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**CENTRE FOR CO-OPERATION WITH NON-MEMBERS  
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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## **OECD Global Forum on Competition**

### **CONTRIBUTION FROM ESTONIA**

*This contribution was submitted by Estonia as a background material for the first meeting of the Global Forum on Competition to be held on 17 and 18 October 2001.*

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## I. - COMPETITION LAW AND POLICY IN ESTONIA

By Aini Proos  
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The first Estonian Competition Act was adopted and Estonian Competition Board (ECB) was established in 1993. The second Competition Act was in force from October 1998 to October 2001. Starting from October 2001 we have our third Competition Act in force. In this new Act there are provisions on prohibited agreements, abuse of dominant position, merger control and State aid and we have harmonised all these principles with the relevant competition legislation of European Communities. Secondary legislation is of course still on the half way, since it is in the changing process in the EU also. During years 1993 to 2001 we had also unfair competition provisions in the Act, but now these cases are going directly to the court and the Consumer Protection Board deals with misleading advertising cases according to the Advertising Act.

This was a period of rapid changes both in economy and in legislation and we could see that implementing of completely new law is very difficult and it takes years because of the need to train partly unstable staff of the ECB and ministries. At the same time, the process of creating and changing legislation is taking place, considering also the practice in and outside of Estonia. When we had reached some progress with this work described before, we realised that knowledge of competition legislation had not extended to the working area of the judges. After this some judges were included in EU training programmes and they have taken part in competition seminars. After the first success in this area, the court reform took place in January 2001 and competition cases went instead of the administrative court now to the city court. So we were on the starting position with this training again since the target group of the judges had changed.

At the same time it was not possible to create any special Court or Council or Board, the decisions of which could not be appealed in the ordinary Court. There is a three level court system in Estonia and it takes usually 2 or more years to have the final decision by the court and there is no obligation to use previous court decisions. In practise our judges are fortunately considering previous decisions.

The ECB is under the administration of the Ministry of Finance, which means that the Minister decides over the budget and appoints the Director General of the ECB. Currently there are over 40 officials working at the ECB and we do not have any special council. The Director General or his Deputy can a) decide over the cases by themselves directly and these decisions could be appealed to the court or b) send the administrative offence report to the court that it could decide over the sanctions according to the Competition Act.

There is a Division in the Ministry which deals with the questions which ECB wants to discuss in the Ministry or on the Government level. In the ministries there are officials who are in the board of directors of big stock companies with state shares, which do not have a problem in the fulfilling of supervisory function of the ECB since the reasonable officials working there. All suggestions and drafts made by the ECB have to go through the Ministry of Finance and when the Ministry's position will be sent on to the Government, the competition-side of the question may not reach the table for discussion. In the process of liberalisation and privatisation we could see that the ECB was not actively involved.

As we all know there are very big difference in lawyers salaries in state and private sector. The middle average salary per month and cost of private law firm services per 3 hours are at the same level in Estonia. In this situation part of the ECB budget for the purpose of the legal aid was not enough even for one court session of one big case in this year. This means that other big cases have to wait or we have to deal with these without the help of private law firms. It is well known that the countries in transition do not have enough resources to hire good lawyers, which means that in the court cases the state authority is on the weaker position than the persons who violated the law, especially big natural monopolies. As a conclusion of this situation we can say, that it is very important on what level we create a supervisory authority in order to make it independent one and there are the resources, what will determine the results of the work of an authority.

The ECB has handled the cases, where the undertakings who had violated a law, with negotiating and suggesting them to change the situation in the market and when this undertaking fulfilled the demand of the ECB, then there was not used any sanctions. In the case, when there was not possible to reach on the same understanding with the entrepreneurs, the decision of the ECB was appealed to the court. In this situation there were the first sanctions according to the Competition Act used in the end of 2000. The size of the sanction decided by court in the case of unlawful behaviour of one Bank was 40000 EEK (2200 euros); this shows the attitude of courts to the implementing of the Competition Act.

There are the provisions in the Competition Act according to which the ECB has the right to acquire all information but it has not been supported by police activity or Court order so far, but there are changes taking place concerning the Estonian legislation where sanctions are provided. There are proposed two options for determinating the size of the sanction: a) to limit it with amount of money or b) to account it from the view of losses. In case of the possibility a) - there was the same small limit to all sanctions (taxes, competition, etc.), what is not enough in competition cases. In case of the option b) - there are no institutes or scientists in Estonia, who would calculate these losses and no enough budget of the ECB to buy this kind of analysis. There are the problems of direct and indirect effect of violation of the Competition Act in the different product markets and of course there are smaller direct losses than indirect ones.

In the only court case where there was defined the losses of one party from the violation of the Competition Act by other party, there was not accounted indirect effect by the court. There was not taken into account that other party had taken over whole market and it took 2 and half years to reach the court decision. Then if we take as an example the case where the entrepreneur has not notified about merger taking place there is not direct effect to the market and it is unclear how we could find the amount of sanction in this case.

### **Some provisions of our new Competition Act**

There is a short market definition in the Competition Act (art.3):

“Product market means an area in the whole territory of Estonia or a part thereof where goods or services which are regarded as interchangeable or substitutable by the buyer by reason of price, quality, technical characteristics, conditions of sale or use, consumption or other characteristics are circulated.” So far this definition has functioned quite well and when we tried to improve it, we understood that it would be too long for one Act and there is a need to make a separate document relating to this question to explain all sides of it.

In the Competition Act there are the prohibitions of the agreements between undertakings, concerted practices and decisions by associations of undertakings, which have their object or effect the

restriction of competition (art.4). This rule has one general exemption: this article does not apply to agreements and practices of farmers or to decisions by associations of farmers, which concern the production or sale of agricultural products or the use of joint facilities, unless competition is substantially restricted by such agreements, practices or decisions and of course "the price cartel" is always prohibited.

