

Unclassified

DAF/COMP/WD(2014)91

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

18-Nov-2014

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WD(2014)91
Unclassified

ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Estonia --

17-18 December 2014

This document reproduces a written contribution from Estonia submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.

More documents related to this discussion can be found at <http://www.oecd.org/daf/competition>.

JT03366439

Complete document available on OLIS in its original format

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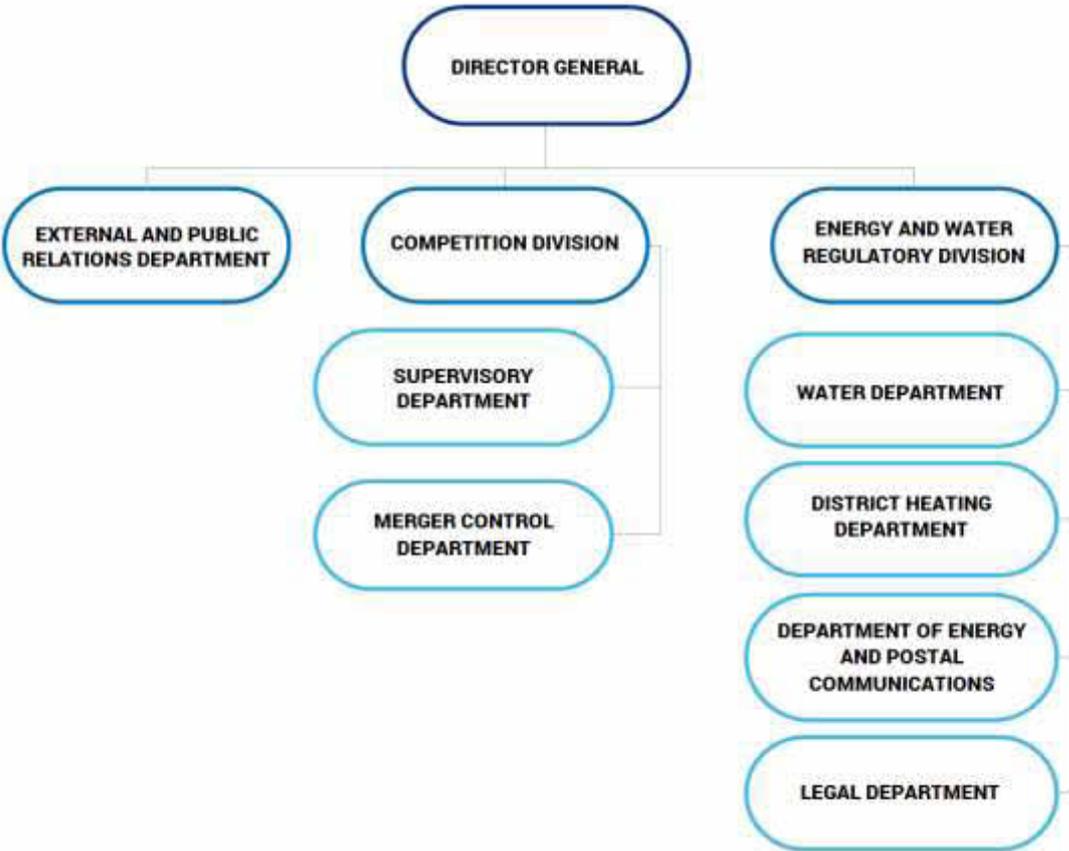
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ESTONIA

1. Functions of Estonian Competition Authority

1. Estonian Competition Authority (ECA) is a government agency, which operates within the administrative area of the Ministry of Economic Affairs and Communications (MEAC). The authority exercises state supervision and applies enforcement powers in the fields of competition, fuel and energy, postal services, railway, water supply and aviation on the basis and to the extent prescribed by law. Therefore the ECA is multi-purpose agency with antitrust and regulatory functions, currently employing 49 people of whom 18 work in the Competition Division.

