

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Competition Council, Lithuania

The following template is submitted by **Competition Council, Lithuania** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Competition Council of the Republic of Lithuania (‘Competition Council’, <http://kt.gov.lt/en/>) is an independent state institution implementing the state competition policy, controlling the compliance with the requirements of the [Law on Competition of the Republic of Lithuania](#)¹ (‘Law on Competition’), the [Law on the Prohibition of Unfair Practices of Retailers of the Republic of Lithuania](#)² (‘Law on Unfair Retail Practices’) and other laws, the control of which has been assigned to the Competition Council. The Competition Council also applies EU competition rules in cases set forth in the legal acts of the European Union.

The functions of the Competition Council include:

- (1) investigating infringements of the Law on Competition and the Law on Unfair Retail Practices, i.e. conducting investigations of anti-competitive agreements, abuse of dominance, legal acts or other decisions adopted by public administration entities, unfair practices of retailers;
- (2) carrying merger review;
- (3) conducting market investigations;
- (4) strengthening competition culture and preventing anti-competitive behavior.

The working procedure of the Competition Council, including the rules of the Competition Council's procedures for infringement investigations, are primarily governed by the Law on Competition and further specified in the [Rules of procedure](#) and the [Rules on approval of merger notification and examination procedure](#), both adopted by the resolution of the Competition Council. The Competition Council also complies with national rules regarding principles and provisions of public administration, general principles of European Union law and the Charter of Fundamental Rights of the European Union and follows case law and interpretations of the courts of the Republic of Lithuania, as well as Court of Justice of the European Union.

Lithuania is an EU member country since 1st May 2004. The Law on Competition has the aim of harmonising national rules with the legislation of the EU regulating competition matters and the Competition Council as the national competition authority cooperates with the European Commission and national competition authorities of other EU member states when applying Articles 101 and 102 of the Treaty on the Functioning of the European Union.

¹ English version of the Law on Competition, which was valid on 1st January 2015, is available [here](#).

² English version of the law on Unfair Retail Practices, which was valid on 1st July 2019, is available [here](#).

II. **Laws, Regulations, and Policies relevant for the implementation of the CAP**

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

The Law on Competition applies to activities of undertakings registered outside the territory of the Republic of Lithuania if the said activities restrict competition on the domestic market of the Republic of Lithuania (Article 2 (2) Law on Competition). The Law of Competition does not provide separate or less favorable rules for undertakings of other jurisdictions, all entities subject to Competition Council's procedure are granted identical rights and guarantees.

As far as language requirements are concerned, entities must provide documents in the official – Lithuanian – language. However, the Competition Council may accept documents and other information in English without translation into the official Lithuanian language for the purposes of merger review (§ 161 Rules of procedure; § 30 Rules on approval of merger notification and examination procedure) and for the purposes of submitting an initial summary application for leniency .

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The Competition Council has adopted regulations and other legislation that applies to the procedure at the Competition Council. The Competition Council follows its procedural rules and administrative practice (§ 6 Rules of Procedure).

The list of legislation on competition enforcement, including relevant laws, secondary legislation, guidelines, information leaflets adopted by the Competition Council are published on its website.

This includes the Rules of procedure, the Rules on approval of merger notification and examination procedure, the [Rules concerning the setting of the amount of a fine imposed for the infringement of the Law on Competition](#), the [Rules on immunity from fines and reduction of fines for the parties to prohibited agreements](#)³, the [Requirements and conditions in respect of agreements of minor importance](#), the [Rules on the processing of personal data](#), and other relevant legislation.

The Competition Council prepares and publishes guidelines on certain aspects of application of competition law, including procedure in the Competition Council, e. g. [Investigation procedure](#), [Leniency](#).

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The Competition Council informs entities under investigation about the opening of the investigation as soon as possible taking into account the specific nature and needs of the investigation.

