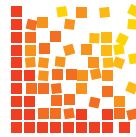


# 2009 ANNUAL REPORT



COMPETITION COUNCIL  
OF THE REPUBLIC OF LITHUANIA

The Law on Advertising



The Law on Competition





# TABLE OF CONTENTS

## FOREWORD

Enforcement of competition policy under economic downturn conditions

2

## I. COMPETITION COUNCIL IN 2009: ACTIVITIES AND ACHIEVEMENTS

- \* Highlights
- \* Activities – facts and figures

4

## II. INVESTIGATIONS AND OUTCOMES

- \* Prohibited agreements
- \* Abuse of a dominant position
- \* Concentration control
- \* Restrictive actions of public administration entities
- \* Enforcement of the Law on Advertising

6

## III. JUDICIAL PRACTICE AND PREVENTION

- \* Legislative activities and enforcement of legislation
- \* Judicial decisions

13

## IV. COORDINATION AND CONSULTATION

- \* Coordination of State aid
- \* Market research and price control

17

## V. INTERNATIONAL COOPERATION

20

## VI. COMPETITION CULTURE AND PUBLICITY

22

## VII. STATISTICS

23

## ENFORCEMENT OF COMPETITION POLICY UNDER ECONOMIC DOWNTURN CONDITIONS

**Jonas Rasimas**  
Chairman of the Competition Council



*“The ability of the Competition Council to ensure fair competition is of vital importance to all residents of Lithuania. The Lithuanian competition authority is not only meant to detect and sanction participants of cartel agreements, but even more, to prevent the very appearance of prohibited agreements. The Competition Council is to seek ways to involve itself at the earliest possible stage in the deliberation and discussion of legal acts being drafted. Laws are not meant to impede competition.”* These statements by Dalia Grybauskaitė, President of the Republic of Lithuania, summarize the most important priorities and tasks faced by the Lithuanian Competition Council. And these are the tasks that have to be fulfilled by our joint and efficient work and efforts.

In 2009, in carrying out its mission to protect the freedom of fair competition and consumer welfare, the Competition Council passed in excess of 230 resolutions related to the application of both the Law on Competition and the Law on Advertising of the Republic of Lithuania. In 2009, we had launched four new investigations concerning

alleged prohibited agreements, as agreements of this nature are the most detrimental to consumers. Each revealed case of prohibited agreements is a step closer to ensuring efficient competition. In three resolved cases of prohibited agreements (in the areas of waste management, advertising and media services, and organization of events) the Competition Council identified infringements of Article 5 of the Law on Competition and imposed upon the responsible companies fines amounting to a total of nearly LTL 4 m.

The Competition Council, however, acted not merely as a punitive authority. In response to allegations of prohibited agreement the vehicle traders repealed the provisions in their agreements that could have harmed consumers, and the Competition Council terminated its investigation. As a result, drivers will no longer be forced to undergo their warranty technical maintenance in the network of authorized garages only, and will be free to choose any capable service provider.

There may be more temptations to seek ways to avoid competition, specifically under the conditions of

ongoing economic downturn, on the assumption that such actions will make it easier to stay in a market. The difficult economic situation, however, is no excuse for infringing the law. Long-term economic viability is ensured by the drive to win the favour of buyers specifically by being a better seller than others, which is exactly what fair competition is about.

Businesses willing to be granted immunity from sanctioning, which definitely might hurt them under the crisis conditions, may have recourse to the leniency system. A participant to a prohibited agreement, which first reveals the existence of the agreement to the Competition Council before the start of an investigation, and provides weighty evidence and conscientiously cooperates with the Competition Council during the investigation, is fully exempted from responsibility. It is rather delightful to see some cartel members that summoned up the courage to notify the Council of existing prohibited agreements and submitted valuable evidence. In the course of the accounting year we performed one investigation on the basis of notification filed by a

cartel participant, and we will issue a decision on this case in 2010. At the end of the year we received relevant information from another cartel participant, and this case will be also investigated in 2010.

Quite a number of markets in Lithuania have only few undertakings of nearly equal capacities. Therefore, such markets may be described as oligopolies that largely increase the threat not only of cartel agreements, but also of tacit collusion sometimes referred to as parallel behaviour. An event of special importance to the Competition Council was the ruling of the Supreme Administrative Court of Lithuania passed in 2009 after lengthy litigation proceedings to the effect that back in 2006 the Competition Council correctly qualified and assessed an infringement committed in the office and chalky paper markets. The ruling stood as confirmation of the rule that a regular exchange of important market information among competitors in an oligopoly market may diminish incentives to compete, and owing to these potential consequences, is illegal. The Competition Council will continue in its efforts not only to disrupt the cartels actually in operation, but also to eliminate the very conditions that facilitate any attempts to avoid competition.

In 2009, only one undertaking was recognized having abused its dominant position and having infringed the requirements of Article 9 of the Law on Competition. The Competition Council, not for the first time, had to investigate actions of Vilnius International Airport for refusing to provide access to essential facilities managed by the Airport. The information at the disposal of the Competition Council, as well as the actions of Vilnius

International Airport in the said case, its rapid decision to terminate the infringement and the Airport's well-meant cooperation with the Competition Council in the course of the investigation allow to hope that in the aftermath of several cases concerning the conduct of this enterprise, Vilnius International Airport changes its behaviour and seeks to ensure compliance with the Law on Competition.

The Competition Council also investigated 19 cases related to the duty of entities of public administration to protect the freedom of fair competition in Lithuania. In the course of these investigations the authority took interest into markets of public territory management, household waste management, transport services, and other similar markets. By its three resolutions the Competition Council established infringements of Article 4 of the Law on Competition.

In the period covered, we also investigated 46 cases of businesses seeking to perform mergers. Although most merger transactions, specifically involving minor market participants, are most often beneficial both to the merged undertakings and buyers of their products, however, the actual threat that mergers might significantly restrict competition requires a very thorough examination of all mergers between firms with annual income exceeding the statutory threshold.

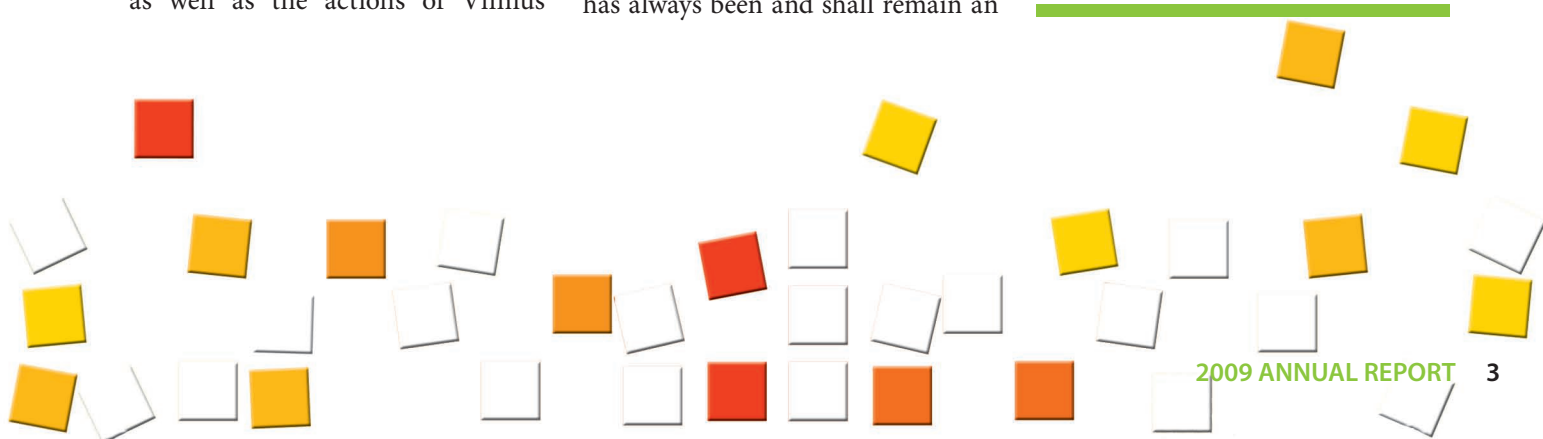
In the period reviewed the Competition Council passed 19 Resolutions concerning infringements of the Law on Advertising. In many of the cases the ultimate outcome was the protected right of consumers to be well informed and not mislead concerning the developments on the market. The Competition Council has always been and shall remain an

uncompromising opponent of any attempts to capture consumers with ungrounded promises especially at a time when most consumers have experienced significant income reductions and any unreasonable purchasing decision has a significantly more critical effect on their household budgets.

Certain events that had taken place in 2009 and in previous years force us to reconsider the mistakes made then and to seek ways to avoid making the same in the future. We refer to the judicial rulings obligating us to renew the investigations completed in preceding years concerning actions of *AB Mažeikių nafta* and the agreements between several milk processing companies. As a result of insufficiently thorough investigations, or our likely inability to prove our truth in court, we lost the chance to timely and effectively defend the freedom of fair competition in markets of specific importance.

Not only in view of the need to avoid any past mistakes, but also of the necessity to become fully prepared for any forthcoming challenges, we will have to bring a number of long-developing changes into reality in 2010. We are determined to make the energy, transport, and retail sectors central in our focus. Therefore in 2010 the Competition Council will reorganise the structure of its Administration with a view to increasing the efficiency of its performance and its contribution to the revival of the national economy and consumer welfare.

We will cover in detail our success in attaining these and other goals in our next year's report.



# COMPETITION COUNCIL IN 2009: ACTIVITIES AND ACHIEVEMENTS

## HIGHLIGHTS

### CARTEL IN THE WASTE MANAGEMENT MARKET

January 8

Resolution passed to impose sanctions having established a prohibited agreement concluded by the Association of Packaging and Electronic Waste Processors (PEATA) and its members – companies operating in the relevant market as competitors.

### RENEWED INVESTIGATION

January 15

Based on the ruling of the Supreme Administrative Court of Lithuania the resolution passed to renew the investigation concerning the actions of *AB Mažeikių nafta* (currently – *ORLEN Lietuva*).

### SANCTION FOR THE FAILURE TO FULFIL THE OBLIGATIONS

January 29

A LTL 184 000 fine imposed upon *UAB Tez Tour* for the failure to fulfil the obligations to terminate the use of misleading advertising and denounce the misleading advertising statements.

### FUEL MARKET

February 25

Having examined the situation in the fuel market following the change in the taxation framework the Competition Council submitted its conclusions and proposals to the Government.

### COURT JUDGEMENTS

March 26

The Court passed the final and unappealable judgement whereby the

Court upheld the Resolution passed by the Competition Council that sought to equalise competition conditions for the security divisions of the Lithuanian Police and private security services.

April 2

The Court confirmed the legitimacy of the Resolution of the Competition Council – by its final and unappealable judgement the Court acknowledged that *AB Lietuvos paštas* had infringed the requirements of Article 9 of the Law on Competition by fixing different prices for post delivery services.

October 16

With a view to comprehensively assessing the Resolution passed by the Competition Council the Court supported its judgement by the opinion of the European Commission and acknowledged that the Competition Council had essentially correctly assessed the established infringement – a prohibited agreement between six undertakings operating in the chalky and office paper markets and imposed the sanctions upon them.

### ADVERTISING AND MEDIA SERVICES

June 4

For the conclusion of a prohibited agreement 25 companies and the Lithuanian Association of Communication Agencies joining them (*KOMAA*) were sanctioned.

### EVENT ORGANISATION ACTIVITIES

June 11

The actions of several event organisers and the Association of Event Organisers (*ROA*) were assessed to constitute an infringement of the Law on Competition – a prohibited agreement concluded by competitors on price fixing, and appropriate fines were imposed.

### TELECOMMUNICATIONS MARKET

September 10

The Competition Council granted the authorisation to *TeliaSonera AB* to implement the concentration deal by

acquiring up to 100 percent of the shares of *TEO LT, AB*.

### END OF THE TERM OF OFFICE

October 19

Dr. Rimantas Stanikūnas completed his second five years term of office in the position of the Chairman of the Competition Council, but stayed in the position until the appointment of the next Chairman. On 7 January 2010, by the Decree of the President of the Republic of Lithuania Dr. Jonas Rasimas was appointed the Chairman of the Competition Council.

### MEAT PRODUCT MARKET

November 12

The advertising of some meat products designated as products for children was recognised to constitute misleading advertising, and the respective companies were issued appropriate warnings.

### PHARMACEUTICALS MARKET

December 10

The case concerning the compliance of the actions of undertakings engaged in wholesale trading in medicines, medical products and medical equipment and their Association with the requirements of Article 5 of the Law on Competition and Article 101 of the Treaty on the Functioning of the European Union was returned for additional investigation.

### TERMINATED INFRINGEMENT

December 24

Terminated the investigation concerning the compliance of the actions of a number of vehicle traders with the requirements of Article 5 of the Law on Competition and Article 101 of the Treaty on the Functioning of the European Union following the written commitments by vehicle traders to put an end their practice of possible infringement of the competition rules and to voluntarily eliminate reasons that had caused the alleged violation.

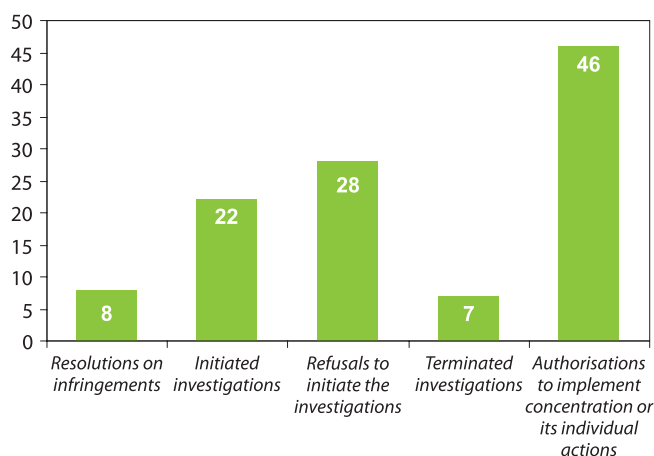
## ACTIVITIES – FACTS AND FIGURES

In 2009, the Competition Council (hereinafter – CC) passed **233 Resolutions**.

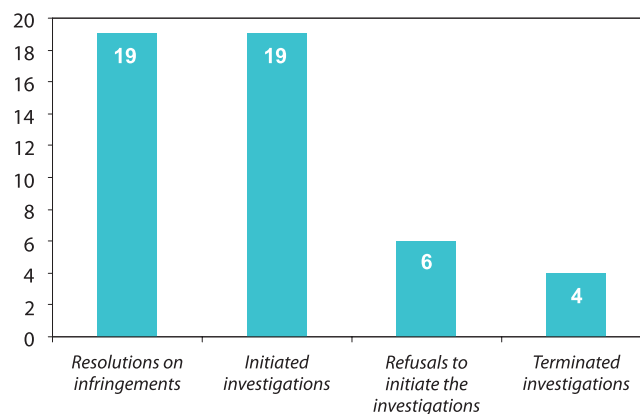
Total sanctions were imposed upon 52 undertakings (total fines imposed – LTL 4 393 000).

### RESOLUTIONS PASSED BY THE CC IN ENFORCING THE REQUIREMENTS OF THE LAW ON COMPETITION AND THE LAW ON ADVERTISING

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72 Resolutions of the CC were passed concerning investigation actions, and 2 in respect of legal acts.

### NUMBER OF SANCTIONED UNDERTAKINGS AND FINE AMOUNTS IMPOSED

Year	2006	2007	2008	2009
Sanctioned undertakings/groups of undertakings/associations	14	22	23	52
Fines imposed, LTL	3 883 514	618 281	2 869 500	4 393 100

### JUDICIAL EXAMINATION OF THE CC RESOLUTIONS

Year	2006	2007	2008	2009
<b>Total cases</b>	<b>24</b>	<b>33</b>	<b>40</b>	<b>51</b>
<b>Judicial decisions</b>	12	9	21	19
Resolutions upheld	7	6	16	15
Partly amended	3	1	3	1
Overruled	2	2	2	3
Pending cases	12	24	19	32

### HARMONISATION OF LEGAL ACTS, APPROVAL OF PRICES AND TARIFFS, AND PROVISION OF INFORMATION

Positions on EU legal acts submitted via <i>LINESIS</i> system* of the Government of the Republic of Lithuania	3
Agreed positions on EU legal acts drafted by other authorities via the <i>LINESIS</i> system	58
Comments on European Commission draft regulations on State aid	8
Passed Resolutions of the Government and other regulations of the CC	2
Comments concerning draft laws, draft resolutions of the Government and other institutions	54
Written responses to inquiries and consultations to Lithuanian and foreign undertakings	329
Approved prices and tariffs/procedures for fixing prices and tariffs	163 / 4

\* Information system on Lithuania's membership in the EU.

### CONCENTRATION CASES OVERVIEW

Year	2006	2007	2008	2009
New notifications received	61	78	54	42
Total authorisations granted	59	74	52	47
Of which to undertakings registered in foreign States	15	14	13	14
Authorisations subject to conditions and obligations	1	2	4	1
Refusals to issue an authorisation		1		

### AREAS OF ACTIVITIES AND MARKETS IN THE CC'S FOCUS IN 2009:

- Telecommunications services
- Trading in pharmaceuticals
- Fuel market
- Public procurement
- Public administration

In 2009, the scope of investigations conducted by the CC in accordance with the requirements of the Law on Competition (hereinafter – LC) has been steadily increasing both by the number of undertakings involved and in their complexity.