There is a possibility to use block exemptions or to request an individual exemption for prohibited agreement. Block exemptions are described in the regulations of the Government and the undertakings can use them directly. Individual exemption is a permission which can be granted at the request of an undertaking by a decision of the Director General of the ECB or his Deputy for entry into an agreement, engagement in concerted practices or adoption of a decision, which are generally prohibited by article 4 of the Act

The undertaking in a dominant position in the meaning of the Competition Act is an undertaking which accounts for at least 40 per cent of the turnover in the product market or whose position enables the undertaking to operate in such market to an appreciable extent independently of competitors, suppliers and buyers. We have had this 40 per cent line because of the small scale of Estonian market and in most of the cases we have used it. Only in few cases we have looked at the other part of the definition because it is very difficult to define what position have enabled to operate independently and to what extent it is appreciable. We do not have the principle of joint dominance in our Act because we look at this kind of activity from the side of an agreement or concerted practice.

It is prohibited to abuse dominant position in the market including the position where the undertakings have the special or exclusive rights or control over an essential facility (art.16).

Undertakings with special or exclusive rights or in control over an essential facility shall permit access to the network, infrastructure or other essential facility by other undertakings under reasonable and non-discriminatory conditions for the purposes of supply or sale of goods and draw a clear distinction in accounting between primary and secondary activities (for example production, transportation, marketing and other activities of the undertaking) thereby ensuring the transparency of accounting (art.18). These obligations are general ones and most of them are included in special Acts (. as an example in Energy Act), but in areas where no special Act exists, we can apply the Competition Act.

Before October 2001 the undertakings were obliged to notify concentrations to the ECB before taking place. The ECB could not permit or prohibit the mergers; it just received the notices for the purpose of collecting information and other documents concerned. The undertaking had to submit the certificate issued by the ECB to the Commercial register upon receipt of the required information. Such an obtaining of information was good practise before imposing full control with an obligation of prior notification. The obligation to notify had been implemented since October 1998 and the ECB has analysed over 100 merger notices during this period. Most of the mergers have taken place in industry, especially in energetic and transport sector. Other cases have been in banking, insurance, telecommunication, trade and services sector and in some other sectors. The mergers have mostly concerned foreign undertakings acquiring decisive influence over local undertakings both directly and through subsidiaries. The foreign companies were mostly from Nordic countries but also from Netherlands and USA. In very rare cases we have been notified of mergers abroad when merging party has a subsidiary in Estonia.

During this year the main goal was and still is to enforce the new Act in order to implement full merger control as soon as possible.

Starting from 1<sup>st</sup> October 2001 the Director General of the ECB or his Deputy may prohibit a concentration if it creates or strengthens a dominant position as a result of which competition is significantly restricted in the product market (art.22). A concentration shall be subject to control if (art.21):

1. during the previous financial year the aggregate worldwide turnover of the parties to the concentration exceeded 500 million EEK and
2. the aggregate worldwide turnover of each of at least two parties to the concentration exceeded 100 million EEK and
3. the business activities of at least one of the merging undertakings or of the whole or part of the undertaking of which control is acquired are carried out in Estonia.

Concentration is deemed to arise where (art.19):

1. previously independent undertakings merge within the meaning of the Commercial Code;
2. an undertaking acquires control of the whole or part of another undertaking;
3. the undertakings jointly acquire control of the whole or part of a third undertaking;
4. a natural person already controlling at least one undertaking acquires control of the whole or part of another undertaking;
5. 5) several natural person already controlling at least one undertaking jointly acquire control of the whole or part of another undertaking.

A concentration subject to control shall be notified to the Competition Board within one week after (art.25):

1. the entry into the merger agreement;
2. the acquisition of control;
3. the acquisition of joint control;
4. the announcement of the public bid of securities.

There are the supervisory functions divided between two authorities in the Competition Act: State aid issues are the responsibility of the Ministry of Finance and competition is the responsibility of the Competition Board. Until October 2001 there was the situation where the supervision in respect of credit institutions, securities intermediates and insurance companies were carried out by state supervisory bodies in the relevant field, while the Competition Board was entitled to present viewpoints of recommendatory character. In fact there was only few activities of these bodies in the competition matters in finance sector in this period. Now the Competition Board shall supervise in all areas, this means that the financial sector is also included.

The Competition Board is the authority with powers to:

- investigate the abuses of dominant position and the agreements restricting competition on its own initiative or upon applications submitted to the Board,

- give the exemption to an agreement where the Board finds that the agreement is in accordance with the conditions laid down in the Competition Act,
- examine and analyse the situation of competition in different markets for goods and services and make recommendations to improve the situation of competition,
- prepare measures facilitating competition and to make proposals for the amendment of legal acts,
- make the decisions on competition cases or administrative offence reports for the court,
- prohibit the mergers,
- issue the mandatory precepts.

Our new Act includes some new possibilities for the ECB to investigate cases:

1. After receiving a complaint we have 30 calendar days to decide, whether to commence proceedings of the matter or to refuse to commence if the proceeding in this case is not within the competence of the Board or it is clear, that the Competition Act has not been violated.
2. To have better results in cartel investigation cases we added the leniency procedure: an administrative offence report shall not be drawn up on a person who was the first to notify on a prohibited agreement, decision or practice where such person was not the initiator of such agreement, decision or practice and has cooperated with Competition Board in the proceeding of the matter. We hope this procedure will help us a lot to get the evidences in cartel cases.
3. There are criminal sanctions included now, but there is an open question, how to share the investigative powers with the Economy Police.

In almost all cartel cases investigated there are companies not only from Estonia and the prohibited agreements, decisions or practices, if these exist, have probably not been made in Estonia. We have been in a very tight position in the investigation period because of the obligation to keep business secrets of companies. There are mainly two open questions:

- Whether the Competition Authority of one country can inspect the entrepreneurs of the same country in order to complete investigation of the case of other country's Competition Authority?
- Whether the Competition Authority of one country can inspect the entrepreneurs of other country?