The applicant and entities suspected of the breach of the Law on Competition are notified about the resolution to open the investigation no later than 10 working days after the Competition Council's meeting during which the resolution was adopted (Article 22 (3) the Law on Competition, § 33 Rules of Procedure). However, resolution to open the investigation may be considered confidential and therefore not disclosed to parties within the time limit specified, if there is a threat to the investigation process, e. g. when the Competition Council intends to conduct unannounced inspection (Article 22 (4) the Law on Competition). The applicant and suspected entities are provided with a copy of the resolution or an extract of it without confidential information. The resolution identifies entities under investigation, relevant legal provisions and the subject matter of the investigation (Article 23 (4) Law on Competition).

³ English version of the Rules on immunity from fines and reduction of fines for the parties to prohibited agreements, which was valid 26 July 2017, is available [here](#).

The person notifying the merger is provided with the confirmation on the date which is considered to be the date of receipt of the notification and the commencement of review procedure no later than 7 working days after the Competition Council receives full and complete merger notification (§ 33 Rules on approval of merger notification and examination procedure).

The entities under investigation and other legal or natural persons have the right to submit documents, data, explanations and other information necessary for conducting the investigation to the authorized officials of the Competition Council during the investigative process (Article 25 (1) 6 the Law on Competition, § 53 Rules of Procedure).

The Competition Council engages with suspected entities, applicants and other persons in the form of state of play meetings. Meetings are organized both at the initiative of the authorized officials of the Competition Council or interested parties. When meeting is requested by the suspected entities, applicants or other persons, authorized officials request an upfront submission of questions for discussion during the meeting and decide on the need and scope of the meeting (§ 58 and 59 Rules of Procedure). During such meetings, the parties and the authorized officials of the Competition Council might discuss competitive concerns under investigation, provide their views and supporting arguments, discuss further cooperation possibilities during the investigation. For the purposes of merger control, meetings with notifying parties might be organized both prior to officially filling the merger notification and also during the merger review procedure itself, e. g. to review the course of the procedure, discuss and clarify requests for information and other issues.

The Competition Council and its authorized officials have the power to collect information required for conducting infringement investigations or merger review, e. g. request information, obtain oral explanations (Articles 11 (5), 25 (1) Law on Competition). When the Competition Council issues requests for information, time limit for submitting such information is determined depending on the scope, complexity of the information requested and the needs of the investigation or the merger review, e. g. taking into account short time frame for merger review, time limits might be significantly shorter than in the infringement investigations. Suspected entities and other persons may, taking into account the nature and extent of the information requested, submit a reasoned request for an extension of the time limit for submission of the information (§ 54 and 55 Rules of Procedure).

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The Competition Council strives to carry investigations within a reasonable time. The Law on Competition does not limit the total duration of the infringement investigation, i. e. the initial investigation period is five months and may be extended multiple times for justified reasons by three months by a resolution of the Competition Council (Article 23 (5) Law on Competition).

The Law on Competition also provides for a limitation period. Sanctions for infringements of this law may be imposed not later than within five years from the date of commitment of the

infringement, and in the event of a single and continuous infringement – from the date of performance or termination of the last infringing conduct. The calculation of the limitation period is suspended from the moment when the investigation is launched and for the duration of legal proceedings when dispute regarding the final resolution in the infringement investigation is heard in court (Article 25 (4) Law on Competition).

The Competition Council examines merger notifications and adopts resolutions no later than within the term of four months. Within one month from the receipt of a merger notification the Competition Council might adopt a resolution to authorise merger or adopt a resolution to proceed with further examination of the notification. Further extension of one month is possible if the Competition Council intends to pass a resolution to authorize merger with commitments, and if the notifying party provided a justified request for extension of the general four-month time limit (Article 11 Law on Competition). The Competition Council may suspend the term of four months (“stop the clock”) only in cases when merging parties or related undertakings do not provide the information necessary for the merger review within the time limit set by the Competition Council (Article 11 (6) Law on Competition).