In 2009, the CC commenced 4 investigations in accordance with Article 5 of the LC concerning prohibited agreements (cartels). In three cases having established infringements of the LC the investigations were completed having passed the Resolutions imposing appropriate fines upon infringing undertakings. In three cases the CC refused to initiate investigations and one investigation was terminated. Furthermore, two investigations were renewed and ten investigations are being continued. All three Resolutions passed by the CC in respect of completed investigations were appealed to the Vilnius Regional Administrative Court. Total fines imposed by the CC for restricting agreements reached LTL 3 990 800.

### **Restriction of competition in provision of advertising and media planning services**

The CC sanctioned a number of undertakings providing advertising and media planning services, members of KOMMA Association for imposing a fixed tender fee upon organisers of tenders for procurement of advertising and media planning services. For this infringement accordingly were fined the following undertakings: the *Lithuanian Association of Communication Agencies (KOMMA)* – LTL 2 500; *UAB Adell reklama* – LTL 120 300; *UAB Reklamos vizija* – LTL 22 500; *UAB DDB Vilnius* – LTL 190 400; *UAB Euro RSCG MIA* – LTL 46 100; *UAB Inorek & GREY* – LTL 46 800; *UAB Kreda R* – LTL 25 400; *UAB Leo Burnett Vilnius* – LTL 7 500; *UAB AGE reklama* – LTL 54 900; *UAB Milk Agency* – LTL 60 600; *UAB Not Perfect* – LTL 134 500; *UAB SAN Vilnius* – LTL 29 200; *UAB Videvita Vilnius* – LTL 60 300; *UAB Carat* – LTL 176 800; *UAB Creative Media Services* – LTL 307 100; *UAB VIA media* – LTL 276 300; *UAB Media*

## PROHIBITED AGREEMENTS

*Bridge Vilnius & Co* – LTL 88 900; *UAB Media House* – LTL 481 000; *UAB MPG Lietuva* – LTL 150 500; *UAB Mediapool* – LTL 188 500; *UAB Omnicom Media Group* – LTL 164 300; *UAB Star Communications Worldwide* – LTL 26 700; *UAB Aukštaitijos reklama* – LTL 11 100; *UAB Tarela* – LTL 76 600; *UAB VRS grupė* – LTL 417 200; *UAB Baltic FCB* – LTL 226 100.

In 2003, KOMMA, the Lithuanian Association of Communication Agencies and its members introduced a fee for participation in tenders (LTL 3 000) to be imposed upon advertising agencies, and in 2004 some media planning agencies also agreed concerning the imposition of the fee thus seeking to ensure equal conditions for participation in tenders. The fee was charged upon a tender organiser to be paid to undertakings submitting their bids in tenders for the procurement of advertising and media planning services, i.e. to members of the KOMMA Association. Thus, members of the KOMMA Association, while being competitors – introduced a flat rate tender participation fee for all undertakings, i.e. performed actions that infringed Article 5 of the LC.

### **Agreement between undertakings engaged in event organisation and their association**

The CC sanctioned a number of undertakings providing event organisation services, members of the Association of Event Organisers (ROA) for imposing a fixed tender fee upon organisers of tenders for procurement of event organisation services. For this infringement accordingly were fined the following undertakings: *UAB Alchemic* – LTL 9 300, *UAB Anoniminių darboholikų klubas* – LTL 35 200, *UAB Concept Events & Media* – LTL 45 300, *PE Pirmoji kava* – LTL 39 000 and *UAB Saldo grupė* – LTL 22 200.

In the period 2007–2008, five major undertakings providing event organisation services and their Association ROA by the agreement imposed a fixed fee of LTL 2 008 for participation in tenders. The fee was charged upon tender organisers to be paid to undertakings submitting their bids in tenders for the procurement of event organisation services, i.e. to members of ROA Association. Thus members of ROA Association while being competitors agreed to impose a fixed tender participant fee and thus infringed Article 5 of the LC.

### **Agreement in the market of handling taxable products and packaging waste**

For the agreement to fix tariffs for handling taxable products and packaging waste and the issue of certificates on recycling and disposal of taxable products and packaging waste the Association of Packaging and Electronic Waste Processors (PEATA) and five its members were fined as accordingly: *PEATA* – LTL 131 800, *UAB Antraža* – LTL 35 000, *UAB Metransa* – LTL 60 700, *UAB Super Montes* – LTL 77 000, *UAB Utenos antrinis popierius* – LTL 15 900, *UAB Virginijus ir Ko* – LTL 127 300.

PEATA and its members agreed to fix and publish in the internet website the tariffs for handling waste and issue of appropriate certificates. In its offers to the clients PEATA indicated minimum tariffs for handling of small quantities of waste and the issue of certificates. At its meetings PEATA also fixed a possible 20 percent range for the fluctuation of the established tariffs. Furthermore, PEATA and its members were seeking to ensure that waste of certain types and the issue of appropriate certificates would be organised through the Association only. Thus, by concluding a prohibited agreement to fix the tariffs for handling taxable products

and packaging waste and the issue of certificates for the recycling (disposal) of taxable products and packaging waste PEATA and its members violated Article 5(1)(1) of the LC.

### **Actions of undertakings selling new vehicles**

The investigation aimed at establishing whether or not the companies selling new vehicles were rightfully requiring technical maintenance and service of such vehicles to be performed in authorised garages only. In the opposite case (with the technical maintenance provided in other than authorised garages) the owners of the

vehicles would lose their warranty maintenance clause. The investigation was commenced based on a suspicion that such practice of vehicle sellers possibly infringed the requirements of Article 5 of the LC and Article 101 of the Treaty on the Functioning of the European Union (TFEU). In the course of the investigation the undertakings concerned presented the information and evidence of ceasing the practice that caused the suspicion concerning their compliance with the provisions of the LC and Article 101 of the TFEU and the commitments to refrain from any such actions in the future. Having considered that the actions of the undertakings concerned

did not result in any material damage to any interests protected by law and the undertakings suspected of the infringement voluntarily terminated their actions and presented to the CC written commitments not to perform any such actions in the future, and perform the necessary actions eliminating the alleged infringement and preventing any such infringement in the future, by its Resolution No. 1S-2000 of 24 December 2009, the CC terminated the investigation and obligated the undertakings in respect whereof the investigation was commenced to perform the actions committed.

## **ABUSE OF A DOMINANT POSITION**

*In 2009, were commenced 6 new investigations in accordance with the requirements of Article 9 of the LC concerning abuse of a dominant position, and 1 case was reopened. In 10 cases the CC refused to commence the investigations and 2 investigations were terminated. In 1 case, after completion of investigation the infringement was established.*

### **Actions of Vilnius International Airport from competition law viewpoint**

Two cases were investigated concerning the actions of the SE Vilnius International Airport (hereinafter – the Airport) with a view to establishing whether or not the undertaking had infringed the provisions of Article 9 of the LC.

In one case the Airport was recognised to have infringed the requirements of Article 9(1) of the LC by imposing unfair conditions in respect of acquisition of gallery services (selling the service only together with the service of airplane towing from the galleries). In view of the circumstances alleviating the liability of the undertaking the Airport was exempted from the fine.

In another case the CC concluded that the Airport, holding a dominant position in the market for the provision of passenger terminal galleries and taking advantage of its dominant position had imposed upon the

ground service provider *UAB Baltic Ground Services* unfair terms of the service provision agreement by obligating the latter in connection with the gallery acquisition service also purchase the airplane towing service. The investigation concluded that such tying of services and the requirement to acquire them together as inseparable (to be acquired together) was ungrounded, since the service of passenger gallery provision and the airplane towing service are two independent services related by causative, rather than technological relation and could be provided by different individual undertakings.

Another investigation was terminated having failed to prove a dominance of the Airport in the market concerned.

The investigation concerned the actions of the Airport whereby the undertaking *AB flyLAL* was prevented from building the technical maintenance hangar in the territory of the Airport. Such actions of the Airport allegedly prevented the performance of the hangar construction works and created obstacles to compete in parallel with the branch of *Air Baltic Corporation* (hereinafter – *Airbaltic*) and *UAB Baltic Maintenance* in the airplane technical maintenance markets. The investigation established that the Airport was not dominating in the relevant markets therefore; in the absence of a dominance factor the Airport did not have any possibility

to abuse its position. Although the Airport does operate the exclusive right to dispose the land on which the infrastructure, necessary for the periodical airplane technical maintenance, is deployed, the Airport itself was not operating on the downstream markets, therefore could not affect the activities of the undertakings providing such services or affect the competition conditions.

### **Actions of AB Lietuvos geležinkeliai from competition law viewpoint**

The investigation concerning a possible abuse of a dominant position by the Lithuanian rail company *AB Lietuvos geležinkeliai* in the market for maintenance and repair of sidings in the territory of the *Klaipėda State Sea Port* was terminated. Having assessed the collected information the CC concluded that the application of different terms by *AB Lietuvos geležinkeliai* (imposition of operating fee) in its agreements with *UAB Klaipėdos konteinerių terminalas* as compared to the terms applied to other stevedoring companies that are competitors is objectively justified. It was established that *AB Lietuvos geležinkeliai* had been, for the extra fee, providing to *UAB Klaipėdos konteinerių terminalas* certain additional services (at a choice of *UAB Klaipėdos konteinerių terminalas* maintenance and repair of sidings), while this service is not provided to other stevedoring companies.

## CONCENTRATION CONTROL

*In 2009, 42 new notifications applying for authorisations to implement concentration of market structure were received. In 46 cases (including notifications received in the previous year) the Resolutions of the CC authorised the implementation of concentration or individual concentration actions, and on one case the authorisation came into effect in accordance with Article 14(3) of the LC. In another case the CC approved the notification submitted by undertakings subject to specific obligations not to change the nature of the economic activity of the undertakings involved.*

*The undertakings paid in total LTL 19 200 in Stamp duty charge for the examination of submitted concentration notifications.*

In 2009, the CC initiated two investigations concerning the compliance of undertakings actions with the requirements of Article 10(1) and 11(2) of the LC, and concerning a possible infringement by *Rautakirja Oy* of the concentration conditions and related obligations imposed by the CC Resolution No. 1S-190 of 27 December 2007, and also extended the term of validity for the concentration conditions and related obligations established in the said Resolution. With a view to more expediently addressing the applications of the undertakings to implement concentration transactions and having considered that the intended concentrations will not create any dominant position or significantly lessen competition, in all these three cases the Resolutions of the CC, in accordance with Article 12(3) of the LC, authorised individual concentration actions pending the taking of the final decisions.

Having analysed the intentions of *PKN Orlen S.A* to acquire *AB Klaipėdos nafta*, the CC filed to the Committee of Economics of the Seimas of the Republic of Lithuania that such concentration could not be authorised. In other three cases following the consultations with the specialists of the CC the undertakings renounced their intentions to implement concentration as potentially having a restrictive effect.

In a number of cases prior to filing the notifications undertakings were seeking advice from the CC specialists which appreciably improved the quality of notifications, at the same time restricting the scope of information required to be provided as necessary for passing decisions by the CC. In thirty cases inquiries of undertakings, institutions, or representatives of foreign States were responded in writing, undertakings were regularly consulted by e-mail or verbally.

### CONCENTRATION NOTIFICATIONS: CHANGE IN NATURE

In 2009, 14 foreign undertakings were issued concentration notifications, thus the number remaining in the same range as in previous years (in 2008 – 13, 2007 – 14, 2006 – 15, 2005 – 22, 2004 – 15). In five cases concentrations were effected between undertakings registered in foreign States partly operating on Lithuanian commodity markets, including both the retail, and wholesale trading in food products, consumer goods, household goods and construction materials.

Concentration among the Lithuanian-registered undertakings was performed in 30 cases, of which on 10 occasions the authorisations were issued to undertakings controlled by foreign capital, and in 4 cases – to undertakings controlled by joint domestic and foreign capital.

In 2009, the number of concentrations between undertakings operating in the same markets remained unchanged as compared to the previous years (21) although in 2007 there were 38 concentrations that were assessed as horizontal. Horizontal concentrations were effected in a number of markets though, as a rule, by 1 or two cases in each. More numerous horizontal acquisitions were effected in the market for retail trading in food products, consumer goods, toys, pharmaceuticals, fuels, vehicles and books.

In 8 cases concentration was assessed as vertical, in 7 cases – conglomerate and in three cases the CC approved the establishment of new undertakings.

### ASSESSMENT OF THE EFFICIENCY OF DECISIONS

The CC has been continuously monitoring the effectiveness of all its previous decisions. For instance, the consistent decisions passed by the CC in the course of the past several years in respect of the telecommunications market triggered vigorous competition among mobile communications operators which eventually caused lower service tariffs, larger spectrum of services, and a bigger variety of different proposals beneficial to the service users.

In 2009, the CC received 258 notifications on concentration from the European Commission Directorate for Competition. In respect of such notifications the CC was requested to submit its comments and proposals in the event the concentrations implemented could possibly produce any negative effect upon competition in Lithuania.

#### Assessment of concentration in retail book market

Among others the CC examined several notifications on concentration in the retail market of trading in books (bookstores).

The CC examined the concentration notification filed by *UAB Alma Littera* by acquiring a 100 percent holding of the bookstore *UAB Baltos lankos* and authorised the concentration having established that the intended concentration will not cause or strengthen a dominant position or result in any severe restriction of competition in the relevant markets. Although the degree of concentration in the market was changing by about 10 percentage points this did not create any significant market entry barriers. Having analysed the situation in the book publication market, wholesale market for trading in books and the retail book trading market, the CC assessed the concentration being implemented as horizontal concentration in the relevant retail market for trading in books.

In the cases of this concentration *UAB Alma Littera* was acquiring only four bookstores owned by the bookstore *UAB Baltos lankos* operating in *Akropolis* trade centres in Vilnius, Kaunas, Klaipėda

and Šiauliai. Since the associated enterprises – *UAB Baltos lankos* (publication sector) and *UAB Baltos lankos* (export and import) were not an object of acquisition, the companies will continue their activities without any restrictions in relation to the markets of wholesale trading in books or book publication.

The assessment of the situation in the retail book trading market led to the conclusion that the concentration implemented by *UAB Alma Littera* will increase the market share held, without however, creating a dominant position or any more significant restriction of competition in respect of even the most narrow definition of local markets in the cities of Vilnius, Kaunas, Klaipėda and Šiauliai. *UAB Šviesa*, a company related to *UAB Alma Littera*, manages the bookstore network *Pegasas* (32 bookstores throughout Lithuania) and the internet portal *Knygų klubas*. The retail book trading market includes specialised bookstores, trade centres with book sale outlets, other book selling channels (book clubs, on-line sale etc.), direct selling. In the process of the assessment of the intended concentration the specialists of the CC placed inquiries to the four major trading centres holding a significant share of the market of the retail trading in books. Respondents indicated that they were maintaining cooperation relations both with wholesalers, book suppliers, as well as publishers. In this relation the assessment also duly considered the fact that expenses and time costs of entering into the retail book trading market are relatively small.

Further, the analysis of the book publication market established *UAB Alma Littera* and the associated company *UAB Šviesa* operating in the said market. Also, *UAB Baltos lankos* (publication) related to the bookstore *UAB Baltos lankos* is an actor in the book publication market. However *UAB Baltos lankos* (publication) is not a participant in the concentration, therefore, the concentration degree in the market concerned remains unchanged. According to the data of the Lithuanian Publishers Association, in 2008 there were 479 publishing houses registered in the Republic of Lithuania that in 2008 published at least one book. The market is characterised by a large number of small market participants. *UAB Šviesa* is specialising in the

publication of textbooks for schools. The publication of textbooks is different from other book publication segments in its special regulation. There are no legal or other regulations or quotas imposed upon publishers to submit their publication or include it into the list of authorised textbooks. In 2008–2009, the list of authorised textbooks included 1 253 textbooks of 49 publishers. 506 of them are published by *UAB Šviesa*.

Another concentration case examined by the CC in the retail book trading market was the transaction whereby *UAB Vagos prekyba* acquired the retail book trading business of *UAB Mūsų knyga*. The notification to the CC noted that the retail trading operations of *UAB Mūsų knyga* were incurring loss. For that reason the company was determined to seek ways to reduce the operating costs therefore the company decided to merge 9 bookstores of *UAB Mūsų knyga* with the 31 bookstores of *UAB Vagos prekyba*. The concentration deal would leave two companies operating in the market: *UAB Vagos prekyba* engaged in the retail trading in books; *UAB Mūsų knyga* mostly engaged in the wholesale trade in books. Furthermore, *UAB Vagos prekyba* is taking over all rights in respect of the trade name *Knygų namai*.

In this specific case the CC found it necessary to analyse the market in retail trading in books. *UAB Vagos prekyba* manages the bookstore network *Vaga* (31 bookstores throughout Lithuania); *UAB Mūsų knyga* – 9 bookstores operating in Vilnius (5 bookstores), Kaunas (2 bookstores), Klaipėda (1 bookstore) and Šiauliai (1 bookstore). It was established that following the concentration the share of the retail book trading market held by *UAB Vagos prekyba* changes by about 4 percent. In relation to the present concentration the CC observed certain overlapping of retail book trading activities in Vilnius, Kaunas, Klaipėda and Šiauliai. However, having analysed the local retail markets in book trading, no matter how narrowly defined, no threat of creation or strengthening of a dominant position or lessening of competition in the relevant markets was established.

