REPUBLIC OF ESTONIA
COMPETITION AUTHORITY

Annual Report 2014

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FOREWORD

Dear readers!

I am delighted for the opportunity to present you the latest Competition Authority Yearbook.

Our efforts are targeted at two areas, one is ensuring free competition and the other – exercising regulatory control over economic sectors. We are hoping for the number of regulated sectors and undertakings to continue to decline and the number of undertakings operating in the free competition environment to increase. Estonia can boast with some good examples in this area. While as recently as ten years ago the entire postal services sector was monopolistic, and Eesti Post inevitably had to carry such reputation, Omniva today is an undertaking oriented towards free competition and the highest level of customer service. Customers can choose between several different service providers to send their postal parcels and letters, and the last activity of Omniva that still remains regulated is the obligation to provide universal postal service. In the same way as in the postal sector, restrictions on monopolies were enacted in the electronic communication sector some 10–15 years ago. Today the monopoly service has been replaced by competition on free market. For two and a half years the country has lived under the free electricity market conditions, where the Competition Authority does not need to regulate oil shale or electric energy prices, let alone the sales margins added to prices charged to end consumers.

While in the energy sector the developments towards free market have been positive, there are regrettably still certain sectors where introducing of free market principles is facing considerable difficulties. For instance, on the medicinal products market restrictions on establishment of pharmacies have indeed been abolished, but there is still a number of problems yet to resolve. The matter of restrictions on ownership of pharmacies, that certainly hamper free competition, is still raising questions. It is completely understandable, that in a pharmacy customer service should be provided by employees with the respective education, but establishing restrictions on ownership is definitely over the top. This is like stipulating that shareholders of a power network must be electricians or that only bus drivers are allowed to own bus companies. Developments in public transport are not very satisfying either. This sector too could benefit from free market conditions, where regulations apply to quality, i.e. traffic safety, and not the market. It means that any bus operator who observes traffic rules, operates a fleet of buses compliant with the law, and generally ensures safe commuting, could carry passengers between Tallinn and Tartu.

The year 2014 will be remembered for a heated debate on the topic on whether or not cartel conduct should be regarded as criminal offence. Another issue is whether a participant in a cartel should be considered a criminal, but it is obvious that such complicated matters cannot be detected in a misdemeanour procedure. In a free market economy it is essential to comply with underlying rules, one of the most important of which is refraining from prohibited agreements, and therefore the means of combating cartels efficiently should remain in place. It is also appropriate to point out once again that it is easier to prevent a monopoly rather than to fight against abuse of the monopoly status. In this respect it is important, inter alia, to continue exercising uncompromising control over concentrations.

Wishing everyone creative ideas promoting free competition,

Märt Ots

Director General

ORGANISATION

The Estonian Competition Authority exercises supervision in the fields of competition, electricity, natural gas, district heating, postal services, water and railways. In addition, the Authority settles disputes regarding airport fees.

On 1 July 2014, amendments to the Electronic Communications Act entered into force, modifying the provisions concerning the organisation and supervision of electronic communications at the national level. The tasks, rights and obligations of the electronic communications' market regulator, which previously had been divided between the Estonian Competition Authority and the Technical Surveillance Authority, were brought under the competence of the latter. The Estonian Competition Authority was responsible for regulating electronic communications since 1 January 2008. In relation with these changes, the electronic communications department was also transferred to the Technical Surveillance Authority and the structure of the Estonian Competition Authority was also changed.

Since the 1st of July 2014, the Competition Authority includes two field-based divisions, which are the Competition Division and the Energy and Water Regulatory Division. In addition to the Divisions there is the External and Public Relations Department, which is responsible for ensuring effective support services for the Authority. The Director General is at the head of the Authority (Figure 1). Structural divisions are directed by the Heads of Divisions – Deputy Directors General.

