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-- Competition Law and Policy Development in Lithuania --

The attached note is the statement made by Mr. Stanikunas, Director General of the State Competition and Consumer Protection Office, to the CLP Committee on 5 June 2000. It is circulated FOR INFORMATION as an annex to the Summary Record of the 79th CLP session.
COMPETITION LAW AND POLICY IN LITHUANIA

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I. Introduction

1. Recent competition law and policy developments in Lithuania have been directly related to the adoption of the new Law on Competition.

2. Nearly a seven-year experience accumulated, when enforcing the competition law, preparatory procedures during the pre-accession period to the EU as well as the European Agreement itself, signed and enacted, harmonisation of the Lithuanian law with the EU legislation have created favourable conditions for the review and improvement of the competition law existing in Lithuania. In March 1999, the new competition law was adopted to replace the former 1992 competition law. It was the most remarkable event in the competition law and policy of Lithuania during the recent period.

3. Thus, the major focus in my presentation will be made on the characterisation of new shifts that have taken place both in the Lithuanian competition law and policy. I am going to present brief comments on the new institutional structure of the Competition Council and its Administration, most important elements of the new competition law, as well the main decisions made by the Competition Council, when applying the competition law.

II. Institutional developments

4. It is very important to stress that the new competition law has changed the status of the Lithuanian competition institution. The new law creates a Competition Council, an independent public institution, responsible for the implementation of competition law and policy.

5. In this respect, I would like to present you some historical developments. Under the 1992 law the Competition Council initially existed within the Institution of Price and Competition under the Ministry of Economics. In 1995 the Institution was reorganised into the State Competition and Consumer Protection Office by the Government, the director of which was appointed by the government. The former Competition Council was under the State Competition and Consumer Protection Office. The Competition Council consisted of seven members, also appointed by the government, and served for terms of three years. Council members did not serve full time in their positions; they only used to meet once-twice per month for making relevant decisions.

6. The new law is more explicit on several aspects of the status of the Competition Council, and in some respects provides the Competition Council with a greater measure of independence. The law provides that the Chairman and four members of the Competition Council are appointed by the President, according to the proposal of the Prime Minister. The Chairman serves for a term of five years, and the four members serve for a term of six years, except that initially two members serve for a three year term. The new Competition Council was appointed by the President on 18 October 1999. Regulations of the Competition Council have been adopted by the Government Resolution No 822 on 12 July 1999.

7. The separate Law on Coming into Force of the Law on Competition No VIII-1100, adopted on the 23 of February 1999, provided for the reorganisation of the former Competition and Consumer Protection Institution into the administration of the Competition Council. The administration of the
Competition Council was formed to fulfil the functions of the Competition Council. Its specific structures and management procedures were elaborated and approved by the Competition Council.

8. On 22 October 1999 the Competition Council issued Resolution No 2 “On the Regulations of the Competition Council Administration”. The current Regulations make provisions for the structure of the Administration of the Competition Council. The Administration comprises the manager, the legal adviser, a representative for press media, 9 divisions, a secretariat and a financial group. Each member of the Competition Council is designated to perform the co-ordination of the activity of appropriate divisions.

9. Over the recent period the staff of the Administration of the Competition Council averaged 50 people. Most of the professional employees are economists and lawyers and deal with competition (anti-trust) and state aids issues.

10. Staff of the administration of the Competition Council conduct investigations of possible violations of the law, having powers to acquire evidence, and make recommendations to the Competition Council. The new competition law provides for extensive powers to obtain information from the subjects of an investigation. The powers include entering and searching the subjects’ premises with or without notice, examining and copying documents therein and taking documents away, obtaining oral and written explanations from subjects, including by requiring individuals to appear at the offices of the Competition Council. Before entering and searching the subjects’ premises and reviewing and removing documents, however, a court order must be obtained. In addition, the law provides for the Competition Council to obtain information and documents from other economic entities – non-subjects – and from public administration and local authorities in the course of an investigation.

11. Although, the implementation of competition law and policy in Lithuania rests within responsibility of the Competition Council, competition claims in Lithuania are also investigated by the Higher Administrative Court and other courts.

12. In addition to the supervision of the Law on Competition, the Competition Council performs monitoring of state aid, and also carries out functions assigned by the Law on Prices, the Law on Consumer Protection, and the Antidumping Law.