### **Concerning a possible concentration of PKN Orlen S.A. and AB Klaipėdos nafta**

In 2009, the CC carried out the analysis of the possible effect of

the transaction of *PKN Orlen S.A.* acquiring *AB Klaipėdos nafta* upon the fuel markets.

In the Lithuanian market *PKN Orlen S.A.* operates through *AB Mažeikių nafta* (*ORLEN Lietuva*), *AB Ventus-Nafta* whose principal activity is processing of raw oil, and retail and wholesale trading in oil products (operates about 50 gas stations). *AB Klaipėdos nafta* was established having assessed the necessity to organise an alternative supply of oil and oil products (dark and light). One of the major segments of the operations of the company is storage of oil and oil products and loading services.

The intended concentration between *PKN Orlen* and *AB Klaipėdos nafta* was assessed as vertical since the companies were operating in different supply chain levels (*AB Mažeikių nafta* recycles oil and produces oil products, while *AB Klaipėdos nafta* ensures further distribution of oil products by exercising export-import operations). Furthermore, such transaction might produce a horizontal and mixed (conglomerate) effect.

*AB Klaipėdos nafta* performs certain operations in distributing oil products produced by *AB Mažeikių nafta*. The assessment of the infrastructure operated by *AB Klaipėdos nafta*, and its technical facilities led to a conclusion that the company might potentially become a competitor of *AB Mažeikių nafta* in supply of oil products to the Lithuanian market. It should be noted that *AB Klaipėdos nafta* was established as an alternative to the oil product supply. Therefore, the intended concentration could produce a restrictive effect upon efficient competition as it could strengthen the dominant position of *AB Mažeikių nafta* in the wholesale market of oil products. This could be the effect, because the intended concentration can change the capacities and incentives of the concentration participants and their competitors to compete to the detriment of consumers.

In this relation account should also be taken of the forthcoming changes in the market in relation to the anticipated changes in legislation and the essential developments in energy markets. An important factor to consider is the anticipated changes in raw material supply after the decommissioning

of the Ignalina Nuclear Power Plant. The increase in the power generation volumes by Elektrėnai power plant would increase the demand of fuel oil received from Mažeikiai, as well as through *AB Klaipėdos nafta* (which is a less costly and more efficient supply method than the railway transportation of oil from other States). It could be concluded that the acquisition by *PKN Orlen S.A.* directly or through *AB Mažeikių nafta (ORLEN Lietuva)* of *AB Klaipėdos nafta* further strengthens the dominance of *AB Mažeikių nafta* in the Lithuanian energy sector (that is dominant in the Lithuanian oil product market) by also affecting the power generation sector.

### **Influence of AB Klaipėdos nafta upon the retail fuel market**

*AB Klaipėdos nafta* has arranged the vehicle yards and special facilities for the delivery of light oil products directly to the retail fuel network, though in 2008–2009 these operations by the company were not performed. Therefore, *AB Klaipėdos nafta* itself has the necessary capacities to supply fuels both to small and the large retail trade networks trading in fuel. By importing fuels through *AB Klaipėdos nafta* major retail gas trading networks could create an efficient competition to *AB Mažeikių nafta*, affect the prices of *AB Mažeikių nafta*, the price reduction eventually

being transferred to consumers.

*PKN Orlen S.A.* not only declares its intentions to expand its retail fuel trading network in Lithuania by acquiring its competitors, on franchise and other bases, but also actually performs such actions.

Oil refining, wholesale trading, and retail trading cover the entire cycle from production to final consumer. Therefore, the acquisition by *PKN Orlen S.A.* of the control of *AB Klaipėdos nafta* would significantly reduce the alternative possibilities for other networks engaged in trading in oil products to purchase all kinds of oil products.

During 2009 *AB Klaipėdos nafta* essentially did not perform any light oil product export-import reloading operations for other companies. During 2008, reloading of dark oil products for other companies accounted for 46 percent of all loading operations of *AB Klaipėdos nafta*.

### **Administrative restriction of fuel markets**

According to Order No. 147 of 26 April 2001 of the Minister of Economy and Order No. D1-399/4-336/3-340 of 31 August 2006 of the Ministers of the Environment, Economy and Communications a defined quantity of biological products must be added to diesel fuel and gasoline (ethanol,

RME). The retail fuel networks in Lithuania receive the fuels from *AB Mažeikių nafta* that already contains the mandatory products of biological origin and complying with the standards approved in Lithuania and harmonised with the Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels.

This further strengthens the position of *AB Mažeikių nafta* in the wholesale fuel trading markets as other fuel trading networks, although able to add the ethanol and RME into imported fuels need to have for that purpose the appropriate storage facilities. Besides, it is difficult by this method to produce the gasoline complying with the standards (in accordance with the requirements concerning oxygen, sulphur, lead, and the octane number that are significantly different from the standards in force in the Eastern markets).

According to the Law on State Stock of Petroleum Products and Crude Oil of the Republic of Lithuania (25 June 2002, No IX-986) fuel importers are obliged to allocate a predetermined amount of fuel (12–17 percent) as the State reserve.

This situation, all other factors considered, does not provide a sufficient stimulus to fuel networks to import fuels from other States.

## **RESTRICTIVE ACTIONS OF PUBLIC ADMINISTRATION ENTITIES**

*In assessing the compliance of actions of public administration entities with the provisions of Article 4 of the LC in 2009 the CC examined 19 cases. As a result the CC established 3 infringements, in 13 cases the CC refused to initiate the investigation and 3 investigations were terminated.*

### **Resolution of the Administration of the Vilnius Region Municipality**

By refusing to agree the schedule for the regular local route M2-18 “*Kirtimai–Stotis–Kalnėnai–Guriai–Kyviškių aerodromas*” (hereinafter – Route M2-18) extended by the decision of the Administration of the Vilnius Municipality the Administration of the Vilnius Region Municipality discriminated the carrier of the Vilnius

Municipality *UAB Lostiras* thus seeking to protect the interests of the Vilnius region carrier H. Mušket. The Resolution of the Vilnius Region Municipality thus created different competition conditions for undertakings competing in the relevant market.

The Administration of the Vilnius Region Municipality was recognised to have infringed Article 4 of the LC and was obligated to agree the traffic schedule for the extended route M2-18 executed by *UAB Lostiras*.

### **Resolution of the Trakai Region Municipality Council**

The CC concluded that the Resolution of the Trakai Region Municipality Council obligating *UAB Trakų paslaugos* to carry out the public territories maintenance works in Trakai and Lentvaris towns

infringed the requirements of Article 4 of the LC and obligated the Trakai Region Municipality within 3 months to repeal the Clauses of the Resolution constituting the infringement of the LC, and terminate the agreement on the maintenance of public territories in Trakai and Lentvaris towns concluded on 8 April 2008 between the Administration of the Trakai Region Municipality and *UAB Trakų paslaugos*. (The First Instance Court upheld the Resolution of the CC).

### **The Clause of the Methodology for the customs assessment of imported used vehicles approved by the Customs Department**

The CC passed the Resolution whereby it recognised that Clause 20.1.2 of the “Methodology for the customs

assessment of imported used vehicles” approved by Order No. 1B-1198 of 29 December 2004 of the Director General of the Customs Department under the Ministry of Finance of the Republic of Lithuania infringed the requirements of Article 4 of the LC. The Order established that the inspection of hidden defects of damaged vehicles and a record thereof must be executed only by authorised representatives of the respective vehicle brands. The Customs Department was obligated within one month to amend Clause 20.1.2 of the “Methodology for the customs assessment of imported used vehicles” to bring the provision into line with the requirements of Article 4 of the LC.

### **Decisions of the Druskininkai Municipality concerning the passenger navigation in the Nemunas**

The investigation concerning the decisions of the Druskininkai Municipality in establishing the conditions for passenger navigation

in the territory of Druskininkai municipality was terminated having concluded that the resolutions passed by the Municipality did not discriminate *UAB Halsas* in respect of *UAB Easy 2 invest*. The CC concluded that both *UAB Halsas* and *UAB Easy 2 invest* had been provided equal conditions to submit their proposals to provide passenger navigation services on the Nemunas River in the Druskininkai Municipality, i.e. the municipality did ensure the fair competition and had selected on an objective basis the offer found most acceptable having considered the amounts the undertakings intended to invest. (The Resolution of the CC was overruled by the First Instance Court).

### **The Rules on the issue of driver’s licence approved by the Minister of the Interior**

The investigation concerning actions of the State Enterprise *Regitra* in issuing driver’s licences for motor vehicles was terminated having established no infringement of Article 4 of the LC.

Clause 12 of the *Rules on the issue of driver’s licences for drivers of motor vehicles* approved by Order No. IV-328 of 10 September 2008 of the Minister of the Interior established the requirement that the applicant’s picture and his signature sample are executed in a branch of *Regitra*, and the picture must comply with the requirements for pictures in personal ID approved by the appropriate Order of the Minister of the Interior of the Republic of Lithuania. On the basis of that Order the *SE Regitra* in its branches arranged photo booths. The purpose of the investigation was to determine whether or not, as a result of the Resolution, any discriminatory conditions were established in respect of photography companies by refusing to accept from applicants their pictures and requiring them to be photographed in the booths specially arranged for the purpose. The investigation established that *SE Regitra* was accepting the pictures irrespective of where they were made provided they met the requirements for driver’s licence certificate, while the fee for issuing the certificate was in both cases identical.

## **ENFORCEMENT OF THE LAW ON ADVERTISING**

*In 2009, the CC passed 29 Resolutions concerning misleading and prohibited comparative advertising. In 19 cases the competition authority established infringements of the Law on Advertising (hereinafter – LA). Furthermore, one undertaking was sanctioned for the failure to fulfil the established obligations. In 6 cases, in view of the insufficient evidence of an infringement of the LA the CC refused to initiate the investigation. Four investigations were terminated having failed to obtain sufficient evidence and data that the LA had been infringed. Seven investigations are still in progress.*

*Having assessed the advertising statements published in the media means and considered the small significance of potential infringements 40 advertising providers, as a preventive measure, were issued warnings and thus terminated the publication of potentially misleading advertising statements. 186 applicants were consulted concerning the potentially misleading and prohibited*

*comparative advertising, provided the explanations on the requirements of the LA and their enforcement.*

*Total fines imposed by the CC for the infringements of the LA reached LTL 151 200.*

### **Advertising of advocacy services**

For the use of misleading advertising the Divorce centre of *UAB Tikroji turto kaina* was fined LTL 11 500.

In a number of advertising leaflets and in the press the Divorce centre of *UAB Tikroji turto kaina* was using various advertising statements, such as “divorce advocate services”, “judicial representation”, “best divorce lawyers”, “services of best divorce advocates”, “professional representation in court”, “highly qualified and inexpensive all range advocate services”, “Divorce centre – advocates”, “world divorce champions – divorce in three days”, “immediate award of child support from debtors”. In the course of the investigation the Divorce centre of

*UAB Tikroji turto kaina* could not provide any evidence that it was authorised to provide the services it was advertising, i.e. the advocacy services; the Lithuanian Bar Association that according to Article 18 of the Law on Bar has the authority to include persons into the list of advocates practitioners, informed that no such licence had been issued to the Divorce centre of *UAB Tikroji turto kaina*. The Ministry of Justice indicated that the issues of marriage dissolution and award of child support funds are assigned to the competence of the court and are settled within the procedure and terms set forth by the Code of Civil Proceedings of the Republic of Lithuania.

### **Advertising of investment services**

For the use of misleading advertising *UAB Investment house* was fined LTL 26 400.

*UAB Investment house* was publishing advertising statements offering investment into mergers and development of stable business

enterprises with significant returns. With a view to substantiating the accuracy of the advertising statements *UAB Investment house* submitted a business plan which, according to the company, constituted the basis for preparing the advertising statements concerned. The investigation established that the company did not have the licence authorising it to provide the services advertised, therefore such commercial activity should be considered to constitute misleading advertising, and the business plan submitted by the company could not be considered a sufficient substantiation of the accuracy of the statements at the time of their use, since the advertising provider was referring to forecasts only whose realisation probability is not and cannot be guaranteed. While the advertising provider in its statements had unambiguously indicated that any person having invested his funds will gain the return of specific amount as indicated in the advertising statement. Furthermore, the company itself did not rule out a possibility that the investor will not gain the returns advertised in the statement – to that effect a note in section „Risk assessment“ was included indicating that „... in the absence in the market of an actual buyer shareholders will be offered an alternative method of withdrawing from the project – start quoting the company’s shares at the Vilnius Stock Exchange. <...> In an event of a failure to realise the project within three years the shareholders will be paid significant dividends until a successful sale of the project.“

### **Advertising of meat products**

For the use of misleading advertising a number of meat processing enterprises were issued warnings and obligated to terminate the use of the advertising statements concerned.

By using the product names, the colour scale of the label, pictures and/or other information provided in the labels of the products, such as “suitable for children above three years of age”, “recommended for children above three years of age”, “produced specially for children”, and the appropriate pictures obviously facilitated the opinion of consumers that the product was meant specifically for children. The consumer was thus encouraged to buy the products that in his opinion had been produced

specifically for children, i.e. such products in their composition and/or nutritive value were essentially different from regular meat products of the same group, and therefore more suitable and useful for a growing child than regular meat products. An important detail in this matter was that the average prices of the products offered specifically for children were significantly higher than those of regular products of the same group, which further strengthened the regular consumer’s opinion formed judging by the name and the label that the product was meant for children, i.e. that the product had qualities rendering it much more useful for a growing organism. In the course of the investigation the companies failed to produce sufficient evidence that the meat products advertised as attributed to the children product group by their composition and/or nutritive value were more suitable and useful for growing children than regular meat products.

### **Advertising of newly built apartments offered for sale**

For the use of misleading advertising *UAB Oslit* was fined LTL 23 300.

*UAB Oslit*, a company engaged in the development and sale of immovable property projects in its website used a number of statements advertising “a three-unit 9 storey residential house under construction”, “total 208 apartments”, with convenient communication with all districts of Vilnius and the city centre, apartments of well-designed layouts, and all apartments with open or glassed-in balconies. Thus the company was inviting consumers to avail themselves of the services offered by the company by concluding agreements on booking or purchase of apartments. The preliminary contract indicated that the Seller sells and the Buyer buys a 2-room “premises” that was hereinafter referred to in the contract as an “apartment”. Upon signature of the contract the buyer undertakes within 30 calendar days to pay the down-payment in the amount of 15 percent of the total preliminary price of the apartment purchased. The contract also provided for the liability of the parties – in case of the refusal to conclude the principal contract on the purchase-sale of the apartment the party at fault was obliged to pay

the forfeit in the amount of 10 percent of the total preliminary price of the apartment purchased. The investigation established that the advertising published by *UAB Oslit* was misleading as, in accordance with the data of the SE Centre of Registers the building under construction had 144 non-residential premises and only 81 apartments. The misleading nature of the advertising was further confirmed by the complaint lodged by a misled consumer to whom instead of the apartment indicated in the advertising the company sold non-residential premises. The premises purchase-sale contract submitted by the consumer that had been misled by the advertising also indicated that the recreational premises were arranged in a separate building – the Tourism centre, rather than in the residential building as indicated in the advertising statement.

### **Advertising of mobile communications services**

For the use of misleading advertising *UAB Omnitel* was fined LTL 30 000.

The operator of mobile communications services *UAB Omnitel* published the advertising statements on TV, in the press, booklets, outdoor billboards, the internet website, as well as *Omnitel* and its partners’ outlets specifying the exact price for telephone sets applicable upon signing a service agreement with *UAB Omnitel*. Thus, *UAB Omnitel* sought to encourage consumers to conclude service agreements with the company and purchase a telephone set for the specific price indicated in the advertising statements. However where customers wishing to acquire a telephone set for the indicated price called or arrived at a customer service store, they would be informed that the conclusion of the service agreement and the acquisition of a telephone will be additionally charged a monthly installation fee. These additional terms were not indicated in the advertising statements, therefore a consumer, having familiarised himself with the advertising statement could reasonably expect to be able to acquire a set for the price indicated in the statement without incurring any additional expense. The product or service price is considered to be the essential term affecting the consumer choice and his economic behaviour.



## LEGISLATIVE ACTIVITIES AND ENFORCEMENT OF LEGISLATION

### ***Development of the national legislation***

The laws passed on 9 April 2009 and 24 September 2009 enacted the amendments of the LC designed to ensure enhanced legal clarity and introduced the amendments seeking to ensure a more efficient protection of competition both in terms of the investigative procedures and other legal norms governing competition relations.

Some of the principal changes concerned the enhancement of efficiency of investigations conducted by the CC both in respect of the provisions of the LC and Articles 81 and 82 of the EC Treaty (from 1 December 2009 – Articles 101 and 102 of the TFEU), providing for the powers to perform investigative actions to the CC's officials identical to those vested with the officials of the Commission thus ensuring the identical application of competition rules on the national and the EU scale. For that purpose the LC provided for a possibility to officers of the CC, where necessary, e.g. where in the course of a single inspection the officers can not examine all documents held at the premises of the undertakings, to seal the premises used by the undertakings in which the inspection is carried out and storing any documents relevant to the investigation. Without sealing the premises in which the inspection has not yet been performed undertakings would have a possibility to change or destroy the evidence held in the premises pending the next search by the CC. Furthermore, officers of the CC carrying out investigations in severe infringements of the LC or the TFEU have been provided a possibility to carry out checks in residential premises of managers of undertakings and employees, since the evidence of a committed infringement may be held or hidden in the private premises of

managers or employees related to the infringement. The need for granting such right has been confirmed by the European Commission practice. With a view to ensuring the efficiency of the checks and other investigation actions in collecting the evidence, according to the provisions of the LC the CC now has the right to consider resolutions related to the investigation confidential until any threat to the course of the investigation is eliminated. This provision was considered necessary having regard to the nature of the investigations performed by the CC. Without providing for a possibility to keep the decisions of the CC confidential (e.g. decisions to initiate certain investigative actions), any investigation actions would not be sufficient enough in terms of collection of evidence, since the principal evidence of an infringement is normally held in the premises used by undertakings and would be quite easy to hide should the undertakings learn in advance of a launched investigation.