The Competition Council may apply merger control procedure on its own initiative, but only in cases where no more than 12 months have passed from the implementation of the merger in question. The Competition Council by resolution imposes an obligation to submit merger notification. In such cases the standard merger review procedure applies (Article 13 Law on Competition).

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Under law, the Competition Council and its administrative staff must protect commercial and professional secrets that they became aware of in the course of exercising their functions and in the absence of the consent of the undertaking, may use it only for the purposes it was provided (Article 21 Law on Competition). The Competition Council also ensures the protection of personal data as required by EU General Data Protection Regulation. and other types of confidential information, e. g. identity of the informant (Article 38¹ (6) Law on Competition).

The Competition Council ensures protection of commercial and professional secrets following a request for such protection from the undertakings. Such request should be addressed to the Competition Council either simultaneously with the provision of the information to Competition Council or immediately after undertakings become aware that the Competition Council has information constituting their commercial secrets (Article 21 (2) Law on Competition, § 163 Rules of Procedure). The request by the undertaking must clearly state which information should be considered commercial secret. Following the request, the Competition Council or its authorized officials make a decision on its appropriateness and

notify the undertaking about the decision to disclose certain information if such information is not considered to be commercial secret. Such notification is sent within a reasonable time prior to the disclosure for the undertaking to provide its views (Article 21 (2) Law on Competition, § 164-170 Rules of Procedure).

Information requested to be treated as commercial secret is not considered to be such if it is public or has been publicly available before submitting it to the Competition Council, or it does not meet criteria of the commercial secret (§ 168, 169 Rules of Procedure). When considering a request to grant protection the Competition Council takes into account the nature of the information, the criteria for commercial secrets, procedural rights of the parties under investigation. The Competition Council places utmost importance to the legitimate interest of the parties in protecting their commercial secrets therefore public interest in transparency of the decisions of the Competition Council if possible is ensured by providing non-confidential summary description of the commercial information or figures, e. g. market share ranges instead of the exact market shares.

When exercising the right of defense undertakings are granted access to file which does not include documents containing state secrets or commercial secrets of another undertaking. Access is granted to non-confidential versions of the documents in the file. The access to confidential information might be granted only after the consent of the undertaking whose documents containing confidential information are sought (Article 29 (2) Law on Competition, § 69 Rules of Procedure).

The resolutions of the Competition Council, which are published on the Competition Council's website, do not include commercial secrets or other confidential information, e. g. personal data. Non confidential versions of resolutions are published.

Rules on treatment of confidential information in Competition Council are indicated in the publicly available Rules of procedure.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

When dealing with issues falling within its remit, the Competition Council adopts resolutions. Council members and the chairman vote on the resolutions independently and individually (Article 19 (7) Law on Competition).

Chairman and members of the Competition Council are state officials and administrative staff are public servants. Both categories abide by requirements of the [Law on public and private interests in the civil service](#) ('Law on public and private interests') and internal regulation on implementing the Law on public and private interest adopted by the Chairman of the Competition Council.

Mentioned persons are required to avoid conflict of interest and act in such a way as to avoid raising any suspicions about the existence of such a conflict; when adopting decisions they should be guided by law and the principle of equality of all persons and ensure that decisions

are made solely according to public interests (Article 1 Law on public and private interests). For that purpose, chairman, members of the Competition Council and administrative staff must declare their private interests⁴ by filing a declaration of private interests⁵ and are prohibited from participating in the preparation, consideration or taking of decisions or from otherwise influencing decisions which may give rise to a conflict of interest situation and must recuse themselves or might be recused from participating in the procedure if that participation would result in a conflict of interest (Articles 4 and 11 Law on public and private interests).

The Competition Council periodically organizes seminars in order to inform and educate staff and members of the Competition Council on rules on impartiality and managing public and private interests.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

If the Competition Council intends to adopt a resolution finding an infringement and imposing a sanction, the Competition Council by its decision issues a Statement of Objections.