III. Legislation

Summary of main legal provisions of the new competition law

13. The new Law on Competition No VIII-1099 was passed by the Parliament (Seimas) of the Republic of Lithuania on 23 March 1999 and became effective on 2 April 1999. The law replaced the previous Law on Competition No I-2878 adopted in 1992.

14. Like most competition laws around the world, the new Lithuanian competition law is structured so as to prevent and prosecute three main kinds of anti-competitive actions. First, Article 5 prohibits agreements “which have as their object the restriction of competition or which may restrict competition”. Second, Article 9 prohibits abuse of a dominant position. Third, Articles 10-15 provide for premerger notification and merger control in order to “prevent creation or strengthening of a dominant position”.

15. An important aspect of the new law is its approximation to the competition law of the European Community. The provisions proscribing restrictive agreements and abuse of dominance are practically identical to Articles 81 and 82 of the EC Treaty. The law provides for notification of mergers (concentrations), that exceed certain size thresholds in advance of consummation, and, like in the EU
(Control of mergers is governed by the Council Regulation (EEC) No 4064/89), establishes as substantive legal standard the prohibition of mergers that establish or strengthen a dominant position and result in the significant reduction of competition in a relevant market.

16. The law covers not only the three traditional areas of antitrust but it also contains provisions relating to unfair competition and actions of public and local authorities.

17. The most important new elements of the competition law are as follows:

- the law introduces control over both vertical and horizontal restrictive agreements, while the old law provided restrictions only for horizontal anti-competitive agreements. According to the new law anti-competitive agreements include all agreements which have their object the restriction of competition or which may restrict competition. Such agreements are considered to be void from the moment of conclusion. The substantive provisions prohibiting restrictive agreements in the 1992 law (Article 4) and the new law (Article 5) do not differ significantly. They contain general prohibitions of agreements that restrict competition and also prohibitions of specified types of conduct. The specific prohibitions include agreements among competitors fixing prices or terms of sale, allocating markets or sales volumes, and bid rigging. The new law provides that these types of conduct are considered as always restricting competition and are illegal unless they fall within one of the exemptions in Article 6. Other types of conduct that are specifically provided in Article 5 include agreements applying discriminatory conditions to contracting parties or requiring obligations unrelated to the subject of the underlying agreement, and agreements to refuse to contract with certain parties (group boycotts);

- the new law departs from the 1992 law, in providing for certain exemptions from the general prohibitions of anti-competitive agreements. Article 6 provides for “block or individual exemptions” for agreements that improve investment, technical or economic progress or distribution of goods to the benefit of consumers. Such agreements must not impose restrictions on the contracting parties that are unrelated to the beneficial objectives enumerated in Article 6, however, and they must not afford the parties the ability to eliminate competition with respect to a substantial part of the relevant market. Article 7 bestows upon the Competition Council the power to issue block exemptions relating to certain types of conduct. It provides for general exemptions of agreements for which block exemption is granted in accordance with the law provisions existing in the European Union. By incorporating the EU experience in this area the new law offers the benefit of increased certainty for the business community about the legality of their agreements. Parties may apply to the Competition Council for a determination of whether their agreement falls within a general exemption. Article 7 also requires the parties to an agreement subject to a block exemption to provide some basic information about the agreement to the Competition Council. Article 8 provides for the granting of individual exemptions, upon the submission of an application to the Council in advance of implementation of the agreement. The Competition Council must render its decision within three months of the submission of the application;

- Article 9 of the new law prohibits abuse of a dominant position and is in line with Article 82 of the EC Treaty. Like Article 82, it prohibits certain discriminatory conduct, imposition of additional obligations not directly related to the commercial purpose of a contract, limiting production or output without objective reasons, and imposing unfair sales or purchase prices or terms with contracting partners. Both the old and the new law define “dominant position” as having the ability to unilaterally exercise “decisive influence” on a market. Under the 1992
law an enterprise could not be dominant unless it had a market share of more than 40 per cent. Under the new law, a 40 per cent market share establishes a presumption of dominance. In addition, the new law creates a presumption of joint dominance when the three largest firms in a market have a collective market share of 70 per cent;

