

# REPUBLIC OF LITHUANIA

## LAW ON COMPETITION

23 MARCH 1999 NO VIII-1099

(As last amended on 22 March 2012 No XI-1937)

### CHAPTER I GENERAL PROVISIONS

#### **Article 1. Purpose of the Law**

1. The purpose of this Law is to protect freedom of fair competition in the Republic of Lithuania.

2. This Law shall regulate activities of entities of public administration and economic entities which restrict or may restrict competition and acts of unfair competition, and shall establish the rights, duties and liabilities of the said entities and the legal basis for the restriction of competition and control of unfair competition in the Republic of Lithuania.

3. This Law shall have the aim of harmonising the law of the Republic of Lithuania and the European Union regulating competition relations.

4. This Law shall implement the legal acts of the European Union listed in the Annex to this Law.

#### **Article 2. Scope of the Law**

1. This Law shall prohibit economic entities from performing acts which restrict or may restrict competition, regardless of the character of their economic activity, except in cases where this Law or laws governing individual areas of economic activity provide for exemptions.

2. This Law shall also apply to activities of economic entities registered outside the territory of the Republic of Lithuania if the said activities restrict competition on the domestic market of the Republic of Lithuania.

3. This Law shall not apply to activities of economic entities which restrict competition on foreign markets, unless international agreements to which the Republic of Lithuania is a party provide otherwise.

4. Where the treaties ratified by the Seimas of the Republic of Lithuania (hereinafter: 'the Seimas') provide for other requirements to protect competition, the provisions of the said treaties shall apply.

#### **Article 3. Definitions**

1. **Relevant market** shall mean the market of certain goods in a certain geographic territory.

2. **Dominant position** shall mean the position of one or more economic entities in a relevant market directly facing no competition or enabling to exert a unilateral decisive influence in a relevant market by effectively restricting competition. Unless proved otherwise, an economic entity (except for an economic entity engaged in retail trade) with the market share of not less than 40 per cent shall be considered to enjoy a dominant position within the relevant market. Unless proved otherwise, each of a group of three or a smaller number of economic entities (except for economic entities engaged in retail trade)

with the largest shares of the relevant market, jointly holding 70 per cent or more of the relevant market shall be considered to enjoy a dominant position. Unless proved otherwise, an economic entity engaged in retail trade with the market share of not less than 30 per cent shall be considered to enjoy a dominant position within the relevant market. Unless proved otherwise, each of a group of three or a smaller number of economic entities engaged in retail trade with the largest shares of the relevant market, jointly holding 55 per cent or more of the relevant market shall be considered to enjoy a dominant position.

3. **Geographic territory (geographic market)** shall mean the territory in which the conditions of competition in a relevant product market are, in essence, similar for all economic entities and which, taking into consideration the said fact, may be distinguished from adjacent territories.

4. **Concentration** shall mean:

1) a merger, when one or more economic entities which terminate their activity as independent economic entities are joined to the economic entity which continues its operations, or when a new economic entity is established from two or more economic entities which terminate their activity as independent economic entities;

2) acquisition of control, when the same natural person or natural persons already controlling one or more economic entities, or one or more economic entities, by agreement, jointly set up a new economic entity (except the cases when such new economic entity does not perform the functions of an independent economic entity) or gain control over another economic entity by acquiring an enterprise or part thereof, all or part of the assets of the economic entity, shares or other securities, voting rights, by contract or by any other means.

5. **Restriction of competition** shall mean any actions which prevent competition in a relevant market or may weaken, distort or otherwise have a negative effect on competition.

6. **Conditions of competition** shall mean various economic parameters of purchase or sale, the most important thereof being prices, discounts and markups or other payments as well as factors affecting them (legal restrictions on economic activity, aid granted by public administration authorities, production technologies and costs, peculiarities of the use and consumption of goods, transportation possibilities, etc.).

7. **Competitors** shall mean economic entities which face or may face mutual competition in the same relevant market.

8. **Control** shall mean any rights arising from laws or transactions which entitle a legal or natural person to exert a decisive influence on the activity of an economic entity, including:

1) the right of ownership to all or part of the assets of the economic entity or the right to use all or part of the economic entity's assets;

2) other rights which permit exertion of a decisive influence on the decisions of the bodies of the economic entity or the composition of its personnel.

9. **Controlling person** shall mean a legal or natural person having or acquiring the right of control over an economic entity. A controlling person may be a citizen of the Republic of Lithuania, a foreign national or a stateless person, or an economic entity, as well as a public administration authority. Spouses, parents and their minor children (adopted children) shall be considered as one controlling person. Where two or more legal or natural persons, by agreement, acquire control over an economic entity which is subject to concentration, each of these legal or natural persons shall be considered a controlling person.

10. **Decisive influence** shall mean the situation when the controlling person implements or is in a position to implement his decisions in relation to the economic

activity of the controlled economic entity, the decisions of its bodies or the composition of its personnel.

11. **Goods** shall mean any object of purchase or sale, including all kinds of services, works, rights or securities. The transfer or acquisition of goods under the contracts of purchase and sale, supply, contracts of independent work or other transactions shall be considered purchase or sale. Articles (property) transferred under the lease or loan- for-use contracts shall be comparable to goods.

12. **Product market** shall mean the totality of goods which, from the consumers' point of view, are appropriate substitutes according to their properties, application and prices.

13. **Market share** shall mean the ratio, expressed as a percentage, of the sales or purchases of an economic entity or a group of associated economic entities to the total sales or purchases of goods in a relevant market. If it is impossible to obtain reliable data on the sales or purchases of goods, when determining the market, other objective information about the relevant market, including value of purchases or sales of goods share may be taken into consideration.

14. **Group of associated economic entities** shall mean two or more economic entities which, due to their mutual control or interdependence and possible concerted actions are considered as one economic entity when calculating joint income and market share. Unless proved otherwise, a group of associated economic entities shall be considered to be comprised of each economic entity concerned and:

1) of economic entities in which, as in the economic entity concerned, the shareholding of one and the same natural person or the same natural persons accounts for 1/3 or more of the authorised capital or carries 1/3 or more of all the voting rights;

2) of economic entities which are subject to joint management or have a joint administrative subdivision with the economic entity concerned or half or more of whose members of supervisory board, administrative board or other management or supervisory body are also members of the management or supervisory bodies of the economic entity concerned;

3) of economic entities in which the shareholding of the economic entity concerned accounts for 1/3 or more of the authorised capital or 1/3 or more of all the voting rights or which have a commitment to co-ordinate decisions relating to their economic activity with the economic entity concerned, or of economic entities whose responsibility for the meeting of their obligations to third parties has been assumed by the economic entity concerned, or of economic entities which have committed to transfer all or part of their profit or have transferred the right to make use of 1/3 or more of their assets to the economic entity concerned;

4) of economic entities whose shareholding in the economic entity concerned accounts for 1/3 or more of the authorised capital or 1/3 or more of all the voting rights or with which the economic entity concerned has committed itself to co-ordinate decisions relating to its economic activity, or which have assumed the responsibility for meeting the obligations of the economic entity concerned to third parties, or to which the economic entity concerned has committed to transfer all or part of its profit or has granted the right to make use of 1/3 or more of its assets;

5) of economic entities connected directly or indirectly, through other economic entities, with the economic entities referred to in Points 1, 2, 3 and 4 of this Paragraph in any of the ways specified in Points 1, 2, 3 and 4 of this Paragraph.

15. **Agreement** means contracts concluded in any form (written or oral) between two or more economic entities or concerted practices between economic entities, including decisions made by any combination (association, amalgamation, consortium, etc.) of economic entities or by representatives of such a combination.

16. **Economic activity** shall mean any type of manufacturing, commercial, financial or professional activities associated with the purchase or sale of goods, except for acquisitions by natural persons intended for personal and household needs.

17. **Economic entity** shall mean an enterprise, a combination of enterprises (associations, amalgamations, consortiums, etc.), an institution or an organisation, or other legal or natural persons which perform or may perform economic activities in the Republic of Lithuania or whose actions affect or whose intentions, if realised, could affect economic activity in the Republic of Lithuania. Entities of public administration of the Republic of Lithuania shall be considered to be economic entities if they engage in economic activities.

18. **Assets of an economic entity** shall mean tangible fixed assets and other fixed assets used in economic activity.

19. **Head of an economic entity** shall mean a natural person who is in charge of a legal person and is its single-person management body.

#### **Article 4. Duty of Entities of Public Administration to Ensure Freedom of Fair Competition**

1. In carrying out the assigned tasks related to the regulation of economic activities within the Republic of Lithuania, entities of public administration must ensure freedom of fair competition.

2. Entities of public administration shall be prohibited from adopting legal acts or other decisions which grant privileges to or discriminate against any individual economic entities or their groups and which give or may give rise to differences in the conditions of competition for economic entities competing in a relevant market, except where the difference in the conditions of competition may not be avoided when meeting the requirements of the laws of the Republic of Lithuania.

