



Lithuania² lies in Eastern Europe, on the coast of the Baltic Sea; and borders Latvia, Belarus, Poland, and the Russian Federation. On March 11, 1990, Lithuania became the first of the Soviet republics to declare its independence. Lithuania's independence was quickly recognised by major European and other nations, including the United States, but Moscow did not recognise this proclamation until September 1991.

Economy³

Lithuania is an upper middle-income country. Some 30 percent of the country is covered with forests. Lithuania's major exports are textiles (15 percent of total exports), wood and furniture (5 percent), food products (11 percent) and refined oil products (19 percent).

Agriculture remains an important sector in the country's economy, employing 17.7 percent of the population. The sector is mostly characterised by small-scale, semi-subsistence farms with a low level of productivity. The share of the agricultural sector has declined from 12 percent of GDP in 1995 to seven percent in 2002, while the share of services has increased from 54 percent to 62 percent in the same period.

The GDP growth in recent years has been remarkable, increasing by an average of 6.6 percent in 2001-2002. In the first half of 2003, the economy grew by an impressive 7.7 percent, despite the global economic slowdown.

Lithuania's macroeconomic performance started to improve in 2000, when the government embarked on the policy of fiscal consolidation and acceleration of structural reforms. As a result, macro-financial stability was achieved and the economy returned to a sustainable growth path.

PROFILE	
Population:	3.5 million***
GDP (Current US\$):	18.2 billion***
Per Capita Income: (Current US\$)	4,500 (Atlas method)*** 10,320 (at PPP)**
Surface Area:	65,300 sq. km
Life Expectancy:	72.5 years**
Literacy (%):	99.6 (of ages 15 and above)**
HDI Rank:	41
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

The EU accession process has been instrumental in advancing regulatory reforms, including in the restructuring of the important energy and banking sectors. In the aftermath of the Russian crisis, Lithuanian enterprises have been successfully reorienting their exports from the traditional markets to the east, towards the more competitive EU markets. This has been a critical factor in the country's export-led economic recovery. On the other hand, social sectors, which are outside the competence of the EU such as health, education, pensions and social support, still require concerted efforts on the part of the government to increase their efficiency, quality and access.

Evolution of Economic Policy Regime

During the early 1990s, the government launched a comprehensive program of market-oriented reforms, which included the privatisation of SoEs, the lifting of price

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1 Comments received from Rima Kaulenaite, Competition Policy and Foreign Relations Division, Competition Council of the Republic of Lithuania

2 <http://www.cia.gov/cia/publications/factbook/geos/lh.html>

3 Library of Congress Country Studies; <http://www.infoplease.com/countries.html>

controls, land reform, and reform of the banking sector. Also, a new national currency, the litas, was introduced in June 1993.

Privatisation occurred at a rapid rate in the 1992-94 period (especially with respect to farmland, housing, and small enterprises), and about half of the large and medium-size enterprises scheduled for privatisation were sold through public share offerings. The Law on Initial Privatisation of State Property of the Republic of Lithuania, passed in early 1991 and amended several times in 1993 (primarily with regard to land reform and restitution), served as the principal basis for undertaking privatisation.

Successful implementation of structural and legislative reforms in Lithuania attracted greater foreign direct investments by the mid-1990s. In 2001, Lithuania became a member of WTO. In late 2002, Lithuania was accepted for membership in the EU and NATO, and it joined both in 2004.

Competition Law: Evolution and Environment⁴

The very need to protect competition is identified in the Constitution of the Republic of Lithuania. Article 46 of the Constitution asserts that:

- Lithuania's economy shall be based on the right to private ownership, freedom of individual economic activity and initiative;
- The State shall support economic efforts and initiative which are useful to the community;
- The State shall regulate economic activity, so that it serves the general welfare of the people;
- The law shall prohibit monopolisation of production and the market;
- The law shall protect freedom of fair competition; and
- The State shall defend the interests of the consumers.

In general, the Constitution seeks to create a reasonable balance between the interests of an individual and those of society. The same applies to the constitutional principles of the organisation of the national economy. In this particular case, such a balance is supposed to be achieved by protecting the freedom of fair competition.

Lithuania introduced its first Law on Competition in September 1992 (the '1992 Law on Competition'). From the very beginning, it has been marked by a gradual harmonisation of national competition rules with the European Competition Law standards. Despite that the 1992 Law on Competition was, to a certain extent, influenced by US anti-trust law, its basic structure and terminology still followed the European style.

