



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

Lithuania

Date of update:15/04/2020

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

<p>A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Law on Competition of the Republic of Lithuania as of 23 March 1999 (No. VII-1099) as last amended on 2 July 2019 (No. XIII-193) ('the Law on Competition'). Home page address: www.kt.gov.lt Languages: Lithuanian and English Law on Competition is available online at: https://www.e-tar.lt/portal/lt/legalAct/TAR.B8B6AFC2BFF1/kUNCrMXdZa (in Lithuanian) https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/49e68d00103711e5b0d3e1beb7dd5516?jfwid=q8i88mf0v (in English, version valid as of 1st January 2015 and does not include latest amendments)</p>
<p>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<ul style="list-style-type: none"> The Guidelines on setting the amount of a fine imposed for the infringement of the Law on Competition of the Republic of Lithuania. Adopted by the decision of the Government of Republic of Lithuania as of 18 January 2012 (No. 64) as last amended on 29th April 2017 (No. 314) This document is available online at: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.417393/FXASnnXCRy (in Lithuanian) The Competition Council of the Republic of Lithuania ('the CC') has also issued the following regulations that have relevance to cartels:

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<ul style="list-style-type: none"> On 28 February 2008, the CC instituted a leniency programme by passing a resolution No. 1S-27 on 'Leniency Rules from fines and reduction of fines for the parties to prohibited agreements'. These rules were applicable solely to horizontal agreements among competitors. However, the leniency notice was later broadened so as to include applicants taking part in anti-competitive agreements between non-competitors on direct or indirect price fixing. Leniency rules were last amended on 01 January 2019. This document is available online at: https://www.e-tar.lt/portal/lt/legalAct/TAR.1FB03EE1B7A8/asr (in Lithuanian) On 27 March 2017, the CC adopted resolution No. 1S-32 (2017) on 'Rules on application of a mitigating circumstance, when the party acknowledges the infringement and the calculated fine during the investigation'. The applicable mitigating circumstance and rules are similar to an EU settlement procedure. This document is available online at: https://www.e-tar.lt/portal/lt/legalAct/849f6ad012ff11e79800e8266c1e5d1b (in Lithuanian) The Resolution No. 1S-84 (2016) of 22 July 2016 of the CC 'On requirements and conditions in respect of agreements of minor importance which are not considered restricting competition'. This document is available online at: https://www.e-tar.lt/portal/lt/legalAct/023b4d9053d111e6b72ff16034f7f796 (in Lithuanian)
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>None.</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>The CC has published a notice on how associations can comply with Law on Competition titled „Activities of associations: compliance with Law on Competition”.</p> <p>This notice can be found on the website of the CC in Lithuanian at: http://kt.gov.lt/uploads/documents/files/ASOCIACIJ%C5%B2%20VEIKLA_20130404_galutinis%20(002).pdf</p> <p>Seeking to highlight the usual cartel conduct indicators, the CC has also published the guidelines for detecting bid rigging in public procurement: http://kt.gov.lt/uploads/documents/files/PO_kaip_atpazinti_karteli.pdf (in Lithuanian)</p> <p>The CC has published guidelines on how to avoid infringement of Law on Competition when cooperating with public institutions and other undertakings.</p> <p>The document available online at: http://kt.gov.lt/uploads/documents/files/Guidebook.pdf (In English) http://kt.gov.lt/uploads/documents/files/atmintin%C4%97(1).pdf (in Lithuanian)</p> <p>In the beginning of 2020, the CC has issued a guidebook of procedure for payment of fines.</p> <p>The document is available on the following link (in Lithuanian only): https://kt.gov.lt/uploads/documents/files/Baud%C5%B3%20mok%C4%97jimo%20atmintin%C4%97_2020.pdf</p> <p>The CC has prepared a guidebook for information exchange threats.</p> <p>The document is available on the following link (in Lithuanian only): https://kt.gov.lt/uploads/documents/files/Atmintine_Informacijos%20mainu%20gresmes.pdf</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>Under Article 3(19) of the Lithuanian Law on Competition, ‘Agreement’ means contracts concluded in any form (written or verbal) between two or more undertakings or concerted actions of undertakings, including decision made by any combination (association, amalgamation, consortium, etc.) of undertakings or by representatives of such a combination.</p> <p>Article 5(1) of the Law on Competition prohibits all agreements which have as their object the restriction of competition or which restrict or may restrict competition (i.e. prohibits both horizontal agreements and vertical agreements).</p> <p>Article 5(1)(1-4) and Article 5(2) of the Law on Competition state that the following agreements, when concluded between competitors, should be in any case considered as restricting competition:</p> <ol style="list-style-type: none"> 1. agreements to directly or indirectly fix prices of certain goods or other conditions of sale or purchase; 2. agreements to share the product market on a territorial basis, according to groups of buyers, suppliers or in any other way; 3. agreements to fix production or sale volumes for certain goods as well as to restrict technical development or investment; 4. agreements to apply dissimilar (discriminating) conditions to equivalent transactions with individual undertakings, thereby placing them at a competitive disadvantage. <p>The agreements mentioned above might be treated as ‘hardcore cartels’.</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>Please refer to 2A.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or</p>	<p>1. Article 6(1) of the Law on Competition defines an individual exemption from the prohibition of cartels:</p> <p>Agreements which have as their object the restriction of competition or which restrict or may restrict competition are not prohibited provided that the agreement promotes technical or economic progress or improves the</p>

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

<p>sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>production or distribution of goods, and thus creates conditions for consumers to receive additional benefit, also where:</p> <ul style="list-style-type: none"> a) the agreement does not impose restrictions on the activity of the parties thereto, which are not indispensable to the attainment of the objectives referred above; b) the agreement does not afford contracting parties the possibility to restrict competition in a large share of the relevant market. <p>On 15 July 2010 the CC adopted a resolution No. 1S-140 'Concerning the agreements that shall be deemed to be in accordance with Article 6(1) of the Law on Competition' that provides that the rules on exemptions are the same as those adopted by the European Commission. There are no additional sector-based exclusions from the prohibition of hardcore cartels.</p> <p>2. Agreements, which are of minor importance, are not prohibited according to Article 5(3) of the Law on Competition.</p> <p>The CC on 22 July 2016 adopted the Resolution No. 1S-84 (2016) 'On requirements and conditions in respect of agreements of minor importance which are not considered to be restricting competition'.</p> <p>An agreement is deemed to be of minor importance if the joint share of the participating undertakings and undertakings which are not independent from them does not exceed 10 per cent on the relevant market unless they restrict competition by object (including agreements provided for in Article 5(2), please refer to 2/A).</p> <p>Therefore, the hardcore cartels even those of minor importance cannot be granted an exemption from prohibition.</p>
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</p>	<p>Yes. Please refer to 2/A.</p>
<p>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</p>	<p>Participation in a hardcore cartel is an administrative offence.</p>

