

Translated from Lithuanian

REPUBLIC OF LITHUANIA

LAW

ON THE PROHIBITION OF UNFAIR PRACTICES OF RETAILERS

22 December 2009 No XI-626

Vilnius

CHAPTER ONE GENERAL PROVISIONS

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Article 1. Purpose and Scope of the Law

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1. The purpose of this Law shall be to limit the use of market power by retailers having significant market power and ensure the balance of interests between suppliers and retailers having significant market power.
2. This Law shall apply to undertakings having significant market power and engaged in retail trade in the Republic of Lithuania.
3. If a retailer having significant market power by the same acts violates this Law and Article 9 of the Law of the Republic of Lithuania on Competition (hereinafter referred to as the “Law on Competition”), which prohibits abuse of a dominant position, it shall be held liable in accordance with the procedure set forth by the Law on Competition.

Article 2. Definitions

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1. “Retailer having significant market power” (hereinafter referred to as a “retailer”) means an undertaking engaged in retail trade in non-specialised stores with food, beverages and tobacco products predominating which alone or together with associated undertakings engaged in the same activity meets all of the following requirements:

1) the sales area of at least 20 stores from all the stores under its (their) management in the Republic of Lithuania is not less than 400 sq. m.;

2) its (their) aggregate income in the last financial year is not less than LTL 400 million. Where a retailer is a foreign undertaking, the aggregate income shall be calculated as the total amount of income received in the Republic of Lithuania.

2. “Associated undertakings” means two or more undertakings which, due to their mutual control or interdependence and possible concerted practices, are considered as one undertaking. Unless proved otherwise, associated undertakings shall be considered to be comprised of each undertaking concerned and:

1) of undertakings in which, as in the undertaking concerned, the shareholding of one and the same natural person or the same natural persons accounts for 1/2 or more of the authorised capital or carries 1/2 or more of all the voting rights;

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

3) of undertakings in which the shareholding of the undertaking concerned accounts for 1/2 or more of the authorised capital or carries 1/2 or more of all the voting rights or which have a commitment to co-ordinate decisions relating to their economic activity with the undertaking concerned, or of undertakings in which the responsibility for meeting their obligations to third parties has been assumed by the undertaking concerned, or of undertakings which have committed to transfer all or part of their profit or have granted the right to make use of 1/2 or more of their assets to the

undertaking concerned;

4) of undertakings whose shareholding in the undertaking concerned accounts for 1/2 or more of the authorised capital or carries 1/2 or more of all the voting rights or with which the undertaking concerned has committed to co-ordinate decisions relating to its economic activity, or of undertakings which have assumed the responsibility for meeting the obligations of the undertaking concerned to third parties, or to which the undertaking concerned has committed to transfer all or part of its profit or has granted the right to make use of 1/2 or more of its assets;

5) of undertakings connected directly or indirectly, i.e. through other undertakings, with the undertakings referred to in subparagraphs 1, 2, 3 and 4 of this paragraph in any of the ways specified in subparagraphs 1, 2, 3 and 4 of this paragraph.

3. “Food and beverage supplier” (hereinafter referred to as a “supplier”) means a person selling food and/or beverages intended for sale to consumers to a retailer under a wholesale sale and purchase agreement.

4. “Sales promotion” means the entirety of consumer-oriented actions creating more favourable conditions for the purchase of goods with a view to increasing the sale of goods.

CHAPTER TWO UNFAIR PRACTICES AND CONTROL THEREOF

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Article 3. Prohibition of Unfair Practices

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1. Retailers shall be prohibited from carrying out any actions contrary to fair business practices whereby the operational risk of the retailers is transferred to suppliers or they are imposed supplementary obligations or which limit the possibilities of suppliers to freely operate in the market and which are expressed as requirements for the supplier:

1) to pay directly or indirectly or remunerate in any other way for consent to start to trade in the supplier’ s goods (“entry” fees);

