

Unclassified

DAF/COMP/AR(2013)2

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

22-May-2013

English - Or. English

Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE

DAF/COMP/AR(2013)2  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ESTONIA**

-- 2012 --

*This report is submitted by Estonia to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 June 2013.*

JT03339957

Complete document available on OLIS in its original format

*This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.*

English - Or. English

## TABLE OF CONTENTS

Foreword .....	3
1. Organisation.....	4
1.1 Structure.....	4
1.2 Personnel and budget .....	5
2. International co-operation .....	5
3. 2012 in the competition division.....	6
3.1 Competition supervision .....	6
3.2 Many cartel cases under investigation reached a solution in 2012 .....	7
3.3 The analysis of the domestic interchange fees for card payments .....	8
3.4 The competition authority's injunction with regard to OÜ Lehepunkt came into force .....	9
3.5 Competitive situation in postal sector .....	9
3.6 Control of concentrations.....	12

**Foreword\***

Dear reader,

The Competition Authority's scope of activities is broad and covers all the different sectors of the economy. If the European Union goes from Lisbon to Tallinn, then our actions can be described by the expression "from birth to death." After all, both health care and funeral services are parts of the economy. Out of the important events of the year 2012, we will remember in particular the energy sector, which is the focus of attention of both the public and the government. Why is this area so important? In addition to electricity, heating, food, drinking water, etc., are after all, necessary for life. The main reason is that we are living in the era of expensive energy. Only 15 years ago, oil cost 10 to 15 dollars a barrel, today, its price is almost 100 dollars. Similar figures also reflect the stock market price of electricity, which, for instance, at the starting time of the Finnish electricity market in the early 2000's, the price was 15 € / MWh, while today it is on the level of 40-50 euros.

Prices in some areas are growing so fast that they attract a lot of attention and taking steps to find solutions and for the development of the sector is perfectly logical. At the other extreme are the prices for communications services, which have been dropping from year to year. When prices are falling, then the public interest in the topic also becomes more lukewarm. It is perfectly logical that there is no need to worry about it, as a simple mobile phone can be picked up for a few dozen euros, and for a few euros you get a month of unlimited domestic chatter and the monthly fee of unlimited mobile internet usage does not cost a lot more. For a tank full of petrol one can use the mobile Internet and chat endlessly on the phone for an entire year - thus, it is clear that what makes the consumer more worried are the areas where prices escalate.

It is of course pointless to look for the reasons or for culprits. There are disputes as to whether high oil prices are caused by the speculative nature of financial markets, or is it a serious sign that the resources are running low and the high price reflects the continuing actual supply-demand relationship. However, it can be argued that such a rapid development of the telecommunications sector can only take place under fertile conditions for free competition. After all, it is free competition that puts the human thought into motion and causes technology to evolve. In communications, this is exactly what has taken place in the best way. A one hundred year old truth in the economy is that price agreements and abuse of a dominant position in the market are the inhibiting factors in the development of an economy. One would not want to imagine what the development would have been if the major phone manufacturers would have agreed on the prices or if each country had only one mobile operator. Even worse, what if the whole communication sector were under the control of one carrier?

The power industry has also taken a direction towards free competition; a good example of this is the opening of the electricity market at the beginning of the year 2013. Another example is the steps towards the creation of competition in the natural gas market. The EU is a model for the rest of the world, in particular in the development of competition in the electricity market. While this process has not always taken the most desirable direction and the high prices do not make the consumer happy, the best result can be found only in the conditions of free competition.

The Competition Authority's job is to keep pace with change. There are areas where there is no competition and a strong need for regulation remains, but there are examples where, by ensuring free competition, the best outcomes have been achieved. It is the latter conditions where market forces need to be given a chance to manage things and too much interference must be avoided.

---

\* Report submitted by Mr. Märt Ots, Director General, Estonian Competition Authority, 10317 Tallinn. E-mail: [mart.ots@konkurentsiamet.ee](mailto:mart.ots@konkurentsiamet.ee)