2. Current Structure of the Estonian Competition Authority



3. The development of institutional design of the ECA 1993-2008

2. October 1st 1993 marked the take-off of competition enforcement in newly re-established republic, as the first Competition Act entered into force. The Competition Act of 1993 was based on traditional competition law provisions and laid the foundation for setting up the Estonian Competition Board the same year.

3. For that purpose the former Price Authority within the administrative area of the Ministry of Finance was reorganised to become a competition watchdog. Interestingly enough, although the ECA was officially named the Competition Board, it was and still is a unitary executive headed by a director general. After the reform of 2008 the Statutes of the ECA began to reflect the traditional model *de jure*, referring henceforth to the ECA as the Authority.

4. According to the 1993 Competition Act, competition enforcement duties were divided between the Competition Board and three sectoral regulators in their respective spheres, the Banking Supervision Authority, the Insurance Supervisory Authority and the Securities Inspectorate, which were later merged to become the Financial Supervision Authority.

5. Another reorganisation took place in 1995 with the creation of the Consumer Protection Board, as a number of officials and units of the ECA were transferred there.

6. Liberalisation of Estonian economy, privatisation process and particularly the foreseeable accession to the EU necessitated setting up of additional agencies. The Energy Market Inspectorate and the Communications Board were both established in 1998, whereas the Railway Inspectorate was created a year later, with the consequence of the ECA being partially relieved of its responsibilities in these sectors.

7. On 1st of October 2001, a new Competition Act entered into force, which provided the ECA with additional responsibilities, including the supervision of competition matters among credit institutions, securities brokers and insurance companies, which were previously supervised by relevant regulators. In 2002, the ECA was transferred to the administrative area of the MEAC.

4. Reform of 2008

8. A major reform concerning the functions and design of the ECA was undertaken in 2007, with the result of five agencies within the administrative area of the MEAC being merged into two. The merging parties were the Competition Board, Energy Market Inspectorate, Communications Board, Railway Inspectorate and Technical Surveillance Inspectorate, which became the Competition Authority and the Technical Surveillance Authority. The merger entered into force on 1st of January 2008. In total the reform took around 6 months to prepare.

9. The new Competition Authority retained all of its antitrust functions, whilst taking over the tasks of the energy regulator and obtaining some functions of the communications regulator. In addition some tasks in the railway sector previously exercised by the MEAC were transferred to the ECA, due to requirements of EU legislation.

10. Preparation of said reform started in July 2007 with the formation of work groups, with one high level work group co-ordinating the process and a number of sub-groups dealing with specifics of the merger. The high level work group was comprised of the heads and deputy directors of all the merging agencies and officials from the MEAC. The members of sub-groups represented the agencies and relevant departments of ministry.

11. The reform entailed amendments in 36 laws which mostly were not substantive but rather concerned referencing to new names of the relevant authorities and suchlike.¹ In addition a brief analysis of the institutional design of competition authorities and regulators of other Member States of the EU was undertaken, although it mostly confirmed what was already known beforehand, that at the time multi-purpose agencies existed in some other Member States. A draft law was presented to the Parliament in October 2007 and was passed at the end of November, surprisingly without even stirring

¹ For example, amendments of the Competition Act comprised only of changing the terms “The Director-General of the Competition Authority, the Deputy Director-General” or the person authorised by them“ with the term “Competition Authority”.

any meaningful debate in the Parliament, which points to a strong political support for the merger among all stakeholders.

12. The considered alternatives to the chosen model revolved mostly around the question how to divide functions of the telecoms regulator between the two new authorities. It was decided that functions pertaining to market regulation would fall under the responsibility of the ECA and the more technical tasks would be handled by the Technical Surveillance Authority. Incidentally, this partition was changed in 2014.

13. A somewhat internationally popular model of merging regulatory and competition authorities with consumer protection agencies was not seriously considered as it was believed that application of consumer protection legislation was much too dissimilar compared to the functions of economic and competition regulators. Therefore it was assumed that such a merger would lead to internal conflicts within the agency.

