC the investigations were completed having passed the Resolutions imposing appropriate fines upon infringing undertakings. In three cases the CC refused to initiate investigations and one investigation was terminated. Furthermore, two investigations were renewed and ten investigations are being continued. All three Resolutions passed by the CC in respect of completed investigations were appealed to the Vilnius Regional Administrative Court. Total fines imposed by the CC for restricting agreements reached LTL 3 990 800 (EUR 1 155 816).

  As regards the actions against abuse of a dominant position, the CC commenced 6 new investigations in accordance with the requirements of Article 9 of the LC, and 1 case was reopened. In 10 cases the CC refused to commence the investigations and 2 investigations were terminated. In 1 case, after completion of investigation the infringement was established.

- **courts:**

  In year 2009, national courts examined cases related to the undertakings appeals against decisions passed by the CC in respect of the infringements of the LC. In 15 cases national courts upheld the CC decisions, in 3 cases the CC decisions were overruled, and in 1 case the CC decision was partly amended (see the Table).

Judicial examination of the CC resolutions

	2006	2007	2008	2009
Total cases	24	33	40	51
Judicial decisions	12	9	21	19
resolutions upheld	7	6	16	15
partly amended	3	1	3	1
overruled	2	2	2	3
Pending cases	12	24	19	32

The most important cases of the Court are provided for below.

Abuse of dominance by AB Lietuvos paštas

On 2 April 2009, the Supreme Administrative Court of Lithuania (SALC) passed the judgement whereby it finally recognised that by its Resolution No. 2S-20 of 27 September 2007 the CC had reasonably concluded that *AB Lietuvos paštas* had infringed Article 9 of the LC and fined it LTL 80 000 (EUR 23 170). It was established that *AB Lietuvos paštas* by taking advantage of its position in the reserved postal services market and being aware of the fees on invoice delivery in envelopes to be included by the competitors of *AB Lietuvos paštas* in the invoice printing, folding and enveloping market in their tenders for the public procurement procedure, and by submitting a significantly lower fees for the invoice delivery service than could be offered by the undertakings purchasing the services from *AB Lietuvos paštas* (*UAB Nacionalinis atsiskaitymų centras* and *UAB Biznio mašinų kompanija)* was abusing its dominant position in the market of reserved postal services. *AB Lietuvos paštas* was thus seeking to establish its position in the market and oust its competitors from the closely related market of invoice printing, folding and enveloping. Such actions of *AB Lietuvos paštas* could affect competition in the market for invoice printing, folding and enveloping and deprive other undertakings that have submitted their proposals to the public procurement procedure executed by *UAB Vilniaus energija* from a possibility to conclude supply contracts with *UAB Vilniaus energija*. Furthermore, the SACL, having examined the dispute that arose in relation to the case concerning the definition of the relevant market, supported the position of the CC that for the purpose of the definition of the relevant market the important issue to consider is the manner of service provision, rather than the way the matter is defined by the undertaking providing the service, i.e. the actual relations should be assessed following the substance over form principle.

Cartels (information exchange between competitors)

On 16 October 2009, the SALC passed the judgement whereby it concluded that the CC, by its Resolution No. 2S-13 of 26 October 2006 reasonably assessed the exchange of information between undertakings as a restrictive agreement. In relation to this case the SALC had applied to the European Commission, and obtained the Commission's opinion concerning the issues examined in the cases related to the practice of application of Article 101 of the TFEU. The opinion produced by the Commission essentially confirmed the correctness of the conclusions drawn up by the CC in the case concerned. In assessing the arguments of the undertakings involved in the information exchange that the CC had failed to prove the negative impact of the information exchange on competition, the SALC concluded that the agreement between the undertakings to exchange confidential information could restrict competition even where the actual anti-competitive effect could not be established, since, as was indicated by the SALC, to provide any direct evidence on a supposed situation should there has not been any information exchange, also the evidence on a potential anti-competitive effect of a relevant agreement is virtually impossible and could be neither required nor expected from the CC.

The SALC indicated that exchange of information in all cases is contrary to competition rules and restricts competition where such actions of the undertakings reduce or eliminate certainty concerning the operation of the market concerned. Such assessment largely depends on the economic conditions in the markets covered and the characteristics of the system itself, specifically on its objective, approach, and conditions of the participation in the information exchange, also the nature of the information exchanged. The case concerned the undertakings engaged in wholesale trading in paper operating in oligopoly markets of wholesale trade in chalky and office paper characterised by a relatively high degree of concentration. These undertakings were exchanging in individualised and specific information on their market shares and sales volumes. The information being exchanged was very current, as it concerned the results

of the quarter and immediately after the end of a relevant quarter the undertakings would expediently exchange it. Besides, the information was not public, since it was not in the same scope, frequency or content details accessible to other market participants and/or consumers (buyers). In this view, the SALC supported the conclusion drawn up in the Resolution of the CC that the information exchange could affect corporate behaviour in the market since the undertakings were provided means to monitor the information and, with the relevant data at their disposal, could pass appropriate decisions concerning behaviour in the market and sufficiently quickly learn of the outcomes of their decisions. In the opinion of the SALC the information exchange concerned reduced or eliminated the uncertainty about the operation of the markets concerned and thus restricted competition.

