

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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Competition Enforcement Agencies Handbook 2019

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Competition Enforcement Agencies Handbook 2019

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

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Questions and answers

How long is the head of agency's term of office?

The Competition Council (Council) members, including its head, are appointed for a six-year term. The same person may not be appointed as a council member for more than two consecutive terms of office.

When is he or she due for reappointment?

The chairman was reappointed for a six-year term starting on 5 April 2017.

Which posts within the organisation are political appointments?

The chairman, his deputies and the council members are appointed by the President of the Republic of Lithuania upon the proposal of the Prime Minister.

A council member's term of office is fixed and does not depend on the change of either the President or the Prime Minister.

What is the agency's annual budget?

The total annual budget of the Council for 2018 was €2.5 million.

Annual budget of the council in the five past years:

Year	Annual budget
2018	€2.5 million
2017	€2.3 million
2016	€1.70 million
2015	€1.69 million
2014	€1.61 million
2013	€1.28 million

How many staff are employed by the agency?

Sixty-seven persons and five council members (including the chairman) are currently employed at the Council.

To whom does the head of the agency report?

The Competition Council is an independent authority accountable only to the Lithuanian parliament.

Do any industry-specific regulators have competition powers?

No.

Do politicians have any right to overrule or disregard the decisions of the authority?

No.

Does the law allow non-competition aims to be considered when taking decisions?

No.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this?

The decisions of the Council may be appealed to the Vilnius Regional Administrative Court, while judgments of the latter can be reviewed by the Supreme Administrative Court of Lithuania. No further appeals are possible.

Has the authority ever blocked a proposed merger?

Yes. In 2016, the Council blocked a merger in the Lithuanian markets for classified ads for real estate and vehicles. In 2015, the Council blocked a merger between malt producers. In 2018 the Council has blocked a proposed merger by two major supermarket chains after failure to comply with the remedies offered. In 2018, the Council has blocked a proposed merger by two major supermarket chains after failure to comply with the remedies offered.

One company in 2018, one company in 2014, two companies in 2013 and two companies in 2012 all withdrew their merger notifications after receiving the authority's preliminary negative assessment of their respective mergers.

Has the authority ever imposed conditions on a proposed merger?

Yes. Between 1999 and 2016, the Council cleared 26 mergers subject to conditions. The last time a merger was cleared subject to conditions was in 2017 in the retail trade sector (the latter was subsequently blocked when the condition was not met).

Has the authority ever conducted a Phase II investigation in any of its merger filings?

Yes. The Council conducted a Phase II investigation in seven merger filings in 2018, five merger filings in 2017, nine merger filings in 2016, five merger filings in 2015, eight merger filings in 2014, five mergers in 2013 and five merger filings in 2012.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence?

Yes. In 2017 the Council found that UAB Norvesta and the German company Sypra concluded a cartel agreement while participating in the radioactive scrap metal

auction conducted by Ignalina nuclear power plant, and thus were fined €27,500 and €27,100 respectively. In 1998, the Council found the Latvian company Grindex and Lithuanian company Ilsanta guilty of geographically sharing the market of intravenous fluids. There have also been instances of investigations into possible anticompetitive agreements between Lithuanian and foreign-based companies; however, these cases were closed without finding an infringement.

Some investigations into the actions of companies outside the Lithuanian jurisdiction are still ongoing.

Do you operate a leniency programme? Whom should potential applicants contact?

A leniency programme has been in place since 1999, when the current Law on Competition came into effect. It was further elaborated in the 2008 Leniency Rules laying down the procedure for its application. The Leniency Rules have been drafted following the 2006 European Commission Leniency Notice and the European Competition Network (ECN) Model Leniency Programme. The 2012 amendments of the Law on Competition widened the scope of the leniency policy to include both horizontal agreements and vertical agreements of resale price maintenance.

