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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN LITHUANIA

-- 2010 --

This report is submitted by Lithuania to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 29-30 June 2011.

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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. On 13 October 2010, the President of the Republic of Lithuania submitted for the consideration of the Seimas the Draft Law supplementing and amending Articles 3, 40 and 42 of the Law on Competition and supplementing the Law by Articles 44^1 and 44^2 drawn up by the President's Office in cooperation with the Competition Council of the Republic of Lithuania (hereinafter – CC). The draft Law sought to introduce into the national competition legislation additional instruments facilitating protection of competition, more efficient prevention of infringements of the Law on Competition (hereinafter – LC) and ensuring that offenders are held properly liable for relevant infringements.

2. According to the currently effective legal regulation the liability for infringements of the LC is provided for in respect of undertakings – legal persons, only. In most instances those responsible for infringements of the LC (prohibited agreements concluded by undertakings or abuse of dominance) are managers of undertakings – natural persons, however, when sanctions are imposed upon the undertakings, their managers that have personally contributed to the commitment of the infringement, escape responsibility. With this taken into account the draft Law proposes to provide for the personal liability of managers (natural persons) of undertakings (legal persons). The draft proposes that the LC include a provision whereby for involvement in the conclusion of a prohibited agreement or abuse of a dominant position by an undertaking (legal person) a restriction of right is imposed upon its manager (natural person) to hold office of a manager in public and/or private legal person, to be a member of the collegial supervisory and/or management body of a public and/or private legal person. In addition to this restriction the person may also be fined up to LTL 50 000. The amendments proposed seek to deter from committing infringements and encourage confessing of the infringements already committed.

3. The draft Law also proposes amendments to the procedure for calculation of the amount of fines. The current fine calculation procedure has been drafted on the basis of the already repealed Guidelines of the European Commission (hereinafter – EC) and no longer comply with the currently effective EC Guidelines on the method of setting fines. Therefore the draft Law proposes to supplement Article 42(1) of the LC by Item 6 introducing an additional criterion to be taken into account for the purpose of fine calculation, and provide for the proper preconditions to draw up the new fine calculation methodology fully compliant with the EC Guidelines on the method of setting fines. The methodology for the calculation of fines drafted following the EC Guidelines would enable the CC to impose larger fines and enhance its efficiency in combating competition infringements, which would facilitate ensuring full liability for infringements of the LC.

4. The draft legislation also proposes to establish a longer term of limitation of imposing the liability – 5 years instead of the currently applicable 3 years, as well as define the cases when the run of this term shall be suspended. The proposed measures are designed to eliminate preconditions for violators to unduly avoid liability for their anti-competitive practices.

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: Competition authorities

5. In 2010, the CC passed 278 Resolutions (233 in 2009). 115 Resolutions were passed concerning the enforcement of the LC. 43 undertakings were fined in total LTL 12.2 m (EUR 3.5 m) for the infringements of the LC.

Resolutions of the CC Concerning Infringements of the LC	
Prohibited agreements	6
Abuse of a dominant position	3
Infringements of concentration rules	1
Actions of public administration entities	6

6. During 2010, the CC passed 6 Resolutions imposing fines upon undertakings for concluding and participating in prohibited agreements; one more investigation was completed (the final decision pending to be taken in 2011). 10 new investigations were initiated, on 4 occasions the CC refused to initiate the investigations and one investigation was terminated. At the end of 2010, 12 investigations were still in progress most of them scheduled to be completed in 2011. The investigations were carried out in different areas of economic activity: the CC was assessing the actions of undertakings engaged in the production and trade of food products allegedly infringing competition law requirements; also investigations were carried out in pharmacy, trade in oil products, civil engineering sectors, also in relation to public procurement tenders in different areas. In relation to the investigations of prohibited agreements in 2010 the CC conducted total 60 inspections ("dawn raids") in the premises of the undertakings covered by the investigations.

7. During the reporting year prohibited agreements were definetely in the focus of attention, the CC also increased its staff in charge of the area, therefore the institution managed to improve its performance results as compared to previous years when the CC would pass 2 or 3 Resolutions on prohibited agreements. In 2010, for the first time ever the CC passed the Resolution granting immunity to the undertaking that had notified the CC of the prohibited agreement; the CC also conducted another investigation initiated in response to the information submitted by a market participant who was aware of the agreement between competitors; completed several investigations of vertical prohibited agreements and horizontal (between competitors) agreements.

8. 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. In 7 cases the CC refused to commence the investigations and 2 investigations were terminated. In three cases the breach of Article 9 of the LC was established, of which in one case the breach also concerned Article 102 of the TFEU. In one case the CC approved the assumed commitments.

2.1.2 Summary of activities: Courts

9. In year 2010, national courts examined cases related to the undertakings appeals against decisions passed by the CC in respect of the infringements of the LC. In 20 cases national courts upheld the CC decisions, in 2 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

Year	2006	2007	2008	2009	2010
Total cases	24	33	40	51	65
Judicial decisions	12	9	21	19	24*
Resolutions upheld	7	6	16	15	20
partly amended	3	1	3	1	1
overruled	2	2	2	3	2
Pending cases	12	24	19	32	41

* Including the action against the State of Lithuania on the indemnification of damages to the public company *Mažeikių nafta* regarding the allegedly illegal actions of the Competition Council dismissed.

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

2.1.2.1 Application of EU competition rules in national courts

On 15 March 2010, the Supreme Administrative Court of Lithuania (SACL) passed its Judgment in the administrative case concerning Resolution No. 2S-23 of 6 November 2008 whereby the CC acknowledged that the *SE Vilnius International Airport*, by preventing *UAB Naftelf* from entering the aviation gasoline and jet fuel supply to air planes market in Vilnius International Airport infringed the requirements of Article 9 of the LC and Article 102 of the TFEU. Concerning the infringement of Article 102 of the TFEU the Court held that the indispensable condition for the application of this legal norm is the abuse of dominance potentially affecting trade between Member States. The SACL upheld the observation by the CC that a port or an air port operating in a Member State may hold a significant share of the internal market. The Court treated the actions of the *SE Vilnius International Airport* as the provision of intermediate services (in this case – supply of fuel to air planes) that affects international economic activity.