## **CHAPTER II RESTRICTIVE PRACTICES**

### **SECTION ONE PROHIBITED AGREEMENTS**

#### **Article 5. Prohibition of Agreements Restricting Competition**

1. All agreements which have the purpose of restricting competition or which restrict or may restrict competition shall be prohibited and shall be void from the moment of conclusion thereof, including:

1) agreements to directly or indirectly set (fix) prices of certain goods or other conditions of purchase or sale;

2) agreements to share the product market on a territorial basis, according to groups of buyers or suppliers or in any other way;

3) agreements to fix production or sale volumes for certain goods as well as to restrict technical development or investment;

4) agreements to apply dissimilar (discriminating) conditions to equivalent contracts with individual economic entities, thereby placing them at a competitive disadvantage;

5) agreements to require other economic entities to assume supplementary obligations which, according to their commercial nature or purpose, have no direct connection with the subject of the contract.

2. The agreements concluded between competitors, as listed in Points 1, 2, 3 and 4 of Paragraph 1 of this Article, shall, in all cases, be considered as restricting competition.

3. This Article shall not be mandatory to agreements concluded between economic entities which, due to their small influence, cannot substantially restrict competition. The requirements, terms and conditions of such agreements shall be laid down by a relevant legal act of the Competition Council of the Republic of Lithuania (hereinafter: 'the Competition Council').

#### **Article 6. Exemption**

1. Article 5 of this Law shall not apply where the agreement promotes technical or economical progress or improves the production or distribution of goods, and thereby creates conditions for consumers to receive additional benefit, also where:

1) the agreement does not result in restrictions on the activities of the parties thereto which are not necessary for the attainment of the objectives referred to in this Article;

2) the agreement does not afford the contracting parties the possibility to restrict competition in a large share of the relevant market.

2. An agreement meeting the conditions set forth in Paragraph 1 of this Article shall be effective from the moment of conclusion thereof (*ab initio*) without any prior decision of the Competition Council. In the event of a dispute concerning the compliance of the agreement with the provisions of Paragraph 1 of this Article, the burden of proof concerning the compliance shall fall upon the party to the agreement benefiting from this exemption.

3. The Competition Council shall have the right to adopt legal acts and establish the groups of agreements as well as conditions under which the agreement meets the conditions set forth in Paragraph 1 of this Article.

4. The Competition Council may revoke the right of economic entities to take advantage of the exemption provided for in the legal acts specified in Paragraph 3 of this Article where it is established that, in certain cases, the effect of the agreement is incompatible with the provisions of Paragraph 1 of this Article.

### **SECTION II ABUSE OF A DOMINANT POSITION**

#### **Article 7. Prohibition to Abuse a Dominant Position**

It shall be prohibited to abuse a dominant position within a relevant market by performing any acts which restrict or may restrict competition, limit, without due cause, the possibilities of other economic entities to act in the market or violate the interests of consumers, including:

1) direct or indirect imposition of unfair prices or other conditions of purchase or sale;

2) restriction of trade, production or technical development to the prejudice of consumers;

3) application of dissimilar (discriminating) conditions to equivalent contracts with certain economic entities, thereby placing them at a competitive disadvantage;

4) the conclusion of a contract subject to acceptance by the other party of supplementary obligations which, according to their commercial nature or purpose, have no direct connection with the subject of such contract.

### **SECTION III SUPERVISION OF CONCENTRATION**

#### **Article 8. Notification of Concentration**

1. The intended concentration must be notified to the Competition Council and its permission must be obtained where the combined aggregate income of the economic entities concerned in the business year preceding the concentration is more than LTL 50 million and the aggregate income of each of at least two economic entities concerned in the business year preceding the concentration is more than LTL 5 million.

2. The combined aggregate income of the economic entities participating in the concentration shall be interpreted as:

1) the total amount of aggregate income of the economic entities concerned;

2) the total amount of aggregate income of the economic entities where one or more of the economic entities concerned, by agreement, acquire another economic entity (an enterprise or part thereof), all or part of the assets of the economic entity or acquire a part of shares in another economic entity which, including all previous acquisitions, constitutes 1/3 or more of the authorised capital, or obtain 1/3 or more of all the voting rights of another economic entity. Where the economic entity acquiring a part of shares in another economic entity belongs to a group of associated economic entities, when calculating the shares being acquired, the shares in this entity that are owned by the economic entities belonging to the same group of associated economic entities shall also be included. In the case of acquisition of a part of the economic entity (enterprise) or part of the assets of the economic entity, the aggregate income and market share shall be calculated proportionately to the part of the assets acquired;

3) the total amount of aggregate income of the economic entities subject to concentration, where in one or more of the economic entities concerned the same natural person or natural persons, having the right of control, acquire another economic entity (an enterprise or a part thereof), all or part of the assets of the economic entity or acquire a part of shares in another economic entity which, including all previous acquisitions, constitutes 1/3 or more of the authorised capital, or obtain 1/3 or more of all the voting rights of another economic entity. When calculating the part of the shares of another economic entity acquired by a natural person or natural persons, the shares owned in this economic entity by the economic entities controlled by the natural person or the same natural persons as well as the shares owned in this economic entity by all economic entities belonging to the same group of associated economic entities shall be included. In the case of acquisition of a part of the economic entity (enterprise) or part of the assets of the economic entity, the aggregate income and market share shall be calculated proportionately to the part of the assets acquired;

4) the total amount of aggregate income of the economic entities which, by agreement, jointly set up a new economic entity or establish a common management or supervisory body or a common administrative subdivision, or which, due to the decisions taken, will have half or more of the same members in the supervisory board, administrative board or other management or supervisory bodies, or which commit to co-ordinate among themselves decisions concerning their economic activity or to transfer to each other the whole or a certain part of profit, or which grant each other the right to make use of all or part of their assets, or one or several economic entities of which, by agreement, otherwise acquire control of another economic entity. Where one economic entity grants another economic entity the right to make use of a part of its assets, the aggregate income and market share shall be calculated proportionately to the part of the assets used.

3. If the participant in the concentration:

1) is an insurance undertaking, the value of gross insurance premiums shall be calculated instead of the aggregate income;

2) is collective investment undertakings or management companies managing them, the aggregate income shall be calculated as the total amount of aggregate income of

all the economic entities under the control of the management company, closed-ended investment company or investment company with variable capital, the management of the assets whereof has not been transferred to the management company;

3) is an economic entity which belongs to a group of associated economic entities, the aggregate income shall be calculated as the total amount of aggregate income of all the economic entities belonging to the group of associated economic entities;

4) is a foreign economic entity, the aggregate income shall be calculated as the total amount of income received on the product markets within the Republic of Lithuania.

4. The Competition Council shall establish the procedure for calculating the aggregate income applicable to control of concentration.

5. A concentration shall not be deemed to arise where commercial banks, other credit institutions, intermediaries of public trading in securities, collective investment undertakings or management companies managing them and insurance undertakings acquire 1/3 or more of shares in another enterprise with a view to transferring them, provided that they do not exercise the voting right conferred by the shares, and that any such transfer takes place within one year and, the information is submitted to the Competition Council within one month from the acquisition. If the financial institutions which acquired 1/3 or more of shares in another enterprise decide not to comply with the conditions provided for in this Paragraph, they must submit a notification of concentration in accordance with the general procedure.

#### **Article 9. Notification of Concentration**

1. A notification of concentration in the cases referred to in Points 2 and 3 of Paragraph 2 of Article 8 of this Law shall be submitted by the controlling persons, in other cases – jointly by all economic entities participating in concentration.

2. A notification of concentration must be submitted to the Competition Council prior to the implementation of the concentration. The notification of concentration shall be submitted after the submission of the proposal to conclude an agreement or acquire the shares or assets, an instruction to conclude the agreement, conclusion of the agreement, acquisition of the right of ownership or the right to dispose of certain assets. The notification of concentration may also be submitted in case of a good faith intention to conclude the agreement or to make a public bid to buy up shares. The Competition Council shall establish the standard form of notification of concentration.

3. A notification of concentration must include:

1) the registration data of the economic entities participating in concentration;

2) the reasons and purposes of concentration;

3) a description of the manner of concentration;

4) the annual financial accounts of each economic entity participating in concentration for the last three years prior to concentration;

5) the data on the enterprises owned by each economic entity participating in concentration or the controlling persons as well as data on the enterprises the holders of interests or member shares of which they are;

6) the purchase and sale volumes of each economic entity participating in concentration for the last three years prior to concentration and evaluation of their market share in a relevant market;

7) a list of the major purchasers and suppliers as well as the main competitors in the relevant markets of each economic entity participating in concentration.

4. Where a notification of intended concentration with participation of an economic entity belonging to a group of associated economic entities is submitted, the data on all the economic entities belonging to the group of associated economic entities shall be submitted pursuant to the requirements of Paragraph 3 of this Article.

5. Where a notification of intended concentration with participation of banks or other credit institutions is submitted, a conclusion of the Bank of Lithuania shall also be submitted to the Competition Council.

6. A notification of concentration must be accompanied by documents confirming that the economic entities concerned have paid a fee in the amount established by the Government of the Republic of Lithuania (hereinafter: 'the Government') for the submission and examination of the notification.

#### **Article 10. Suspension of Concentration**

1. Economic entities or controlling persons participating in the concentration which is subject to notification shall have no right to implement the concentration until the resolution of the Competition Council is passed in accordance with Points 1 or 2 of Paragraph 1 of Article 12 of this Law except the cases provided for in Paragraphs 3 and 4 of this Article.