#### **Competition Board activities in figures in 2000**

Restrictive agreement or concerted practice Incl. Investigations on different product markets	17
Business activity of an undertaking dominant in the market Incl. Investigations on different product markets	19
Unfair competition	6
Mergers notifications	29
Refusing to investigate	31
Total:	102

## II. - CARTEL CASES IN ESTONIA

### **Milk processors (producers) and wholesalers case (09/00)**

The Competition Board started an investigation since there was information that on 28<sup>th</sup> January 2000 the leading milk processors and wholesalers of milk products in Estonia met in Rakvere (city in North-East Estonia) with a purpose to agree in reduction of sell-off and purchasing prices of milk products.

The Competition Board carried out an investigation and found out that the information regarding the meeting between the four leading milk processors and ten wholesalers of milk products was correct. With further investigations and by explanations inquiries, it cleared out that during the meeting the issue in question was to stop price war and to reach an agreement not to lower sell-off prices any more. There is one processor that lowered the sell-off prices significantly started "the price war" and others followed. In addition to this the deduction rates (wholesalers earn from the percent in sell-off price) were discussed during this meeting with wholesalers, as they were interested about higher deduction percent while sell-off prices were decreased. There were no discussions during the meeting about lowering purchasing prices of raw milk. No agreement was concluded during the meeting.

Milk processors and wholesalers itself had the financial losses from the price war during time the sell-off prices were reduced, because no reduction in purchasing prices of raw milk was made, processors sold so cheap and wholesalers earned fewer when the sell-off prices were lower. At the present time the situation has normalised, since the sell-off prices have increased to a reasonable level. Market shares have remained quite stable.

According to Article 3 (1) of the Competition Act, a market is an area in the whole territory of Estonia or a part thereof in which goods which are regarded as interchangeable by the buyer by reason of price, quality, technical characteristics, conditions of sale or use, consumption or other characteristics are circulated. The market in this case was defined as milk product sales market in the territory of Estonia.

According to Article 4 (1) of the Competition Act, contracts, other transactions and agreements or concerted practices, which have as their object or effect the restriction, prevention, limitation or distortion of free enterprise and competition are prohibited. According to Article 4 (1) (5) of the Competition Act, such agreements or activities are deemed to restrict competition if they directly or indirectly disseminate information, which distorts competition.

Information exchange about sell-off prices of milk products influenced the behaviour of the processors, as competitors being aware of the others market behaviour, acted similarly. With giving out information about the future behaviour, it became possible for processors to react quickly to the changes in the market, it means to act similarly with competitors. Since during the meeting processors and wholesalers discussed the deduction rates this kind of information exchange between wholesalers as competitors makes possible to predict each others deduction rates and it influences market situation. Also, the concerted practices of the entrepreneurs on different economic level might lead to establishment of similar prices.

The exchange of the information, which distorts competition freedom, is the prohibited activity by Article 4 (1) (5) of the Competition Act.

Article 5 (1) (1) of the Competition Act states that agreements or concerted practices are deemed not to restrict, prevent, limit or distort competition such that free enterprise may be distorted if the combined significance of the parties entering into an agreement or developing concerted practices does not exceed 5 per cent of the turnover of the market influenced by such agreement or concerted practices. In this case the combined significance of the parties (turnover) is 50%, that is the reason why Article 5 (1) (1) of the Competition Act does not apply.

The Competition Board terminated the case by establishing an infringement of the Competition Act since during the Rakvere meeting in 28<sup>th</sup> January 2000 the information, which may distort competition was exchanged. The Competition Board made a mandatory prescription to the entrepreneurs who participated in the meeting and while being active at the same market not to organise or participate at the meetings which have the purpose or consequence to get information from processors or wholesalers about milk product prices or planned changes in prices.

### **Case of the taxi services in Pärnu (13/99)**

Based on the information published in newspapers concerning concerted practice of taxi companies on the territory of Pärnu city in determining prices, the Competition Board initiated the proceeding of the matter of Pärnu taxi services with a purpose to investigate violation of Article 4 (1) (1) of the Competition Act.

Legal entities providing taxi services and sole proprietors rendering taxi services in their own name were active on the Pärnu taxi services market as competitors. Subject of the proceedings was considered to be the legal entities rendering taxi services on whose behalf and under whose trademark the taxi services were provided. Such entities included taxi companies of Pärnu such as OÜ Pärnu Takso, OÜ E-Takso, OÜ Bristol Takso, MTÜ Ranna Takso and OÜ Pärnu Tulika Takso. The share of the above companies accounted for ca 70% of the Pärnu taxi service market.

In the course of proceedings unannounced inspections were conducted, representatives of taxi companies, taxi drivers and dispatch clerks were interviewed, and in addition several written proof and materials were investigated. In the course of investigation no written agreements verifying the co-operation between companies were discovered. The analysis indicated that even though the mechanism of imposing tariffs for the services was varying and immediate providers of taxi services participated in the price formation, the prices valid on the product market were enforced by legal entities organising taxi services.

During the proceedings the formation of general tariff and discounted price of taxi services during May 1998 to May 1999 was analysed as well as the compliance of the activity of undertakings competing on the product market with the Competition Act. While in the beginning of the period under observation the general tariff of taxi services and the discounted tariff provided by loyal customer cards was relatively varied for different companies then in the beginning of April 1999 the undertakings enforced a common general tariff of 6 EEK/km. At the same time with changing of the general tariff OÜ Pärnu Takso implemented a discounted price of 5 EEK/km for producers of its customer cards. OÜ Pärnu Tulika Takso did not change the general tariff and continued to provide the services with a price of 5 EEK/km and did not apply the discounted price.