- 2) to compensate for the lost or smaller-than-expected income of the retailer from the sale of goods received from the supplier;
- 3) to compensate for the operational costs of the retailer related to equipping new stores or renovating the old ones;
- 4) to acquire goods, services or property from third parties specified by the retailer;
- 5) to ensure that the prices of goods sold to the retailer are smaller than the prices of the same goods sold to other buyers;
- 6) to change the basic supply procedures or goods specifications without notifying the supplier thereof within the time limit specified in the agreement, which may not be shorter than 10 days;
- 7) to accept unsold food products, except for non-perishable packaged food products if they are safe, high-quality and at least 1/3 of time before their expiration date remains or they have no expiration date and there is a prior agreement in relation to their return;
- 8) to pay directly or indirectly a part of the costs of sales promotion carried out by the retailer or together with it or to compensate for such costs in any other way, except for the cases where there is a written agreement between the retailer and the supplier regarding the amount of costs to be paid and sales promotion activities to be applied;
- 9) to compensate for the expenses incurred while investigating consumer complaints, except for the cases where a justified consumer complaint was due to the circumstances which are the responsibility of the supplier. In this case, the amount of expenses which the retailer requests the supplier to compensate for must be substantiated by the actual expenses of the retailer;
- 10) to pay directly or indirectly or to compensate for the arrangement of goods, except for the cases where there is a written agreement between the retailer and the supplier regarding payment for the arrangement of goods.

2. In the course of investigation of infringements of this Law, the duty to prove that the agreement referred to in subparagraphs 7, 8 and 10 of paragraph 1 of this Article has been concluded and meets the set requirements shall fall on the retailer which has concluded such an agreement.

Article 4. Institution Controlling Unfair Practices

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1. Control over compliance with the provisions of this Law shall be exercised by the Competition Council of the Republic of Lithuania (hereinafter referred to as the “Competition Council”).

2. In exercising control over compliance with the provisions of this Law, the Competition Council shall:

- 1) carry out investigation in relation to infringements of the provisions of Article 3 of this Law and apply sanctions provided for in this Law;
- 2) within the scope of its competence, adopt legal acts necessary for the implementation of this Law.

Article 5. Protection of Commercial Secrets

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1. The Competition Council and its administrative staff must keep the commercial secrets of a person, of which they became aware while exercising control over compliance with the provisions of this Law, confidential and, in the absence of the person’s consent, must only use them for the purposes for which they were provided.

2. The disclosure of commercial secrets by the Competition Council and its administrative staff shall incur liability under the law.

3. Persons shall have the right to submit a reasoned application to the Competition Council at any time regarding the protection of their commercial secrets. The Competition Council or its authorised official must make a reasoned decision on the protection of commercial secrets and notify the applicant thereof. The applicant may be obligated to produce, within the set time limit, an extract of the document omitting the commercial secrets. Such a document shall be included in the file.

CHAPTER THREE PROCEDURE FOR IMPOSING LIABILITY FOR INFRINGEMENTS OF THIS LAW

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Article 6. Right of Initiative for Examining Infringements of this Law

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1. The following shall have the right to request that the Competition Council initiate an investigation regarding an infringement of this Law:

- 1) persons whose interests have been violated;
- 2) associations representing the interests of suppliers.

2. The Competition Council shall have the right to initiate an investigation on its own initiative by adopting a reasoned decision.

Article 7. Initiation of an Investigation on Infringements of this Law

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1. The request for carrying out an investigation must be submitted in a written application. The application must specify the facts and circumstances of an infringement of this Law of which the applicant is aware. Where possible, the application must be accompanied by documents and information confirming this.

2. The Competition Council must examine applications concerning the infringements of this Law not later than within 30 days of receipt of the application meeting the set requirements and adopt a reasoned decision to either initiate an investigation or to refuse to initiate an investigation.

3. The Competition Council shall refuse to initiate an investigation if:

- 1) the investigation of the infringement specified in the application is

beyond the competence of the Competition Council;

- 2) the facts specified in the application have already been investigated and a decision has already been adopted on the issue;
- 3) there are no data which would allow to reasonably suspect that this Law has been infringed;
- 4) the facts specified in the application are immaterial, causing no substantial damage to the interests protected under this Law;
- 5) more than one year has passed since the infringement and in the event of a continuous infringement, more than one year from the day of commitment of the last acts of infringement.

Article 8. Rights of Officials Authorised by the Competition Council

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In carrying out investigations in relation to infringements of this Law, the authorised officials of the Competition Council shall have the right:

- 1) to obtain from retailers, suppliers, other persons and entities of public administration documents, data and other information necessary for carrying out investigations of infringements of this Law, including information comprising a commercial secret;
- 2) to obtain oral and written explanations from persons linked to the investigated actions of the retailer, to request them to arrive in the office of the authorised investigating official in order to provide explanations;
- 3) to enlist the assistance of specialists and experts for the investigation.

Article 9. Procedure for Investigating and Examining the Infringements of this Law

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1. An investigation in relation to infringements of this Law must be completed and a decision by the Competition Council must be adopted within three months of the commencement of the investigation. Where there are objective reasons, the time limit for the investigation may, by a reasoned decision of the Competition Council, be extended by not longer than one month.

