

Competition Council Newsletter no 16

September 14



COMPETITION COUNCIL – AMONG WORLD'S LEADING COMPETITION AUTHORITIES

Lithuanian Competition Council's work is both, beneficial and visible, says antitrust and competition law journal and news service Global Competition Review (GCR). Having summarised all the data gathered from the interviews with competition law practitioners and the questionnaires/surveys filled by national competition authorities and local competition counsels, GCR experts awarded Lithuanian Competition Council three stars out of five. GCR highlighted the significant progress made by the Council - the authority became more active, brought bold cases and effectively advocated competition. While the Council has been placed among the world's leading competition authorities several times before, the ranking for 2014 is the highest ever received.

“ Even though our budget is one of the smallest in the world, we rank as highly as Israel, Canadian, Swedish and Swiss competition authorities. This signifies high level of expertise brought by our employees. We work hard to achieve our mission which is safeguarding competition for the benefit of consumers. The results of the Council's impact assessment have shown that every €1 put in our operations has brought a sevenfold direct financial benefit to consumers.”

- Šarūnas Keserauskas,
Chairman of the Competition Council



GCR

GLOBAL COMPETITION REVIEW

THREE-STAR COMPETITION AUTHORITIES

Canada's Competition Bureau
Greece's Competition Commission
Italy's Competition Authority
The Netherlands' Authority for Consumers and Markets
Norway's Competition Authority
Austria's Federal Competition Authority
Chile's National Economic Prosecutor's Office
Finland's Competition and Consumer Authority
Hungary's Competition Authority
Israel's Antitrust Authority
Latvia's Competition Council
Lithuania's Competition Authority
New Zealand's Commerce Commission
Mexico's Federal Economic Competition Commission
Poland's Office of Competition and Consumer Protection
Portugal's Competition Authority
Russia's Federal Antimonopoly Service
South Africa's Competition Commission
Sweden's Competition Authority
Switzerland's Competition Commission
Turkey's Competition Authority

Competition Council introduces changes to merger notification procedure

Competition Council introduced changes to merger notification procedure made following discussions with business and legal communities, EC recommendations and the Council's current practice. The new merger notification procedure will come into force on 1 January 2016.

Changes of notification submission and assessment procedure include the following:

- more explanations on how to identify merger parties and calculate income properly;
- simplified submission of income statements;
- possibility not to submit information if the company cannot access it;
- public announcement of the anticipated merger's summary;
- procedure of submitting commitments;
- new form of merger notification.

“ We adopted the new merger notification procedure with regard to rapidly changing business environment, amendments of the EU merger regulations, law enforcement practice and the most frequent mistakes that occur in merger notifications. We publicly announced the project of the new merger notification procedure and received feedback – we hope that the new merger notification procedure will bring more clarity and legal certainty to the parties anticipating mergers. ”

- Šarūnas Keserauskas, Chairman of the Council

market investigation on raw milk and dairy products

Competition Council completed market investigation into the sector of raw milk and dairy products and put preliminary findings forward for public consideration. The Council's experts analysed all four levels of dairy industry – raw milk production, purchase, processing and distribution. The preliminary findings suggest that stronger negotiating power and bigger amount of milk produced may increase the effectiveness of milk producers. The most effective way of increasing sales is to cooperate or form producers' organisations and, thus, ensure long-term agreements, build up immunity for market swings and boost export opportunities.



advertising

Competition Council opened an investigation into suspected misleading reference pricing on the website *akcijatau.lt*.

The Council will evaluate whether reference prices of hair dryer and straightener are genuine and reflect the real value for consumers.

Competition Council found that the ads of electronic products offered by *Electronic Trade* mislead consumers.

Having examined the ads of randomly selected products the Council's experts found that the displayed sale and reference prices reflected fake value of the offers and, thus, mislead consumers. In Council's opinion, if consumers knew the true value of the offers, they would likely search for better price deals somewhere else. Having evaluated all the circumstances and the fact, that the breach lasted 6 years, the Council imposed on the Company a fine of 7,182 euros.



“Online buyers cannot physically inspect the products before purchase; therefore price information often has a decisive influence when buying online. Hence, traders have to ensure that the ads are accurate and the reference prices reflect the real value of the products.”

- Elonas Šatas, Deputy Chairman of the Competition Council



Competition Council suspects *UAB RIMI LIETUVA* of abusing its market power

Competition Council sent a statement of objections to *UAB RIMI LIETUVA* suspected of abusing its market power. According to the Council's preliminary evaluation, the regulation and use of *UAB RIMI LIETUVA* marketing budget contradicts fair-trade practices and restricts the possibilities for providers to negotiate the conditions of sales.

The fact that the Council has informed *UAB RIMI LIETUVA* about the conclusions of an investigation does not mean that the infringement has already been established. The Council will take into consideration all the explanations provided by the company before adopting the final decision.

municipalities

Competition Council sent a statement of objections to Kaunas City Municipality suspected of restricting competition. The Municipality authorised a municipal company *Kapinių priežiūra* to provide services of Kaunas city cemetery maintenance and organisation of burial services without a competitive procedure.