During the period from 1 May 1999 to 6 May 1999 Bristol Takso introduced for the first time and E-Takso and Ranna Takso reintroduced the loyal customer card providing price discounts, established similar discounted price of 5 EEK/km for loyal customer card owners and agreed on cross-use of such cards. The share of the above-mentioned legal entities accounted for a total of 45% of Pärnu taxi services market. E-Takso tried to further weaken the price competition of taxi services by repeatedly advertising in

a local newspaper that it applies a discounted price of 5 EEK/km to owners of loyal customer cards of all taxi companies in Pärnu.

The investigation verified the concerted practice of three companies – Bristol Takso, E-Takso and Ranna Takso – in implementation of a price giving uniform discount as a counterbalance to the activity of OÜ Pärnu Takso that had enforced a discounted price of 5 EEK/km to the owners of its loyal customer cards about a month before than its competitors.

In the article "Three taxi companies attacking Pärnu Takso" by Allan Tankler, published in "Pärnu Postimees" newspaper on 14 May 1999 the board member and Managing Director of OÜ E-Takso Endel Hiis commented the co-operation between OÜ E-Takso, OÜ Bristol Takso and MTÜ Ranna Takso and the introduction of cross-use of loyal customer cards by saying: "We, together with Bristol Takso and Ranna Takso came to the conclusion that the people of Pärnu deserve a discounted price".

A claim as if the cross-use of loyal customer cards allowing discounted price between three competing legal entities providing taxi services was favourable for the consumer of the service is false. In fact and especially in the long run it is favourable for the consumer if the providers of services compete among themselves with the discounted price for the service. Otherwise it is realistic that undertakings commonly enjoying dominant position in the market (over 40% of the product market) will, by using their relative independence from customers and competitors, soon raise both the discounted tariff and regular tariff to economically unfoundedly high level. The rest of the undertakings operating on the same product market that have smaller market share will follow their example in order to receive higher profits. Thus, such concerted practice may lead not only to weakening of price competition but even to ending of it and to implementation of unjustly high prices in relevant product market.

Having regard to the aforesaid and taking into consideration the fact that OÜ Bristol Takso, OÜ E-Takso and MTÜ Ranna Takso had set similar discounted prices, the introduction from May 1999 of cross-use of their loyal customer cards was a practice wherewith competing companies established similar discounted tariffs to be adopted for customers-owners of loyal customer cards of different companies. Such an activity can be qualified as anticompetitive concerted practice deemed to restrict, harm and limit price competition and is prohibited pursuant to Article 4 (1) (1) of the Competition Act. The Competition Board closed the proceeding of the matter by establishing a violation of law and made a mandatory precept to joint-stock companies Bristol Takso, E-Takso and the non-profit association Ranna Takso to end the cross-use of their loyal customer cards granting similar discounted tariffs.

On February 2000 the ECB compiled official report of the violation of law and submitted them to the court. By the decision of the Administrative Court from April 2000 the proceedings were closed due to the absence of essential elements of administrative offence. By the decision of the District Court from November 2000 the fines was imposed to 3 companies 10 000 EEK to each of them. By making of this decision the Court considered that the cross-use of client cards of competitors granting similar preferential tariffs lasted a short period and ended after the ECB made mandatory precept. The State Court did not change the decision in December 2000.

### **Case of the activity of the Association of Estonian International Road Carriers (03/00)**

The Association of Estonian International Road Carriers (AEIRC) is the union, representing majority the respective industry. Besides representing the general interests of its members the Association performs several services, which are vital for its members and which cannot be or can be with significant difficulties obtained elsewhere. For example, the Association provides to the entrepreneurs with TIR carnets, CEMT-licences, performs certain VAT operations etc. For the above-mentioned reasons an entrepreneur who is not a member of the Association is in a considerably less favourable position.

At the moment of the infringement there were 1300 entrepreneurs with 3300 vehicles active in the Estonian international road transport sector. 450 of them with 2500 vehicles were members of the association. Therefore, the Association engaged 35% of the respective entrepreneurs having 76% of the vehicles. Insofar as the Association was not in the position to operate outside Estonia the geographical market was delineated as the whole of the country.

There was a special Commission established in October 1999 in order to analyse the cost of the transport service and to compile a uniform pricing policy. The Commission found, that considering all incurring costs an average cost price of the transport service to Western Europe could not be less than 10.40 EEK/km (Euro 0.67). Cheaper service can only be the result of the overloading of the vehicles, making the drivers work too long, tax evasion, ignoring safety requirements etc. Finally, the Commission proposed to exclude from the association the entrepreneurs who proved to violate the law in the described manner. The board of the AEIRC published the proposals by the Commission in the newspaper of the association and in the main business daily newspaper. Besides that, the board didn't take any further steps in order to implement the proposals.

The representatives of the AEIRC argued that the 10.40 EEK/km price level was meant to be a voluntary guideline in order to raise the consciousness of both the transporters and their clients. Moreover, the Association was planning to establish a system of guidelines, which was going to be based on the Finnish experience of price indexation. This price was presented as a calculation where all the possible costs were clearly indicated. The representatives of the AEIRC stated, that the calculation was meant to educate the smaller enterprises carrying out similar cost analysis. The representatives of the association were on the opinion that minimum price levels were vital in order to protect honest entrepreneurs from the ones who did not follow all the legal requirements. The minimum price level was supposed to indicate whether an entrepreneur is an honest one.

The proposals made by the Commission clearly indicated that the entrepreneurs performing the service at a lower price than 10.40 EEK/km were taken as not following all the legal requirements. Those entrepreneurs faced a potential threat of getting excluded from the Association. As far as it was profitable to be a member of the Association all the entrepreneurs had an incentive to have their price level at least 10.40 EEK/km. In that way the activities of the Association did fix pricing conditions and therefore restrict Competition.