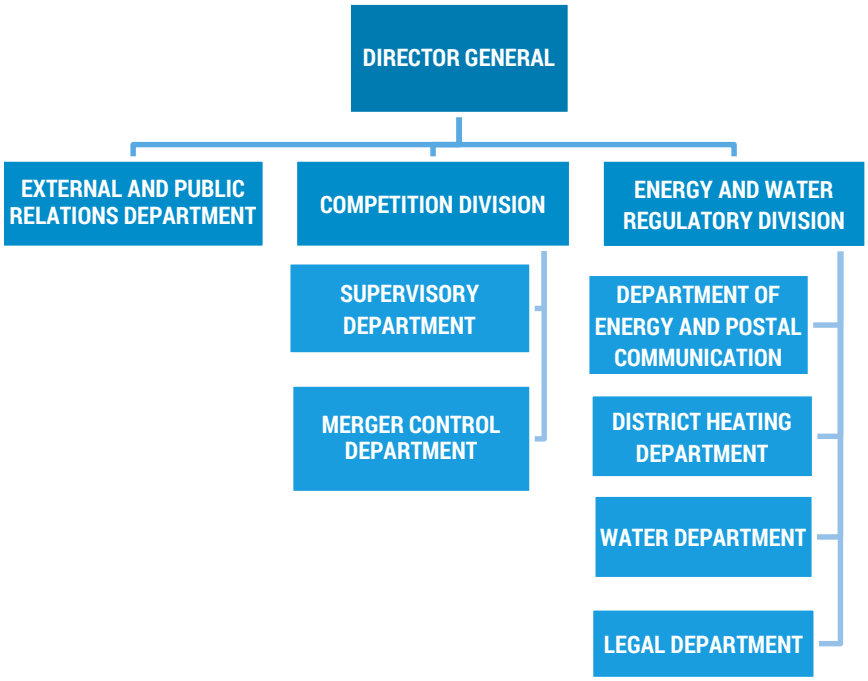

Figure 1. Structure of the Authority

The functions of the Authority are divided between structural units as follows:

The main functions of the Competition Division are exercising competition related supervision; control of concentration in all economic sectors; analysing competitive situations; counselling undertakings and raising competition related awareness.

The main functions of the Energy and Water Regulatory Division are implementing price regulation and market supervision in the electricity, natural gas, district heating and water sectors and regulation of postal services market.

The main functions of the External and Public Relations Department are coordination of public and international relations of the Authority; organisation of state assets and means in the possession of the Authority; personnel work and training coordination; document management and administration of archive.

The Competition Authority employed 49 persons as of the end of the year 2014.

Most staff members have higher education in economics (business administration; business management; finance; economics etc.) or in law. The third group of officials consisted of those with higher education in other disciplines such as thermal engineering, public administration or other.

COOPERATION ON INTERNATIONAL AND NATIONAL LEVEL

The Competition Authority routinely participates in the work of competition, energy, water, postal communications related working groups and associations. The officials of the Competition Division attend meetings and discussions of the ECN (*European Competition Network*), ECA (*European Competition Authorities*), OECD Competition Committee and ICN (*International Competition Network*) working groups and sub-groups. The officials of the Energy and Water Regulatory Division participate in the meetings of CEER (*Council of European Energy Regulators*), ERRA (*Energy Regulators Regional Association*) and ACER (*Agency for the Cooperation of Energy Regulators*).

In June 2014, the Authority hosted the Merger Working Group meeting in Tallinn.

In 2014 the Estonian Competition Authority continued to be participate in a project „Improving good governance of competition and regulatory authorities in the Republic of Moldova: public administration, e-governance and inter-institutional cooperation." The project is being funded from the Estonian Ministry of Foreign Affairs Development Cooperation Funds and managed by the Tallinn Law School. The objective of the project is to contribute to the institutional reform of Moldova and to strengthen the institutional capacity of the partner institutions by increasing the relative importance of ICT and e-governance solutions and cooperation between competition authority and sector regulators. The Moldovan partner institutions in the project were the Competition Council, National Energy Regulatory Authority and National Regulatory Agency for Electronic Communications and Information Technology.

***Photo**. Signing the Cooperation Agreement in Chisinau*

In the framework of the project, the President of the Competition Council of the Republic of Moldova, Viorica Carare and the Director General of the Estonian Competition Authority, Märt Ots signed a cooperation agreement in Chisinau. The purpose of the agreement is to stimulate professional cooperation and exchange of knowhow between two authorities.

On the 7th of October 2014 the Director General of the Agency of Medicines Kristin Raudsepp and the Director General of the Competition Authority Märt Ots signed a cooperation agreement which aims to enhance supervision in the sphere of medicines and develop legislation pertaining to the sphere. The Agencies wish to cooperate for the identification of dominant influence, unfair prices or unequal competitive conditions.