The European Commission experience in the application of Articles 101 and 102 of the TFEU prompted other amendments of the LC, e.g. specification of the LC provisions under which undertakings may assume obligations related to the performance of certain actions, and which govern the binding character of the obligations assumed thereby. Furthermore, having assessed the experience obtained by the Commission and the CC in investigating dominance abuse cases, also that the possibility to be exempted from a fine actually did not sufficiently encourage the abusing undertakings to voluntarily confess of infringements, while the purpose of leniency is to encourage the undertakings committing infringements that are characterised by a high degree of secrecy (e.g. cartel infringements) to confess to the CC

of the committed infringements, the LC repealed the provision creating preconditions for undertakings to avoid the consequences related to the abuse of a dominant position – the imposition of a fine. With a view to ensuring the transparency of the imposition of fines for infringements of competition rules established in the LC and the TFEU, and having regard to the alleviating circumstances recognised by the Commission and the practical application whereof has been elaborated by the Court of Justice of the EU, the CC compiled a finite list of circumstances alleviating the liability of undertakings for infringements.

A special mention should be made of the amendment to the LC related to the assessment of a dominant position of undertakings. Having considered that undertakings engaged in retail trading may acquire market power even before they reach the 40 percent relevant market share threshold established in the LC, the exceeding whereof gives ground to the presumption of the dominance, in respect of retailers the threshold was established at the level of the 30 percent share of the relevant market. In respect of these undertakings the threshold demonstrating collective dominance was thus reduced to 55 percent. Nevertheless, having regard to the concept of a dominant position, the market share held, in case it exceeds the threshold established in the LC, by itself does not mean the dominance of the undertaking where other circumstances are established that the undertaking is still facing competition in the market and is in no position to exercise a unilateral decisive influence on it.

### ***Enforcement of the EU competition law in the practice of the CC***

Acting in accordance with the provisions of Article 3 of Regulation (EC) No. 1/2003 during 2009, the

CC was enforcing the competition rules established in the TFEU. In this connection the CC carried out an investigation of an infringement of Article 5 of the LC and Article 101 of the TFEU whereby car manufacturers and vehicles distributors had concluded prohibited agreement by providing for a condition for the warranty services of new vehicles, i.e. that within the warranty duration technical maintenance of vehicles must be performed in authorised garages only. Such agreements could limit the possibilities for independent repairers to perform technical maintenance of vehicles within their warranty period and, at the same time, restrict the possibilities of consumers to freely select providers of technical maintenance services without losing their right to warranty service of their vehicles. The investigation was terminated by Resolution of the CC of 24 December 2009, after the undertakings suspected of the infringement of provisions of the LC and the TFEU assumed an obligation to withdraw the conditions regarding the warranty repair and inform consumers accordingly. The obligations assumed by the undertakings concerned eliminated the restrictive effect in the market as independent repairers were provided the possibility to compete with the authorised repairers in the provision of technical maintenance services within the warranty period, and consumers – the possibility to choose from a wider circle of service providers. The enhanced competition is expected to lead to a reduction of the fees for

vehicle technical maintenance services.

In the course of 2009, the CC was conducting, though has not completed, a number of other investigations concerning infringements of the provisions of the LC as well as the TFEU: three investigations concerning possible prohibited agreements between undertakings violating Article 5 of the LC and Article 101 of the TFEU, and two investigations concerning alleged abuse of a dominant position in violation of the requirements of Article 9 of the LC and Article 102 of the TFEU.

### **Overview of the application of the EU competition rules in national courts**

On 16 October 2009, the Supreme Administrative Court of Lithuania (SACL) passed the judgement in the case concerning Resolution No. 2S-13 of 26 October 2006 of the CC establishing the restrictive agreement concluded by wholesale traders in paper on exchange in confidential information. In this case the SACL, acting in accordance with Article 15(1) of Council Regulation (EC) No. 1/2003 of 16 December 2002, for the first time in its practice, with a view to assessing the legitimacy of the resolution passed by the CC, applied to the European Commission with a request to issue its opinion regarding the issues related to the enforcement of Article 101 of the TFEU. On the basis of, inter alia, the opinion issued by the Commission, the SACL concluded that the CC by its Resolution No. 2S-13 of 26 October

2006 correctly assessed the negative effect upon competition produced by the information exchange agreement concluded by the undertakings.

According to Article 50(2) of the LC, upon receipt of a claim related to the application of Article 101 or 102 of the TFEU the court of general competence shall notify the CC thereof. In 2009, the CC received the notice on the claim accepted at the Vilnius Regional Court on 6 February 2009 filed by claimants *UAB Kauno termofikacinė elektrinė* and *UAB Fortis Energy* to the defendant *AB Lietuvos energija*. The Claimants, in accordance with Article 9 of the LC and Article 102 of the TFEU and other legal acts required the Court to recognise the actions of the Defendant whereby it unilaterally established or groundlessly increased or applied the electricity export fee and imposed unfair contractual terms upon the Claimants to constitute an abuse of the dominant position and to obligate the Defendant to terminate the allegedly illegal actions. The Court also informed the CC that the Claimant *UAB Fortis Energy* on 6 March 2009 filed a claim against the defendant *AB Lietuvos energija* whereby, based on the provisions of Article 9 of the LC and Article 102 of the TFEU and other legal norms requesting to recognise the provisions of the agreement null and void and award the indemnity for the damage incurred. During 2009, in other cases of general competence courts in which the claims were based on the provisions of the TFEU and of which the CC had been informed in previous years the judgements are still pending.

## **JUDICIAL DECISIONS**

### **Abuse of dominance by AB Lietuvos paštas**

On 2 April 2009, the SACL passed the judgement whereby it finally recognised that by its Resolution No. 2S-20 of 27 September 2007 the CC had reasonably concluded that *AB Lietuvos paštas* had infringed Article 9 of the LC and fined it LTL 80 000. It was established that *AB Lietuvos paštas* by taking advantage of its position in the reserved postal services market and being aware of the fees on invoice delivery in envelopes to be included by

the competitors of *AB Lietuvos paštas* in the invoice printing, folding and enveloping market in their tenders for the public procurement procedure, and by submitting a significantly lower fees for the invoice delivery service than could be offered by the undertakings purchasing the services from *AB Lietuvos paštas* (*UAB Nacionalinis atsiskaitymų centras* and *UAB Biznio mašinų kompanija*) was abusing its dominant position in the market of reserved postal services. *AB Lietuvos paštas* was thus seeking to establish its position in the market and oust its

competitors from the closely related market of invoice printing, folding and enveloping. Such actions of *AB Lietuvos paštas* could affect competition in the market for invoice printing, folding and enveloping and deprive other undertakings that have submitted their proposals to the public procurement procedure executed by *UAB Vilniaus energija* from a possibility to conclude supply contracts with *UAB Vilniaus energija*. Furthermore, the SACL, having examined the dispute that arose in relation to the case concerning the definition of the relevant market,

supported the position of the CC that for the purpose of the definition of the relevant market the important issue to consider is the manner of service provision, rather than the way the matter is defined by the undertaking providing the service, i.e. the actual relations should be assessed following the substance over form principle.

### **Cartels (information exchange between competitors)**

On 16 October 2009, the SALC passed the judgement whereby it concluded that the CC, by its Resolution No. 2S-13 of 26 October 2006 reasonably assessed the exchange of information between undertakings as a restrictive agreement. In relation to this case the SALC had applied to the European Commission, and obtained the Commission's opinion concerning the issues examined in the cases related to the practice of application of Article 101 of the TFEU. The opinion produced by the Commission essentially confirmed the correctness of the conclusions drawn up by the CC in the case concerned. In assessing the arguments of the undertakings involved in the information exchange that the CC had failed to prove the negative impact of the information exchange on competition, the SALC concluded that the agreement between the undertakings to exchange confidential information could restrict competition even where the actual anti-competitive effect could not be established, since, as was indicated by the SALC, to provide any direct evidence on a supposed situation should there has not been any information exchange, also the evidence on a potential anti-competitive effect of a relevant agreement is virtually impossible and could be neither required nor expected from the CC.

The SALC indicated that exchange of information in all cases is contrary to competition rules and restricts competition where such actions of the undertakings reduce or eliminate certainty concerning the operation of the market concerned. Such assessment largely depends on the economic conditions in the markets covered and the characteristics of the system itself, specifically on its objective, approach,

and conditions of the participation in the information exchange, also the nature of the information exchanged. The case concerned the undertakings engaged in wholesale trading in paper operating in oligopoly markets of wholesale trade in chalky and office paper characterised by a relatively high degree of concentration. These undertakings were exchanging in individualised and specific information on their market shares and sales volumes. The information being exchanged was very current, as it concerned the results of the quarter and immediately after the end of a relevant quarter the undertakings would expediently exchange it. Besides, the information was not public, since it was not in the same scope, frequency or content details accessible to other market participants and/or consumers (buyers). In this view, the SALC supported the conclusion drawn up in the Resolution of the CC that the information exchange could affect corporate behaviour in the market since the undertakings were provided means to monitor the information and, with the relevant data at their disposal, could pass appropriate decisions concerning behaviour in the market and sufficiently quickly learn of the outcomes of their decisions. In the opinion of the SALC the information exchange concerned reduced or eliminated the uncertainty about the operation of the markets concerned and thus restricted competition.

Having regard to the opinion of the Commission and the practice of the EU Court of Justice the SALC concluded that participants of information exchange normally lose their interest to actively compete as any more significant actions of theirs may be promptly noticed and expediently responded by appropriate countermeasures. In the meantime any new or other market participants not involved in the information exchange system in any case find themselves in disadvantageous situation, since, on the one hand, they do not have at their disposal the relevant information about the markets, and, on the other, participants of information exchange could notice and appropriately respond to any actions of a new competitor and prevent it from seizing their market

shares. Thus, in the opinion of the SALC, an information exchange system in certain cases may materially reduce the independence of the participants' decisions, replacing the normal competition risk by practical cooperation which is prohibited by competition rules.

Besides, by referring in this judgement to the practice of the EU Court of Justice, the SALC concluded that any legal or organisational reforms of an undertaking infringing competition rules (the dissolution of one undertaking by merging it to another undertaking) does not necessarily mean that the resulting undertaking is not responsible for the infringement of competition rules committed by the predecessor, where from an economic point of view both undertakings coincide. Thus, the reorganisation or restructuring of undertakings does not create the basis *per se* for the undertaking to be exempted from the liability for an infringement of competition rules. With this taken into account the SALC confirmed that the CC had rightfully concluded the liability for the infringement of the LC to the undertaking to which the infringing undertaking was affiliated.

It should be also noticed that the CC pursued its position to treat agreements between undertakings on information exchange as restrictive prohibited agreements also while taking its Resolution No. 2S-3 of 28 February 2008, whereby the CC recognised that undertakings engaged in milk purchase and processing and their association infringed the requirements of Article 5 of the LC, as these undertakings had been continuously and periodically exchanging the information of confidential character about the quantities of milk purchased and the volumes of produce and sales of dairy products, thus restricting competition. By its judgement of 11 June 2009, the SALC in respect of the undertakings that had lodged the appeals (*UAB Marijampolės pieno konservai* and *AB Rokiškio sūris*) overruled the Resolution of the CC and returned the case for additional investigation on the basis of the conclusion that the CC failed to prove that the actions of the undertakings concerned actually restricted competition. The

CC however, having analysed the reasoning provided in the SALC's judgment and still sticking to the opinion that an infringement of Article 5 of the LC may be concluded not only in the cases where the actual restrictive effect of the agreement is proven, but also when a potential (possible) anticompetitive effect of the agreement is evident, in particular, of the agreements to exchange confidential information, which had been previously also supported by the SALC in its judgment of 16 October 2009, submitted an application to renew the consideration of the Resolution of the CC concerned. The CC seeks the SALC to repeatedly consider the case and hand down the decision having properly assessed and considered a potential anticompetitive effect of the agreement to exchange confidential information concluded by the undertakings engaged in milk purchasing and processing.

### **Discriminating provisions of the Orders of the Commissar General of the Police**

On 26 March 2009, the SALC passed the judgement whereby the Court concluded that by its Resolution No. 2S-2 of 12 January 2006 the CC had rightfully assessed the provisions of the Order of the Commissar General of the Lithuanian Police granting public police security divisions the rights to provide legal and natural persons' property security services on contractual basis as contradicting Article 4 of the LC. The CC had concluded that securities divisions of the Public Police, next to the public order maintaining functions are also providing personal and property security services thus competing with other private security services providing identical services. However in respect of this activity the scope of the rights available to security services of public police and private security services are very different – by law police divisions are vested with a number of special rights that the divisions continue to exercise even

in rendering the security services on commercial basis, thus acquiring significant advantage in respect of private security services. In the opinion of the CC, the rights available to Security Divisions, such as the right to use special vehicles, enter at any time residential and other premises or territories owned by natural and legal persons, stop and enter into vehicles, etc. have an impact upon the price and quality of the service, thus creating in the market different competition conditions and, as a result, the situation is discriminatory in respect of private security services. The SALC supported the conclusions of the CC by indicating that the scope of the rights available to private security services is much narrower than those exercised by police officers, therefore the services are placed at significant competitive disadvantage as compared to the police security service.

### **Restricting provisions of the Order of the Minister of Health**

On 25 June 2009, the SALC passed the judgement whereby the Court acknowledged the Resolution No. 2S-4 of 13 March 2008 ungrounded for the reason of the failure of the CC to substantiate its conclusions. The Resolution of the CC recognised that certain provisions of the Description of the Procedure for charging for health services approved by the Minister's of Health Order No. V-1113 of 22 December 2006 providing for the procedure for the payment for specialised in-house services from the Mandatory Health Insurance Fund (hereinafter – MHIF) create different competition conditions for undertakings competing in the relevant markets for the provision of specialised in-patient health care services – personal health care institutions (hereinafter – PHI) and thus violate requirements of Article 4 of the LC.

In the opinion of the CC the procedure for the payment for specialised in-house health care services introducing up-front allocation to individual PHIs

of the funds of the MSIF that actually does not reflect the performance of individual PHIs is discriminatory in respect of individual PHIs and therefore, fails to ensure equal competition conditions for all PHIs providing specialised in-house services. Such procedure for the allocation of the MHIF's resources restricts competition between PHIs and does not encourage them to improve the quality of services provided. Essentially being in advance assured concerning a certain amount to be allocated to them from the MHIF according to the contracts with the territorial patient funds (hereinafter – TPF) such health care institutions lose incentive to compete in quality of service to be provided to their patients, since even having attracted more patients and accordingly provided more services, PHIs are not assured they will be reimbursed additionally for the services exceeding the amounts provided for in contracts with the TPFs. Therefore, the PHIs take the risk to provide the services on their own account thus weakening their possibilities to compete with other PHIs. In the opinion of the CC, the procedure for the payment for specialised in-patient health services established by the Ministry of Health not only fails to ensure the conditions for fair competition between PHIs, but also fails to ensure the transparency of the allocation of the funds from the MHIF, the efficiency of the use thereof, and, furthermore, limits the rights of patients to freely select and receive services compensated from the MHIF at PHIs of their choice.

Sticking to this opinion and having thoroughly analysed the arguments and reasoning laid down in the judgement of the SALC, the CC submitted an application to renew the consideration of the case by the Court with the request to re-examine the case and hand down the judgement having thoroughly considered the consequences to competition between PHIs and to consumer interests possibly arising from the procedure of payment for specialised in-patient health care services.

## COORDINATION OF STATE AID

### Legislative developments in the area of State aid

Acting as the authority in charge of the coordination of State aid and with a view to fulfilling its functions defined in Article 48(3) of the LC, the CC has been closely cooperating with the European Commission and public authorities of the Republic of Lithuania (hereinafter – public authorities) on issues related to State aid, provided comments and proposals to regulations drafted by the Commission, also submitted responses to inquiries from the Commission.

During the accounting period the CC, in cooperation with other public authorities submitted its comments regarding the drafts of the following regulations of the European Commission:

- Communication from the Commission – Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis;
- Communication from the Commission on the application of State aid rules to public service broadcasting;
- Communication from the Commission – Amendment to the temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis;
- Guidance on in-depth assessment of regional aid for large investment projects;
- Commission Notice on Simplified procedure for the treatment of certain types of State aid;
- Best practices code on the conduct of State aid control proceedings;
- Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and

disabled workers subject to individual notification;

- Criteria for the analysis of the compatibility of State aid for training subject to individual notification.

Together with the Ministry of Economy the CC submitted replies to the questionnaire concerning the application of the Commission Communication Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis. In cooperation with the Ministry of Communications the CC examined the proposals of the Commission concerning the application of the guidelines on the State aid to railway undertakings referred to in Council Directive 91/440/EEC of 29 July 1991, and submitted to the Commission the information required.

