

---

October, 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 & Norcouus  
Lithuania



**Elijus Burgis**

Partner  
Raidla Lejins & Norcouus  
Lithuania



**Kestutis Šukvietis**

Associate  
Raidla Lejins & Norcouus  
Lithuania



**Jurgita Misevičiūtė**

Associate  
Raidla Lejins & Norcouus  
Lithuania

---

## COURT DECISIONS

### **A court of first instance confirms that the Competition Council reasonably refused to open an investigation into compliance with Article 4 of the Law on Competition**

Vilnius Regional Administrative Court ('VRAC') confirmed that in 2012 the Competition Council reasonably refused to open an investigation into compliance of the conduct of public administrative authorities with Article 4 of the Law on Competition while implementing the Customs Convention on the International Transport of Goods under Cover of TIR Carnets.

The Lithuanian Business Employers' Confederation ('LBEC') turned to the Competition Council stating that the Customs Department and other public authorities who granted the right to the Lithuanian National Road Carriers Association LINAFA to distribute TIR carnets without having determined the price of distribution of TIR carnets and the legal grounds and procedure for the control and supervision of financial and other activities of the Association possibly committed a breach of Article 4 of the Law on Competition which provides for the duty of public administration authorities to ensure the freedom of fair competition.

In support of the view taken by the Competition Council, VRAC pointed out that there was no reason for suspecting that the decisions of the public authorities were such as to secure privileged position for LINAFA Association in distributing TIR carnets based merely on the fact that no other association meeting TIR Convention requirements existed in Lithuania.



In supporting the view taken by the Competition Council, VRAC stated that the right for LINAVA Association to distribute TIR carnets arose not from the decisions of public administration authorities, but rather from the intent of economic operators to establish an alternative association meeting the requirements of the TIR Convention.

The court held that when examining LBEC's application the Competition Council was active and conducted a thorough investigation of the application which did not result in identification of any specific decisions taken by public administration authorities leading to privileging or discriminating against individual economic operators or groups of them or which give or may give rise to differing conditions of competition.

As the judicial decision was not appealed, it became final and definitive.

---

## DECISIONS OF THE COMPETITION COUNCIL

### **Competition Council rejects allegations of excessive prices of liquefied petroleum gas**

The Competition Council refused to open investigations into compliance by AB Suskystintos dujos and UAB Saurida with Article 7 of the Law on Competition prohibiting abuse of a dominant position.

After analysis of the data provided by the companies on the prices of centrally supplied liquefied petroleum gas, the Competition Council determined that there was no reason to allege that the prices charged by the companies might be excessive for the purposes of competition law.

In evaluating the gas prices charged by AB Suskystintos dujos in 2013, the Competition Council took into account the expenses incurred by the company and the fact that in the period from 2011 to 2012 the company operated at a loss, and further to the fact that after fixing said prices a profit margin of up to 10 per cent was expected in 2013. As a result, the Competition Council resolved that there was no reason for alleging that AB Suskystintos dujos applied unfair (excessive) prices for the purposes of competition law.

In evaluating the gas prices charged by UAB Saurida, the Competition Council compared average monthly gas bills issued by both UAB Saurida and AB Suskystintos dujos to consumers to find out that average monthly bills issued to consumers by UAB Saurida were about 20 per cent higher compared to those issued by AB Suskystintos dujos. Taking into account UAB Saurida's planned repair and renovation of the gas pipeline and its equipment and related additional costs, the Competition Council decided that UAB Saurida's costs of selling analogous goods might exceed those of AB Suskystintos dujos, while the identified difference between the prices charged by UAB Saurida and AB Suskystintos dujos did not give reason to suspect that the prices charged by UAB Saurida are unfair (excessive) for the purposes of competition law.

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

### **Competition Council fines for impeding an investigation**

The Competition Council fined UAB LitCon ('LitCon') LTL 615 000 (approx. EUR 178 116) for impeding investigatory efforts of the officials of the Competition Council.

During the inspection on LitCon's premises the officials of the Competition Council were prevented from taking a document which was likely to have probative value relevant to the investigation. Despite being warned of liability that may be incurred under law, an employee of LitCon removed the document from the inspected premises and submitted it to the officials of the Competition Council only



after a certain period of time. According to the Competition Council, such actions of the company's employee involved a risk of damage to or alteration of the document, which could have resulted in a loss of its probative value.

The Law on Competition provides for a fine of up to one per cent of the gross annual income of the company for hindering investigatory efforts on the company's premises.

