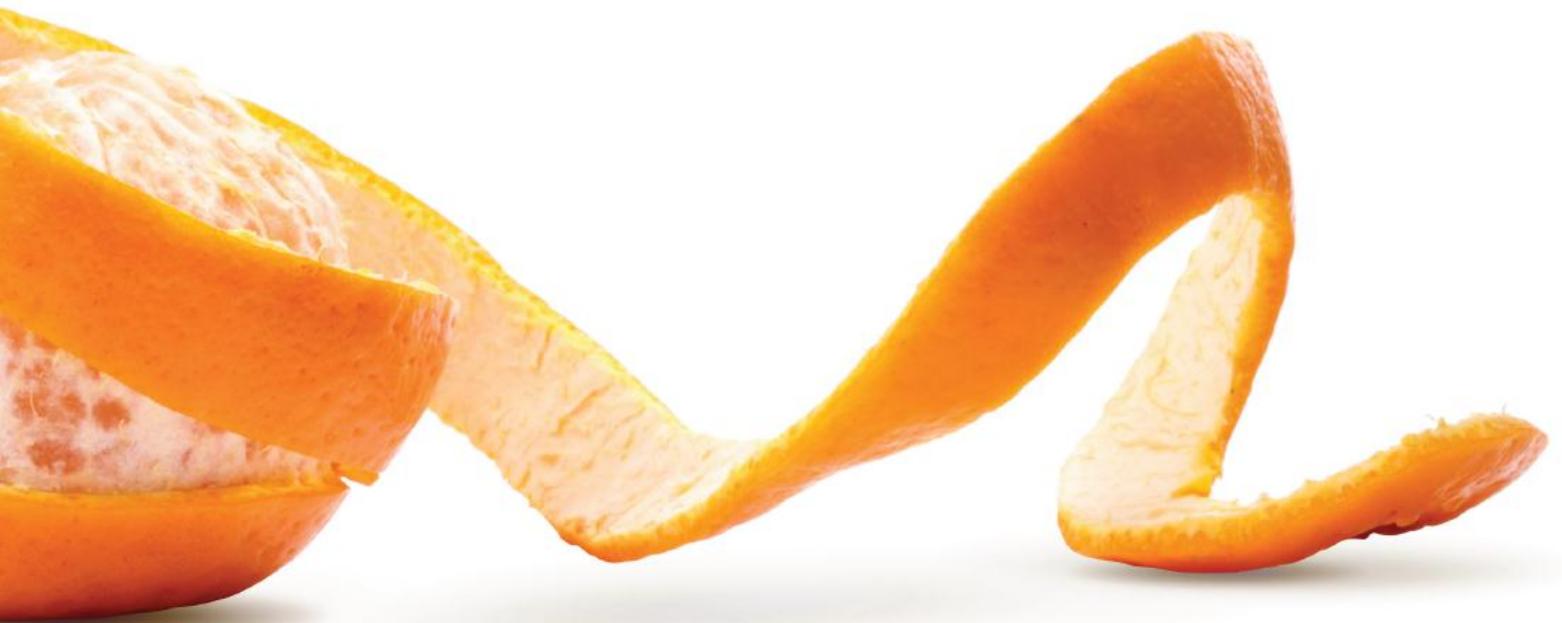


May, 2013

LITHUANIAN COMPETITION LAW NEWS



Dear Reader,

This issue of the Lithuanian Competition Law Newsletter prepared by the EU & Competition practice group of the law offices RAIDLA LEJINS & NORCOUS contains brief summaries of the most noteworthy developments in Lithuanian competition law during the last several months.

We will be happy to answer your specific questions or assist you in dealing with a particular competition law issue.

With kind regards,



Dr Irmantas Norkus
Managing Partner
Raidla Lejins & Norcous
Lithuania



Elijus Burgis
Partner
Raidla Lejins & Norcous
Lithuania



Ieva Sodeikaitė
Associate
Raidla Lejins & Norcous
Lithuania

COURT DECISIONS

Court Confirms the Fine Imposed on AB Orlen Lietuva for Abuse of Its Dominant Position

The Supreme Administrative Court issued a non-appealable ruling stating that the fine of LTL 8,231,000 (approx. EUR 2.83 million) imposed on the oil company AB Orlen Lietuva by the Competition Council was reasonable. The decision marks the end of seven years of litigation in which the Competition Council attempted to fine Orlen for abusing its dominance in the fuel market in Lithuania.

In 2005, the Competition Council fined Orlen LTL 32 million (approx. EUR 9.27 million) for abuse of dominance; however, the Supreme Administrative Court quashed the decision and requested that the Competition Council carry out an additional investigation. The findings of the additional investigation reasserted that Orlen did infringe competition rules. The Competition Council established that by applying an economically unsubstantiated, discriminative pricing policy and obligations to purchase from Orlen a fixed volume of fuel, Orlen sought to 'tie down' its buyers, thus restricting the import of petrol and diesel into the territory of Lithuania. The fuel market of Lithuania was practically closed for other producers; therefore, competition was limited significantly. This actually resulted in the loss of possibility for consumers to take advantage of the benefits of competition.

Orlen challenged the fine before Vilnius Regional Administrative Court, but the court sided with the Competition Council. Orlen then appealed against the fine to the Supreme Administrative Court. Having examined the case, the court upheld the Competition Council's decision. However, the Supreme



Administrative Court did agree to reduce the fine by 5 per cent to LTL 7,819,450 (approx. EUR 2.26 million), because it believed that one alleged episode of the infringement had not been proven by the Competition Council.

The full decision of the Supreme Administrative Court (in Lithuanian only) can be found [here](#).

Court Clarifies When Companies in Breach of the Law on Competition May Be Excluded From Public Procurement Procedures

The Supreme Administrative Court clarified in what circumstances contracting authorities may exclude suppliers in breach of the Law on Competition from public procurement tenders.