With best wishes,

Märt Ots  
Director General

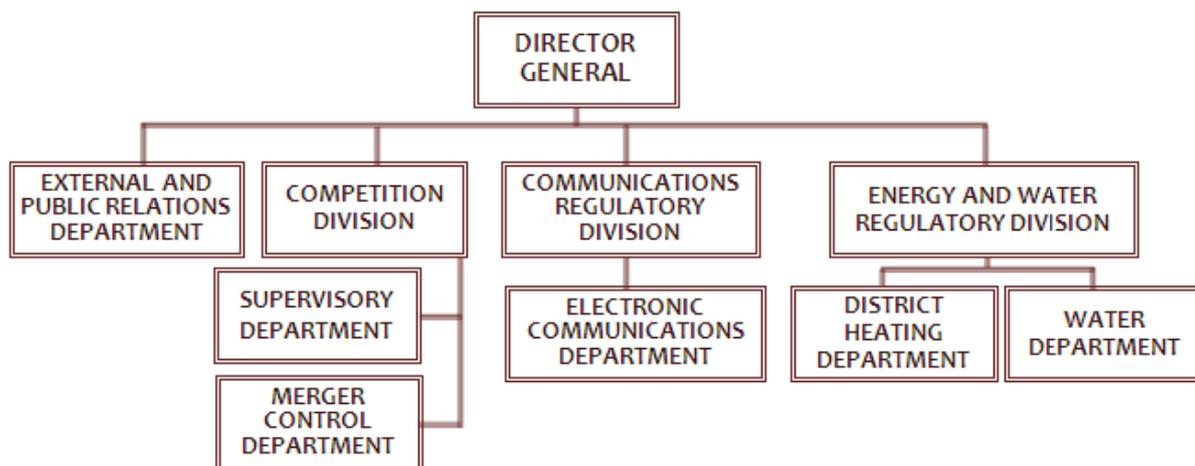
## 1. Organisation

### 1.1 Structure

1. In 2012 the statutes of the Competition Authority was changed and the structure was slightly reorganised due to the entry into force of the amendments of the Aviation Act. Additional functions to the Competition Authority were set in the Aviation Act and these tasks had to be included in the statutes. The former Railway and Communications Regulatory Division was now named the Communications Regulatory Division, because the communications sector dominates in the Division's workload and the name would be too long in order to cover all the sectors in it. The Energy and Water Regulatory Division was reorganised by forming two departments instead of one as before – since 2012 the Division consists of the water department and district heating department.

2. The Competition Authority still includes three field-based divisions, which are the Competition Division, the Energy and Water Regulatory Division and the Communications Division. In addition to the divisions, there is the External and Public Relations Department which is responsible for ensuring effective support services. The Director General is at the head of the Authority (Figure 1). Structural Divisions are directed by the Heads of Divisions – Deputy Directors General.

Figure 1. Structure of the Competition Authority



3. The functions of the Authority are divided between structural units or divisions as follows:

- The main functions of **the Competition Division** are: conducting the proceedings of complaints and concentration notifications submitted by undertakings or on its own initiative; replying to inquiries of undertakings and their representatives; counselling and raising competition related awareness of the public. The main functions of **the Energy and Water Regulatory Division** are: price regulation and market supervision, issuing activity licenses, controlling security of supply and quality in energy and water sectors. The main functions of **the Communications Regulatory Division** are: regulating and monitoring the communications market; regulating the postal market; organising the provision and exercising supervision of the universal service; settling

disputes regarding airport fees; perform duties regarding railway regulation. The main functions of **the External and Public Relations Department** are: coordination of public and international relations; organisation of state assets and means in the possession of the Authority; ensuring the existence of tools and inventory; personnel work and coordination of training; document management and administration of archives.

## 1.2 *Personnel and budget*

4. The Competition Authority employed 61 persons as of the end of 2012, 3 new employees joined the Authority and 3 people left the organisation during the year. The division of personnel between the structural units was as follows:

Unit	Number of Staff
External and Public Relations Department	6 persons
The Competition Division	21 persons
Energy and Water Regulatory Division	21 persons
Communications Regulatory Division	13 persons

5. Officials with up to 10 years of public service experience were of the majority. Most staff members have higher education in economics (business administration, business management, finance, economics, etc.) or in law. The third group of officials consisted of those with higher education in other disciplines, such as radio electronics, telecommunications, thermal energy, public administration or other.

6. In 2012 the budget of the Competition Authority was approx. 1, 83 million euros.

## 2. **International co-operation**

7. The ECA (European Competition Authorities) meeting of Directors General in Tallinn on June 20-21 may undoubtedly be considered as one of the most important international events hosted by the Authority in 2012. In addition, the Authority hosted Balti elektrituru mini-foorumit, Balti kommunaalteenuste foorumit and ECN (European Competition Network) forensic IT meeting.