The CC submitted a number of comments on draft legal acts of the Republic of Lithuania. During the accounting period the CC assessed 93 draft national legal acts prepared by the Ministries of Economy, Finance, Energy, Agriculture, Communications, Education and Science, Culture, Environment, Interior, Social Security and Labour, the State Tourism Department under the Ministry of Economy, the Lithuanian Environmental Investment Fund,

the National Land Service under the Ministry of Agriculture, and other institutions. In respect of total 42 draft legal acts (of which: 8 draft laws, 13 Resolutions of the Government, and 15 draft Orders of Ministers) the CC submitted its comments and proposals.

During the accounting period the CC prepared and passed its Resolution No. 1S-160 “On the approval of the description of the procedure for the accounting by municipalities for the fulfilment of public functions (delegated to municipalities) supervised by the Competition Council”.

### Submission of notifications and other information to the European Commission

In performing its functions of the coordinating authority in State aid issues the CC closely cooperated with State aid providers in drafting notifications to the Commission, and submitting other information related to State aid.

During the accounting period State aid providers submitted to the Commission 10 notifications on State aid and 16 Forms of short information on State aid granted according to the Block Exemption Regulation. The largest number of notifications on State aid and short information forms was submitted

<b>Total notifications on State aid and short information forms on State aid granted according to the Block Exemption Regulation submitted to the European Commission</b>	<b>26</b>
Of which:	
notifications on State aid under schemes	10
short forms of information on State aid granted under block exemption regulation	16
<b>Notifications on State aid approved by Resolutions of the European Commission (including notifications submitted in 2007–2009, whose examination was completed in 2009)</b>	<b>8</b>
Of which:	
State aid under schemes	8
<b>Notifications withdrawn</b>	<b>1</b>
<b>Cases of State aid not considered by the European Commission during the accounting year (according to notifications submitted in 2009)</b>	<b>3</b>

by the Ministry of Agriculture (13 notifications) and the Ministry of Economy (9 notifications). During the period concerned, the Commission passed favourable decisions in respect of 8 State aid cases. In one case the notification was withdrawn as, following the consultations with the representatives of the Directorate for Competition it was concluded that the measure „Renovation of multi-apartment houses primarily increasing energy efficiency” did not constitute State aid. At the end of 2009, 3 State aid cases were still under the examination at the Commission.

### **Performance of other functions**

The State aid action plan provided for a number of measures on the application of more efficient and simplified procedures in the area of State aid to ensure an enhanced liability of Member States for the proper application of legal provisions. The Block Exemption Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of State aid compatible with the common market in application of Articles 87 and 88 of the Treaty enhanced the liability of Member States for the proper application of the provisions of this Regulation. These legislative changes in the area of State aid significantly increased the role and significance of the CC, as the institution coordinating the provision of State aid.

The CC has been verbally and in writing providing advice to State aid providers and aid beneficiaries, hosting and participating in the advisory meetings organised by other public authorities and devoted to discussion of the issues related to State aid in drafting investment and other support projects. In view of the continuing financial

crisis and all problems related to it a number of necessary aid measures were undertaken in order to facilitate various undertakings, specifically small and medium-sized enterprises to respond to financial difficulties.

Due to the ongoing improvement and updating of the information posted in the “State aid” section of the CC website now State aid providers and beneficiaries can readily access complete and most updated information on the newly adopted or amended EU legal acts and the European Commission decisions governing the provision of State aid.

Further improvements have been introduced in the operation of the State aid Register; from the outset of the Register operation (01-10-2005) to 31 December 2009 entries were made on 63 424 *de minimis* aid cases (including *de minimis* aid in agriculture and fisheries sectors), and 177 State aid schemes and individual aid cases.

### **Information on State aid granted in Lithuania**

According to the data available to the CC, total State aid granted in Lithuania during 2008 amounted to LTL 902.02 m (EUR 263.27 m).

The rate of the national State aid in relation to the GDP (at current prices) in 2008 accounted for 0.82 percent, in 2007 – 0.63 percent. For comparison: the EU-27 average in 2007 was 0.5 percent, in 2008 – 2.1 percent, the EU-15 average in 2007 and 2008 – 0.5 percent and 2.4 percent, and that of 12 new EU Member States in 2007 and 2008 – respectively 0.8 percent and 0.72 percent. The value of the State aid per one working person was LTL 563.12 (EUR 163.09), in 2007 – LTL 399.01 (EUR 115.56). The tables and graphs presented in the “Statistics”

section show that in 2008 the volume of granted State aid was significantly higher than in 2007 (EUR 177.29 m), and in 2006 (EUR 128.27 m). The volumes of aid to agriculture in 2008, as compared to 2007, decreased by LTL 107.82 m (EUR 31.23 m). The State aid in this area has decreased since in 2007 a number of agricultural undertakings that incurred significant loss or damage to agricultural plans caused by natural meteorological phenomena in 2006 were reimbursed LTL 127.05 m. Therefore, this circumstance has been taken into account, the total State aid to agriculture in 2008, as compared to 2007, increased by LTL 19.23 m. The amounts of State aid to industry and services in 2008 were significantly higher than in 2007. In 2008 the aid accounted for LTL 593.36 m (EUR 171.85 m), while only LTL 186.13 m in 2007 (EUR 53.91 m). This increase in the amounts of overall State aid is accounted for by the significantly larger regional aid granted in 2008. In 2008, as compared to the period 2004–2007, more voluminous State aid support was allocated to environmental protection, implementation of the employment programmes, employee professional development. This reallocation within the State aid structure comes in compliance with the objectives defined by the European Council to provide more targeted State aid, with higher volumes of aid resources channelled to horizontal general importance objectives, i.e. regional development, small and medium-sized enterprises, research, development and innovation, and the implementation of employment programmes. Notably, the volumes of State aid as presented here do not include the funds received from the EU structural funds. The data on the allocation of national State aid is presented in the “Statistics” Chapter of the present Report.

## **MARKET RESEARCH AND PRICE CONTROL**

### **Analysis of the retail market of food products**

The analysis performed by the CC specialists in the retail food product sector identified the predominant operators in the market – the four major trading networks. In 2008, the trading networks *MAXIMA*, *IKI*, *RIMI* and *NORFA* were operating total 612

sales outlets (8.7 percent of all stores engaged in this activity) with the total sales area of 558 000 m<sup>2</sup> (49.8 percent). In general the number of retail food stores, sales area and the share of the retail food sector held by the major trading networks were continuously increasing – in 2004–2008 the number of stores operated by the networks increased by 35 percent and the sales

area increased by about 50 percent. In the same period the number of sales outlets operated by independent retailers and by incorporated smaller networks decreased by 11 percent, although the trading area increased by about 4 percent. The decrease in the number of independent stores with simultaneous increase of their trading areas indicates that undertakings were

joining into larger combinations, or some smaller stores were forced to discontinue their operations – in 2004, an average area per store was 75.4 m<sup>2</sup>, and in 2008 – 87.5 m<sup>2</sup>.

The share of the four major trading networks in the retail food product market in 2004–2008 increased by 11 percent – from 61.9 to 72.3 percent, while the share of the independent retailers or those incorporated into smaller networks or other combinations decreased from 38.1 to 27.7 percent. Leading in terms of increasing of its share in the market was the MAXIMA trade network that in the course of 5 past years increased its share by 6.6 percent (from 31.1 to 37.7), IKI – by 1.8 percent (14.1–15.9), NORFA – by 0.6 percent (10.5–11.1), RIMI – 1.4 percent (6.2–7.6). In the retail food product market in municipal territories that from consumer viewpoint may be defined as local markets the four major trade networks in 54 municipalities out of 60 hold over 40 percent of the market, and in some municipalities the share reaches 80–90 percent. Meanwhile the stores that operate independently or incorporated in smaller trade networks or other combinations hold over 40 percent of the market in 18 municipalities, while in 2007, this share of the market by the retailers concerned was occupied in 24 municipalities.

To the inquiry in the course of the investigation of the major suppliers of meat product, poultry, dairy, flour and bakery products (total 51 companies) on any unfair supply terms imposed by major trading networks, 18 such entities did not provide their positions on the matter. 19 undertakings in their responses indicated that in the course of negotiations on supply terms they normally find bilaterally beneficial solutions. 14 undertakings noted the extensive periods for settlement for the production supplied, also assessed the inadequate fines for the failure to supply products to the stores as completely ungrounded from the business logics point of view, as well as the excessive marketing fees for trading in trade centres, extensive discounts, sometimes reaching up to 30 percent of the basic price, and excessive fines for failure to fulfil obligations. It should be in this relation noted that during 2008, the major trade networks MAXIMA,

IKI, RIMI (NORFA did not provide the data) collected about LTL 244 m from their suppliers in the form of different charges and fees (discounts, advertising, promotion, marketing), also during the same period claimed about LTL 5 m in fines.

In the retail trade market there is a mutual dependence between the goods purchase and the goods sale market – the strengthening concentration in the retail trade market causes a growth of the buyer's purchasing power in the purchase market. The increasing purchasing power enables retailers to impose upon their suppliers smaller prices on the goods, also to require some economically ungrounded discounts and a range of payments, i.e. establish unfair supply terms. Such unfair supply terms adversely affect only the specific undertakings upon which such terms are applied. To establish an infringement of competition law it is not sufficient to conclude that long settlement periods or different fees are contrary to the fair business practice. In order to prove that the terms for the purchase of the goods set forth in the contracts were unfair and that the conduct infringed the norms of competition law, it is necessary to prove that the relevant actions had been exercised with a view to ousting competitors from the market, or creating barriers for entering the market or otherwise restricting competition. Even having established that actions of some undertakings restrict or may restrict competition it is necessary to prove that the undertaking exercising any restricting actions holds in the market the dominant position that is not limited by the size of the market share held only.

In order to ensure the balance between the interests of the suppliers and retail trade undertakings enjoying a significant market power late in 2009 the Seimas of the Republic of Lithuania passed the Law on Prohibition of Unfair Operations by Retail Trade Undertakings that prohibits retail trade undertakings to perform any actions contradictory to the fair business practice that result in the transfer the operating risk of trading undertakings upon their suppliers, or additional obligations are imposed upon the latter, or which restrict the possibilities of the suppliers to freely operate in the market.

## **Market research concerning liquid oil gas**

In the course of the reporting period the CC carried out the market research concerning liberalisation of oil gas market, enhancement of competition, equalisation of pricing practices in relation to natural gas, as well as the substantiation of the introduction of the subscriber's fee. This market research was conducted having regard to the information received from the Member of the Seimas, A. Kazulėnas, the State Consumer Rights Protection Authority under the Ministry of Justice, and consumers of liquid oil gas from Rokiškis town.

Having completed the market research the CC submitted its proposals to the Ministry of Energy to consider a possibility of temporary unification (pending the appearance of effective competition in the liquid oil gas market) of pricing practice in oil gas and natural gas sectors, by initiating by public authorities concerned amendments to the relevant laws and other related legal acts.

## **Pricing control**

Within the scope of its competence the CC had been performing its duties and obligations under the Law on Prices of the Republic of Lithuania and the relevant Resolutions of the Government (03-02-1994, No. 77; 28-05-2002, No. 756; 30-06-2005, No. 739) in the area of pricing, placing a special focus on the compliance of the procedure for the establishment of prices and rates of monopoly goods and services provided by State enterprises established by Ministries and the Government of the Republic of Lithuania and public institutions assigned to them. The CC prepared the information on the issues and submitted such information to the relevant public authorities.

While performing its duties under the Law on Prices, the CC approved the rates for monopoly goods and services provided by public authorities, State enterprises and public institutions established thereby, and the fees for the provision of the data by State registers and cadastres: total the CC approved 163 prices and rates, and 4 price calculation methodologies.



## EUROPEAN COMPETITION ACTIVITIES

### **Work related to the EU documents**

During 2009, the CC was, quite traditionally, an active participant in the EU legislative process; through the LINESIS system it submitted three positions for the documents considered by the EU institutions. Within its competence, the CC approved total 58 positions drafted by other ministries.

Furthermore, the CC had been submitting to the Office of Chancellor of the Government of the Republic of Lithuania, later on to the European Law Department under the Ministry of Justice the relevant information on the necessity of national implementing measures in respect of legal acts published in the EU Official Journal.

Starting from 2009, while cooperating in the European Competition Network (ECN) the European Commission initiated the publication of the ECN newsletters containing the information submitted by national competition authorities of all Member States on the issues of development of competition law and policy, enforcement of competition rules, judicial examination of competition cases, strengthening of competition authorities and other issues important to the entire competition community. The CC has been actively contributing the publication of the newsletter providing, on a monthly basis the information about the most important competition developments in Lithuania.

### **Participation in committees and working groups**

During 2009, in view of the significant shortage of financial resources, the participation of the CC representatives in the work of the EU institutions was rather limited as compared to previous years. Thus, no representative of the CC was delegated to the meetings of

the Working Party on Competition of the EU Council, or the Advisory Committee on Mergers. The CC was represented at only one out of 25 meetings of the Advisory Committee on Restrictive Practices and Dominant Positions, and in one of seven Hearings. Virtually was terminated the participation of the CC officers in the work of the ECN working groups (there are seven such groups) and sub-groups (eleven). These groups and sub-groups were established implementing the provisions of Articles 101 and 102 of the TFEU and Regulation (EC) No. 1/2003. The CC also did not take part in a single meeting of the ECN sub-groups (eleven such meetings were held), while out of eight meetings of the ECN working groups the CC participated only in one meeting of the *Cooperation Issues* Working Group and in one meeting of the Working Group on *Vertical Restraints*. In addition, the CC participated at only two out of seven multilateral meetings on State aid issues, one meeting of the State aid notifications interactive (SANI) facility, three out of four ECN Plenary meetings. Similarly to previous years the Chairman of the CC participated in the meeting of Directors General of competition authorities the agenda whereof included various most important competition issues.

On the other hand, the CC may conclude a more active cooperation in the ECN network with other EU competition authorities in the virtual space. Following the rules on the cooperation within the ECN the CC had been regularly exchanging information and sharing its experience accumulated in examining individual cases and carrying out investigations.

### **Cooperation**

During 2009, the CC was most intensively developing its international cooperation through multilateral

forums, specifically such as ICN, ECA and OECD in whose Competition Committee Lithuania had been granted the observer status since 2000. The principal input of the Lithuanian CC in this area was represented by its reports and contributions, and active participation of representatives of the CC in the meetings and commenting on most relevant competition policy issues.

### **OECD**

The CC prepared and submitted its notices to the following meetings of the working groups of the OECD Competition Committee:

- Roundtable on *Margin Squeeze*;
- Roundtable on the *Application of Antitrust Law to State-Owned Enterprises*;
- Roundtable on *Competition Policy and the Informal Economy*.

For the Global Forum on Competition held in February 2009, the CC prepared its contribution on *The relationship between competition policy, industrial policy and national champions*.

Furthermore, comprehensive responses were prepared to the following questionnaires:

- *Competition and Regulation in Auditing and Related Professions* – for the Roundtable discussions;
- *Challenges facing young competition authorities* – for the Global Forum on Competition.

Within the Multilateral Assistance Program granted by the OECD to the Central and Eastern European countries, two specialists from the CC participated in the traditional two-weeks workshop hosted by the OECD and the *Hungary Regional Centre for Competition* and made their presentations.

As in every year the CC presented to the OECD its annual activity report including overviews of the most important cases on abuse of a dominant position, prohibited agreements examined during 2008, reviewed the Lithuanian judicial practice and presented a brief overview of the development of the Lithuanian competition law.

### **ICN**

While cooperating within the ICN (International Competition Network) the CC submitted the relevant information for the overview in the subject *Refusal to deal* of the ICN Unilateral Conduct working group. Also, the CC updated the information for the systemised material prepared by the ICN Cartel Working Group on the legal system of investigation of

cartel agreements in Lithuania, and the legal framework on investigations and assessment of concentration deals in Lithuania.

### **Seminars, conferences**

With a view to exchange the experience in the area of competition law and policy enforcement four representatives of the CC, in May 2009, participated in the 6<sup>th</sup> Annual Regional conference in Riga.

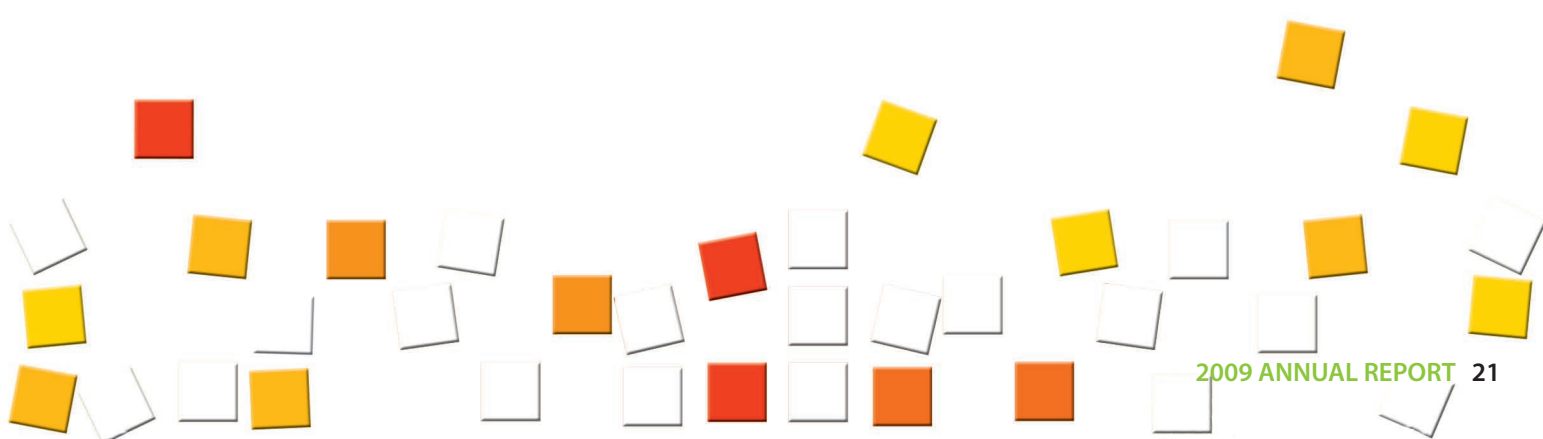
Besides, the Chairman of the CC participated in the 42<sup>nd</sup> FIW-Symposium "Competition and Innovation" held in February in Innsbruck, Austria; in April – in the ECA Annual Meeting in Madrid at which the central subject was the EU competition policy – development and prospects; in June – in the 8th Annual ICN Conference in Zurich; in

September – in the BRIC International competition conference in Kazan at which the Chairman of the CC made the presentation on the subject "Exchange in commercial information between competitors"; in October – at the Meeting of Directors General for Competition in Brussels.