The Court referred to the information obtained by the CC that the price of fuel accounts for a significant share within the cost of air communication services, and acknowledged that in this particular case the provision of interim services was specifically the factor capable of affecting the international economic activity. By this Judgement SACL for the first time endorsed the Resolution of the CC concluding an infringement of the provisions of the TFEU governing competition.

2.1.2.2 Application of the LC in national courts

- Concerning the use of superlative adjectives in advertising

On 27 May 2010, the SACL passed the Judgement whereby the Court upheld the Resolution No. 2S-3 of 22 January 2009 of the CC concluding that the advertising claim used by the company *BIGBANK AS* "BIGBANK – the fastest road to money" is to be considered to represent misleading advertising. In evaluating the truthfulness of the advertising the Court was assesssing one specific aspect of the advertising statement in question – the adjective used in the superlative degree. The SACL pointed out that although neither Lithuanian, nor the EU law prohibits the use of superlative adjectives in advertising, there must be a clear distinction between objective (objectively measurable and supported by factual parameters of goods or services) and the subjective (independent from specific factual quality indicators of goods or services or assessments) advertising claims expressed in terms of adjectives in the superlative degree. The Court indicated that the descriptor "the fastest" in "BIGBANK – the fastest road to money" is an objectively verifiable indicator of the service, since it may be practically verified and it should not be related exclusively to the subjective opinion of the consumer. The SACL pointed out that

the adjective "the fastest" used in the advertising statement may be assessed by calculating the speed of the provision of consumer credit in the relevant market and comparing it with the speed with which credits are granted by other undertakings operating in the consumer credit market. Therefore, the Court acknowledged that *BIGBANK AS* failed to prove to be the fastest credit provider within the period of the investigation carried out by the CC, as it had claimed in its advertising statements, therefore the Court acknowledged the statements to represent misleading advertising.

- Concerning the discriminatory conditions for fishing vessels in the Baltic Sea

  On 21 May 2010, the SACL passed its judgement upholding the findings of Resolution No. 2S-17 of 30 July 2008 of the CC. The Resolution of the CC recognised as contradicting Article 4 of the LC provisions of the Orders of the Ministry of Agriculture of the Republic of Lithuania establishing the relevant quotas in the Baltic Sea and the limits of fishing areas, and the provisions of the "Rules on the Registration of Fishing Vessels in the Register of Fishing Vessels, the Issue, Management and Revocation of Licences to Fishing Vessels" approved by Director of the Fisheries Department under the Ministry of Agriculture of the Republic of Lithuania.

  One of the most important issues considered in the case was related to the definition of the relevant market. According to the LC, relevant market is understood as a product market within certain geographic territory. The Court confirmed that in the case the CC had correctly defined the relevant market and pointed out that to conclude an infringement under Article 4 of the LC it is sufficient to conclude that undertakings compete or could compete in the absence of any discriminatory or other restrictions not compatible with fair competition conditions, i.e. in this case market definition is subject to specific minimum requirements. The SACL also voiced its position concerning the distinctions of fishing vessels into segments. According to the Rules on the Registration of Fishing Vessels all vessels in the Fishing Vessel Register are grouped into certain segments; the Register also specified the territories in which vessels of each segment are allowed to fish – vessels of the first segment – within the isobath territory sea of up to 20 m in depth, second – in the territory sea beyond the 20 m isobath in depth and in the open Baltic sea, and the third – in the waters of other seas (except the Baltic Sea). The Court upheld the conclusion of the CC that the prohibition for technically capable vessels of first segment from fishing outside the 20 m isobath in depth ensuring larger catch restricted their possibilities to compete in the commercial fishing market; furthermore, the vessels assigned to the second segment find themselves in a privileged position being authorised, only by virtue of the segment to which they have been assigned, to fish in larger territories and thus ensure bigger catches.

- Concerning the competence of the CC to exercise competition enforcement in the area of electronic communications

  On 10 November 2010, the SACL passed the Judgement upholding Resolution No. 1S-51 of 2 April 2009 whereby the CC refused to initiate the investigation concerning compliance of the actions of *TEO LT, AB* with Article 9 of the LC. The Applicant *UAB Nacionalinis telekomunikacijų tinklas* applied to the Court requesting to repeal the Resolution and obligate the CC to perform the investigation. In this particular case the SACL was examining the issue of delimitation of the competences of the CC and the Communications Regulatory Authority. The Court assessed the relevant provisions of the Law on Electronic Communications (hereinafter – LEC) and concluded that the underlying purpose of the Law is to ensure efficient competition in the electronic communications sector which essentially corresponds to the objective of the LC. Furthermore, according to the provisions of the LEC, the CC consults the Communications Regulatory Authority in its fulfilling the functions related to the enforcement of competition in

the area of electronic communications. Nevertheless, the SACL indicated that the parallel application of both the LEC and LC for the same factual legal relations would be incompatible with the objectives of those Laws. Therefore the SACL upheld as substantiated the CC refusal to initiate the investigation as the issues raised at the time of the appeal to the CC had already been considered by the Communications Regulatory Authority on the basis of the LEC.