Applicants should contact the Anti-Competitive Agreements Investigation Group:

Jogailos g. 14, Vilnius 01116, Lithuania
Tel: +370 5 212 4225 / 6641
praneskmums@kt.gov.lt

Anonymous discussions prior to application as well as a market system are also available. All information on the application procedure, including contact details, is published on the Council's website.

Is there a criminal enforcement track? If so, who is responsible for it?

No.

Are there any plans to reform the competition law?

In 2018, amendments to the Law on Competition were proposed regarding additional powers to the Competition Council. Firstly, the Competition Council would be running a whistleblower remuneration system to persons who provide evidence enabling the Competition Council to detect anticompetitive agreements. Secondly, the draft law foresees fines and periodic penalties for some procedural breaches. Thirdly, it is proposed to align the Lithuanian commitments procedure with that of European Commission as defined

in Regulation 1/2003. Fourthly, the Competition Council would be able to interview not only persons related to suspected undertakings, but also other persons which may be aware of the facts relevant to the investigation. Fifthly, the Competition Council would be able to impose structural remedies. As a separate draft, amendments to the Law on Competition were proposed regarding the payment of fines. It is proposed that the duty to pay a fine is suspended during court proceedings if a financial guarantee covering the amount of a fine and interests is provided. If the company opts for a bank guarantee, the payment of the fine will be deferred until the judgment.

When did the last review of the law occur?

The Law on Competition was last amended in December 2017. One of the amendments, which came into force from 1 January 2018, concerns merger notification thresholds, which were increased from €14.5 million and €1.45 million to €20 million and €2 million respectively. Elsewhere, the Council gained the right to suspend merger proceedings if at least one of the merging parties or related undertakings fail to provide information required by the Council in time or fail to provide complete information.

Do you have a separate economics team? If so please give details.

Yes, a separate Economic Analysis Group was established in 2018.

Has the authority conducted a dawn raid?

Yes. Between 2010 and 2018, the authority has carried out 74 dawn raids, nine of them in 2018.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company?

Sanctions on directors may only be imposed by courts upon the proposal by the Council following the final ruling in the respective case. In 2018, Vilnius Regional Administrative Court, for the first time in the Lithuanian case law, restricted the right of three directors to occupy managerial positions in the public or private sector for four years. Due to the fact that one director failed to leave the managerial position in a company that was involved in a cartel agreement, the District Court of Vilnius later imposed an additional fine against that person.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

From 1 January 2018, the intended merger must be notified to the Competition Council and its permission must be obtained where the combined aggregate income of the economic entities concerned in the business year preceding the merger exceeds €20 million and the aggregate income of each of at least two economic entities concerned in the business year preceding the merger exceeds €2 million.

Are there any restrictions on minority investments?
No.

What discounts are available to companies that cooperate with cartel investigations?

The Leniency Rules provide for a possibility of full immunity from a fine for the first company to hand over evidence of a cartel or a vertical price-fixing arrangement to the Council before an investigation on the matter has been launched. If a company provides the Council with evidence of the alleged infringement when the investigation has been launched, a fine might be reduced from 50 to 75 per cent.

In addition, acknowledging the findings of the Council and one's liability during the investigation can be considered as a mitigating circumstance (settlement procedure). In cases where such an acknowledgment allows for a more efficient finalising of a case, a 15 per cent reduction of a fine is given for undertakings for a written acknowledgement of the facts that were established by the Council, their legal assessment and the maximum fine to be imposed. Additionally, cooperation by a company with the Competition Council outside the scope of the Leniency Notice and beyond its legal obligation to do so may also be considered as a mitigating circumstance. A total combined reduction of a fine for all mitigating circumstances listed in the Law on Competition (including voluntary prevention of the detrimental consequences of the violation, compensation for damage caused, voluntary termination of the violation, non-implementation of restrictive practices, among other) cannot exceed 50 per cent.

Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

Competition infringements are not criminalised in Lithuania, so no authority can conduct criminal investigations for cartel activity.

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