The Council opened an investigation having received a notice about the exclusive rights the Municipality granted to *Kapinių priežiūra*. Kaunas City Municipality authorised the municipal company to provide services of cemetery maintenance, grave digging, initial body transportation and storage in Kaunas city without a competitive procedure and, thus, discriminated other five companies able to provide the relevant services. According to the preliminary evaluation of the Council's experts, such municipal decision breached Article 4 of the Law on Competition.

The statement of objections suggested the Municipality to repeal competition-restricting decision and, thus, eliminate the breach.

Competition Council sent a statement of objections to Klaipėda City Municipality suspected of anticompetitive conduct. According to the Council, the Municipality's decision to authorise *Audresta*, *Aštuoniukė*, *Devintoji banga*, *Aiščiai* and *Dešimtas maršrutas* (further – the Companies) to provide shared taxi services without a competitive procedure breached Article 4 of the Law on Competition.

The Council's statement of objections suggested that in 2012 the Municipality authorised the Companies to provide shared taxi services on routes no. 6, 8, 9, 10 without a competitive procedure. Hence, the Municipality discriminated against other companies willing to provide the aforementioned services.

The Council suggested the Municipality to repeal the agreements within 3 months after the Council's decision is published on the authority's website.

Competition Council found that Panevėžys City Municipality restricted competition within waste management sector. The Municipality authorised a

municipal company *Panevėžio specialus autotransportas* to provide waste management services in Panevėžys without a competitive procedure and, thus, breached Article 4 of the Law on Competition.

The Municipality failed to convince the Council that *Panevėžio specialus autotransportas* was the only company able to ensure continuity, quality and accessibility of waste management services. Neither the Municipality nor the municipal company could provide any evidence-based exceptional and objective circumstances to justify competition-restricting municipal decision.

“Municipalities often use references to “consumer protection” and “investments” made into municipal companies to justify their competition-restricting decisions. Unfortunately, more often than not these justifications are nothing more than just a poorly disguised fear to let competition into the markets so far dominated by municipal companies. So called “investments” in many cases are nothing more than privileges and subsidies that safeguard municipal companies against bankruptcy, simultaneously “safeguarding” consumers against competition benefits.”

– Šarūnas Keserauskas, Chairman of the Council

The Council obligated the Municipality to repeal the agreement signed with *Panevėžio specialus autotransportas* within 3 months after the Council's decision is published on the authority's website.



anti-competitive agreements

Competition Council sent a statement of objections to several companies suspected of bid rigging. *Ministerium*, *Nebūk briedis* and *TV Europa* are suspected of entering into a cartel to win public tender of software production, while *Nebūk briedis* and *Media medis* - to win a public tender for infographics production. Hence, all five companies may have breached article 5 of the Law on Competition.

According to the Council's preliminary evaluation, factual circumstances such as explanations provided by the companies, their internal communication and other suggest that all of them were involved in cartels.

CJEU's Advocate General delivered his opinion on the case concerning an anti-competitive agreement between Lithuanian travel agencies.

On 7 June 2012, the Competition Council found that 29 travel agencies used online booking system E-TURAS to concert practices when applying discounts to bookings and, thus, breached competition law.

For the breach, the Council imposed fines totaling ~1.5 million euros. The companies appealed against the Council's decision to Vilnius Supreme Administrative Court (further- the Court).

The Court decided to refer the case to CJEU for a ruling on the liability of the contractors.

Having taken into account all the circumstances, Advocate General Maciej Spunzar concluded that „the concept of a concerted practice covers the situation where several travel agencies use a common online travel booking system, and that system's administrator posts a notice informing its users that following the proposals and wishes of the undertakings concerned the discounts applicable to clients will be restricted to a uniform maximum rate, this notice being followed by technical restriction on the choice of discount rates available to the users of the system. The undertakings which become aware of that illicit initiative and continue to use the system, without publicly distancing themselves from that initiative or reporting it to the administrative authorities, are liable for participating in that concerted practice“.

Advocate General's opinion does not constitute the final decision. The final decision is to be adopted this year. After that the Court will continue further examination of the case.

two CEO's detained for an attempt to bribe an employee of the Council

Officials of Special Investigation Service (STT) detained two CEOs for an attempt to bribe an employee of the Lithuanian Competition Council. The Council's employee refused to accept 14,000 euro bribe, an equivalent of the employee's annual salary, in exchange for a favourable decision in a suspected bid rigging case.

If bid rigging in a public procurement charges were presented and confirmed, serious sanctions could be applied to the companies involved: imposing a fine of up to 10 per cent of the annual turnover and cancelling allocations of the EU financial support (up to 174,000 euro in this case).

This particular bribery case is a result of a close cooperation between the Council and STT. STT is very active in combating corruption in the EU funded projects and seriously reacts to alerts about suspected bid rigging and anticompetitive agreements.