- Concerning the claim of *AB Mažeikių nafta* against the State of Lithuania

  On 14 June 2010, the SACL passed the Judgement whereby the Court overruled the claim of *AB Mažeikių nafta* concerning the award of damages. On 22 December 2005, the CC had passed the Resolution No. 2S-16 "Concerning the compliance of actions of *AB Mažeikių nafta* with Articles 5 and 9 of the LC and Article 82 of the Treaty Establishing the European Community" imposing upon the Company a fine of LTL 32 m. However, the Resolution of the CC and the fine were revoked by the Judgement of the SACL of 8 December 2008. *AB Mažeikių nafta* claimed it had suffered a material damage in the form of interest for the funds borrowed from credit institutions. The Court, nevertheless, referred to Article 6.271(3) of the Civil Code providing that unlawful act of institutions of public authorities "mean any action (active or passive actions) of an institution of public authority or its employees that directly affects the rights, liberties and interests of persons". As SACL explained as unlawful are recognised only the actions that directly affect the rights, liberties and interests of persons. Therefore for the liability for the damage according Article 6.271 of the Civil Code to arise a mandatory condition is the direct causative relation between the actions of public authorities and the damage incurred. The SACL concluded that the Resolution of the CC did not represent the action that directly led to the damage incurred by *AB Mažeikių nafta*. The court pointed out that, as *AB Mažeikių nafta* claimed itself the damage was incurred because the company did not have at its disposal the amount of a fine of LTL 32 m in the period when the funds were held by the State Tax Inspectorate, rather than by the CC. Therefore, the Court concluded there being no direct causative relation between the Resolution No. 2S-16 of the CC of 22 December 2005 and the damage incurred by *AB Mažeikių nafta*.

- Concerning the limited right to appeal Resolutions of the CC

  On 9 December 2010, the SACL passed the Judgement dismissing the case according to the appeal by *UAB Vilniaus energija* concerning Resolution No. 1S-110 of 2 July 2009 of the CC whereby the CC had initiated an investigation concerning the compliance of actions of *UAB Vilniaus energija* with the LA. The Court held that the Resolution of the CC to investigate restricting actions is one of the procedural documents adopted as part of public administration procedures. The SACL concluded that the LC provided for a possibility to appeal the final Resolutions of the CC, or the CC Resolutions refusing to investigate restricting practices, and Resolution of the CC concerning the initiation of an investigation is not appealable.

2.1.3 Description of significant cases, including those with international implications

2.1.3.1 Prohibited agreements

- The leniency programme yields first results: a cartel agreement having received the information from its participant disclosed

  On 18 February 2010, the CC for the first time in its practice passed the Resolution (No. 2S-6) granting immunity to *UAB Lintera* that on its own initiative was the first to notify of its participation in a prohibited agreement of which the CC had not been aware or had started any

investigation; *UAB Lintera* also furnished some valuable evidence and cooperated with specialists of the CC conducting investigation. The undertaking took advantage of the possibility available under the leniency programme applied by the CC for participants of prohibited agreements to avoid imminent sanctions for hardcore infringements of the LC.

The investigation established that three undertakings (*UAB Lintera, UAB Prof-T and UAB Frezlitus*) being competitors engaged in trading in small mechanisation items and other tools and equipment, acted coordinating their actions while participating in public procurement tenders; also that the actions of the companies coordinating their tender prices essentially enabled one company – *UAB Prof-T* to win tenders. *UAB Prof-T* was awarded the tender in five instances considered in relation to the investigation. The investigation examined the activities of the above mentioned undertakings in relation to their participation in public procurement tenders in 2007-2008 announced by such entities as *SE Ignalina Nuclear Power Plant, AB Mažeikių nafta, AB Lietuvos elektrinė* and others. Such prohibited agreements create a threat that the contracting authorities may be forced to procure possibly substandard goods, services or works or those exceeding market prices and, as a result, incur some unforeseen additional expenses.

Having assessed the findings of the investigation and the explanations presented by the undertakings concerned the CC concluded that *UAB Lintera*, *UAB Prof-T* and *UAB Frezlitus* had infringed the requirements of Article 5 of the LC. *UAB Prof-T* was fined LTL 97 000, and *UAB Frezlitus* – LTL 4 000 (the latter was part of one tender only). Having avoided the threatened sanctions *UAB Lintera* would be able to continue operatinag and competing in the market for public procurement tenders.

- Sanctions upon undertakings engaged in distribution of audiovisual works

In 2010, the CC concluded its investigation of the actions of a number of undertakings engaged in the production and trade in audio-visual products. The investigation was initiated in 2008 and concerned the compliance of the actions of companies engaged in the production of and trading in audio-visual products with the requirements of Article 5 of the LC having as the information at the disposal of the CC allowed a reasonable suspicion that the companies had agreed to fix the minimum sale price. Such actions are prohibited by Article 5 of the LC stipulating that all agreements which have as their object the restriction of competition or which may restrict competition shall be prohibited and shall be void from the moment of conclusion thereof, including agreements to directly or indirectly fix prices of certain goods or other conditions of sale or purchase.

The investigation concluded that UAB Forum Cinemas Home Entertainment had entered into agreements with UAB Computer data international, UAB Elektromarktas, UAB GPP, JV UAB Interatlas, UAB Media Incognito, UAB Palink, UAB Play prekyba and UAB Ronus concerning the conditions of the sale of films which by their very object were of restricting character, i.e., the agreements restricted the possibilities of the undertakings involved to independently set the prices of their products marketed to third parties. The evidence obtained by the investigation proved that the agreements whose object was restriction of competition were also concluded between Forum Cinemas Home Entertainment and Bombos and Pigu (the undertakings had concerted their actions and thus eliminated any uncertainty as to their conduct in the market).

The CC concluded that UAB Bomba, UAB Computer data international, UAB Elektromarktas, UAB Forum Cinemas Home Entertainment, UAB GPP, JV UAB Interatlas, UAB Media Incognito, UAB Palink, UAB Pigu, UAB Play prekyba and UAB Ronus had concluded a prohibited agreement to fix the prices for the resale of films recorded in digital discs and

videotapes, thus infringing the requirements of Article 5(1)(1) of the LC. The undertakings were obligated to terminate the infringement of the LC and were fined.