There was announced by the AEIRC in the newspapers during the investigation process of the case, that there are no obligations to use any fixed price level and all entrepreneurs are free to choose the prices by themselves. There was made the decision of the establishment of an offence and there were no financial sanctions imposed.

### **Hawaii Express case (22/99)**

Hawaii Express (HE) is leading distributing company of sports and leisure goods in Estonia. This case concerned only the bicycles distributed by HE. The company is the distributor of several well-known international brands. HE is also active in the retail level and uses the help of the dealers generally in the locations where there are no retail outlets of HE itself. At the moment of the investigation there were 16 dealers with whom HE had signed a contract.

The attention of the Competition Board was driven by an advertisement of the bicycles distributed by HE published in the main newspapers in 1999. The advertisement listed the bicycles distributed by HE together with retail prices. The advertisement also included the list of retail outlets from

which the products could have been obtained. The list included besides HE-s retail outlets also the ones of the dealers. It appeared from the advertisement that in all the retail outlets irrespective of their ownership the prices were exactly the same.

The Competition Board launched an investigation and HE was asked to present all the contracts it had signed with the dealers concerning the distribution on bicycles. From these contracts a retail price maintenance scheme appeared. All the contracts included provisions that fixed the retail price levels of the independent dealers. There were two forms of fixing retail prices. First, in the majority of the contracts the dealer was obliged to set prices equal or up to 5% higher than the ones effective in the HE's retail outlets. In that way a certain price corridor was created for the retailers. It must be mentioned, that with some rare exceptions all the retailers set their prices exactly to the same level as HE. Second, in one contract exact margins were specified for the retailer. As far as these margins equalled the ones used by the HE the prices of that retailer once again matched the ones of HE.

All the contracts between HE and the dealers included certain provisions of exclusivity. Majority of the contracts were exclusive distribution contracts with some territorial protections given to the dealer. The exclusive territories usually consisted of one county of Estonia (there are 15 counties in Estonia) or one city, but also of a suburb of Tallinn. A number of contracts were exclusive purchasing agreements in which the dealer was obliged to purchase the bicycles and some supplementary products only from HE. Four contracts limited the dealer's right to sell the respective products to a certain territory without offering the latter any exclusive protection towards the territory.

The relevant product market was defined as the one of bicycles and the relevant geographical market was defined as the whole of Estonia.

According to Article 5 of the Estonian Competition Act agreements that cover less than 5% of the market are not considered to restrict competition. The market share of HE was considerably above that level. At the same time it was clearly less than it is necessary for having a market dominating position.

All the investigated contracts included provisions that restricted the dealer's freedom of pricing, which were in a contradiction with the Competition Act.

The Estonian system of block exemptions matches the "old" system of EU. There are block exemptions for exclusive distribution and exclusive purchasing agreements. Most of the contracts did cope with the requirements of these block exemptions as far as exclusivity was concerned. Both block exemptions do not exempt agreements including resale price maintenance so that generally the contracts did not match the requirements of the block exemptions.

The four contracts that limited the territory in which the dealer had the right to operate without giving the latter any exclusive territorial protection were not the subject of any of the block exemptions. No contracts like these would have been exempted by a block exemption even if there were no provisions leading to resale price maintenance. Their respective provisions were in contradiction with the Competition Act, which forbids market sharing, including the sources of supply.

All the analysis in this case was based on the contracts signed between HE and the dealers. As far as the restricting activities were described clearly enough in these contracts, no further investigation was considered necessary. HE was given a time period to change the restricting provision found in the agreements and HE had done so. At the end we made the decision of the establishment of an offence and we did not impose any fine in February 2001.

### III.- ANSWERS TO THE QUESTIONNAIRE ON ANTI-CARTEL ACTIONS

#### A. General information on cases

##### Milk processors (producers) and wholesalers (09/00)

*1(a) Each respondent's name, the covered product or service and geographic area, and the approximate beginning and ending dates of the cartel.*

28<sup>th</sup> January 2000 the four leading milk processors and ten wholesalers of milk products in Estonia met in Rakvere (city in North-East Estonia) with a purpose to agree in reduction of sell-off and purchasing prices of milk products.

The market in this case was defined as milk product sales market in the territory of Estonia.

*(b) Whether the evidence of collusion was direct (written or testimonial) or indirect; the nature of any indirect evidence.*

The Competition Board started an investigation by its own initiative based on an article that was published in an economic newspaper "Äripäev". It appears from the article that on 28<sup>th</sup> January 2000 the leading milk processors and wholesalers of milk products in Estonia met in Rakvere with a purpose to agree in reduction of sell-off and purchasing prices of milk products.

By explanations inquiries, it cleared out that during the meeting the issue in question was to stop price war and to reach an agreement not to lower sell-off prices any more. In addition to this the deduction rates (wholesalers earn from the percent in sell-off price) were discussed during this meeting with wholesalers, as they were interested about higher deduction percent while sell-off prices were decreased. No agreement was concluded during the meeting.

*(c) Amount of commerce*

According to the Statistical Office of Estonia in 1999 the value of production of milk products was 2 143 million Estonian crores. The combined significance of the parties participating in the meeting of 28<sup>th</sup> January 2000 was 1 094 million Estonian crores.

*(d) Sanctions:*

The Competition Board terminated the case by establishing an infringement of the Competition Act since during the Rakvere meeting in 28<sup>th</sup> January 2000 the information, which may distort competition was exchanged. The Competition Board made a mandatory prescription to the entrepreneurs who participated in the meeting and while being active at the same market not to organise or participate at the meetings which have the purpose or consequence to get information from processors or wholesalers about milk product prices or planned changes in prices.