3. Investigating institution(s)

<p>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]</p>	<p>The Competition Council of the Republic of Lithuania</p>
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³ For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Address: Jogailos g. 14, LT-01116 Vilnius Tel. +370 5 262 7797 Fax: +370 5 212 6492 E-mail: taryba@kt.gov.lt ; A dedicated e-mail to report cartels: praneskmums@kt.gov.lt Website address: www.kt.gov.lt Languages: Lithuanian and English
C. Information point for potential complainants:	The Anti-competitive Agreements Investigation Group of the CC Address: Jogailos g. 14, LT-01116 Vilnius E-mail: taryba@kt.gov.lt A dedicated e-mail to report cartels: praneskmums@kt.gov.lt Telephone: +370 5 260 8879, +370 5 212 6641
D. Contact point where complaints can be lodged:	Complaints can be submitted in writing and should be sent directly to the CC by mail, e-mail, or fax. Complaints can also be lodged in the premises of the CC.
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	According to Article 25(3) of the Law on Competition, for the purpose of maintaining order the authorised investigating officials of the CC may enlist the assistance of police officers. Also, under Article 25(1) subparagraph 10, in carrying out the investigation, the authorised officials of the CC have the right to enlist the assistance of professionals and experts. For instance, experts from the Special Investigation Service or Financial Crime Investigation Service sometimes assist during investigations, organised by the CC.

4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	NA
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	NA
C. Contact point for questions	NA

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

and consultations:	
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	NA
E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?	NA

5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	<p>Investigations can be launched on the basis of:</p> <ol style="list-style-type: none"> 1. a complaint; 2. <i>ex officio</i>; 3. an immunity application.
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	<p>A complaint must be submitted in writing, specifying the facts and circumstances of restrictive practices of which the complainant is aware and must also be accompanied by the documents confirming the facts and circumstances mentioned in a complaint. There is no specific form that has to be filled.</p>
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	<p>Article 23 of the Law on Competition states that there are three main categories of complainants that are entitled to request to launch an investigation of restrictive practices (including cartels), namely:</p> <ol style="list-style-type: none"> 1. undertakings whose interests have been violated due to restrictive practices; 2. entities of public administration; 3. associations or unions representing the interests of undertakings and consumers. <p>Additionally, consumers may submit a complaint regarding the violation of their interests suggesting the CC to initiate an investigation under its own initiative.</p> <p>A leniency application must be submitted by the undertaking participating in an anti-competitive agreement or its representative.</p> <p>It should also be mentioned, that according to the latest amendments of the Law on Competition, persons who provide evidence enabling the CC to detect anti-competitive agreements are entitled to a financial reward. Taking into account the new amendments, a whistleblower remuneration constitutes 1 per cent of the fines imposed on the infringers, and will range from EUR 1,000 to EUR 100,000.</p> <p>In accordance with the provisions of the law, the remuneration may be granted, if the following conditions are met:</p>

	<ol style="list-style-type: none"> 1. the natural person provide evidence prior to the authority's decision to open an investigation; 2. the evidence in question was gathered in a legal manner. Otherwise, if it came out that the evidence was obtained as a result of unlawful acts, money would have to be paid back to the authority. 3. Managers or members of the supervisory and governing bodies of an undertaking who submitted a leniency application in the same case, and employees, as well as persons who had access to evidence when performing their duties in judicial or other supervisory authorities, will not be entitled to remuneration. <p>The evidence may be provided to the CC by e-mail <i>praneskmums@kt.gov.lt</i>, mail (Jogailos g. 14, Vilnius) or by coming to the competition authority. Before submitting all relevant information, interested persons can ask for individual consultations with the authority's experts on the application of the respective procedure. Upon request, the identity of whistleblowers will not be disclosed to the parties of the investigation procedure, including undertakings suspected of a competition law infringement.</p> <p>The CC decision regarding the allocation of a reward should be taken within 20 days from the official disclosure of an infringement.</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p>	<p>The CC must examine every complaint submitted with respect to restrictive practices within 30 days from its submission, having no discretion in this regard. It is, however, not required to conduct an investigation in each case.</p> <p>The CC might refuse to open an investigation under the following circumstances (Article 24 (4) of the Law on Competition):</p> <ol style="list-style-type: none"> 1. the facts specified in the application are immaterial, causing no substantial damage to the interests protected under the Law of Competition; 2. investigation of the facts specified in the application is not within the remit of the CC; 3. the facts specified in the application have already been investigated and a resolution has already been adopted on the issue; 4. the applicant has failed to provide, within the time period set by the CC, the data and documents required to initiate an investigation; 5. a period of limitation has expired; 6. there are no factual data available that would allow to reasonably suspect an infringement of the Law on Competition. 7. investigation of the factual circumstances specified in the application does not correspond to the CC's priorities. <p>Additionally, on 2 July 2012, the CC adopted a Notice on Agency's Enforcement Priorities ('Notice') which makes it possible to prioritize between investigations more efficiently. The Notice outlines a single priority of the CC, which is to ensure the highest consumer benefit. In order to decide whether a matter falls within the enforcement priority, the CC assesses the following principles:</p> <ol style="list-style-type: none"> 1. the potential impact of an investigation on effective competition and consumer welfare; 2. the strategic importance of such an investigation; 3. the rational use of resources. <p>The document last amended on 21 August 2017 and is available on the following link (in Lithuanian only): https://www.e-tar.lt/portal/lt/legalAct/09a7cf10866911e7a3c4a5eb10f04386/qvOWirLAIE</p>
<p>E. If the agency intends not to</p>	<p>Yes. If it is not intended to pursue a complaint that meets all the requirements, a reasoned decision should be adopted.</p>