- Prohibited agreement in the public procurement of vehicle operational lease services and acquisition of vehicles

  For the agreement to submit concerted commercial offers for public tenders for procuring vehicle operating lease services and acquisition of vehicles lauched in 2008 by Lithuanian police commissariats and *UAB Rokiškio vandenys* undertakings *AB Autoūkis*, *UAB Autodina* and *UAB Moller Auto* were fined totaling LTL 1.5 m. The investigation initated in 2009 established that in the case of the public procurement tenders covered by the investigation the companies involved were maintaining contacts and communicating concerning their tenders offered to procuring organisations: employees of the companies communicated discussing various issues related to the participation in the procurement tenders (*AB Autoūkis* being the most frequent initiator of such coordination); the companies would even draw up and submit tenders on each other's behalf. As a result, in all six public procurement tenders examined under the investigation the winner of the tender was determined in advance, and competition in respect of procuring organisations was only imitated.

  When imposing the sanctions the CC considered that the concerted actions in relation to participation in public tenders constituted a hardcore infringement of competition law. The CC, also, considered the impact of individual undertakings in the commitment of the infringement, i.e., in five instances of public procurements *AB Autoūkis* acted as an initiator of the infringement, *UAB Moller Auto* was the initiator on a single occasion, while the role of *UAB Autodina* in all cases was passive. Furthermore, in imposing the fines the CC took into account that *UAB Autodina* and *AB Autoūkis* partly acknowledged the circumstances established, and in view of the difficult situation in the vehicle business sector the fines were reduced by 20 percent.

- Restriction of competition in the markets of compulsory insurance for the civil liability of building designer and contractor

  For the restricting insurance pool agreement concerning the compulsory insurance for the civil liability of building designer and contractor that did not meet the requirements of block or individual exemption two insurers operating in Lithuania were fined accordingly: *AB Lietuvos draudimas* – LTL 400 300 and *UAB DK PZU Lietuva* – LTL 130 800.

  The investigation (period covered 2002 through 2009) examined the provision by insurers of insurance services related to construction activity, i.e., compulsory insurance for the civil liability of building designer and contractor. The information collected in the course of the investigation and other circumstances established allowed the conclusion that the two undertakings - *AB Lietuvos draudimas* and *UAB DK PZU Lietuva* (former – *UAB DK Lindra*), having concluded the pool insurance agreement infringed competition law requirements applicable to cooperation agreements between competitors in the insurance market. On 26 February 2003, the two companies concluded the Framework Cooperation Agreement under which the insurers agreed to cooperate in providing the compulsory insurance for the civil liability of building designer and contractor and the suretyship insurance (insurance of participating in tenders and of contract surety). Having concluded the Agreement and other agreements and documents related thereto the parties agreed on insurance contract terms, the procedure for the calculation of insurance premiums, minimum premium amounts and other terms of insurance, such as uniform risk assessment and the unified commission to external intermediaries.

The insurance pool agreements of a similar type restricting competition are not prohibited *per se*, and, provided they meet certain requirements, may benefit from block and individual exemptions, however, in the case concerned the requirements of block or individual exemption were not met.

By such actions *AB Lietuvos draudimas* and *UAB DK PZU Lietuva* thus restricted competition in the relevant compulsory insurance for the civil liability of building designer and contractor markets thus committing an infringement of requirements of the LC.

It should be noted that the agreement whereby *AB Lietuvos draudimas* and *UAB DK PZU Lietuva* agreed not to compete by prices for the compulsory insurance for the civil liability of building designer and contractor services, provided in the framework of insurance pool agreement, was concluded between major insurers operating in the general third party liability insurance markets. The scope of the agreement, when assessed in the context of competition in the compulsory insurance for the civil liability of building designer and contractor markets, was quite weighty as it covered significant shares of the relevant markets and had a long-term effect. Having considered the circumstances related to the nature of the agreement, its conclusion and implementation the CC concluded that in the absence of the agreement competition in the market concerned would have been more efficient.

- Cartel agreement in the market for the sale of pure-breed puppies with the pedigree documents issued by the Lithuanian Cynological Society (LCS)

  The CC initiated the investigation in response to the application from the *IC Terra Animalis* engaged in retail trading within the shop network KIKA. The CC passed the Resolution whereby it recognised that the Lithuanian Cynological Society (LCS), by establishing the prohibition in respect of its members to sell puppies with pedigree documents issued by the LCS to natural or legal persons with the view to reselling the puppies had infringed requirements of Article 5 of the LC. Such actions of the LCS restricted competition between dog breeders in selling puppies and prevented pet stores and other resellers from acquiring puppies holding pedigree documents issued by the LCS. Such actions of the LCS created a market foreclosure barrier for some existing or potential competitors.

  For this infringement of the LC the LCS was fined LTL 32 300, also obligated to immediately terminate the infringement of the LC. The CC also obligated the LCS to repeal the obligation set forth in the Regulations on dog breeding in respect of breeders within one month from the sale of a puppy to submit to the LCS's Secretariat office copies of the documents certifying the sale of the puppy to a new owner.

- Prohibited agreements between undertakings trading in decoupage articles

  The CC established that by having concluded prohibited agreements on fixing retail prices or coordinating the level of prices for decoupage articles, the companies, *UAB Puse Plus Kaunas*, *UAB Creativa grupė*, *PC Terra animalis* and *UAB Senas Naujas* infringed the requirements of Article 5 of the LC. The actions of retail price coordination were performed both by concluding wholesale (vertical) agreements (*UAB Puse Plus Kaunas* acting as a wholesaler concluded such agreements with *UAB Creativa grupė*, *PC Terra animalis*) and by means of electronic correspondence and verbal contracts (between *UAB Puse Plus Kaunas and UAB Senas Naujas*). The companies were obligated to cease the actions infringing the LC, and the fines imposed upon all infringers exceeded LTL 60 000.

The accomplished investigation demonstrated that restrictive agreements, i.e. the agreement to directly or indirectly fix the prices of a specific article or other terms for purchase or sale – may exist in most diversified markets and even among comparatively small undertakings. Such agreements may cause consumers to overpay for articles of any purpose.

- Completed investigation concerning possible infringements of competition law in the market for orthopedic articles

  Late in 2010, the CC completed the investigation concerning possible prohibited agreements between undertakings engaged in the production and trade in orthopedic articles. The investigation also involved the assessment of actions of the National Health Insurance Fund under the Ministry of Health (NHIF) potentially infringing Article 4 of the LC. The final decision concerning the possible infringements will be taken in 2011.