8. The competition Authority participates in the work of competition, energy, communications and railway related working groups and unions. During 2012 the officials of the Competition Division attended meetings and discussions of the ECN (European Competition Network), the ECA (European Competition Authorities) and the ICN (International Competition Network) working groups and subgroups. Officials of the Energy and Water Regulatory Authority participated in the meetings of CEER (*Council of European Energy Regulators*) and the ERRA (Energy Regulators Regional Association) and the ACER (the Agency for the Cooperation of Energy Regulators). The Communications Regulatory Division was actively involved in the organisation comprising European national communications regulators – BEREK by contributing to the working groups of mobile and fixed termination rates, cost accounting, transparency and designation of undertaking with significant market power.

9. On June 20<sup>th</sup> -21<sup>st</sup> the Competition Authority had the opportunity to organise the ECA meeting of Directors General (DG), held in Estonia for the first time. This is an annual high-level meeting, where agency heads discuss topical Pan-European competition concerns, exchange information about recent developments in different countries and jointly design solutions.

10. On January 11<sup>th</sup> - 12<sup>th</sup> Baltic Electricity Market Forum and Baltic Utilities Forum took place in Tallinn. These events brought together energy and utility sectors regulators, representatives from the

European Commission, undertakings and other interested parties to debate over the creation and development of a single electricity market and problems regarding utility services in the Baltic States.

11. Many officials spoke at various Estonian or international events and responded to numerous inquiries from undertakings and organisations both from Estonia and from other countries.

### **3. 2012 in the competition division**

#### **3.1 *Competition supervision***

12. The Supervisory Department of the Competition Authority is responsible for solutions of the very versatile competition challenges emerging in the economy. In our daily work, we encounter many different business sectors, from banking all the way to waste management. Depending on the type of violation of the competition, the Competition Authority will review procedures with different content, from simple monitoring procedures all the way to voluminous criminal cases.

13. In 2012, the recession in Estonia was for the third consecutive year, in a clearly positive economic growth cycle. At the same time, the volume and the content of the work of the Competition Authority are not particularly dependent on the economic cycle - there are competition problems in both low and high cyclical times. However, in recent years there has clearly been an increase in the resource dedicated competition law by the private sector. There is increasing awareness of the entrepreneurs and we encounter less and less situations where a significant competitive malpractice has been committed by mere ignorance. There is also a noticeable increase in demand for legal services on competition matters and the ability of law firms to provide such a service. All of this has contributed to the taking root of a more fair competitive business environment in Estonia.

14. Estonia is one of the few countries in the European Union, where the anti-competitive agreements, so-called cartels, are processed in criminal proceedings. It is a complex type of proceeding requiring from the body conducting the proceedings a burden of proof higher than average. Although the offenses in the field of competition were criminalized in Estonia as early as in the year 2002, their more active processing commenced only in the year 2008, when the Competition Authority was thoroughly reorganized. The year 2012 must be considered the most successful year for judicial decisions - a conviction was made in three criminal cases handled by the Competition Authority.

15. In contrast to anti-competitive agreements, an abuse of a dominant position in Estonia is a misdemeanor. Such offenses occur usually in the form of very large and complex financial disputes, while the misdemeanor was originally intended rather for smaller and lighter offenses. Consequently, the Competition Authority deems the penal regulations of abuse of the dominant position to be clearly ineffective. Regarding misdemeanor proceedings, in 2012, one of the more significant events was the litigation by the Competition Authority on the 36,000-euro fine imposed to AS Eesti Post in 2011, which the court reduced to € 18,000, while leaving the remainder of the Competition Authority's misdemeanor decision in force.

16. The largest part of the work of the Supervisory Department is formed of the various supervisory procedures. The supervision procedure is aimed at directing entrepreneurs towards behavior which stimulates free competition. Such procedures often appear to be very large and complex processes. Regarding last year can be mentioned, among other things, termination of the proceeding of card payment commissions of the Estonian banks in connection with a significant reduction in fees. Out of the lawsuits was the predominant litigation of the injunction made to AS Lehepunkt, as a result of which the courts deemed the injunction to be entirely lawful. In 2012 the Competition Authority examined thoroughly the terms of access to oil shale resources. As a result, at the beginning of 2013, a recommendation was made to

improve the competitive position in the sector. Also, the Competition Authority made a recommendation to improve the competitive situation in various waste management markets.

