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*Estonia**

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Estonia is located in Eastern Europe, bordering the Baltic Sea and Gulf of Finland, between Latvia and Russia. It attained independence in 1918 from Russia. Forcibly incorporated into the USSR in 1940, it regained its freedom in 1991, with the collapse of the Soviet Union.

Since Independence, Estonia has been free to move toward a modern market economy and to promote economic and political ties with Western Europe. It joined the WTO in 1999 and the EU in the spring of 2004.

PROFILE	
Population:	1.4 million***
GDP (Current US$):	9.1 billion***
Per Capita Income: (Current US$)	12,260 (Atlas method)*** 5,380 (at PPP.)**
Surface Area:	45,230 sq. km
Life Expectancy:	71.6 years**
Literacy (%):	99.8 (of ages 15 and above)**
HDI Rank:	36***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

Estonia, as a new member of the WTO and the EU, has transitioned effectively to a modern market economy with strong ties to the West, including the pegging of its currency to the Euro. The economy benefits from strong electronics and telecommunications sectors, and is greatly influenced by developments in Finland, Sweden, and Germany, three major trading partners. The current account deficit remains high, at about 14 percent of GDP in 2004. However, the state budget enjoyed a surplus of US$130mn in 2003.

Competition Evolution and Environment

In Estonia, the first attempts at regulating business activities began in 1931, when Parliament adopted the law on Fighting against Unfair Competition. The law prohibited activities conflicting with good trade practices and customs, and protected consumers' interests.

After World War II, Estonia became a Socialistic Republic and, for almost fifty years, the country's economy could be described as a planned economy.

Restoration of a market economy began in 1988, after Estonia had declared its will for independence. Following this change in thinking, strict price control was substituted by liberal price policies, protection of consumers, and promotion of competition.

In 1991, the first draft of the Competition Act was drawn up. The draft law contained special provisions on the prohibition of restriction of competition, by means of agreements, abuse of a dominant position in the market and unfair competition. However, this bill did not get enough support.

The revised draft law passed through Parliament in 1993, and the *Competition Act* became effective on October 01, 1993. By that time, the political will to lay the legal foundations of a market economy in Estonia had grown immense. The Law was a result of very thorough preliminary work. It is also worth mentioning that several experts from OECD countries, and from the United States of America, assisted in drawing up the draft law.

Competition Law and Policy

The Competition Act 1993 was also in accordance with the principles of competition law of the EU stipulated in the Treaty Establishing the European Community. Still, the regulations in the Competition Act 1993 had some differences, compared to the EU competition rules.

The main aim of the Competition Act 1993 was to protect the freedom of competition within Estonia, with particular

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regard to the interests of consumers. The Competition Act 1993 established the traditional provisions of the competition law:

- prohibition of agreements that restrict competition;
- prohibition of concerted practices; and
- prohibition of abuse of a dominant position in the market. Besides that, the Act contained other provisions related to unfair competition.

The Act contained no provisions related to the merger control. It was decided that due to the rapid development of the competition environment, and the small size of the country, it would not be necessary to have such kinds of provisions.

An administrative body enforcing competition rules, The State Competition Board was established under the Ministry of Finance, on October 21, 1993.

As Estonia had long expressed its desire to become a member of the EU, on June 12, 1995, an association agreement between the European Communities and their Member States, and the Republic of Estonia (Europe Agreement) was concluded in Luxembourg.

The Europe Agreement emphasised that the final goal of Estonia was to become a member of the EU and the association created through that Agreement would help to reach that goal. Article 68 of the Agreement, set out the main conditions for the economic integration of Estonia into the EU. Above all, the Article mandated the conformity of the existing and future Estonian legislation with the legislation of the EU, including that of competition rules.

After a few years of rapidly developing the competitive environment, and law making (in connection with independence, all laws and regulations had to be adopted in a very short time), when Estonia had gained experience from the implementation of the first Competition Act; it became apparent that there was a necessity for a new, more precise and amended Competition Act.

