



ANNUAL REPORT
2008



COMPETITION COUNCIL
OF THE REPUBLIC OF LITHUANIA

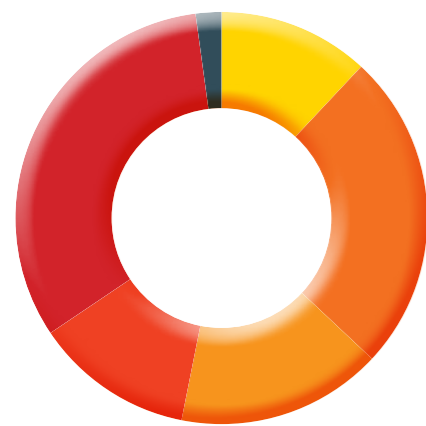
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COMPETITION COUNCIL IN 2008: ACTIVITY HIGHLIGHTS

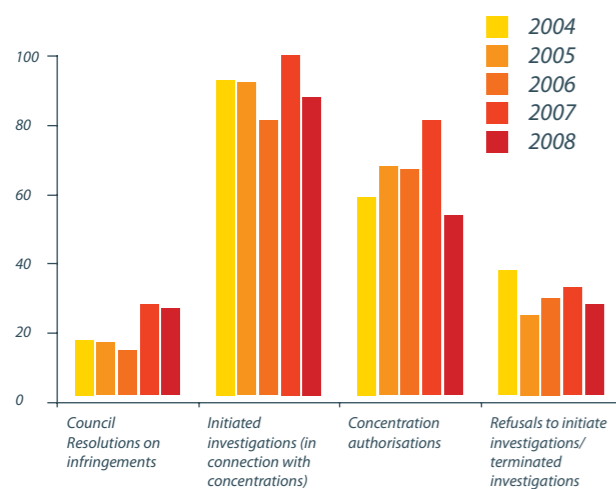
ACTIVITIES IN 2008 – FACTS AND FIGURES

In 2008, the Competition Council (hereinafter – CC) passed **209** Resolutions

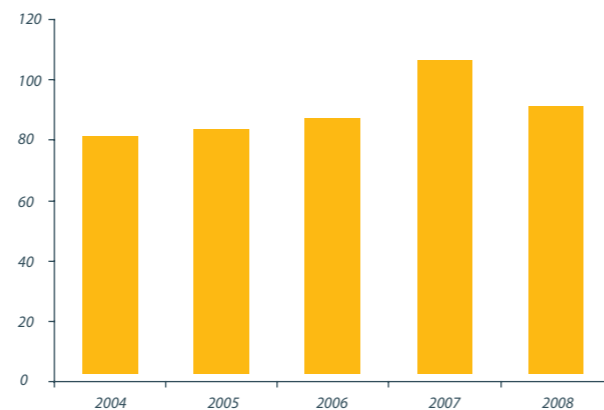


- Resolutions on infringements 25
- Concentration authorisations 52
- Initiated investigations 34
- Refusals to initiate investigations/terminated investigations 26
- Resolutions concerning investigatory actions 68
- Resolutions concerning legal acts 4

RESOLUTIONS: NATURE AND NUMBER



RESOLUTIONS ON COMPLETED INVESTIGATIONS ACCORDING TO THE LC



The number of the Resolutions passed by the Competition Council in accordance with the Law on Competition (hereinafter – the LC) has been steadily increasing, furthermore, the investigations underlying the Resolutions were increasing in complexity and scope.

NUMBER OF UNDERTAKINGS SANCTIONED AND THE AMOUNTS OF THE FINES IMPOSED

Year	2004	2005	2006	2007	2008
Sanctioned undertakings/groups of undertakings/associations	22	18	14	22	23
Fines imposed, LTL	281 500	32 210 500	3 883 514	618 281	2 869 500

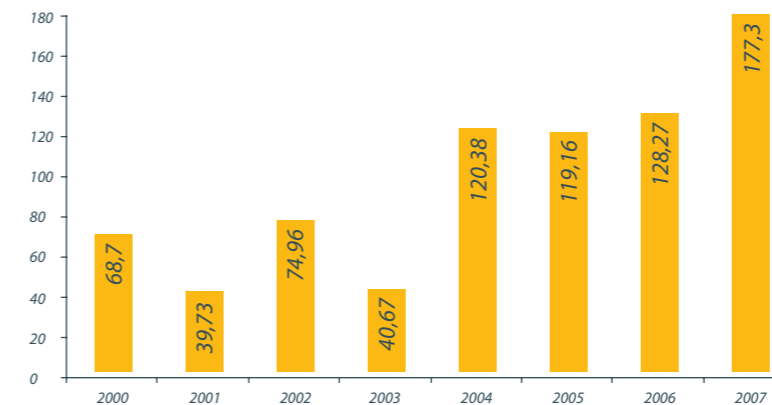
JUDICIAL EXAMINATION OF RESOLUTIONS PASSED BY THE CC

Year	2005	2006	2007	2008
Total cases	17	24	33	40
Judicial decisions:				
resolutions upheld	9	12	9	21
partly amended	3	7	6	16
overruled	4	3	1	3
overruled	1	2	2	2
Pending cases	8	12	24	19

DEVELOPMENT OF CONCENTRATION CASES

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

TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000-2007 (MEUR)



HARMONIZATION OF LEGAL ACTS AND APPROVED PRICES AND TARIFFS

Positions on the EU legal acts submitted via LINESIS system* of the Government of the Republic of Lithuania	4
Agreed positions on the EU legal acts drafted by other institutions via the LINESIS system	47
Comments on European Commission's draft regulations	7
Passed Resolutions of the Government and other regulations of the CC	5
Comments on draft laws, draft Resolutions of the Government and other institutions	120
Written responses to inquiries	294
Approved prices and tariffs/procedures for fixing prices and tariffs	280/4

* Information system on Lithuania's membership in the EU

Fines

LTL
2,869,500

imposed for the proven infringements in 2008

Areas and markets in the focus of the CC in 2008:

- * Public procurement
- * Waste management
- * Food industry
- * Publications distribution
- * Aviation

SCOPE OF CIRCULATED INFORMATION

Year	2004	2005	2006	2007	2008
Press releases	75	77	70	72	79
Published publications	466	483	548	570	630

PUBLICATIONS DISTRIBUTION MARKET

January 9

Having examined the notification on the concentration by *Rautakirja Oy* by acquiring the 100 percent holding in *UAB Impress Teva* the concentration deal authorised subject to conditions and obligations prescribed by the CC.

November 6

Rautakirja OY was fined LTL 70,000 for the infringement of certain obligations and conditions attached to the concentration authorisation.

MILK PURCHASE AND PROCESSING

February 28

For the violation of the LC – prohibited actions by exchanging confidential information a fine in the amount in excess of LTL 2 m imposed upon 7 entities – members of the Lithuanian Dairy Association *Pieno centras* and the Association itself.

CARTEL PREVENTION

February 28

The CC passed the “Rules on immunity from fines and reduction of the fines for participants of prohibited agreements”.

HEALTH CARE

March 13

The Ministry of Health was obligated to amend the provisions contradicting the LC providing for a different share of aid in respect of individual personal health care institutions.

MOBILE TELECOMMUNI- CATIONS SERVICES

April 24

For the use of misleading advertising statements related to *Laisvalaikis* service Tele2 was fined LTL 10,000.

December 18

For the use of misleading advertising statements related to *Labas* service *UAB Bitė Lietuva* was fined LTL 20,000.

ANNIVERSARY

May 29

The 5th Regional Competition Conference held in Vilnius on the occasion of the 15th anniversary of the Lithuanian Competition Authority. The Conference attended by representatives of counterpart authorities from Latvia, Estonia, Poland, Finland, Austria and Czech Republic.

OUTDOOR ADVERTISING

June 12

The CC established that certain resolutions of the Council of the Vilnius City Municipality and the subsequent agreements with *UAB JCDecaux Lietuva* concerning operations in the market for the outdoor advertising installations granted certain privileges to the company and was discriminatory in respect of other undertakings.

PUBLIC PROCUREMENT TENDERS

July 10

The CC disclosed a cartel among the companies that participated in the public procurement tenders for the implementation of the European Union structural funds support projects: fines (total LTL 159,000) imposed upon the *EIP* company group (three companies), *UAB Finsida* and *UAB Statybų strategija*.

December 18

The Support Foundation *Agilė, PE Baltijos aplinkos forumas* and *UAB Vandens projektai* were fined for the concluded prohibited agreement in relation to a public procurement tender in the area of protection of environment. The fines imposed accounted for 2-4 percent of the total annual revenues of the undertakings for the previous economic year.

TRADING NETWORKS

September 18

Having examined the concentration being implemented by *MAXIMA* trading networks by leasing or acquiring trading premises; authorisation issued to implement concentration subject to certain conditions and specific obligations.

October 16

MAXIMA LT, UAB was fined LTL 100,000 for the infringement of the LC – nine concentrations implemented in 2002-2006 without notifying the CC and not obtaining the appropriate authorisation.

SUGAR MARKET

October 30

Having considered the circumstances related to the intended changes in the sugar market of the European Union, *TitoConcerto A/S* was authorised to implement the concentration by acquiring 100 percent of the shares of *Danisco Sugar A/S* according to the submitted notification.

THE MARKET OF FUEL SUPPLY TO AIRPLANES

November 6

For the infringement of the requirements of Article 9 of the LC and Article 82 of the EC Treaty the State enterprise *Vilnius International Airport* was fined LTL 171,000. The Company abused its dominant position by refusing to grant access to *UAB Naftelf* to the recourses necessary for the airplane supply with fuels.

WASTE MANAGEMENT

December 24

Recognised that the provisions of some of the resolutions of Municipalities and the resulting agreements to the extent they are related to the delegation of the municipal waste usage and disposal functions to regional waste management centres without ensuring equal competition conditions to other undertakings to provide the services concerned constituted an infringement of the LC.



COMPETITION – THE BASIS FOR A MORE EFFICIENT ECONOMY AND CONSUMER WELFARE

Fair and unrestricted competition that has continuously been in focus of the Lithuanian Competition Council is a vital premise for the welfare of the State and each individual consumer. Both in our efforts to design the operational strategy for the implementation of the national competition policy or exercising the supervision over the enforcement of the EU competition rules and conducting the investigations or protecting the interests of undertakings and consumers we have continuously been guided by the concept of freedom of competition.

The year 2008 was an exceptional year for the CC that marked its 15th activity anniversary. Having assessed the works performed we could be rightfully pleased to acknowledge that the performance of the CC operating as an independent public authority had a significant impact not only in addressing the most burning competition issues but also in fostering competition culture. The investigations conducted being increasingly complex provide the evidence both of the professional expertise and competence of the officers involved, and the effect of the conclusions approved by the CC on competition.

The volumes of the work performed by the CC have been also increasing. During the year the CC passed over 200 resolutions related to the application of the provisions of the LC, as well as in respect of misleading or prohibited comparative advertising. The CC conducted total 10 investigations concerning possible cartel agreements: upon completion of part of the investigations and having established the committed infringements the CC passed three resolutions and imposed upon the violators the fines in the amount of nearly LTL 2.5 m. An important development in early 2008 was the publication and the enforcement of the leniency programme. The “Rules on immunity from fines and reduction of the fines for participants of prohibited agreements” passed by

the CC have already yielded the first results and will undoubtedly operate as a facilitator in detecting and disclosing cartel agreements. During 2008, the CC initiated seven investigations concerning abuse of a dominant position, and examined 54 cases of concentration. To conclude, the scope of the activity of the CC has been steadily increasing and expanding, to some extent due to the authorisation of the CC to directly apply the EU competition rules.

The CC is interested that all public authorities in their efforts to provide favourable competition conditions target their activities to promote and strengthen fair competition. Nevertheless, in 2008, the number of investigations concerning actions of public and municipal authorities by large exceeded that in preceding years. Infringements of the LC were established in nine cases. The trend in itself causes concern, since the resolutions and decisions passed by public and municipal authorities in violation of the requirements of the LC created privileges to individual undertakings, or any discrimination of such undertakings result in differences in competition conditions the elimination whereof is a rather time-demanding and costly task.

Formation of competition policy and enforcement of the principles of fair competition is not an exclusive obligation of the CC. Competition policy is being formulated and developed by the Seimas, the Government, courts, ministries and municipalities. The CC is in charge of monitoring the compliance with the established rules and regulations. However, not in absolutely all cases the CC is sufficiently supported in its efforts to pass or improve the rules aimed at creating the conditions for the enhancement of the efficiency of competition and improvement of its enforcement.

While cooperating with the European Commission and the national competition authorities the CC has been an active

participant in carrying out the reforms in the free profession markets. One of such markets in Lithuania is the notary service market. We have been devoting significant efforts to trigger efficient competition in this market.

Another challenge in the CC's focus is the segregation of management and commercial functions in public and municipal authorities in order to minimize any barriers for competing undertakings for entering markets and operating therein. The CC has, in the course of the year, investigated a number of cases where State or public enterprises in exercising their control and supervisory functions at the same time were the competitors of the undertakings operating in the markets, and thus were enabled to abuse their dominant position.

In 2008, the European Commission provided for specific State aid measures available to Member States under crisis conditions, therefore the CC operating in its function as the State aid provision coordinator has been continuously monitoring this area of activity.

Activity plans for 2009 are fairly ambitious. We believe in the meaningful outcome of the ongoing investigations, in particular, concerning cartel agreements, and that the appropriate amendments to the LC will be adopted and will provide us with a new stimulus to act for the benefit of the State and consumers through implementing the principles of fair competition.

Rimantas Stanikūnas

Chairman of the CC

COMPETITION POLICY: INTERNATIONAL INSIGHTS



In 2008, the CC faced a number of new challenges. The evolving economic crisis clearly demonstrated that the global interdependence requires equally global crisis management approaches that are unfeasible without a much closer cooperation and activity coordination. The complex economic background adds significance to issues of State aid and concentration control, while the fight with cartel agreements, abuse of dominant position, and market research in the major economic sectors remained among the priority areas of activity of the Lithuanian competition authority. In view of the changing economic situation in Lithuania, as well as in the EU and the entire world competition policy needs to become ever more efficient while maintaining its transparency, comprehensiveness and fairness in respect of both competitors and consumers. In the time of economic decline it is vital to even more closely monitor those products and services markets that are highly susceptible and conducive to conclusion of prohibited agreements or market sharing to the detriment of competition terms for weaker competitors, and increasing prices for consumers in the market. An important task is to be able to thoroughly assess the concentration of market structures to prevent any weakening of competition or an increase in the number of dominant entities or market monopolisation. In 2008, a major source for concern in Europe and the entire world was a steep increase as well as fluctuation of food prices. Apart from objective reasons for the price increase consideration is given to subjective reasons among which there is a place for inadequate or weakened competition, or certain restrictions imposed upon the supply chain. Therefore in the foreseeable future supervision of competition in the food markets is likely to be designated as one of the major priorities of competition policy. In order to be able to continue the efficient performance it is vital to further improve the Lithuanian legal framework

and the enforcement of competition law through the enhancing cooperation both with the Lithuanian public authorities and non-government organisations, as well as other counterparts globally.

The international cooperation has acquired a specific relevance in the view of the present developments. This is clearly evidenced not only by an increasing number of inquiries received from other competition authorities, but also by the complexity of the issues raised which are clearly demonstrated in the Annual Report.

The overview of the international cooperation in 2008 clearly distinguishes two main areas of activity of the CC – cooperation in conducting the specific investigations and cooperation in the development of common competition policy. In respect of the first area cooperation was largely developed through the interfaces with the EU competition authorities within the European Competition Network (ECN). Within this framework the cooperation was most active in terms of exchange of information and expertise accumulated in the course of investigation of individual cases and conducting market research. In the meantime, cooperation through the development of competition policy was traditionally developed within the multilateral forums specifically such as ICN and OECD in the Competition Committee whereof Lithuania has been granted the observer status since 2001. The principal contribution of the Lithuanian CC in this area was represented by its reports and submissions, and the most active participation of the representatives of the CC in speaking up about the most relevant issues of today.