17. Due to Estonian law, the judicial proceedings that are a part of the detection of harmful agreements belong to the general courts' jurisdiction, which are the county courts as the courts of first instance. According to the data of ECN (European Competition Network), Estonia and Ireland are the only European Union member states, where the handling of competition crimes in the first instance is in the jurisdiction of county courts (*e.g.*, Võru, Tartu and Harju County Courts). Bringing competition cases to court will require from investigators the capacity of performing a painstaking autopsy of the action of the suspect in a cartel. The tasks of prosecutors in the court proceedings, in addition to debating over proof and evidence, is often the clarification of the definition of anti-competitive activity, the contents of specific cases, as well as the highlighting of the negative effects of the cartel and identification of the existence or absence of various circumstances justifying prohibited activities.

### **3.2 Many cartel cases under investigation reached a solution in 2012**

18. On 22 February 2012, by decision of Harju County Court, which in the settlement proceedings convicted Argo Luude, Tänavapuhastuse AS and AS Cleanaway (formerly AS Veolia Keskkonnateenus), who participated in the public procurement of Tartu city street cleaning with coordinated bids after determining the prices of the bids as well as the areas that each company wanted to win at a price as high as possible. As a result of the tender, Tänavapuhastuse AS ended up with the western region of Tartu and AS Cleanaway with the eastern region of Tartu.

19. At the beginning, the trial in this case focused on procedural questions. Namely, the county court decided that the intelligence evidence gathered during the criminal proceeding was unacceptable and the defendants were acquitted. The circuit court found that the evidence should be allowed and remitted the case to a lower court for discussion in a new composition of the panel of the court. The defendants appealed to the Supreme Court (stage III). However, since the latter did not take on the case for discussion, the issue was resolved in conclusion of a penal agreement in the Harju County Court.

20. Furthermore, at the beginning of 2012, the judgment was imposed on two security companies, AS Pristis and Securitas Eesti AS of a pecuniary penalty for conclusion of an anti-competitive agreement. The investigation was started by the Competition Agency on the basis of a newspaper article "Pristis signs suspicious market-sharing agreements" published in the newspaper Postimees in 2010. The agreement between the competitors was concluded on 24.04.2009, which on the basis thereof the provider of security services joining the agreement had no right, without the consent of the other party, to provide security services to clients who have a contract with the other party to purchase the security services indicated in the agreement. Similar agreements were negotiated with several other security service providers. Agreements constituted sharing clients between security service providers. Such agreements limit the customer's freedom to choose the security service provider and the freedom of the security service provider to provide services to the clients of the competitor.

21. In 2012, the Harju County Court imposed a pecuniary punishment to OÜ REHVID 24, who was indicted for having entered competition damaging price agreements with competing companies in the passenger car tire retail market. As a result of the proceedings, the fairly large undertaking in the wholesale and retail markets of vehicle tires terminated its activity directed towards damaging price competition.

22. Many procedures described herein that have been completed or are still pending were actively covered in the media during the year 2012, which shows the great public interest in the protection of competition. The Competition Authority believes that the operating procedures, which resulted inter alia in termination of cartels emerging and developing in a number of commodity markets, sent the message to

businesses that society does not accept the distortion of competition and such action may be exposed regardless of the efforts made to conceal it. The latter gives the hope of creating a level playing field in market conditions, as well as the support of those practicing fair and transparent businesses.

### **3.3 *The analysis of the domestic interchange fees for card payments***

23. In 2012, the Competition Authority completed the analysis of procedures and pricing of banks regarding the interbank commissions of the Estonian domestic card payments applied by the banks operating in Estonia such as AS Swedbank, AS SEB Bank, Nordea Bank Estonian branch, Danske Bank A/S Estonian branch, AS Eesti Krediidipank and Tallinna Äripanga AS. Under observation were the four-party or open-card payment systems (VISA and MasterCard card organizations) card transactions, as these comprise the bulk of the transactions taking place in Estonia. In the four-party or open-card payment system, in addition to the system operator (VISA or MasterCard card organizations) participates the card holder, the card issuing bank, the merchant and the card receiving bank.

