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The critical aspects of Lithuanian competition policy in relation to cartels

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Abstract

Competition in the market is an essential prerequisite for ensuring the national economic growth; therefore, almost all market economies consider national competitiveness as a value and protect it. The national competition policy, directed towards the detection and punishment of cartels, is an important tool for ensuring fair and free competition and an important factor for maintaining the country's economic development. The success of an efficient competition supervision is determined by not only a formal coordination of the legal basis, but also by the peculiarities of practical application of competition law, economic and cultural aspects of society, the political will and many other factors. Despite the fact that formally, the regulation of competition restricting agreements concluded between undertakings in Lithuania is essentially the same as in the European Union, however, in Lithuania the level of competition culture and competition policy dissemination and public awareness is quite low, compared to the other European Union states. This paper analyzes the aims, measures and mechanism of implementation of the Lithuanian competition policy in relation to the cartels in the context of the EU and highlights the economic aspects, peculiarities and critical issues of this policy.

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Keywords: Cartels; competition; competition policy; collusive behaviour; national economic development.

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1. Introduction

In the market economy, competition is an essential prerequisite for operating in the market. Only thanks to competition it turns out which business idea and its implementation in the market is successful and which is not, because, according to Hayek (2010), competition is important as the discovery procedure for entrepreneurs, while searching for unexploited opportunities. So, competition is a value, because through it the allocative efficiency of resources and products distribution can be achieved. However, not all undertakings act fairly. Often, business participants, in pursuit of their selfish purposes (to get more profit, gain a bigger share of the market, reduce market risk, limit the number of competitors, etc.), by their actions distort the "healthy" competition, thus undermining the welfare of both the consumers and other market participants, and in the end, it has a negative effect on the overall economy. The government can not stay away, so it protects the competition and controls the competition restricting factors through the implementation of competition policy. According to Motta (2007), competition policy includes a set of laws that guarantee that competition within the market is not restricted, and at the same time the economic welfare is not reduced. Sufrin and Jones (2004) defined competition policy as a set of measures, through which the governments promote the formation of competitive market structures, and a fair market participants' behavior. Stanikūnas (2009) approached competition policy as a set of measures, functioning of laws and supervision, facilitating fair competition and ensuring that it is not going to decrease within the market. Despite different, but identifying the same aspects, definitions of competition policy, it is important to emphasize that the policy itself will not ensure fair competition until a viable and effective working mechanism for its implementation is created. Although the roots of the rules, regulating the market participants' behaviour date back to almost 2000 years[†] , but during this period, many countries of the world in the history of their economic development have experienced the outcomes of the monopolies and cartels existence in the market, reducing not only the consumers' welfare, but often leading to the economic, political and social development crisis. The consequences suffered by the states due to the lack of competition in the market, have even encouraged and justified the identification and protection of competition as a value.

The development of modern competition policy began in 1890, after the U.S.A. adopted the Sherman Act, regulating monopolies' behavior and prohibiting cartels. In Europe, the first competition laws were adopted only in the first half of the 20th century - in France after World War I, in Germany, Austria and the United Kingdom - after World War II. According to Cairns (1999), with the development of the European Community a danger emerged that the expanded market would encourage economic entities to avoid the national competition laws applied to them, resulting in the need to regulate the protection of competition across the European Union. So, the original documents of the Community - the Treaty establishing the European Community (The Treaty of Rome)[‡] signed by seven Member States in 1957, was supplemented with the rules, whose one of the goals was to prohibit anti-competitive agreements.

Despite the competition protecting laws, the undertakings often risk to conclude prohibited agreements - cartels, whose primary goal is to obtain maximum profit and eliminate competition between them. It is cartel that is considered the most harmful form of competition restricting actions, regardless of the nature of the agreement, i.e. whether it is an agreement on production volumes, prices, discounts, credit terms, customers, territory or other issues. It should be noted that cartels are harmful not only at the micro (the consumer or individual undertaking), but also at the macro (the whole market or country) economic level. According to the European Commission (2008) estimates, only due to cartels, fixing prices or sharing markets, each year consumers in Europe experience at least from 13 to 36 billion Euros of direct damage. Referring to the data of various estimates (Riley (2010), Vogelaar (2008), Connor and Lande (2005)), cartels artificially raise the price by the average of 20 - 30 %: 17-19 % in the national and 30 - 33 % in international cartels. Cartel hazard is evidenced by prosecution of physical and legal

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[†] According to Berger (1991), the earliest preserved example of modern competitiveness law sources is Lex Julia de Annona, adopted in the Roman Republic in 50 B. C. This legal act defined sanctions for raising grain prices and restricting the supply.

[‡] Now - the Treaty on European Union Functioning (TEUF), Article 101.