Having regard to the opinion of the Commission and the practice of the EU Court of Justice the SALC concluded that participants of information exchange normally lose their interest to actively compete as any more significant actions of theirs may be promptly noticed and expediently responded by appropriate countermeasures. In the meantime any new or other market participants not involved in the information exchange system in any case find themselves in disadvantageous situation, since, on the one hand, they do not have at their disposal the relevant information about the markets, and, on the other, participants of information exchange could notice and appropriately respond to any actions of a new competitor and prevent it from seizing their market shares. Thus, in the opinion of the SALC, an information exchange system in certain cases may materially reduce the independence of the participants' decisions, replacing the normal competition risk by practical co-operation which is prohibited by competition rules.

Besides, by referring in this judgement to the practice of the EU Court of Justice, the SALC concluded that any legal or organisational reforms of an undertaking infringing competition rules (the dissolution of one undertaking by merging it to another undertaking) does not necessarily mean that the resulting undertaking is not responsible for the infringement of competition rules committed by the predecessor, where from an economic point of view both undertakings coincide. Thus, the reorganisation or restructuring of undertakings does not create the basis *per se* for the undertaking to be exempted from the liability for an infringement of competition rules. With this taken into account the SALC confirmed that the CC had rightfully concluded the liability for the infringement of the LC to the undertaking to which the infringing undertaking was affiliated.

It should be also noticed that the CC pursued its position to treat agreements between undertakings on information exchange as restrictive prohibited agreements also while taking its Resolution No. 2S-3 of 28 February 2008, whereby the CC recognised that undertakings engaged in milk purchase and processing and their association infringed the requirements of Article 5 of the LC, as these undertakings had been continuously and periodically exchanging the information of confidential character about the quantities of milk purchased and the volumes of produce and sales of dairy products, thus restricting competition. By its judgement of 11 June 2009, the SALC in respect of the undertakings that had lodged the appeals (*UAB Marijampolės pieno konservai* and *AB Rokiškio sūris*) overruled the Resolution of the CC and returned the case for additional investigation on the basis of the conclusion that the CC failed to prove that the actions of the undertakings concerned actually restricted competition. The CC however, having analysed the reasoning provided in the SALC's judgment and still sticking to the opinion that an infringement of Article 5 of the LC may be concluded not only in the cases where the actual restrictive effect of the agreement is proven, but also when a potential (possible) anticompetitive effect of the agreement is evident, in particular, of the agreements to exchange confidential information, which had been previously also supported by the SALC in its judgment of 16 October 2009, submitted an application to renew the consideration of the Resolution of the CC concerned. The CC seeks the SALC to repeatedly consider the case and hand down the decision having properly

assessed and considered a potential anticompetitive effect of the agreement to exchange confidential information concluded by the undertakings engaged in milk purchasing and processing.

2.1.2 Description of significant cases, including those with international implications

- **Prohibited agreements**

Restriction of competition in provision of advertising and media planning services

The CC sanctioned a number of undertakings providing advertising and media planning services, members of the Lithuanian Association of Communication Agencies (KOMMA) for imposing a fixed tender fee upon organisers of tenders for procurement of advertising and media planning services. For this infringement the CC imposed the fines in the amount of LTL 3 392 100 (EUR 982 420) upon the following undertakings: the KOMMA; UAB Adell reklama; UAB Reklamos vizija; UAB DDB Vilnius; UAB Euro RSCG MIA; UAB Inorek & GREY; UAB Kredo R; UAB Leo Burnett Vilnius; UAB AGE reklama; UAB Milk Agency; UAB Not Perfect; UAB SAN Vilnius; UAB Videvita Vilnius; UAB Carat; UAB Creative Media Services; UAB VIA media; UAB Media Bridge Vilnius & Co; UAB Media House; UAB MPG Lietuva; UAB Mediapool; UAB Omnicom Media Group; UAB Star Communications Worldwide; UAB Aukštaitijos reklama; UAB Tarela; UAB VRS grupė; UAB Baltic FCB.