14. The internal design of the authority was decided by the management of the ECA and has seen only some minor changes during the past years. The main issue concerning the structure has been whether a separate legal division is required.

4.1 Objectives of the reform

15. Reorganisation of the agencies had a number of objectives. It was mostly emphasised that by pooling the existing know-how of different agencies into one, it would lead to marked improvements and synergies in discharging regulatory functions.

16. Unsurprisingly cost-cutting and better resource allocation was also high in the agenda, with combining support functions of the agencies often cited as an important motivation for the reform. Financial and economic rationale was also tied to the objective of offering better career opportunities and wages for officials working in the newly merged authorities. Related to the aforementioned objectives was the fact that some of the merging agencies employed only a handful of people.

17. One of the more unorthodox goals of the merger was to avoid setting up new regulators in the future. It was known at the time that EU legislation on aviation (directive on airport charges) might require setting up a regulatory authority which would have to deal with disputes between airport operators and airport users on applicable rates. As Estonia is a comparatively small country, it was argued that establishing new regulators would be unreasonable.

18. Another point was the prevention of conflicts of mandate between agencies. Mandates of pre-reform agencies were sometimes overlapping or the division of responsibilities was often somewhat vague. Additionally, the accession to the EU and concomitant primacy of EU law with the “duty to disapply” principle made division of competences between regulators and the ECA even more complex.

19. Stemming from the objective of prevention of conflicts, it was also considered to be important that a one-stop-shop could be created, as it was believed that the ECA would become a unified and strong partner for undertakings and the public sector to communicate with.

4.2 Results of the merger

20. The ECA or the MEAC has not carried out an evaluation of the merger yet, but there is some anecdotal evidence of some objectives of the reform being met. Most notable outcome is cost-cutting achieved by combining administrative functions, although some cost-reductions might be explained by

centralising additional administrative functions to the ministry or by indirect effects of liberalisation in telecoms and postal sector on public administration expenses.²

21. A clearer scope of the merged authority due to eliminating conflicts in mandate has allowed tackling a number of competition concerns which were not addressed before due to regulatory gaps or vagueness in the division of competences between authorities. For example, the director general of the ECA has stated that post-merger there is no more grey area where the regulator can't and the Competition Authority won't.

5. Post reform developments

22. Changes in functions and competences of the ECA did not subside by the 2008 reform, but in 2011 the ECA was also entrusted with regulatory functions in the fields of district heating and water supply, which were previously wholly or partly regulated by local authorities. Due to the adoption of EU directive on airport charges, the ECA became the agency which settles disputes between airport operators and airport users on applicable rates.

23. Since 1st July 2014 the ECA was relieved of its functions of telecoms regulator which were transferred to the Technical Surveillance Authority, ending the division of responsibilities between the two agencies, as the latter is now the sole telecoms regulator. Due to the harmonisation of EU energy efficiency directive, it has been proposed that the ECA should be responsible for regulatory functions foreseen by that directive.

24. Further developments in institutional design of the ECA might be driven by the commitment of the current coalition to enhance the independence of the ECA from elected officials. In our preliminary view, the degree of formal autonomy that the ECA currently enjoys is rooted firmly in the EU mainstream.

25. The most relevant factors for measuring autonomy – appointment criteria of the management, budget allocation and relationship between the agency and elected officials shows no marked deviations from the models applied in other EU Member States, including our immediate neighbours. But nevertheless some authors have concluded that the ECA is by far the least independent competition authority in the EU.³

26. In any case the MEAC is currently carrying out a comparative study of models employed in other jurisdictions so to devise instruments for increasing the independence of the ECA. This might also yield some proposals on the institutional design of the ECA.

² Pre-merger administrative staff of separate agencies was in total 60 employees, post-merger 5. Telecoms regulator employed 35 people in 2008; today the same functions are performed by 7 employees. The number of people employed in regulation of the postal sector has also decreased dramatically, from 15 to 1 during the same period.

³ Guidi, M. Explaining and Assessing Independence: National Competition Authorities in the EU Member States. (2012). European University Institute.