Also, representatives of the CC participated in the conference "State Aid Day" organized by the European Commission in Brno, the Czech Republic.

### **Technical assistance**

Within the framework of the programme for the Albanian competition authority organised by TAIEX one officer from the CC participated in the expert mission and seminar in Tirana.



A tremendous impact for the CC's image and the assessment of its activities is produced by the viewpoint towards the institution promoted by politicians, public authorities and representatives of business community. During 2009, on numerous occasions and publicly, efforts of the specialists of the CC in dealing with issues related to the enforcement of the requirements of fair competition were highly appreciated. In 2009, the development and strengthening of public relations acquired a specific significance, as on rather frequent occasions specialists of the CC were requested to submit their views on situations developing in certain markets (dairy, fuels, telecommunications, pharmaceuticals) in view of arising suspicions on possible distortion of competition.

When submitting information to the media the CC sought to comprehensively disclose the contribution of the authority in addressing the issues assigned to its competence, form a positive image of the institution in the public, and in general develop the competition culture.

With a view to ensuring a widest possible dissemination of the relevant information about its activity results the CC was referring to a number of different methods, including the announcement of the agenda of its meetings, press releases, regular contacts with information vendors and press services, publication of analytical articles, interviews on most important issues. When publishing and disseminating the information about its activities, specifically in view of the difficult economic conditions the CC was relying exclusively upon the long-established contacts with media and communication means without incurring any expenses for contracted publications. Due to the relevance of the news and the quality of the presentation of such information media could expediently disseminate the information to the public.

With a view to further improving the quality of public relations specialists of the CC were referring to different guidelines and legal acts defining the

requirements for public authorities in relation to the provision of public information and servicing applicants. The year 2009 recorded a significant increase in the number of inquiries filed by legal and natural persons to the CC, where the authority received about 600 such inquiries. Besides, the CC continued its constructive cooperation with the press services of the President's Office, Seimas, Government and individual ministries.

### Scope of provided information in 2009

- During the accounting year the CC published 82 press releases on different issues, of which 68 were directly related to Resolutions passed by the CC.
- Different information agencies and internet portals were used to disseminate over 260 information notices on the activities of the CC: Resolutions passed by the CC, initiated investigations, complaints received, concentration notifications filed by undertakings, content of advertising statements, possible unfair commercial activities, etc.
- According to the data of the survey produced by the news agency *BNS spaudos centras* in 2009 regional press published 414 publications covering the activities of the CC.
- In the course of the year on more than 600 occasions various aspects of the CC's activities were covered in different notices and articles.
- CC members and officers produced and published 6 analytical articles (published in the magazines *Juristas*, *Veidas*, and dailies *Respublika*, *Verslo žinios*, weeklies *Atgimimas* and *Statybu žinios*).
- The CC organised two press conferences and participated in a live conference at the vz.lt portal.

### TV and radio releases

On numerous occasions programmes of different TV and radio channels were covering a range of subjects related to the most relevant activities of the CC. Specialists of the CC gave total 40 interviews commenting on a number of issues. In this relation officers of the CC participated both in live and recorded programmes for analytical broadcasting in *Žinių* radio station, Lithuanian Television and Radio, TV-3, *Baltijos TV*, *Lietuvos ryto TV* and other media channels. Principal subjects addressed and discussed in the programmes – cartel agreements, competition issues

### Scope of information dissemination

Year	2005	2006	2007	2008	2009
Press releases	77	70	72	79	82
Publications in print media	483	548	570	630	600

in telecommunication sector, retail trading sector, decisions concerning infringements of the LA. TV and radio news broadcastings were the channels most frequently used by representatives of the competition authority to provide most urgent and relevant commentaries.

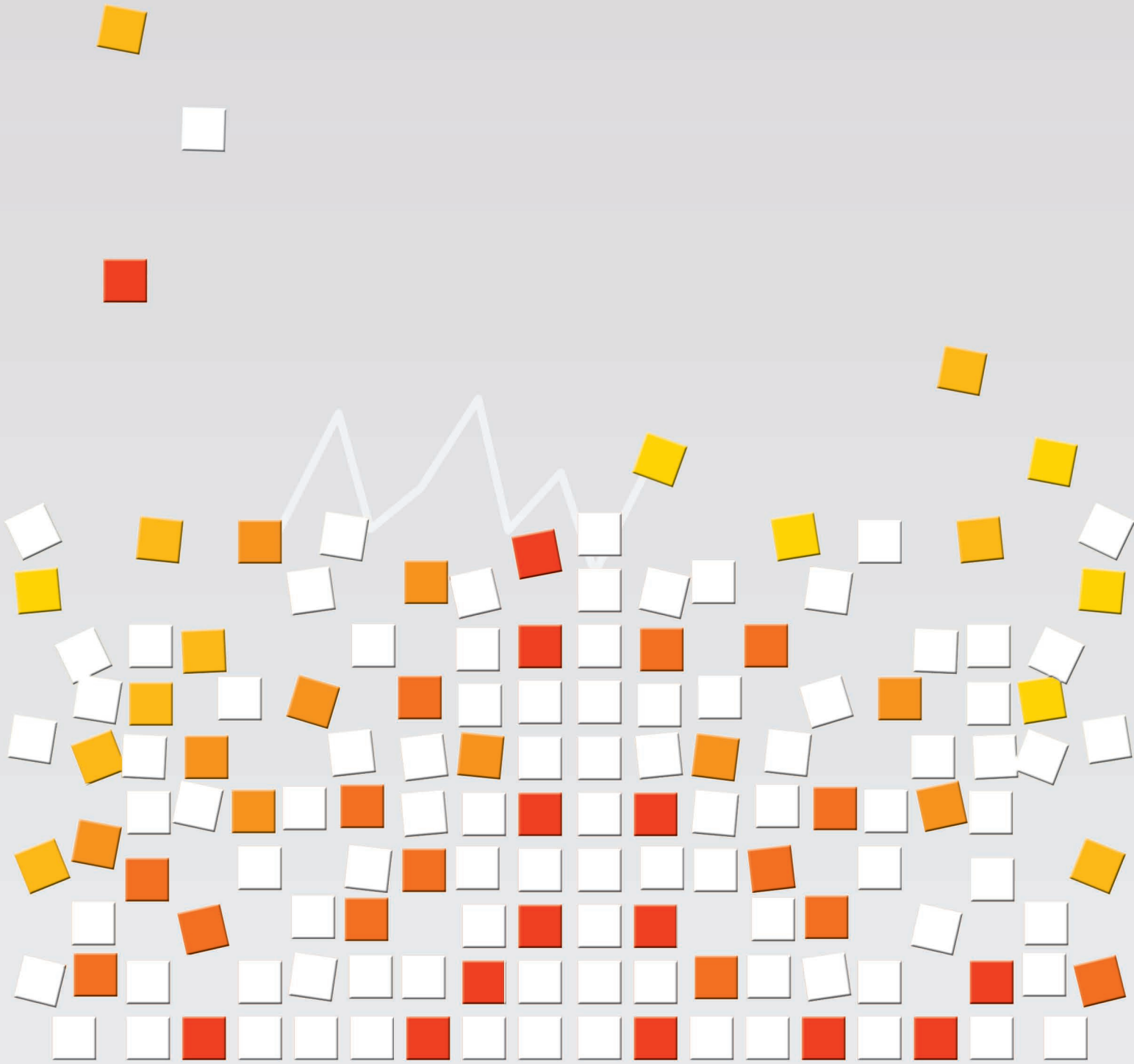
### Public relations

After the facility was provided, by using the internet website, to directly place inquiries and questions on different aspects of the activities of the CC, and expediently receive responses, this method of communication with the public in 2009 became an extremely important means in supplying explanations and disseminating the information of interest to the public. In the course of 2009, total 98 questions relating to most different areas and issues were posted in the inquiries section of the CC's website. The responses that were considered informative and possibly relevant to other undertakings or consumers were declared. The largest number of responses to the inquiries was worked out by specialists of the Divisions of Law, Services and Consumer Goods. About 20 percent of all questions and inquiries received concerned specific information and facts that provided the basis for competition authority specialists to initiate investigations regarding possible infringements of competition requirements or impose preventive measures. Having received comprehensive responses from the competition specialists the inquirers were openly expressing their gratitude, and this feedback undoubtedly contributed to the building of the positive image of the CC.

The increasing number of the website visitors who chose to be subscribers to the news on the CC's activity clearly demonstrates the growing interest on the part of the public in competition issues. The scope of the information posted in the website of the CC is being consistently expanded (larger numbers of commentaries, data or market research) with an objective to comprehensively present the activities of the CC. Also, the contents and scope of the information provided in the intranet of the CC have been considerably expanded. This enables employees and specialists of the CC to expediently locate any legal information, or any material related to any investigations in progress, and to ensure professional and efficient communication with their colleagues.

VIII

# STATISTICS



## DECISIONS REACHED AND FINES IMPOSED BY THE COMPETITION COUNCIL IN 2009

<b>ENFORCEMENT OF THE LAW ON COMPETITION</b>		
<b>Concerning legal acts passed by public administration entities (19)</b>		
<b>Established infringements (3):</b>		
19-03-2009 No. 2S-7	On the compliance with the requirements of Article 4 of the LC of the decisions of the Trakai region Municipality obligating <i>UAB Trakų paslaugos</i> to carry out the public territories maintenance works	
26-03-2009 No. 2S-8	On the compliance with the requirements of Article 4 of the LC of the decision of the Vilnius region Municipality	
02-07-2009 No. 2S-16	On the compliance with the requirements of Article 4 of the LC of Item 20.1.2 of the "Methods for the customs assessment of imported used vehicles" approved by Order No. 1B-1198 of 29 December 2004 of the Director General of the Customs Department under the Ministry of Finance of the Republic of Lithuania	
<b>Refusals to initiate investigations (13)</b>		
<b>Cases terminated (3)</b>		
<b>Concerning prohibited agreements (7)</b>		
<b>Established infringements (3):</b>		
08-01-2009 No. 2S-1	On the compliance with the requirements of Article 5 of the LC of the actions of undertakings engaged in waste management, recycling and processing : Association of Packaging and Electronic Waste Processors <i>UAB Antraža</i> <i>UAB Metransa</i> <i>UAB Super Montes</i> <i>UAB Utenos antrinis popierius</i> <i>UAB Virginijus ir Ko</i>	LTL 131 800 LTL 35 000 LTL 60 700 LTL 77 000 LTL 15 900 LTL 127 300
04-06-2009 No. 2S-13	On the compliance with the requirements of Article 5 of the LC of the actions of undertakings providing advertising and media planning services and their association: Lithuanian Association of Communication Agencies <i>UAB Adell reklama</i> <i>UAB Reklamos vizija</i> <i>UAB DDB Vilnius</i> <i>UAB Euro RSCG MIA</i> <i>UAB Inorek &amp; GREY</i> <i>UAB Kredo R</i> <i>UAB Leo Burnett Vilnius</i> <i>UAB AGE reklama</i> <i>UAB Milk Agency</i> <i>UAB Not Perfect</i> <i>UAB SAN Vilnius</i> <i>UAB Videvita Vilnius</i> <i>UAB Carat</i> <i>UAB Creative Media Services</i> <i>UAB VIA media</i> <i>UAB Media Bridge Vilnius &amp; Co</i> <i>UAB Media House</i> <i>UAB MPG Lietuva</i> <i>UAB Mediapool</i> <i>UAB Omnicom Media Group</i> <i>UAB Star Communications Worldwide</i>	LTL 2 500 LTL 120 300 LTL 22 500 LTL 190 400 LTL 46 100 LTL 46 800 LTL 25 400 LTL 7 500 LTL 54 900 LTL 60 600 LTL 134 500 LTL 29 200 LTL 60 300 LTL 176 800 LTL 307 100 LTL 276 300 LTL 88 900 LTL 481 000 LTL 150 500 LTL 188 500 LTL 164 300 LTL 26 700

	<i>UAB Aukštaitijos reklama</i> <i>UAB Tarela</i> <i>UAB VRS grupė</i> <i>UAB Baltic FCB</i>	LTL 11 100 LTL 76 600 LTL 417 200 LTL 226 100
11-06-2009 No. 2S-14	On the compliance with the requirements of Article 5 of the LC of the actions of undertakings providing event organization services and their association:  <i>UAB Alchemic</i> <i>UAB Anoniminių darboholikų klubas</i> <i>UAB Concept Events &amp; Media</i> <i>PE Pirmoji kava</i> <i>UAB Saldo grupė</i>	LTL 9 300 LTL 35 200 LTL 45 300 LTL 39 000 LTL 22 200
<b>Refusals to initiate investigations (3)</b>		
<b>Cases closed (1)</b>		
<b>Concerning abuse of a dominant position (13)</b>		
<b>Established infringements (1):</b>		
05-11-2009 No. 2S-24	On the compliance with the requirements of Article 9 of the LC of the actions of the State Enterprise <i>Vilnius International Airport</i>	
<b>Refusals to initiate investigations (10)</b>		
<b>Cases terminated (2)</b>		
<b>Concerning concentration control (46)</b>		
<b>Authorisations to implement concentration (43):</b>		
22-01-2009 No. 1S-11	<i>Schibsted Baltics AS</i> to implement concentration by acquiring up to 100% of shares of <i>UAB 15 minučių</i>	
29-01-2009 No. 1S-14	<i>AB City Service</i> to implement concentration by acquiring 100% of shares of <i>UAB Fervėja</i>	
12-02-2009 No. 1S-20	<i>AB KLAIPĖDOS ENERGIJA</i> and <i>UAB FORTUM HEAT LIETUVA</i> to implement concentration by establishing a joint company <i>UAB Fortum Klaipėda</i> and acquiring by each, respectively, of 49 and 51 percent of shares.	
12-02-2009 No. 1S-21	<i>MØLLER BALTIKUM AS</i> to implement concentration by acquiring 35% of shares of <i>UAB Baltic Auto</i> .	
12-02-2009 No. 1S-22	<i>UAB HELIOS GAZ</i> to implement concentration by acquiring 67% of shares of <i>UAB INTERGAS</i>	
12-02-2009 No. 1S-23	<i>AS SKINEST RAIL</i> to implement concentration by acquiring 65% of shares of <i>UAB Skinest Baltija</i>	
12-03-2009 No. 1S-38	<i>UAB Palink</i> to implement concentration by renting premises of commercial purpose located at Laisvės Av. 31, Vilnius and J. Basanavičiaus St. 23, Palanga	
26-03-2009 No. 1S-47	<i>Schibsted Classified Media AS</i> to implement concentration by acquiring 100% of shares of <i>UAB Plius</i>	
02-04-2009 No. 1S-49	<i>AB Panevėžio keliai</i> to implement concentration by acquiring 100% of shares of <i>AB Ukmergės keliai</i> .	
09-04-2009 No. 1S-54	<i>UAB FORTUM HEAT LIETUVA</i> to implement concentration by acquiring 90% of shares of <i>UAB Fortum Klaipėda</i> .	
09-04-2009 No. 1S-55	<i>ASICOM Holdings Limited</i> to implement concentration by acquiring 100% of shares of <i>MD Holdings Ltd.</i> and 100% of shares of <i>BRP Holdings Limited</i>	
16-04-2009 No. 1S-56	<i>UAB Towage &amp; Marine Assistance</i> and <i>Smit International Overseas B.V.</i> to implement concentration by establishing in equal shares <i>UAB Towmar Smit Baltic</i>	
16-04-2009 No. 1S-57	<i>Rautakesko Oy</i> by acquiring 25% of shares of <i>TOOMAXX Handelsgesellschaft mit beschraenkter Haftung</i> and acquiring a joint control of the company together with <i>REWE – Beteiligungs-Holding International GmbH, bauMAX AG and Coop Cooperative</i> .	
30-04-2009 No. 1S-62	<i>UAB Inovacinės technologijos</i> to implement concentration by acquiring 100% of shares of <i>UAB Jungtinė medienos kompanija</i> .	
30-04-2009 No. 1S-63	<i>AB Ventus-Nafta</i> to implement concentration by acquiring the immovable property (a business of retail trade in fuels) located at S. Kerbedžio St. 7, Panevėžys.	
14-05-2009 No. 1S-67	<i>AB Panevėžio keliai</i> to implement concentration by acquiring 100% of shares of <i>AB Panevėžio statybos trestas</i> .	