24. A variety of models for commissions exists across the world. Commissions may be agreed upon by the banks multilaterally (multilateral interchange fee, or MIF) or bilaterally (bilateral interchange fee, or BIF). In the case of bilateral contracts, each bank must conclude a bilateral agreement with any other bank, while in the case of multilateral agreements an equal interchange fee has been imposed collectively to all parties. In Estonia a multilaterally agreed interchange fee was also implemented before the year 2008, but from 17.06.2008, the banks began using the model based on bilateral agreements, which requires that each bank has to individually agree on the interchange fee with the other banks. This bilaterally agreed interchange fee model is for obvious reasons applicable more in the countries with a small number of banks. However, the model based on interchange fees and bilateral contracts is considered more open to competition, since each individual bank's business strategy has an effect on the size of the fees.

25. Banks are paying interchange fees to each other if the bank serving the merchant and the consumer, *i.e.*, the bank issuing the payment card are different. In this case, the bank servicing the merchant pays the bank servicing the consumer a fee, which is usually a percentage of the amount of the payment card. Interbank commissions make up a substantial part of the service fees applied by the banks to the merchants and the impact thereby affects the merchant's mark-up. In Estonia card payments are widespread and the majority of merchants will accept them. It is convenient and a safe enough way to settle payment for goods and services. However, the consumers will not perceive the costs involved, because apparently it does not involve service fees. Traditionally, merchants do not accept card payments for a separate fee, which is supposed to offset the costs for card payments. However, it must be borne in mind that, indirectly, consumers pay the merchant fees of the banks, as merchants include all the costs, including the costs of card payments in their retail price of goods. Since the vast majority of merchants in Estonia accept card payments made by consumers, the size of the interbank commission related to card payments and hence the merchant fees imposed on the merchants by the banks impact the retail prices of virtually all goods and services. It has a more significant effect on smaller merchants simply because they are generally subject to higher merchant fees.

26. The banks that were under observation had reduced the charges during the procedure on several occasions, as a result of which interchange fees by the time of completion of the proceedings had been reduced from the jointly agreed one (1) percent in force at the beginning of the year 2008 to the average of a half (.5) percent. In doing so, some banks had agreed on an additional reduction of bilateral fees on the card payments volume growth, which are likely to reduce the average charges in the future significantly. The analysis of the Competition Authority showed that the past reductions of interchange fees have been transferred to the reduction of merchants' fees, the impact of which should reach the consumers. Therefore, it was decided to terminate the proceedings in relation to the competitive situation.

### **3.4 *The competition authority's injunction with regard to OÜ Lehepunkt came into force***

27. The case concerned the activity of OÜ Lehepunkt (hereinafter Lehepunkt) which is an undertaking in a dominant position in the market of the wholesale service of magazines. The wholesale service provided to the publishers by Lehepunkt is a package of services, which consist of the delivery of individual issues of magazines from publishers to retail locations. The Competition Authority found that on offering the magazine wholesale service, in case of equivalent agreements, Lehepunkt has levied lower service fees to the publishers, who are two of Estonia's leading groups of companies (Ekspress Grupp and Eesti Media) than to other publishers who do not belong to these large groups. The undertaking in a dominant position in the market had been authorized to offer to customer's volume discounts, resulting from the cost savings from higher volumes sold. During the administrative proceedings, the Competition Authority, analyzed, in particular, whether servicing of large groups involves cost savings for Lehepunkt which would justify the imposition of the economically most advantageous rate.

28. As a result of the analysis, the Authority concluded that significant cost savings do not occur. Magazine servicing costs are not largely dependent on which publisher issues a specific magazine, due to which servicing of magazines issued by publishers belonging to large groups on the basis of a more favorable rate is objectively unjustified. The Competition Authority held that with the unjustified imposition of different service fees, Lehepunkt distorts competition between publishers, because for the big publishing groups an unjustified competitive advantage has been created, while the publishers not belonging to the groups and paying a higher fee have been placed at a competitive disadvantage. Therefore, the Competition Authority in 2009 made Lehepunkt the precept that the company violated competition law in the wholesale market of magazines as an undertaking in a dominant position in Estonia. For an undertaking in a dominant position, offering or applying dissimilar conditions to different trading partners is prohibited in case of equivalent agreements, thereby placing some of them at a competitive disadvantage. The precept obligated Lehepunkt to terminate the imposing of and application of different service fees to the extent not justified by the cost depending on the total volume of services purchased by the publisher and/or its group of companies (to which the publisher belongs).