- as regards unfair competition, the new law prohibits certain actions that are defined as “unfair competition”, but differently from the old law, the Competition Council investigates the actions of unfair competition only in cases where these the interests of a significant number of undertakings or consumers are violated;

- according to Article 4 public and local authorities are required to “ensure freedom of fair competition” in the course of their regulation of economic activity. They are prohibited from discriminating in favour or against individual undertakings, except when such discrimination is required in the course of carrying out their responsibilities under the laws of Lithuania. Article 19(4) of the new law provides that the Competition Council may request governmental bodies to modify or abolish legal acts that are considered to violate Article 4, and if such measures are not taken, to appeal to the Higher Administrative Court, except in the case of normative acts of the Government of Lithuania;

- the new law explicitly sets out the administrative procedures and appeals in prosecuting cases, which was not the case with the old law. In a potentially significant departure from the 1992 law, other entities, including economic entities that have been injured by allegedly anticompetitive conduct, bodies of public administration and local authorities, and associations and unions of economic entities and consumers, may submit a formal request for an investigation. The Council is obliged to decide whether it will grant the request within 14 days of the application. If an investigation is begun it must be completed within three months, except that the Council can extend the period for up to an additional two months. The Competition Council may conduct public hearings, in which the parties to the proceedings may participate and present evidence. After the hearing the Competition Council may adopt resolutions to the effect that a violation of law has or has not occurred, and impose sanctions as appropriate. Sanctions may include orders to stop an illegal activity or to take action to eliminate the consequences of such activity. Fines may also be imposed, both for substantive violations and for failure to observe procedural obligations imposed by the law. For the most substantive violations the new law provides the maximum fine up to 10 per cent of the gross annual income. Decisions of the Council are determined by majority vote, with at least four members participating. Its decisions must be published in an official journal. Appeals from decisions of the Competition Council may be made to the Higher Administrative Court;

- the new competition law provides for a principle of extra-territoriality, according to which the law may apply not only to Lithuanian undertakings but also to foreign undertakings, provided that their activities restrict competition in the Lithuanian market;

- an important novelty of the law is the broadening of the concept of “undertaking”, which includes "enterprises, a combination of enterprises (associations, unions, consortiums, etc.), an institution or an organisation, or other legal or natural persons which perform or may perform economic activity in the Republic of Lithuania or whose actions affect or whose intentions, if realised, could affect economic activity in the Republic of Lithuania. Public administration and local authorities of the Republic of Lithuania may be considered to be undertakings if they engage in economic activity".
Secondary legislation

18. The new Law on Competition has committed to further improve and develop the competition law in Lithuania by adopting secondary legislation to facilitate the effective implementation of the provisions of the said Law. While meeting such requirements, the Competition Council has adopted the following acts:

- Resolution No 2 of 22 October 1999 “On the Regulations of the Administration of the Competition Council”;
- Resolution No 4 of 5 November 1999 “On Provisional Rules of Procedure of the Competition Council”;
- Resolution No 1 of 13 January 2000 “On Agreements of Minor Importance that Do Not Fall Under Article 5(1) and Article 5(2) of the “Law on Competition” (in compliance with the Commission Communication concerning agreements of minor importance which do not fall under Article 81(1) EC);
- Resolution No 17 of 24 February 2000 "On the Competition Council Notice on the Definition of the Relevant Market” (in compliance with the Commission Notice on the definition of the relevant market OJ C 372 on 9/12/1997);
- Resolution No 45 of 27 April 2000 "On Notifications of Concentration and Calculation of Aggregate Turnover” (in compliance with the Council Regulation (EEC) No 4064/89);
- Resolution No 52 of 17 May 2000 "On the Competition Council Notice on the Establishing of the Dominant Position”.

Later in 2000, the Competition Council is planning to adopt resolutions:

- on the Rules of procedure of the Competition Council;
- on granting exemptions to certain categories of agreements, decisions and concerted practices in insurance sector;
- on granting of block exemptions to different transport sectors;
- on the form of applications and notifications of agreements.

In 2001 the Competition Council is planning to adopt resolutions:

- on granting general exemptions to horizontal agreements;
- on granting general exemptions to certain categories of technology transfer agreements;
• on granting exemptions to production and trade in agriculture products.