2. All transactions and actions of all economic entities and controlling persons related to concentration regarding which the resolution specified in Point 3 of Paragraph 1 of Article 12 was adopted shall be held invalid and not creating any legal consequences.

3. Upon a justified request of the economic entities participating in concentration or the controlling person, the Competition Council, taking into account the consequences of the suspension of concentration on the persons concerned and the envisaged effect of concentration on competition, may adopt a decision to permit the performance of individual actions of concentration. The permission of the Competition Council to perform individual actions of concentration may be granted subject to certain conditions and obligations necessary to ensure effective competition.

4. Economic entities and controlling persons participating in the concentration may, without the permission of the Competition Council to carry out individual concentration actions, make a public offer to buy up shares and make transactions on transferable securities admitted to trading on a regulated market, provided that no later than seven days after these actions a notification is submitted to the Competition Council and the acquirer of the securities does not exercise the voting rights granted by the securities.

#### **Article 11. Examination of Notifications of Concentration by the Competition Council**

1. Having received a notification of concentration, the Competition Council shall publish an announcement thereof on their website, specifying the nature of concentration and the parties concerned.

2. The Competition Council shall examine the notifications of concentration submitted in accordance with the established requirements and adopt the resolutions specified in Paragraph 1 of Article 12 no later than within the term of four months. This term shall begin on the day following the receipt of the notification of concentration which complies with the established requirements. If the notification of concentration does not comply with the established requirements, the Competition Council shall forthwith inform about this in writing the persons who have submitted the notification.

3. The Competition Council must, within one month from the receipt of a notification of concentration meeting the established requirements, adopt a resolution pursuant to Points 1 or 2 of Paragraph 1 of Article 12 or a resolution to proceed with further examination of the notification of concentration.

4. The Competition Council, intending to pass a resolution in accordance with Point 2 of Paragraph 1 of Article 12, upon a justified request of the person who has



submitted the notification, may extend the term for the examination of the concentration referred to in Paragraph 2 of this Article by one month.

5. When examining notifications of concentration, the Competition Council shall be entitled to obtain from economic entities, controlling persons and entities of public administration information, oral and written clarifications necessary for adopting a resolution on the concentration.

### **Article 12. Resolutions of the Competition Council on Concentration**

1. Upon completing the examination of the notification of concentration, the Competition Council shall adopt one of the following decisions:

1) to permit the implementation of concentration in accordance with the submitted notification;

2) to permit the implementation of concentration in accordance with the conditions and obligations established by the Competition Council for the economic entities concerned or controlling persons necessary to prevent the creation or strengthening of a dominant position or a substantial restriction of competition in a relevant market;

3) to refuse to grant permission to implement concentration and impose an obligation on the economic entities or controlling persons concerned to perform actions restoring the previous condition, or to eliminate the consequences of concentration, including the obligations to sell the enterprise or part thereof, the assets of the economic entity or part thereof, the shares or part thereof, to cancel or amend contracts, as well as to establish the terms and conditions for the fulfilment of the above obligations, where the concentration will result in creation or strengthening of a dominant position or substantial restriction of competition in a relevant market.

2. The resolution of the Competition Council provided for in Points 2 or 3 of Paragraph shall indicate the motives for imposition of concentration implementation and obligations or the motives for refusal to permit the concentration. When adopting this resolution, the Competition Council shall have the right to rely only on such motives regarding which the economic entities or controlling persons participating in concentration had the opportunity to give explanations.

3. The persons who have submitted notifications of concentration shall be informed of the resolutions adopted by the Competition Council in writing. If the Competition Council does not within the term specified in Paragraph 2 of Article 11 of this Law adopt the resolutions referred to in Paragraph 1 of this Article, economic entities or controlling persons shall have the right to implement concentration in accordance with the conditions formulated in the notification of concentration.

4. Resolutions of the Competition Council provided for in this Article shall be published on the website of the Competition Council.

### **Article 13. Application of the Concentration Control Procedure on Own Initiative**

1. The Competition Council may impose an obligation on economic entities to submit a notification on concentration and *mutatis mutandis* apply the concentration control procedure provided for in this Section even though the aggregate income indicators established in Paragraph 1 of Article 8 of this Law are not exceeded where it is likely that concentration will result in the creation or strengthening of a dominant position or a substantial restriction of competition in a relevant market.

2. The Competition Council may adopt a separate resolution to apply the concentration control procedure only in cases where no more than 12 months have passed from the implementation of the concentration in question.

#### **Article 14. Investigation of the Breach of Concentration Implementation and Change or Repeal of the Competition Council Resolutions on Concentration**

1. Where there are reasonable grounds to believe that concentration has been implemented in violation of the requirements of this Law or in breach of the resolutions of the Competition Council, the Competition Council shall carry out an investigation in accordance with the provisions of Chapter V of this Law.

2. The Competition Council shall have the right to amend or repeal its resolutions on concentration provided for in Paragraph 1 of Article 12 of this Law where such a resolution was adopted based on incorrect or incomplete information submitted by the economic entities participating in concentration or by the controlling persons and that had a decisive influence when adopting the resolution, or where the economic entities or controlling persons have violated the conditions and obligations of the implementation of concentration.

3. If an effective court decision cancels all or part of the resolution of the Competition Council provided for in Paragraph 1 of Article 12 of this Law, economic entities must submit to the Competition Council the revised notification of concentration on the current market situation. If economic entities do not perform these actions, *mutatis mutandis*, consequences provided for in Paragraph 2 of Article 10 of this Law arise as far as they comply with the effective court decision.

4. The revised notification provided for in Paragraph 3 of this Article must be submitted to the Competition Council no later than within one month after the day of the effective court decision. The Competition Council shall examine the revised notification of concentration and adopt one of the resolutions referred to in Paragraph 1 of Article 12 of this Law. In this case, the term referred to in Paragraph 2 of Article 11 of this Law shall start from the day on which the economic entities submit a revised notification of concentration.

### **CHAPTER III UNFAIR COMPETITION**

#### **Article 15. Prohibition of Actions of Unfair Competition**

1. Economic entities shall be prohibited from performing any actions contrary to fair business practices and good usages if such actions may be detrimental to the competitive potential of another economic entity, including:

1) unauthorised use of a reference mark identical or similar to the name, registered trade mark or unregistered well known trade mark or any other reference mark having a distinguishing feature of another economic entity, if this causes or is likely to cause confusion with that economic entity or its activity, or where it is sought to take undue advantage of the reputation of that economic entity (its mark or reference mark) or where this may be detrimental to the reputation (mark or reference mark) of that economic entity, or where it may reduce the distinguishing feature of the mark or reference mark used by that economic entity;

2) misleading of economic entities by providing them with incorrect or unsubstantiated information about the quantity, quality, components, properties of usage, place and means of manufacturing and price of its goods or the goods of another economic entity, or concealing of risks associated with the consumption, processing or other usage of those goods;

3) usage, transfer, disclosure of information representing a commercial secret of another economic entity without its consent as well as obtaining of such information from

persons having no right to transfer such information, in order to compete, seeking self-benefit or inflicting damage on that economic entity;

4) proposing that the employees of the competing economic entity terminate their employment contracts or refrain from performing all or part of their work-related duties, seeking self-benefit or inflicting damage on that economic entity;

5) imitating of the product or product packaging of another economic entity, copying of the shape, colour or other distinguishing features of that product or product packaging, if this may be misleading in terms of the identity of the product, or if the acts are intended to take undue advantage by using the reputation of another economic entity;

6) provision of incorrect or unsubstantiated information about its own or another economic entity's managing personnel, the qualifications of employees, the legal, financial or other position of an economic entity if damage may thereby be inflicted on another economic entity;

7) use of advertising which is considered misleading or unlawful comparative advertising under the laws of the Republic of Lithuania.

2. The use of an identical or similar name, trade mark or another reference mark specified in Point 1 of Paragraph 1 of this Article shall not be considered as such where the name or surname of the owner, the holder of the qualifying holding or the founder is used in the name, trade mark or reference mark and where the economic entities using such a name, trade mark or reference mark have taken measures to prevent misleading customers as to the identity of the economic entity or the goods.

3. The information specified in Point 2 of Paragraph 1 of this Article concerning the designation of origin of the goods shall be considered geographical indications provided in any form, characterising the goods as being produced in the territory of a certain state or a certain region or area of that territory which is associated with the quality, reputation or other properties of the goods.

4. Persons who have become aware of a commercial secret as a result of their work or any other contractual relations with the economic entity may use this information not earlier than one year after the termination of employment or other contractual relations, unless laws or the contract provide otherwise.

5. Actions taken with a view to achieving certain functional properties of the goods or their packaging shall not be considered as imitation of the appearance of the goods or the form of their packaging, provided that the person taking such actions has taken measures to prevent misleading other economic entities or consumers as to the identity of the manufacturer or the goods.

#### **Article 16. Protection of Rights**

1. An economic entity whose legitimate interests are violated by actions of unfair competition shall be entitled to bring a claim before the court seeking:

1) termination of the illegal actions;

2) recovery of the damages;

3) imposition of an obligation to make one or several statements of specific content and form, refuting the previously submitted incorrect information or providing explanations as to the identity of the economic entity or its goods;

4) seizure or destruction of the goods, their packaging or other means directly related to unfair competition, unless the infringements can be eliminated otherwise.