The Europe Agreement, between European Communities and their Member States and Lithuania, was signed on June

12, 1995 and came into effect on February 01, 1998. According to this agreement, the competition system for trade relations between the Community and Lithuania had to be based on the requirements set out in Articles 85, 86 and 92 of the EC Treaty, bringing the Lithuanian rules on competition in line with those of the EC. Therefore, a new Law on Competition was enacted in 1999 (the '*1999 Law on Competition*').

The main objectives of the competition policy in Lithuania are identified in an objects clause. Article 1 of the Competition Law establishes that:

1. The purpose of this law is to protect freedom of fair competition in the Republic of Lithuania.
2. The law shall regulate the actions of the public and local authorities and undertakings, which restrict or may restrict competition as well as actions of unfair competition; shall establish the rights, duties and liabilities of the said institutions and undertakings, and the legal basis for the control of competition restriction and unfair competition in the Republic of Lithuania.
3. This law seeks harmonisation of the Lithuanian and the EU law regulating competition relations.

Accession of Lithuania into the EU and the modernisation of the EU competition rules, in particular, the adoption of Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings triggered new developments in the Lithuanian competition law. To facilitate the enforcement of the new EU competition rules upon the Lithuania's accession it was necessary to create the appropriate necessary preconditions, primarily through the amendments to the Law on Competition of 1999 and the Code of Civil Procedure. To that effect on April 15, 2004, the Parliament passed the Law on the Amendment and Supplementing the Law on Competition, which came into effect on May 01, 2004.

The new legislation introduced certain important new provisions in the area of prohibited agreements and merger control pertaining to the investigation procedures and imposition of sanctions. In addition, certain modifications in the LC were made in view of the shortcomings and gaps of the law, which had become apparent in the course of its practical enforcement.

Competition Law: Institutions and Competencies

According to 'The 1992 Law on Competition' in Lithuania, there were two state administrative bodies responsible for the competition policy and its implementation. One was the State Competition and Consumer Protection Office (CO), a governmental agency (the 'Competition Office')

⁴ Enforcement of competition rules in Lithuania www.ebrd.com/pubs/law/lit

and another was the Competition Council (CC). The first had the status of a permanent executive institution conducting investigations in cases of alleged violations of the 1992 Law on Competition, whilst the second acted as a collegial decision-making body, applying sanctions for violations of competition, whilst all the preparatory and investigative work was carried out by the Competition Office. Both the executive and decision-making competition bodies were financially dependant on the Government.

In 1999, after the adoption of a new '1999 Law on Competition' the former two competition bodies were merged into one Competition Council. As a result, the dominance of the executive branch, once represented by the Competition Office, over the decision-making body was abolished and the Competition Council, comprised of five members, became the only administrative institution responsible for enforcing competition rules in Lithuania.

This kind of reform brought many positive changes such as: a better focus on the traditional areas of anti-trust, merger control and State aid; a better allocation of both financial and human resources, allowing increasing operational efficiency; more investigations on prohibited agreements and abusive practices; more 'serious' cases under investigation.

The main task of the Competition Council is to apply the Law on Competition. In addition to the supervision of the Law on Competition, the Competition Council performs supervision of the Law on Monitoring of State Aid to Undertakings and also carries out functions assigned by the Law on Prices and the Law on Advertising.

Under the Law on Competition, the Council is responsible for regulating:

- agreements that restrict competition;
- abuses of dominant positions;
- concentrations which create or strengthen a dominant position with the effect of eliminating or restricting competition;
- unfair competition; and
- anticompetitive activities of public and local authorities.

The Council investigates competition restrictions both on its own initiative and on the basis of notifications and complaints. The Council has extensive investigatory powers. It may: request information from undertakings under investigation; search premises with or without notice; inspect and copy documents; seize evidence; obtain oral and written explanations; require individuals to appear at the offices of the Council. In addition, the Law on Competition entitles the Council to obtain information and documents from other economic entities – non-subjects – and also from public and local authorities.

According to the Law on Competition, the Council has the right to: impose administrative fines up to 10 percent of the gross annual income; prohibit concentrations; prohibit anticompetitive practices; apply interim measures; and grant exemptions in respect of certain agreements and decisions.