**2(a)** The manager of one of the processors made a statement that meetings between the milk processors are regular. The purposes of these meetings are to get information about each other's

actions in the milk sector. He also said that in 1999 milk processors agreed that sell-off prices of milk products should be the same all over the country. The participants of 28.01.2000 meeting tried to reach an agreement not to lower sell-off prices of milk products any more and therefore maintain their market share.

The sales and marketing manager of another processor told that the purpose of the milk processors and milk wholesalers meeting was to disseminate information. During the meeting he made a statement that his company is interested to increase the sell-off prices at the milk, but has a necessity to reduce the sell-off prices of the milk as other processors have done so. The company was ready to increase the sell-off prices of the milk. He also said that the other processors present at the meeting were not interested about increasing the sell-off price of the milk.

### **Case of the taxi services in Pärnu**

***1(a) Each respondent's name, the covered product or service and geographic area, and the approximate beginning and ending dates of the cartel.***

Three taxi companies OÜ E-Takso, OÜ Bristol Takso and MTÜ Ranna Takso issued loyalty cards and each agreed to accept the cards of the other two. The price discount for card holders was the same for all three companies.

The beginning date – Beginning of May 1999

The ending date- December 1999

Competition Board defined it for the purpose of this case covers the territory of Pärnu city and the goods traded in that market were taxi services.

***(b) Whether the evidence of collusion was direct (written or testimonial) or indirect; the nature of any indirect evidence.***

In the course of proceedings unannounced inspections were conducted, representatives of taxi companies, taxi drivers and dispatch clerks were interviewed, and in addition several written proof and materials were investigated. In the course of investigation no written agreements verifying the co-operation between companies were discovered.

But there was an article "Three taxi companies attacking Pärnu Takso" published in "Pärnu Postimees" newspaper on 14 May 1999 the board member and Managing Director of OÜ E-Takso commented the co-operation between OÜ E-Takso, OÜ Bristol Takso and MTÜ Ranna Takso and the introduction of cross-use of loyal customer cards by saying: "We, together with Bristol Takso and Ranna Takso came to the conclusion that the people of Pärnu deserve a discounted price".

***(c) Amount of commerce***

The share of the three taxi companies accounted for a total of 45% of Pärnu taxi services market.

**(d) Sanctions**

Taking into consideration the fact that OÜ Bristol Takso, OÜ E-Takso and MTÜ Ranna Takso had set similar discounted prices, the introduction from May 1999 of cross-use of their loyal customer cards was a practice wherewith competing companies established similar discounted tariffs to be adopted for customers-owners of loyal customer cards of different companies. Such an activity can be qualified as anticompetitive concerted practice deemed to restrict, harm and limit price competition and is prohibited pursuant to Article 4 (1) (1) of the Competition Act. The Competition Board closed the proceeding of the matter by establishing a violation of law and made a mandatory precept to joint-stock companies Bristol Takso, E-Takso and the non-profit association Ranna Takso to end the cross-use of their loyal customer cards granting similar discounted tariffs.

On February 2000 the Estonian Competition Board compiled official report of the violation of law and submitted them to the court. By the decision of the Administrative Court from April 2000 the proceedings were closed due to the absence of essential elements of administrative offence. By the decision of the District Court from November 2000 the fines was imposed to 3 companies 10 000 EEK to each of them. By making of this decision the Court considered that the cross-use of client cards of competitors granting similar preferential tariffs lasted a short period and ended after the ECB made mandatory precept. The State Court did not change the decision in December 2000.

2. (a) The three companies that issued the new cards claimed that their purpose was only to offer more competition to their larger rival.
2. (b) Before the concerted practice within three taxi companies, they did not have loyal customer cards but only had a general tariffs. The three taxi companies introduced the loyal customers card after their biggest competitor implemented a discounted price in the beginning of April.
2. (c) The three taxi companies claimed that they have not concluded any agreements and the discounted price 5 EEK/km was incidental, they also argued that they were not aware that the cross use of loyalty cards could be a violation of Competition Act.

**Association of Estonian International Road Carriers (AEIRC) case**

***1 (a) Each respondent's name, the covered product or service and geographic area, and the approximate beginning and ending dates of the cartel.***

The Association of Estonian International Road Carriers (AEIRC) is the union, representing majority the respective industry. Besides representing the general interests of its members the Association performs several services, which are vital for its members and which cannot be or can be with significant difficulties obtained elsewhere. For example, the Association provides to the entrepreneurs with TIR carnets, CEMT-licenses, performs certain VAT operations etc. The relevant geographical market was defined as the whole of Estonia.

The beginning date:

- In October 1999 a special Commission established in order to analyze the cost of the transport service and to compile a uniform pricing policy. The Commission found, that

considering all incurring costs an average cost price of the transport service to Western Europe could not be less than 10.40 EEK/km (Euro 0.67).

The ending date:

- In April 2000, during the investigation process of the case the AEIRC announced in the newspapers that there are no obligations to use any fixed price level and all entrepreneurs are free to choose the prices by themselves.

**(b) *Whether the evidence of collusion was direct (written or testimonial) or indirect; the nature of any indirect evidence.***

The board of the AEIRC published the proposals by the Commission in the newspaper of the association and in the main business daily newspaper. Besides that, the board didn't take any further steps in order to implement the proposals.

**(c) *Amount of commerce. Price fixing lasted during the short period and the monetary value of service affected by cartel wasn't remarkable.***

**(d) *Sanctions. There was announced by the AEIRC in the newspapers during the investigation process of the case, that there is no obligation to use any fixed price level and all entrepreneurs are free to choose the prices by themselves. There was made the decision of the establishment of an offence and there were no financial sanctions imposed.***

**2.**

**2 (a)** The Commission found, that considering all incurring costs an average cost price of the transport service to Western Europe could not be less than 10.40 EEK/km (Euro 0.67). Cheaper service can only be the result of the overloading of the vehicles, making the drivers work too long, tax evasion, ignoring safety requirements etc The representatives of the AEIRC argued that the 10.40 EEK/km price level was meant to be a voluntary guideline in order to raise the consciousness of both the transporters and their clients.