2014 IN COMPETITION SUPERVISION

The largest share of efforts of the Supervisory Department of the Competition Authority involves conducting supervision proceedings to detect various violations of the Competition Act. This includes supervision of activities carried out by undertakings in dominant position, as well as cooperation between undertakings that could harm competition. In certain cases the Supervisory Department also conducts criminal proceedings. Additionally, the Authority has always considered assessment of legislation and other similar actions of the state to be one of its key objectives, making, where appropriate, suggestions on amending legislation to uphold free competition.

The year 2014 marked six years since profound reorganisation of the Competition Authority; among other matters it meant that the Authority started to apply criminal proceedings much more extensively. Agreements distorting competition, above all cartels, cause substantial damages to consumers and to the development of the economy, and Estonia was one of the first countries in Europe to criminalise such behaviour. Assessing the history of criminal proceedings conducted by the Competition Authority over these six years it is appropriate to admit that the business community´s understanding of the prohibition of anti-competitive agreements, has certainly improved. There are increasingly fewer situations where a trader commits a prohibited act by reason of ignorance. Moreover, based on the feedback received by the Competition Authority it is possible to conclude that, in particular, larger companies pay much more attention to raising their employees´ awareness and to avoiding risks stemming from competition law. This is a very positive trend, seeing that the main objective of competition related supervision is introducing the culture of fair competition in the business community.

With regard to criminal proceedings the most significant among them conducted in 2014 was the lawsuit in the biggest competition related criminal case in Estonia, which investigated alleged concerted practices of AS Liviko and a number of retail chains towards establishing vodka prices. In April 2015 Harju County Court rendered a guilty verdict in this matter. Several parties to the proceedings have declared their intent to appeal the judgement. Additionally, last year there was much discussion about the future of penal power vis-à-vis competition related breaches. Namely, competition related offences are criminalised rather extensively in Estonia, covering not just the most serious agreements, but a number of less harmful forms of cooperation as well. In view of the complicated nature of competition law business organisations have expressed their reservations about whether or not it is reasonable to criminalise these violations to such an extent. On the other hand, in comparison with other European countries the nature of penal law in Estonia is rather atypical, because, other than criminal proceedings, there are virtually no possibilities to efficiently sanction persons. The Competition Authority finds that potential

amendments to penal law should be made in a balanced manner, and this should not jeopardise effectiveness of the fight against cartels.

The amendment to the Competition Act, offering a possibility to assume obligations, entered into effect in the summer of 2013, and based on the results of 2014 one can conclude that traders have accepted this rather well. A trader whose activities could constitute a breach of the Competition Act, and on whom the Competition Authority considers issuing a percept, may submit an application for assuming an obligation. The obligation has to be targeted towards improving the competitive situation, and be appropriate for remedying the damaging effects of the breach. Such solution, on one hand, provides traders a flexible possibility of curing the situation distorting competition and, on the other hand, saves resources of the Competition Authority that otherwise would be spent on litigation. The key benefit of this is that the competitive situation is improved right away, not in some years, after the court has uttered its final position. Two of such cases – assumption of obligations by AS Tallinna Küte and AS G4S – are discussed below as examples. These were extremely complicated discussions where both these traders agreed to improve their activities themselves.

Estonia is generally considered a country with rather liberal trade policies, traditionally earning high ratings in economic freedom. At the same time there are situations in the legislation where the regulatory environment of the state either hampers free competition, or at least does not create the best possible conditions for it. The Competition authority has made suggestions about amending, for instance, the Medicinal Products Act, the Public Transport Act, the Waste Act, etc. One of the examples of the last year is the proposal to amend the Health Insurance Act, in which the Authority has suggested that certain clear and transparent criteria be added to the Act that – if met – would give the Health Insurance Fund the right to accord preference to hospitals, covered by the hospital network development plan, over private hospitals without any restrictions. Restrictions on competition contained in several legal acts are not laid down by someone's intent to hamper competition; instead limiting competition is often seen as means to obtain another objective, not directly connected with enterprise. For instance, last year the judgements of the Supreme Court concerning the Medicinal Products Act, which essentially found that restrictions on freedom of establishment of pharmacies are disproportionately high vis-à-vis the sought objective, i.e. uniform distribution of pharmacies across Estonia, attracted extensive discussions. The Competition Authority has suggested that these restrictions be abolished as early as in 2009. The mission of the Authority in such situation is in fact to emphasise the significance of free competition, and to assess whether restriction of competition is indeed the best way to achieve different objectives.