Statement of Objections is submitted to the applicant and the entity suspected of having committed an infringement ('participants in the procedure'), as well as to other interested parties, that the Competition Council has approved as having an interest in the case. The time limit for the submission of written explanations on the findings in the Statement of Objections is determined by the size, complexity, stage of the process and other relevant circumstances of the investigation and is at least 14 calendar days, except where a shorter time limit may be set due to the circumstances of the investigation, e. g. in case of supplementary statement of objections. Parties have the right to request an extension of the time limit with a reasoned application (Article 29 (1) Law on Competition, § 70 and 71 Rules of procedure). After issuing Statement of Objections parties are granted access to file, subject

⁴ 'Private interests' means private economic or non-economic interest of a person in the civil service (or a person close to him) which may affect his decision-making in the discharge of his official duties.

⁵ The declarations of state officials, i. e. chairman and members of the Competition Council, are public and published on the website of the Chief Official Ethics Commission (Article 10 (1) Law on public and private interests). The declarations of administrative staff of the Competition Council are disclosed to the head (supervisor) of the particular staff member, i. e. the chairman of the Competition Council and (or) to the head of certain division of the Competition Council (Article 5 (5) Law on public and private interests).

to limitations related to confidential information (§ 68, 69 Rules of Procedure) [See Reply to ICN CAP Confidentiality principle f) above].

Statement of Objections includes information about the entities concerned, including entity suspected of infringement, investigative procedure, factual circumstances related to the suspected infringement, supporting evidence, explanations provided by the participants in the procedure, assessment of the mentioned circumstances, conclusions on the alleged infringement and the imposition of sanctions (§ 62 Rules of Procedure). Participants in the procedure and other interested parties have the right to be heard at a Competition Council's oral hearing and are informed about the time of the hearing in advance, i. e. at least 14 days before the hearing (Article 29 (3)-(5) Law on Competition, §132-145 Rules of Procedure). Participants in the procedure and other interested parties can respond to allegations, make arguments and present evidence, which for objective reasons they did not have the opportunity to present earlier (§ 143, 144 Rules of procedure).

The final resolution of the Competition Council is based only on those conclusions, facts and circumstances of the investigation with respect to which the undertaking suspected of the infringement of the Law on Competition has been afforded an opportunity to provide its position (Article 30 (3) Law on Competition).

If the Competition Council intends to adopt a resolution to refuse to authorize a merger, the Competition Council provides the notifying party or controlling parties involved in the merger, with written reasoned conclusions on the notified merger and grants access to file, which does not include commercial and professional secrets of other entities (Article 12 (2) Law on Competition, § 44 Rules on approval of merger notification and examination procedure) [See Reply to ICN CAP Confidentiality principle f) above]. These parties may provide written observations and are invited to the Competition Council's hearing to submit their explanations and views on findings of the Competition Council and answer questions of the Competition Council (§ 45, 46 Rules on approval of merger notification and examination procedure). Even though parties are usually given 7 working days to provide observations to the written conclusions on the notified merger, the parties are informed about the preliminary views on problematic mergers earlier during state of play meetings [See Reply to ICN CAP Investigative Process principle d) above].

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or*

rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

Entities, which are part of investigations or other enforcement proceedings in the Competition Council, have the right to be represented by legal counsel (attorney), advocate or assistant advocate of their choosing throughout the entire procedure in the Competition Council.

An advocate and (or) assistant advocate is entitled to attend the inspection. However, the absence of an advocate and (or) assistant advocate does not prevent the initiation and conduct of an inspection, i. e. officials of the Competition Council are not obliged to wait for the advocate in order to carry an inspection (§ 42 Rules of procedure). Persons being interviewed during investigations are also entitled to give their oral explanations in the presence of an advocate or assistant advocate (§ 51 Rules of procedure).