**2. (b)** The Commission was established to analyze the cost of the transport service and to compile a uniform pricing policy. The Commission made only the proposals. The AEIRC published the proposals, but after that the board didn't take any further steps in order to implement the proposals.

**2. (c)** The Association was planning to establish a system of guidelines, which was going to be based on the Finnish experience of price indexation. This price was presented as a calculation where all the possible costs were clearly indicated. The representatives of the AEIRC stated, that the calculation was meant to educate the smaller enterprises carrying out similar cost analysis. The representatives of the association were on the opinion that minimum price levels were vital in order to protect honest entrepreneurs from the ones who did not follow all the legal requirements. The minimum price level was supposed to indicate whether an entrepreneur is an honest one.

**2 (d)** There wasn't any other dramatic demonstration of cartels' harm.

*Hawaii Express case*

***1(a) Each respondent's name, the covered product or service and geographic area, and the approximate beginning and ending dates of the cartel.***

Hawaii Express (HE) is leading distributing company of sports and leisure goods in Estonia. This case concerned only the bicycles distributed by HE. The company is the distributor of several well-known international brands. HE is also active in the retail level and uses the help of the dealers generally in the locations where there are no retail outlets of HE itself. At the moment of the investigation there were 16 dealers with whom HE had signed a contract.

The relevant product market was defined as the one of bicycles and the relevant geographical market was defined as the whole of Estonia.

***(b) Whether the evidence of collusion was direct (written or testimonial) or indirect; the nature of any indirect evidence.***

The attention of the Competition Board was driven by an advertisement of the bicycles distributed by HE published in the main newspapers in 1999. The advertisement listed the bicycles distributed by HE together with retail prices. The advertisement also included the list of retail outlets from which the products could have been obtained. The list included besides HE-s retail outlets also the ones of the dealers. It appeared from the advertisement that in all the retail outlets irrespective of their ownership the prices were exactly the same.

All the contracts between HE and the dealers included certain provisions of exclusivity. Majority of the contracts were exclusive distribution contracts with some territorial protections given to the dealer. The exclusive territories usually consisted of one county of Estonia (there are 15 counties in Estonia).

***(c) Amount of commerce***

According to Article 5 of the Estonian Competition Act agreements that cover less than 5% of the market are not considered to restrict competition. The market share of HE was considerably above that level. At the same time it was clearly less than it is necessary for having a market dominating position.

All the analysis in this case was based on the contracts signed between HE and the dealers. As far as the restricting activities were described clearly enough in these contracts, no further investigation was considered necessary.

***(d) Sanctions All the investigated contracts which included provisions that restricted the dealer's freedom of pricing, were in a contradiction with the Competition Act.***

HE was given a time period to change the restricting provision found in the agreements and HE had done so. At the end Competition Board made the decision of the establishment of an offence and we did not impose any fine in February 2001.

2.

2. (a) HE published an advertisement in the main newspapers in 1999. The advertisement listed the bicycles distributed by HE together with retail prices. The advertisement also included the list of retail outlets from which the products could have been obtained. The list included besides HE-s retail outlets also the ones of the dealers.
- 2 (b) When cartel case ceased the prices of bicycles distributed by HE the prices hadn't changed remarkably. The market is open, there are many competitors in the bicycles market and the price competition exist continually.

## **B. General Information on Sanctions**

According to the Competition Act forced on 1 October 1998, repealed on 1 October 2001 the sanctions were as follows.

Proceedings of a matter will be terminated by a decision of the Director General of the Competition Board or his or her deputy on non-establishment of an offence or establishment of an offence.

A decision establishment of an offence may contain a mandatory precept for the undertaking or a proposal to a government agency or local government agency. If an undertaking fails, without good reason, to submit information or materials by the deadline demanded in a written demand of the Competition Board, prevents the inspection of the location of its activities, or, without good reason, refuses inspection prescribed by a directive of the Director General of the Competition Board or his or her deputy or fails to appear, without good reason, at an oral discussion, the Director General of the Competition Board or his or her deputy may by a decision impose a fine of up to 2 000 kroons per calendar day. If an undertaking fails to fulfil or unsatisfactorily fulfils a mandatory precept set out in a decision of the Director General of the Competition Board or his or her deputy by the date specified in the decision, the Director General of the Competition Board or his or her deputy may by a decision impose a fine of up to 5 000 kroons per calendar day, subject to mandatory collection as of the day following the date of imposition of the fine until the day the undertaking fulfils the precept set out in the decision and notifies the Competition Board thereof in writing. An undertaking has the right to file an appeal with a court against a decision of the Director General of the Competition Board or his or her deputy on the imposition of a fine pursuant to the procedure provided for in the Code of Administrative Offences within one month from the date such decision is received.

The Director General, his or her deputy, department heads, deputy department heads and chief specialists of the Competition Board have the right to prepare reports of administrative offences of Competition Act. Administrative judges have the right to impose punishments for the administrative offences. For submission of incorrect, incomplete or misleading information or for failure to give notice of a merger or to give notice of a merger on time to the Competition Board, a fine of up to 1 per cent of the net turnover of the financial year of the offender preceding the year that the decision to impose a fine is made shall be imposed, but not less than 10 000 kroons. For concerted practices, enforcement of a prohibited agreement, failure to apply for an exemption for an agreement which requires exemption within six months from entry into such agreement, failure to fulfil a condition or obligation established in a decision of exemption, for abuse of a dominant position of an undertaking in the market or for planning such acts, a fine of up to 5 per cent of the net turnover of the financial year of the offender preceding the year that the decision to impose a fine is made shall be imposed, but not less than 20 000 kroons. For failure to fulfil the obligations imposed on an undertaking with special or exclusive rights or a natural monopoly, a fine of up to 1 per cent of the net turnover of the financial year of the offender preceding the

year that the decision to impose a fine is made shall be imposed, but not less than 10 000 kroons. According to the Competition Act proprietary or other damage caused by actions prohibited by Competition Act shall be compensated for by way of civil procedure.