Changes in the Competition Act

The amendments to the Competition Act enacted by the revision of the Penal Code, which increased the amounts of fines imposed on legal entities for competition-related misdemeanours, entered into effect on 1 January 2015. The punishment stipulated by the Competition Act for enforcement of concentration without permission to concentrate and for concentration, which prejudices competition, as well as for non-performance of obligations of undertakings in control of essential facilities, is a fine in the amount of up to 400 000 euros. The Penal Code was amended so that these necessary elements of competition-related criminal offences, the condition precedent to applying of which was a prior punishment for a misdemeanour, were repealed. In practice since 2004 Sections 399, 401 and 402 had not been applied even once. Therefore, as of 2015 the deeds punishable as criminal offences are agreements, decisions and concerted practices that prejudice free competition, as set out in Section 400 of the Penal Code.

Moreover, the rates of turnover to which control of concentration is to be applied under the Competition Act, have become less complicated as well. According to the amendment a concentration is subject to control by the Competition Authority if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 6 000 000 euros and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded 2 000 000 euros.

AS Tallinna Küte assumed a commitment to organise a competition for purchasing peak capacities of heating

In 2012 the Competition Authority initiated supervision proceedings in order to establish the process of purchasing heat generated from natural gas for the district heating network operated by AS Tallinna Küte. In the course of these proceedings the Authority assessed whether the activities of AS Tallinna Küte were in conformity with the Competition Act, above all, in respect of fostering fair competition between the gas boiler owned by AS Tallinn Küte, and the Iru Power Plant of Eesti Energia AS.

The Competition Authority presented AS Tallinna Küte its preliminary findings, along with a caution to issue a percept.

Based on the information gathered the Authority found that through possessing the district heating network of the city of Tallinn AS Tallinna Küte holds a dominant position on the market of heat transmission in the Central, East and West regions of the city, because it is the only undertaking in these regions that transmits heat via the district heating network of the city of Tallinn. Furthermore, the Authority assumed an initial position that in the district heating network of the city of Tallinn, AS Tallinna Küte owns an essential facility in the meaning of § 15 of the Competition Act. Building another district heating network doubling the existing one in the Central, East and

West regions of the city of Tallinn (as any other district heating network) would be a completely unreasonable venture from the economic point of view, because of high costs, and would be impracticable from the city planning and technical aspects. Pursuant to § 8 (1) of the District Heating Act consumers cannot purchase heat directly from the generating facility, and therefore a heat producer can have no alternative purchasers, other than the district heating network operator. The Authority found that an undertaking producing heat cannot operate on a goods market of heat generation if it lacks access to a district heating network, because without access it would be impossible to sell the heat produced.

The Competition Authority established that both AS Tallinna Küte, as well as the Iru Power Plant of Eesti Energia AS, are capable of ensuring the necessary capacity and generate heat using the existing gas boiler plants. Therefore AS Tallinna Küte was obliged to provide Eesti Energia AS access to the network for selling heat on reasonable and non-discriminatory terms. The Authority also found that the terms, set by AS Tallinna Küte, under which Eesti Energia AS was given access to the district heating network of the city of Tallinn for selling heat generated at the Iru Power Plant, could have been discriminating for Eesti Energia AS, vis-à-vis those applied to the gas boiler plants owned by AS Tallinna Küte. Therefore, AS Tallinna Küte could have committed a breach of the obligation to provide access to an essential facility set forth in § 18 (1) clause 1 of the Competition Act. Furthermore, the Authority assumed the preliminary position that, being a dominant undertaking, AS Tallinna Küte could have committed a breach of § 16, clause 6 of the Competition Act, because the decision of the undertaking about whether to purchase heat and capacity from its own gas boiler stations or from the Iru Power Plant of Eesti Energia AS, was based on non-transparent consideration. The Authority found that purchasing heat and capacity from its own gas boiler plants, in a situation where AS Tallinna Küte had not established whether or not the rival provider could offer the same at a lower price, could represent unjustified refusal to buy goods. In the opinion of the Competition Authority AS Tallinna Küte should have purchased heat and capacity in a manner that would have provided Eesti Energia AS an opportunity to compete on equal footing with the gas boiler plants owned by AS Tallinna Küte.

AS Tallinna Küte wished to have the supervision proceedings to be terminated, and submitted the Competition Authority an application on assumption of obligations.