When elaborating a draft of the new Competition Act, both the requirement to fulfill the obligations deriving from the Europe Agreement, as well as the necessity (arising from everyday practice) for the establishment of more exact rules of procedure, in order to ensure more effective implementation of the Act, were taken into consideration.

The second *Competition Act* entered into force on October 01, 1998. The new Competition Act contained amended provisions regarding the prohibition of competition restrictive agreements; individual and group exemptions; prohibition of abuse of dominant position; and also specific obligations for undertakings with special or exclusive rights, or natural monopolies. For the first time, an obligation for merging companies to notify the Estonian Competition Board of the merger, as well as the basis and procedure for granting state aid, were established under this Act.

As the obligations of, and limitations for, undertakings with special or exclusive rights and natural monopolies had to be enacted in the law, considering that the drafts of other acts were not yet ready, it was decided to include these stipulations in the Competition Act. Today, various acts regulating energy and other sectors, regulating the above-mentioned issues in the respective fields more precisely, have already been enforced.

The task of supervising the implementation of the Competition Act was continuously being divided between the Competition Board and the supervisory authorities in the respective fields (Banking Supervision Authority, Insurance Supervisory Authority and Securities Inspectorate – today, these authorities have been united into a single authority: the Financial Supervision Authority); and the Ministry of Finance exercised supervision over the new, additional field – State aid.

Due to the rapid development of the economy and legislation, as well as the upcoming joining with the EU, a need to draft a new Competition Act in Estonia arose again. On October 01, 2001, the new Competition Act, which is currently in force, took effect. The scope of application of the Act is the safeguarding of competition in the interest of free enterprise upon the extraction of natural resources; manufacture of goods; provision of services; and sale and purchase of products and services; and the preclusion and elimination of the prevention, limitation or restriction of competition in other economic activities.

The Act also applies if an action or omission, directed at restricting competition, is committed outside the territory of Estonia but restricts competition within the territory of Estonia.

Pursuant to the new Act, the Competition Board has new, additional tasks, namely the complete control over concentrations. Now the Competition Board will be authorised to prohibit a concentration if it creates or strengthens a dominant position, as a result of which competition would be significantly restricted in the goods market. If the parties concerned fail to give notice of the concentration, prejudicing free competition within the specified term; or violate the prohibition on concentration, or the conditions of a permitted concentration, they would be liable for punishment.

The most recent amendments to the Competition Act 2001 were introduced in summer 2004.

The main aspects of the current Competition Act are:

- prohibition of anticompetitive agreements, concerted practices and decisions by associations of undertakings;
- general conditions for individual and group exemptions;
- prohibition of an abuse of a dominant position by one or more undertakings;
- restrictions on activities and obligations of undertakings, with special or exclusive rights or in control of essential facilities;
- control of concentrations;
- condition for granting State aid;
- prohibition on unfair competition;
- state supervision over implementation of the Competition Act and rules of administrative procedure and co-operation between the EC, competition authorities of the EU member states and the Estonian Competition Board; and
- penalties for competition misdemeanours.

In cases where undertakings intentionally enter into anticompetitive agreements or repeatedly violate other prohibitions of the Competition Act 2001, criminal proceedings shall be carried out and the offenders (both, individuals representing the undertaking and the undertakings themselves) will be prosecuted and punished in accordance with the Penal Code.

The Competition Board shall exercise state supervision over the implementation of the Competition Act, except for the implementation of the provisions of unfair competition and State aid. The existence or absence of unfair competition shall be ascertained in a dispute between parties, held pursuant to civil procedures in civil courts. The granting of State-aid, which can be done by the State, Local Government or other body, such as a foundation, non-profit association, legal person in public law, or public undertaking, must be consented by the EC, as it exercises supervision over the granting of State-aid in the EU.