<p>pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>The CC must examine applications submitted in relation to restrictive practices no later than within 30 days from submission of the application and documentation and take a decision to launch or refuse to launch the investigation.</p> <p>However, if the information provided is not sufficient to assess alleged anti-competitive practices, the CC might invite the applicant to supplement or clarify documents provided. In this case, the time limit of 30 days is to be calculated from the day on which additional information was submitted.</p>

6. Leniency policy⁵

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>Rules on immunity from fines and reduction of fines for the parties of prohibited agreement ('the Leniency Rules').</p> <p>Languages: Lithuanian and English</p> <p>The Leniency Rules are available on the following link (in Lithuanian only):</p> <p>https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.315594/cssRVILhig</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>The Lithuanian jurisdiction provides both full leniency (immunity from fines) and partial leniency (reduction of fines up to 75%).</p> <p>While Article 38(1) of the Law on Competition foresees full exemption from fine, the Rules concerning the setting of the amount of a fine imposed for the infringement of the Law on Competition approved by the resolution of the Government of the Republic of Lithuania establishes partial exemption from fine.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Article 38(1) of the Law on Competition states that an economic entity, which is a party to a prohibited agreement between competitors or is a party to a prohibited agreement between non-competitors for the direct or indirect price setting (fixing) is to be exempted from fines provided for this violation, if it presents to the CC full information relating to the agreement and all the following conditions are met:</p> <ol style="list-style-type: none"> 1. the undertaking provides information prior to the beginning of the investigation of the agreement;

⁵ For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

	<ol style="list-style-type: none"> 2. the undertaking is the first of the parties to the prohibited agreement to provide such information; 3. the undertaking provides all the information available to it regarding the prohibited agreement and co-operates with the CC in the course of investigation; 4. the undertaking has not been the initiator of the prohibited agreement and has not induced other undertakings to participate in such an agreement.
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p><i>The significance of information provided</i></p> <p>In the case of full leniency, the submission of information and evidence is required, either enabling the CC to carry out a targeted inspection in connection with the alleged prohibited agreement or sufficient to establish an infringement of Article 5 of the Law on Competition and/or Article 101 TFEU.</p> <p>In order to determine the level of fine reduction, the CC will take into account the significance of the evidence for proving infringement. The requirement of 'significant' evidence is described in the Leniency Rules as follows: 'submits the evidence of an anti-competitive agreement which the CC does not possess and which is significant to prove the anti-competitive agreement. The significance of the evidence is estimated having regard to the direct proof of it as for conclusion of an anti-competitive agreement or intention to conclude an anti-competitive agreement. Usually written evidence originating from the period of an anti-competitive agreement, as well as direct evidence confirming the participation of other undertakings in the anti-competitive agreement shall be regarded as significant. Indirect evidence, evidence originating after the period of the anti-competitive agreement or which do not confirm the participation of other undertaking therein, or explanations of the undertakings, unsubstantiated by other means may be regarded as significant subject to their nature and content'.</p> <p><i>The moment of application</i></p> <p>Article 38(1) of the Law on Competition states that one of the conditions for undertaking to be exempted from a fine is that information provided must be submitted prior to the beginning of the investigation of the agreement (please refer to 6/C).</p> <p>Paragraph 3.1 of the Leniency Rules specifies that the above-mentioned condition is met if at the time of the leniency application, the CC has not yet passed the resolution to initiate the investigation regarding the compliance of the alleged prohibited agreement with Article 5 of the Law on Competition and/or Article 101 TFEU.</p> <p>Otherwise, if the CC has already initiated the investigation and the leniency application is received afterwards, a fine imposed upon applicant can be reduced by 25-75 % provided that the applicant submits significant evidences. In this case, the fines can be reduced only if an undertaking also complies with other cumulative requirements provided in the Leniency Rules (for further details please refer to 6/G).</p> <p>It should be noted that according to the Leniency Rules, applications to be exempted from a fine or to reduce a fine should not be considered if submitted to the CC after the investigation is completed and the parties to the proceedings are sent a Statement of objections. Such applications of the undertakings may only be considered as a circumstance mitigating the liability of an undertaking as provided for in the Law on Competition.</p>
<p>E. Who can be a beneficiary of the leniency program</p>	<p>All undertakings can be beneficiaries of the leniency programme.</p>

(individual / businesses)?	It should also be noted that Article 40 of Law on Competition establishes disqualification of heads of undertakings, who organized or significantly contributed to an anti-competitive agreement. For involvement in the prohibited agreement of competitors or abuse of dominance, the head of the undertaking may be restricted to function as a director of any public or private entity or to act as a member of management of such entity from 3 to 5 years. However, according to the provisions of this rule, if the undertaking was immune from a fine under the leniency program, its head also should not be disqualified.
F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]	Please refer to 6/C.
G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]	<p>Fines may be reduced by 20-75% on application, if the undertakings do not qualify for full leniency.</p> <ol style="list-style-type: none"> 1. A fine calculated for an undertaking can be reduced by 50-75%, provided that: <ol style="list-style-type: none"> a) the CC has already initiated the investigation concerning the alleged infringement; b) an undertaking is the first of the parties to a prohibited agreement to submit to the CC with all information concerning a prohibited agreement which is known to it; c) an undertaking submits the evidence of a prohibited agreement of competitors which the CC does not possess and which is significant to prove the prohibited agreement; d) an undertaking was not the initiator of the prohibited agreement and did not coerce other undertakings to participate in the agreement. 2. A fine calculated for an undertaking can be reduced by 50%, if an undertaking: <ol style="list-style-type: none"> a) is the initiator of the prohibited agreement or which coerced other undertakings to participate in the prohibited agreement; b) submits information before the initiation of investigation of the agreement; c) is the first of all the parties to an agreement to submit information; d) submits all the information known to it concerning the agreement. 3. If a party to a prohibited agreement does not satisfy the above-mentioned conditions (e.g. subsequent leniency applicants), a fine calculated for an undertaking can be reduced by 20-50 %, if the undertaking submits the evidence of a prohibited agreement which the CC does not possess and which is significant to prove the prohibited agreement. <p>In all aforementioned cases, the undertakings are required to cooperate with the CC and comply with other requirements as provided in the Leniency Rules (for further details please refer to 6/H).</p>
H. Obligations for the	From the moment of submission of information to the CC until the end of the investigation an undertaking is obliged to cooperate with the CC