19. Full compliance with the EC competition (anti-trust) *acquis* is expected by 31 December 2001, after the Competition Council adopts all the relevant secondary legislation required by the competition law.

20. An important development in the field of competition was the adoption of the implementing rules for the application of the competition provisions applicable to undertakings provided for in Article 64 (1)(i), (1)(ii) and (2) of the Europe Agreement by the Association Council in 1999.

IV. Enforcement of competition law

General overview

21. During the period of 1993-1999, the Lithuanian Competition Institution considered a total of 262 cases involving possible substantive violations of the competition law. Most of the cases (108) were related to unfair competition, 47 - abuse of a dominant position, 45 - illegal concentration, 39 - activities of state government bodies restricting competition, 18 -- fail to fulfil the obligations of the Competition Institution, 4 - restrictive agreements (cartels). For the infringements of the law total amount of fines constituted 4 million 153 thousand Litas (approximately 1 million USD). 25 cases were appealed to the court, and the Competition Council prevailed in most of them.

22. In 1999, a total amount of investigations constituted 80. The new Competition Council (appointed in October 1999) organised 15 formal meetings and considered 62 questions. A total of 8 new investigations were started and in 7 cases violation-constituting decisions have been taken.

23. In January-April 2000, a total of 15 meetings (including 2 public hearings) were organised, 78 questions were considered and 34 investigations were started (including 3 proceedings against cartel agreements, 3 - against abuse of a dominant position, 4 - unfair competition, 3 - restrictive actions of state government bodies). In 6 cases decisions were made. A total of 10 permissions for concentration were issued.

Actions against restrictive agreements and abuses of dominant positions

Restrictive agreements

24. The substantive provisions prohibiting restrictive agreements in the 1992 law (Article 4) and the new law (Article 5) do not differ significantly. They contain general prohibitions of agreements that restrict competition and also prohibitions of specified types of conduct. The specific prohibitions include agreements among competitors fixing prices or terms of sale, allocating markets or sales volumes, and bid rigging. The new law provides that these types of conduct are considered as always restricting competition and are illegal unless they fall within one of the exemptions in Article 6. Other types of conduct that are specifically enumerated in Article 5 include agreements applying discriminatory conditions to contracting parties or requiring obligations unrelated to the subject of the underlying agreement, and agreements to refuse to contract with certain parties (group boycotts).

25. The new law departs from the 1992 law, however, in providing for certain exemptions from the general prohibitions of anticompetitive agreements. In language that parallels Article 81(3) of the EC Treaty, Article 6 provides for “general or individual exemptions” for agreements that improve investment,
technical or economic progress or distribution of goods to the benefit of consumers. Such agreements must not impose restrictions on the contracting parties that are unrelated to the beneficial objectives enumerated in Article 6, however, and they must not afford the parties the ability to eliminate competition with respect to a substantial part of the relevant market.

26. Article 7 bestows upon the Competition Council the power to issue block exemptions relating to certain types of conduct. The article is explicitly intended to parallel the practice in the EU relating to block exemptions. It provides for block exemptions of agreements “for which general exemption is granted pursuant to the legal provisions in effect in the European Union.” Parties may apply to the Council for a determination of whether their agreement falls within a general exemption. Article 7 also requires the parties to an agreement subject to a general exemption to provide information about the agreement to the Council on a standard form to be established by the Competition Council. Article 8 provides for the granting of individual exemptions, upon the submission of an application to the Competition Council “prior to the conclusion or coming into force of the agreement.” The Competition Council must render its decision within three months of the submission of the application.

27. The Competition Council has considered relatively few cases on restrictive agreements under the old competition law. In some industries cartels were suspected, but the Competition Office was unable to generate sufficient evidence of an agreement. The subjects of the investigation were not co-operative, and the office lacked sufficient powers to compel the production of evidence. Only four cases involving cartel activity have been brought to the Competition Council. Two successful cartel cases of the year 1998 are worthy of description, however.

28. **Price Fixing - Meat Producers** - A meat producers’ association, consisting of eight members, was organised under the auspices of the Ministry of Agriculture. The members met periodically for legitimate purposes, but at these times they also met unofficially and agreed on prices for sales to the government. The Agriculture Ministry discovered a written protocol containing the agreement and notified the Competition Office. The Office interviewed the producers and several admitted to the agreement. The Council fined the association 500,000 litas.