2.1.3.2 Abuse of dominance

- Actions of Vilnius International Airport

  In 2010, the CC passed the decision concerning the compliance of actions of the SE Vilnius International Airport (hereinafter – *SE VIA*) with the requirements of Article 9 of the LC and Article 102 of the TFEU. The investigation was initiated acting upon an application of *UAB RSS MOTORS* requesting the CC to establish whether or not the *SE VIA,* a competitor of the Applicant in supply of jet fuel to airplanes, was abusing its dominant position by refusing to allocate to the Applicant more space in the fuel storage facilities, and a parking space meeting the fire safety requirements for the third fuel feeder of the Applicant. In its complaint *UAB RSS MOTORS* also indicated that *SE VIA* was establishing unreasonably low prices for the fuels supplied thereby.

  The CC established that the *SE VIA* was abusing its dominant position thus infringing Article 9 of the LC having, without any due reason, refused to allocate an additional quota for fuel storage to *UAB RRS MOTORS,* and a parking space for the Applicant's fuel supply vehicle. For this infringement the *SE VIA* was fined LTL 76 000 and obligated to terminate the illegal activity, i.e. within an established time period to grant to *UAB RSS MOTORS* an additional quota in fuel storage facilities according to the latter's applications and on the non-discriminatory and transparent basis.

  Also, having assessed that the Ministry of Transport and Communications is the founder of the *SE VIA* and the public authority responsible for the proper implementation of the Rules on the Provision of Ground Services, the CC recommended the Ministry to take active actions and measures to ensure fair competition in the market for the provision of jet fuels to airplanes.

  Having acknowledged the committed infringement of the LC by the actions as referred to above in respect of *UAB RSS MOTORS* the CC concluded there being no grounds to claim that in the period concerned the *SE VIA* had been applying "predatory" prices, therefore these actions of the *SE VIA* did not constitute an element of abuse of the dominant position.

  Such conclusions of the CC were also supported by the Vilnius Regional Administrative Court which judgement, after coming into effect, completed the judicial disputes in the case.

  It should be noted that the *SE VIA* even before the completion of the investigation had been on two occasions sanctioned for the infringements of competition rules (abuse of dominance) that

had significantly impeded the operational conditions of jet fuel suppliers in the airport. At the same time the CC also notes that the previous infringement by the SE VIA, as well as the one covered by the investigation concerned were related to the actions of the *SE VIA* administration, however, the circumstances have materially changed and all issues related to restriction of competition are addressed following the relevant requirements.

- Actions of UAB Vilniaus energija

In 2010, the CC completed the resumed investigation concerning the compliance of actions of *UAB Vilniaus energija* with the requirements of Article 9 of the LC. Having assessed the findings of the additional investigation carried out according to the judgement passed by the Vilnius Supreme Administrative Court, the CC resolved that UAB *Vilniaus energija*, by imposing unfair prices in the markets for the lease of communication tunnels in Vilnius, had infringed Article 9 of the LC and fined the company LTL 178 000. Also, in this connection *UAB Vilniaus energija* was obligated to terminate the infringement by submitting to communication tunnel lessees new draft agreements on the lease of transitory collectors and technical corridors, or respective amendments to the existing agreements.

The additional investigation also established that by having disproportionately distributed the lease fees *UAB Vilniaus energija* imposed upon individual groups of lessees unfair prices, i.e., for the lease of the same space of the tunnel some lessees were charged a ten-fold price than others. Thus, by paying for the lease of communication tunnels such undertakings would pay not only for the tunnel areas occupied thereby, but also cover the communication costs of *UAB Vilniaus energija* that the company actually had to cover by itself in proportion to the share of communication facilities it operated. This concludes that when leasing communication tunnels *UAB Vilniaus energija* had been applying "exploitative" prices.

- Additional investigation concerning actions of *AB ORLEN Lietuva*

Having assessed the conclusions of the additional investigation the CC acknowledged that *AB ORLEN Lietuva* (former *AB Mažeikių nafta*) had infringed Article 9 of the LC and the requirements of Article 102 of the TFEU. *AB ORLEN Lietuva* was obligated to terminate its activities infringing the requirements of the relevant legal acts. For those infringements *AB Orlen Lietuva* was fined LTL 8 231 000.

Having considered the aspects pointed out by the Supreme Administrative Court of Lithuania in its judgment obligating to conduct an additional investigation the CC repeatedly examined and substantiated the conclusions of its Resolution of 2005. The additional investigation involved the specification of the relevant market definition by narrowing the geographic market to the territory of the Republic of Lithuania, which was substantiated by a number of extensive arguments, and providing additional substantiations for the definition of the product market. Having considered the evidence collected in the course of the investigation the CC concluded that *AB Mažeikių nafta* had been performing certain restricting actions, i.e., was abusing its dominant position in the market for the sale of gasoline, and, accordingly, the sale of diesel from the factory in the territory of the Republic of Lithuania. The investigation concluded that the pricing policy employed by *AB Mažeikių nafta* was designed to restrict the entry of competitors into Lithuanian market, i.e. to avoid import competition: diesel fuel – from the East, and gasoline – from the West. Certain discounts granted to companies acquiring fuels were economically ungrounded and the rebate system itself actually meant the application of dissimilar conditions in agreements of similar character. The rebate system applied by *AB Mažeikių nafta* actually discriminated certain undertakings (*UAB Rekolas*, *UAB Skulas*, *UAB Saurida*, *UAB Hydro Texaco*, *KB Tiltoilas*) in

respect of selected others (*UAB Lukoil Baltija*, *UAB Lukoil Baltija servisas*, *UAB Lietuva Statoil* and *UAB Neste Lietuva*) actually operating in the same market. Furthermore, having considered the market power exercised by *AB Mažeikių nafta* in the Lithuanian territory that was approximating monopoly status, and the conduct of *AB Mažeikių nafta* in establishing gasoline and diesel fuel consumer prices the CC concluded that *AB Mažeikių nafta*, by imposing some loyalty obligations sought to "tie up" its consumers and restrict their free behaviour in the market in respect of the changes of oil product prices or other actions, and choose other producers only in the cases when *AB Mažeikių nafta* was not able to supply them with oil products. This actually resulted in a foreclosure of the Lithuanian gasoline and diesel markets from other producers, thus significantly restricting competition therein.