In 2003, the *KOMMA* and its members introduced a fee for participation in tenders (LTL 3 000 or EUR 869) to be imposed upon advertising agencies, and in 2004 some media planning agencies also agreed concerning the imposition of the fee thus seeking to ensure equal conditions for participation in tenders. The fee was charged upon a tender organiser to be paid to undertakings submitting their bids in tenders for the procurement of advertising and media planning services, i.e. to members of the *KOMMA*. Thus members of the *KOMMA*, while being competitors - introduced a flat rate tender participation fee for all undertakings, i.e. performed actions that infringed Article 5 of the LC.

Agreement between undertakings engaged in event organisation and their association

The CC sanctioned a number of undertakings providing event organisation services, members of the Association of Event Organisers *(ROA)* for imposing a fixed tender fee upon organisers of tenders for procurement of event organisation services. For this infringement accordingly were fined the following undertakings: *UAB Alchemic* – LTL 9 300 (EUR 2 693), *UAB Anoniminių darboholikų klubas* – LTL 35 200 (EUR 10 195), *UAB Concept Events & Media* – LTL 45 300 (EUR 13 120), *PE Pirmoji kava* – LTL 39 000 (EUR 11 295) and *UAB Saldo grupė* – LTL 22 200 (EUR 6 430).

In the period 2007-2008, five major undertakings providing event organisation services and their Association *ROA* by the agreement imposed a fixed fee of LTL 2 008 (EUR 582) for participation in tenders. The fee was charged upon tender organisers to be paid to undertakings submitting their bids in tenders for the procurement of event organisation services, i.e. to members of the *ROA*. Thus members of the *ROA* while being competitors agreed to impose a fixed tender participant fee and thus infringed Article 5 of the LC.

Agreement in the market of handling taxable products and packaging waste

For the agreement to fix tariffs for handling taxable products and packaging waste and the issue of certificates on recycling and disposal of taxable products and packaging waste the Association

of Packaging and Electronic Waste Processors *(PEATA*) and five its members were fined as accordingly: the *PEATA* – LTL 131 800 (EUR 38 172), *UAB Antraža* – LTL 35 000 (EUR 10 137), *UAB Metransa* – LTL 60 700 (EUR 17 580), *UAB Super Montes* – LTL 77 000 (EUR 22 301), *UAB Utenos antrinis popierius* – LTL 15 900 (EUR 4 605), *UAB Virginijus ir Ko* – LTL 127 300 (EUR 36 869).

The *PEATA* and its members agreed to fix and publish in the internet website the tariffs for handling waste and issue of appropriate certificates. In its offers to the clients *PEATA* indicated minimum tariffs for handling of small quantities of waste and the issue of certificates. At its meetings the *PEATA* also fixed a possible 20 percent range for the fluctuation of the established tariffs. Furthermore, the *PEATA* and its members were seeking to ensure that waste of certain types and the issue of appropriate certificates would be organised through the Association only. Thus, by concluding a prohibited agreement to fix the tariffs for handling taxable products and packaging waste and the issue of certificates for the recycling (disposal) of taxable products and packaging waste the *PEATA* and its members violated Article 5(1)(1) of the LC.

Actions of undertakings selling new vehicles

The investigation aimed at establishing whether or not the companies selling new vehicles were rightfully requiring technical maintenance and service of such vehicles to be performed in authorised garages only. In the opposite case (with the technical maintenance provided in other than authorised garages) the owners of the vehicles would lose their warranty maintenance clause. The investigation was commenced based on a suspicion that such practice of vehicle sellers possibly infringed the requirements of Article 5 of the LC and Article 101 of the Treaty on the Functioning of the European Union (TFEU). In the course of the investigation the undertakings concerned presented the information and evidence of ceasing the practice that caused the suspicion concerning their compliance with the provisions of the LC and Article 101 of the TFEU and the commitments to refrain from any such actions in the future. Having considered that the actions of the undertakings concerned did not result in any material damage to any interests protected by law and the undertakings suspected of the infringement voluntarily terminated their actions and presented to the CC a written commitments not to perform any such actions in the future, and perform the necessary actions eliminating the alleged infringement and preventing any such infringement in the future, by its Resolution No. 1S-2000 of 24 December 2009, the CC terminated the investigation and obligated the undertakings in respect whereof the investigation was commenced to perform the actions committed.

- **Abuse of dominance**

Actions of Vilnius International Airport from competition law viewpoint

Two cases were investigated concerning the actions of the SE Vilnius International Airport (hereinafter – the Airport) with a view to establishing whether or not the undertaking had infringed the provisions of Article 9 of the LC.

In one case the Airport was recognised to have infringed the requirements of Article 9(1) of the LC by imposing unfair conditions in respect of acquisition of gallery services (selling the service only together with the service of airplane towing from the galleries). In view of the circumstances alleviating the liability of the undertaking the Airport was exempted from the fine.