29. **Market Allocation - Intravenous Solutions** - A Lithuanian producer of intravenous solutions agreed with a Latvian producer of these products that each would not export to the other’s country. The agreement was discovered during a routine visit to the offices of the Lithuanian enterprise by staff members of the Competition Office. The manager of the enterprise, unaware of the illegality of the conduct, provided the competition staff with a copy of the written agreement dividing the markets. In the ensuing investigation the manager of the enterprise provided a written statement admitting to the agreement. The case was presented to the Competition Council, which imposed a fine upon the Lithuanian enterprise and issued an order to terminate the agreement. It should also be noted that this was an international cartel; the illegal agreement allocated markets between Lithuania and Latvia.

30. Recently the Competition Council has increased its emphasis on cases involving restrictive agreements. Cartel investigations are set by the new Competition Council as a priority. Three cartel cases are under investigation now. The new investigative powers including search of premises have been used in order to obtain the evidence.

31. **Abuses of a dominant position**

During the period of 1993-1999, the Competition Institution considered a total of 47 cases involving abuse of dominance. The cases arose in several sectors of the economy, and involved issues such as refusals to deal or discrimination by operators of essential facilities (rail, telecommunications), exclusive
distribution arrangements and resale price maintenance. Remedies in most of the cases included orders to cease the offending conduct accompanied by fines.

32. Market definition was a central issue in some of the cases, particularly those not involving essential facility issues. That issue and ease of entry was determinative in most abuse cases.

33. Article 9 of the new law specifies certain types of conduct that can constitute abuse, such as “unfair pricing” or “limitation of trade, production or technical development to the prejudice of consumers.” Such terms are sometimes difficult to interpret.

34. Thus, during 1999 efforts were made to draft regulations related to practical application of the current Article 9 of the Law on Competition. The Competition Council issued Resolutions on “The Notice of the Competition Council on the Establishing of the Dominant Position” and on “The Notice of the Competition Council on the Definition of a Relevant Market”.

35. The objective of “The Notice of the Competition Council on the Establishing of the Dominant Position” is to present a clear understanding of the way the Competition Council defines the dominant position of undertakings functioning in a relevant market. The Council will assess whether undertakings face no direct competition, or if position of undertakings enables to make unilateral decisive influence in such relevant market by effectively restricting competition. The Competition Council shall make such assessments in cases of abuse of a dominant position and of concentration control.

36. “The Notice of the Competition Council on the Definition of a Relevant Market” is aimed at provision of major principles and criteria to be followed by the Competition Council while defining the relevant market.

Mergers and acquisitions

37. Under the 1992 competition law the thresholds for notifications were set at a relatively low level. Notification was required if the merging parties together had any of the following: annual turnover of 8 million Lt., total capital of 2 million Lt., or over 300 employees. These thresholds generated a relatively large – and growing – number of notifications: 17 in 1994, 31 in 1995, 38 in 1996, 77 in 1997, 158 in 1998 and 93 in 1999.

38. Under the new law the notification threshold is set at combined turnover of 30 million Lt., each party having at least 5 million Lt. The higher threshold reduced the number of notifications in 1999-2000.

39. Notified concentrations have occurred in many sectors of the economy. In approximately half of the transactions a foreign economic entity was involved. All types of mergers have been notified – horizontal, vertical and conglomerate – with horizontal and conglomerate being the larger categories. To date, almost all notified mergers have been approved by the Competition Council. Only two mergers have been disapproved completely, and a few have been approved with conditions.

40. In 1999, 93 notifications were examined; out of them 32 and 61 notifications have been examined following the Law on Competition adopted on 15 September, 1992 (No 1-2878) and the new Law on Competition, respectively. Out of 61 decisions taken, the new Competition Council has made 13. During 1999 the permits have been issued to 38 foreign undertakings. Out of them 27 cases have been regarded as a capital concentration distinguished by strikingly prominent horizontal concentration features: 8 cases have been identified in the manufacturing sector, 7 in financial markets; 3 in telecommunications and information services market; in 11 cases concentration has been characterised as a capital concentration containing the features of a vertical concentration. The rest 55 cases have been related to the undertakings
registered in Lithuania. Out of them 40 have been treated as a horizontal concentration including 18 in the manufacturing sector, 5 in financial markets, 1 in telecommunications and information service markets, 15 in trade service markets, 1 in construction markets. In 11 cases concentration has been characterised as a capital concentration containing the features of a vertical concentration, in a single case it has been a vertical concentration and 3 cases have been related to the establishment of new undertakings.