Entities might as well be represented by advocates in merger review. The Competition Council requires legal representative to provide power of attorney, certifying the rights of the representative to act on behalf of the represented entity (§ 25 Rules on approval of merger notification and examination procedure).

Competition Council recognizes legal professional privilege in its proceedings. The [Law on the Bar of the Republic of Lithuania](#)⁶ prohibits access or use as evidence of information constituting professional secret of an advocate. The professional secret of an advocate encompasses the fact of consulting the advocate, the terms of the contract with the client, the information and data provided by the client, the nature of consultation and the information collected by the advocate by order of the client.

The procedure of the Competition Council when applying the protection of legal professional privilege is laid down in the Rules of procedure and largely follows the procedure applied by the European Commission. Entities must identify information covered by professional secrecy and substantiate their claims on information being a professional secret of an advocate. If officials of the Competition Council consider explanations of the entity regarding professional secrecy insufficient to prove the special nature of the information, documents in question are placed in a sealed envelope and the matter is later decided in the Competition Council by official not in any way involved in the investigation (§ 44-46 Rules of procedure). Decision of the Competition Council regarding protection of the legal professional privileged might be appealed to the court.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant*

⁶ English version of Law on the Bar of the Republic of Lithuania, which was valid 15 April 2008, is available [here](#).

will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

Final written resolutions of the Competition Council are available on its website upon adoption.

The Competition Council publishes the following types of resolutions (Article 30 (1) Law on Competition):

(1) to impose sanctions;

(2) to refuse to impose sanctions where there is no basis established by the Law on Competition, e. g. limitation period has expired;

(3) to terminate the procedure where there is no infringement of the Law on Competition, e. g. no infringement was found, including the resolution to accept commitments;

(4) to conduct a supplementary investigation.

The content of the resolutions of the Competition Council includes describing the competition matter under consideration, relevant facts and evidence, statements, claims and arguments of persons concerned, relevant legal provisions, assessment and grounds on which the Competition Council bases its decision, the decision of the Competition Council and sanctions (§ 155 Rules of Procedure). General requirements for content and publication apply also to resolutions accepting commitments.

The participants in the procedure and other interested parties are given a copy of the resolution or extract of the resolution without confidential information (§ 79, 158 Rules of Procedure).

If the Competition Council intends to accept remedies or commitments, both in merger review and infringement proceedings, it publishes a non-confidential version of the commitments offered by the undertakings on its website and give interested parties an opportunity to comment on the proposed commitments within a specified time period (§ 96 Rules of procedure, § 51 Rules on approval of merger notification and examination procedure).

After adopting and publishing the resolution, the Competition Council usually publishes a press release in Lithuanian and English with a brief description of the content of the decision.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The resolutions of the Competition Council are subject to judicial review.

Undertakings and other persons who believe that their rights protected by the Law on Competition were violated have the right to appeal to Vilnius Regional Administrative Court ('court'). Persons may appeal only the resolutions of the Competition Council which prevent any further investigation of the infringement of the Law on Competition or which complete the

examination of the notification of concentration, e. g. parties do not have the right to appeal a resolution to open an investigation or resolution to conduct a supplementary investigation (Article 33 (1) Law on Competition).

An appeal has to be filed in writing 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 (Article 33 (2) Law on Competition). The court decides on the legality and merits of the resolution.

A judgement of the Vilnius Regional Administrative Court may be appealed for review to the Supreme Administrative Court of Lithuania. However, an appeal may not give rise to claims which were not raised in the proceedings at first instance. Claims that are inextricably linked to claims already made are not considered to be new claims (Article 134 (6) Law on Administrative Proceedings of the Republic of Lithuania).

Investigative measures, e. g. scope of the seizure during the inspections, may be appealed to the Competition Council, and then the resolution of the Competition Council may be appealed to the court. Undertakings and other persons who consider that their rights have been violated have the right to submit a complaint 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 infringement of the Law on Competition or when carrying merger review (Article 32 Law on Competition).