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

## **Competition Council opens an investigation into an alleged prohibited agreement between breweries and carries out inspections**

The investigation looked into the allegation that major brewing companies agreed through the Lithuanian Brewers Association to refrain from producing beer with alcohol content above a certain level (strong beer). The legal provision prohibiting production of high alcohol content beer will enter into force only at the end of October 2013. Until then, there have been no legal provisions prohibiting production of strong beer.

In light of the above circumstances, the Competition Council opened an investigation into a potential prohibited agreement, which was followed by inspections of the premises of certain breweries in July.

## **Competition Council terminated its investigation into the procedure for using short telephone numbers**

An investigation was launched on the basis of UAB Infomedia's application in order to determine whether or not the procedure for using the short number 118 established by the Communications Regulatory Authority of the Republic of Lithuania (CRA) favoured TEO LT, AB and UAB Lintel in the provision of information using the short number and thereby violated Article 4 of the Law on Competition prohibiting differences in the conditions of competition for economic entities.

The investigation revealed that CRA's decisions governing the procedure for using the short telephone number 118 do not give rise to any differences of competition for economic operators entitled to provide information using short numbers; therefore, it cannot be considered that the decisions are contrary to Article 4 of the Law on Competition.

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

## **Competition Council terminated its investigation into the rules for fishing quota allocation**

An investigation was opened into the Rules for Inland Fishing Quota Allocation approved by Order of the Minister of Agriculture on the allegation that they may be contrary to Article 4 of the Law on Competition. The investigation dealt with evaluation whether economic entities to which fishing quotas are allocated without competition according to the procedure established by the Rules do not benefit from privileged treatment compared to those economic entities to which fishing quotas are allocated only by way of competition.

As the Order of the Minister of Agriculture had been repealed while the investigation was ongoing, the Competition Council discontinued the investigation.

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



## Competition Council terminated its investigation on finding that a bank could not have acquired control under a credit agreement

An investigation was opened into the allegation that a bank implemented concentration of a company and a group of companies concerned after the bank had entered into the credit agreement and acquired the possibility to control the appointment of the head of the companies, their business operations and disposal of assets by the companies.

The credit agreement provided that the company and the group of companies were required to coordinate the business plan with the bank and that the bank participated in the appointment of the head of the companies.

The companies were obligated to supply the bank with their business plans reflecting information on the forecasted financial position of the companies and their subsidiaries, their planned budgets and the anticipated fulfilment of obligations to the bank in the following calendar year.

However, the credit agreement did not provide that the bank itself was able to contribute to the preparation of the business plan and decide on the particular aspects of its content or specific plans related to the companies' budgets and liabilities contained in the business plan. Bearing this in mind, the Competition Council came to the conclusion that the provisions of the credit agreement were not such as to provide a real chance of exerting decisive influence over decisions of the companies regarding specific business strategies and other business activity plans which should have been incorporated in a business plan meeting the methodological instructions given by the bank.

The Competition Council made a similar conclusion regarding the Action Plan agreed between the parties. The Action Plan only recorded actions planned to be taken by one company, while in accordance with the credit agreement the bank was in no position to indicate to the companies concerned what particular decisions regarding business activities the companies were required to take and could only monitor performance against the agreed Action Plan.

The Action Plan also indicated that the process of selection and appointment of a new head of the company had to be coordinated with the bank. According to the findings of the investigation, coordination with the bank was necessary for advisory purposes, in order to be satisfied that the companies concerned fulfil the actions contained in the Action Plan, i.e. that they organise properly a real competition for the position of the Managing Director. In principle the bank did not make any decisions, i.e. did not propose its nominees for the most senior positions, did not object to the persons appointed by the company to serve on its management bodies, nor did it give any directions regarding the composition of the staff of the company. Taking this into account, the Competition Council concluded that there was no reason for stating that the bank had a real chance of exerting decisive influence on the decisions of the managing bodies of the companies concerned regarding the composition of the staff and the appointment of the senior management of the public limited liability company and its group companies.

In view of all of the above circumstances, the Competition Council found that by entering into the credit agreement with the company and the group of companies and by fulfilling its provisions the bank implemented credit risk management without acquiring control of such companies, because it did not have a real chance of exerting decisive influence on the activities of the companies.

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 & Norcous

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

[rln@rln.lt](mailto:rln@rln.lt)

[www.rln.lt](http://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.