In another case the CC concluded that the Airport, holding a dominant position in the market for the provision of passenger terminal galleries and taking advantage of its dominant position had

imposed upon the ground service provider *UAB Baltic Ground Services* unfair terms of the service provision agreement by obligating the latter in connection with the gallery acquisition service also purchase the airplane towing service. The investigation concluded that such tying of services and the requirement to acquire them together as inseparable (to be acquired together) was ungrounded, since the service of passenger gallery provision and the airplane towing service are two independent services related by causative, rather than technological relation and could be provided by different individual undertakings.

Another investigation was terminated having failed to prove a dominance of the Airport in the market concerned.

The investigation concerned the actions of the Airport whereby the undertaking *AB flyLAL* was prevented from building the technical maintenance hangar in the territory of the Airport. Such actions of the Airport allegedly prevented the performance of the hangar construction works and created obstacles to compete in parallel with the branch of *Air Baltic Corporation* (hereinafter – *Airbaltic*) and *UAB Baltic Maintenance* in the airplane technical maintenance markets. The investigation established that the Airport was not dominating in the relevant markets therefore; in the absence of a dominance factor the Airport did not have any possibility to abuse its position. Although the Airport does operate the exclusive right to dispose the land on which the infrastructure, necessary for the periodical airplane technical maintenance, is deployed, the Airport itself was not operating on the downstream markets, therefore could not affect the activities of the undertakings providing such services or affect the competition conditions.

Actions of AB Lietuvos geležinkeliai from competition law viewpoint

The investigation concerning a possible abuse of a dominant position by the Lithuanian rail company *AB Lietuvos geležinkeliai* in the market for maintenance and repair of sidings in the territory of the *Klaipėda State Sea Port* was terminated. Having assessed the collected information the CC concluded that the application of different terms by *AB Lietuvos geležinkeliai* (imposition of operating fee) in its agreements with *UAB Klaipėdos konteinerių terminalas* as compared to the terms applied to other stevedoring companies that are competitors is objectively justified. It was established that *AB Lietuvos geležinkeliai* had been, for the extra fee, providing to *UAB Klaipėdos konteinerių terminalas* certain additional services (at a choice of *UAB Klaipėdos konteinerių terminalas* maintenance and repair of sidings), while this service is not provided to other stevedoring companies.

2.2 Mergers and acquisitions

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

5. In 2009, 42 new notifications applying for authorisations to implement concentration of market structure were received. In 46 cases (including notifications received in the previous year) the Resolutions of the CC authorised the implementation of concentration or individual concentration actions, and on one case the authorisation came into effect in accordance with Article 14(3) of the LC. In another case the CC approved the notification submitted by undertakings subject to specific obligations not to change the nature of the economic activity of the undertakings involved.

6. The undertakings paid in total LTL 193 200 (EUR 55 955) in Stamp duty charge for the examination of submitted concentration notifications.

2.2.1.1 Development of concentration cases

Year	2004	2005	2006	2007	2008	2009
Notifications received	56	64	61	78	54	42
Authorisations issued	54	59	59	74	52	46
Of which the concentration authorisations for undertakings registered in foreign States	15	22	15	14	13	14
Authorisations subject to conditions and obligations	5	4	1	2	4	1
Refusals to issue authorisations				1		

2.2.1.2 Overview of concentration cases

7. In 2009, 14 foreign undertakings were issued concentration notifications, thus the number remaining in the same range as in previous years (in 2008 – 13, 2007 – 14, 2006 – 15, 2005 - 22, 2004 – 15). In five cases concentrations were effected between undertakings registered in foreign States partly operating on Lithuanian commodity markets, including both the retail, and wholesale trading in food products, consumer goods, household goods and construction materials.

8. Concentration among the Lithuanian-registered undertakings was performed in 30 cases, of which on 10 occasions the authorisations were issued to undertakings controlled by foreign capital, and in 4 cases – to undertakings controlled by joint domestic and foreign capital.

9. In 2009, the number of concentrations between undertakings operating in the same markets remained unchanged as compared to the previous years (21) although in 2007 there were 38 concentrations that were assessed as horizontal. Horizontal concentrations were effected in a number of markets though, as a rule, by 1 or two cases in each. More numerous horizontal acquisitions were effected in the market for retail trading in food products, consumer goods, toys, pharmaceuticals, fuels, vehicles and books.

10. In 8 cases concentration was assessed as vertical, in 7 cases – conglomerate and in three cases the CC approved the establishment of new undertakings.

2.2.1.3 Assessment of the efficiency of decisions

11. The CC has been continuously monitoring the effectiveness of all its previous decisions. For instance, the consistent decisions passed by the CC in the course of the past several years in respect of the telecommunications market triggered vigorous competition among mobile communications operators which eventually caused lower service tariffs, larger spectrum of services, and a bigger variety of different proposals beneficial to the service users.