41. Bearing in mind the fact that actions of the undertakings executing concentration had not introduced any significant changes in the established market structure, the permits allowing concentration have been issued in 92 cases, out of them two cases had allowed for concentration under certain conditions only.

42. The first case was related to concentration in mobile communications service market.

43. With the permission of Amber Mobile Teleholding Stock Company having majority shares in Lietuvos Telekomas Stock Company, and upon evaluation of rather significant changes in the concentration level in the mobile communications service market and possible monopolisation of the said market, for the first time in the Office practice Lietuvos Telekomas has been advised to sell the shares acquired from Comliet Closed Stock Company and Bītē Closed Company as well as to waive the right to GSM 900 and DCS 1800 licences.

44. While implementing the provisions of the agreement, "Lietuvos Telekomas" has sold "Bītē GSM" shares, waived of the licenses held on GSM 900 and DCS 1800 frequencies. In this way, there appeared the opportunity to step in and to start to operate for Tele 2, controlled by the “Net Com”, the third operator of the mobile link, one of the leaders in the Scandinavian telecommunications markets providing mobile, stationary communications, internet and cable TV services. Such factors, as entry into the market of the third mobile link operator and loss by "Lietuvos Telekomas" Stock Company both of the shares owned by "Bītē GSM" Closed Stock Company and of the seats in the management, have contributed to enhancement of competition in this market. Coming down tariff rates, improving service quality and increasing diversification of the services provided have all been a good proof to support the aforementioned statement. Increased number of actors playing in this market has reduced the danger of concluding various agreements that might have distorted competition and at the same time brought harm to consumers.

45. Later, following prolonged negotiations with the Competition Council it has been agreed to allow to "Lietuvos Telekomas" Stock Company to acquire a portfolio of shares owned by "Comliet" Closed Stock Company with regard to the fact that "Lietuvos Telekomas" Stock Company has committed itself to release additional investments for installation of telephone lines in rural areas.

46. In the second case it has been allowed, based on the agreement principle, to establish "Aibēs mažmena" Closed Stock Company on condition that no prices and mark-ups shall be set to the members of "Aibēs mažmena" network and no rights of "Aibēs mažmena" network members to acquire goods analogous to commodities supplied from alternative sources via "Aibēs mažmena" Closed Stock Company shall be restricted.

47. In one case the permit was declined because the evaluation of the situation had shown that the concentration would lead to a dominant position in the market and will heavily restrict competition in a grain processing sector (namely, in the wheat processing market).
Unfair competition

48. Initially, the Competition Council was very active in this area, bringing at least 20 cases in most years, but the number dropped to six in 1998, and three in 1999, however. After adoption of the new competition law, most cases of unfair competition are to be dealt by courts.

49. In 1999, the investigations were started in 28 cases related to possible violations of the provisions on unfair competition. Three undertakings have been charged with fines in the amount of 11,000 LTL. In other cases the offenders have been warned and obligated to terminate illegal activities.

50. The most typical investigations were related to misleading of consumers. One case could be mentioned.

51. **Misleading discount card** - Based on the advertising service contract concluded between the YORK BALTIC Closed Stock Company and I. Urbšienės Company, the latter had to make 40 percent discount to the consumers who had acquired a discount card during their first visit in the NZ club-cafeteria. The investigation results have proven that this type of discount has been applied not to all consumers. Therefore, the consumers to whom the discount regime was not applied have been misled. The Competition Council has imposed on I. Urbšienės Company a fine for infringement of the Law on Competition.

Actions against restricting decisions of state government bodies

52. During the period of 1993-1999, the Competition Council considered totally 39 cases related to the activities of state government bodies restricting competition.

53. During 1999 the analysis has been made into legal acts and other decisions made by public and local authorities with the aim to identify the compliance thereof with the provisions of Article 4 of the Law on Competition. Below there are two cases of 1999 that are worthy of mention.