2. Organisations representing the interests of economic entities or consumers shall also enjoy the rights specified in Points 1, 3 and 4 of Paragraph 1 of this Article.

3. Liability for the use of misleading advertising or unlawful comparative advertising shall be established by the laws of the Republic of Lithuania.

4. The Competition Council shall investigate the acts of unfair competition only in cases where these acts violate the interests of the majority of economic entities or consumers. The Competition Council shall impose sanctions for these acts as established by the laws.

## **CHAPTER IV COMPETITION SUPERVISORY INSTITUTION**

### **Article 17. Competition Council of the Republic of Lithuania**

1. The Competition Council shall be a state institution of the Republic of Lithuania implementing the state competition policy and supervising compliance with this Law. When performing its statutory functions the Competition Council shall be free and independent in its decision making.

2. The Competition Council shall be a legal person having its accounts with the banks and a seal bearing the coat of arms of the State of Lithuania and its name.

3. The Competition Council shall act in compliance with the Constitution, this Law and other laws of the Republic of Lithuania, international treaties and other legal acts of the Republic of Lithuania.

4. The Competition Council shall be a budgetary institution financed from the Lithuanian state budget.

5. The Law on Budgetary Institutions shall apply to the activity of the Competition Council, unless this Law provides otherwise.

### **Article 18. Functions and Powers of the Competition Council**

1. The Competition Council shall:

1) control the compliance by economic entities and entities of public administration with the requirements of this Law;

2) establish the criteria and procedure for providing definition of a relevant market and determining a dominant position, investigate and define relevant markets for performance of their own functions, determine the market share of economic entities and their position in the relevant market;

3) examine the conformity of the legal acts or other decisions adopted by entities of public administration with the requirements of Article 4 of this Law and, if there are grounds, apply to the entities of public administration with a request to amend or repeal the legal acts or other decisions restricting competition. In case of failure to comply with the requirement, the Competition Council shall have the right to appeal against the decisions of entities of state administration, except for the statutory acts issued by the Government of the Republic of Lithuania, to the Supreme Administrative Court of Lithuania, and against the decisions of entities of municipal administration and other entities of public administration— to the regional administrative court;

4) examine notifications of concentration;

5) investigate and examine infringements of this Law and other laws and impose sanctions on the violators in the cases and following the procedure provided for by the laws;

6) apply to court for the protection of public interests safeguarded by this Law;

7) within its remit, carry out expert examination of drafts of laws and other legal acts, submit its conclusions regarding the effect of these acts on competition to the Seimas and the Government of the Republic of Lithuania;

8) submit proposals to the Government on the amendment of laws and other legal acts limiting competition for their assessment when the Competition Council establishes such restrictions of competition while carrying out its functions;

9) perform the surveillance of competition effectiveness on the markets and provide conclusions and proposals to the Seimas or the Government on the measures to ensure effective competition;

10) cooperate with other institutions and organizations of the Republic of Lithuania, and foreign and international institutions and organizations, in accordance with the procedure established by the legal acts and cooperation agreements;

11) perform other functions established by this Law and other laws.

2. When performing the functions assigned to it, the Competition Council shall have the right to:

1) give obligatory instructions to economic entities, including commercial banks, other credit institutions and entities of public administration, submit financial and other documents, including documents containing commercial secrets, as well as other information required for performance of the functions of the Competition Council;

2) adopt legal acts within the scope of its remit;

3) identify and publish on its website the priorities of the Competition Council's activities;

4) establish an advisory committee;

5) invite professionals and experts. The assigned tasks for professionals and experts and their rights and obligations while implementing the tasks shall be specified in the agreement with the Competition Council;

6) organize meetings, set up working groups and advisory groups or commissions, determine their working procedure, and receive advisory findings and proposals;

7) record relevant facts important for initiating the investigations concerning violations of laws;

8) exercise other rights provided for in this Law and other legal acts.

### **Article 19. Composition, Formation and Working Procedure of the Competition Council**

1. The Competition Council shall consist of the chair and four members. The chair and members of the Competition Council shall be appointed by the President of the Republic on the recommendation of the Prime Minister of the Republic of Lithuania. The chair and members of the Competition Council shall be appointed for a term of six years. The same person may be appointed a chair or a member of the Competition Council for not more than two consecutive terms of office. The chair of the Competition Council shall appoint two vice-chairs of the Competition Council from the appointed members of the Competition Council.

\*2. The chair and members of the Competition Council may be Lithuanian citizens of good repute with a university degree in law or economics (at least a Master's degree or equivalent). The criteria according to which a person may not be considered to be of good repute shall be those as specified in the Republic of Lithuania Law on Civil Service.

3. The chair and members of the Competition Council shall be dismissed from office only:

1) at their own request;

2) upon the expiry of their term of office;

3) upon being elected or appointed to another office;

4) upon the entry into force of a court judgement of conviction;

5) if instances of material breach of duties are revealed;

6) where, by their acts, they discredit the name of the chair or the member of the Competition Council;

7) for health reasons.

\*8) if instances of non-compliance with the requirements set forth in Paragraph 2 of this Article are revealed.

4. Upon the expiry of their term of office, the chair or members of the Competition Council shall continue to perform their duties until the same or another person is appointed to the respective position. The chair and members of the Competition Council dismissed from office upon the expiry of their term of office shall be paid a severance pay equal to their average monthly salary, except in cases when they are appointed for another term of office.

5. During their term of office the chair and members of the Competition Council may not engage in any other activity, except for scientific, educational or creative work.

6. The chair and members of the Competition Council shall be state officials.

7. When dealing with issues falling within its remit, the Competition Council shall adopt resolutions. The resolutions shall be adopted by majority vote, with participation of at least three members of the Competition Council, including the chair of the Competition Council. The chair and members of the Competition Council shall vote independently and individually. The chair and members of Competition Council participating in the meeting shall not be entitled to abstain from voting on the resolution.

8. The Competition Council shall have the right to transfer to the chair of the Competition Council or individual members, according to their activities, a part of its powers, except adoption of resolutions specified in this Law, hearing of participants in the procedure of violations of this Law, imposition of sanctions specified in this Law, and adoption of regulations related to application of this Law and other laws the monitoring of compliance with which is performed by the Competition Council.

9. In performing its functions the Competition Council shall be assisted by the Competition Council administration. Its structure and the lists of positions of civil servants and employees working under employment contracts shall be approved by the resolution of the Competition Council. The Competition Council administration functions shall be defined by this Law and other laws and regulations of the Competition Council administration which are approved by the resolution of the Competition Council.

10. The working procedure of the Competition Council and the rules of Council's procedures for violations of laws shall be specified in the rules of procedure adopted by the resolution of the Competition Council.

**\*Note. Paragraph 2 and Point 8 of Paragraph 3 of Article 19 shall not apply to the chair and members of the Competition Council of the Republic of Lithuania appointed before the effective day of Law No XI-1937.**

#### **Article 20. Chair and Members of the Competition Council**

1. The chair of the Competition Council shall:

- 1) direct the work of the Competition Council;
- 2) represent the Competition Council in the Republic of Lithuania and abroad;
- 3) employ and dismiss the administrative staff of the Competition Council;
- 4) submit annual activity reports of the Competition Council to the Seimas and the

Government;

5) sign resolutions of the Competition Council;

6) perform other functions established by the laws and assigned by the Competition Council.

2. The chair of the Competition Council shall have the right to participate in meetings of the Government in a deliberative capacity and must voice his comments should the decisions proposed for adoption contradict this Law.

3. In the absence of the chair of the Competition Council, his appointed vice-chair of the Competition Council shall act on his behalf.

4. Members of the Competition Council shall participate in the consideration and adoption of resolutions on the issues within the remit of the Competition Council, shall be responsible for activities assigned to them and perform other functions assigned to them by the Competition Council or the chair of the Competition Council.

**Article 21. Protection of commercial secrets and documents intended for official use**

1. The Competition Council and its administrative staff must protect commercial and professional secrets that they became aware of in the course of exercising control over compliance with this Law and, in the absence of the economic entity's consent, may use it only for the purposes it was provided.

2. Economic entities must submit an application to the Competition Council on the protection of commercial secrets when providing documents and other information to the Competition Council, or immediately after becoming aware that the Competition Council has documents or other information constituting their commercial secret. The application must clearly state which information the Competition Council should consider the economic entity's commercial secret. The Competition Council or its authorized official shall make a decision on the application and notify of it the economic entity.

3. If an economic entity submits an application for protection of commercial secrets, but does not indicate the specific information which the Competition Council should consider a commercial secret of the economic entity, the applying economic entity may be required to indicate this information within the term specified. If during the term specified the economic entity does not indicate the specific information that the Competition Council should consider a commercial secret, it is assumed that the information available to the Competition Council about the economic entity does not constitute a commercial secret information.

4. If an economic entity fails to submit an application for protection of commercial secret referred to in Paragraph 1 of this Article, it is assumed that the information available to the Competition Council about the economic entity is not the information constituting a commercial secret.