12. In 2009, the CC received 258 notifications on concentration from the European Commission Directorate for Competition. In respect of such notifications the CC was requested to submit its comments and proposals in the event the concentrations implemented could possibly produce any negative effect upon competition in Lithuania.

2.2.2 Summary of significant cases

2.2.2.1 Assessment of concentration in retail book market

13. The CC examined the concentration notification filed by *UAB Alma Littera* by acquiring a 100 percent holding of the bookstore *UAB Baltos lankos* and authorised the concentration having established that the intended concentration will not cause or strengthen a dominant position or result in any severe

restriction of competition in the relevant markets. Although the degree of concentration in the market was changing by about 10 percentage points this did not create any significant market entry barriers. Having analysed the situation in the book publication market, wholesale market for trading in books and the retail book trading market, the CC assessed the concentration being implemented as horizontal concentration in the relevant retail market for trading in books.

14. In the case of this concentration *UAB Alma Littera* was acquiring only four bookstores owned by the bookstore *UAB Baltos lankos* operating in *Akropolis* trade centres in Vilnius, Kaunas, Klaipėda and Šiauliai. Since the associated enterprises – *UAB Baltos lankos* (publication sector) and *UAB Baltos lankos* (export and import) were not an object of acquisition, the companies will continue their activities without any restrictions in relation to the markets of wholesale trading in books or book publication.

15. The assessment of the situation in the retail book trading market led to the conclusion that the concentration implemented by *UAB Alma Littera* will increase the market share held, without however, creating a dominant position or any more significant restriction of competition in respect of even the most narrow definition of local markets in the cities of Vilnius, Kaunas, Klaipėda and Šiauliai. *UAB Šviesa*, a company related to *UAB Alma Littera,* manages the bookstore network *Pegasas* (32 bookstores throughout Lithuania) and the internet portal *Knygų klubas*. The retail book trading market includes specialised bookstores, trade centres with book sale outlets, other book selling channels (book clubs, on-line sale etc.), direct selling. In the process of the assessment of the intended concentration the specialists of the CC placed inquiries to the four major trading centres holding a significant share of the market of the retail trading in books. Respondents indicated that they were maintaining co-operation relations both with wholesalers, book suppliers, as well as publishers. In this relation the assessment also duly considered the fact that expenses and time costs of entering into the retail book trading market are relatively small.

16. Further, the analysis of the book publication market established *UAB Alma Littera* and the associated company *UAB Šviesa* operating in the said market. Also, *UAB Baltos lankos* (publication) related to the bookstore *UAB Baltos lankos* is an actor in the book publication market. However, *UAB Baltos lankos* (publication) is not a participant in the concentration, therefore, the concentration degree in the market concerned remains unchanged. According to the data of the Lithuanian Publishers Association, in 2008 there were 479 publishing houses registered in the Republic of Lithuania that in 2008 published at least one book. The market is characterised by a large number of small market participants. *UAB Šviesa* is specialising in the publication of textbooks for schools. The publication of textbooks is different from other book publication segments in its special regulation. There are no legal or other regulations or quotas imposed upon publishers to submit their publication or include it into the list of authorised textbooks. In 2008 - 2009, the list of authorised textbooks included 1 253 textbooks of 49 publishers. 506 of them are published by *UAB Šviesa.*

17. Another concentration case examined by the CC in the retail book trading market was the transaction whereby *UAB Vagos prekyba* acquired the retail book trading business of *UAB Mūsų knyga*. The notification to the CC noted that the retail trading operations of *UAB Mūsų knyga* were incurring loss. For that reason the company was determined to seek ways to reduce the operating costs therefore the company decided to merge 9 bookstores of *UAB Mūsų knyga* with the 31 bookstores of *UAB Vagos prekyba*. The concentration deal would leave two companies operating in the market: *UAB Vagos prekyba* engaged in the retail trading in books; *UAB Mūsų knyga* mostly engaged in the wholesale trade in books. Furthermore, *UAB Vagos prekyba* is taking over all rights in respect of the trade name *Knygų namai*.

18. In this specific case the CC found it necessary to analyse the market in retail trading in books. *UAB Vagos prekyba* manages the bookstore network *Vaga* (31 bookstores throughout Lithuania); *UAB Mūsų knyga* – 9 bookstores operating in Vilnius (5 bookstores), Kaunas (2 bookstores), Klaipėda (1 bookstore) and Šiauliai (1 bookstore). It was established that following the concentration the share of the

retail book trading market held by *UAB Vagos prekyba* changes by about 4 percent. In relation to the present concentration the CC observed certain overlapping of retail book trading activities in Vilnius, Kaunas, Klaipėda and Šiauliai. However, having analysed the local retail markets in book trading, no matter how narrowly defined, no threat of creation or strengthening of a dominant position or lessening of competition in the relevant markets was established.