Notable was the expansion of the geographical boundaries of the international cooperation of the CC in the year that ended. Representatives of the CC, in the role of experts, were delegated

to participate in the expert missions and workshops hosted by TAIEX in such countries as Albania, Moldova, Turkey and Egypt. The 5th Annual Regional competition Conference held in the spring of 2008 in Vilnius that served also as an occasion to mark the 15th anniversary of the activity of the Lithuanian Competition Authority next to representatives from the conventionally present Estonia, Latvia, Poland and Finland, welcomed also delegates from Czech Republic and Austria. The conference offered a perfect opportunity to review and assess the expertise accumulated in the course of the 15 years of activity of the Authority, compare the efficiency of competition regulations, cast a look into the future and define the future goals of competition policy. In 2008, the CC renewed the bilateral cooperation with the competition authority of the Ukraine.

Experience has been clearly showing that most competition authorities under the conditions of economic crisis face similar challenges therefore a fruitful cooperation will become instrumental to the competition authorities not only to meet the challenges, but also to successfully overcome them.

Viktorija Aleksienė

Head of the Competition Policy and Foreign Relations Division

HIGHLIGHTS OF LEGAL ACTIVITIES



In 2008, several new developments characterised the law enforcement activities of the CC related to the application of the relevant legal norms.

First, in the course of the year reviewed there has been a marked increase in the number of litigation proceedings concerning the resolutions passed by the CC, as Lithuanian courts considered and completed the examination of 21 cases concerning the legality of the resolutions passed by the CC (cf. 9 cases in 2007). The courts overruled two resolutions of the CC. In one case the Court obliged the CC to re-examine the request of the applicant concerning the alleged infringement, and in the second case the instruction of the court to the CC was to perform additional investigatory actions. In three proceedings the court, having considered the requests filed by the applicants reduced the fines imposed by the CC for the established infringements. In sixteen cases the rulings of the court upheld the resolutions of the CC. The increase in the number of cases in the first place resulted from a larger number of investigations conducted by the CC and the resolutions passed by the authority. On the other hand, there is an observable increase in the number of appeals not only of the resolutions of the CC passed upon the completion of the case investigations, but rather in respect of the decisions of the CC to initiate, refuse to initiate or supplement an investigation. There is a significant number of appeals filed against the resolutions still pending the court examination.

The investigations conducted by the CC are likewise growing in complexity, in particular in cases of investigations related to infringements of the LC, in addition to the alleged infringements of the EC Treaty. Therefore, in order to be able to appropriately apply the competition norms the comprehensive understanding of the EU competition law, specifically the practice of the European Commission, the Court of First Instance and the European

Court of Justice specific knowledge in economics has acquired a specific significance. The conclusion is readily confirmed by the development of the judicial examination of cases. For instance, the Supreme Administrative Court of Lithuania, in its assessment of the validity of Resolution No. 2S-13 of 26 October 2006 of the CC and having considered the complexity of the market structure investigated in the case, as well as the impact of the actions assessed upon the market, on 2 September 2008 resolved to refer to the European Commission with a request to submit its opinion concerning the issues raised in the case in terms of the application of Article 81 of the EC Treaty.

Quite conventionally, one of the major priority areas in the activity of the CC has remained the fight against the most detrimental infringements of competition law – cartel agreements. The CC passed the “Rules on immunity from fines and reduction of the fines for participants of prohibited agreements”. The Commission’s practice has shown that the mere possibility to reduce fines or even acquire immunity from fines has proven an efficient incentive for cartel participants to acknowledge the participation in the infringement. Although the practice of the CC in this field is comparatively small there is a good justification for an assumption that the leniency program facilitates the disclosure of cartels, more expedient and less costly investigations. The CC has been consistent in its position that in the process of the assessment of the possibility to reduce the fine for a cartel participant, account must be taken of the added value of the information submitted by the undertaking to the investigation, i.e. the earlier an undertaking submits the information at its possession to the CC, and the more complete the information is, the smaller the fine imposed upon the participant will be, or the undertaking may be whatsoever exempted from the fine. The correctness of the position of the CC has been supported by the ruling of 4 July

2008 of the Supreme Administrative Court of Lithuania whereby the Court established that the CC had rightfully reduced the fine upon the cartel participants by not more than 25 percent, as the undertakings had been in the course of the investigation refusing to cooperate with the CC and acknowledged the existence of the cartel only when the investigation was nearing completion. The Immunity rules and the experience accumulated by the CC, as well as the judicial practice will provide significant clarity to the undertakings willing to acknowledge their participation in a cartel and any possible consequence of pleading the participation.

Notably the duration of the investigations conducted by the CC was to a large extent affected by the readiness of the undertakings concerned to cooperate with the authority. There have been isolated cases where the undertakings, although explicitly suspected of an infringement, were avoiding to provide any requested information. The CC has provided for an obligation upon undertakings to provide the CC with the information and the appropriate sanctions upon those refusing to comply. Having this in mind when imposing fines the CC assessed the refusals to provide information and cooperate as aggravating circumstances. When considering the obligation of the undertakings to provide the information to the CC worthy of notice is the Ruling of the Supreme Administrative Court of Lithuania of 8 December 2008 whereby, being guided by the norms of justice and the practice of the European Court of Justice, the Court ruled that in the course of the investigation of a competition infringement any undertaking suspected of an infringement can not refuse to supply any information even where such information is incriminatory, i.e. it may be referred to for the purpose of concluding an infringement of competition law.

Elonas Šatas

Head of the Law Division

STRENGTHENING OF ADMINISTRATIVE CAPACITIES AND FUNCTIONS



At the end of the year the staff of the CC listed 48 civil servants, 5 officers of state (CC members) authorised to pass resolutions concerning infringements of laws, and service staff members working on contractual basis. The number of the employees working at the CC has been virtually unchanging for a number of years already, despite the expansion of the functions of the CC in addition to ever enhancing qualification requirements in respect of civil servants. The supervisory duties require from the specialists specific and comprehensive legal knowledge and competence. The work load of the specialists is outstanding in the view of the ever increasing complexity and scope of investigations, in particular the investigations related to the supervision over the compliance with Articles 81 and 82 of the EC Treaty. Benefiting from the membership in the ECN the CC has been exchanging information and expertise with other European counterpart authorities on a regular basis, taking over their operation principles and employing the policies proven efficient in other EU Member States. Specialists of the CC are dedicated to a continuous improvement of their knowledge and further professional development.

The oversight over the enforcement of the LC and Articles 81 and 82 of the EC Treaty requires absolute independence and transparency of resolutions on infringements. To that end the legal basis is properly put in place – the CC is a public authority completely independent from the Government in which the CC members appointed by the President of the Republic of Lithuania make decisions on a collegial basis. This status of the CC ensures immunity from any influence of individual interest groups upon the decision-making powers of the CC. Acting as an independent public authority the CC, within the limits of competence assigned to it, is responsible for the enforcement of the national and the EU competition policy. Therefore the CC sees it as a vital task to maintain and secure the independent status of the institution, which is responsible for contributing to the market liberalisation processes and the supervision of freely operating markets. The independent status of the institution is particularly important with a view to preventing any influence upon the CC from the part of a range of interest groups

(business, in particular) upon the decision-passing discretion of the CC. In any other case a considerable damage could be incurred upon the State and domestic consumers, as the ultimate goal of the fair competition is the consumer welfare.

On the other hand, the performance of the CC would significantly benefit from the expansion of its authority and the investigatory mandates of its officers by providing for a possibility to perform inspections at private premises, seal business premises for the duration of the inspection, or the authority to pass confidential resolutions. The draft amendments to the LC following its approval by the Government had been submitted to the Seimas as far back as autumn of 2007 still in 2008 the draft was not yet considered.

All resolutions by the CC are passed on collegial basis after having heard the explanations and arguments of all parties concerned, thus ensuring the objectivity and the unbiased character of the decisions, as well as success in defending the passed resolutions in the judicial litigation proceedings. When dealing with the economic issues related to the enforcement and supervision of competition another aspect emerges for its importance, i.e. cooperation with the Government, ministries and other public authorities when submitting any proposals and opinions regarding competition issues in individual markets. With a view to being enabled to even more expediently respond to any complaints and inquiries from undertakings and consumers, in its website the CC launched a facility for the undertakings and consumers to directly post their inquiries, to which the authority expediently responds and informs of a possible way of seeking a solution to the problems raised.

The CC is a public institution funded from the State budget of the Republic of Lithuania, in its own turn the CC contributes to the State budget revenues through the collection of the imposed fines and the fees for the submission of concentration notifications. In 2008, LTL 4.5 m was the amount of the appropriation from the State budget to fund the activities of the CC.

According to the strategic activity plan of the CC for 2008-2010 which has been

previously approved by the Government, the CC continued to take measures to ensure the high qualification of the specialists working in the institution, the ability to complete the large-scale investigations and the legal scrutiny of documents, provide advice and consultations to undertakings, etc. The resources and the appropriations allocated according to the activity plan are employed seeking to ensure the continuity of the institution's operations and the improvement of customer servicing.

In 2008, the staff turnover in the CC was comparatively low. Through the civil servant recruitment competition procedure 7 new employees joined the staff of the CC. The Cartel Division was reinforced by 2 new specialists, in the course of the year the Law Division, Services, Industry and Transport, Competition Policy and Foreign Relations, as well as the Finance Divisions each admitted one new staff member. Most of the CC officers are University graduates in law or economics, many of them attended professional development courses and acquired additional certificated qualifications.

The administrative capacities developed by the CC staff members are sufficient for the purpose of the performance of the functions assigned to the authority. This has been attained by virtue of thorough and consistent work, and continuous training and professional development activities. The Lithuanian CC is a member of the ECN uniting all competition authorities of the EU Member States. The officers of the CC have been regular participants in the activities of a range of task forces of the ECN. This has been a well-designed and useful school for professional improvement and qualification enhancement, in particular in respect of the issues related to the application of Articles 81 and 82 of the EC Treaty. Furthermore, through the participation in the ECN working groups the CC has become an active participant in the development of the EU competition policy; participation in the ECN offers a possibility to voice the CC's and Lithuania's views towards dealing with the competition problems (e.g., liberalisation of notary services, etc.)

Šarūnas Pajarskas
Head of Administration

INVESTIGATIONS AND SANCTIONS



PROHIBITED AGREEMENTS

In 2008, the CC investigated 10 cases in accordance with Article 5 of the LC concerning prohibited agreements (cartels): as a result, the CC established 3 infringements and imposed sanctions upon the infringing undertakings, 3 investigations were terminated, in 4 cases the CC refused to initiate the investigations.

In 2008, fines of LTL 2,427,000 imposed for the proven infringements

RESTRICTION OF COMPETITION IN THE MILK PURCHASE AND PROCESSING MARKET

For the exchange of information of confidential nature on the volumes

of the purchased raw milk, also the volumes of the individual kinds of dairy products produced and marketed among themselves and through third persons, the CC fined LTL 2,236,000 the following undertakings: *AB Kelmės pieninė, UAB Kelmės pieno centras, UAB Marijampolės pieno konservai, UAB Modest, AB Pieno žvaigždės, AB Rokiškio sūris, AB Žemaitijos pienas* and *AB Vilkyškių pieninė*. The investigation established that the undertakings had been, through the Lithuanian Milk Producers' Association *Pieno centras* on a monthly basis exchanging the information that enabled them to establish the volumes of sale and production of a specific undertaking, as well as the market share held by each undertaking, and, furthermore, the development of these indicators. Such agreements on exchange of information of confidential character significantly restricted competition between the undertakings, as they unavoidably lost some of their independence in taking decisions concerning their behaviours in the market affected by the information received from their competitors, and being aware that their competitors would receive the analogous information about them, as a result, significantly reducing any competition pressure in respect of each other.

When assessing the gravity of the infringement of the LC and the role of each undertaking in the committing of the infringement, as well as establishing the appropriate fines, the CC took into consideration some of the relevant circumstances. First, the established prohibited agreement in terms of its

damage to competition and consumers was not as detrimental as classical cartels where undertakings conclude agreements on fixing prices for certain selected goods or the sharing a product market on territorial basis. The CC also duly considered the mitigating circumstances that significantly facilitated the proof of the infringement of the LC. Some of the undertakings – *AB Pieno žvaigždės, AB Rokiškio sūris, AB Vilkyškių pieninė* and *UAB Modest* acknowledged the facts established in the course of the investigation to the effect that through the Lithuanian Milk Producers' Association they had been exchanging with other members of the Association the confidential information on the volumes of the raw materials purchased and the sales of certain selected dairy products, i.e. restricted competition in the relevant raw milk purchase and dairy product markets in Lithuania, and thus infringed the LC. Also the termination of the infringement by the undertakings in the course of the investigation was considered as an alleviating circumstance.

28-02-2008, CC Resolution No. 2S-3

AGREEMENTS IN PUBLIC PROCUREMENT TENDERS

For the agreement to submit the coordinated tender proposals for the public tender concerning the provision of the services related to implementation of the projects funded from the structural funds *UAB Eurointegracijos projektai, UAB EIP Vilnius, UAB EIP Kaunas, UAB Statybos strategija*, and *UAB Finsida* were

fined LTL 159,000. These undertakings were frequent participants in the public procurement tenders for the drawing up of the projects to receive the financial support from the EU structural funds in accordance with a number of the measures under the Single Programming Document for Lithuania. The undertakings concluded the prohibited agreements by submitting the agreed tender prices and establishing the lowest price to be submitted by one of the competitors in three public procurement tenders. In the course of the investigation all suspected undertakings confessed they had committed such infringements. When imposing the fines the CC considered that such agreed actions in respect of the public tenders in terms of the gravity of the infringement constituted severe infringements. While assessing other circumstances account was taken on the impact of individual undertakings upon the infringement – *UAB EIP Vilnius* and *UAB EIP Kaunas* were acknowledged to be the initiators of the prohibited agreements. On the other hand, the CC considered the circumstances that alleviated the liability – *UAB EIP Vilnius*, *UAB EIP Kaunas*, *UAB Finsida* and *UAB Statybų strategija* submitted their acknowledgements on participation in the infringement. The liability of some of the undertakings concerned was aggravated by their previous infringements – *UAB Eurointegracijos projektai* was fined for the infringement of the LC in 2006.

10-07-2008, CC Resolution No. 2S-16.

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For the agreement to submit a concerted tender for the public procurement tender for the procurement of the copyright services in the tender “Public involvement in addressing pollution in Trakai region” funded from the EU structural funds three undertakings – the Support Foundation *Agilė* and the *PE Baltijos aplinkos forumas* and *UAB Vandens projektai* were fined LTL 32,100. The principal criteria in the assessment of the public procurement tender were the lowest price offered. The undertakings concerned agreed that the Support Foundation *Agilė* would offer a lowest price that was enabled to win the tender in such way.

18-12-2008, CC Resolution No. 2S-26.

ABUSE OF DOMINANCE

In 2008, the CC investigated 7 cases in accordance with Article 9 of the LC concerning abuse of a dominant position: as a result, the CC established 1 infringement and fined the infringing undertaking, 1 investigation was terminated, in 5 cases the CC refused to initiate the investigations.