<p>beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>without reservation and on a continuous basis. Following the Leniency Rules the obligation to co-operate is fulfilled if the undertaking-applicant:</p> <ol style="list-style-type: none"> 1. immediately submits to the CC any information and evidences which become known to it; 2. answers any questions and gives any other explanations that are necessary for the investigation; 3. ensures the possibility to question the former or present employees and directors available; 4. does not destroy, falsify or conceal evidences or other information necessary for the investigation; 5. does not disclose the fact that the leniency application is submitted. <p>An undertaking might also be required to end its involvement in a prohibited agreement immediately following its submission of information to the CC, except for what would be reasonably necessary to preserve the integrity of the investigation (subject to approval by the CC).</p>
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>According to the Leniency Rules, leniency applicants applying for the immunity from fines or the reduction of fines must apply in writing and submit to the CC all the relevant information concerning the cartel, including: the role of their own and the other parties in an alleged prohibited agreement, a detailed description and the nature of an alleged prohibited agreement, as well as a territory affected by the agreement. Documents or other evidence confirming these facts must also be submitted.</p> <p>Additionally, the type of request (immunity from a fine or reduction of a fine) must be clearly specified in the application.</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision?]</p>	<p>There are no distinct procedural steps within the leniency programme. After receiving the information regarding the prohibited agreement, the CC launches the investigation during which the undertakings are required to cooperate with the CC on purpose to be exempted from a fine. The CC having completed the investigation and adopting the final resolution on the infringement decides whether the conditions specified in the Law on Competition and explained in more detail in the Leniency Rules have been met and the undertaking qualifies for an exemption from fines or reduction of fines.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>The paragraph 20 of the Leniency Rules establishes the 30 days period during which having received the receipt of the request to be immune from a fine the CC adopts a decision that the request meets the requirements for full immunity on a conditional basis, and informs an applicant thereafter by also specifying that it may be exempted from a fine if all other conditions and obligations related to the co-operation with the CC during the investigation, etc. are fulfilled.</p> <p>The paragraph 21 of the same rules states that when the CC adopts a decision that the request to exempt from a fine does not meet the conditions for full immunity from a fine, an undertaking which submitted the request is informed of such a decision and notified that it may withdraw the evidence disclosed for the purposes of its immunity application or request to consider it under the conditions for reduction of a fine.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the</p>	<p>Article 38(2) of the Law on Competition provides that after having completed the investigation and when adopting the final resolution on the infringement, the CC has to decide whether the conditions specified have been met and the undertaking qualifies for exemption from fines. A conclusive decision to grant immunity from a fine or to reduce a fine and exact amount of it or refuse to grant immunity from a fine or reduction of</p>

<p>agency decides about leniency applications?</p>	<p>a fine is adopted by the CC in the hearing of the case in which a decision to establish an infringement of Article 5 of the Law on Competition and/or Article 101 TFEU and impose sanctions provided for in the Law on Competition is to be adopted.</p> <p>The decision to grant / refuse to grant immunity is laid down in the final resolution on infringement.</p>
<p>M. Do you have a marker⁶ system? If yes, please describe it.</p>	<p>According to the Leniency Rules, an undertaking seeking to apply for immunity from a fine or reduction of a fine, may in the first place inform the CC of its intention and apply for setting a period within which it would collect all necessary information and evidence.</p> <p>Applicant has to provide a written application filled with the following information:</p> <ol style="list-style-type: none"> 1. its name and address; 2. names and addresses of other participants of the agreement; 3. information about relevant goods, services and territories; 4. information about the duration of the agreement; 5. nature of the agreement. 6. the list of the evidences that will be submitted later <p>In case the ‘marker’ application complies with the requirements mentioned above, an undertaking usually within 15 days must submit all lacking information and evidence. If an undertaking submits the lacking information and evidence within the period set, the leniency application is to be deemed to have been submitted on the day of the receipt of the primary application at the CC.</p> <p>It must be mentioned that the Leniency Rules do not specify between first-in and subsequent applicants on this issue, therefore, it can be said that subsequent applicants also have a right to apply for markers.</p>
<p>N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>No.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>Paragraph 30 of the Leniency Rules establishes that the fact of the request submitted by an undertaking to exempt from a fine or to reduce a fine and the content herein is to be treated confidentially and undisclosed to other parties to an alleged prohibited agreement or other persons until the completion of the investigation of the prohibited agreement, unless the undertaking itself has permitted such information to be disclosed.</p>
<p>P. Is there a possibility of appealing an agency’s decision rejecting a leniency</p>	<p>Yes (for further details please refer to 15/A).</p>

⁶ A marker protects an applicant’s place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

application?	
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	Address: Jogailos g. 14, LT-01116 Vilnius Tel. +370 5 212 4225; +370 5 212 6641; E-mail: praneskmums@kt.gov.lt
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	<p>Due to the provisions of the Law on Competition and the Leniency Rules, there are two types of 'revoked' leniency application.</p> <ol style="list-style-type: none"> 1. An undertaking is not granted immunity from a fine or a fine imposed on the undertaking is not reduced if <u>during the investigation</u> it is established that when contemplating of or making its application to the CC, the undertaking destroyed, falsified or concealed evidence of the alleged anti-competitive agreement and/or disclosed the fact or any of the content of its application, except to other competition authorities of the EU and/or the European Commission. In such situation the CC would probably revoke the application and would not consider it without waiting till the end of investigation. 2. The second way to revoke (any) leniency application is at the time of <u>the adoption of the final resolution</u> on infringement by the CC. Only in this final resolution all the fines are imposed, and, consequently, undertakings can be immune or the fines reduced, if the CC is convinced that all the relevant requirements are fulfilled. So, at this phase the CC, having regard to all the important circumstances of the investigation, should finally grant (or revoke) immunity or reduction of fine.
S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?	It does not explicitly provide for such option.
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate. which parts are protected and what does protection actually mean.	<p>Article 21 (8)-(11) of the Law on Competition institutes that a leniency application cannot be disclosed except for a few occasions. The leniency application can be disclosed in full only to undertakings participating in the same agreements in order to fulfil their right to self-defense. However, in such cases the CC does not make any copies and provides access to the leniency request only at the CC's premises.</p> <p>Additionally, the copy of leniency application would be provided to the court, when a resolution on infringement is appealed. The leniency application can also be disclosed to the court if the court seeks to check that leniency application was submitted under the Law on Competition.</p>