14-05-2009 No. 1S-68	<i>VR Ltd and OAO Freight One</i> to implement concentration by establishing a joint venture and acquiring the common control.	
21-05-2009 No. 1S-71	<i>Cargotec Holding Finland Oy and AB Vakarų laivų gamykla</i> to implement concentration by establishing a joint venture <i>UAB MacGREGOR BLRT LT</i> 51% shares of which will be acquired by <i>Cargotec Holding Finland Oy</i> , and 49% – by <i>AB Vakarų laivų gamykla</i> .	
28-05-2009 No. 1S-72	<i>UAB Kelex</i> to implement concentration by acquiring 100% of shares of <i>UAB Kelda</i> .	
18-06-2009 No. 1S-93	Concerning authorization to <i>Ramūnas Karbauskis</i> to implement concentration by acquiring up to 100% of shares of the <i>AC Draugas</i> .	
02-07-2009 No. 1S-103	<i>UAB SPECTATOR</i> to implement concentration by acquiring 85% of shares of <i>UAB Pasvalio agrochemija</i> .	
02-07-2009 No. 1S-104	<i>UAB MG BALTIC MEDIA</i> to implement concentration by acquiring 100% of shares of <i>UAB MEDIAFON</i> .	
09-07-2009 No. 1S-111	<i>MAXIMA LT, UAB</i> to implement concentration by leasing premises of commercial purpose located at <i>Verkių St. 29, Vilnius</i> .	
27-08-2009 No. 1S-122	<i>UAB SNORO Media Investicijos</i> to implement concentration by acquiring 34% of shares of <i>UAB Lietuvos rytas</i> .	
27-08-2009 No. 1S-123	<i>MØLLER BALTIKUM AS</i> to implement concentration by acquiring 100% of shares of <i>UAB MAGIRA</i> .	
27-08-2009 Nr. 1S-124	<i>AAS Gjensidige Baltic</i> to implement concentration by acquiring 100% of shares of <i>Lansforsakringar International Forsakringsaktiebolag</i> .	
10-09-2009 No. 1S-136	Concerning authorisation to the joint Lithuanian–American company <i>UAB Sanitex</i> to implement concentration by acquiring 100% of shares of <i>Nordnet Eesti AS</i> , and 44% of shares of <i>UAB Nordnet</i> .	
10-09-2009 No. 1S-137	Concerning authorization to <i>GP ZIP</i> to implement concentration by acquiring 26% of shares of <i>ASICOM Holdings Limited</i> , and acquiring the joint control together with <i>Wabashi Holdings Limited</i> and <i>Genopas Investments Limited</i> .	
10-09-2009 No. 1S-145	<i>TeliaSonera AB</i> to implement concentration by acquiring 100% of shares of <i>TEO LT, AB</i> .	
17-09-2009 No. 1S-146	<i>UAB Statybų gausa</i> to implement concentration by acquiring 100% of shares of <i>AB Silikatas</i> .	
07-09-2009 No. 1S-147	<i>ZAO Atomstroyexport</i> to implement concentration by acquiring 100% of shares of <i>NUKEM Technologies GmbH</i> .	
24-09-2009 No. 1S-150	<i>UAB VAKARŲ MEDIENOS GRUPĖ</i> to implement concentration by acquiring 23.46% of shares of <i>AB KLAIPĖDOS MEDIENA</i> , 100% of shares of <i>UAB Lamiga</i> and 100% of shares of <i>UAB VMG ekspedicija</i> .	
24-09-2009 No. 1S-151	<i>UAB Alma Littera</i> to implement concentration by acquiring 100% of shares of bookstore <i>UAB Baltos lankos</i> .	
08-10-2009 No. 1S-159	<i>AB City Service</i> to implement concentration by acquiring 37.2% of shares of <i>UAB Būsto administravimo agentūra</i> .	
15-10-2009 No. 1S-161	<i>UAB Eika</i> to implement concentration by acquiring 100% of shares of <i>UAB Santariškių namai</i> .	
15-10-2009 No. 1S-162	<i>UAB Vagos prekyba</i> to implement concentration by acquiring the retail trading in book business of <i>UAB MŪSŲ KNYGA</i> .	
22-10-2009 No. 1S-164	<i>UAB Kotryna</i> to implement concentration by acquiring 100% of shares of <i>UAB Voira</i> .	
12-11-2009 No. 1S-175	<i>AB Panevėžio keliai</i> to implement concentration by acquiring 100% of shares of <i>UAB Aukštaitijos traktas</i> .	
26-11-2009 No. 1S-180	<i>Schibsted Baltic AS</i> to implement concentration by acquiring 100% of shares of <i>UAB Žurnalų leidybos grupė</i> .	
10-12-2009 No. 1S-188	Concerning authorisation to implement concentration by <i>UAB Vilsarmos investicija</i> by acquiring 67.06% shares of <i>UAB Čili Holdings</i> , increasing the authorised capital of the latter, and <i>UAB Čili Holdings</i> acquiring the 100% holdings of <i>UAB Čili pica</i> , <i>UAB Čili Kaimas</i> , <i>UAB Čili Kinija</i> , <i>UAB Maisto namai</i> .	
24-12-2009 No. 1S-197	<i>Ektornet Lithuania S.A.</i> to implement concentration by acquiring 100% of shares of <i>UAB Cosma Invest</i> .	

24-12-2009 No. 1S-198	<i>UAB Palink</i> to implement concentration by acquiring the premises of commercial purpose located at Sukilėlių Av. 84, Kaunas; Šilalės St. 83A, Tauragė; Lėvens St. 10, Panevėžys; Džiaugsmo St. 28A, Vilnius; Parko St. 14, Vilnius; Molėtų St. 13, Didžiosios Riešės village, Vilnius region; Juodojo kelio St. 35, Vilnius; Šeškinės St. 22, Vilnius; Pagiriai village, Vilnius region; Kleboniškių St. 27B/Vaistariškių St. 2, Kaunas.	
24-12-2009 No. 1S-199	<i>UAB Armilato</i> to implement concentration by acquiring 100% of shares of <i>UAB Ramunėlės vaistinė</i> .	
<b>Authorizations to perform individual concentration actions (3):</b>		
31-08-2009 No. 1S-132	<i>TeliaSonera AB</i> to perform individual actions of concentration by acquiring up to 100% of shares of <i>TEO LT, AB</i> .	
04-06-2009 No. 1S-176	Authorization to perform individual actions of concentration to <i>UAB Vilsarmos investicija</i> by acquiring 67.06% of shares of <i>UAB Čili Holdings</i> by increasing the authorised capital of the latter company, and <i>UAB Čili Holdings</i> by acquiring 100% shares of <i>UAB Čili pica, UAB Čili Kaimas, UAB Čili Kinija, UAB Maisto namai</i> .	
30-12-2009 No. 1S-203	Concerning the authorisation to Algirdas Butkus, Arvydas Salda, Gintaras Kateiva, Sigitas Baguckas, Vigintas Butkus, Vytautas Junevičius, Kastytis Jonas Vyšniauskas together with the European Bank of Reconstruction and Development to perform individual actions of concentration by acquiring up to 100% shares and votes of <i>AB Šiaulių bankas</i> .	
<b>Failure to fulfil obligations (1)</b>		
29-01-2009 No. 2S-5	Concerning the failure by <i>UAB Tez Tour</i> to fulfil the obligations imposed by the CC.	LTL 184 000
<b>Concerning actions of unfair competition (3)</b>		
<b>Refusals to initiate investigations (2)</b>		
<b>Cases terminated (1)</b>		
<b>ENFORCEMENT OF THE LAW ON ADVERTISING (LA)</b>		
<b>Concerning misleading and comparative advertising (29)</b>		
<b>Established infringements (19):</b>		
22-01-2009 No. 2S-2	Concerning the compliance of the advertising of tractors <i>New Holland</i> and <i>John Deere</i> with the requirements of the LA	
22-01-2009 No. 2S-3	Concerning the compliance with the requirements of the LA of the advertising statement "The BigBank – the shortest way to money". <i>Balti Investeeringute Grupi Pank AS</i>	LTL 30 000
29-01-2009 No. 2S-4	Concerning the compliance with the requirements of the LA of actions of <i>UAB EUROVAISTINĖ</i>	LTL 27 000
19-03-2009 No. 2S-6	Concerning the compliance with the requirements of the LA of the statements advertising special discounts for children's cloth and footwear in stores <i>Kotryna, Vaikų miestas, Čipolino</i> and <i>Mažylio pasaulis</i> on May 1–5. <i>UAB Kotryna</i>	LTL 3 000
26-03-2009 No. 2S-9	Concerning the compliance with the requirements of the LA of the statements "free of charge digital TV on additional TV sets". <i>UAB Mikrovisatos TV</i>	LTL 10 000
02-04-2009 No. 2S-10	Concerning the compliance with the requirements of the LA of hotels advertising statements <i>UAB Tez Tour</i>	LTL 40 300
23-04-2009 No. 2S-11	Concerning the compliance with the requirements of the LA of statements advertising services provided by lawyers. The Divorce centre of <i>UAB Tikroji turto kaina</i>	LTL 11 500
07-05-2009 No. 2S-12	Concerning the compliance with the requirements of the LA of statements advertising investment services <i>UAB Investment House</i>	LTL 26 400
09-07-2009 No. 2S-17	Concerning the compliance with the requirements of the LA of the statement "Buy goods for LTL 250 and we will award you with 50 golden litas". <i>UAB Kornas</i>	LTL 3 000
10-09-2009 No. 2S-18	Concerning the compliance with the requirements of the LA of the advertising statement "Buy "Rasa" beverages of any kind and win a dream motor boat".	
10-09-2009 No. 2S-19	Concerning the compliance with the requirements of the LA of the advertising statements offering discounts to medicines and other products in the pharmacies <i>Litfarmos vaistinė, UAB Saulėgrąžų vaistinė</i>	LTL 3 000

01-10-2009 No. 2S-20	Concerning the compliance with the requirements of the LA of the actions of <i>Air Baltic Corporation A/S</i> .	
15-10-2009 No. 2S-21	Concerning the compliance with the requirements of the LA of the statements advertising internet and television services <i>UAB Roventa</i>	LTL 3 000
22-10-2009 No. 2S-22	Concerning the compliance with the requirements of the LA of the statements advertising "Justice – services of lawyers, jurists and detectives". <i>UAB Teisingumas</i>	LTL 2 800
29-10-2009 No. 2S-23	Concerning the compliance with the requirements of the LA of the statements advertising prices of telephone sets upon signature of service agreements with <i>UAB Omnitel</i> .	LTL 30 000
12-11-2009 No. 2S-25	Concerning the compliance with the requirements of the LA of the statements advertising meat products indicating their designation to the children's product group.	
03-12-2009 No. 2S-26	Concerning the compliance with the requirements of the LA of the statements advertising the project <i>Karoliukai</i> . <i>UAB Oslit</i>	LTL 23 300
17-12-2009 No. 2S-28	Concerning the compliance with the requirements of the LA of the advertising of the daily <i>Šiaulių naujienos</i> . <i>UAB Šiaulių naujienos</i>	LTL 5 000
31-12-2009 No. 2S-29	Concerning the compliance with the requirements of the LA of the advertising of discounts for clothing and footwear.	
<b>Refusals to initiate investigations (6)</b>		
<b>Cases terminated (4)</b>		
<b>Total fines imposed in 2009: LTL 4 393 100</b>		

## TOTAL NATIONAL STATE AID IN LITHUANIA IN 2008\*

Sectors	Aid forms	A1	A2	B1	C1	C2	D1	Total (LTL m)	Total (MEUR)
1.1. Agriculture		93.38	222.28					315.66	91.42
1.2. Fisheries									
<b>2. Industry/services</b>		<b>511.24</b>	<b>82.12</b>					<b>593.36</b>	<b>171.85</b>
<b>2.1. Horizontal aid</b>		<b>84.91</b>	<b>74.16</b>					<b>159.07</b>	<b>46.07</b>
2.1.1. Research and development and innovation		0.25						0.25	0.07
2.1.2. Environmental protection			74.16					74.16	21.48
2.1.3. Small and medium-sized enterprises		7.00						7.00	2.03
2.1.4. Trade									
2.1.5. Energy efficiency									
2.1.6. Investment									
2.1.7. Employment programmes		20.65						20.65	5.98
2.1.8. Enhancement of professional qualification		57.01						57.01	16.51
2.1.9. Privatisation									
2.1.10. Rescue/restructuring									
<b>2.2. Sectoral aid</b>			<b>3.37</b>					<b>3.37</b>	<b>0.98</b>
2.2.1. Steel industry									
2.2.2. Ship building									
2.2.3. Transport			3.37					3.37	0.98
2.2.4. Coal industry									
2.2.5. Synthetic fibre									
2.2.6. Other sectors									
<b>2.3. Regional aid</b>		<b>426.33</b>	<b>4.59</b>					<b>430.92</b>	<b>124.80</b>
<b>TOTAL:</b>		<b>604.62</b>	<b>304.40</b>					<b>909.02</b>	<b>263.27</b>

\* Compensations for the provision of the services of general economic interest not included.

EXPLANATIONS OF SYMBOLIC MARKINGS:

*A1 – non-recoverable aid: grants, subsidies*

*A2 – tax exemptions, tax relief, write-off of late interest and penalties, other exemptions*

*B1 – different types of increase of the state-owned equity of enterprise or increase of its value*

*C1 – soft loans*

*C2 – tax deferrals*

*D1 – State guarantees*

**TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000–2008 (MEUR)**

Indicators	Years	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>Total national State aid</b>		<b>68.70</b>	<b>39.73</b>	<b>74.96</b>	<b>40.67</b>	<b>120.38</b>	<b>119.16</b>	<b>128.27</b>	<b>177.29</b>	<b>263.27</b>
Of which:										
- manufacturing and services		42.07	17.26	44.03	25.56	25.34	25.66	53.54	50.45	170.87
- agriculture and fishery		0.43	0.82	1.43	0.74	89.63	93.50	74.73	123.38	91.42
- transport		26.20	21.65	29.50	14.37	5.41	–	–	3.46	0.98

**TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000–2008**

Indicators	Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
MEUR		68.70	39.73	74.96	40.67	120.38	119.16	128.27	177.29	263.27
EUR per employee		49.14	29.39	53.31	28.28	83.81	80.85	85.57	115.56	163.09
% of GDP (at current prices)		0.57	0.29	0.51	0.25	0.66	0.58	0.54	0.63	0.82
% of national budget expenditures		2.81	1.36	2.22	1.12	2.85	2.41	2.37	2.73	2.19
% of national budget deficit		66.50	13.21	23.50	12.42	55.73	71.77	119.28	61.15	25.32
Average population (m)		3.50	3.48	3.47	3.45	3.43	3.41	3.39	3.37	3.35

**FORMS OF NATIONAL STATE AID IN LITHUANIA IN 2000–2008**

	A1	A2	B1	C1	C2	D1	Total (LTLm)	Total (MEUR)
State aid 2000	225.55	7.45	0.06	0.01	0.07	22.48	255.62	68.70
State aid 2001	87.99	24.50	0.00	0.07	27.54	0.00	140.10	39.73
State aid 2002	93.09	127.19			38.45	0.07	258.8	74.96
State aid 2003	50.03	46.22	11.62	0.34	32.13	0.00	140.34	40.67
State aid 2004	202.79	183.33	13.40	0.03	15.69	0.40	415.64	120.38
State aid 2005	205.30	205.80	0.35				411.45	119.16
State aid 2006	243.88	198.86	0.12				442.86	128.27
State aid 2007	343.85	268.05	0.27				612.17	177.29
State aid 2008	604.62	304.40					909.02	263.27

EXPLANATIONS OF SYMBOLIC MARKINGS:

*A1 – non-recoverable aid: grants, subsidies*

*A2 – tax exemptions, tax relief, write-off of late interest and penalties, other exemptions*

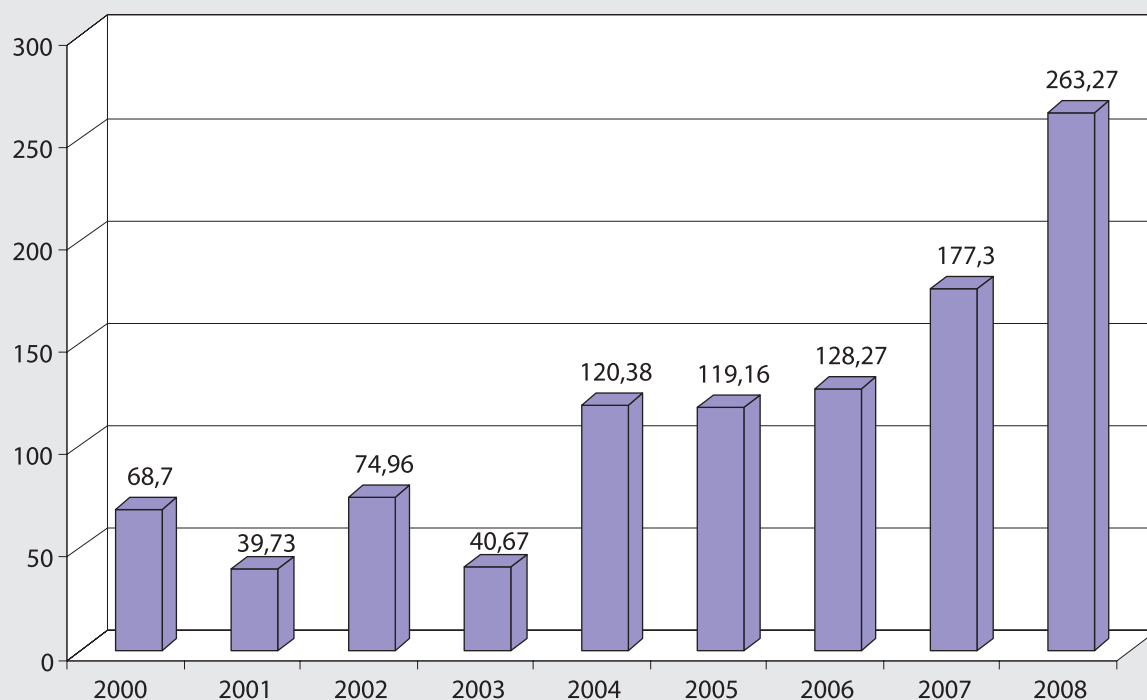
*B1 – different types of increase of the state-owned equity of enterprise or increase of its value*