ACTIONS OF VILNIUS INTERNATIONAL AIRPORT

Having completed the investigation started on the basis of the appeal by *UAB Naftelf* the State enterprise *Vilnius International Airport* (the airport) was fined LTL 171,000 for the abuse of its dominant position by preventing *UAB Naftelf* from entering the markets for the supply of the aviation gasoline and jet fuels to air planes in the territory of Vilnius airport. *Vilnius International Airport* was obligated to terminate the illegal activities, i.e. not later than within 3 months to provide the possibility for *UAB Naftelf* to enter the market for the supply of aviation gasoline and jet fuels in the territory of the airport. Although *UAB Naftelf* applied to *Vilnius International Airport* administration more than once, the applicant was not provided any possibility to compete with the Airport and *RSS UAB MOTORS* in the market for the supply of aviation gasoline and jet fuels to airplanes in *Vilnius International Airport*. The investigation established that the abuse of a dominant position could possibly affect trade among the Member States, therefore, it constituted an infringement of Article 82 of the EC Treaty. In view of the circumstances the infringement was assessed as severe, as having considered that it had lasted since 2006 until the completion of the investigation of the case, the fine was increased by 10 percent for a year of the duration of the infringement.

06-11-2008, CC Resolution No. 2S-23.

CONCENTRATION CONTROL

In 2008, the CC was lodged 54 notifications applying for authorisations to implement the concentration of market structures. In 50 instances the CC, by its resolutions authorised the intended concentrations, and in two cases the applicants were authorised to perform individual actions of concentration.

In the year reviewed in two cases the CC imposed economic sanctions for the delayed notification on concentration and the failure to fulfil the terms and obligations attached to concentration as imposed by the CC. The total amount of the sanctions imposed – LTL 170,000.

The undertakings paid in total LTL 233,400 in Stamp duty charge for the examination by the CC of the submitted concentration notifications.

Overview of the CC resolutions

Undertakings have been increasingly closely following actions of their competitors, as well as validity of the CC decisions, conditions and obligations imposed by the CC upon the undertakings in respect of concentration authorisations (4 such cases in 2008). In one of such cases the CC approved the notification on intended concentration submitted by undertakings while imposing the obligations to refrain from using the voting rights, the right of the shareholders

to receive the information concerned and other documents, related to the strategic decisions in the activities of the competitor.

With a view to more expediently addressing the applications of the undertakings to implement concentration transactions and having considered that the intended concentrations will not create any dominant position or significantly weaken competition, in two cases the Resolutions of the CC authorised individual concentration actions pending the taking of the final decisions.

In 2008, there had been no single case of appeal of a resolution of the CC on concentration to courts. In the period from 1996 to 2009, i.e. in 13 years not a single Resolution of the CC on concentration was overruled by courts; this obviously demonstrates that the decisions of the CC on concentration issues were objective and well grounded, despite the obvious complexity of the cases. In four instances the concentration cases were or will be, directly or indirectly, examined by the Constitutional Court of the Republic of Lithuania.

In 2008, the number of authorisations issued by the CC to foreign undertakings remained unchanged. The concentrations implemented by foreign undertakings in 10 cases were assessed as horizontal concentrations which significantly increased the degree of concentration in Lithuania.

Concentration among the Lithuanian-registered undertakings was performed in 37 cases, on 8 occasions of which the authorisations were issued to undertakings controlled by foreign capital, and in 5 cases – to undertakings controlled by joint domestic and foreign capital. However, the number of concentration deals among the undertakings operating in the same markets was somewhat smaller, as only in 21 cases concentration was assessed as horizontal, as opposed to 38 in 2007.

Concentration notifications: change in nature

The observable trend was the decline in concentration in the residential and commercial real estate development markets with 3 individual cases reported

(13 in 2007). Horizontal concentration was not infrequent in trade sector (7 cases), industry (5), information technologies, public information and advertising sector – 2 cases, agricultural production and purchase sector – 3 cases reported. In 4 cases concentration was assessed as vertical, in 2 cases the CC approved the establishment of new undertakings, and in 10 cases the concentration deals were assessed as conglomerate.

For the past several years the pattern of the development of concentration notifications was hardly changing. However, in 2008, the number of concentration notifications decreased, mostly in view of the strengthening recession in the market of construction of residential and commercial purpose and development of real estate. Essentially no concentration processes were taking place in the food processing sector. Hardly concentrated remains the meat processing sector with about 200 meat processing undertakings operating therein, where there was not a single case of acquisition or merger deal. The CC was continuously holding back the merger transactions among the major milk processing undertakings. In the food industry sector both the competition among the undertakings, and the competitiveness in general are to a very significant extent affected by the policies pursued by the Member States and the EU in the sector.

Monitoring of decisions passed

The CC has been continuously monitoring the effectiveness of the enforcement of the decisions taken thereby. For instance, at the end of 2007, the CC authorised *AB TEO LT* to acquire 100 percent of the shares of *UAB Nacionalinė skaitmeninė televizija* on the condition that *AB TEO LT* will implement and ensure a segregated accounting of all digital television services. *UAB Nacionalinė skaitmeninė televizija* then established *UAB Mikrovisatos TV* to which it transferred two licenses for the re-broadcasting of 24 programmes of the digital terrestrial television. This solution by the company was implemented having considered the recommendations of the CC to separate and further develop the cable and microwave television service business from the newly introduced terrestrial digital television services. Currently, *UAB Mikrovisatos TV* is successfully providing

both cable and the wireless TV (as well as digital TV) services, also the internet and fixed telecommunications services and operates a light transmission cable in Kaunas.

ENFORCEMENT OF OBLIGATIONS IMPOSED

In November 2008, *Rautakirja OY* was fined LTL 70,000 for the infringement of certain obligations and conditions attached to the concentration authorisation. Any obligations and conditions established by the CC as attached to the concentration authorisation are obligatory to undertakings participating in any concentration deals. Any failure to fulfil such obligations is considered to constitute an infringement of the LC.

A Finnish company *Rautakirja OY* is a principal distributor of press in the Lithuanian market that operates through its subsidiary companies the *Vilnius agency of UAB Lietuvos spauda* and *UAB Impress Teva*. With a view to preventing the market leaders to abuse their dominance in the market the CC imposed certain operating conditions upon the companies (“market behaviour”).

In December 2007, the CC when granting the authorisation to *Rautakirja OY* to acquire 100 percent of the shares of *UAB Impress Teva* imposed conditions and obligations with a view to controlling the performance of *Rautarkirja OY* in the wholesale publication distribution market and ensuring that the operations of these undertakings comply with competition rules. When passing this decision the CC took duly into account its previous experience in addressing the competition problems in the press distribution market and established a function of an independent observer. The independent observer was charged with a supervisory function designed to ensure the efficiency of the enforcement of the obligations imposed by the CC and facilitate the settlement of disputes between publishers, publishing houses, press distributors and *UAB Impress Teva* and/or the *Vilnius agency of UAB Lietuvos spauda*. The important consideration concerned a prohibition in the course of dispute settlement to terminate the effective distribution contracts. The independent observer is obliged, in an established procedure, to draw up reports on the course of the fulfilment of the obligations, the actions taken and the course of dispute settlement and, where so requested by the publication suppliers, provide the requested information to them in writing.

Rautarkirja Oy was fined for the failure to fulfil the obligations and conditions attached to the concentration authorisation in relation to the appointment of the observer. In the context of the settlement of the disputes between the publishers and the distributors the active and timely involvement and the proper fulfilment of the functions assigned to the independent observer *UAB KPMG Baltics* are of vital significance.

11-11-2008, CC Resolution No. 2S-22.

OBLIGATION TO REMOVE THE OUTCOMES OF CONCENTRATION

When passing the resolution concerning the authorisation to *Maxima LT*, *UAB* to implement concentration the CC concluded that in Vilnius, Klaipėda and Marijampolė geographic markets *Maxima LT*, *UAB* had a sufficiently large market share. With an increase in the market share of *Maxima LT*, *UAB* as a result of concentration (increase up to 5 percent), a dominant position could have been created in these markets or competition in the retail markets for foodstuff trade could have been significantly weakened. Furthermore, it has been established that although the possibilities of any new market participant to enter the retail food product market is neither directly nor indirectly restricted by any statutory requirements, the entry is impeded by the administrative restrictions in respect of the construction of new trade centres (shops), significantly increased prices for the lease of trading space, etc. In the course of the past 5 years there has not been a single significant entry into the market (note, *LIDL* had abandoned its intentions to enter the retail food product market). Furthermore, any new market participants are discouraged from entering the market by virtue of the market power exercised by *UAB Maxima LT* in their negotiations with suppliers, specifically the food producers in Lithuania who are conventionally focusing on food product production for domestic market and therefore are able to negotiate more favourable terms for the supply of their products to the trading centres. The CC obligated *UAB Maxima LT* to remove the consequences of concentration in Klaipėda and Vilnius city and Marijampolė municipalities – extinguish the lease contracts for the commercial premises in which *UAB Maxima LT* has been conducting its retail trade activities in food products and house-ware, or to transfer the ownership rights in respect of such premises.

When passing any decisions concerning specific concentrations the CC is not entitled to impose any obligations that

would in any way go beyond an objective to address the specific competition problems caused by market concentration. Therefore, the obligations imposed by the CC in the municipalities concerned were considered sufficient for the purpose of responding to competition problems in the relevant markets as they facilitated the reduction in the level of concentration down to the previous level in these local markets.

18-09-2008, CC Resolution No. 1S-118.

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The CC fined LTL 100,000 *UAB Maxima LT* for the submission of the notification on concentration already after the deal was implemented.

16-10-2008, CC Resolution No. 2S-21

Concentration issues in retail trade sector

The CC initiates the investigations concerning the implementation of concentration in retail trade markets in cases set forth in Article 10 of the LC, i.e. when the concentration is implemented following the scheme defined in the Article and where the aggregate income indicators are exceeded. It should be noted that the activities of undertakings related to construction works with a view to arranging shops fall outside the scope of regulation by the LC. This relates to all issues related to the acquisition of land plots, issue of permits for the construction of commercial (trade) premises, or

Czech Republic

6 networks – about 52 % of retail trade in food products.

Denmark

3 networks – about 86 % of retail trade.

Finland

3 networks – about 85 % of retail trade in food products.

France

4 networks – about 66 % retail trade.

Germany

6 networks – about 80 % of retail trade in food products.

Hungary

4 networks – about 39 % of retail trade in food products; small retailers account for about 29 % of retail trade sector.

Ireland

4 networks – about 70 % of retail trade.

designing and development of such premises. It is only acquisitions under any terms and/or lease of the premises in which the trade activity had been conducted previously are covered by the supervisory power of the CC related to concentrations. Examination of individual concentrations ordinarily requires an identification and examination of local markets in retail trade in food products (i.e. in the territories of individual municipalities) since competition problems are identified at the local level of individual territories.

When examining concentrations the CC shall assess whether a concentration deal would significantly restrict competition or would strengthen or create a dominant position in relevant markets. In Lithuania, there are currently 4 major retail trade networks: *MAXIMA*, *IKI*, *NORFA* and *RIMI*. The major share of the merchandise marketed in the networks is food products. In the period from 2004 to 2007, the market share of the 4 major trade networks in retail food product increased by about 10 percentage points. The retail trade network was expanding mainly on the account of the construction of the new trade centres (shops) and the acquisition of new premises or lease, i.e. the activities falling outside the scope of regulation by the CC. The increase in the market share of the retail trade networks due to concentration was, since 2000, negligible.

Currently, the four major networks *MAXIMA*, *IKI*, *NORFA* and *RIMI* jointly hold over 70 percent of the retail trade in food products. For comparison, the Table below shows the figures illustrating the retail trade structure in other EU Member States*.

Latvia

2 networks – about 60 % of retail trade in food products.

Portugal

Several major networks – 86 % of retail market.

Slovakia

3 networks – about 50 % of retail trade in food products; major networks – about 65 % of retail trade in food products.

Slovenia

3 networks – about 80 % of retail trade; small retailers – about 20 %.

Spain

5 networks – about 26 % of retail trade in food products.

United Kingdom

4 networks – about 73 % of retail trade in food products.

*Source: Regulation of the supplier-retailer commercial relationships: An overview of 17 European countries regimes; Concurrences No 3-2008.

RESTRICTIVE ACTIONS OF PUBLIC AND LOCAL AUTHORITIES

The presence and the development of the conditions for effective competition depend not only upon the CC, but to an equal extent upon the concerted actions of all institutions, since not infrequently institutions and authorities pass decisions that obviously contradict the LC and distort competition, or the resolutions that are beneficial to certain undertakings, business sector, however, disadvantageous in respect of consumers. This has been clearly supported by the observation that in 2008 the number of investigations by the CC acting in accordance with Article 4 of the LC concerning possible restrictions of competition caused by individual provisions of the legal acts and regulations passed by public authorities was larger than in previous years.

In 2008, the CC examined 19 cases in accordance with the requirements of Article 4 of the LC, infringements were established in 9 cases and in 10 cases the authority refused to initiate investigations.

Decisions of the local government authorities (municipalities)

THE VILNIUS CITY MUNICIPALITY

The decision of the Council of the Vilnius City Municipality to approve the contract and the agreement between the Vilnius City Municipality and *UAB JCDecaux Lietuva* concerning the advertising on outdoor installations for the events related to the “Vilnius – European capital of culture 2009” campaign in foreign States acknowledged as infringing

Article 4 of the LC. The contract was concluded without having arranged a tender procedure, thus failing to ensure a competitive environment for economic activity and equal possibilities for other undertakings to operate on equal terms in the relevant market for the supply and the installation of the equipment for outdoor advertising in Vilnius; the arrangement was put in place having eliminated all offers submitted by other undertakings. Under the agreement the Municipality, in exchange for the possibility to advertise in the stands managed by *UAB JCDecaux Lietuva* had granted the company a right to arrange and maintain the advertising boards on bridges and viaducts having disregarded that this could equally be performed by other companies operating in the relevant market. The agreement also provided for the extension of the permits for a period of 10 years thus granting privileges to a single company and discriminating other companies.

12-06-2008, CC Resolution No. 2S-12.

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The Resolution of the Council of the Vilnius City Municipality approved a condition of the tender for the selection of the public waste management service provider establishing that any waste manager intending to provide waste management services (collection, transporting and transfer for recycling or disposal) in the territory of the Vilnius City Municipality must be a holder of the licence for hazardous waste management. This condition of the tender was recognised as contradicting Article 4 of the LC. The requirement to hold a licence for hazardous waste management established as a condition of the tender for municipal waste management services discriminated the undertakings not holding such licence. The management of non-hazardous waste has been groundlessly linked to the management of hazardous waste – there is no statutory requirement for all waste managers to be holders of hazardous waste management licence, as the latter activity is subject to specific requirements. The requirement to be a holder of the licence concerned prevents other undertakings from entering and operating in the municipal waste management market of the city of Vilnius.

05-06-2008, CC Resolution No. 2S-11.

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By obligating a single undertaking, without undergoing a tender procedure, to provide the mandatory deratisation services the Council of the Vilnius City Municipality infringed the provisions of

Article 4 of the LC. Although there were several undertakings that were capable of and willing to provide the deratisation services, the Administration of the Vilnius City Municipality terminated the respective tender procedure. Having decided to procure (obligate to render the services), without a tender procedure the mandatory deratisation services from a single undertaking that had offered the prices higher than those of other undertakings the Council of the Vilnius City Municipality granted privileges to a single undertaking and therefore discriminated other undertakings operating in the relevant market.

02-10-2008, CC Resolution No. 2S-20.

KAUNAS CITY MUNICIPALITY

The relevant provisions of the Rules on Waste Management in the city of Kaunas and the Resolution of the Council of the Kaunas City Municipality obligating without a tender procedure *UAB Kauno švara* to render the municipal waste services in the municipal territory recognised as contradicting Article 4 of the LC. By these Resolutions the Municipality of the City of Kaunas, when developing the municipal waste management system in Kaunas granted exclusive rights to *UAB Kauno švara* thus depriving other undertakings from a possibility to render the services concerned in the city of Kaunas.