7. Settlement

A. Does your competition regime allow settlement?	Article 37(2) of the Law on Competition establishes a list of mitigating circumstance, one of which is the 'Submission of the statement of acknowledgement to the CC of the party that acknowledged the
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<p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>infringement, as well as the fine imposed on it, thus creating conditions for the effectiveness of the investigation'. Such mitigating circumstance is in essence similar to the settlement procedure.</p> <p>On 27 March 2017, the CC adopted resolution No. 1S-32 (2017) on 'Rules on application of a mitigating circumstance, when the party acknowledged the infringement and calculated fine during the investigation' ('Rules on acknowledgement of infringement and fine'). The applicable mitigating circumstance and rules are similar to settlement procedure.</p> <p>The document is available online on the following link (in Lithuanian only):</p> <p>https://www.e-tar.lt/portal/lt/legalAct/849f6ad012ff11e79800e8266c1e5d1b</p>
<p>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p>	<p>The above-mentioned mitigating circumstance could be applied to all infringement cases of the Law on Competition.</p>
<p>C. What is the reward of the settlement for the parties?</p>	<p>Paragraph 12 of Rules on acknowledgement of infringement and fine provides that the party would be rewarded with a 15 percent reduction of fine.</p>
<p>D. May a reduction for settling be cumulated with a leniency reward?</p>	<p>Yes.</p>
<p>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</p>	<p>Mitigating circumstance, which is taken into account when acknowledging the breach of the Law on Competition for which a fine shall be imposed, can only be applied if the process of an investigation has been made more effective. The CC assesses conditions for an effective investigation considering the real possibility of reducing the required resources, as well as the number of suspected undertakings or public administrative bodies, the number of statements of acknowledgement they are going to submit, and other circumstances.</p>
<p>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	<p>The CC only settles provided all the criteria, including the criteria for effectiveness are met.</p>
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	<p>Settlement procedure is designed to shorten the duration of the investigation and also leads to a shorter SO (and consequently, the final decision) than a standard one.</p> <p>Additionally, it is likely that undertakings which acknowledged the infringement and amount of fine would not appeal the CC's resolution on infringement. Thus, this procedure would save the CC's and parties' recourses for litigation after the adoption of final resolution.</p>
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	<p>Yes.</p>

H. Is there a possibility for settled parties to appeal a settlement decision at court?	Yes (for further details please refer to 15/A).
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8. Commitment	
<p>A. Does your competition regime allow the possibility of commitment?</p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].</p>	<p>Article 28(3)(2) of Law on Competition establishes that the CC may close the investigation if the actions did not cause a significant damage to the interests protected by the Law and the undertaking suspected of the violation of the Law has voluntarily terminated the actions and submitted to the CC a written obligation not to perform such actions or to perform actions eliminating the suspected violation or creating preconditions to avoid it in the future.</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from the commitment possibility?</p>	<p>Hardcore cartels and other agreements that restrict competition by object are considered as causing significant damage to the interests protected by the Law on Competition. Therefore, the commitments would not usually be appropriate in such cases.</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>The investigation could be terminated with commitments if all cumulative criteria are met:</p> <ol style="list-style-type: none"> 1. the actions did not cause a significant damage to the interests protected by the law 2. the undertaking suspected of the violation of the Law has voluntarily terminated the actions 3. the undertaking submitted to the CC a written obligation not to perform such actions or to perform actions eliminating the suspected violation or creating preconditions to avoid it in the future.
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>The Law on Competition does not list different types of commitments that could be offered during investigation. However, the CC in its practice considers both, behavioural and structural commitments.</p>
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	<p>The suspected undertaking initiates the commitments and offer them to the CC.</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>No.</p>

<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	<p>The CC may oblige the suspected undertaking to provide the CC information on how the commitments are being implemented in its resolution by which confirms commitments. The undertaking might be obliged to provide information and evidence on its behaviour. The CC may also inquire other market participants about suspected undertaking's behaviour.</p>
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	<p>Yes (for further details please refer to 15/A).</p>

9. Investigative powers of the enforcing institution(s)⁸

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures require a court warrant.</p>	<p>Under Article 25 of the Law on Competition, the authorised officials of the CC, carrying out the investigation, have the right:</p> <ol style="list-style-type: none"> 1. to enter and carry out inspections of other premises, territories and means of transport, including residential and other premises of heads and employees of the economic entity, if a reasonable suspicion arises that documents or any other evidence necessary for investigation and likely to have an influence on proving a serious violation of Articles 5 or 7 of this Law or Articles 101 and 102 of the TFEU are held in such premises, territories or means of transport; 2. to examine the documents necessary for investigation (irrespective of the medium on which they are stored), obtain their copies and extracts, be granted access to the notes of the employees of the economic entity, related to work activities, also to copy the above notes as well as the information stored in computers and on any other media; 3. to seal the premises used by the economic entity wherein documents are held for the time period and to the extent necessary to carry out inspections, however, for no longer than three calendar days; 4. to obtain oral and written explanations from persons related to the activity of the economic entity under inspection; 5. to obtain oral or written explanations from persons who may have information relevant to the investigation, including answers to the questions about facts and documents, obtained from persons which are related to the activities of the suspected undertakings, and to require them to come to the CC's premises for explanations; 6. to seize any documents and articles having evidential value in the investigation of the case; 7. to obtain information on subscribers to electronic communications services or registered users of electronic communications services, related traffic data and the content of information transmitted by electronic communications networks from providers of the electronic
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⁸ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁹ "Searches/raids" means all types of search, raid or inspection measures.

	<p>communications network and/or services;</p> <p>8. to enlist the assistance of professionals and experts in carrying-out of the investigation and obtain conclusions from the expert bodies;</p> <p>9. to capture the facts;</p> <p>10. to use for the investigation the information available for the CC obtained during other investigations or proceedings.</p> <p>Investigation actions referred to in paragraphs 1 and 7 above might be carried out only upon receiving the court authorization.</p>
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	The possibility to inspect private residences, vehicles and other territories or premises is provided in the Article 25 (2) of the Law on Competition. These investigative actions may be carried out only having a court authorisation.
C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!	Yes. As mentioned in section 9A, the authorised officials shall have the right to examine and copy information relevant to investigation stored on computers or any other media, including servers or clouds, regardless the territory in which they are located, if the inspected entity has access to such data.
D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?	No. The authorized officials of the CC are allowed to seize information only falling within the scope of a warrant authorizing the inspection of business premises in a particular case. Under Article 25(1)(13) of the Law on Competition the CC can use information gathered during investigations for the purposes of other investigations.
E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	No.

10. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal	<p>Article 29 of the Law on Competition provides that upon the completion of the investigation, the applicant and the entity suspected of having committed a violation ('the participants in the procedure') as well as to other interested entities or public administration entities ('other interested persons') by the resolution of the CC should be provided with written findings of the investigation and offered to submit written explanations on the findings within the reasonable time limit set by the CC.</p> <p>The investigation file material is also made available to the participants in the procedure, except for the documents containing state or service secrets, or commercial secrets of another economic entity. Additionally, before the CC adopts a resolution on the violation of the Law of</p>
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<p>representation before the enforcing authorities, right not to self-incriminate, etc.]Please indicate the relevant legal provisions.</p>	<p>Competition, participants in the procedure and other interested persons are entitled to provide clarifications and to be heard at a CC's hearing.</p> <p>Under Article 32 of the Law on Competition, economic entities and other persons who consider that their rights have been violated have the right to appeal to the CC against the actions performed and the decisions adopted by the authorized officials and other employees of the CC during the procedure. A complaint has to be filed no later than 10 days after learning about the actions or decisions which are appealed against. If economic entities or other persons, who filed a complaint, object to the decision of the CC, they have the right to file an appeal to Vilnius Regional Administrative Court.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>All properly claimed business secrets are protected from disclosure, irrespective of how the information was obtained. In both concerned cases the CC and its administrative staff must protect commercial secrets that they became aware of in the course of exercising control over compliance with the Law on Competition, and, in the absence of the economic entity's consent, may use it only for the purposes it was provided (Article 21 (1)-(2) of Law on Competition).</p> <p>Also, an economic entity whose information constituting a commercial secret is available to the CC may be required to submit within the term specified the extract of a document or another information without a commercial secret and the description of the information to be protected as well as reasons for the need to protect such information as confidential (Article 21 (5) of Law on Competition).</p>

11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</p>	<p>Article 35(3) of the Law of Competition establishes that sanctions can be imposed on economic entities for violation of the Law on Competition no later than within five years from the date of commitment of the violation, and in the event of a single and continuous infringement – from the date of performance or termination of the last act.</p> <p>The limitation periods suspended when (Article 35(4) of the Law on Competition):</p> <ol style="list-style-type: none"> 1. the CC carries out an investigation; 2. the investigation carried out by the CC is suspended by a decision of the court. The time limit for the imposition of sanctions shall be suspended in this case for the period of suspension of the investigation carried out by the CC; 3. a dispute regarding the resolution of the CC to impose sanctions is heard in the court.
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements</p>	<p>The CC must complete the investigation no later than within five months from the date of the adoption of the resolution to launch an investigation. The CC may, by a reasoned resolution, extend this time limit each time for no longer than three months. The Law on Competition does not provide for the maximum period for the investigation.</p> <p>The investigation may be suspended by the court decision or by decision of the CC, e. g. in cases where court is examining a matter which may affect findings of the investigation in question; if elements of criminal offence are identified and the CC applied to the competent law</p>

for such rules to apply!	enforcement authorities; at the request of undertakings or in other exceptional cases;
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)	<p>Under Article 33(1) of the Law on Competition, undertakings and other persons who believe that their rights protected by this Law were violated shall have the right to appeal to Vilnius Regional Administrative Court against the CC's decision which prevent any further investigative process of the violation of this Law or which complete the examination of the notification of concentration. Thus, the commencement of investigation cannot be appealed.</p> <p>An appeal against the CC's decisions which prevent any further investigative process of the violation of the Law on Competition (e. g. infringement resolution, resolution terminating investigation with commitments or without finding an infringement) should be filed in writing no later than 20 days after the receipt of the resolution of the CC or, if the resolution is to be published on the website of the CC, after the date of publication.</p>

12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]	<p>Under Article 30(1) of the Law on Competition after the completion of the investigation, the CC has a right to adopt resolution:</p> <ol style="list-style-type: none"> 1. to impose sanctions provided for by the Law on Competition; 2. to refuse to impose sanctions where there is no basis established by the Law on Competition; 3. to terminate the procedure regarding the violation of competition law where there is no violation; 4. to conduct a supplementary investigation.
B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).	Please refer to 12/A.
C. Can interim measures¹⁰ be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) Which	<p>Under Article 26 of the Law on Competition, in urgent cases, where there is sufficient evidence of violation of Law on Competition, the CC, seeking to prevent a substantial or irreparable damage to the interests of economic entities or the public, has the right to apply for interim measures necessary for the implementation of the final decision of the</p>

¹⁰ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

¹¹ Only for agencies which answered “yes” to question 2.B. above

<p>institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>CC. The interim measures should be ceased to be applied upon the implementation of sanctions imposed by the resolution of the CC adopted after the investigation of the case.</p> <p>The CC has the right to apply for the following interim measures with respect to the economic entity suspected of violation of the Law on Competition:</p> <ol style="list-style-type: none"> 1. to obligate the economic entities to terminate an illegal activity; 2. upon receiving an authorisation from Vilnius Regional Administrative Court, to obligate the economic entities to perform certain actions if failure to perform them would result in serious damage to other economic entities or public interests, or incur irreparable consequences. <p>Before adopting a resolution to apply interim measures, the CC must give the economic entity suspected of infringement of the Law on Competition an opportunity to provide explanations within the set time limit.</p>
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13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines[e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>Article 36(3) of the Law on Competition stipulates a possibility to impose a fine of up to one per cent of the gross annual income in the preceding business year on economic entities for not providing information required for carrying out the investigation, also for providing incorrect and incomplete information required for investigation as well as for hindering the officials of the CC from entering into and carrying out inspections of the premises of the economic entities, inspecting or seizing any documents and articles having evidential value in the investigation of the case, for damaging or breaking the seal affixed by the officials of the CC.</p> <p>Under Article 505 of the Code of the Administrative Offences of the Republic of Lithuania, a fine from 60 to 600 Eur for obstructing and impeding the investigation might also be imposed on individuals (a fine from 300 to 1500 Eur for the heads of undertakings).</p> <p>Such fines can be imposed regardless of whether the anti-competitive agreement has been established.</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>Administrative sanctions.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>The procedural sanctions can be imposed both upon the undertakings and individuals.</p>
<p>D. Criteria for determining the sanction / fine:</p>	<p>Please refer to 14/B.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>Please refer to 13/A.</p>