**According to the Competition Act entered into force 1 October 2001 the sanctions are as follows.**

The Director General of the Competition Board or his or her deputy has the right to issue a precept to a natural or legal person if such person fails to submit information or materials within the term specified in a written request of the Competition Board; interferes with an inspection of the seat or place of business of the undertaking; fails to appear at an oral hearing or preparation of an administrative offence report or when requested to provide explanations; puts into effect a concentration which is subject to control or a decision prohibiting the concentration has been made or the permission for the concentration has been revoked by the Director General of the Competition Board or his or her deputy. A precept imposes an obligation to perform a required act or to refrain from a prohibited act. In the case of a failure to comply with a precept, the Director General of the Competition Board or his or her deputy may impose a penalty payment of up to 50 000 kroons on natural persons and a penalty payment of up to 100 000 kroons on legal persons. Preparing an administrative offence report shall terminate proceedings concerning a case or by a decision of the Director General of the Competition Board or his or her deputy. Proceedings in matters concerning administrative offences by legal persons provided for in the Competition Act shall be conducted pursuant to the procedure provided by Competition Act and, in the cases not directly regulated by Competition Act, pursuant to the procedure provided for in the Code of Administrative Offences.

The Director General of the Competition Board and his or her deputy and the officials of the Competition Board authorised by the Director General or his or her deputy have the right to prepare reports concerning the administrative offences. A report shall be submitted for hearing by a court within ten calendar days after preparation of the report. A fine in the amount of up to one per cent of the turnover of the offender during the financial year preceding the decision on the imposition of the fine shall be imposed for submission of incorrect, incomplete or misleading information to the Competition Board. A fine in the amount of up to 10 per cent of the turnover of the offender during the financial year preceding the decision on the imposition of the fine shall be imposed for abuse of a dominant position; prohibition on an agreement, practice or decision restricting competition and for entry into an agreement, engagement in a practice or making of a decision requiring an exemption without obtaining such exemption and for violation of the conditions of an exemption; for failure to give notice of a concentration within the specified term and for violation of a prohibition on concentration or the conditions of a permission to concentrate; for failure to draw a clear distinction between primary and secondary activities in the accounting of a legal person with special or exclusive rights or in control of essential facilities.

Proprietary or other damage caused by acts prohibited by this Act shall be subject to compensation by way of civil procedure. The Competition Act amended also Criminal Code. A member of the management board, a body substituting for the management board or of the supervisory board of a legal person, who establishes unfair trading conditions, limits production, services, market, technical development or investments to the prejudice of consumers, or engages in other activities causing a direct or indirect abuse of a dominant position, who violates a prohibition on an agreement, decision or practice restricting competition, or enters into an agreement, makes a decision or engages in practices requiring an exemption without obtaining such exemption, or violates the conditions of the exemption, who fails to notify of a concentration within the specified term or violates a prohibition on concentration or the conditions of a permission to concentrate, who engages in activities resulting in a failure to draw a clear distinction between primary and secondary activities in the accounting of a legal person with special or exclusive rights or in control of essential facilities shall be punished by a fine or up to 3 years' imprisonment.

5.

### **Public Procurement Act**

Civil, disciplinary, administrative or criminal liability is applied for violation of Public Procurement Act. Administrative liability applied to a legal person shall not preclude application of administrative or criminal liability to a relevant natural person. If the Office receives information concerning an offence relating to public procurement or it discovers such offence in the course of supervisory activities relating to public procurement and the offence cannot be regarded as an administrative offence provided of Public Procurement Act, the Office should notify a police authority or a prosecutor of the facts known to the Office. The Office has the right to make proposals concerning disciplinary proceedings to be brought against a person or persons who have violated Public Procurement Act. The Director General of the Office, the deputy Director General and an official of the same agency authorised by the Director General have the right to issue administrative offence reports to legal persons concerning administrative offences. County or city court judges hear matters concerning administrative offences by legal persons. The judge could impose fine of 5000 to 500 000 kroons depending of the violation of public procurement procedure.

Same examples in Criminal Code about violation of Taxation Act and Acts concerning tax:

Failure to submit information, an income tax return or documents provided by law to a tax authority or failure to submit these on time, if such acts are intentionally committed, or if an administrative punishment has been imposed on the offender for a similar offence, is punishable by a fine or detention or up to one year imprisonment.

Submission of false information or falsified documents to a tax authority, or presentation of false information in an income tax return, if such acts are intentionally committed, or if an administrative punishment has been imposed on the offender for a similar offence, is punishable by a fine or detention or up to three years' imprisonment.

Failure to pay an amount of tax due pursuant to an Act concerning a tax by a due date or payment of an amount of tax which is smaller than prescribed, if such acts are intentionally committed, or if an administrative punishment has been imposed on the offender for a similar offence, is punishable by a fine or detention or up to three years' imprisonment.

Failure to transfer an amount of tax due to be withheld pursuant to an Act concerning a tax by a due date or transfer of an amount of tax which is smaller than prescribed, if such acts are intentionally committed, or if an administrative punishment has been imposed on the offender for a similar offence, is punishable by a fine or detention or up to three years' imprisonment.

Failure to perform a duty imposed on a legal person or agency by the Taxation Act or an Act concerning a tax, if such act is intentionally committed by a competent official who is required to perform the corresponding duty, or if an administrative punishment has been imposed on the offender for a similar offence, is punishable by a fine or detention or up to three years' imprisonment.