5. An economic entity whose information constituting a commercial secret is available to the Competition Council may be required to submit within the term specified the extract of a document or another information without a commercial secret and the description of the information to be protected. If during the term specified an economic entity fails to submit the extract and the description, it shall be assumed that the information requested by the economic entity to be protected does not constitute a commercial secret information.

6. The disclosure of commercial secrets of undertakings by the Competition Council and its administrative staff shall be held liable under the law.

7. Documents prepared by the Competition Council when performing functions assigned to it and which contain the opinions expressed by the Competition Council for internal use, documents prepared by the Competition Council related to the matters on which there is no final resolution or some other decision of the Competition Council adopted and documents meant for internal work organization of the Competition Council only shall be considered documents for official use which are not provided to third parties and are not included into investigation files to which third parties have the right of access. Such documents of the Competition Council intended for official use may only be provided to the law enforcement institutions for performing of their functions assigned by the law.

**CHAPTER V**

# **COMPETITION COUNCIL'S PROCEDURE APPLIED IN INVESTIGATION OF INFRINGEMENTS OF THIS LAW**

## **SECTION I COMPETITION COUNCIL'S INVESTIGATION OF INFRINGEMENTS OF THIS LAW**

### **Article 22. Infringements Investigated by the Competition Council**

1. According to the procedure specified in this section the Competition Council shall investigate:

1) conformity of legal acts or other decisions adopted by entities of public administration with the requirements of Article 4 of this Law;

2) agreements restricting competition;

3) abuse of a dominant position;

4) implementation of concentration without a prior notification or consent or in breach of the established conditions or obligations of concentration implementation as well as continuation of concentration during its suspension;

5) unfair competition in the cases provided for in Paragraph 4 of Article 16 of this Law;

6) infringements in case of failure to comply with requests to provide information or failure to provide information in a timely manner, also in case of provision of incorrect or incomplete information or, in the cases provided for in this Law, failure to provide information within the established time limit, damaging or tearing off the seal affixed in accordance with Point 4 of Paragraph 1 of Article 25, obstruction of the officials of the Competition Council in carrying out the investigation, or non-compliance with the sanctions or obligations imposed by resolutions of the Competition Council as well as obligations assumed by economic entities in accordance with Point 2 of Paragraph 3 of Article 28 of this Law. This procedure shall not apply to investigation of violations in case of failure or failure to comply in time with the obligations imposed by resolutions of the Competition Council to amend or repeal legal acts or other decisions restricting competition in breach of the requirements of Article 4 of this Law. These violations shall be investigated in accordance with the Competition Council's procedures.

2. The investigation shall be carried out by the authorised administrative staff of the Competition Council (hereinafter: 'authorised officials of the Competition Council').

3. Applicants and entities suspected of a breach of this Law shall be notified about the resolutions of the Competition Council adopted with regard to the investigation of violations of this Law in accordance with the terms specified in the Competition Council's Rules of Procedure.

4. Resolutions of the Competition Council regarding the investigation of violations of this Law may be considered confidential by a resolution of the Competition Council until a threat to the investigation process ceases to exist but not longer than any action specified in Points 1, 2, 3, 4, 5, 7 or 8 of Paragraph 1 of Article 25 of this Law regarding the economic entities suspected of committing a violation of this Law is performed.

5. The Competition Council shall have the right to establish a separate investigation and examination procedure for investigation and examination of individual types of law violations falling within the remit of the Competition Council, to the extent it does not conflict with requirements specified in laws and other legal acts.

### **Article 23. Right of Initiative to Launch Investigation of a Violation of the Law**



1. The right to request to launch investigation of a violation of this Law shall have the following:

1) economic entities whose interests have been violated due to law infringement actions;

2) entities of public administration;

3) associations or unions representing the interests of economic entities and consumers.

2. The Competition Council shall have the right to initiate an investigation on its own initiative.

3. The right to request the initiation of investigation of a violation of this Law shall have customers whose interests are violated by the law infringement actions. Having assessed the circumstances specified in the users' request, the Competition Council shall have the right to launch investigation on its own initiative.

4. The Competition Council shall adopt a justified resolution to investigate law infringement actions.

5. The Competition Council must complete the investigation no later than within five months from the date of the adoption of the resolution to launch of the investigation. The Competition Council may, by a justified resolution, extend this time limit each time for not longer than three months.

#### **Article 24. Submission of an Application for Investigation and its Examination**

1. Applicants specified in Paragraph 1 of Article 23 asking for initiation of investigation must submit to the Competition Council a written application indicating the facts of violation of this Law that they are aware of. The application shall be accompanied by the documents confirming the above mentioned facts and circumstances.

2. The Competition Council shall establish general requirements for the data and documents to be provided by an applicant in order the investigation of an application regarding actions violating this Law be launched.

3. An application regarding the actions violating this Law, which meets the requirements laid down by the Competition Council, shall be considered by the Competition Council which makes a decision to launch investigation or refuse to launch investigation within 30 days of the submission of the application and the documents.

4. The Competition Council shall adopt a resolution to refuse to initiate investigation if:

1) the facts specified in the application are immaterial, causing no substantial damage to the interests protected under this Law;

2) investigation of the facts specified in the application is not within the remit of the Competition Council;

3) the facts specified in the application have already been investigated and a resolution has already been adopted on the issue or there is an effective decision of the court;

4) the applicant has failed to provide, within the time period set by the Competition Council, the data and documents required to launch investigation;

5) a period of limitation referred to in Paragraph 3 of Article 35 of this Law has expired,

6) the legal act or resolution of an entity of public administration, appealed against in cases of the violations specified in Point 1 of Paragraph 1 of Article 22, has been annulled, changed or expired before the day of the examination of the application at the Competition Council;

7) there is no factual data that would allow to reasonably suspect that there was a violation of this Law;

8) investigation of the factual circumstances specified in the application does not correspond to the Competition Council's priorities.

### **Article 25. Rights and Duties of Authorised Officials of the Competition Council in Performing the Investigation**

1. In carrying out the investigation, the authorised officials of the Competition Council shall have the right:

1) to enter and carry out inspections of any premises, territory and means of transport used by the economic entity;

2) to enter and carry out inspections of other premises, territories and means of transport, including residential and other premises of heads and employees of the economic entity, if a reasonable suspicion arises that documents or any other evidence necessary for investigation and likely to have an influence on proving a serious violation of Articles 5 or 7 of this Law or Articles 101 and 102 of the Treaty on the Functioning of the European Union are held in such premises, territories or means of transport;

3) to examine the documents necessary for investigation (irrespective of the medium on which they are stored), obtain their copies and extracts, be granted access to the notes of the employees of the economic entity, related to work activities, also to copy the above notes as well as the information stored in computers and on any other media;

4) to seal the premises used by the economic entity wherein documents are held (irrespective of the medium on which they are stored) for the time period and to the extent necessary to carry out inspections, performed upon receiving the court authorisation, however, for not longer than three calendar days;

5) to obtain oral and written explanations from persons related to the activity of the economic entity under inspection; to request that they give explanations in the office of an authorised official conducting the investigation;

6) to obtain from the economic entities, other natural and legal persons and entities of public administration the documents, data and other information necessary for conducting the investigation; These entities and persons shall have the right to submit this information and explanations to the authorized officials of the Competition Council on its own initiative as well;

7) to carry out an inspection (audit) of the economic activity of the economic entity and, on the basis of the inspection material, obtain conclusions from the expert bodies;

8) to seize any documents and articles having evidential value in the investigation of the case;

9) to obtain information on subscribers to electronic communications services or registered users of electronic communications services, related traffic data and the content of information transmitted by electronic communications networks from providers of the electronic communications network and/or services;

10) to enlist the assistance of professionals and experts in carrying-out of the investigation;

11) to use technical means for investigation purposes, in compliance with the procedure established by the law;

12) to capture the facts;

13) to use for the investigation the information available for the Competition Council obtained during other investigations or proceedings.

2. The investigation actions specified in Points 1, 2 and 9 of Paragraph 1 of this Article may be carried out only with the court authorisation.

3. For the purpose of maintaining order the authorised investigating officials of the Competition Council may enlist the assistance of police officers.

4. Before carrying out the actions specified in this Article, the authorised officials of the Competition Council must produce a document issued by the Competition Council confirming their powers, the purpose and time limits of the investigation.

5. While exercising their rights granted by this Law and the Competition Council, the authorised officials of the Competition Council shall execute the investigation actions in writing, i.e. shall draw up documents (acts, minutes, requests, etc.). The form and the filling procedure of the above documents shall be established by the Competition Council.

6. The requests of the authorised officials of the Competition Council when carrying out the actions specified in Paragraph 1 of this Article shall be mandatory. Sanctions provided for by the laws shall apply for failure to comply with the requests.

7. The authorised officials of the Competition Council carrying out the investigation shall warn in writing persons providing explanations of their liability for providing false information or refusal to provide information to the Competition Council.

#### **Article 26. Interim Measures**

1. In urgent cases, where there is sufficient evidence of violation of this Law, the Competition Council, seeking to prevent a substantial or irreparable damage to the interests of economic entities or the public, shall have the right to apply interim measures necessary for the implementation of the final decision of the Competition Council. The interim measures shall cease to be applied upon the implementation of sanctions imposed by the resolution of the Competition Council adopted after the investigation of the case.