2. Upon examining the conclusions made in the course of investigation and written explanations submitted by the parties to the investigation regarding the conclusions of the investigation, the Competition Council shall adopt one of the following decisions:

1) to recognise that the retailer has violated the requirements of this Law and apply sanctions provided for by this Law;

2) to discontinue the investigation if no infringement of this Law has been established.

3. Upon establishing an infringement of this Law, following the principles of impartiality and proportionality, the Competition Council shall have the right to impose on the retailer a penalty specified by this Law and to obligate the retailer to discontinue the prohibited unfair practices or impose an obligation to perform actions restoring the previous situation or eliminating the consequences of the infringement, including the amendment of the agreement.

4. The decision of the Competition Council shall be communicated to the applicant and the person who has committed the infringement of this Law.

5. Investigation of infringements of this Law may commence not later than within one year from the day of commitment of infringement of Article 3 of this Law and in the event of a continuous infringement, within one year from the day of commitment of the last acts of infringement.

Article 10. Appealing against the Decisions of the Competition Council

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1. Decisions of the Competition Council may be appealed against to Vilnius Regional Administrative Court.

2. Appeals in relation to decisions of the Competition Council adopted

pursuant to Articles 7 and 9 of this Law must be lodged not later than within 20 days of receipt of the decisions.

Article 11. Fines

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1. A fine of up to LTL 400 000 shall be imposed on retailers for the prohibited unfair practices specified in paragraph 1 of Article 3 of this Law.
2. A fine of up to LTL 30 000 shall be imposed on retailers, suppliers or other persons for not providing information required for carrying out an investigation, also for providing incorrect or incomplete information.
3. A fine of LTL 1000 shall be imposed on retailers, suppliers or other persons for each day of non-compliance in a timely manner with the instructions of the Competition Council to provide information.
4. A fine of LTL 1000 shall be imposed on retailers for each day of commitment (continuation) of infringement in the event of failure to comply or failure to comply in a timely manner with the obligations of the Competition Council to discontinue the prohibited unfair practices, to perform actions restoring the previous situation or eliminating the consequences of the infringement.
5. The amount of the fine imposed shall depend on the nature of infringement, its duration and scope and mitigating and aggravating circumstances.
6. The decision of the Competition Council must state the reasons substantiating the amount of the fine.
7. The court hearing the complaint concerning the decision of the Competition Council, taking into account mitigating and any other circumstances (due to which a respective fine would be too large because it would be disproportionate to the committed infringement and therefore unfair) and acting in compliance with the criteria of fairness and reasonableness, shall have the right to impose a fine smaller than the fines provided for in this Article.
8. Mitigating circumstances shall include actions of retailers, suppliers or other persons who have committed an infringement, taken to voluntarily prevent the harmful consequences of the infringement, to provide assistance to the Competition Council during the investigation, to compensate for losses or

eliminate the damage incurred.

9. Aggravating circumstances shall include actions of retailers, suppliers or other persons impeding the investigation, continuation of the infringement despite the obligation to terminate it, where damage is caused or the infringement is repeated within one year from the imposition of the fine specified in this Law.

10. The fine imposed by the Competition Council shall be paid to the state budget not later than within three months from the day of communication of the decision on the imposition of the fine to the offenders of this Law. In the event of appealing against such a decision, the fine must be paid not later than within one month from the coming into effect of a court decision dismissing the appeal.

Article 12. Administrative Liability

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Infringements of this Law shall incur administrative liability established by the laws of the Republic of Lithuania.

Article 13. Compensation for Damage

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1. Persons shall have the right to apply to court, in the manner prescribed by the law, for the compensation for damage resulting from the infringement of this Law.

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

CHAPTER FOUR FINAL PROVISIONS

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Article 14. Monitoring of the Law

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The Competition Council shall carry out monitoring of this Law and as of 2011 each year by 1 March shall submit to the Government of the Republic of Lithuania an annual report on the monitoring of this Law, specifying the objectives sought when adopting this Law, objectives achieved upon adoption of the Law, negative consequences (if any) and, where necessary, recommendations on the improvement of this Law or a conclusion that there is no such necessity.

Article 15. Entry into Force and Implementation of the Law

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1. This Law, except for paragraph 2 of this Article, shall enter into force as of 1 April 2010.
2. The Competition Council shall adopt legal acts implementing this Law prior to the entry into force of this Law.

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