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LITHUANIAN COMPETITION LAW NEWS

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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

Kęstutis Šukvietis
Associate
Raidla Lejins & Norcous
Lithuania

Ieva Sodeikaitė
Associate
Raidla Lejins & Norcous
Lithuania

COURT DECISIONS

A Court of First Instance Confirms That Travel Agencies Concluded a Prohibited Agreement but Reduces the Fines Significantly

Vilnius Regional Administrative Court upheld the position of the Competition Council, stating that over 30 travel agencies concluded a prohibited horizontal agreement infringing Article 5(1)(1) of the Law on Competition and Article 101(1) TFEU. The travel agencies offered on their websites through E-TURAS system a maximum discount of 3 per cent on travels to consumers and in such a way coordinated their actions. The court also stated that the travel agencies did not object to and tacitly accepted the changes in E-TURAS system involving the introduction of the maximum available discount of 3 per cent and so expressed their common intention. Such actions were qualified as agreements restricting competition by object.

However, the court significantly reduced the fines for all but one undertaking concerned. The court stated that the Competition Council was not justified in not determining the circumstances mitigating the liability of the undertakings. The court mentioned that all except two of the undertakings provided all known information to the Competition Council, filled the questionnaires of the Competition Council and assisted the Competition Council during the investigation. Due to this the court ordered to reduce the basic amount of the fine for them by 20 per cent. The court also concluded that none of the travel agencies performed any active actions and that E-TURAS system was quite a new channel of sales, so not all of the travel agencies could have been familiar with that system. The court noted that the travel agencies sold only very few,

if at all, travels through E-TURAS system. For those reasons the court reduced the basic amount of the fine for the travel agencies by additional 40 per cent. After the decision of the court the total sum of the fines is LTL 2,320,979 (approx. EUR 672,202) or 57.28 per cent lower than imposed by the Competition Council (LTL 5,433,000 or approx. EUR 1,573,506).

This case is not closed yet, because the decision of the court of first instance has been appealed.

A Court of First Instance Confirms that Shipping Agents Infringed Competition Law, however Reduces the Fines

Vilnius Regional Administrative Court upheld the position of the Competition Council, stating that the Lithuanian Shipbrokers and Agents Association (the 'Association') and its members (over 30 undertakings) concluded a prohibited agreement by setting (fixing) minimal prices of shipping agency services and in such a way infringed Article 5(1)(1) of the Law on Competition and Article 101(1) TFEU. The Competition Council imposed fines for such actions totalling LTL 11,683,900 (approx. EUR 3,383,891).

The court concluded that the prohibited agreement existed, because questions related to the setting of minimal shipping agency tariffs were dealt with in more than one meeting of the Association, all the undertakings concerned did not object to the application of the recommended tariffs and the provisions of the Code of Ethics; all the undertakings tacitly agreed on that and in such a way expressed their common intention. The Court also noted that the agreement had as its object the setting of minimal tariffs of the shipping agency service price and the prohibited agreement was compulsory for the members of the Association.

The court concluded that the Competition Council should have considered more the income related to the infringing activity when calculating the fines for the infringement. The court, taking into account the duration of the infringement, the fact that the tariffs actually applied in most cases were lower than the tariffs agreed upon under the prohibited agreement, the degree of active participation in concluding the prohibited agreement, the actions of the public institutions, the share of the shipping agency services in overall activities of the particular undertaking, the principles of rationality, proportionality and equality, reduced the fines for all but one undertaking concerned from 5 to 25 per cent. Now the total sum of the fines is LTL 9,124,953 (approx. EUR 2,642,769) or approx. 22 per cent lower than the total sum of the fines imposed by the Competition Council.

This case is not closed yet, because the decision of the court of first instance has been appealed.

A Court of First Instance Reduces Fines for G4S and for Major Banks for a Prohibited Agreement

In 2012 the Competition Council imposed fines exceeding in aggregate LTL 57 million (approx. EUR 16 million) on the provider of security services G4S Lietuva ('G4S') and three major Lithuanian banks: Swedbank AB, AB SEB bank, and AB DNB bank. The Competition Council concluded that in the period of 2007 and 2008 G4S entered into cash handling agreements that effectively tied all these banks to G4S. On the date the agreements were concluded G4S enjoyed a market share close to 100 per cent.