2. In cases provided for in Paragraph 1 of this Law, the Competition Council shall have the right to apply the following interim measures with respect to the economic entity suspected of violation of this Law:

1) to obligate the economic entities to terminate an illegal activity;

2) upon receiving an authorisation from Vilnius Regional Administrative Court, to obligate the economic entities to perform certain actions if failure to perform them would result in serious damage to other economic entities or public interests, or incur irreparable consequences.

3. Before adopting a resolution to apply interim measures, the Competition Council must give the economic entity suspected of violation of this Law an opportunity to provide explanations within the set time limit.

4. The decision of the Competition Council on the application of interim measures may be appealed against to Vilnius Regional Administrative Court within one month from the date of adoption of the decision. The filing of an appeal shall not suspend the application of interim measures.

#### **Article 27. Procedure for Issuing Court Authorisations for Performance of Investigation Actions, Application of Interim Measures and Restrictions of Economic Activity**

1. Upon the adoption of the Competition Council's resolution on investigation actions as provided for in Paragraph 2 of Article 25 of this Law, or on the application of interim measures as provided for in Point 2 of Paragraph 2 of Article 26 of this Law, or on restrictions of economic activity as provided for in Paragraph 2 of Article 35 of this Law, the authorised official of the Competition Council shall submit an application to Vilnius Regional Administrative Court for the issue of an authorisation for performance of these actions and application of interim measures or restrictions of economic activity.

2. The application must include the name of the economic entity, the character of the alleged violations and the intended investigation actions, the applicable interim measures or restrictions of economic activity.

3. A judge of Vilnius Regional Administrative Court shall examine the application for the issue of a court authorisation for performance of investigation actions and application of interim measures or restrictions of economic activity and shall adopt a reasoned ruling to satisfy or reject the application.

4. The application for the issue of a court authorisation for performance of investigation actions and application of interim measures or restrictions of economic activity must be examined and the ruling thereon must be adopted not later than within 72 hours from the moment of filing of the application.

5. If the Competition Council disagrees with the decision of the judge of Vilnius Regional Administrative Court to reject the application, it shall have the right to, within seven days, appeal against the judge's decision to the Supreme Administrative Court of Lithuania.

6. The Supreme Administrative Court of Lithuania shall examine the appeal against the ruling of the Vilnius District Administrative Court within a period of seven days. The representative of the Competition Council shall have the right to attend the investigation of the appeal.

7. A ruling of the Supreme Administrative Court of Lithuania shall be final and not subject to appeal.

8. When considering applications and appeals regarding the issue of an authorisation for performance of investigation actions and application of interim measures or restrictions of economic activity, the courts must ensure confidentiality of the provided information and intended actions.

### **Article 28. Supplementary Investigation, its Separation (Combination) and the Completion**

1. In order to achieve timeliness and cost-effectiveness of the investigation, the Competition Council shall have the right to adopt a resolution to supplement the investigation, divide it into separate investigations, or combine separate investigations into one.

2. The investigation shall be completed when the Competition Council approves the authorized officials' investigation findings on the alleged violation (hereinafter: 'findings of the investigation'). In that case, the actions provided for in the Second Section of this Chapter shall be performed.

3. The Competition Council shall adopt a resolution to terminate the investigation if:

1) in the course of investigation it transpires that there is no substance of violation of the Law;

2) the actions did not cause a significant damage to the interests protected by the law and the economic entity suspected of the violation of the Law has voluntarily discontinued the actions and submitted to the Competition Council a written obligation not to perform such actions or to perform actions eliminating the suspected violation or creating preconditions to avoid it in the future;

3) where the circumstances referred to in Paragraph 4 of Article 24 of this Law arise or transpire in course of investigation;

4. Obligations submitted in accordance with Point 3 of Paragraph 2 of this Article and included in the resolution of the Competition Council in relation to the discontinuation of the investigation shall be binding on the economic entity.

5. If new circumstances turn out, the Competition Council shall be entitled to adopt a resolution to resume the terminated investigation.

6. The resolutions adopted by the Competition Council pursuant to Point 2 of Paragraph 3 of this Article shall be published in the website of the Competition Council.

## **SECTION II**

### **HEARING OF PARTICIPANTS IN THE PROCEDURE AT THE COMPETITION COUNCIL AND THE ADOPTION OF THE COMPETITION COUNCIL'S RESOLUTION ON THE VIOLATION OF THIS LAW**

#### **Article 29. Report on the Findings of the Investigation and Hearing of Participants in the Procedure**

1. Upon the completion of the investigation, the applicant and the entity suspected of having committed a violation (hereinafter: 'the participants in the procedure') as well as to other interested entities or public administration entities (hereinafter: 'other interested persons') by the resolution of the Competition Council shall be provided with written findings of the investigation and offered to submit written explanations on the findings within the reasonable time limit set by the Competition Council.

2. Upon the completion of the investigation, the investigation file material shall also be made available to the participants in the procedure, except for the documents containing state or service secrets, or commercial secrets of another economic entity. In order to access the documents containing commercial secrets of another economic entity, it shall be necessary to get the consent of the economic entity whose documents containing commercial secrets are sought to be accessed. The restrictions provided in Paragraph 3 of Article 38 of this Law shall *mutatis mutandis* apply to the access to the information provided by the economic entity to the Competition Council on the basis of Paragraph 1 of Article 38 of this Law.

3. Before the Competition Council adopts a resolution on the violation of this Law, participants in the procedure and other interested persons shall be entitled to provide clarifications and to be heard at a Competition Council's meeting. The meeting place and time must be communicated to them in advance and according to the procedure set forth by the Code of Civil Procedure of the Republic of Lithuania (hereinafter: 'the Code of Civil Procedure'). The Competition Council shall have the right to communicate a planned meeting through the media or its own website.

4. Competition Council's meetings during which the participants in the procedure and other interested persons undergo hearing procedures shall be public. The Competition Council may, on its own initiative or at the request of the participants in the procedure or other interested persons, announce a closed hearing of the case where it is necessary to protect state or service secrets, or commercial secrets of economy entities.

5. It shall be considered that the participants in the procedure and other interested persons underwent the hearing procedure when there is evidence that they were properly notified of the time and place of the Competition Council's meeting, were given the opportunity to provide clarifications, to familiarise themselves with the findings of the investigation and the participants in the procedure were given access to the investigation material.

#### **Article 30. Resolutions of the Competition Council on the Violation of this Law**

1. Having performed the actions specified in Article 29 of this Law, the Competition Council shall have the right to adopt a resolution:

- 1) to impose sanctions provided for by this Law;
- 2) to refuse to impose sanctions where there is no basis established by this Law;
- 3) to terminate the procedure regarding the violation of this Law where there is no violation of this Law;
- 4) to conduct a supplementary investigation;

2. The resolution of the Competition Council must include the circumstances of the violation of this Law, clarifications provided to the Competition Council by the participants in the procedure and other interested persons as well as their evaluation, the motives and legal basis of the adopted resolution.

3. The resolution of the Competition Council must be based only on those conclusions and facts and circumstances of the investigation with respect to which the economic entity suspected of the violation of the Law on Competition has been afforded an opportunity to provide clarifications.

4. The resolutions of the Competition Council provided for in this Article, with the exception referred to in Point 4, Paragraph 1 of this Article, may be amended or repealed by court only.

### **Article 31. Publication of Resolutions of the Competition Council**

1. The participants in the procedure and other interested persons shall be notified about the Competition Council's resolutions provided for in Paragraph 1 of Article 30 of this Law within the time limits specified in the Rules of Procedure of the Competition Council.

2. The resolutions of the Competition Council provided for in Article 30 shall be published on the Competition Council's website.

## **SECTION III**

### **APPEALS AGAINST THE DECISIONS AND ACTIONS OF THE COMPETITION COUNCIL AND ITS AUTHORISED OFFICIALS**

#### **Article 32. Appeal against the Actions and Decisions of Authorised Officials and Other Employees of the Competition Council**

1. Economic entities and other persons who consider that their rights have been violated shall have the right to appeal to the Competition Council against the actions performed and the decisions adopted by the authorized officials and other employees of the Competition Council during the procedure regarding the violation of this Law. A complaint shall be filed not later than ten days after learning about the actions or decisions which are appealed against. The decision of the Competition Council on such complaint must be taken within ten days of receipt of the complaint.

2. The complaint filing term set in Paragraph 1 may be renewed if together with the complaint a reasoned request to renew the term is submitted. In such case, the Competition Council shall admit the complaint, if it determines that the filing deadline was exceeded due to important objective reasons. The Competition Council's decision to refuse to renew the term of filing the complaint may be appealed against in accordance with the procedure provided for in Paragraph 3 of this Article.

3. If economic entities or other persons, who filed a complaint, object to the decision of the Competition Council or if the Competition Council fails to make a decision within ten days, they shall have the right to file an appeal with Vilnius Regional Administrative Court. Filing of an appeal does not stop the procedure for the violation of this Law.