*C1 – soft loans*

*C2 – tax deferrals*

*D1 – State guarantees*

## TOTAL NATIONAL STATE AID IN LITHUANIA IN 2000–2008 (MEUR)



## DECISIONS OF THE EUROPEAN COMMISSION ON STATE AID NOTIFICATIONS IN 2009

State aid notification registration by the Commission	Title	Beneficiary sector	Purpose	Duration of the aid scheme	Decision of the Commission	Decision date
29-07-2009	N 372/2007 Support for bio fuel	Agriculture	Promote the usage of bio fuel and other renewable fuels, also development of the agricultural sector	Until 31-12-2012	Positive	03-03-2009
16-12-2008	N 636/2008 Measure "Inoklaster LT"; Measure "Inoklaster LT+"	Non applicable to specific sectors	Support the development of innovation implementation – regional development	Until 31-12-2013	Positive	29-04-2009
04-02-2009	NN 9/2009 Development of airport infrastructure	Transport	State investment into modernisation and renovation of the infrastructure of three airports (Vilnius, Kaunas and Palanga).	Until 31-12-2013	Positive	30-09-2009
25-03-2009	N 183/2009 Development of Rural Area Information Technology Network RAIN	Telecommunications	Develop the broad-band network infrastructure	Until 31-12-2014	Positive	17-07-2009
06-05-2009	N 272/2009 Limited amounts of compatible aid in the form of guarantees to credit institutions for loans taken by SMEs and large enterprises during the financial and economic crisis	Non-applicable to agricultural sector	Compensate the guarantee fee for loans from credit institutions during the financial and economic crisis	Until 2010-12-31	Positive	08-06-2009

07-09-2009	N 507/2009 Modification of the scheme "Inoklaster LT" and "Inoklaster LT+"	Non applicable to specific sectors	Support the development of innovation implementation – regional development	Until 31-12-2013	Positive	12-10-2009
16-09-2009	N 523/2009 Limited amounts of compatible aid under the Temporary Framework (Amendment to the aid scheme N 272/2009)	Agriculture	Compensate the guarantee fee for loans from credit institutions during the financial and economic crisis	Until 31-12-2010	Positive	13-11-2009
26-11-2009	N 659/2009 Short term export credit insurance – Lithuania	Non applicable to specific sectors	The procedure for the calculation and payment of the fee for the guarantees granted to policyholders by <i>UAB Invega</i>	Until 31-12-2010	Positive	21-12-2009

## JUDICIAL REPRESENTATION IN 2009: OUTCOME ANALYSIS

	Pending cases in the Vilnius Regional Administrative Court	Pending cases in the Supreme Administrative Court of Lithuania	Completed cases	Total representations
<b>Infringements of Art. 4 of the LC</b>	<ol style="list-style-type: none"> <li><i>UAB Halsas v. Competition Council</i> (concerning termination of investigation).</li> <li><i>UAB JCDecaux Lietuva v. Competition Council</i></li> <li><i>Kaunas City municipality v. Competition Council.</i></li> </ol>	<ol style="list-style-type: none"> <li><i>Ministry of Agriculture v. Competition Council.</i></li> <li><i>Regional waste management centres v. Competition Council.</i></li> <li><i>UAB Vitaresta v. Competition Council</i> (re: refusal to initiate investigation).</li> <li><i>UAB Infomedia v. Competition Council</i> (re: refusal to initiate investigation)</li> <li><i>UAB Grinda v. Competition Council</i> (re: initiation of investigation).</li> <li><i>UAB Trakų paslaugos v. Competition Council</i></li> <li><i>Ministry of Health v. Competition Council.</i></li> </ol>	<ol style="list-style-type: none"> <li><i>Vilnius region municipality v. Competition Council.</i></li> <li><i>UAB Universali arena v. Competition Council.</i></li> <li><i>Association of Lithuanian businessmen trading in oil v. Competition Council</i> (re: refusal to initiate investigation).</li> <li><i>Neringa municipality v. Competition Council.</i></li> <li><i>Police Department v. Competition Council.</i></li> </ol>	<b>15</b>
<b>Infringements of Art. 5 of the LC</b>	<ol style="list-style-type: none"> <li><i>Event organisers v. Competition Council</i></li> <li><i>KOMAA and advertising agencies v. Competition Council</i></li> </ol>	<ol style="list-style-type: none"> <li><i>AB Rokiškio sūris, UAB Marijampolės pieno konservai v. Competition Council</i></li> <li><i>Waste processors v. Competition Council</i></li> </ol>	<ol style="list-style-type: none"> <li><i>Schneidersöhne Baltija and UAB Libra Vitalis v. Competition Council</i> (Article 81 EC).</li> <li><i>Support Foundation Agilė v. Competition Council</i> (re: supplement of the investigation).</li> </ol>	<b>6</b>

Continuation of table on page 32.

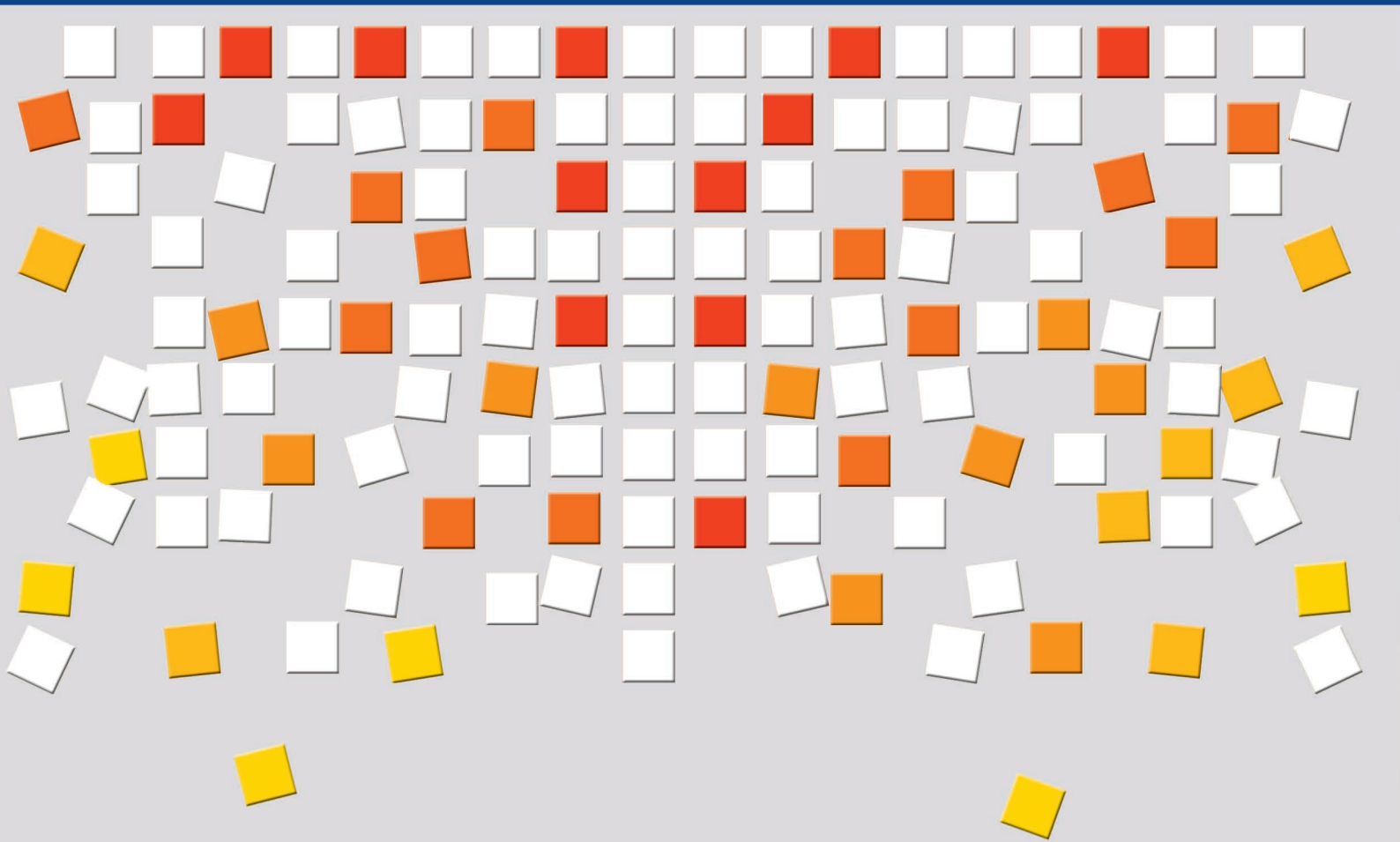
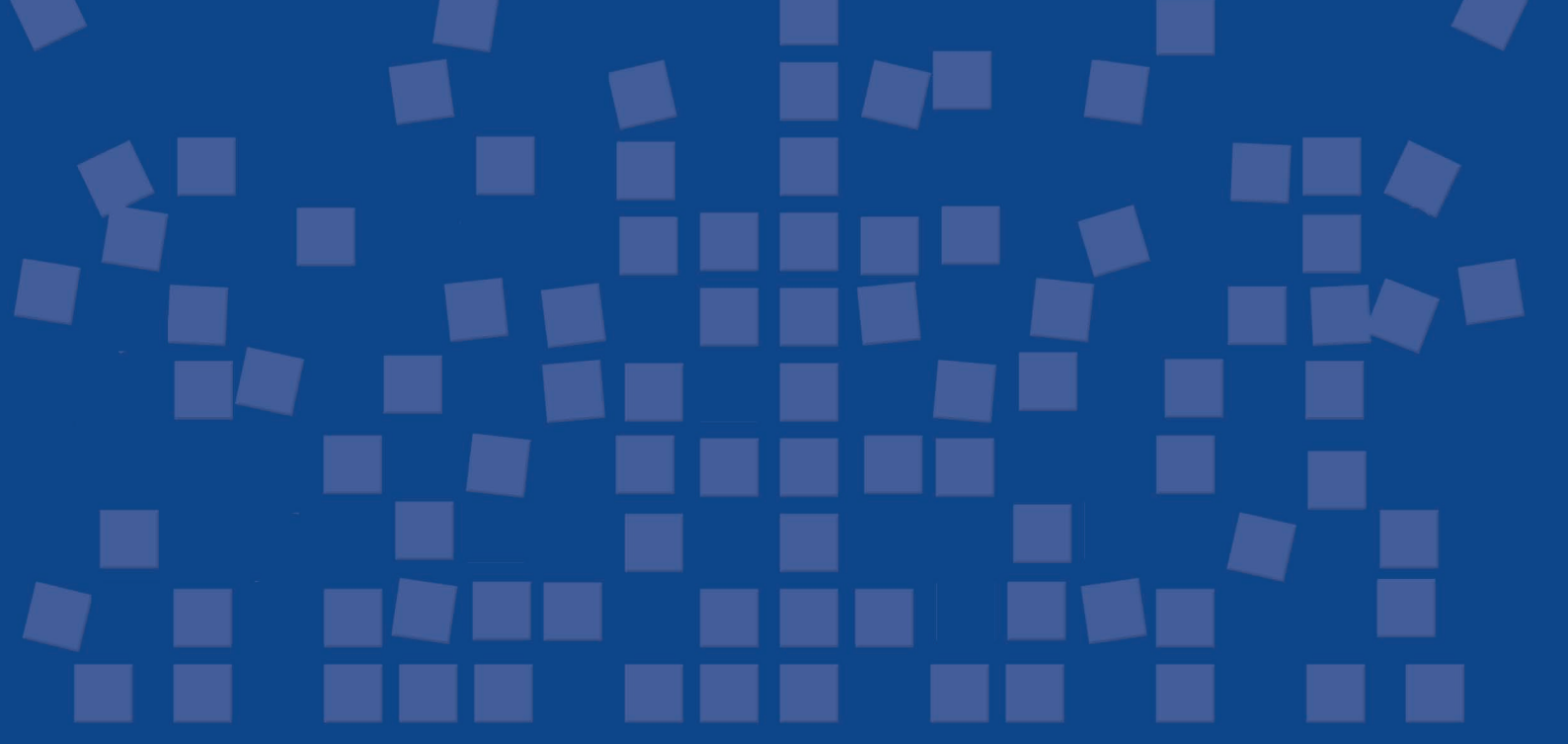
<b>Infringements of Art. 9 of the LC</b>		<ol style="list-style-type: none"> <li>1. <i>UAB Lex ano v.</i> Competition Council (re: refusal to initiate investigation).</li> <li>2. <i>AB Mažeikių nafta v.</i> Competition Council (re: renewal of the investigation).</li> <li>3. <i>Impress Teva v.</i> Competition Council (re: refusal to initiate investigation).</li> <li>4. <i>UAB Nacionalinis telekomunikacijų tinklas v.</i> Competition Council (re: refusal to initiate investigation).</li> <li>5. <i>SE Vilnius International Airport, UAB Naftelf v.</i> Competition Council</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>AB Lietuvos paštas v.</i> Competition Council</li> <li>2. <i>AB Lietuvos geležinkeliai v.</i> Competition Council (re: initiation of investigation).</li> <li>3. <i>AB Vilniaus energija v.</i> Competition Council</li> <li>4. <i>UAB CSC Telecom, UAB Cubio, UAB Interneto pasaulis, UAB Nacionalinis telekomunikacijų tinklas and UAB Norby Telecom v.</i> Competition Council (re: refusal to initiate investigation).</li> </ol>	<b>9</b>
<b>Infringements of Art.5 and 6 of the LA</b>	<ol style="list-style-type: none"> <li>1. <i>UAB Saulėgrąžų vaistinė v.</i> Competition Council</li> <li>2. <i>Air Baltic v.</i> Competition Council</li> <li>3. <i>AB Lietuvos dujos v.</i> Competition Council</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>BIGBANK AS v.</i> Competition Council.</li> <li>2. <i>UAB Mikrovisatos TV v.</i> Competition Council.</li> <li>3. <i>UAB Žemės vystymo fondas, UAB Žemės vystymo fondas 18 v.</i> Competition Council.</li> <li>4. <i>UAB Tez tour v.</i> Competition Council (re: failure to comply with the obligations)</li> <li>5. <i>UAB Tez Tour v.</i> Competition Council (hotel <i>Kadikale Resort</i>).</li> <li>6. <i>UAB Investment house v.</i> Competition Council.</li> <li>7. <i>UAB Vilniaus energija v.</i> Competition Council (re: initiation of the investigation).</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>UAB Aldasa v.</i> Competition Council (re: initiation of the investigation).</li> <li>2. <i>Association of the Lithuanian gambling operators v.</i> Competition Council (re: refusal to initiate investigation).</li> <li>3. <i>UAB Tez Tour v.</i> Competition Council (hotel <i>Sultan Beach</i>).</li> <li>4. <i>UAB Vilpra v.</i> Competition Council (re: refusal to initiate investigation).</li> <li>5. <i>UAB Tez Tour v.</i> Competition Council (re: initiation of the investigation).</li> <li>6. <i>UAB Tez Tour v.</i> Competition Council (catalogue <i>Travelman</i>).</li> <li>7. <i>AB Lietuvos dujos v.</i> Competition Council (concerning the letter of the Competition Council).</li> <li>8. <i>UAB Tikroji turto kaina v.</i> Competition Council (re: initiation of the investigation).</li> </ol>	<b>18</b>
<b>Infringements of Art. 16 of the LC</b>	<ol style="list-style-type: none"> <li>1. <i>Viasat v.</i> Competition Council (re: supplementing of the investigation).</li> </ol>			<b>1</b>
<b>Concentration</b>		<ol style="list-style-type: none"> <li>1. <i>AB Klaipėdos jūrų krovinių kompanija v.</i> Competition Council</li> </ol>		<b>1</b>
<b>Other representation in courts</b>		<ol style="list-style-type: none"> <li>1. <i>AB Mažeikių nafta v.</i> the Republic of Lithuania, represented by the Competition Council (re: indemnification of damage).</li> </ol>		<b>1</b>
<b>Total:</b>	<b>9</b>	<b>23</b>	<b>19</b>	<b>51</b>

Cases in which resolutions of the CC were upheld – 15,

Cases in which resolutions of the CC were partly amended – 1 (reduced fines),

Cases in which resolutions of the CC were overruled – 3 (1 – obligation to conduct additional investigation actions, 1 – obligation to initiate the investigation, 1 – obligation to re-examine the application).





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