Anticompetitive Business Practices[1]

The Estonian Competition Act does not prohibit the existence of a dominant position *per se*, but only the abuse of it. The undertakings with special or exclusive rights are also defined as being in a dominant position. Several restrictions and conditions that apply to these undertakings are:

- Government authorities may prescribe the prices to be charged to, or impose other conditions or obligations on, the undertakings concerned. This is so that consumers are not placed in a substantially worse situation than they would be if competition was present in the corresponding area of activity;
- The undertakings must draw a clear distinction in their accounts between primary and secondary activities, in order to ensure accounting transparency; and
- They must permit other undertakings access to their network, infrastructure or essential facilities, under reasonable and non-discriminatory conditions, unless there are safety, security or efficiency reasons for not granting access; problems of technical non-conformity; or unless access of competitors would put at risk the data protection provided for by law.

The Estonian Competition Board (ECB) has the authority to prohibit a concentration. Approval of a merger shall be based on the need to maintain and develop competition, taking into account the structure of the respective markets; actual and potential competition; legal or other barriers to entry; supply and demand trends for the relevant goods; and the interests of buyers, sellers and, ultimately, consumers.

Once the actors have notified the ECB of a planned concentration, the ECB must decide, within thirty calendar days, whether to permit the merger or whether to initiate supplementary investigations into its possible anticompetitive effects. If supplementary investigations are conducted, these may last no longer than four months. After this period, a final decision – approval or prohibition of the merger – must be communicated to the undertakings concerned. The ECB may approve the concentration conditional on certain obligations, in order to avoid the restraint of competition.

Sectoral Regulation

The liberalisation of the economy and the privatisation process called for special laws and regulations in some economic sectors, including provisions for promoting competition and imposing limitations on undertakings having a dominant position in the market (including undertakings having exclusive or special rights and undertakings having control over essential facilities). The implementation and enforcement of the above-mentioned laws and regulations shall be supervised by the following specialist authorities (regulators):

- The Energy Market Inspectorate (*Electricity Market Act and District Heating Act*);
- The Railway Administration (*the Railways Act*);
- The Communications Board (*the Telecommunications Act*);
- The Financial Supervision Authority (*the Credit Institutions Act, the Securities Market Act, the Insurance Activities Act, the Money Laundering and Terrorist Financing Prevention Act*); and
- The Aviation Authority (*the Aviation Act*).

The Competition Board was thereby, at least to some extent, relieved of dealing with the competition problems occurring in these sectors.

1 http://64.233.187.104/search?q=cache:eacjxgPbyTAJ:137.120.22.236/www-edocs/loader/file.asp%3Fid%3D586+anti+competitive+practices+in+estonia&hl=en&ie=UTF-8

Energy Sector

The energy and fuel markets are mainly regulated by the following acts:

- *Electricity Market Act* regulates the generation, transmission, sale, export, import and transit of electricity; and the economic and technical management of the power system. The Electricity Market Act prescribes the principles for the operation of the electricity market, based on the need to ensure an effective supply of electricity at reasonable prices; meeting environmental requirements and the needs of customers; and on the balanced, environmentally clean and long-term use of energy sources;
- *District Heating Act* regulates activities related to the production, distribution and sale of heat by way of district heating networks and connection to networks;
- *Liquid Fuel Act* provides for the purpose of guaranteeing the collection of fuel excise duty and the quality of more widely used motor fuels; the bases and procedure for handling of liquid fuel, liability for the violation of this Act; and organisation of State supervision. The provisions of the Act are applied to the production of liquid fuel, with the specifications arising from an Act providing for the imposition of fuel excise duty; and
- *Natural Gas Act* regulates activities related to the import, distribution and sale of natural gas by way of gas networks, and connection to networks.