4. The procedure for appealing, as provided for in this Article, shall be applied *mutatis mutandis* to the decisions and actions of the Competition Council's employees in performing concentration supervision provided for in Chapter Two of this Law and in other cases when such actions and decisions are related to the performance of the functions assigned to the Competition Council by this Law and other laws.

### **Article 33. Appealing against the Resolutions of the Competition Council**

1. Economic entities and other persons who believe that their rights protected by this Law were violated shall have the right to appeal to Vilnius Regional Administrative Court against the Competition Council's resolutions which prevent any further investigation process of the violation of this Law or which complete the examination of the notification of concentration. The participants in the procedure and other interested persons referred to in Paragraph 1 of Article 29 of this Law shall have the right to appeal against the resolutions of the Competition Council provided for in Article 30 of this Law, with the exception of the resolution of the Competition Council specified in Point 4 of Paragraph 1 of Article 30 of this Law.

2. An appeal shall be filed in writing no later than 20 days after the receipt of the resolution of the Competition Council or, if the resolution is to be published on the website of the Competition Council, after the date of publication.

3. The filing of an appeal shall not suspend the implementation of the resolutions of the Competition Council, unless otherwise decided by the court.

### **Article 34. Decision of the Court**

Upon hearing the appeal against the resolution of the Competition Council, the court shall adopt one of the following decisions:

- 1) to uphold the resolution and reject the appeal;
- 2) to revoke the resolution or its individual sections and refer the case back to the Competition Council for a supplementary investigation;
- 3) to revoke the resolution or its individual sections;
- 4) to amend the resolution on concentration, application of sanctions or interim measures.

## **CHAPTER VI LIABILITY FOR VIOLATIONS OF THIS LAW**

### **Article 35. Sanctions Imposed on Economic Entities**

1. Upon establishing that economic entities have performed actions prohibited under this Law or have otherwise violated this Law, the Competition Council, following the principles of impartiality and proportionality, shall have the right:

- 1) to obligate the economic entities to discontinue illegal activity, to perform actions restoring the previous situation or eliminating the consequences of the violation, including the obligation to terminate, amend or conclude contracts, also to set the time limits and conditions for meeting the above obligations;
- 2) to obligate the economic entities or controlling persons who have implemented concentration resulting in the establishment or strengthening of a dominant position or a substantial restriction of competition in a relevant market without notifying the Competition Council or getting its permission, also in the cases provided for in Paragraph 2 of Article 14 of this Law, to perform actions restoring the previous situation or eliminating the consequences of concentration, including obligations to sell the enterprise or part thereof, the assets of the economic entity or part thereof, shares or part thereof, to

reorganise the enterprise, to terminate or amend contracts, also to set the time limits and conditions for meeting the above obligations;

3) to impose fines on economic entities set by this Law.

2. Upon receipt of the authorisation of Vilnius Regional Administrative Court, the Competition Council may by its resolution impose restrictions on economic activity of economic entities failing to comply with the imposed sanctions referred to in Paragraph 1 of this Article: temporary suspension of export and import operations, banking operations, an authorisation (license) to engage in respective economic activity. The resolutions of the Competition Council shall be binding on the institutions which may apply such restrictions and must be implemented forthwith. The restrictions shall be lifted after the implementation of the sanctions imposed by the Competition Council.

3. Sanctions may be imposed on economic entities for violation of this Law not later than within five years from the date of commitment of the violation, and in the event of a single and continuous infringement – from the date of performance or termination of the last act.

4. The time limit for the application of the sanctions specified in Paragraph 3 of this Article shall be suspended when:

1) the Competition Council carries out an investigation. The time limit for the application of sanctions in this case shall be suspended from the date of adoption by the Competition Council of the resolution to investigate the violations of this Law until the date of adoption by the Competition Council of the resolution to discontinue the investigation or the resolution specified in Article 30 of this Law;

2) the investigation carried out by the Competition Council is suspended by a court's decision. The time limit for the imposition of sanctions shall be suspended in this case for the period of suspension of the investigation carried out by the Competition Council;

3) a dispute regarding the decision of the Competition Council to impose sanctions is heard in the court. The time limit for the imposition of sanctions in this case shall be suspended from the date of filing of an appeal with a court until the date of entry into force of the court's decision.

### **Article 36. Penalties**

1. A fine of up to 10 per cent of the gross annual income in the preceding business year shall be imposed on economic entities for prohibited agreements, abuse of a dominant position, implementation of a notifiable concentration without permission of the Competition Council, continuation of concentration during the period of its suspension, also infringement of concentration conditions or mandatory obligations established by the Competition Council.

2. A fine of up to three per cent of the gross annual income in the preceding business year may be imposed on economic entities for the actions of unfair competition investigated by the Competition Council.

3. A fine of up to one per cent of the gross annual income in the preceding business year may be imposed on economic entities for not providing information required for carrying out of investigation or examination of concentration, also for providing incorrect and incomplete information in cases stipulated by this Law, for hindering the officials of the Competition Council from entering into and carrying out inspections of the premises, territory and means of transport of the economic entities, inspecting or seizing any documents and articles having evidential value in the investigation of the case, for damaging or breaking the seal affixed by the officials of the Competition Council in accordance with Point 4 of Paragraph 1 of Article 25 of this Law.



4. A fine of up to five per cent of the average gross daily income in the preceding business year may be imposed on undertakings for each day of commitment (continuation) of a violation in the event of failure to comply or failure to comply in a timely manner with the obligations of the Competition Council to discontinue illegal activity, to perform actions restoring the previous situation or eliminating the consequences of the violation, also in the event of failure to comply in a timely manner with the instructions to provide information and failure to meet the assumed obligations in the cases provided for by this Law.

### **Article 37. Imposition of Fines and Fixing of their Amount**

1. The amount of fines imposed on economic entities shall be differentiated taking into consideration:

- 1) the gravity of the violation
- 2) the duration of the violation;
- 3) the circumstances mitigating or aggravating liability of the economic entity;
- 4) the influence of each economic entity in the commitment of the violation, where the violation has been committed by several economic entities;
- 5) the value of the sold goods of the economic entities, which are directly and indirectly related to the infringement.

2. Voluntary prevention of the detrimental consequences of the violation after the commitment thereof by the economic entities, assistance to the Competition Council in the course of investigation, compensation for the losses, elimination of the damage caused, voluntary termination of the violation, non-implementation of restrictive practices, acknowledgement of the material circumstances established by the Competition Council in the course of investigation, also the fact that actions constituting the violation were determined by the actions of the public authorities as well as serious financial difficulties of the economic entity shall be considered as mitigating circumstances.

3. Obstruction of the investigation, concealment of the committed violation, failure to terminate the violation notwithstanding the obligation by the Competition Council to discontinue illegal actions or repeated commitment of the violation within the period of seven years for which the economic entities were already imposed the sanctions provided for in this Law shall be considered as aggravating circumstances.

4. The Government shall pass a resolution approving the description of the procedure for fixing the amount of fines.

### **Article 38. Exemption from Fines**

1. An economic entity, which is a party to a prohibited agreement between competitors or is a party to a prohibited agreement between non-competitors for the direct or indirect price setting (fixing) as specified in Point 1 of Paragraph 1 of Article 5 of this Law, the party who submitted the Competition Council with all the details of such an agreement, shall be exempted from the fines provided for this violation, if all the following conditions are met:

- 1) the economic entity has provided information prior to the beginning of the investigation of the agreement;
- 2) the economic entity is the first of the parties to the prohibited agreement to have provided such information;
- 3) the economic entity provides all the information available to it regarding the prohibited agreement and cooperates with the Competition Council in the course of investigation;
- 4) the economic entity was not the initiator of the prohibited agreement and has not induced other economic entities to participate in such an agreement.

2. Having completed the investigation and adopting the final resolution on the violation, the Competition Council shall decide whether the conditions specified in this Article have been met and the economic entity qualifies for exemption from fines. The Competition Council shall establish requirements for applications for exemptions from fines on the grounds specified in this Article, as well as their submission and investigation procedure.

3. Information specified in Paragraph 1 of this Article provided by the economic entity which was recognised by the Competition Council as satisfying the conditions of Paragraph 1 of this Article may, without the consent of the economic entity which provided the information, be given access only for the implementation procedure and objectives of the right to defence as specified in Paragraph 2 of Article 29 and Paragraph 1 of Article 33 of this Law, and to those economic entities only which are suspected or recognized by the resolution of the Competition Council as parties to the same agreement as is the economic entity which provided this information. It shall be forbidden to disclose this information for other persons or other purposes or allow forwarding it. Copies, transcripts, and extracts of this information shall not be made. This information may be provided to law enforcement bodies only for performance of the functions assigned to them.

#### **Article 39. Implementation of Sanctions Imposed on Economic Entities**

1. An economic entity must pay the fine imposed by the Competition Council to the state budget no later than within the period of three months from the publication of the resolution on the Competition Council's website.

2. If there is a justified request of the economic entity, the Competition Council has the right to defer the payment of the fine or a part of it for a period up to six months if the economic entity is not able to pay the fine on time due to objective reasons.