Vilnius Regional Administrative Court concluded that the fines imposed by the Competition Council were unreasonably excessive. The court also established a number of circumstances mitigating the liability of the banks: the banks voluntary terminated the infringement, prevented the detrimental consequences of the infringement and assisted the Competition Council in the course of the investigation.

The court reduced the fine imposed on G4S by 10 per cent and the fines imposed on the banks by 60 per

cent.

This case is not closed yet, because the appeals are pending in this case.

Supreme Administrative Court of Lithuania Confirms That Implementation of a Concentration without a Prior Authorisation of the Competition Council Is a Serious Infringement and Leaves the Fine Unchanged

The Supreme Administrative Court of Lithuania upheld the conclusions of the Competition Council and the court of first instance, stating that Corporation of European Pharmaceutical Distributors N.V. ('CEPD') infringed Article 10(1) and Article 11(2) of the Law on Competition by acquiring 49.999998 per cent of shares in UAB Nacionalinė farmacijos grupė ('NFG') (obtaining the sole control of NFG) and not notifying the Competition Council about the concentration before implementing it (implementing it without the prior clearance of the Competition Council). Notification about the concentration concerned was made only after its implementation.

The court agreed that in this particular case the joint control was changed to the sole control, which should be qualified as a concentration, and there was an obligation to notify the concentration to the Competition Council and obtain its clearance before implementing the concentration.

The Supreme Administrative Court of Lithuania upheld the view that the infringement in the case in question was a serious infringement in accordance with the decision of European Commission in *Electrabel/Compagnie du Rhone* case (European Commission decision of 10 June 2009 in case No. COMP/M.4994), because the most basic principle of merger control, i.e. the principle of *ex ante* control, was infringed.

CEPD was fined by the Competition Council with a fine of LTL 110,000 (approx. EUR 31,858). The Supreme Administrative Court of Lithuania concluded that the fines imposed should have a deterrent effect. Citing its previous case law, the court noted that one purpose of imposition of fines for the infringement of competition rules is the deterrence from making an infringement, so very low economic sanctions or exemption from fines may not be capable of reaching that purpose. The court therefore left the fine unchanged.

Supreme Administrative Court of Lithuania Confirms That the Municipality of Kazlų Rūda Privileged UAB Litesko

The Supreme Administrative Court of Lithuania upheld the conclusions of the Competition Council and the court of first instance, stating that the municipality of Kazlų Rūda privileged UAB Litesko ('Litesko') and also created different conditions of competition by extending the agreement with Litesko on heat sector modernisation and renovation until 2030 without any competitive procedure. In accordance with the conditions of the previous tender, the agreement could be extended for a period until 2025 at the latest.

The Supreme Administrative Court of Lithuania noted that the extension of the agreement beyond the term determined in the conditions of the previous tender would create legal uncertainty for other potential competitors because of their inability to forecast their activity and entry of the market.

The court also concluded that the actions of the municipality were not stipulated in other legal acts of the Republic of Lithuania. Therefore, the municipality could have acted in such a manner that no different conditions of competition would have been created.

The full decision (in Lithuanian only) can be found here.

DECISIONS OF THE COMPETITION COUNCIL

Competition Council Concludes That Vilnius City Municipality did not Ensure the Freedom of Fair Competition in the Provision of Public Passenger Transport Services

The Competition Council took a decision stating that Vilnius city municipality infringed Article 4 of Law on Competition while entrusting the provision of public passenger transport services to UAB Vilniaus viešasis transportas ('Vilniaus viešasis transportas') without any competitive procedure and without enabling other undertakings engaged in the provision of public passenger transport services to compete for the right to provide passenger transport services.

During the investigation the Competition Council determined that the municipality made the decision and signed an agreement for the provision of public passenger transport services with Vilniaus viešasis transportas for five years. In line with the agreement, Vilniaus viešasis transportas acquired an exclusive right to provide public passenger transport services on 95 routes determined by the municipality and acquired entitlement to be compensated for losses incurred in connection with the provision of the public service obligations. More specifically, the municipality entrusted Vilniaus viešasis transportas to provide public passenger transport services without first having evaluated the possibilities of other carriers to provide such services and as a result failed to ensure fair competition among the providers of passenger transport services.

The Competition Council obliged the municipality to abolish or amend its decision and the agreement within 6 months in such a way that they no longer contradict the requirements of Law on Competition.

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
www.rln.lt