Telecommunications Sector

The *Electronic Communications Act* contains the most important regulation in the field of telecommunications. The purpose of the Electronic Communication Act is to create the necessary conditions for the development of electronic communication, in order to promote the development of electronic communications networks and communications services, without giving preference to specific technologies; and to ensure the protection of the interests of users of electronic communications services, by promoting free competition and the purposeful and fair planning, assignment and use of radio frequencies and numbering.

The Act provides requirements for the publicly available electronic communications networks and communications

Box 70.1: Parallel Competencies of the Competition Board and the Communications Board

In 2001, AS Eesti Telefon (hereinafter ET), the largest Estonian company providing telephone services (with market share around 97 percent) published a notice in the media about its intention to unify the prices of domestic long-distance calls and local calls in its network. The Communication Board, as regulator, approved the new prices, but the Competition Board regarded the aforementioned activities as abuse of dominant position (the application of unfair price conditions by ET to the fixed network call services provided inside the ET network). ET appealed the decision of the Competition Board to the Court. The case went through three levels of court hearings.

Finally the Supreme Court of Estonia provided important interpretations regarding the application of the Competition and Telecommunication Acts.

The Supreme Court stated that the use of unfair pricing conditions, and thereby abusing its dominant position in the market, by an undertaking was prohibited regardless of whether other undertakings were harmed or not. The aim of the Competition Act is not only the protection of other undertakings but any persons not engaged in entrepreneurship, as well as the protection of the public interest.

Thus, the aim of the Competition Act is to protect all the parties in the market, i.e. the consumers of goods in a situation where there is no competition or where it is restricted, e.g. where one or several undertakings dominate the market. If unfair price conditions are dictated by the undertaking, consumers will be the first ones to suffer.

The generally recognised aim and function of competition and its law is to ensure quality of goods, fair prices and availability of a reasonable amount of goods through optimal demand and offer in the market. The economic power, of an undertaking having monopolistic or essential market power, i.e. power to dictate agreement conditions, by such undertaking is, for the consumer, one of the main undesired phenomena, which the competition law must restrict.

If the State allows undertakings, which are monopolies or have essential market power, to operate in such sectors of the economy where this is inevitable or which reasonably takes into account public interests, then the State must also ensure protection of the consumers and other undertakings from the possible abuse of such economic power. If this is not done, the principal rights of the consumers may be harmed.

The Supreme Court also stated that, in cases where the law, regulating a specific economic sector, does not limit the power of the Competition Authority to investigate activities of the undertaking in dominant position in that sector, and in the case of parallel competence of two supervision authorities (in this case the Competition Board and the Telecommunication Board); the authorities ought to coordinate their work and avoid taking inconsistent (controversial) decisions. The decision taken earlier by one of the supervisory authorities (even if it is not in the form of an administrative act) will exclude further interventions by the other authority if it may harm the undertaking's legitimate expectations.

services; radio communication; management of radio frequencies and numbering; apparatus and state supervision over compliance with the requirements; and liability for violation of the requirements.

Since the regulators do not have the competence to enforce neither EU competition law nor national competition rules, the Competition Board, as the primary competition enforcement authority, is still closely supervising the activities of the undertakings engaged in business activities, in the above mentioned sectors; and intervenes according to necessity. The Board is especially active in dealing with competition matters not specifically covered in the special regulations.

The various sectoral regulators are currently rather active in dealing with various issues related to their respective sectors. The work of the regulators has proven to be effective and some of them have recently gained further powers for exercising their supervisory powers in their sector.

Financial Sector

The Financial Supervision Authority (FSA) is an agency of the Bank of Estonia, with autonomous competence and a separate budget; the management of which performs and submits reports pursuant to the procedure provided for in the *Financial Supervision Authority Act*. The Financial Supervision Authority conducts financial supervision in the name of the State and is independent in the conduct of financial supervision.

Its goal, as defined in the Financial Supervision Authority Act, is to enhance the stability, reliability, transparency and efficiency of the financial sector; to reduce systemic risks and to prevent the abuse of the financial sector for criminal purposes, with a view to protecting the interests of clients and investors by safeguarding their financial resources and, thereby, supporting the stability of the Estonian monetary system. The FSA organisational structure is in line with its statutory functions and responsibilities: it consists of capital, markets and funds, insurance and general supervision divisions.