05-06-2008, CC Resolution No. 2S-10.

PALANGA TOWN

The provisions of the Resolution “On the Fee for the Lease of State-Owned Land in 2007” of the Palanga Municipality were recognised as infringing Article 4 of the LC. A provision of the Resolution established in respect of the corporate land lessees different rates depending on whether or not the registered office of the lessee is within the territory of the Palanga Municipality. The differentiated land lease fees (lower for the undertakings that have registered their business offices in the territory of the Palanga Municipality) were based merely on the formal venue of registration of an undertaking. This caused unjustifiable differences in the land lease fees charged on undertakings operating in the same markets (e.g., accommodation services, public catering and other markets). Accordingly, as a result of the provision of the Resolution the undertakings whose registered offices were located outside the territory of the Palanga Municipality incurred significantly higher costs irrespective of the nature of the activity of the company, seasonality, number of employees, and other quality and quantity criteria.

The differentiated land lease fees clearly favoured undertakings registered in the territory of the Palanga Municipality, i.e. undertakings operating in the same market were charged different fees for the lease of land of comparable value, which directly affected the economic status of the companies and, as a result, the conditions of competition between the undertakings registered within and beyond the territory of the Palanga Municipality.

28-12-2008, CC Resolution No. 2S-19.

RESOLUTIONS OF COUNTY ADMINISTRATIONS

The investigation established that the decisions passed by the municipalities, whereby the regional waste management centres were obligated to engage in commercial activity without any tender procedure, granted such centres certain competitive advantage in respect of other undertakings operating in the relevant waste management markets and thus infringed Article 4 of the LC. The Municipalities of Šiauliai, Klaipėda and Utena Counties passed resolutions whereby certain regional waste management centres were granted exclusive rights depriving other undertakings from a possibility to enter the market, or making them withdraw from the market. Benefiting from exclusive rights some undertakings faced virtually no competition therefore being privileged in respect of other undertakings.

24-12-2008, CC Resolution No. 2S-27.

Legal acts of public authorities

ORDER OF THE MINISTER OF HEALTH

Certain provisions of the Order for the charging for health services approved by the Minister of Health applicable to specialised in-house services were recognised as contradicting Article 4 of the LC. When allocating the funds of the Mandatory Health Insurance Fund the Kaunas Patients' Fund acted in accordance with the provisions of the Order approved by the Minister of Health, i.e. the funds were allocated in advance on the basis of the established criteria specifying the amounts to be allocated to a specific institution. Such up-front allocation of funds, however, caused discrimination of some health care institutions and

created different competition terms for undertakings providing certain health care services.

13-03-2008, CC Resolution No. 2S-4.

LEGAL ACTS PASSED BY THE MINISTRY OF AGRICULTURE AND THE FISHERIES DEPARTMENT

Certain provisions of the regulations and decisions passed by the Ministry of Agriculture and the Fisheries Department under the Ministry of Agriculture governing fishing operations in the Baltic Sea were recognised as contradictory to the requirements of Article 4 of the LC.

The clause of the Rules on the Allocation of Fishing quotas in the Baltic Sea approved by the Ministry of Agriculture provided that the new fishing resource users in the Baltic Sea or the coastal areas of the Baltic Sea could receive the requested fishing quotas only subject to the approval by more than half of the companies fishing in those water bodies or the organisations representing them. This significantly restricted the possibilities of any new undertakings to enter the market and privileged those already operating therein. Furthermore, the linking of a fishing vessel segment with the body water segment and the segmentation of the water body into individual sections allocated to a specific coastal fishing undertaking definitely caused differences in the operating conditions for fishing undertakings.

10-07-2008, CC Resolution No. 2S-17.

MARKET RESEARCH

RETAIL TRADE NETWORKS

For the purpose of the implementation of the obligations by the Government of the Republic of Lithuania in 2008, the CC carried out the analysis of the market in retail trade in food products whereby the CC established that in 2004-2007 the market share of the four major trade networks in the market increased from 61.9 to 72.1 percent. *Maxima LT*, *UAB* was the leader in terms of strengthening its market position in the period concerned having increased its market share from 31.1 to 35.2 percent, *IKI* – from 14.1 to 17.1 percent, *RIMI* – from 6.2 to 8.1 percent, *NORFA* – from 10.5 to 11.7 percent. The assessment of the market position held by the major trade networks in municipal territories that from the consumer view point may be defined as local markets yielded an observation that in 2007, the operating strategy of the networks was mainly targeting expansion in regional centres and major settlements. In 2007, in five major cities of Lithuania – Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys the major trade networks were owners of 47 percent of all stores managed thereby, while in 2006 – 50 percent. In 2007, in major cities there has been an observable trend of the increase in the number of independent stores, or those run by smaller trade networks or other structures – the number of such stores increased from 1785 to 1828.

The trade networks are distinguished from other stores not only by a large range of merchandise offered (from 30,000 to 60,000 product names); such networks offer a range of other advantages: the stores are located in venues convenient for reaching by vehicles, the networks as well as other undertakings operating in the premises of the networks offer a wide range of additional services. Therefore buyers can not only acquire the goods they need, but also avail themselves of a number of additional services, as well as spend their leisure time – this all in combination makes the trade networks a place of major attraction for consumers. Due to the above mentioned reasons both producers and suppliers are interested in supplying their merchandise to such stores. The major suppliers of food products to such trade networks are

Lithuanian producers and suppliers: 92-97 percent of bread and bakery products, milk, meat and fish products, confectionary and pastry products, and 34-70 percent of fruits and vegetables are supplied to the network stores by domestic suppliers. These factors grant to retailers some material advantage in negotiations with producers and suppliers.

In the retail trade sector there is a material interdependence between the product sale market and the product purchase market. The strengthening of concentration in the retail trade market causes an increase in the buyer's purchasing power. The increasing purchasing power is an incentive to retailers to impose upon the suppliers smaller prices on the goods, also to require some economically ungrounded discounts and a range of payments, i.e. establish unfair supply terms. By making appropriate inquiries among the major meat product manufacturers, poultry farms, bread and bakery producers who are the major suppliers of the products to the trade networks, the CC sought to identify the terms imposed upon the suppliers by the networks that, in the opinion of the undertakings, are unfair, restricting their business possibilities or are otherwise discriminating. In their responses the undertakings were in most cases referring to the extensively long settlement for the produce supplied, inadequate fines and sanctions for any failure to supply the products that cannot be justified by any business logics, significant marketing charges for trading in the networks and the required discounts.

The impact of the major trade networks upon competition in the retail trade sector can be assessed from two different view points: first, from the point of view of smaller trade undertakings that operate independently from the major networks, and second – from the consumers' perspective. Due to their extensive capacities major trade networks acquire a significant advantage in respect of the smaller trade undertakings both in terms of consumers and in their negotiations with the suppliers concerning production prices, discounts and other supply terms. Due to the more favourable terms of merchandise supply the networks are enabled to ensure higher profit margins or fix lower sale prices which eventually grant them significant competitive advantage in respect of smaller retailers. On the other hand, the capacities operated and facilities offered by trading networks are highly beneficial to consumers who can purchase all their necessities in a single place, are offered a wider assortment of merchandise; the prices of a number of products are smaller than those in small shops.

MINERAL FERTILISERS

The investigation was initiated in response to the inquiry lodged by K. Starkevičius, Member of the Lithuanian Seimas and the application of the farmers from Rokiškis region.

The investigation primarily involved an opinion survey among the major Lithuanian fertiliser producers: *AB Achema* (nitrogen fertilizers), *AB Lifosa* (compound fertilisers), *UAB Agrochema* (compound fertilisers), *UAB Arvi fertis* (compound fertilisers), *UAB Kemira GrowHow* (compound fertilisers) and *UAB Kemira Lifosa* (compound fertilisers). The investigation established that the increasing natural gas prices caused an increase in the ammonia production costs, and, consequently, the costs and related prices of nitrogen production. The undertakings producing compound fertilizers import most of the production components necessary from third States such as the Russian Federation, Belarus, Kazakhstan Republic, the Ukraine, although the imported fertilizers and individual components imported from other States are subject to customs duties and antidumping charges. Despite the operation of the common economic area import of fertilizers or individual components from the EU States is negligible due to comparatively high transportation costs and prices. The findings of the investigation conducted in the mineral fertilizers markets did not provide any grounds for a conclusion that Lithuanian fertilizer producers have been abusing their dominant position in the relevant fertilizer sale markets, as the principal reason for the increase in fertilizer prices was the rising raw material prices on the global market.

ENFORCEMENT OF THE LAW ON ADVERTISING

With a view to fulfilling its functions to enforce the provisions of the Law on Advertising (LA) in 2008 the CC examined 23 cases related to the use of misleading or impermissible comparative advertising.

As a result, the CC established 10 infringements and imposed sanctions upon the infringing undertakings, 1 investigation was terminated, 8 investigations are in progress.

Preventive measures applied by the CC – 11 providers of advertising, upon being warned in writing ceased the use of misleading advertising.

The CC rendered consultations to 96 applicants who received explanations of the requirements of the LA and their practical enforcement.



■ Infringements 10

■ Refusals to initiate investigations/terminated investigations 5

■ Investigations in progress 8

Cases examined

TRAVEL AND RESCREATION SERVICES

UAB Tez Tour was fined LTL 30,000 for the use of misleading advertising. The travel organizer *UAB Tez Tour* in its advertising catalogues "Egypt. May - October 2007. Hurghada", "Egypt. Gran Canaria 2007-2008" and in its website at www.travelman.lt advertised the hotels indicating the Sultan Beach hotel as a "3+star hotel", the "Hotel category in the country - 4 star hotel". The customers, having purchased the trip and arrived to the hotel Sultan Beach, found out that the category of the hotel was lower than indicated in the advertising statement in the catalogue. The investigation showed that the company was publishing the untruthful information about the category of the hotel, therefore the advertising used by the company was acknowledged as misleading advertising. When assessing the potential of such information to have a misleading effect upon consumers, account was taken of the fact that the information on the category of the hotel is essential to the persons heading for holidays.

19-06-2008, CC Resolution No. 2S-14.

MOBILE TELECOMMUNICATIONS SERVICES

UAB Bitė Lietuva was fined LTL 20,000 for the use of misleading advertising. The mobile telecommunications company *UAB Bitė Lietuva* in national dailies, the national TV and radio channels, outdoor advertising and on the internet promoted the *LABAS* service declaring the statement of the following contents: "Get 10 cents for each minute of an incoming call from another network". The statement, however, failed to inform that the bonus is not generated in the case of a call from a fixed telephone communications and foreign operators. The investigation concluded that the misleading information could have possibly affected the behaviour of the advertising users in taking decisions concerning the acquisition and use of the *LABAS* service.

18-12-2008, CC Resolution No. 2S-25.

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UAB Tele2 was fined LTL 10,000. *UAB Tele 2* in its internet website was publishing the advertising of the payment plan *Laisvalaikis* which claimed: "A bonus for

each minute of a call received - 0.10 LTL/min." This kind of statement prompted the consumers to presume that when using the payment plan a LTL 0.10 bonus will be generated in the user's account in all cases. However, no bonuses were generated in the case of a subscriber who has ordered the service *Šeima ir draugai*, or calling from a number under the payment plan *Pleyps of Tele2*.

24-04-2008, CC Resolution No. 2S-7.

ADVERTISING OF THE TRADE NETWORK

For an infringement of the LA of minor significance *UAB Elektromarktas* was sanctioned in the administrative discipline - was issued a warning. In selected periods *UAB Elektromarktas* was using in its advertising activities the statements each containing a claim "Elektromarktas - largest in the Baltic States". In the opinion of *UAB Topo centras* this claim of the competitors was misleading. The investigation conducted by the CC established that the *Elektromarktas* network was offering a wider range of products, while *Topo centras* was running a larger number of stores, therefore both networks could be considered as one of the largest, although none of them could be claimed to be the largest seller of household appliances and electronic goods. Since the assortment of the goods as well as the number of stores are the factors determining the greater possibilities of consumers to select from a large variety of merchandise, and in respect of undertakings - a possibility to supply and sell their produce in larger quantities, such actions by *UAB Elektromarktas* could affect consumers and serve as an incentive to show preference to the stores run by the latter network.

27-03--2008, CC Resolution No. 2S-5.

ADVERTISING OF THE CONCERT

UAB Zepter International was fined LTL 10,000. *UAB Zepter International* in press and on TV channels, in the context of advertising the concert by a popular singer Laima Vaikulė held in the *Siemens* arena, Vilnius, indicated that the concert will start at 6.00 p.m., without making any announcement that the concert will start much later, as before the concert the advertising provider *UAB Zepter International* will host a commercial presentation of its products. Thus, the advertising statement omitted essential information which eventually misled consumers: the advertising statement had to inform of the planned presentation and/or indicate the exact time of the

beginning of the concert. Having been accurately informed about the concert the consumers could have taken an appropriate decision to attend the concert after the presentation, or not to attend the concert at all.

22-05-2008, CC Resolution No. 2S-9.

PREVENTION OF INFRINGEMENTS



LENIENCY SYSTEM

Having considered the practice exercised and the leniency program model developed by the EC, provisions of the LC, other legal acts and its own experience the CC approved the "Rules on immunity from fines and reduction of the fines for participants of prohibited agreements". The Rules govern the procedure for the exemption from fines of participants of agreements prohibited by Article 5 of the LC and Article 81 of the EC Treaty. The Rules explicitly identify the conditions in the presence whereof an undertaking may be exempted from a fine, or a fine imposed on it may be reduced; the Rules also govern in detail the procedure for acceptance, examination of the applications and the passing of the respective resolutions. With a view to ensuring a correct enforcement of the common leniency and the fine reduction policy in the entire EU in the cases covered by Article 81 of the EC Treaty, the Rules provide for a possibility for undertakings to file with the CC a simplified application concerning the

exemption from a fine thus ensuring an equivalent protection of the interests of the undertakings supplying such applications in all EU Member States. The Rules have been adopted by the CC with a view to ensuring the compatibility of the national legislation and the EU competition law in the area of the formation of the leniency and fine reduction policy.

LEGISLATIVE AND JUDICIAL PRACTICE

HARMONIZATION OF LEGAL ACTS

During 2008, the CC was, already traditionally, an active participant in the legislative process; the Authority analysed and assessed from competition law perspective 23 draft laws and their amendments, 32 draft Resolutions of the Government, and 3 other legal acts and regulations. The CC submitted comments concerning the draft Law on the amendment of the Law on Audit of the RL, pointing out that the Law should

be avoiding the evaluation of the audit service price as an independent indicator of the audit service quality, or a basis to impose disciplinary sanctions. In the opinion of the CC such provisions of the Law could serve as an incentive to auditors and the organisations of audit companies to draft guidelines concerning the rates for audit services and prompt auditors to concert their actions, and groundlessly increase their rates which would eventually harm consumer interests. This position of the CC was equally supported by the previous experience whereby following the completed investigation the CC acknowledged that the Lithuanian Court of Auditors had infringed the requirements of Article 5(1)(1) of the LC, by having approved the recommended rates for the costs of an auditor's engagement, and the minimum hourly rates. Following the comments by the CC the provisions concerned were removed from the draft Law.

The CC submitted its conclusions concerning the draft Law on the amendment of Articles 3, 4, 5, 6 and 13 of the Law on State Stocks of Petroleum Products and Crude Oil. The provisions of the draft Law sought to provide for an exclusively State budgetary funding for the accumulation and management of petroleum product stocks, exempting the undertakings from the duty to accumulate an established share of the stocks at own account. The CC noticed that any costs incurred in relation to the accumulation of petroleum could potentially affect the price of oil products, however, the delegation to the State of the duty to finance the accumulation

and management of the entire stockpile would not necessarily result in any reduction in the consumer prices; the incentives for the prices to decline are triggered by competition (its level) in the market. For that reason it is important to take all possible measures to enhance competition by removing any possible market entry barriers.