2.2.2.2 Concerning a possible concentration of *PKN Orlen* S.A. and *AB Klaipėdos nafta*

19. In 2009, the CC carried out the analysis of the possible effect of the transaction of *PKN Orlen S.A.* acquiring *AB Klaipėdos nafta* upon the fuel markets.

20. In the Lithuanian market *PKN Orlen S.A.* operates through *AB Mažeikių nafta* (ORLEN Lietuva), *AB Ventus-Nafta* whose principal activity is processing of raw oil, and retail and wholesale trading in oil products (operates about 50 gas stations). *AB Klaipėdos nafta* was established having assessed the necessity to organise an alternative supply of oil and oil products (dark and light). One of the major segments of the operations of the company is storage of oil and oil products and loading services.

21. The intended concentration between *PKN Orlen* and *AB Klaipėdos nafta* was assessed as vertical since the companies were operating in different supply chain levels (*AB Mažeikių nafta* recycles oil and produces oil products, while *AB Klaipėdos nafta* ensures further distribution of oil products by exercising export-import operations). Furthermore, such transaction might produce a horizontal and mixed (conglomerate) effect.

22. *AB Klaipėdos nafta* performs certain operations in distributing oil products produced by *AB Mažeikių nafta*. The assessment of the infrastructure operated by *AB Klaipėdos nafta*, and its technical facilities led to a conclusion that the company might potentially become a competitor of *AB Mažeikių nafta* in supply of oil products to the Lithuanian market. It should be noted that *AB Klaipėdos nafta* was established as an alternative to the oil product supply. Therefore, the intended concentration could produce a restrictive effect upon efficient competition as it could strengthen the dominant position of *AB Mažeikių nafta* in the wholesale market of oil products. This could be the effect, because the intended concentration can change the capacities and incentives of the concentration participants and their competitors to compete to the detriment of consumers.

23. In this relation account should also be taken of the forthcoming changes in the market in relation to the anticipated changes in legislation and the essential developments in energy markets. An important factor to consider is the anticipated changes in raw material supply after the decommissioning of the Ignalina Nuclear Power Plant. The increase in the power generation volumes by Elektrėnai power plant would increase the demand of fuel oil received from Mažeikiai, as well as through *AB Klaipėdos nafta* (which is a less costly and more efficient supply method than the railway transportation of oil from other States). It could be concluded that the acquisition by *PKN Orlen S.A.* directly or through *AB Mažeikių nafta* (*ORLEN Lietuva*) of *AB Klaipėdos nafta* further strengthens the dominance of *AB Mažeikių nafta* in the Lithuanian energy sector (that is dominant in the Lithuanian oil product market) by also affecting the power generation sector.

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

3.1 Concerning restrictive actions of public administration entities

24. In 2009, the Competition Council investigated 19 cases related to the duty of entities of public administration to protect the freedom of fair competition in Lithuania. In the course of these investigations the Competition Council took interest into markets of public territory management, household waste

management, transport services, and other similar markets. By its three resolutions the Competition Council established infringements of Article 4 of the Law on Competition.

3.1.1 Resolution of the Administration of the Vilnius Region Municipality

25. By refusing to agree the schedule for the regular local route M2-18 "*Kirtimai-Stotis-Kalnėnai-Guriai-Kyviškių aerodromas*" (hereinafter – Route M2-18) extended by the decision of the Administration of the Vilnius Municipality the Administration of the Vilnius Region Municipality discriminated the carrier of the Vilnius Municipality *UAB Lostiras* thus seeking to protect the interests of the Vilnius region carrier H. Mušket. The Resolution of the Vilnius Region Municipality thus created different competition conditions for undertakings competing in the relevant market.

26. The Administration of the Vilnius Region Municipality was recognised to have infringed Article 4 of the LC and was obligated to agree the traffic schedule for the extended route M2-18 executed by *UAB Lostiras*.

3.1.2 Resolution of the Trakai Region Municipality Council

27. The CC concluded that the Resolution of the Trakai Region Municipality Council obligating *UAB Trakų paslaugos* to carry out the public territories maintenance works in Trakai and Lentvaris towns infringed the requirements of Article 4 of the LC and obligated the Trakai Region Municipality within 3 months to repeal the Clauses of the Resolution constituting the infringement of the LC, and terminate the agreement on the maintenance of public territories in Trakai and Lentvaris towns concluded on 8 April 2008 between the Administration of the Trakai Region Municipality and *UAB Trakų paslaugos*. (The First Instance Court upheld the Resolution of the CC).