54. **Animal insemination** - LITGENAS Lithuanian-German Closed Stock Company has applied to the Competition Council by making a statement that animal insemination inspectors working in a public sector of Ukmergė and Akmenė regions have been putting obstacles in the way of the said Company to penetrate animal insemination markets in these regions. It was found to be in conflict with the provisions of paragraph 2 of Article 4 of the Law on Competition specifying that state administrative bodies are not allowed to take decisions that may introduce disturbances in the competition conditions for the undertakings competing in the market. The Competition Council, based on its decision, has authorised the two institutions regulating the animal insemination activity, namely, the State Animal Breeding Surveillance Office and the Ministry of Agriculture, to adopt appropriate legal acts regulating the activities of public inspectors and to ensure the freedom of choice for the customer (the animal grower) and the opportunity for the sperm supplier to be engaged in free and fair competition in sperm supply market segment.

55. **Selection of training centres for training of the unemployed** - The Competition Council has received a complaint from the NAUJOJI SISTEMA Closed Stock Company “Regarding the Legality of Some Actions Performed by the Lithuanian Labour Market Training Authority”. This complaint has initiated the investigation. During the investigation it has been found out that following Order No 85 “On Vocational Training of the Unemployed and the Employees on the Redundancy List and Financing Opportunities of such an Activity from the Employment Fund” issued on 10 July 1996 by the Ministry of Social Security and Labour, the preference in the selection of training centres for training of the
unemployed has been given to labour market training centres under the auspices of the Lithuanian Labour Market Training Authority in this way creating non-uniform competition conditions for other licensed training institutions. Thus, this procedure, once adopted, has restricted the opportunities of private training institutions to be engaged in training of the unemployed and favoured some individual economic entities. The matter of the investigation has been considered during the public hearing of the Competition Council. It has been stated that the Order infringes Article 4 of the Law on Competition, and the Ministry of Social Security and Labour has been requested to change the paragraphs of the procedure in such a way as to make them no longer conflicting with the Law on Competition and to inform the Competition Council on the decisions taken.

V. State aid

56. State aid constitutes a very important part of competition policy in Lithuania. Acquis in the field of State Aid is laid down in Articles 87-89 of the EC Treaty. Lithuania has an obligation under Article 64 of the Europe Agreement to establish a state aid monitoring system. Monitoring of state aid should be carried out on the basis of criteria arising from application of Article 87 of the EC Treaty.

57. For the time being state aid in Lithuania is governed by the Government Resolution No 137 "On the Approval of the State aid Monitoring Procedure” which has been revised and approved by the Resolution No 505 of 30 April 1999. By virtue of this Government Resolution, the monitoring body is granted the right to evaluate state aid and decide whether the state aid is in compliance with the Article 64 of the Europe Agreement. Providers of the state aid must submit to the monitoring body new projects of state aid regardless of the form or the purpose of state aid.

58. Monitoring of state aid is performed by the State Aid Division, which was established in 1997. One of the Members of the Competition Council has specific responsibility for state aids.

59. To ensure transparency in the field of State aid in accordance with the European Agreement annual reports on state aid in 1996-1998 were drawn up and submitted to the European Commission. The annual reports were prepared on the basis of the comprehensive state aid inventory. The compilation of the state aid inventory is carried out on a regular basis, i.e. each year the data is collected in the inventory concerning state aid granted in the previous year. In order to improve processing and accumulation of relevant data on the state aid in Lithuania a new software has been installed.

60. A further major step in the process of transposition in the field of state aid was the adoption of the law on state aid by the Seimas on 18 May 2000.

61. For the implementation of the law on state aid the Competition Council has planned in 2000-2002 to draft and adopt by Resolution of the Competition Council Guidelines governing the granting sectorial, horizontal and regional aid. Full transposition of the acquis in the field of the monitoring of state aid is envisaged by 30 June 2002.