The CC changed the amount of the fine imposed upon *AB Orlen Lietuva* (LTL 32 m by Resolution No. 2S-16 of 22 December 2005) having, during the resumed investigation, narrowed the geographic market to the national territory of the Republic of Lithuania, also reassessed as non-infringing actions of *AB Mažeikių nafta* related to discrimination of undertakings on territorial basis and sale of arctic diesel fuel to corporate customers. It should be noted that in relation to imposing the fine the CC took into consideration the circumstances aggravating the liability of the company that was sanctioned for infringements of the LC for the third time.

- Commitments assumed by *Forum Cinemas*

Acting in accordance with Article 30(2) and Article 30(3) of the LC the CC passed the decision to terminate the investigation concerning the compliance of *UAB Forum Cinemas* with the requirements of Article 9 of the LC – alleged abuse of its dominant position. The investigation was terminated having assessed the commitments assumed by *UAB Forum Cinemas*. In the opinion of the CC the commitments by the company prevent any possible infringements of the LC in distributing films or allocating them to individual cinemas, as well as addressing other aspects related to the film demonstration and distribution activity. Such commitments create preconditions for avoiding in the future any possible infringements of Article 9 of the LC concerning which competitors had applied to the CC, and the spectators in different cities will be quicker delivered the newest films.

The investigation was launched in response to the application of *UAB Cinamon Operations* on suspicion that *UAB Forum Cinemas* was holding a dominant position in the film distribution market, and could abuse its dominance in breach of Article 9 of the LC: the investigation established several instances justifying a suspicion that the company was exercising pressure upon other distributors demanding to impose restrictions in renting film copies, or refuse to rent copies of certain films to some cinemas. It was also established that in its activities *UAB Forum Cinemas* was using one trademark, acting both as films distributor and as a cinema operator. The commitments assumed by *UAB Forum Cinemas* specifically eliminate those aspects of the activity that had been raising suspicions both to its competitors and the CC. *UAB Forum Cinemas* is obliged to fulfil the commitments assumed thereby and in case of failure the CC may impose fines.

The CC holds that the specific commitments assumed by *UAB Forum Cinemas* and, on that basis, the termination of the investigation actually resulted in the achievement of the results pursued by the Resolutions – to terminate the activity that could potentially infringe fair competition. In the opinion of the CC the commitments assumed were appropriate and sufficient to refute the suspicion that actions of the undertaking possibly infringe competition law.

2.2 Mergers and acquisitions

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

11. During 2010, the CC examined 41 notification concerning authorisations to implement concentration of market structures, of which 40 were received in the course of the reporting year, and one notification was brought forward from 2009. In 33 cases the concentration transactions were authorised by Resolutions of the CC, and the examination of 8 cases will continue in 2011. During the reporting period the CC completed one investigation concerning the compliance of undertakings with the requirements of Articles of 10(1) and 11(2) of the LC, and imposed economic sanctions, and on one occasion refused to initiate an investigation regarding the alleged infringement.

12. In 2010, undertakings paid total LTL 179 400 (EUR 51 958) in Stamp duty for the examination by the CC of their concentration notifications, besides, the CC fined one undertaking LTL 10 000 for the delayed submission of the concentration notification.

Overview of Concentration Cases

Year	2006	2007	2008	2009	2010
Notifications received	61	78	54	42	40
Total authorisations granted	59	74	52	47	33
Of which to undertakings registered in foreign States	15	14	13	14	11
Authorisations subject to conditions and obligations	1	2	4	1	
Refusals to issue an authorisation		1			

13. With a view to more expediently processing applications to implement concentration transactions and having considered that the intended concentrations will not create any dominant position or significantly weaken competition, in four cases the Resolutions of the CC, in accordance with Article 12(3) of the LC, authorised individual concentration actions pending the final decisions. In a number of cases prior to filing the notifications undertakings were seeking advice from the CC's specialists which appreciably improved the quality of the notifications, which also made it possible to reduce the scope of information required to be provided as necessary for passing the decisions by the CC.

14. In more complicated cases the CC was inviting public authorities or business associations to express their views, also organised meetings with their representatives.

15. In 2010, as compared to previous years, the number of authorisations issued to foreign undertakings was lower – 11 (14 in 2009, 13 in 2008, and 14 in 2007), of which in 7 cases concentration was implemented by foreign undertakings operating also in the Lithuanian product markets, including financial services markets, retail trade in food products, and production of pharmaceuticals.

16. Concentration among the Lithuanian-registered undertakings was recorded in 21 cases, of which on 6 occasions the authorisations were issued to undertakings controlled by foreign capital, and in 15 cases – to undertakings controlled jointly by domestic and foreign capital.

17. The number of conglomerate concentrations increased to 14; concentrations between undertakings operating in the same markets that are assessed as horizontal reduced slightly – total 19 registered in 2010 (21 in previous years). Horizontal concentrations were observed in a number of markets; however most of the acquisitions were recorded in wholesale and retail markets of trading in food products, consumer goods and fuels; all were authorised by the CC as the degree of concentration in those markets changed insignificantly.

18. In relation to the examination of concentration notifications the CC carried out a comprehensive analysis in the retail trade market in petrol, diesel fuel, liquid gas, food products and consumer goods both in Lithuania, and in individual local markets. The analysis sought to assess the principal factors affecting fuel prices in Lithuania, examined the markets of retail trade in food products and consumer goods (commodity markets, shares of trading spaces and the efficiency of utilisation of the same by individual trade networks).