29. In connection with legal proceedings, enforcement of the Competition Authority's precept was suspended. Tallinn Administrative Court dismissed the appeal of Lehepunkt and the Tallinn Circuit Court did not satisfy the appeal of the Company either. The Circuit Court was of the view that the significantly higher sales volume is not an objective fact, which would provide a basis for unequal treatment of business partners and the price differentials made by an undertaking in a dominant position and should be based on rigorous economic logic. On 12.09.2012, the Supreme Court decided not to hear the appeal in the case against Lehepunkt. Therefore the Competition Authority's precept to Lehepunkt remained in force and took effect.

### **3.5 *Competitive situation in postal sector***

30. Increased attention of the Competition Authority Division in recent years has been called by the competition situation in the postal sector in connection with the complaints submitted by several different companies as regards to AS Eesti Post (hereinafter Estonian Post). In 2009-2012 the competition service conducted three monitoring processes and two misdemeanor proceedings with regard to Estonian Post, which ended for Estonian Post with one precept and two fines.

31. Estonian Post owns the only nation-wide postal network through which it supplies postal services. In addition, Estonian Post used to own until 31.03.2009 an exclusive right for the transmission of a domestic letter of up to 50 grams in Estonia as an ordinary item. Since the disappearance of such exclusivity, every individual can provide the service of forwarding an ordinary letter of up to 50 grams, if he or she has received an operating license for that by the Competition Authority. Respective operating

licenses are owned by Estonian Post and AS Express Post (the Express Post). The latter has developed their own postal network in the major cities and their surrounding areas, but since it only covers certain areas, it does not allow Express Post to provide postal services all over Estonia. In order to promote competition in the provision of postal services, the Postal Law provides for the postal service provider a possibility to use for the purpose of provision of the service another postal service provider's postal network, if there is a relevant written contract. This means that the postal service provider does not necessarily have to have a postal network built up, so the investment needed to start the provision of the service is smaller and entry into the market is easier. With regard to the opening of the postal market, in 2009 came into force a number of amendments in the provisions of the Postal Act § 24, which specified the conditions of using the postal network of another provider of postal services. Among other things, according to the amendments, access to the postal network of the other postal service provider must be available on the same conditions and at the same quality as the other postal service provider enables it to its parent company and subsidiaries, customers or business partners. The cited regulation is designed to prevent discrimination of the parties interested in access through the setting of conditions of access to the postal network. Applications of the described provisions of the Postal Act were handled in the proceedings conducted by the Competition Authority (2009-2010), in the course of which it was checked whether the conditions the Estonian Post offered to another postal service provider upon access to its postal network, were in compliance with the requirements of the Postal Act. Namely Express Post reported to the Competition Board that since the spring of 2009, Express Mail has unsuccessfully requested access to the postal network of Estonian Post. As a result of negotiations between the parties, Estonian Post had submitted to Express Post two quotations with postal network access fees (one for forwarding ordinary and registered mail and the second for forwarding only ordinary mail), which on the estimate of Express Post were so unreasonable that they did not allow them to compete with Estonian Post on providing the service of ordinary and registered mail.

32. The Competition Authority analyzed the access fees proposed by Estonian Post to Express Post and found that on developing the charges they had not complied with the requirements provided in the Postal Act, which requires that access to the postal network of another postal service provider must be available on equal terms and at an equal quality with which the postal service provider enables to its parent company and subsidiaries, customers or business partners. Estonian Post offered to Express Post significantly less favorable price terms compared to those under which the Estonian Post nationally forwards the comparable ordinary or registered letters of its corporate customers, business partners and subsidiaries. Since Estonian Post does not essentially have to take additional actions for delivery of the letters received by Express Post as compared to forwarding of the standard mail of the business letter clients, the prices of postal network access required from Express Post can in no case be higher than the prices of forwarding the standard mail in the framework of the business letter service, from which is deducted the universal postal fee payable to the state. The Competition Authority also noted that if the Express Post network delivers to the Estonian Post postal network, pre-sorted mail, handling of the letters delivered by Express Post should be rather cheaper by sorting for the Estonian Post from the handling of the standard mail of the business clients.

33. The Competition Authority made on 04.03.2011 an injunction to Estonian Post, with which it required the company to enable Express Post access to its postal network at the maximum within the same prices with which the Estonian Post forwards domestic standard letters as ordinary and registered mail in the framework of the business letter service, from which is deducted the universal postal fees (Express Post has to pay the referred payment on access to the Estonian Post's postal network for each letter forwarded by it to the Estonian Post postal network). Eesti Post contested the precept of the Competition Authority in the administrative court. The Administrative Court dismissed the appeal of Estonian Post with its decision of 13.07.2012.