3.1.3 The Clause of the Methodology for the customs assessment of imported used vehicles approved by the Customs Department

28. The CC passed the Resolution whereby it recognised that Clause 20.1.2 of the "Methodology for the customs assessment of imported used vehicles" approved by Order No. 1B-1198 of 29 December 2004 of the Director General of the Customs Department under the Ministry of Finance of the Republic of Lithuania infringed the requirements of Article 4 of the LC. The Order established that the inspection of hidden defects of damaged vehicles and a record thereof must be executed only by authorised representatives of the respective vehicle brands. The Customs Department was obligated within one month to amend Clause 20.1.2 of the "Methodology for the customs assessment of imported used vehicles" to bring the provision into line with the requirements of Article 4 of the LC.

3.2 Enforcement of the Law on Advertising

29. In 2009, the CC passed 29 Resolutions concerning misleading and prohibited comparative advertising. In 19 cases the competition authority established infringements of the Law on Advertising (hereinafter – LA). Furthermore, one undertaking was sanctioned for the failure to fulfil the established obligations. In 6 cases, in view of the insufficient evidence of an infringement of the LA the CC refused to initiate the investigation. Four investigations were terminated having failed to obtain sufficient evidence and data that the LA had been infringed. Seven investigations are still in progress.

30. Having assessed the advertising statements published in the media means and considered the small significance of potential infringements 40 advertising providers, as a preventive measure, were issued warnings and thus terminated the publication of potentially misleading advertising statements. 186 applicants were consulted concerning the potentially misleading and prohibited comparative advertising, provided the explanations on the requirements of the LA and their enforcement.

31. In many of the cases the ultimate outcome was the protected right of consumers to be well informed and not mislead concerning the developments on the market. The Competition Council has always been and shall remain an uncompromising opponent of any attempts to capture consumers with ungrounded promises especially at a time when most consumers have experienced significant income reductions and any unreasonable purchasing decision has a significantly more critical effect on their household budgets.

32. Total fines imposed by the CC for the infringements of the LA reached LTL 151 200 (EUR 43 790).

3.3 Co-ordination of State aid

33. Acting as the authority in charge of the co-ordination of State aid and with a view to fulfilling its functions defined in Article 48(3) of the LC, the CC has been closely co-operating with the European Commission and public authorities of the Republic of Lithuania (hereinafter – public authorities) on issues related to State aid, provided comments and proposals to regulations drafted by the Commission, also submitted responses to inquiries from the Commission.

34. The CC submitted a number of comments on draft legal acts of the Republic of Lithuania. During the accounting period the CC assessed 93 draft national legal acts prepared by the Ministries of Economy, Finance, Energy, Agriculture, Communications, Education and Science, Culture, Environment, Interior, Social Security and Labour, the State Tourism Department under the Ministry of Economy, the Lithuanian Environmental Investment Fund, the National Land Service under the Ministry of Agriculture, and other institutions. In respect of total 42 draft legal acts (of which: 8 draft laws, 13 Resolutions of the Government, and 15 draft Orders of Ministers) the CC submitted its comments and proposals.

35. During the accounting period the CC prepared and passed its Resolution No. 1S-160 „On the approval of the description of the procedure for the accounting by municipalities for the fulfilment of public functions (delegated to municipalities) supervised by the Competition Council".

3.4 Pricing control

36. Within the scope of its competence the CC had been performing its duties and obligations under the Law on Prices of the Republic of Lithuania and the relevant Resolutions of the Government (03-02-1994, No. 77; 28-05-2002, No. 756; 30-06-2005, No. 739) in the area of pricing, placing a special focus on the compliance of the procedure for the establishment of prices and rates of monopoly goods and services provided by State enterprises established by Ministries and the Government of the Republic of Lithuania and pubic institutions assigned to them. The CC prepared the information on the issues and submitted such information to the relevant public authorities.

37. While performing its duties under the Law on Prices, the CC approved the rates for monopoly goods and services provided by public authorities, State enterprises and public institutions established thereby, and the fees for the provision of the data by State registers and cadastres: total the CC approved 163 prices and rates, and 4 price calculation methodologies.

4. Resources of competition authorities

4.1 Recourses overall (current number and change over previous year):

4.1.1 Annual budget (in your currency and USD):

- LTL 4,59 million (USD 1,74 or EUR 1,33 million at the currency rate of early 2009) in 2008.
- LTL 3,62 million (USD 1,45 or EUR 1,05 million at the currency rate of early 2010) in 2009.

4.1.2 Number of employees (person-years):

- economists - 31
- lawyers – 12
- other professionals – 7
- support staff – 9
- all staff combined - 59

4.2 Human resources (person-year) applied to:

- Enforcement against anticompetitive practices – 31;
- Merger review and enforcement – 10;
- Advocacy efforts – 6.

4.3 Period covered by the above information – 2009.

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

38. Addresses of Annual Reports of the CC in the website http://www.konkuren.lt/en/index.php?show=anual and of press releases http://www.konkuren.lt/en/index.php?show=pr_metai&metai=2009.