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>Administrative sanctions.</p> <p>Under Article 35(1) of the Law on Competition the CC can impose fines upon undertakings provided for the violation of the Law on Competition.</p> <p>Article 40 of the Law on Competition institutes that for the contribution to the prohibited agreement, fines might also be imposed upon the heads of the undertaking as well as their right to be a head or a member of the collegial supervisory and/or management body of any legal entity might be restricted (for further details please refer to 14/C).</p> <p>It is considered that the head of an undertaking has been involved in committing an infringement where:</p> <ol style="list-style-type: none"> 1. he has been directly involved in the commitment of the infringement; 2. he has not been directly involved in the commitment of the infringement, however had grounds for suspecting that the undertaking he was in charge of committed the infringement and he did not take any actions to prevent the infringement; 3. he was not aware of the fact although he had to be aware of the fact that the undertaking, he was in charge of, committed or is in the process of committing the infringement.
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>Article 37(1) of the Law on Competition provides that the amount of fines imposed on economic entities is to be differentiated taking into consideration:</p> <ol style="list-style-type: none"> 1. the gravity of the violation; 2. the duration of the violation; 3. the circumstances mitigating or aggravating liability of the economic entity; 4. the influence of each economic entity in the commitment of the violation, where the violation has been committed by several economic entities; 5. the value of the sold goods of the economic entities, which are directly and indirectly related to the infringement.
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Under Article 36(1) of the Law on Competition a fine of up to 10 per cent of the gross annual income in the preceding business year can be imposed by the CC upon economic entities for prohibited agreements.</p> <p>Under Article 40(1) of Law on Competition the right of the head of an undertaking to be appointed head of a public and/or private legal person, to be a member of the collegial supervisory and/or management body of a public and/or private legal person may be restricted for a period of three to five years for involvement in a prohibited agreement between competitors concluded by the undertaking. In addition to the above-mentioned restrictions, the head of an undertaking may also be imposed a fine of up to 14 481 Eur or involvement in a prohibited agreement between competitors concluded by the undertaking.</p>
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are</p>	<p>The Guidelines on setting the amount of a fine imposed for the infringement of the Law on Competition of the Republic of Lithuania approved by the ruling of the Government of Republic of Lithuania as of 18 January 2012 (No. 64). The document last amended on 29 April 2017 (No. 314).</p> <p>This document is available online on the following link (in Lithuanian only): https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.417393/FXASnnXCRy (in Lithuanian)</p>

available]	
<p>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</p>	<p>The CC decisions are implemented notwithstanding the challenge of a decision, therefore, the filing of an appeal does not suspend the enforcement of the decisions imposing fines on an undertaking or public administration entity, unless the CC decides not to apply to the bailiff for the forced recovery of the fine or the court decides otherwise. The CC shall decide not to apply to the bailiff when an undertaking or public administration entity provides to the CC a financial guarantee and / or insurance company guarantee covering the amount of fine imposed.</p> <p>Fines imposed on undertakings should be paid during the set time limit despite the fact that an undertaking appealed the decision. Additionally, under Article 39(2) of Law on Competition if an undertaking fails to pay the fine within the period specified in the Law on Competition, interest in the amount specified in Article 6.210(2) of the Civil Code of the Republic of Lithuania shall be calculated. However, the CC has a right to postpone the payment of a fine under the reasoned request, if an undertaking or public administration entity is unable to pay the fine on time due to objective reasons.</p>

15. Possibilities of appeal

<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>Article 33 of the Law on Competition foresees that economic entities and other persons who believe that their rights were violated have the right to appeal against the CC's resolutions which prevent any further investigation process of the violation of the Law on Competition.</p> <p>An appeal should be filed in writing no later than 20 days after the receipt of the resolution of the CC or, if the resolution is to be published on the website of the CC, after the date of publication. It should be noted that the filing an appeal does not suspend the implementation of the resolutions of the CC, unless otherwise decided by the court.</p> <p>The grounds for an appeal might be based both on an error of law and on facts as well as on procedural requirements.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>The appeal should be brought before Vilnius Regional Administrative Court.</p>

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>Private enforcement of competition law and private damage claims are possible in Lithuania.</p>
<p>B. Laws regulating private</p>	<p>Articles 43-53 of Law on Competition regulates private enforcement of</p>

<p>enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p>	<p>competition law. Available in Lithuanian language on https://www.e-tar.lt/portal/lt/legalAct/TAR.B8B6AFC2BFF1/asr</p> <p>Articles 441¹ – 441¹⁷ of Code of Civil Process of the Republic of Lithuania provides rules for class action. Available in Lithuanian language on https://www.e-tar.lt/portal/lt/legalAct/TAR.2E7C18F61454/asr</p>
<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>There are no implementing regulations on private enforcement.</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>Private antitrust cause of action is available when infringements of Articles 5 (anti-competitive agreements) and 7 (abuse of dominance) of the Law on Competition and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are committed (Article 43 of the Law on Competition).</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>The finding of infringement by the Competition Council is not required in order to initiate a private antitrust action. In Lithuania the plaintiff can initiate a claim even in the case when the Competition Council did not find the infringement, i.e. a stand-alone and follow-on claims are available in Lithuania.</p> <p>After the Competition Council has adopted a decision on the infringement of Article 5 or 7 of the Law on Competition and/or Articles 101 and 102 of TFEU, which has not been appealed or a court decision on the same infringement has entered into force, the circumstances regarding the nature of the infringement, the territory of the infringement, the duration of the infringement and persons specified in such decision of the Competition Council or decision of court are considered to be irrefutably established for the purposes of proceedings for compensation for damage (Article 51.3 of the Law on Competition).</p> <p>Article 51.4 of the Law on Competition states that the final decision of the court in the EU member state which is recognized according to the regulations of EU or the final decision of competition authority on the infringement of Articles 101 and 102 of TFEU is official evidence and has bigger evidentiary power (<i>prima facie</i> evidence) that the infringement of Articles 101 and 102 of TFEU was done.</p> <p>If damage claim is brought after a finding of infringement by the Competition Council it is required that the decision of the Competition Council is final (i.e. it has not been appealed) or a court decision on the same infringement has entered into force and can no longer be appealed.</p>
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>There is no criminal liability for the infringements of the Law on Competition.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>Immunity or leniency applicants receive beneficial treatment in follow-on private damages cases.</p> <p>Immunity or leniency applicant which were exempted from the fine responds jointly and severally to the following victims: 1) its direct and indirect buyers or suppliers; 2) other victims only if they are unable to</p>