34. The data collected in the supervision procedures showed that with regard to access to the postal network offered to Express Post, Estonian Post had behaved contrary to the requirement of the non-discrimination set out in the Postal Act. Therefore, in the autumn of 2010, the Authority started misdemeanor proceedings with regards to Estonian Post, to check whether the Estonian Post had committed a misdemeanor described in the Postal Act § 48 subsection 2 (breach of duty of universal postal service provider or postal service provider).

35. In the decision made on 21.07.2011, the Competition Authority found that the activities of Estonian Post were punishable as a misdemeanor and ordered Estonian Post to pay a fine in the amount of 2,000 euros (maximum penalty of a legal person for a relevant misdemeanor offense is € 3,200). Estonian Post submitted an appeal against the decision of the Competition Authority to the county court, which dismissed the appeal. As the Supreme Court did not accept the appeal in the case against Estonian Post, then the decision of the Estonian Competition Authority regarding the imposed fine remained in effect.

36. In the summer of 2011, the Competition Authority initiated, with regard to Estonian Post, another misdemeanor proceeding in relation to the pricing of Estonian Post in two procurement procedures organized in the autumn of 2010. Providers who participated in the procurement were Estonian Post (together with its subsidiary AS Eesti Elektronpost) and AS Itella Information (hereinafter Itella). Itella submitted a complaint to the Competition Authority, in accordance to which Estonian Post in the framework of the procurement procedures had applied discriminatory and unfair pricing with regard to Itella concerning the provision of the service of posting unaddressed and addressed advertising. The Competition Authority found that under the concerned procurement, Estonian Post offered for distribution of the dispatches prepared by Elektronpost, significantly more favorable conditions than to Itella. As a result, Itella was no longer competitive in those procurements. On the estimate of the Competition Authority, Estonian Post violated with two different episodes the prohibition of discrimination applying to an undertaking dominant in the market and therefore on 16.11.2011 the Authority, with its decision, ordered Estonian Post to make payment of a fine in the amount of 36,000 euros. The misdemeanors committed by Estonian Post are further described in the 2011 yearbook of the Competition Authority. Estonian Post contested the decision of the Competition Authority in the county court, who left the decision of the Authority regarding violation of the Competition Act unchanged, but reduced the fine imposed to AS Eesti Post to 18,000 euro. As the Supreme Court did not accept the appeal in the case against Estonian Post, then the fine imposed to Estonian Post with the decision of the county court remained in effect.

37. The Competition Authority's latest decision regarding the postal sector is connected to the self-service parcel terminals, which in recent years have become more and more popular among Estonians as a way of parcel delivery. Namely, at the end of the year 2011, Itella SmartPOST OÜ (hereinafter referred to as Smart POST) which since 2009 has been providing the parcel forwarding service via a nation-wide parcel network turned to the Competition Authority with a complaint. The operator asked the Authority to verify whether the postal parcel service pricing by Estonian Post is in breach of the Competition Act.

38. Smart POST was the first company in Estonia, who aside from the traditional post office, to begin providing an innovative parcel terminal service, which is significantly more convenient for the client at sending and receiving parcels. Smart POST has over 60 parcel terminals in shopping malls across Estonia, through which it is possible to send and receive parcels. In August 2011, Eesti Post opened its own parcel terminal network Post24. Post24 parcel terminals are installed outdoors in the most accessible places in different towns all over Estonia, mainly in close proximity of shopping centers, which provides around the clock access to the parcel terminals. If the service of Smart POST includes parcel transfer only via the parcel terminals, then within the service of Post24 of Estonian Post, the customer is able to combine the Estonian Post parcel terminal channels also with other parcel delivery channels of Estonian Post - namely the parcel sender may choose to send the parcel via an Estonian Post parcel terminal, a post office

or by courier delivery and the dispatches are issued to the recipient also via the channel specified by the sender, either from the Estonian Post parcel terminal, from a post office or via a courier service. Smart POST expressed its concern that the Estonian Post provides the parcel terminal service with predatory low prices, in order to eliminate Smart POST as a competitor from the provision of the parcel terminal service.