The Competition Council consists of the Chairperson and four members. They are appointed by the President of the Republic on the nomination of the Prime Minister. The Chairperson is appointed for a term of five years, the term of appointment of the members is six years. The same person may be appointed as a Chairman or a member for not more than two consecutive terms of office.

The transition of the Lithuanian competition authority from a governmental agency to an independent body was crucial in reinforcing free market values and developing a competition culture. The independent institution was better suited to deal with the potential distortions of competition caused by the residual activities of the State in the market.

Anticompetitive Business Practices

All agreements which have as their object the restriction of competition or which may restrict competition are prohibited, including:

- directly or indirectly fix prices of certain goods or other conditions of sale or purchase;
- share the product market on a territorial basis, according to groups of buyers, suppliers or in any other way;
- fix production or sale volumes for certain goods, as well as to restrict technical development or investment; and
- apply dissimilar (discriminating) conditions to equivalent transactions with individual undertakings, thereby placing them at a competitive disadvantage.

When concluded between competitors, these agreements shall be in any case considered as restricting competition.

This Article may be not applicable to agreements concluded between undertakings, which because of their small influence cannot substantially restrict competition. The requirements, terms and conditions in respect of such agreements shall be laid down by a relevant decision of the Competition Council. Further, this provision may not apply where the agreement promotes technical or economical progress or improves the production or distribution of goods, and thus creates conditions for consumers to receive additional benefit.

Abuse of dominant position by an undertaking within the relevant market is prohibited when it carries out actions, which restrict or may restrict competition, limit without cause the possibilities of other undertakings to act in the market, or violate the interests of consumers, including:

Box 82.1: Lithuanian Authority Breaks New Ground

The Competition Council pronounced its resolution adopted, following the completion of the investigation on the compliance of actions of *AB Mabeikiø nafta* with the requirements of the Law on Competition of the Republic of Lithuania and Article 82 of the Treaty establishing the European Community.

Having examined the facts and circumstances established in the course of the investigation the Competition Council recognised that *AB Mabeikiø nafta* had violated Article 9 of the Law on Competition on the prohibition to abuse a dominant position. The Competition Council also concluded the infringement of Article 82 of the Treaty establishing the European Community.

This was the first ever case after the accession of Lithuania to the EU in May 2004, and the enforcement therein of the European competition rules, that a Lithuanian company has been charged for having abused its dominant position in a part of the common market of the EU and by its actions affected trade between Member States.

AB Mabeikiø nafta was obliged to discontinue the restrictive practices. In view of the established infringements and acting according to the Rules concerning the setting of the amount of a fine, the Competition Council imposed upon *AB Mabeikiø nafta* a fine of LTL 32 million.

The investigation was initiated in July 2004 with a view to establishing whether actions of *AB Mabeikiø nafta* in the period between 2002 and 2004 could have caused the gasoline and diesel fuel prices in Lithuania to be higher than those in other Baltic States, also whether the differences in fuel prices in Lithuania, Latvia and Estonia could have resulted from the possibly restrictive actions of the company.

The investigation established that the Lithuanian fuel prices higher than those in Latvia and Estonia were caused by objective reasons stemming from different conditions in different territories of the Baltic States market (excise conversion differences, the fuel reserve accumulation requirement effective in Lithuania, etc.), as well as the abuse of the dominant position by *AB Mabeikiø nafta* in the market.

Being a monopoly producer and the main supplier of oil products in the Lithuanian, Latvian and Estonian market in 2002-2004 *AB Mabeikiø nafta* was dominating in the Baltic states' gasoline and diesel fuel markets and was able to exert considerable influence therein while concluding contracts and selling oil products.

The company had not made any clear-cut and transparent pricing system or a uniform discount

system applicable for identical fuel purchases in Lithuania, Latvia and Estonia. This affected the fuel consumers in the three Baltic States who were in varying competitive conditions.

The trade between the Member States was affected because *AB Mabeikiø nafta* was marketing major part of its production in the Baltic States, besides, the Lithuanian purchasers would acquire fuels at higher prices than Latvian and Estonian buyers. Since the fuels were marketed in Lithuania at higher prices, damage was also caused to Lithuanian oil product consumers.

The Competition Council concluded that *AB Mabeikiø nafta* was abusing the dominant position by discriminating, while concluding similar contracts, among the Lithuanian, Estonian and Latvian purchasers on territorial basis. *AB Mabeikiø nafta* could affect the trade between Member States also by forcing the undertakings operating in the Lithuanian, Latvian and Estonian markets to conclude contracts on the purchase of oil products.