62. For the period of five years (1994-1999) the compatibility of state aid provided in Lithuania was assessed taking into account Article 64 (4) (a) of the Europe Agreement, that was recognising the territory of Lithuania identical to the territories which are specified in Article 87(3)(a) of the Treaty establishing the European Community. The main criteria for considering an area eligible for regional aid pursuant to Article 87 (3)(a) provisions is that GDP per capita should be less than 75 percent of the Community average. The draft decision extending that period for another five years has been initiated to submit it to the Association Council.
VI. Competition advocacy

Besides competition law enforcement and state aid control, very important branch of competition policy in Lithuania is advocacy whereby the Competition Council encourages other branches of the government to adjust their policies so as to interfere as little as absolutely necessary with market competition. This is also in close relation with general process of harmonisation of Lithuanian national law system.

63. Current procedures in the government provide for submission of draft new legislation to the Competition Council for comment on issues of competition policy. The new competition law codifies this procedure in Article 19(8), providing that the Council may submit conclusions to the Seimas and to the Government on the effect of draft laws and other legal acts on competition. In exercising this responsibility the Council has commented on dozens of pieces of legislation in recent years. However, very often the Competition Council faces a significant challenge in this important area.

64. One of the more visible examples of the Competition Council’s competition advocacy role occurred in the recent privatisation of the telecommunications industry in Lithuania.

65. The privatisation of the state-owned telecommunications system, which was accompanied by the enactment of a new law on telecommunications, was a difficult and controversial procedure in Lithuania. Substantial investment in facilities was needed; the equipment required modernisation and penetration of households by landlines was low. A majority interest in the operations ultimately was sold to a consortium headed by Swedish and Finnish interests. The new owners acquired in the transaction an exclusive right to provide service through fixed facilities through 2002. In its comments on the legislation the Competition Council raised certain objections to the exclusive arrangement. Its views apparently were not heeded, however. Later, the Council raised objections to the fact that “Telekomas”, the fixed asset operator and owner of one of the two mobile telephone licenses, also was a shareholder of the second mobile operator. "Telekomas" ultimately sold those shares.

State monopolies and special and exclusive rights

66. State monopolies of a commercial character are governed by Article 31 of the EC Treaty (accordingly Article 32 of the Europe Agreement), and state undertakings having special of exclusive rights are governed by Article 86 (accordingly Article 66 of the Europe Agreement).

67. The legal framework of the Republic of Lithuania is generally in line with the provisions of Articles 31 and 86 of the Treaty Establishing the European Community; by way of derogation, however, the “Law on Telecommunications” granted the main fixed telephone networks operator the right up to the end of the year 2002 to remain the sole fixed public telephone networks operator and services provider. From 1 January 2003 the Lithuanian law will be in full compliance with the acquis as regards monopolies and special and exclusive rights.

68. As regards implementation of competition principles in the field of public undertakings, and undertakings to which special or exclusive rights have been granted, active measures were taken by the Law Harmonisation Commission “Competition”. In order to introduce competition into monopolised sectors of the Lithuanian economy, the Law Harmonisation Commission “Competition” issued recommendations for the implementation of the principles, set in the Treaty establishing the European Community and especially in Article 86, into economical sectors, such as transport, energetic, post and telecommunications. In 1998 -1999 these recommendations were presented to all Ministries of the Republic of Lithuania and other public administration institutions, which are responsible for drafting legislative acts in those areas and revision of them.
VII. Public Relations – Developing a Competition Culture

69. To achieve a satisfactory level of the implementation of competition policy in Lithuania, it is very important to make competition law and competition policy public. In addition to making its proceedings accessible to the public, it is in the broader interests of the Competition Council to educate the public about its work – to help consumers, the business community and other parts of government understand the rationale for competition enforcement and why it benefits them. Seeking to meet these objectives, the Competition Council publishes its all substantive decisions, annual reports describing the Council’s activities and important cases, publishes guidelines explaining the substantive analysis that the Council employs in specific types of matters, or outlining procedures that are followed by the Council, cultivates relations with the press; issues press releases announcing important decisions or cases, makes speeches or other public appearances at appropriate occasions, develops a page on the World Wide Web (www.konkuren.lt).

70. An important aspect of the Lithuanian competition policy is also development of further cooperation with the European Commission, relevant competition institutions, and with other international organisations, such as OECD, UNCTAD and others.

VIII. Conclusion

71. I hope, my presentation was useful and helpful to you by providing better understanding of the fundamental principles of the competition policy in the Republic of Lithuania and the way they are followed in practice.