19. Notably, due to concentration (acquisitions) within the meaning of Article 10 of the LC the market share of retail trade networks in the course of the past decade had increased insignificantly, by several percentage points only. For instance, *Maxima LT, UAB* since 1998 when its share in the market of retail trade in food products was less than 20 % had not implemented any concentration transactions, save for individual cases by acquiring, under lease arrangements trade spaces which did not have any material effect upon the position of the company in the market. Trade networks were expanding following a natural course: by acquiring from municipalities or private persons plots of land and constructing objects of retail trade, privatising or acquiring bankrupt or inoperative companies mostly as land or structures that are subsequently refurbished, redesigned and adapted for retail trade purposes, or in some cases demolished and built as new retail trade facilities; thus according to agreements with municipalities trade networks reconstructed bus stations by arranging them into the premises for retail trade; or by leasing (according to pre-concluded agreements) trading facilities (newly built or reconstructed) from real estate agencies or property developers. Control of these methods of development is outside the scope of competition regulations.

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

20. In assessing the compliance of actions of public administration entities with the provisions of Article 4 of the LC providing for the duty of public administration entities to protect the freedom of fair competition in Lithuania, the CC established total 6 infringements, initiated 14 new investigations, on 13 occasions refused to initiate the investigation and one investigation was terminated.

- Resolution of the Government and actions of the Ministry of Energy concerning oil products

  In 2010, the CC carried out an investigation concerning the compliance of the *Rules on the formation, management, accumulation and control of State oil and oil products reserve* with the requirements of Article 4 of the LC, and concluded that the 10 percent State oil and oil products reserve as established in Item 22 of the Rules is not sufficient in order not to restrict the oil products import and ensure a smooth functioning of the Lithuanian market, as well as an efficient competition in the wholesale market of trade in oil products. Furthermore, in the opinion of the CC, the current regulation is ambiguous by not clearly defining the basis for the calculation of the State reserve allowed to be stored in other States.

  The CC arrived at the conclusion that Item 22 of the Rules was contradicting Article 4(1) of the LC, and, with a view to ensuring enhanced transparency of the decision making process, recommended the Government to ensure a proper regulation of principles and procedures for the recognition of oil and oil products as part of State reserve, also the procedures for the issue of authorisations to accumulate and store oil and oil products reserves in other Member States, the procedure and the terms for the issue of authorisations, and provide for dispute adjudication procedures.

The CC held that the Ministry of Energy, by refusing to issue the authorisation to *UAB Lukoil Baltija* to accumulate and store the State oil products reserve in the Republic of Latvia, infringed Article 4 of the LC.

The CC in this respect noted that by unreasonably refusing the authorisation to *UAB Lukoil Baltija* to store part of its fuel reserve in a foreign State and by not providing any reasonable grounds for its refusal not only prevented the company from acquiring the service at lower cost, but also restricted its possibilities to procure the storage service outside Lithuania. Since at that particular time there were no vacant storage facilities in Lithuania, the company was prevented from acquiring the service outside the country. As a result of such actions by the Ministry import of fuels into Lithuania was artificially restricted, competition conditions in the wholesale fuel market were adversely affected, as Lithuanian consumers were forced to purchase fuels from a single producer only. Furthermore, it produced a negative effect upon the undertakings operating in the retail fuel markets, since they were prevented from competing in prices which eventually violated the interests of numerous consumers.

The CC obligated the Ministry of Economy within 1 month to pass a decision or decisions related to the recognition of oil products as State reserve of oil products and the authorisation to store oil products reserves outside the territory of the Republic of Lithuania in respect of *UAB Lukoil Baltija* compliant with the provisions of Article 4 of the LC.

- Decision of the Vilnius City Municipality concerning project management services

The CC concluded that the Vilnius City Municipality in passing its decisions and concluding on the basis thereof the contract authorising *UAB Vilniaus vystymo kompanija* to provide building design management and construction management, as well as other construction-related services, was granting privileges to the company in respect of other undertakings operating in the relevant market by creating different competition conditions to competing undertakings operating in the same relevant market.

As was established in the course of the investigation the Municipality, having without any tender procedure authorised *UAB Vilniaus vystymo kompanija* to provide building design management and construction management, as well as other construction-related services, thus created different competition conditions for undertakings operating in the relevant markets, since *UAB Vilniaus vystymo kompanija* was not the only capable of providing such services that could compete with the company in providing the services concerned. The CC obligated the Municipality within one month to repeal the decisions and regulations specified in the Resolution of the CC, or amend them to ensure their compliance with Article 4 of the LC.

- Decision of the Vilnius City Municipality concerning mandatory services

The CC concluded that the relevant provisions of the Decision of the Vilnius Municipality Council obligating *UAB Grinda* to provide mandatory services contradicted Article 4 of the LC. By this decision the Vilnius Municipality, without any tender or other competitive procedure, granted exclusive rights to *UAB Grinda* to provide mandatory services – maintenance of city streets in winter, maintenance and operation of wastewater networks, localisation of emergency situations in streets, operation of sand, snow and soil landfill, mechanical cleaning and washing of part of the streets, care of stray animals, organisation of quarantine, euthanasia and special sanitary services.

The CC concluded that the Decision prevented other undertakings operating in the same market from offering their services, and the Municipality failed to consider that the markets of the services meeting its needs were competitive and undertakings in the market should compete for the right to provide the services. The Municipality was obligated to repeal the relevant clauses of its decisions and terminate the service provision agreements with *UAB Grinda*.

- Decisions of the Administration of the Alytus City Municipality

The CC found that two Orders passed by the Director of the Alytus City Municipality whereby the Municipality refused to extend the validity of the permits for several companies of passenger carriage on several regular routes in Alytus, infringed Article 4 of the LC and obligated the Municipality, within 1 month, to repeal the Orders or to amend them bringing them into compliance with Article 4 of the LC.