Consumer Protection

Mostly, the *Consumer Protection Act* safeguards consumer rights. The Act regulates the offering and sale, or marketing in any other manner, of goods or services to consumers by traders; determines the rights of consumers as the purchasers or users of goods or services; and provides for the organisation and supervision of consumer protection and liability for violations of the Act.

According to the Consumer Protection Act, the fundamental consumers' rights are to:

- demand and obtain goods and services which meet the requirements, are harmless to the life, health and property of consumers, and are not prohibited from being owned or used;
- obtain necessary and truthful information on the goods and services offered, in order to make a conscious choice; and timely information on any risks relating to the goods or services;
- obtain information on consumer law and other issues relating to consumption;
- obtain advice and assistance if their rights are violated;
- demand compensation for any patrimonial or non-patrimonial damage caused to them; and
- request that their interests be taken into account, and that they be represented through consumers' federations and associations in the decision-making process on consumer policy issues.

Supervisory authorities engaging in consumer protection are the Consumer Protection Board, the Health Protection Inspectorate, the Police Board, and Local Governments. The Consumer Protection Board also supervises the application of the *Advertising Act* and investigates the infringement related thereto.

Box 70.2: Consumer Board Hauls up Mobile Phone Companies

In 2003, the Consumer Protection Board had a major dispute with the mobile service operators (hereinafter: the Operators). Several operators refused to accept cash payments from their customers (consumers) or had imposed a considerable service fee upon the receipt of such payments. In the Consumer Protection Board's opinion, such conduct was illegal and violated the consumers' rights.

The Consumer Protection Board issued a direction to one of the operators for increasing the service fee. The Operator was ordered to stop such illegal activities and to start accepting cash payments with no service fee.

The order was appealed against in the Administrative Court, and then in the District Court. The appeals failed and consumers won.

The Court decision has had a marked effect on the protection of consumer interests, because the telecommunication firms are not the only companies, which impose service fees on cash payments. For instance, the cable-TV operators act the same way.

Concluding Observations and Future Scenario

The new European competition enforcement regime, which came into force on May 01, 2004, obliges the Competition Authorities and Courts of the Member States to also apply Articles 81 and 82 of the Treaty establishing the European Community, where they apply national competition law to agreements and practices, which may affect trade between Member States.

In order to establish a system, which will ensure that competition in the European common market is not distorted, Articles 81 and 82 of the Treaty establishing the European Community shall be applied effectively and uniformly throughout the EU. Therefore, the competition authorities of the Member States are now associated more closely with the application of the competition law.

Consistency in the application of the competition rules requires cooperation between the Member States and the EC.

The need for the parallel application of national laws and the competition rules of the European Community has called for closer cooperation between the competition authorities and courts of the Member States, and the institutions of the European Union (especially the European Commission). The cooperation includes mutual assistance, by carrying out inspections and other fact-finding measures, as well as information exchange.

As a Member State of the EU, Estonia takes part in the activities of the European Competition Network (ECN) – a forum for discussion and cooperation in the application and enforcement of the European Community's competition policy.

Amendments to the Competition Act in Estonia

The amendments to the Competition Act, in Estonia, came into effect on July 01, 2006. It focused on the regulation concerning the control of concentrations and abolished the possibility for undertakings to apply for individual exemptions to their arrangements under Section 6 of the Act.

The amendments were implemented in order to harmonise Estonian Law with the relevant European Union (EU) regulations, as well as to resolve certain issues that arose during the use of the Act in administrative practice.Before the amendments, the Act required the parties to a concentration to notify the Competition Board within one week of the conclusion of an agreement establishing the acquisition of control or a merger.

(Source: International Law Office, 16.11.06)

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