	<p>obtain full compensation from other undertakings which have participated in the same infringement (Article 45 of the Law on Competition).</p> <p>As concerns the right of recourse, the immunity or leniency applicants which were exempted from the fine for the collusion of competitors can't be required to pay more than they have caused damage to their direct and indirect customers or suppliers (Article 46.2 of the Law on Competition).</p>
H. Name and address of specialised court (if any) where private enforcement claims may be submitted to	Vilnius Regional Court has exclusive competence to hear cases on private enforcement claims (address: Gedimino pr. 40, Vilnius)
I. Information about class action opportunities	Class actions for claiming damages for the infringements of competition rules are possible in Lithuania. However, there have been no such class actions until now.
J. Role of your competition agency in private enforcement actions (if at all)	The Competition Council sometimes is frequently requested by the courts to provide opinions in private enforcement cases concerning alleged infringements of Law on Competition or TFEU Articles 101 and 102. In practice the Competition Council provides general observations, applicable legal rules and relevant case-law. However, the Competition Council does not provide definite answers concerning alleged infringements.
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> Role of your competition agency in the damage calculation (if at all) 	<p>Unless proven otherwise, agreements between competitors referred to in Article 5 of the Law on Competition or Article 101 (1) of TFEU are deemed to cause damage (presumption of harm, Article 44.3 of the Law on Competition).</p> <p>Under the Code of Civil Process any evidences would be admissible in the court. However, the leniency applications and settlement submissions cannot be evidence in civil proceedings (Article 53.5 of the Law on Competition).</p> <p>When the court hears a case regarding the compensation for damage and at its request, the Competition Council has the right to provide an opinion concerning the calculation of damage (Article 51.8 of the Law on Competition). However, the Competition Council has never provided such an opinion and instead it provides applicable legal regulation, case-law and soft-law instruments which might be useful in such cases.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? summary of the rules regulating the disclosure of confidential information by the 	<p>The court can demand evidence in the file of the Competition Council, which are not documents prepared by the Competition Council, in accordance with the procedure established in Article 53 on the Law on Competition only if it cannot be obtained from other persons due to objective reasons (Article 53.1).</p> <p>When deciding on the proportionality of the request of evidence in the file of the Competition Council, the court shall, in addition to the circumstances specified in Article 52 of the Law on Competition, also assess all the following circumstances: 1) whether the request to demand evidence is formulated specifically taking into account the nature, subject matter or content of the material submitted to the Competition Council or in the file of the Competition Council; 2) whether the party requesting the demand of evidence requests it in connection with a court action for compensation for damage caused by the infringement specified in Article 43 of the Law on Competition; 3) whether the efficiency of the activities of the Competition Council will not be impaired.</p> <p>The request to demand all the material in the file of the Competition Council without specifying the evidence or categories of evidence related to the file is not granted.</p>

<p>competition agency to the court</p> <ul style="list-style-type: none"> • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>Until the Competition Council has adopted the decision to terminate the investigation or final decision regarding the infringement the court can't request and use: 1) information prepared by the person specifically for the infringement investigation procedure conducted by the Competition Council; 2) information prepared by the Competition Council and sent to individuals for the purposes of infringement proceedings (Article 53.4 of the Law on Competition).</p> <p>Evidence in the file of the Competition Council, which is not specified in Paragraphs 4 or 5 of the Article 53, may be demanded at any time in proceedings for damages in accordance with the Code of Civil Procedure and Article 53.1.</p> <p>As was mentioned leniency applications and settlement submissions cannot be evidence in civil proceedings. The plaintiff may submit a reasoned request that the court hearing the case inspect leniency applications and settlement submissions in order to ascertain that they have been submitted to the Competition Council on the basis of Article 38.1 or Article 37.2 of the Law on Competition. In making such an assessment, the court may only request the Competition Council to provide copies of the leniency applications, settlement submissions and a conclusion on such assessment. The court also has the right to hear persons who have submitted appropriate requests for immunity or settlement submissions to the Competition Council. In no case shall the court grant access to these documents to persons other than those who have submitted relevant requests for immunity from fines or applications for recognition to the Competition Council. Those provisions do not apply to evidence accompanying applications for immunity or settlement submissions (Article 53.5 of the Law on Competition).</p> <p>The court may require evidence relating to the case which contains confidential information, provided that such information can be considered as evidence in a civil case. Upon receipt or request of evidence of such content, the court shall take effective measures to protect the confidential information (Article 52.5 of the Law on Competition).</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>In proceedings for compensation for damage, the court assesses whether part of the overcharge (and the amount thereof) has been passed on to the plaintiff's buyers. When assessing the part of the overpayment transferred to the indirect purchaser, the court takes into account the methodological documents of the European Commission, which indicate how to determine the part of the overpayment transferred to the indirect purchaser (Article 47.1 of the Law on Competition).</p> <p>In proceedings for damages for an infringement the defendant shall be entitled to rely on the argument that the plaintiff has transferred all or part of the costs of such an infringement to purchaser as a defense. If the defendant proves that the overpayment or part of it has been passed on to the purchasers, the court shall reduce the amount of damages awarded to the plaintiff accordingly (Article 47.2 of the Law on Competition).</p> <p>Where the claimant is an indirect purchaser, it has to prove the fact and extent of the transfer of the overpayment, taking into account the commercial practice of passing on the price increase further down the supply chain (Article 47.3 of the Law on Competition).</p> <p>The transfer of the overpayment to the indirect purchaser shall be presumed if all the following circumstances are proved: 1) the defendant has committed the infringement specified in Article 43; 2) due to such infringement, the direct buyer of the defendant overpaid for the goods; 3) the indirect purchaser has acquired goods which have become the object</p>

	<p>of such infringement, or goods manufactured from goods which have become the object of such infringement, or goods which contain the goods which have become the object of such infringement. (Article 47.4 of the Law on Competition). This presumption may be invoked only by the indirect purchaser. If the defendant rebuts the presumption or part of it, that presumption shall not apply or shall apply only to the un rebutted part (Article 47.5 of the Law on Competition).</p> <p>Indirect purchasers may bring the claim for damages.</p>
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