OPINIONS PRESENTED TO THE CONSTITUTIONAL COURT

In 2008, the CC, acting within the limits of its competence, on four occasions submitted its opinions to the Constitutional Court concerning the cases considered by the Court. The principal issues on which the CC submitted its position were related to the energy supply sector and the natural gas sector. In the opinion of the CC the principal goal of competition is to ensure an efficient use of certain resources and enhance the consumer welfare. However, in certain cases such objectives may be attained even in the presence of certain restriction of activities. Both the supply of natural gas and the supply of electric energy are very particular areas of activity in which certain restrictions of activities of undertakings, or even the authorisation to operate under exclusive rights may be justified in view of ensuring the reasoned and efficient provision of the services concerned and, at the same time, the protection of consumer interests. On the other hand, in the opinion of the CC, when granting certain rights to a single undertaking, measures must be taken to ensure equal possibilities to all undertakings interested to compete for being granted the rights concerned. However, in certain cases a restriction of the principle of freedom of fair competition may be justified in view of the peculiarities of a specific situation (e.g., in certain cases granting of exclusive rights is necessary in order to ensure effective conduct of certain activities which cannot be ensured under the conditions of unrestricted competition among the undertakings).

ENFORCEMENT OF THE EU COMPETITION RULES

Acting in accordance with the provisions of Article 3 of the Council Regulation (EC) No. 1/2003 of 16 December 2002 the CC has been consistently enforcing the competition rules laid down in Articles 81 and 82 of the EC Treaty. The CC carried out the investigation (06-11-2008, Resolution No. 25-23) whereby the CC acknowledged that *Vilnius International Airport* abused its dominant position by preventing *UAB Naftelf* from entering the markets of

the supply of aviation gasoline and jet fuels to airplanes in *Vilnius International Airport*, thus committing an infringement of Article 82 of the EC Treaty and Article 9 of the LC. Furthermore, the CC conducted 2 investigations in 2008 concerning the alleged restrictive agreements concluded by the undertakings in violation of Article 81 of the EC Treaty and Article 5 of the LC.

OVERVIEW OF THE APPLICATION OF THE EU COMPETITION RULES IN NATIONAL COURTS

In accordance with Article 50(2) of the LC, upon receipt of a claim related to the application of Articles 81 or 82 of the EC Treaty the Court shall notify the CC thereof. In 2008, the CC was lodged a notification that on 12 August 2008 the Vilnius Regional Court received a claim filed by the plaintiff *AB flyLAL-Lithuanian Airlines* against the defendants a Latvian undertaking *Air Baltic Corporation A/S*, a branch thereof in Lithuania and *Airport Riga*, requesting to recognise the actions of the defendants related to a prohibited agreement and abuse of a dominant position contradicting Articles 81 and 82 of the EC Treaty and award damages from the defendants *Air Baltic Corporation A/S* and *Airport Riga*.

In another case, the Supreme Administrative Court of Lithuania (SACL), acting in accordance with the provisions of Article 15(1) of Regulation No. 1/2003, on 2 September 2008 ruled to appeal to the European Commission with a request to submit its opinion on questions related to the case being examined concerning the application of Article 81 of the EC Treaty. The case concerned the validity of the CC's Resolution No. 25-13 of 26 October 2006 whereby the CC ruled that a number of undertakings engaged in wholesale paper trade, by exchanging information of confidential nature, infringed the requirements of Article 5 of the LC and Article 81 of the EC Treaty.

Judicial practice

CONCERNING A PROHIBITION TO EXCHANGE INFORMATION

The CC made a finding that undertakings engaged in the milk purchase and processing business – *AB Kelmės pieninė*, *UAB Kelmės pieno centras*, *UAB Marijampolės pieno konservai*, *UAB Modest*, *AB Pieno žvaigždės*, *AB Rokiškio sūris* and *AB Vilkyškių pieninė* and the Lithuanian Milk Producers' Association *Pieno centras*

infringed Article 5(1) of the LC and fined them (28-02-2008, Resolution No. 25-3).

UAB Marijampolės pieno konservai and *AB Rokiškio sūris* disagreeing with Resolution of the CC appealed it to the Vilnius Regional Administrative Court. The Court, in its ruling of 21 August 2008 supported the conclusions of the CC regarding the structures of the relevant markets, nature of information exchanged and restriction of competition. However, the undertakings objected the ruling of the Court and appealed to the SACL. The case is still pending the examination at the SACL.

The SACL is currently considering another case of a similar character related to the Resolution of the CC which recognised that a number of undertakings engaged in the paper trading activity – *UAB Antalis Lietuva*, *UAB Libra Vitalis*, *UAB Lukas*, *UAB MAP Lietuva*, *UAB Papyrus Distribution* and *UAB Schneidersöhne Baltija* by exchanging, on a quarterly basis, the information of confidential character about the market shares held in the paper market and the amounts of paper sales, restricted competition and thus infringed Article 5(1) of the LC and Article 81(1) of the EC Treaty (26-06-2008, Resolution No. 25-13). As noted above, the SACL, in connection to the circumstances related to the case, decided to appeal to the European Commission asking for its opinion. The Commission's opinion has not yet been received.

CONCERNING THE ACTIONS OF THE LITHUANIAN COURT OF AUDITORS

On 25 November 2008, the SACL passed a ruling acknowledging that the CC had reasonably concluded that actions of the *Lithuanian Court of Auditors* in approving the recommended working time costs and rates for audit services infringed Article 5(1)(1) of the LC, and imposed a fine upon the infringing association.

The Court explained that Article 3(4) of the LC defines the concept of an undertaking in the broad sense of the word, under which the *Lithuanian Court of Auditors* falls both as an association uniting a number of undertakings engaged in economic activity – auditors, and as an undertaking whose actions, or intentions, should they be realised, could potentially have an impact upon the economic activity in the Republic of Lithuania. The Court stated that the decisions of the *Court of Auditors*, similarly to those of other undertakings, irrespective of whether they are recommended or mandatory in nature, may fall within the scope of the LC if they seek to restrict competition, or they directly or indirectly restrict (may

restrict) competition. The premise that the recommendations of the *Court of Auditors* concerning the working time costs and the rates, by their very nature, were equivalent to an intent to fix the prices for audit services by coordinating the behaviour of auditors in the audit service market was supported by the fact that the *Court of Auditors* was exercising some pressure upon individual auditors that refused to apply the "recommended" prices. The Court concluded that such actions of the *Court of Auditors* were to be assessed as an agreement whose object is to restrict competition within the meaning of Article 5 of the LC.

CONCERNING THE JOINT CORPORATE LIABILITY

The CC established that undertakings belonging to the *EIP Group* (*UAB Eurointegracijos projektai*, *UAB EIP Kaunas*, *UAB EIP Vilnius*), *UAB Finsida* and *UAB Statybų strategija* when participating in different public procurement tenders infringed the requirements of Article 5 of the LC and appropriately fined the infringing undertakings. These undertakings violated the relevant competition rules by having concluded prohibited agreements whereby they, while participating in the public procurement tenders in 2005-2007 submitted to the contracting authorities their concerted tenders including the coordinated prices thus restricting competition (10-07-2008, Resolution No. 25-16).

The case was special in the sense that for the first time ever, the CC being guided by the practice of the European Court of Justice, for the actions of the subsidiaries *EIP Kaunas* and *EIP Vilnius* held responsible and sanctioned their parent company *UAB Eurointegracijos projektai*. The CC passed the decision on the basis of the single economic unit doctrine used in the competition law claiming that a parent undertaking and the undertakings controlled thereby (or branches) are treated as one undertaking where the controlled undertakings are completely dependent upon the parent undertaking, i.e. have no real freedom to determine their course of action on the market.

In the course of the investigation the CC established that the parent undertaking not only *had de jure* capacities to control its subsidiaries, but also implemented the control *de facto*. The conclusion was based by the evidence of correspondence between undertakings that was discovered in the course of the investigation in the computers of the undertakings concerned. The contents of the correspondence supported the

evidence that the parent undertaking *UAB Eurointegracijos projektai* exercised an influence upon the subsidiaries concerning coordinated activities. The undertakings jointly planned their operating strategies, decided concerning the areas of activities and shared the information thus shaping their unanimous behaviour in the market.

For the established infringement of the LC all three companies of the *EIP group* were jointly fined LTL 144,000.

CONCERNING THE REDUCTION OF THE IMPOSED FINES

By its Resolution of 4 July 2008, the SLAC examined the appeal filed by *UAB Sobo sistemas*, *UAB Lamberta* and *UAB Termofora* concerning the Resolution of the CC whereby the applicants were acknowledged having concluded a cartel agreement while participating in public procurement tenders and, on that basis, were subjected to the appropriate fines (15-03-2008, Resolution No. 25-6).

When passing the Resolution the CC duly considered the fact that the undertakings concerned at the close of the investigation acknowledged the commitment of the infringement, and reduced the principal amount of the fine by 25 percent. However, in disagreement with the rate of the reduction the defendants appealed the Resolution to the Vilnius Regional Administrative Court that by its Ruling of 11 October 2007 reduced the fines imposed by the CC by 50 percent. Subsequently the SLAC overruled the decision of the first instance court on the basis of the provisions of the Rules concerning the setting of the amount of a fine imposed for the infringement of the LC which establish the procedure for the reduction of the fine upon a participant of a prohibited agreement.

The Court ruled that the fine upon undertakings might be reduced by 20 to 75 percent in the cases where the actions of a participant of the prohibited agreement meet two conditions. First, the undertaking concerned must cooperate with the CC in the course of the entire investigation and provide any information possessed and known and related to the prohibited agreement. Provided both conditions are satisfied, a fine may be reduced by 50 to 75 percent in accordance with Clause 7 of the Rules, where the undertaking is the first of the parties to the prohibited agreement, which has supplied all the available information about the infringement; presents evidence of the agreement not possessed by the CC and important for the purpose of proving the existence of the agreement; also the undertaking was not the initiator

of the prohibited agreement. Either the fine may be reduced by 20 to 50 percent in accordance with Clause 8 of the Rules where the participant of the agreement presents evidence not possessed by the CC and important for the purpose of proving the existence of the agreement.

In the case concerned the Court considered that the undertakings were cooperating with the CC not for the entire duration of the investigation conducted in respect thereof. Having received the confessions of the undertakings only nearing the completion of the investigation the CC had reasonably treated the acknowledgements as alleviating circumstance within the meaning of Article 42 of the LC, rather than Clauses 7 or 8 of the Rules, and accordingly reduced the fines imposed by 25 percent.

ON THE CONTRACT BY THE MUNICIPALITY OF THE CITY OF VILNIUS

The CC acknowledged that the Municipality of the City of Vilnius, having decided to procure services from *UAB Rubicon eventus* (later the name of the undertaking was changed into *UAB Universali arena*) for LTL 1.5 m every year and thus securing the funding for a single undertaking created dissimilar competition conditions for undertakings operating in the relevant market. The contract concluded by the Municipality created exceptional conditions for a single undertaking as this undertaking did not have to compete with others in terms of the quality and prices of the services for part of its proceeds (20-09-2007, Resolution No. 25-19). The Vilnius Regional Administrative Court acknowledged that the CC had rightfully and reasonably concluded the commitment of an infringement by the Municipality of the City of Vilnius. Although the decision of the Council of the Municipality authorising the procurement of the services from *UAB Rubicon eventus* was repealed, the Court in its ruling of 15 March 2008 also duly considered the circumstance that the right to provide the lease services was retained by virtue of the contract that continued to be in effect even after the repeal of the Decision. The Court pointed out that the terms established in the contract between the Municipality and the relevant private undertaking, within the meaning of an infringement of the LC may be treated as equivalent to the provisions of legal acts or the effect of certain administrative decisions. The mere fact that civil relations have developed between the parties to the contract cannot in itself extinguish the right of the CC to conduct an investigation

concerning the actions possibly inhibiting fair competition. The Court acknowledged as valid the arguments of the CC to the effect that the events sponsored by the Municipality could be arranged in other halls, rather than exclusively in *Siemens arena*; therefore the contract concluded by the Municipality was discriminatory in respect of other undertakings by precluding them from offering the relevant lease services. The ruling of the first instance court was upheld after the case was examined in the appeal proceeding, therefore the Municipality of the City of Vilnius will be bound to discharge the obligation imposed by the CC to terminate the contract with *UAB Universali arena*, or amend it accordingly.

CONCERNING THE RESOLUTION IN AB MAŽEIKIŲ NAFTA CASE

On 18 February 2008, the SACL decided to return the case on *AB Mažeikių nafta* to the CC for supplementary investigation on the account of the doubts the Court had concerning the definition of the relevant market. The CC acknowledged that *AB Mažeikių nafta* had infringed the requirements of Article 9 of the LC and Article 82 of the EC Treaty. Having not expressed any opinion concerning the commitment or non-commitment of the infringement the Court in its ruling presented an explanation of several very important procedural issues (22-12-2005, Resolution No. 25-16).

The SACL explained that not each infringement of a formal procedure may be considered a sufficient basis to acknowledge an administrative act invalid where the law does not explicitly define the consequences of the infringement of such formal procedure. The impact of a procedural infringement upon the validity of an adopted administrative act must be assessed in terms of presence of a probability that the infringement will result in an adoption of an unsubstantiated decision. Therefore, in the first place the Court should assess whether in the absence of the procedural infringement concerned the CC would have arrived to different conclusions concerning the very fact of the infringement of competition law. The Court did not establish a single procedural infringement that could possibly caused such consequences.

The SACL acknowledged that the scope of the privilege against self-incrimination in the procedure on an infringement of competition law is narrower than in criminal proceedings. An undertaking suspected of an infringement can not refuse to provide information on the excuse that the information is incriminatory,

i.e. may be referred to when establishing the competition infringement. The Court also supported the position of the CC that a parent undertaking is responsible for the actions of the subsidiaries controlled thereby where such parent undertaking may exercise a decisive influence upon the economic behaviour of the latter.

The SACL noted that hearing of a case is an administrative procedure the principal objective whereof is to hear the opinions of the undertakings suspected of infringements and those who fell victims thereto concerning the findings of a completed investigation. Participants of the proceedings in the case examined by the CC do not have the rights enjoyed by the participants of judicial proceedings. Only in judicial proceedings the CC becomes an equal party of the process whose representatives may be inquired in relation to the case. The Court also acknowledged that the final resolution of the CC concerning the infringement may be different from a notice on a completed investigation; and that the CC has only to base itself on the principal findings of the investigation and the factual circumstances.

COMPETITION CULTURE AND PUBLICITY

The development and strengthening of public relations is the principal and most powerful means in informing the public about the activities of the CC. With a view to disseminating the required information the CC used a range of means - including posting of the notices on the forthcoming meetings and sessions of the CC, press releases, maintaining continuous relations with information agencies and press services, publication of articles and giving interviews on most topical and vital issues. When proliferating and publishing the information the principal criterion that the CC has been basing itself was the attention of the communications means to the relevance and urgency of the news and the quality of the presentation

thereof, while refraining from the use of any funding for the dissemination of any commissioned information. When supplying any information to the media the CC sought to disclose the contribution of the competition authority in addressing the issues assigned to its competence and form its positive image.

With a view to improving the quality of public relations the CC was referring to the guidelines drafted by the Information Society Development Committee under the Government of the RL and a range of suggestions presented at the seminar "Re-use of public sector information in the EU Member States and Lithuania: policy and practice"; also a number of documents establishing the requirements in respect of public authorities when providing public information or servicing applicants. In the course of planning its activities the CC has been addressing a number of issues covered in the conference "Public communication in Lithuania: challenges, problems and recommendations"; were implemented the ECN guidelines on information exchange and strengthening of communication. The CC has been maintaining regular contacts and relations with the press services of the Seimas, Government and individual Ministries.