In accordance with the Law on Public Procurement, if the Competition Council imposes an economic sanction (fine) on a company for breach of the prohibition of restrictive agreements, the company may be excluded from public procurement procedures for a period of three years from the effective date of the relevant resolution of the Competition Council. Up to now there was uncertainty as to what date should be treated as the effective date of the resolution of the Competition Council referred to in the Law on Public Procurement, because neither the Law on Competition, nor other laws determine since when resolutions of the Competition Council imposing economic sanctions are deemed to be effective.

The court pointed out in its ruling that *'it is apparent from this legal provision that the legislator intended to prescribe that legal consequences (restrictions on participation in public procurement) result only from economic sanctions for infringements of competition law imposed by final decisions of authorities, i.e. only decisions having the force of res judicata (i.e. which are binding and not subject to review by any other authority)'*.

Based on the interpretation of the court, contracting authorities may enforce the provision on disqualification from public procurement solely in the cases when by resolutions of the Competition Council having the force of *res judicata* such suppliers are found in breach of the prohibition of restrictive agreements. A resolution of the Competition Council acquires such force if it is not appealed with the court within the specified time limit after it is adopted or, if the resolution is appealed with a court, as soon as the court renders a final judgement confirming that the relevant company was duly sanctioned.

The full decision of the Court (in Lithuanian only) can be found [here](#).

DECISIONS OF THE COMPETITION COUNCIL

The Competition Council Fines UAB Lukoil Baltija for Implementing Unauthorised Mergers

The Competition Council imposed a fine of LTL 1,177,600 (approx. EUR 341,057) on UAB Lukoil Baltija, operator of the LUKOIL petrol stations chain in Lithuania, for implementing mergers without the Competition Council's prior authorisation.

The Competition Council established that by virtue of a joint-venture agreement with UAB Okseta, Lukoil took over management of three petrol stations in Lithuania. In the Competition Council's view, Lukoil has thus acquired control over these petrol stations and implemented the mergers in breach of the Law on Competition as no prior clearance from the Competition Council was obtained.

The resolution of the Competition Council is in line with its long-lasting administrative practice to qualify commercial real estate transactions as concentrations irrespective of whether



commercial real estate is transferred as business or as mere assets. In the case at hand, the petrol stations were transferred to Lukoil for use merely as immovable and movable assets, i.e. without personnel, clients, contracts, business processes, intellectual property rights, etc., therefore, by themselves they could not function as autonomous business.

Although the Competition Council had recently declared that not every commercial real estate transaction will be qualified as a concentration and had refused to open a merger control procedure under a received notification of concentration on the basis that the intended commercial premises lease transaction did not constitute a concentration, the most recent *Lukoil* decision demonstrates that the decisional practice of the Competition Council is incoherent, and thus legal uncertainty as to the qualification of commercial real estate transactions under the Lithuanian merger control system remains. Thus undertakings acquiring commercial real estate (under a lease agreement or on other basis) should assess whether the respective transaction might be qualified as a concentration.

The Competition Council's decision (in Lithuanian only) can be found [here](#).

The Competition Council Closes Its Investigation into the Conduct of Banks and Their Associations

Having regard to the findings of its investigation into compliance of the conduct of banks and their associations with Article 101 TFEU and its national equivalent, the Competition Council closed the investigation.

The investigation into the conduct of banks and their associations was opened in 2011 on suspicion that Lithuanian banks issuing and/or servicing Visa Europe and/or MasterCard International payment cards might have entered into discussions among themselves or through the Association of Lithuanian Banks regarding interbank fees charged by banks to each other on each card transaction. The Competition Council also investigated into a potential coordination of other bank service charges (e.g. e-banking, account maintenance, acceptance of utility payments, etc.), which might result in a restriction of competition.

The investigation found no facts showing a breach of the prohibition of restrictive agreements. In light of these circumstances, the investigation was closed.

The Competition Council's decision (in Lithuanian only) can be found [here](#).

The Competition Council Closes Its Investigation as RIMI Removes Doubts as to Fairness of Its Actions

The Competition Council closed its investigation into the conduct of UAB RIMI LIETUVA, one of the four largest retailers in Lithuania, who allegedly demanded that some of its suppliers should deliver goods only in the packaging of a particular company.

The Competition Council opened an investigation into allegedly unfair practices of RIMI after conducting a survey on the implementation of the Law on the Prohibition of Unfair Practices of Retailers. The investigation looked into allegations that RIMI potentially demanded that certain suppliers of food products should use the packaging of a particular company for their deliveries.



In order to remove any doubt as to its alleged demands, RIMI informed the suppliers that it does not restrict the free choice by suppliers of companies from which to purchase packaging meeting the standards determined by RIMI. Furthermore, the investigation did not reveal any specific cases of applying such restrictions. In light of these circumstances, the Competition Council closed the investigation.

The Competition Council's decision (in Lithuanian only) can be found [here](#).

Should you have any questions or need assistance in dealing with a particular competition law issue, please contact us:

Raidla Lejins & Norcouc

Lvovo 25
LT-09320 Vilnius, Lithuania
Tel. +370 5250 0800
Tel. +370 5 250 0801
Fax +370 5250 0802

rln@rln.lt
www.rln.lt

This Newsletter is a periodic publication of RAIDLA LEJINS & NORCOUS and should not be construed as legal advice or legal opinion on any specific facts or circumstances. We have used reasonable efforts in collecting, preparing and providing the information in this newsletter, but we do not warrant or guarantee the accuracy, completeness, adequacy or currency of the information contained herein. The contents are for general informational purposes only, and you are urged to consult a lawyer concerning your situation and any specific legal questions you might have.