39. On 14.12.2012, the Competition Authority made a decision, which held that the activities of Estonian Post are not contrary to the Competition Act. The Authority noted that Estonian Post currently has no market dominance in the relevant product market, which enables it to behave to an appreciable extent independently of competitors, suppliers and buyers. This is irrespective of whether the relevant product market comprises more narrowly the issuing of parcels via parcel terminals or whether in the product market a service of issuance of parcels also operates through post offices. Effective price competition and the associated lower prices are generally in the interests of the consumers. Implementation of predatory low prices is rather an exceptional phenomenon in which the low prices implemented by the dominant undertaking may by weakening of competition in the long run, lead to harming the consumers. Harm to consumers is evident in that after competitors leave the market, the undertaking dominant in the market can take advantage of the weakened competition in order to raise prices and with the higher profits earned thereby earn back the losses borne due to the low prices implemented in the prior periods. If a competitor's exit from the market is unlikely, then the low prices do not comprise the company strategy to the detriment of consumers. The Competition Authority found no circumstances in the course of the proceedings, to suggest the conquest of the products marketed by Estonian Post by implementation of predatory low prices, even if Estonian Post were an undertaking with a dominant position in the product market. In light of the market share development of Smart POST and Estonian Post there is no reasonable prospect that Estonian Post could, with its pricing, weaken the position of Smart POST in the near future to the extent that the latter will be forced to exit the market.

### **3.6 Control of concentrations**

40. The control of concentrations is designed to assess its effects on the competition law and to prevent the creation or strengthening of a market dominant position which may impede effective competition in the market.

41. Concentrations between undertakings may create or strengthen a market dominant position of an undertaking and this may bring along an abuse of dominance. The Competition Act enables to prohibit concentrations if it is likely that these significantly restrict competition in the goods market, above all by creating or strengthening a dominant position. A concentration that is controlled by the Competition Authority may not be enforced before the decision to grant permission is made.

42. From a so-called more emotional side, we may highlight the proceedings that established concentrations which had been enforced without the Authority's permission. In one case the Competition Authority made a decision in a misdemeanour proceeding, imposing a fine on an undertaking for enforcing a concentration without the Authority's permission. The long proceeding ended up in court. Judicial proceedings were terminated due to a lack of public interest in proceedings and negligible guilt and the person subject to proceedings had an obligation to pay 3000 euros. According to the Authority's experience a two-year limitation period of misdemeanour proceedings has appeared to be too short in order to reach a judicial decision (and its entry into force). Usually competition related misdemeanour proceedings are very complicated and the limitation period includes both extra-judicial and judicial proceedings.

43. The transactions that raised more public interest and required substantial time and resources were the concentrations of Tallinna Autobussikoondise AS/ Tallinna Trammi- ja Trollibussikoondise AS, AS

Baltic Agro/AS Werol Tehased, Pharma Group OÜ / OÜ Andresson and Osühing Elekter ja Küte /Aktiaselts Tallinna Küte / AS Eraküte.

44. In 2012, 19 notices of concentration were submitted to the Competition Authority and three cases were brought over from 2010. Thus the Authority proceeded with 22 concentration cases. The Authority made 19 decisions to grant permission to concentration and in two cases the decision was postponed to 2013. In one case, the proceeding was ended because the parties to the concentration decided not to concentrate.

45. 19 decisions to grant permission to concentration were made in the first phase of the proceedings, *i.e.* within the 30 calendar days prescribed by law. One permission was granted with obligations taken by the parties. In five cases the proceeding was suspended in connection with the elimination of deficiencies in the notice. The actual average length of proceedings was 24 days.

46. The breakdown by types of concentrations was as follows:

- Previously independent undertakings merged in the case of 2 concentrations (§19 (1) p 1);
- An undertaking acquired control of the whole or a part of another undertaking in the case of 15 concentrations (§ 19 (1) p 2);
- Undertakings jointly acquired control of the whole or a part of another undertaking in the case of 5 concentrations; (§ 19 (1) p 3).

47. Majority of concentrations (14) took place among Estonian undertakings, in six cases both of the parties to the concentration were foreign undertakings and in two cases the parties to the concentration were both domestic and foreign undertakings.

48. In 2012 concentrations took place in the following goods markets:

- pharmacies, oil shale, thermal energy and electricity, gas, leased line and telephone services; generation and sale of electricity (wind energy), public transportation in Tallinn; dairy farming and wholesale of crude milk, media, sale of IT infrastructure products and provision of services, sale of passenger cars, waste management, road maintenance, operating container terminals; advertising sales, wholesale and retail of forage; machines and equipment rental; systems of pressure, storm water, sewerage and drainage, carriage of passengers, sale of medical devices.