Scope of information disseminated in 2008.

- 79 press releases of various nature, including 57 directly related to Resolutions, passed by the CC.
- 250 information notices disseminated via information agencies and internet portals related to the activities of the CC: resolutions passed, initiated investigations, complaints received, court rulings, concentration control, advertising statements, alleged unfair commercial activities, etc.
- According to the data of the survey produced by the news agency BNS spaudos centras in 2008 regional press published 390 publications related to the activities of the CC.
- In the course of the year various aspects of the CC's activities were mentioned in more than 630 information presentations and articles.
- The CC Members and officers produced and published 7 analytical articles (published in the magazines *Valstybė, Juristas, Vadovo pasaulis, Veidas*, and the daily *Respublika*).



STATE AID

TV AND RADIO RELEASES

On numerous occasions programmes of different national TV and radio channels were covering a range of subjects related to the most relevant activities of the CC. The specialists of the CC gave total 34 interviews commenting on a number of issues. The officers of the CC more than once were invited as participants in live programs on TV and radio channels, notably a round table program *Apskritas stalas* (the news radio *Žinių radijas*), *Forumas, Teisė žinoti* (Lithuanian national TV), *Dienos tema, Ryto garsai* (Lithuanian radio), and others. The principal subjects covered in live programs ranging from cartel agreements, strengthening of fair competition to the application of the Law on Advertising.

In November, the CC had visitors from the Moldova TV who created a special TV report about the activities of the CC for the local audience.

STRENGTHENING OF THE IMAGE

A special role in the assessment of the CC activities is played by the views formed in respect of the institution by politicians, public authorities and business representatives, lawyers who come into most immediate relations with the CC, as well as citizens applying to the CC specialists. Therefore, great efforts, and by employing a range of measures, are devoted to the formation of the CC's image as a professional and responsible public authority efficiently fulfilling its functions.

With a view to improving the servicing of the applicants the CC launched a facility enabling the applicants to post inquiries and be responded directly through the CC's website, and those interested now can subscribe to the CC's news on-line.

The scope of the information posted in the intranet of the CC has been significantly expanded. This has become instrumental for the specialists of the CC facilitating the search of any legal or other operational information as well as efficient in-house communication.

LEGISLATIVE DEVELOPMENTS IN THE AREA OF STATE AID

Acting in accordance with the European Commission legal acts governing State aid and exercising its functions set forth in Article 48(3) of the LC, the CC has been maintaining its closest relations with the European Commission and public authorities of the Republic of Lithuania for the purpose of discussion State aid issues, submitting its comments and proposals to the draft regulations of the European Commission, preparing responses to a number of questionnaires submitted by the European Commission, on numerous cases sharing its expertise with the specialists working in the State aid area of other countries. To make the measures provided for in the State aid action plan on the application of more efficient and simplified procedures operational it is of utmost importance to ensure an enhanced liability of Member States for the proper application of legal provisions. An event of profound importance in this respect was the adoption of the Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty. The enactment of this Regulation as well as other legal acts governing State aid markedly enhanced the role of the CC as the authority coordinating the provision of State aid.

During the accounting period the CC, in cooperation with other public authorities submitted its comments regarding the drafts of the following regulations of the European Commission:

- Community guidelines on State aid to railway undertakings;
- Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees;
- Commission Regulation declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation);
- Commission regulation (EC) on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fishery products;
- Framework on State aid to shipbuilding;
- Commission notice on the enforcement of State aid law by national courts;
- Commission communication on the application of State aid rules to public service broadcasting.

The CC in cooperation with other public authorities of the Republic of Lithuania submitted to the European Commission an opinion on the eligibility for financing of certain maritime activity in application of the provisions of the Community guidelines on State aid to maritime transport.

Having regard to the most recent developments in the EU State aid regulations and the new legislation adopted by the European Commission, the CC during the accounting period prepared three drafts of national legislation.

Having regard to Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production (OJ 2007 L 337, p. 35), replacing Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors (OJ 2004 L 325, p. 4), the CC prepared the draft Resolution of the Government of the Republic of Lithuania "On the amendment of Resolution No. 35 of 19 January 2005 of the Government of the Republic of Lithuania On the setting-up of the Register of State aid, the approval of its Regulations and the setting of the commencement date for its operation" which was passed by the Government of the Republic of Lithuania on 28 May 2008 (Official Gazette, 2008, No. 66-2509).

In this connection the CC passed two Resolutions, one of which was governing the methodology for the calculation of the funds allocated to support the function of the information provision to the European Commission, and another – amending the rules on the registration of State aid.

The CC assessed 62 draft national regulations, and submitted its comments and proposals in respect of 22 draft legal acts (of which 8 draft Resolutions of the Government, and 11 draft Orders of Ministers).

NOTIFICATIONS TO THE EUROPEAN COMMISSION

In performing its functions of the coordinating authority in State aid-related issues the CC was closely cooperating with the State aid providers in drafting notifications to the European Commission, and submitting other information related to the subject. Within the reporting period the State aid providers submitted 20 notifications to the European Commission, of which 14 (short information forms) concerned the application of block exemptions. The largest number of State aid notifications (11 cases) was submitted by the Ministry of Economy, followed by the Ministry of Agriculture (7 notifications). During the period concerned, the European Commission passed favourable decisions in respect of 8 State aid cases. On one occasion the EC concluded that the measure notified could not be treated as State aid. At the end of 2008, 4 State aid cases were still being considered by the European Commission.

Total State aid notifications to the European Commission	20
Notifications on State aid under schemes	20
of which: notifications on State aid under schemes under block exemptions	14
Notifications on State aid approved by the European Commission (including the notifications submitted during 2007 - 2008 and resolved in 2008)	8
of which: State aid under schemes	8
Measure that is not considered to constitute State aid	1
Withdrawn notifications	3
State aid cases still under consideration at the European Commission during the accounting period (according to the submitted notifications)	4

PERFORMANCE OF OTHER FUNCTIONS

The CC has been verbally and in writing providing advice to State aid providers and recipients, hosting and participating in the advisory meetings organised by other public authorities and devoted to discussion of the issues related to State aid in drafting investment and other support projects. In the accounting period the State aid specialists of the CC took part in 19 workshops with the specialists from other institutions and foreign experts among the participants. The agendas of such workshops included issues related to the support measure projects anticipated by the Ministries of Economy, Agriculture, Communications, Culture, Environment, as well as the State Tax Inspectorate under the Ministry of Finance, and the Information Society Development Committee under the Government of the Republic of Lithuania.

Due to the ongoing improvement and updating of the information posted in the "State aid" section of the CC website now State aid providers and recipients can expediently access complete and most updated information on the newly adopted or amended EU legal acts and the European Commission's decisions governing the provision of State aid.

Further improvements were introduced in the operation of the State aid Register (the Register); in the period from the launching (01.10.05) until 31 December 2008, the Register recorded the data on 45,150 *de minimis* aid cases (including *de minimis* aid in agriculture and fisheries sectors) and 143 State aid schemes and individual aid cases. Also within the period reviewed the CC, fulfilling its functions of the manager of the Register and seeking to ensure an efficient operation of the

Register introduced the appropriate amendments as required by the provisions of the Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production (OJ 2007 L 337, p. 35).

VOLUMES OF STATE AID

According to the data available to the CC, the value of State aid granted in Lithuania during 2007 amounted to LTL 612.17m (EUR 177.3 m).

The rate of the national State aid in relation to the GDP (at current prices) in 2007 accounted for 0.63 percent, in 2006 – 0.54 percent. For comparison: the EU-25 average in 2006 was 0.6 percent, in 2007 – 0.5 percent, the EU-15 average in 2006 and 2007 – 0.5 percent, and that of 12 new EU Member States in 2006 and 2007 – 0.8 percent. The average national State aid per working person in 2007 was LTL 399.01 (EUR 115.56), in 2006 – LTL 295.21 (EUR 85.57). The tables and graphs presented in the "Statistics" section show that in 2007, the volume of granted State aid was significantly higher than in 2006 (EUR 128.27 m), and in 2005 (EUR 119.16 m). According to the data available to the CC, the volumes of aid to agriculture increased by LTL 167.77 m (EUR 48.58 m). The increase is accounted for the support of LTL 127.05 m to entities engaged in agricultural activities who have sustained damage due to the fact that their agricultural plans had perished or suffered because of severe meteorological phenomena in 2006. State aid to industry and services in 2007 was only marginally larger than in 2006, accounting to LTL 186.13 m (EUR 53.91 m), in 2006 – LTL 184.85 m (EUR 53.54 m).



In 2007, as compared to the period 2004-2006, higher volumes of the State aid were allocated to environmental protection, implementation of the employment programmes, professional development. This readjustment of State aid structure comes in compliance with the objectives defined by the European Council to provide less but more targeted State aid, with higher volumes of aid resources channelled to horizontal general purpose objectives, i.e. regional development, small and medium-sized enterprises, research, development and innovations, and the implementation of employment programmes. Notably, the volumes of State aid as presented here do not include the funds received from the EU structural funds. The breakdown data of State aid by principal sectors are presented in the "Statistics" Chapter of the present Report.

SOME OF THE HIGHLIGHTS OF THE INTERNATIONAL COOPERATION

Within the aim of developing the international cooperation a special role was dedicated to the representation of the CC in the respective EU institutions. The officers of the CC participated in the work of the Working Party on Competition of the EU Council and other working groups and committees set up by the European Commission. In fulfilling its functions related to the enforcement of the ES competition rules the CC delegated its representatives to seven meetings and one hearing session of the Advisory Committee on Restrictive Practices and Dominant Positions. Members of the CC were active participants in the work of the Advisory Committee on Mergers and the Advisory Committee on State Aid. Furthermore, representatives of the CC attended the meetings and sessions of ten working groups and sub-groups of the ECN dedicated to the enforcement of the provisions of Articles 81 and 82 of the EC Treaty and the Council Regulation (EC) No 1/2003.

The Chairman of the CC was delegated to the annual meeting of Directors-General of the European competition authorities the agenda whereof provided for the discussion of a number of burning issues related to treatment and provision of State aid in the context of the difficult economic and financial situation, attainments of competition policy in 2008 in combating hardcore cartel agreements, and sharing the views on the forthcoming revision of Regulation 1/2003. Representatives of the

CC were also among the participants of the workshop hosted by the Directorate General for Economic and Financial Affairs to discuss the competition policy efficiency issues. Within the programme for the exchange in officers of the EU competition authorities, one employee of the CC was delegated to a traineeship course at the DG Competition.

PARTICIPATION IN FORUMS AND SEMINARS

During 2008, the CC continued to be an active participant in the activities of the OECD Competition Committee and its Working Parties. The CC made the presentations on the following issues:

- Antitrust issues involving minority shareholdings and interlocking directorates;
- Roundtable on competition in the construction industry;
- Roundtable on market studies;
- Roundtable on cartel jurisdiction issues including the effects doctrine.

In February 2008, the CC participated in the Global Forum on Competition held in Paris at which the OECD Member States made presentations and discussed the issues covering the interface between competition and consumer policies.

In April 2008, two delegates from the CC participated in the two-week workshop held in Budapest and hosted by the OECD – Hungarian Regional Centre for

Competition under the OECD programme for multilateral aid to the Central, South-East and East European countries and made presentations on the complete analysis of the cases investigated by the CC on cartels and other horizontal agreements.

In March delegates from the CC participated in the ICN Merger Notification and Procedures Workshop in Brno, in April – the 7th Annual ICN Conference, Kyoto, Japan.

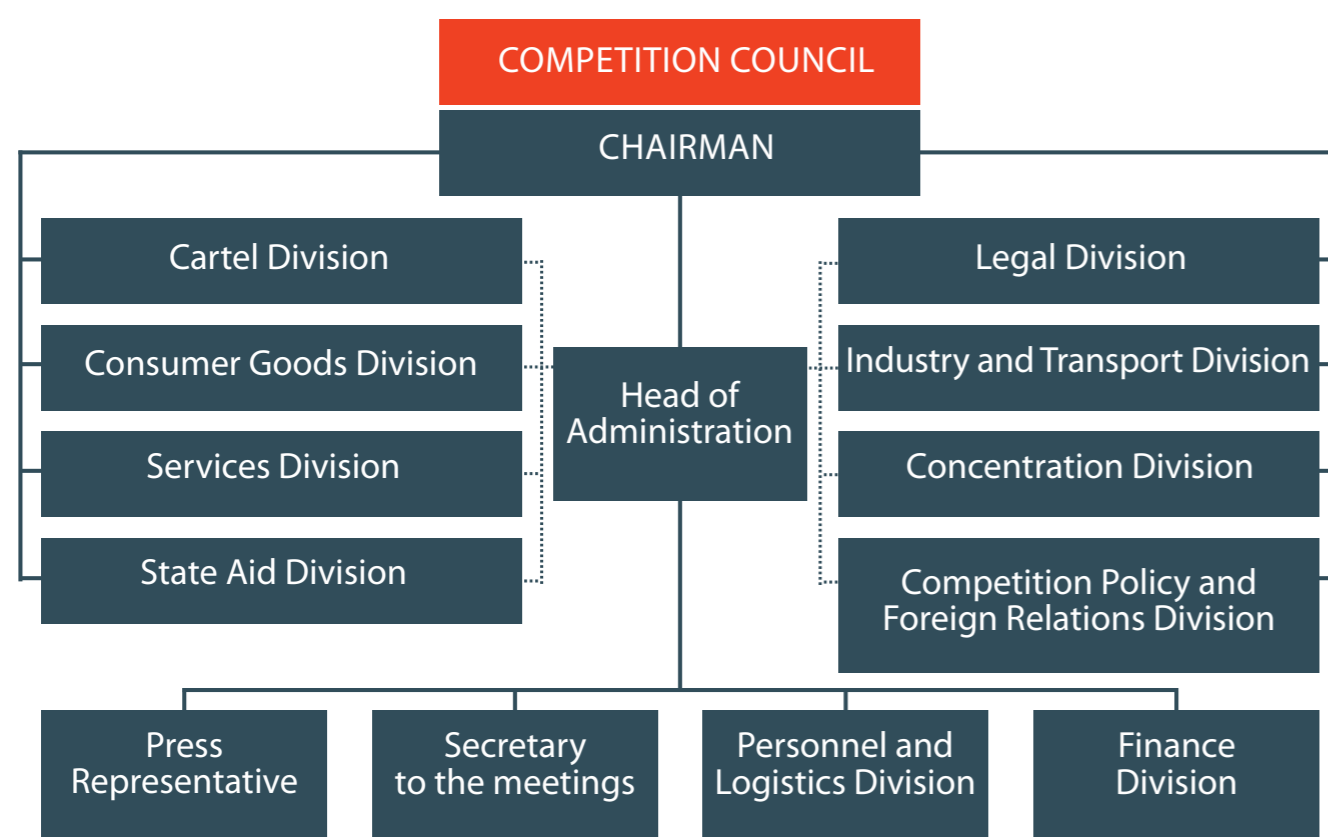
With a view to exchanging the experience in competition law and policy enforcement area the representatives of the CC participated in 7 international seminars and conferences – in Belgium (two conferences), Hungary, France, USA, Estonia and the Netherlands.

REPORTING AND SUBMISSION OF INFORMATION

Within the framework of the cooperation in the ICN the CC supplied the information to the Agency effectiveness project report on the efficiency of the competition authorities that will be presented at the Annual ICN conference in 2009. In addition, some relevant material was supplied to the ICN Advocacy working group on the market research exercises by the CC in various industries and trade sectors, as well as the ICN Unilateral Conduct Working Group. Relevant information was provided to the study being drafted by the ICN Secretariat "Survey on Competition Law in Small Economies" that will be presented at the 8th Annual ICN Conference.