The CC assessed the Orders concerned as creating different competition conditions for undertakings operating in the relevant markets, as at the same time the Municipality was extending or even issuing new permits for other competitors to operate the same routes. The Municipality was referring to the need to optimise the operations of passenger carriers in Alytus when passing the decisions. However, the CC concluded that without establishing any clear conditions or principles for selection of carriers, and by withdrawing the permit for one company while issuing, with no legitimate basis or reason, to another company for three years ahead the Municipality was unjustifiably restricting the possibilities for some carriers to operate in the market, was restricting competition thus infringing Article 4 of the LC.

3.2 Concerning unfair commercial activity

21. In assessing the compliance of actions of undertakings with the requirements of Articles 5 and 6 of the Law on Advertising (hereinafter – LA) and Article 16 of the LC, during 2010 the CC established total 18 cases of infringements, initiated 19 new investigations; in 10 instances in the absence of sufficient evidence concerning infringements of the LA and/or LC the CC refused to initiate investigations, and one investigation was terminated for lack of evidence of an infringement of the LA. It should be noted that 7 investigations started in 2010 will be on-going during 2011, on 80 occasions the undertakings implemented preventive measures – obligations to terminate the misleading advertising and the investigations were not launched.

3.3 Coordination of State aid

22. Acting in accordance with the EU State aid rules and performing its functions of the coordinating authority in State aid-related issues the CC closely cooperated with State aid providers in drafting notifications to the EC, and submitting other information related to State aid.

23. During the accounting period the CC analysed and assessed from the view point of the State aid total 72 draft national legal acts submitted by the Ministries of Economy, Finance, Energy, Agriculture, Transport and Communications, Education and Science, Culture, Environment, Interior and National Defence, also to the regulations drafted by the Department of Physical Education and Sports under the Government of the Republic of Lithuania, as well as a number of other public authorities. In respect of total 24 draft legal acts (of which: 3 draft laws, 14 Resolutions of the Government of the Republic of Lithuania, and 7 draft Orders of Ministers) the CC submitted its comments and proposals.

3.4 Pricing control

24. 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 (hereinafter – the LP) 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 public institutions assigned to them. The CC was preparing and submitting the relevant information related to price issues to the relevant public authorities. In exercising the enforcement of the LP, 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 40 prices and rates and one methodology for price calculation.

3.4.1 Investigation in the changes of food prices

25. In autumn 2010, the CC carried out an investigation addressing changes in food product prices. The purpose of the investigation was to identify the factors and reasons that have caused the recent changes in food product prices. The information collected in the course of the investigation allowed the CC to conclude that the trend of food price increase was observable not only in Lithuania, but also in other States.

26. In the case of food products a price increase may be triggered by several structural factors (world population growth, increase of income levels in developing economies), as well as some temporary factors (adverse natural conditions, export prohibitions imposed by some States). A frequently observable trend of a sudden increase in prices triggered by an increase in production cost and a significantly slower decrease in the same with the production resources' fall in prices is not entirely uncharacteristic of competitive markets and does not necessarily indicate the presence of oligopoly markets or operation of prohibited agreements. The trend depends, *inter alia*, on the number of intermediaries operating in the food product chain, competitive chain structures and the difference in the bargaining power of transaction parties. On the other hand, prices may be also affected by anti-competitive factors.

27. After assessing, however, the changes in the prices of principal production resources and in the wholesale and retail prices of cereals, the CC concluded that the changes in the raw material prices alone did not account for the increase in the prices of certain relevant food products.

28. Having considered that the information collected did not lead to the conclusion on the recent increase in the food product exclusively for objective economic reasons, rather than due to the weakened competition, the CC, *ex officio*, launched an investigation according to the provisions of the LC in order to assess whether or not a number of undertakings engaged in the production and/or marketing of food products have committed any actions prohibited by Article 5 of the LC (i.e. concerted actions or agreements) that could have possibly led to the increase in food products prices.

3.5 Other activity

29. Acting in accordance with the Law on the Prohibition of Unfair Commercial Activities of Retail Trading of the Republic of Lithuania that came into effect on 1 April 2010, the CC initiated an inquiry concerning the enforcement of this Law. According to Article 14 of the Law the CC was obliged to draw up and submit, by 1 March 2011, the Statement on the Monitoring of the Law specifying the progress in attaining the objectives pursued by the Law, any negative outcomes, as well as any proposals concerning improvement of the Law.

30. With this purpose in view all major trade networks and companies supplying food products were submitted inquiries to which the CC received responses that are currently further analysed.

31. The CC carried out an investigation concerning the changes in the food product prices and submitted the findings of this investigation to the Government of the Republic of Lithuania and the public.

32. With a view to informing, as widely as possible, the public about the food product prices in trade networks, the CC concluded the agreement with the SE Agricultural Information and Rural Business Centre concerning the collection, management and publication of information from retail traders in the internet website www.produktukainos.lt. Every week the website is updated with the data on the lowest, highest and average prices of most important food products (milk, meet and meet products, chicken, bread, fish, flour, groats and vegetables – total 45 articles).

33. The CC also entered into the cooperation agreement with the Lithuanian Institute of Agrarian Economics for carrying out the analysis of food products marketed in Lithuania, also of elements of the price structure and other related aspects, and drawing up joint conclusions of such analysis. The website www.produktukainos.lt also publishes the data on the margins charged by trade networks in respect of 10 most common food products.

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 3,62 million (USD 1,45 or EUR 1,05 million at the currency rate of early 2010) in 2009,
- LTL 2,99 million (USD 1,25 or EUR 0,87 million at the currency rate of early 2011) in 2010.

4.1.2 Number of employees (person-years):

- economists - 23
- lawyers – 21
- other professionals – 5
- support staff – 8
- all staff combined - 57

4.2 Human resources (person-year) applied to:

- *Enforcement against anticompetitive practices – 35;*
- *Merger review and enforcement – 7;*
- *Advocacy efforts – 8.*

4.3 Period covered by the above information – 2010.

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

- References to the CC activities: Annual Report and press releases.
- More information can be found on CC website www.konkuren.lt