A range of actions restricting trade performed by *AB Mabeikiø nafta* was also recognised as evidence of abuse of dominance. Those included restricted possibilities of the buyers to freely choose amounts of purchases and discounts, and efforts to protect the gasoline and diesel fuel markets from import and potential importers, by granting some inadequate rebates to *UAB Lukoil Baltija*, *UAB Lietuva Statoil* and *UAB Neste Lietuva* thus eventually discriminating with other minor purchasers-wholesalers. *AB Mabeikiø nafta* was operating an economically irrational rebate system under which minor wholesalers found it difficult to purchase oil products from *AB Mabeikiø nafta*, since they could acquire the same products at lower costs from *Lukoil*, *Statoil* and *Neste*.

Having examined and assessed the above and other facts and circumstances established during the investigation the Competition Council concluded the infringement of both Article 9 of the Law on Competition of the Republic of Lithuania and Article 82 of the Treaty establishing the European Community.

This is the third time during the recent years that the Competition Council took action against *AB Mabeikiø nafta*. In 2000, the company was sanctioned for the abuse of the dominant position, and in 2001 *AB Mabeikiø nafta* was recognised to have infringed the requirements of Article 5 of the Law on Competition (prohibited agreements); in both cases the authority imposed sanctions upon the company. Although appealed by *AB Mabeikiø nafta*, following the long-last litigation proceedings the court upheld the decision of the Competition Council.

Source: The Competition Council Press Officer: www.konkuren.lt

Box 82.2: Cartel Agreement in Information Technology Market

An allegation was brought to the Lithuanian Competition Council that businesses in the newly established information technology market had made a cartel agreement engaging in collusive behaviour to fix prices.

The Competition Council found, in accordance with part 1 of Article 41, and Article 42 of the Law on Competition, that three companies had engaged in such behaviour and were subjected to a fine.

Source: Competition Council of Republic of Lithuania <http://www.konkuren.lt>

- direct or indirect imposition of unfair prices or other purchase or selling conditions;
- limitation of trade, production or technical development to the prejudice of consumers;
- application of dissimilar (discriminating) conditions to equivalent transactions with certain undertakings, thereby placing them at a competitive disadvantage; and
- making the conclusion of contract subject to acceptance by the other party of supplementary obligations which, by their commercial nature or usage, have no connection with the subject of such contract.

A proposed M&A is required to be notified to the Competition Council and permission obtained when the

aggregate turnover of the undertakings participating in concentration and their combined aggregate turnover exceeds a certain threshold. The aggregate turnover of undertakings participating in concentration is an important criterion for establishing whether it is obligatory to submit a notification of the intended concentration to the Competition Council and obtain the permission.

In its activity the Competition Council holds a view that aggregate turnover, as an indicator of economic activity, has to reflect, as precisely as possible, the economic capacity and status of the undertakings participating in the concentration. The notification on concentration is to be filed with the Competition Council prior to the implementation of concentration.

Sectoral Regulation

Telecommunications Sector⁵

During the past several years, the telecommunications sector saw a fast introduction of new technologies and expansion of the services market.

Efforts to regulate the telecommunications sector commenced soon after restoration of country's independence in March 1990. The very first *law on telecommunications* was adopted on May 30, 1991. However, the changing structure of the sector inspired further regulatory steps. On November 30, 1995, the new *Law on communications* was adopted.

Box 82.3: Biased Comparison of Service Prices in Advertisements

In one case, the Competition Council took action on a misleading comparative advertisement published by AB 'Lietuvos dujos'.

The Competition Council concluded that advertising statements published in the publications 'Daugiau nei šiluma' (More than just heat, 2002) and 'Gamtines dujos: geriausias pasirinkimas' (Natural gas: best choice, 2003) fell in the category of prohibited comparative advertising.

A fine amounting to US\$1762.04 was imposed on AB 'Lietuvos dujos' for the prohibited comparative advertising. The amount of the fine was determined taking into account the circumstances extenuating the liability of the advertiser. A lesser fine was imposed, because the company also voluntarily discontinued the use of the prohibited comparative advertising.