The CC made its relevant contribution to the Report drafted by the UNCTAD on competition law and policy issues.

ORGANIZATIONAL CHART OF THE CC IN 2008



STATISTICS



DECISIONS REACHED AND FINES IMPOSED BY THE COMPETITION COUNCIL IN 2008

ENFORCEMENT OF THE LAW ON COMPETITION		
Concerning regulations passed by public and local authorities (19)		
Established infringements (9):		
13-03-2008 No. 2S-4	On the compliance with the requirements of Art. 4 of the LC of Items 6 and 10 of the Description of the Rules for the payment for the health care services approved by Order of 22 December 2006 of the Minister of Health of the Republic of Lithuania.	
05-06-2008 No. 2S-10	On the compliance with the requirements of Article 4 of the LC of the Kaunas City Municipality in refusing to conclude a contract with UAB Dzūtra on the recovery and transportation of household waste.	
05-06-2008 No. 2S-11	On the compliance with the requirements of Article 4 of the LC of the terms for the tender for the selection of the provider of the Public municipal waste management service approved by Resolution No. 1-1537 of 14 February 2007 of the Council of Vilnius City Municipality.	
12-06-2008 No. 2S-12	On the compliance with the requirements of Article 4 of the LC of Item 1 of the Resolution of the Municipality of the City of Vilnius No. 1-1528 "On the approval of the contract and agreement between the Municipality of the City of Vilnius and UAB JCDecaux Lietuva on the advertising of Vilnius, the European Capital of Culture 2009 on the outdoor advertising devices in foreign States".	
03-07-2008 No. 2S-15	On the suspension of the examination of the case on the compliance with the requirements of Art. 4 of the LC of Item 3.2 of Order No. 7P-37 of 5 July 2007 and Item 1.1. of Order No. 7P-44 of 16 July 2007 of the Minister of Justice of the Republic of Lithuania.	
10-07-2008 No. 2S-17	On the compliance with the requirements of Article 4 of the LC of the legal acts and resolutions governing the fishing activities in the Baltic Sea passed by the Ministry of Agriculture and the Fisheries Department under the Ministry of Agriculture of the Republic of Lithuania.	
28-08-2008 No. 2S-19	On the compliance with the requirements of Article 4 of the LC of Resolution No. T2-122 of 26 July 2007 of the Municipality of Palanga "On the fee for the rent of the State-owned land in 2007".	
02-10-2008 No. 2S-20	On the compliance with the requirements of Article 4 of the LC of the decisions of the Municipality of Vilnius on procurement of deratisation services.	
24-12-2008 No. 2S-27	On the compliance with the requirements of Article 4 of the LC of resolutions of municipalities on the transfer of functions to the regional waste management centres.	
Refusals to initiate investigations (10)		
Concerning prohibited agreements (10)		
Established infringements (3):		
28-02-2008 No. 2S-3	On the compliance with the requirements of Article 5 of the LC of actions of the following undertakings engaged in milk purchase and processing activities and the Association of such undertakings: AB Kelmės pieninė UAB Kelmės pieno centras UAB Marijampolės pieno konservai UAB Modest AB Pieno žvaigždės AB Rokiškio sūris AB Vilkyskių pieninė	LTL 76,300 LTL 21,700 LTL 256,500 LTL 7,000 LTL 865,900 LTL 824,800 LTL 183,800

10-07-2008 No. 25-16	On the compliance with the requirements of Article 5 of the LC of the undertakings providing the services related to the implementation of the EU structural funds support projects: <i>UAB Eurointegracijos projektai, UAB EIP Vilnius, UAB EIP Kaunas, jointly UAB Statybos strategija UAB Finsida</i>	LTL 144,000 LTL 12,000 LTL 3,000
18-12-2008 No. 25-26	On the compliance with the requirements of Article 5 of the LC of the undertakings providing the services related to the implementation of the EU structural funds support projects: <i>Support Foundation Agilė PI Baltijos aplinkos forumas UAB Vandens projektai</i>	LTL 3,300 LTL 8,500 LTL 20,300
Refusals to initiate investigations (4)		
Cases closed (3)		
Concerning abuse of a dominant position (7)		
Established infringements (1):		
06-11-2008 No. 25-23	On the compliance with the requirements of Art. 9 of the LC and Article 82 of the EC Treaty of the State Enterprise <i>Vilnius International Airport.</i>	LTL 171,000
Refusals to initiate investigations (5)		
Cases closed (1)		
Concerning concentration control (55)		
Permissions to implement concentration (50):		
17-01-2008 No. 15-2	<i>Ementor ASA</i> to implement concentration by acquiring up to 100 % of shares of <i>UAB Sonex</i> group	
24-01-2008 No. 15-6	<i>UAB SKP stiklas</i> to implement concentration by acquiring up to 100 % of shares of <i>UAB Lanreta</i>	
24-01-2008 No. 15-8	<i>Opoczno A.S. stiklas</i> to implement concentration by acquiring up to 79 % of shares of <i>AB Dvarčionių keramika</i>	
31-01-2008 No. 15-12	<i>AB AVIA Investment</i> to implement concentration by acquiring 95 % of shares of <i>UAB Flylal technics</i> , 90 % of shares of <i>AB Aviation assets management</i> , 100 % of shares of <i>UAB flyLAL Training</i> , 100 % of shares of <i>UAB Passenger terminal</i> , 100 % of shares of <i>UAB flyLAL charters</i> , 97 % of shares of <i>UAB BPC Travel</i> , 97 % of shares of <i>UAB Bilietu pardavimo centras</i>	
14-02-2008 No. 15-17	Joint Lithuanian-USA venture <i>Sanitex</i> to implement concentration by acquiring up to 100 % of shares of <i>AB flyLAL Lithuanian Airlines</i>	
20-03-2008 No. 15-29	<i>BRP Holdings Limited</i> to implement concentration by acquiring 100 % of shares of <i>UAB MD Shopping</i> and 100 % of shares of <i>UAB MD Retail</i>	
27-03-2008 No. 15-35	<i>AB Vilkyškių pieninė</i> to implement concentration by acquiring up to 100 % of shares of <i>AB Kelmės pieninė</i>	
03-04-2008 No. 15-40	<i>Aspo Oyj</i> to implement concentration by acquiring 100 % of shares of <i>Kauko-Telko Oy</i>	
10-04-2008 No. 15-47	<i>AAS Gjensidige Baltic</i> to implement concentration by acquiring 100 % of shares of <i>ADB RESO Europa</i>	
23-04-2008 No. 15-50	<i>UAB Paršelis ir Ko</i> to implement concentration by acquiring 100 % of shares of <i>UAB Krekenavos kiaulės</i>	
23-04-2008 No. 15-51	<i>OAO Rosijskije Železnye dorogi</i> to implement concentration by acquiring 25 % +1 share of <i>The Breakers Investment B.V.</i> and by acquiring joint control of <i>The Breakers Investment B.V.</i>	
23-04-2008 No. 15-53	<i>UAB Flopo informacinės sistemos</i> to implement concentration by acquiring a share of assets of <i>UAB Euroset LIT</i>	
30-04-2008 No. 15-57	<i>UAB Rivona</i> to implement concentration by acquiring 100 % of shares of <i>UAB Tilžė LT</i> and 100 % of shares of <i>UAB Vilniaus Vingio verslo centras</i>	
30-04-2008 No. 15-58	G. T. Jarmalavičius to implement concentration by acquiring 100 % of shares of respectively <i>UAB AG Group</i> and <i>UAB Topo centras</i> , 50 % of shares of <i>UAB Topo technika</i> and by acquiring joint control of <i>UAB Topo technika</i> together with M. Skalandžiūnas.	
15-05-2008 No. 15-61	<i>RAO Nordic Oy</i> to implement concentration by acquiring 51 % of shares of <i>UAB Energijos realizacijos centras</i> , and by acquiring joint control of <i>UAB Energijos realizacijos centras</i> together with <i>UAB Scaent Baltic</i>	
22-05-2008 No. 15-63	<i>UAB Unimodus</i> to implement concentration by acquiring 50 % of shares of <i>UAB GEPAGA</i>	
04-06-2008 No. 15-68	Viktor Uspaskich to implement concentration by acquiring up to 100 % of shares of <i>UAB EDVERVITA</i>	
12-06-2008 No. 15-74	<i>UAB ŽIA valda</i> to implement concentration by acquiring directly and indirectly through controlled entity <i>UAB Spaudvesta</i> up to 100 % of shares of <i>UAB Smulkus urmas</i>	
12-06-2008 No. 15-75	<i>INTERNATIONAL BUSINESS MACHINES CORPORATION</i> to implement concentration by acquiring share of assets (business) of <i>AB Lietuvos draudimas</i>	

19-06-2008 No. 15-77	<i>UAB FIS investicija</i> to implement concentration by acquiring 100 % of shares of <i>UAB Fortakas</i>	
19-06-2008 No. 15-78	<i>UAB ŽIA valda</i> by acquiring up to 45 %, <i>UAB Indeco: Investment and Development</i> – up to 30 % of shares of <i>AB flyLAL – Lithuanian Airlines</i> and by acquiring a joint control of <i>AB flyLAL – Lithuanian Airlines</i> together with joint Lithuanian-USA venture <i>Sanitex</i>	
26-06-2008 No. 15-87	<i>UAB Delta Investment</i> to implement concentration by acquiring 100 % of shares of <i>UAB Biseris</i>	
10-07-2008 No. 15-92	Aurelijus Rusteika to implement concentration by acquiring up to 100 % of shares of <i>UAB General Financing</i>	
10-07-2008 No. 15-93	<i>UAB Verdispar Retail Properties II</i> to implement concentration by acquiring and leasing to <i>UAB MAXIMA LT</i> part of the property, i.e. objects of commercial purpose at the following addresses: Santaikos St. 34G, Alytus; Raudodvario St. 284A, Kaunas; Panerių St. 322, Kaunas; Šilutės St. 68, Klaipėda; J.Tumo-Vaižganto St. 81, Plungė; Aido St. 18A Šiauliai; Žiedo g. 1 Ukmergė; Žirmūnų St. 89A Vilnius; Šaltkalvių St. 2 Vilnius.	
17-07-2008 No. 15-97	<i>Šiaulių plentas</i> to implement concentration together with <i>UAB Kelių remonto grupė</i> by establishing new undertaking	
17-07-2008 No. 15-98	<i>AB Agrowill Group</i> to indirectly implement concentration through parent company <i>UAB AWG Investment 1</i> by acquiring 97,28 % of shares of <i>UAB Grūduva</i>	
17-07-2008 No. 15-99	<i>AB Uomega</i> to implement concentration by acquiring up to 100 % of shares of <i>AB Vieniųė</i>	
27-08-2008 No. 15-103	<i>WestInvest Gesellschaft für Investmentfonds mbH</i> to implement concentration by acquiring 100 % of shares of <i>UAB KAUNO AUDINIŲ PROJEKTAS</i>	
27-08-2008 No. 15-105	<i>UAB B. Braun Avitum</i> to implement concentration by acquiring 100 % of shares of <i>UAB Dializės centras</i> and <i>UAB Kauno dializės centras</i>	
27-08-2008 No. 15-106	<i>UAB Tamro</i> to implement concentration by acquiring 100 % of shares of <i>UAB Herbarijos vaistinė, UAB Farma vaistinės</i> and <i>UAB Naujininkų turto valdymas</i>	
11-09-2008 No. 15-114	<i>Brenntag CEE GmbH</i> to implement concentration by acquiring 100 % of shares of <i>Dipol Chemical International, Inc.</i>	
11-09-2008 No. 15-115	<i>AB Agrowill Group</i> to indirectly implement concentration through parent company <i>UAB AWG Investment 2</i> by acquiring a share of 73.58 % of <i>ŽŪB Tetirvinai</i>	
18-09-2008 No. 15-118	<i>MAXIMA LT, UAB</i> to implement concentration by leasing premises of commercial purpose at the following addresses: Naikupės St. 18, Klaipėda; Sporto St. 16, Marijampolė; Savanorių Av. 375, Kaunas; Pramonės St. 16, Kaunas; Gedvydžių St. 17, Vilnius; Vytauto 98/former Turgaus St. 1, Palanga; Gelvonų St. 35, Vilnius and by acquiring premises at Lietuvininkų St. 58, Šilutė and J.Basanavičiaus St. 53, Kėdainiai	
18-09-2008 No. 15-119	<i>AB flyLAL Group Services</i> to implement concentration by acquiring up to 100 % of shares of <i>UAB Baltic Gound Services</i>	
25-09-2008 No. 15-124	Aurelijus Rusteika and Aurelija Rusteikienė to implement concentration by acquiring 100 % of shares of <i>UAB AG Group</i> ; 50 % of shares of <i>UAB Topo technika</i> and by acquiring joint control of <i>UAB Topo technika</i> together with M. Skalandžiūnas; by acquiring directly and through <i>UAB AG Group</i> 100 % of shares of <i>UAB Topo centras</i> and 100 % of shares of <i>UAB TC investicija</i>	
02-10-2008 No. 15-132	<i>UAB Palink</i> to implement concentration by leasing premises of commercial purpose at the following addresses: Vaidoto St. 1, Šiauliai; Basanavičiaus St. 54, Šiauliai; Tilžės St. 250A, Šiauliai; Vytauto St. 67, Garliava; L.Asanavičiūtės St. 20/V.Druskio St. 2, Vilnius and by acquiring premises with ownership rights at Pupinės St. 6, Vilnius and Darius and Girėnas St. 1, Ramygala.	
02-10-2008 No. 15-133	To implement concentration by establishing new company <i>UAB Grundolitos grupė</i> where 53 % of shares of the company will be owned by <i>UAB Šiaulių plentas</i> and 47 % of shares will be owned by Algirdas Budreckas, Vladas Stanevičius, Algimantas Šiukšta, Algirdas Reimontas and Romanas Kapustinskis and by acquiring joint control of <i>UAB Grundolitos grupė</i> ; and <i>UAB Grundolitos grupė</i> to implement concentration by acquiring up to 100 % of shares of <i>UAB Grundolita</i> and up to 100 % of shares of <i>UAB Žemda</i> .	
02-10-2008 No. 15-134	<i>UAB EVA GRUPĖ</i> to implement concentration by acquiring up to 100 % of shares of <i>UAB TB Investicija</i>	
02-10-2008 No. 15-135	<i>UAB Rivona</i> and <i>UAB BALTIC PETROLEUM</i> to implement concentration by acquiring, respectively, 35.25 % and 29.5 % of shares of <i>UAB Baltijos kryptis</i> and by acquiring joint control of <i>UAB Baltijos kryptis</i> together with A.Gumbelevičius	
23-10-2008 No. 15-146	<i>UAB Remil</i> to implement concentration by acquiring 100 % of shares of <i>UAB Baloša</i>	
30-10-2008 No. 15-151	<i>UAB Mūsų knyga</i> to implement concentration by acquiring 100 % of shares of <i>UAB Vagos prekyba</i>	
30-10-2008 No. 15-152	<i>TitoConcerto A/S</i> to implement concentration by acquiring 100 % of shares of <i>Danisco Sugar A/S</i>	
13-11-2008 No. 15-159	<i>UAB Palink</i> to implement concentration by leasing premises of commercial purpose at the following addresses: Kauno St. 1A, Vilnius; Savanorių Av. 51, Vilnius; Kalvarijų St. 124, Vilnius; Gedimino Av. 31, Vilnius; Švitrigailos St. 40A/Marijampolės St. 8 Vilnius; Laisvės Al. 24, Panevėžys; Nemuno St. 29A, Panevėžys; Darius and Girėnas St. 35, Panevėžys; J. Basanavičiaus Al. 10, Marijampolė; Žuvininkų St. 5, Šiauliai; Gvazdikų tako St. 1, Šiauliai and by acquiring premises with ownership rights at Gardino St. 2, Merkinė.	

