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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



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DECISIONS OF THE COMPETITION COUNCIL

Competition Council finalises its investigation into an alleged infringement of the rules on concentrations by UAB Lukoil Baltija, who implemented concentrations in the auto-fuel retail market without obtaining clearance

In November 2013, the Competition Council closed its investigation into a potential infringement of the rules on the control of concentrations and found that UAB Lukoil Baltija had allegedly acquired control over 16 petrol stations without having notified the Competition Council and without having obtained merger clearance.

The findings of the investigation contain the allegations that by virtue of a joint venture agreement UAB Lukoil Baltija allegedly acquired the right to operate petrol stations owned by another company, due to which, in the view of the Competition Council, UAB Lukoil Baltija acquired control over such petrol stations, and such practices must be treated as concentrations. It further concluded that the concentrations were implemented without notifying and obtaining prior clearance from the Competition Council.

It should be noted, however, that the Competition Council has not yet issued its decision in this case, because UAB Lukoil Baltija filed an appeal with Vilnius Regional Administrative Court regarding an alleged violation of its right to due process. The appeal of UAB Lukoil Baltija was accompanied by an application for an injunction order prohibiting the Competition Council from taking any further action in this case until determination by administrative courts of another similar case which likewise deals with an infringement by UAB Lukoil Baltija of the rules on concentrations due to acquisition by it of control over other petrol stations (implementing concentrations without having obtained clearance from the Competition Council), as identified by the decision of the Competition Council sanctioning the company with a fine, adopted in April 2013. The court granted such application filed by UAB Lukoil Baltija.



The earlier case is closely related to the investigation finalised by the Competition Council in November 2013, which looked into the actions of UAB Lukoil Baltija related to the acquisition of control over petrol stations. Furthermore, originally the Competition Council conducted only one investigation, which was later split into two individual investigations. As mentioned before, based on one investigation, in April 2013 UAB Lukoil Baltija was sanctioned with a fine, and the case is now pending before administrative courts, while the other investigation, as mentioned above, was finalised by the Competition Council in November 2013; however, no decision has yet been taken.

It is further noteworthy that the Competition Council has filed an appeal with the Supreme Administrative Court of Lithuania against the decision of Vilnius Regional Administrative Court prohibiting the Competition Council from taking any actions in relation to the investigation closed in November 2013; however, the Supreme Administrative Court of Lithuania has not yet entered a final decision.

Competition Council launches an investigation to identify if the procedure for fishing quota allocation in the Baltic Sea is non-discriminatory and not contrary to Article 4 of the Law on Competition

In December 2013, the Competition Council opened an investigation into compliance of the Rules for Fishing Quota Allocation in the Baltic Sea, approved by Order of the Minister of Agriculture of the Republic of Lithuania (the 'Rules'), with Article 4 of the Law on Competition of the Republic of Lithuania.

The investigation was opened on the allegation that the procedure for fishing quota allocation established by the Rules, providing for quota allocation having regard only to historical fish catch figures may violate the interests of companies which have been engaged in fishing activities for a shorter period or wish to undertake fishing activities.

Competition Council closes its investigation into a potentially prohibited agreement among breweries

At the end of December 2013, the Competition Council closed its investigation into a potentially prohibited agreement among members of the Lithuanian Breweries Association.

According to the findings of the investigation of the Competition Council, by entering into an agreement not to produce beer above a certain strength (which agreement is established in the Brewers' Code of Conduct) the Lithuanian Breweries Association and its members violated the provisions of competition law on prohibited agreements, because that was an output-limitation agreement in respect of beer over a certain strength.

According to the Competition Council, the investigation revealed that not only public health concerns determined the brewers' agreement not to produce high-strength beer.

During the investigation the Competition Council also considered the explanations of the investigation subjects that the agreement not to produce high-strength beer had been coordinated with the Competition Council. After review of correspondence with the economic operators concerned the Competition Council found that in 2008 the Competition Council issued its opinion regarding the intended decision to limit production of beer above a certain alcohol level. It was stated in the opinion that the Competition Council had no comments.

In view of the fact that after having obtained such a letter from the Competition Council the economic operators might have had lawful expectations regarding the lawfulness of their actions, the findings of the investigation contain a proposal to refrain from imposing the sanction provided for in the Law on Competition of the Republic of Lithuania, i.e. a fine.

A final decision of the Competition Council has not yet been entered in this case.



Competition Council terminates its investigation into potential prohibited agreements between economic operators in public procurement procedures

Following the analysis of the findings of the investigation into compliance of the actions of UAB Milsa and UAB Torita in public procurement procedures with Article 5 of the Law on Competition of the Republic of Lithuania and the information supplied by the parties, the Competition Council terminated the investigation.

The investigation was opened at the request of Lithuanian Railways on the allegation that the two companies selling granite ballast stone possibly coordinated tenders among themselves in public procurement procedures announced by Lithuanian Railways.

The Competition Council found that UAB Milsa and UAB Torita have common shareholders, and some administrative staff members of the companies are closely linked through family, cooperation or other relationship. Accordingly, the Competition Council concluded that when submitting their tenders in public procurement procedures announced by Lithuanian Railways the above companies did not act as independently competing economic operators.

In view of such circumstances, the Competition Council decided that there was no ground for treating the actions of UAB Milsa and UAB Torita as prohibited agreements, because agreements which restrict competition and are therefore prohibited can only exist between individual economic operators which can compete effectively. Consequently, the investigation was terminated.

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

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