The investigation was initiated on the basis of a complaint lodged by UAB 'Vilniaus energija'. AB 'Lietuvos dujos' published and had been distributing publications containing information on the commercial activity of the company, trading in gas. Some information contained in the publications was presented in the manner as to induce consumers to buy gas because of the alleged advantages of natural gas as the source of heat and hot water, as compared to other sources of heat and hot water.

The publicity was promoting the services, placing them in terms of indirect comparison with those provided by UAB 'Vilniaus energija', a competitor of AB 'Lietuvos dujos'. The investigation established that the advertisements represented a biased comparison of the prices of a unit of heat and that of warming up a cubic meter of water, as well as contained other statements, which by the Competition Council were recognised as prohibiting comparative advertising.

Source: Press officer of the Competition Council of Republic of Lithuania (2004-09-09)

5 Legal Framework in Lithuania

On June 09, 1998, the Lithuanian Parliament passed a new Law after carrying out several amendments in the law of 1995, which envisaged the creation of the Telecommunications Regulatory Authority. However, its establishment was delayed until June 2000, and only in 2003 did this agency receive the necessary powers to impose *ex ante* obligations and, thereby, preclude anticompetitive conduct in this important sector.

The Communications Regulatory Authority was established as the main regulatory institution for overall supervision of the Telecommunications sector of Lithuania. It is an independent agency financed from State budget.

Energy Sector

Since 1990, the Lithuanian Government has initiated policy reforms in the energy sector. The most important move was launching a transitional process towards a market-oriented economy and restructuring of the legal and institutional system.

On May 16, 2002, the Parliament of the Republic of Lithuania passed the new law on Energy. The law came into effect from July 01, 2002. It set up the legal preconditions for effective management of the energy sector in Lithuania, which is pursuing EU membership. Furthermore, the law aimed at liberalising the market of energy production, transmission and distribution and increasing its competitiveness.

The law governs the general energy activities; basic principles of energy development and management; also the efficient use of energy resources; sets the regulatory objectives of energy activities; defines relevant administrative institutions; and their competence. It also determines the principles and basic responsibilities for the energy development, pricing and State control over the energy activities.

National Control Commission (NCC) for Prices and Energy was established in October 1997. At the beginning it was responsible for pricing in electricity and gas sectors. Since 1999, it regulates district heating and water supply. Since 2002, it issues licenses, monitors compliance with the license requirements, settles disputes between market players. It also monitors quality of supply and seeks to promote competition. Over the years, NCC has developed from a pricing agency to an economic regulator. Despite various obstacles, it acts in open, transparent way.

Consumer Protection

Law No 1-657 on Consumer Protection of the Republic of Lithuania was enacted on November 10, 1994, and

further amended as *Law No VIII-1946* of September 19, 2000. The law establishes and guarantees the rights of the population as the consumers of goods and services, and protects their economic and social interests.

The National Consumer Rights Protection Board was established in year 2001. The Board coordinates state institutions' activities on protection of consumers. One of the main priorities of the Board is to create a consumer rights protection system corresponding to high EU standards. The main aims, tasks and priority trends of consumer right protection for 2004-2006 are determined by the National Strategy for Consumer Protection and the National Consumer Education Programme of Lithuania, approved on November 11, 2003 by the Government of the Republic of Lithuania.

The Strategy provides an effective institutional system for consumer rights protection. In order to execute these functions the new structure of National Consumer Rights Protection Board has been approved, administrative capacities of the employees are continually improved and collaboration with state and municipality institutions and NGOs is strengthened.

Concluding Observations and Future Scenario

Lithuania has recently become a member state of the EU. Effectively, the member states of the EU work in partnership, where enforcement of national competition law is the responsibility of the Member State. At the inter-state level, where practices will have an impact on trade between Member States, the European competition law comes into effect, regulated by the EC.

The transformation of the Lithuanian competition authority from a governmental agency to an autonomous body was instrumental in reinforcing free market values and developing a competition culture in the Lithuanian market.

The competition law implemented jointly by the Competition Council, as the public authority, and the Courts, has been producing tangible positive effects upon the market structures and the conduct of market participants. The enhanced competition amongst undertakings promotes innovations, reduces production costs and increases the overall production efficiency. Lithuanian producers are becoming increasingly competitive in the newly opened European markets, and the values generated by competition are becoming apparent to growing numbers of Lithuanian consumers, benefiting from improved options to choose from a wider supply of goods and services at lower prices.