3. An economic entity must meet obligations set for it by the resolution of the Competition Council and in compliance with its conditions and terms in accordance with Points 1 and 2 of Paragraph 1 of Article 35 of this Law. Upon a reasoned request of the economic entity, the Competition Council shall have the right to set off the term for the fulfilment of the obligations for a twice longer period of time than it was specified in the resolution, if the economic entity is not able to fulfil the obligations on time due to objective reasons.

4. The fine not paid by the economic entity shall be recovered to the state budget. The resolution of the Competition Council shall be submitted for execution to the bailiff in accordance with the procedure set forth in the Code of Civil Procedure no later than within one year from the date of its adoption. This period shall be extended by the period which was intended for paying the fine and the period within which the Competition Council resolution to impose a fine was suspended by a court's decision.

#### **Article 40. Sanctions Imposed on the Managers of Economic Entities**

1. For the contribution to the prohibited agreement concluded by the economic entity between competitors or abuse of a dominant position the manager of the economic entity may be restricted of the right to be the manager of a public and/or private legal entity, or a member of the collegial supervisory and/or governing body of a public and/or private legal entity for a period from three to five years. The manager of the economic entity for the contribution to the prohibited agreement concluded by the economic entity between competitors or abuse of a dominant position apart from the restriction of the right specified in this Paragraph may be imposed a fine of up to LTL 50 000.

2. The head of an economic entity shall be considered to have been involved in committing a violation where:

- 1) he has been directly involved in the commitment of the violation;
  - 2) he has not been directly involved in the commitment of the violation, however, had grounds for suspecting that the economic entity he was in charge of was committing the violation and he did not take any actions to prevent the violation;
  - 3) he was not aware of the fact although he had to be aware of the fact that the economic entity he was in charge of committed or is in the process of committing the violation.
3. Sanctions specified in Paragraph 1 of this Article may not be imposed to:
- 1) the manager of the economic entity exempted from the payment of a fine in accordance with the procedure specified in Article 38 of this Law;
  - 2) the manager of the economic entity, who submitted, in accordance *mutatis mutandis* with the conditions set in Paragraph 1 of Article 38 of this Law, to the Competition Council information about violations made by the economic entity with whom the employment relations ceased to exist before the information provision to the Competition Council.
4. This provisions on non-imposition of sanctions may be omitted if the economic entity has terminated employment relations with the manager of the economic entity due to his involvement in the commitment of a violation and has applied to the Competition Council for exemption from the fine.
5. Termination of employment relations between the manager of the economic entity and the economic entity which committed a violation or termination of the powers of the manager of such an economic entity before the adoption by the Competition Council of a resolution on the violation of this Law shall not release the manager of the economic entity from the responsibility under this Article.
6. When imposing the sanctions referred to in Paragraph 1 of this Article on the manager of an economic entity, Paragraphs 3 and 4 of Article 35 of this Law shall apply *mutatis mutandis*.

#### **Article 41. Lodgement of an Application with Court for the Imposition of Sanctions on the Managers of Economic Entities and their Examination in Court**

1. Upon establishing the existence of the circumstances referred to in Paragraphs 1 and 2 of Article 40, the Competition Council shall adopt a resolution to refer to Vilnius Regional Administrative Court with an application for the imposition of sanctions provided for in Paragraph 1 of Article 40.
2. The resolution referred to in Paragraph 1 of this Article shall contain the circumstances forming the basis for the application together with the supporting evidence attached thereto as well as a reasoned proposal in relation to the imposition of the sanctions provided for in Paragraph 1 of Article 40 of this Law and their scope. In adopting a decision to impose sanctions, the court shall not be bound by the proposal of the Competition Council in relation to sanctions and their scope.
3. The Competition Council shall have the right to apply to court with an application referred to in Paragraph 1 of this Article within three months from the day:
  - 1) of expiration of the appeal period for the resolution of the Competition Council on the infringement specified in Paragraph 1 of Article 40, if the resolution is not appealed in accordance with the terms and procedure specified in Article 33 of this Law;
  - 2) when a court decision becomes effective, which does not annul the Competition Council's resolution or part of it regarding the infringements specified in Paragraph 1 of Article 40 in relation to an economic entity appealing the resolution of the Competition Council in accordance with terms and procedure specified in Article 33.

4. Upon examining the application of the Competition Council, the court shall adopt one of the following decisions:

- 1) to apply the sanctions specified in Paragraph 1 of Article 40 of this Law;
- 2) to reject the application.

5. When imposing the sanctions specified in Paragraph 1 of Article 40 of this Law on the manager of an economic entity, the court shall act in compliance with the principles of justice, reasonableness and fairness and take into consideration the following:

- 1) the gravity of the infringement committed by the economic entity;
- 2) the duration of the infringement committed by the economic entity;
- 3) the nature of involvement of the manager of the economic entity in the infringement committed by the economic entity;
- 4) the behaviour of the manager of the economic entity in the course of investigation carried out by the Competition Council in relation to the infringement committed by the economic entity;
- 5) other relevant circumstances.

6. A list of persons who have been imposed sanctions referred to in Paragraph 1 of Article 40 of this Law by an effective court decision shall be published on the website of the Competition Council.

7. Upon establishing that an effective court decision imposing the sanctions referred to in Paragraph 40 of Article 441 of this Law is not executed, the Competition Council shall submit the court decision for execution to the bailiff in accordance with the procedure set forth in the Code of Civil Procedure of the Republic of Lithuania.

#### **Article 42. Administrative Liability**

Persons who do not comply with the provisions of this Article shall be held liable in accordance with the procedure prescribed by laws of the Republic of Lithuania.

#### **Article 43. Compensation for Damage**

1. Economic entities that violate this Law must compensate for damage caused to other economic entities or natural and legal persons in accordance with the procedure established by the laws.

2. Damage caused to persons by illegal actions of the Competition Council or its officials shall be compensated in accordance with the procedure established by the laws.

### **CHAPTER VII APPLICATION OF THE EUROPEAN UNION COMPETITION RULES**

#### **Article 44. Authorised Institution**

1. The Competition Council shall be an institution authorised to apply the EU competition rules, the supervision of compliance whereof, according to the European Union competition law, is entrusted to the national competition authority.

2. In performing functions assigned to it in accordance with Paragraph 1 of this Article, the Competition Council shall act in compliance with this Law.

#### **Article 45. State Aid**

1. The Competition Council shall be a coordinating institution in matters related to State aid subject to the European Union State aid rules.

2. Following the procedure set forth by the Government of the Republic of Lithuania, the Competition Council shall perform expert examination of the State aid projects referred to in Paragraph 1 of this Article, submit conclusions and recommendations to State aid providers, accumulate information on State aid granted to

economic entities of Lithuania and submit such information to the European Commission and other institutions concerned.

3. The register of granted State aid referred to in Paragraph 1 of this Article, including *de minimis* aid, shall be managed by the Competition Council.

#### **Article 46. Police Assistance and Issuance of Court Authorisations for Investigation Actions**

1. For the purpose of maintaining public order and possible use of coercion, authorised officials of the European Commission carrying out an investigation in accordance with the EU competition rules or authorised officials of the Competition Council assisting the authorised officials of the European Commission in carrying out the inspections may enlist the assistance of police officers.

2. Vilnius Regional Administrative Court shall issue the court authorisations for the possible use of coercive measures in the case referred to in Article 20 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter: 'Regulation (EC) No. 1/2003').

3. Vilnius Regional Administrative Court shall issue court authorisations for the inspections conducted by the European Commission and the possible use of coercive measures in the case referred to in Article 21 of Regulation (EC) No. 1/2003.

4. Applications for the issuance of court authorisations shall be filed by the European Commission or the Competition Council.

#### **Article 47. Judicial investigation of competition cases**

1. A person whose legitimate interests have been violated by actions performed in contravention of Articles 101 or 102 of the Treaty of the Functioning of the European Union or other restrictive actions prohibited by this Law shall be entitled to bring an action before Vilnius Regional Court seeking:

- 1) termination of the illegal actions;
- 2) compensation for the damage incurred.

2. Upon receipt of the claim related to the application of Articles 101 or 102 of the Treaty on the Functioning of the European Union, the court shall notify thereof the European Commission and the Competition Council. In this case, the European Commission and the Competition Council shall have the rights specified in paragraph 2 of article 50 of the Code of Civil Procedure.

3. A copy of the decision (ruling) adopted in the case in which Articles 101 or 102 of the Treaty were applied shall, without delay after the publication of the decision (ruling), be forwarded to the European Commission and the Competition Council.

4. The proceedings may be reopened when it transpires that after the adoption of the court decision (ruling) in which Articles 101 or 102 of the Treaty applied to the agreements, decisions or practices, the European Commission adopts a decision on the application of the said Articles to the same agreements, decisions or practices, and the effects of the application differ substantially.

5. When the case is heard at Vilnius Regional Administrative Court, Paragraphs 2, 3 and 4 of this Article shall apply *mutatis mutandis*.

*I promulgate this Law passed by the Seimas of the Republic of Lithuania.*

PRESIDENT OF THE REPUBLIC

VALDAS ADAMKUS

**LEGAL ACTS OF THE EUROPEAN UNION IMPLEMENTED BY THIS LAW**

1. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2004, Special edition, Chapter 8, Volume 2, p. 205)
2. Council Regulation (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services (OJ 2006 L 269, p. 1).