27-11-2008 No. 15-166	<i>UAB Palink</i> to implement concentration by acquiring with ownership rights premises of commercial purpose located at Butkų Juzės St. 9, Klaipėda	
27-11-2008 No. 15-167	<i>Ingka Beheer BV</i> to implement concentration by acquiring up to 100 % of shares of <i>UAB Girių bizonas</i>	
27-11-2008 No. 15-168	<i>UAB Energijos realizacijos centras</i> to implement concentration by acquiring 49,99 % of shares of <i>UAB Alproka</i> and by acquiring joint control of <i>UAB Alproka</i> together with <i>AB Panevėžio keliai</i> and by acquiring 50 % of shares of <i>UAB Rackunai Project Holdings</i> and by acquiring joint control of <i>UAB Rackunai Project Holdings</i> together with <i>UAB ŽIA valda</i>	
11-12-2008 No. 15-173	<i>Baltic Agro Holding A/S</i> to implement concentration by acquiring up to 100 % of shares of <i>UAB Kemira GrowHow</i>	
24-12-2008 No. 15-180	<i>UAB Malsena plius</i> to implement concentration by acquiring part of assets related to production of flour and flour compounds of <i>UAB Malsena</i> and 50 % of shares of <i>UAB Amber pasta</i>	
24-12-2008 No. 15-181	<i>UAB Ruukki Lietuva</i> to implement concentration by acquiring 100 % of shares of <i>UAB Gensina</i>	
24-12-2008 No. 15-182	<i>UAB Malsta</i> to implement concentration by acquiring 100 % of shares of <i>UAB Flamanda</i>	

Authorisations to perform individual concentration actions (2):

22-05-2008 No. 15-64	<i>UAB Spaudvesta</i> to implement individual concentration actions by acquiring up to 55 % of shares of <i>UAB Smulkus urmas</i>	
04-06-2008 No. 15-69	<i>UAB ŽIA valda</i> and <i>UAB Indeco: Investment and Development</i> to implement individual concentration actions: <i>UAB ŽIA valda</i> by acquiring up to 45 % and <i>UAB Indeco: Investment and Development</i> by acquiring up to 30 % of shares of <i>AB flyLAL-Lithuanian Airlines</i> and by acquiring joint control of <i>AB flyLAL-Lithuanian Airlines</i> together with the joint Lithuanias-USA venture <i>Sanitex</i>	

Established infringements (2)

16-10-2008 No. 25-21	Concerning the compliance of actions of <i>MAXIMA LT</i> , <i>UAB</i> with the requirements of Article 10(1) and Article 11(2) of the LC.	LTL 100,000
11-11-2008 No. 25-22	Concerning the infringement by <i>Rautakirja OY</i> of the concentration conditions and obligations imposed by the Resolution No. 15-190 of 29 December 2007 of the CC.	LTL 70,000

Refusals to initiate investigations (1)**Concerning actions of unfair competition (1)****Refusals to initiate investigations (1)****ENFORCEMENT OF THE LAW ON ADVERTISING (LA)****Concerning misleading and comparative advertising (15)****Established infringements (10):**

03-01-2008 No. 25-1	Concerning the compliance of actions of <i>UAB Pram Ar</i> with the requirements established in the LA.	LTL 2,000
07-02-2008 No. 25-2	Concerning the compliance of advertising of <i>UAB Tez Tour</i> published in catalogue <i>Travelman 2006-2007 Egiptas, Gran Kanarija</i> with the requirements established in Article 5 of the LA.	LTL 20,000
27-03-2008 No. 25-5	Concerning the compliance of actions of <i>UAB ELEKTROMARKTAS</i> with the requirements of Article 5 of the LA.	
24-04-2008 No. 25-6	Concerning the compliance of advertising of the bar <i>Bumerangas</i> with the requirements of the LA.	
24-04-2008 No. 25-7	Concerning the compliance of actions of <i>UAB Tele 2</i> with the requirements of the LA.	LTL 10,000
22-05-2008 No. 25-9	Concerning the compliance of advertising of the concert of Laima Vaikulė on 14 October 2007 with the requirements of the LA: <i>UAB Zepter International</i>	LTL 10,000
12-06-2008 No. 25-13	Concerning the compliance of actions of <i>UAB RIMI LIETUVA</i> with the requirements of the LA.	
19-06-2008 No. 25-14	Concerning the compliance of advertising of hotel <i>Sultan Beach</i> with the requirements of the LA: <i>UAB Tez Tour</i>	LTL 30,000
28-08-2008 No. 25-18	Concerning the compliance of advertising of the body lotion <i>Sudokrem</i> with the requirements of the LA: <i>UAB Miečys</i>	LTL 9,400
18-12-2008 No. 25-25	Concerning the compliance of actions of <i>UAB Bitė Lietuva</i> with the requirements of Art. 5 of the LA.	LTL 20,000

Refusals to initiate investigations (4)**Cases terminated (1)****Total fines imposed in 2008: LTL 2,869,500****TOTAL NATIONAL STATE AID IN LITHUANIA IN 2007***

Sector	Aid forms	A1	A2	B1	C1	C2	D1	Total (LTLm)	Total (MEUR)
1.1. Agriculture		249.57	173.64	0.27				423.48	122.65
1.2. Fisheries		2.56						2.56	0.74
2. Industry/services		91.72	94.41					186.13	53.91
2.1. Horizontal aid		77.75	63.74					141.49	40.98
2.1.1. Research, development and innovations									
2.1.2. Environmental protection		6.60	56.44					63.04	18.26
2.1.3. SMEs		8.59						8.59	2.49
2.1.4. Trade									
2.1.5. Energy efficiency									
2.1.6. Investments									
2.1.7. Employment programs		13.90						13.90	4.03
2.1.8. Professional development		48.66						48.66	14.09
2.1.9. Privatisation									
2.1.10. Rescue/restructuring			7.30					7.30	2.11
2.2. Sectoral aid			11.95					11.95	3.46
2.2.1. Steel industry									
2.2.2. Ship-building									
2.2.3. Transport			11.95					11.95	3.46
2.2.4. Coal industry									
2.2.5. Synthetic fibre									
2.2.6. Other sectors									
2.3. Regional aid		13.97	18.72					32.69	9.47
Total:		343.85	268.05	0.27				612.17	177.30
Manufacturing and services:		91.72	82.46					174.18	50.45

* compensations for the provision of the services of general economic interest not included

Explanations of symbolic markings:**A1** – not recovered aid: grants, subsidies**A2** – tax exemptions, tax relief, write-off of late interest and penalties, other exemptions**B1** – different types of increase of the state-owned equity of enterprise or increase of its value**C1** – soft loans**C2** – tax deferrals**D1** – State guarantees**TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000-2007 (MEUR)**

Indicators	Year	2000	2001	2002	2003	2004	2005	2006	2007
Total national State aid		68.70	39.73	74.96	40.67	120.38	119.16	128.27	177.30
Of which:									
- manufacturing and services		42.07	17.26	44.03	25.56	25.34	25.66	53.54	53.91
- agriculture and fishery		0.43	0.82	1.43	0.74	89.63	93.50	74.73	123.39
- transport		26.20	21.65	29.50	14.37	5.41	-	-	3.46

TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000-2007

Indicators	Year	2000	2001	2002	2003	2004	2005	2006	2007
MEUR		68.70	39.73	74.96	40.67	120.38	119.16	128.27	177.30
EUR per employee		43.32	26.11	53.31	28.28	83.81	80.85	85.57	115.56
% of GDP (at current prices)		0.57	0.29	0.51	0.25	0.66	0.58	0.53	0.62
% of national budget expenditures		2.81	1.36	2.22	1.12	2.85	2.41	2.46	2.91
% of national budget deficit		66.50	13.21	23.50	12.42	55.73	71.77	119.27	50.60
Average population (m)		3.50	3.48	3.47	3.45	3.43	3.41	3.39	3.37

METHODS OF GRANTED NATIONAL STATE AID IN 2000-2007

	A1	A2	B1	C1	C2	D1	Total (LTL m)	Total (MEUR)
State aid 2000	225.55	7.45	0.06	0.01	0.07	22.48	255.62	68.70
State aid 2001	87.99	24.50	0.00	0.07	27.54	0.00	140.10	39.73
State aid 2002	93.09	127.19			38.45	0.07	258.8	74.96
State aid 2003	50.03	46.22	11.62	0.34	32.13	0.00	140.34	40.67
State aid 2004	202.79	183.33	13.40	0.03	15.69	0.40	415.64	120.38
State aid 2005	205.30	205.80	0.35				411.45	119.16
State aid 2006	243.88	198.86	0.12				442.86	128.27
State aid 2007	343.85	268.05	0.27				612.17	177.30

Explanations of symbolic markings:

A1 – not recovered aid: grants, subsidies

A2 – tax exemptions, tax relief, write-off of late interest and penalties, other exemptions

B1 – different types of increase of the state-owned equity of enterprise or increase of its value

C1 – soft loans

C2 – tax deferrals

D1 – state guarantees

STATE AID ASSESSED BY RESOLUTIONS OF THE EUROPEAN COMMISSION IN 2008

State aid notification registration in the EC	Title of the aid	Beneficiary sector	Purpose of the aid	Duration of the aid scheme	Decision of the Commission	Decision date
28-07-2007	No. 497/2007 Creation of broadband data transfer network in Lazdijai and Alytus municipalities	Telecommunications	Creation of broadband communications infrastructure		Approved	16-07-2008
19-10-2007	No. 666/2007 Aid for reimbursement of insurance premiums	Agriculture	To promote voluntary insurance from the damage caused by diseases of animals and plants, natural disasters and unfavourable weather conditions	Until 31-12-2013	Approved	13-02-2008
14-11-2007	No. 737/2007 Aid for reimbursement of guarantee payments	Agriculture	To reimburse the guarantee payment in respect of loans from credit institutions	Until 31-12-2013	Approved	2008-02-13
11-21-2007	No. 682/2007 Partial compensation for costs of insurance undertakings resulting from the payment of insurance payments for losses caused by drought	Agriculture	Partial compensation for costs of insurance undertakings resulting from the payment of insurance payments for losses caused by drought	Until 31-12-2013	Approved	03-06-2008

21-11-2007	No. 683/2007 Compensation of losses caused by transmittable animal diseases	Agriculture	Compensate losses for animal breeders in relation to the liquidation of the outbreaks of transmittable animal diseases	Until 31-12-2013	Approved	22-07-2008
17-12-2007	No. 755/2007 Aid for reimbursement of credit interest (except the purchase of land)	Agriculture	To reimburse the credit interest paid for the credits from credit institutions to implement investment projects	Until 31-12-2013	Approved	30-04-2008
19-12-2007	No. 764/2007 Aid to the Lithuanian Power Station	Energy	Construction of a 400MW Combined Cycle Gas Turbine		Not State aid within the meaning of Art. 87(1) of the EC Treaty	13-02-2008
15-04-2008	No. 197/2008 Regional aid for energy sector	Energy	Regional development	Until 31-12-2013	Approved	17-06-2008
19-11-2008	No. 587/2008 Aid for reimbursement of credit interest (except the purchase of land)	Agriculture	To reimburse the credit interest paid for the credit from credit institutions to implement investment projects	Until 31-12-2013	Approved	17-12-2008

LITIGATION PROCEEDINGS IN 2008

	Pending cases in the Vilnius Regional Administrative Court	Pending cases in the Supreme Administrative Court of Lithuania	Completed cases	Total number of representations
Infringements of Art. 4 of the LC	1. UAB JCDcaux Lietuva v. Competition Council. 2. Ministry of Agriculture v. Competition Council 3. Kaunas city Municipality v. Competition Council. 4. UAB Infomedia v. Competition Council (refusal to initiate the investigation).	1. UAB Universal arena v. Competition Council. 2. Neringa Municipality v. Competition Council. 3. Ministry of Health v. Competition Council. 4. Police Department v. Competition Council. 5. Union of Lithuanian businessmen trading in oil products v. Competition Council (refusal to initiate the investigation).	1. Vilnius city Municipality v. Competition Council.	10
Infringements of Art. 5 of the LC	-	1. Schneidersöhne Baltija and UAB Libra Vitalis v. Competition Council (Art. 81 of the EC Treaty). 2. AB Rokiškio sūris, UAB Marijampolės pieno konservai v. Competition Council. 3. Support Foundation Agilė v. Competition Council (supplement of the investigation).	1. Lithuanian Court of Auditors v. Competition Council. 2. UAB STIVVF v. Competition Council (refusal to initiate the investigation). 3. UAB Eurointegracijos projektai v. Competition Council. 4. UAB Lambertta, UAB Sobo Sistemas, UAB Termoforma v. Competition Council. 5. UAB Eurointegracijos projektai, UAB EIP Vilnius, UAB EIP Kaunas v. Competition Council.	8
Infringements of Art. 9 of the LC	1. SE International Airport, UAB Naftelf v. Competition Council	1. UAB Vilniaus energija v. Competition Council. 2. AB Lietuvos paštas v. Competition Council. 3. UAB CSC Telecom, UAB Cubio, UAB Interneto pasaulis, UAB Nacionalinis telekomunikacijų tinklas and UAB Norby Telecom v. Competition Council (refusal to initiate the investigation).	1. UAB Akmenės energija v. Competition Council. 2. UAB Baltic ground services v. Competition Council (refusal to initiate the investigation). 3. VĮ Tarptautinis oro uostas v. Competition Council. 4. AB Mažeikių nafta v. Competition Council.	8

Infringements of Arts. 5 and 6 of the LA	1. <i>UAB Vilpra v. Competition Council</i> (refusal to initiate the investigation).	1. <i>UAB Žemės vystymo fondas, UAB Žemės vystymo fondas 18 v. Competition Council</i> . 2. <i>UAB Tez Tour v. Competition Council</i> (hotel <i>Regina Style</i>).	1. <i>UAB Tele2 v. Competition Council</i> (<i>Studento dienoraštis</i>). 2. <i>UAB Plieninis skydas v. Competition Council</i> (refusal to initiate the investigation). 3. <i>UAB Delfi, AS Delfi v. Competition Council</i> . 4. <i>UAB Tele2 v. Competition Council</i> (<i>Laisvalaikis</i>). 5. <i>UAB Zepter International v. Competition Council</i> . 6. <i>UAB Tez Tour v. Competition Council</i> (hotel <i>Sultan Beach</i>). 7. <i>UAB Tez Tour v. Competition Council</i> (hotel <i>Sonesta Club</i>). 8. <i>UAB Topo centras v. Competition Council</i> . 9. <i>UAB Vilpra v. Competition Council</i> (refusal to initiate the investigation). 10. <i>UAB Gintarinė sala v. Competition Council</i> . 11. <i>AB flyLAL-Lithuanian Airlines v. Competition Council</i> (refusal to initiate the investigation).	14
Concentration	-	-	-	-
Total	6	8	21	40

Cases in which resolutions of the CC were upheld - 16

Cases in which resolutions of the CC were partly amended - 3 (reduced fines).

Cases in which resolutions of the CC were overruled – 2 (1 obligation to conduct additional investigation actions, 1 obligation to re-examine the application).



**COMPETITION COUNCIL
OF THE REPUBLIC OF LITHUANIA**

A. Vienuolio st. 8, LT-01104 Vilnius
Tel., fax: + 370 5 212 6492
E-mail: tarnyba@konkuren.lt
www.konkuren.lt

Prepared for printing: V. Aleksienė, R. Kaulėnaitė, P. Kvietauskienė
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