39. A market research is provided for below as well.

5.1 Market research

5.1.1 Analysis of the retail market of food products

40. The analysis performed by the CC specialists in the retail food product sector identified the predominant operators in the market – the four major trading networks. In 2008, the trading networks *MAXIMA, IKI, RIMI* and *NORFA* were operating total 612 sales outlets (8.7 percent of all stores engaged in this activity) with the total sales area of 558 000 m² (49.8 percent). In general the number of retail food stores, sales area and the share of the retail food sector held by the major trading networks were continuously increasing – in 2004-2008 the number of stores operated by the networks increased by 35 percent and the sales area increased by about 50 percent. In the same period the number of sales outlets operated by independent retailers and by incorporated smaller networks decreased by 11 percent, although the trading area increased by about 4 percent. The decrease in the number of independent stores with simultaneous increase of their trading areas indicates that undertakings were joining into larger combinations, or some smaller stores were forced to discontinue their operations – in 2004, an average area per store was 75.4 m², and in 2008 – 87.5 m².

41. The share of the four major trading networks in the retail food product market in 2004-2008 increased by 11 percent – from 61.9 to 72.3 percent, while the share of the independent retailers or those incorporated into smaller networks or other combinations decreased from 38.1 to 27.7 percent. Leading in terms of increasing of its share in the market was the MAXIMA trade network that in the course of 5 past

years increased its share by 6.6 percent (from 31.1 to 37.7), IKI – by 1.8 percent (14.1-15.9), NORFA – by 0.6 percent (10.5-11.1), RIMI – 1.4 percent (6.2-7.6). In the retail food product market in municipal territories that from consumer viewpoint may be defined as local markets the four major trade networks in 54 municipalities out of 60 hold over 40 percent of the market, and in some municipalities the share reaches 80-90 percent. Meanwhile the stores that operate independently or incorporated in smaller trade networks or other combinations hold over 40 percent of the market in 18 municipalities, while in 2007, this share of the market by the retailers concerned was occupied in 24 municipalities.

42. To the inquiry in the course of the investigation of the major suppliers of meat product, poultry, dairy, flour and bakery products (total 51 companies) on any unfair supply terms imposed by major trading networks, 18 such entities did not provide their positions on the matter. 19 undertakings in their responses indicated that in the course of negotiations on supply terms they normally find bilaterally beneficial solutions. 14 undertakings noted the extensive periods for settlement for the production supplied, also assessed the inadequate fines for the failure to supply products to the stores as completely ungrounded from the business logics point of view, as well as the excessive marketing fees for trading in trade centres, extensive discounts, sometimes reaching up to 30 percent of the basic price, and excessive fines for failure to fulfil obligations. It should be in this relation noted that during 2008, the major trade networks *MAXIMA, IKI, RIMI* (*NORFA* did not provide the data) collected about LTL 244 m from their suppliers in the form of different charges and fees (discounts, advertising, promotion, marketing), also during the same period claimed about LTL 5 m in fines.

43. In the retail trade market there is a mutual dependence between the goods purchase and the goods sale market – the strengthening concentration in the retail trade market causes a growth of the buyer's purchasing power in the purchase market. The increasing purchasing power enables retailers to impose upon their suppliers smaller prices on the goods, also to require some economically ungrounded discounts and a range of payments, i.e. establish unfair supply terms. Such unfair supply terms adversely affect only the specific undertakings upon which such terms are applied. To establish an infringement of competition law it is not sufficient to conclude that long settlement periods or different fees are contrary to the fair business practice. In order to prove that the terms for the purchase of the goods set forth in the contracts were unfair and that the conduct infringed the norms of competition law, it is necessary to prove that the relevant actions had been exercised with a view to ousting competitors from the market, or creating barriers for entering the market or otherwise restricting competition. Even having established that actions of some undertakings restrict or may restrict competition it is necessary to prove that the undertaking exercising any restricting actions holds in the market the dominant position that is not limited by the size of the market share held only.

5.1.2 Market research concerning liquid oil gas

44. In the course of the reporting period the CC carried out the market research concerning liberalisation of oil gas market, enhancement of competition, equalisation of pricing practices in relation to natural gas, as well as the substantiation of the introduction of the subscriber‘s fee. This market research was conducted having regard to the information received from the Member of the Seimas, A. Kazulėnas, the State Consumer Rights Protection Authority under the Ministry of Justice, and consumers of liquid oil gas from Rokiškis town.

45. Having completed the market research the CC submitted its proposals to the Ministry of Energy to consider a possibility of temporary unification (pending the appearance of effective competition in the liquid oil gas market) of pricing practice in oil gas and natural gas sectors, by initiating by public authorities concerned amendments to the relevant laws and other related legal acts.