In accordance with the proposed obligation AS Tallinna Küte, being the network operator in the district heating region of the city of Tallinn, promised to arrange in 2016 a tender on purchasing heat and entering into long-term contracts, in order to establish the best bid, taking into consideration both the impact of the procurement on the end consumer price, as well as the aspects deriving from the hydraulics of the network. To develop the terms of the procurement AS Tallinna Küte has, among others, invited scientists from Tallinn University of Technology, and the terms will be concerted with the Competition Authority. The procurement will be announced on

01.09.2015, and the long-term contract on purchasing peak heat capacities will be concluded with the successful tenderer at the latest on 31.12.2015.

Pursuant to the Competition Act, the obligation proposed by the undertaking has to be targeted towards improving the competitive situation, and be appropriate for remedying the harmful effects of the violation. The Competition Authority found that the obligation proposed by the undertaking is necessary and sufficient to resolve the problem with competition pointed out in the preliminary opinion of the Authority, and is an appropriate measure to improve the competitive situation in respect of purchasing of peak capacities of heat into the district heating network of the city of Tallinn. Eesti Energia AS did not have substantive objections against the obligation.

The Competition Authority approved the obligation of AS Tallinna Küte, and made it binding on the undertaking.

Cash-in-transit and cash handling services

At the end of 2014 the Competition Authority ended the supervision proceedings pertaining to the cash-in-transit and cash handling market. These proceedings were initiated on the basis of the application of OÜ Eurex CS. The key issue of the application was price formation of AS G4S Eesti, and its possible conflict with the Competition Act.

It was alleged in the application that AS G4S Eesti had established unreasonably low service fees for cash-in-transit and cash handling services for such clients to whom OÜ Eurex CS had quoted its own price. Moreover, the applicant asked the Authority to render its opinion about whether the cooperation between AS G4S Eesti and banks could by its nature be distortive of competition and whether the vault of AS G4S Eesti is an essential facility in the meaning of the Competition Act.

The cash-in-transit and cash handling market in Estonia is a highly concentrated market, and there are two service providers operating on it: AS G4S Eesti and OÜ Eurex CS. The latter entered into the market in 2009. The market share of AS G4S has remained over 90% even after the competitor entered into it.

The Competition Authority analysed the bases and policies of price formation of AS G4S Eesti, using a number of clients as examples, selecting traders from different customer groups and comparing their contractual terms. In its initial opinion sent earlier to AS G4S Eesti the Authority was not completely convinced that the service fee differences are justified. In particular, the Authority found that the service fee differences should correspond to differences in expenses with regard to providing services to specific customers.

In the process of the proceedings AS G4S Eesti filed the Competition Authority a proposal on assuming the obligation to introduce consistent price formation principles, which would apply uniformly to all new and existing clients to whom the company is providing cash-in-transit and cash handling services on standard terms. Existing customers will be transferred to the new prising principles within two years according to the detailed schedule agreed upon in the obligation. The obligation primarily applies to the 100 largest retail customers. The obligation undertaken by AS G4S Eesti does not apply to certain customer groups that are different from typical, for instance to providers of certain vital services and to those who purchase services within the framework of public procurement procedures. The Competition Authority has approved an obligation undertaken by AS G4S Eesti, because the Authority is convinced that the new pricing principles implemented by the undertaking effectively eliminate the competition related problems emphasized by the Authority during the proceedings.

The Competition Authority did not identify any breach of law in the cooperation between AS G4S Eesti and the banks. Contracts between AS G4S Eesti and the banks do not contain any provisions that would have prevented cooperation with other service providers.

In respect of the matter of the vault of AS G4S Eesti, the Authority held the position that the vault does not constitute an essential facility in the meaning of the Competition Act. OÜ Eurex CS also has a modern vault, which complies with the requirements established for servicing banks.

Distribution of medical treatment funding

The Competition Authority analysed competitive situation in medical treatment funding and made a proposal to the Ministry of Social Affairs to initiate the draft to amend the Health Insurance Act in order to add clear and transparent criteria for the distribution of treatment funding between health care institutions to the Act.

Assessment of the competitive situation vis-à-vis financing of medical treatments was initiated in connection with applications received from a number of health service providers, in which the applicants asked the Competition Authority's opinion about the conclusion of contracts for financing medical treatments by the Estonian Health Insurance Fund. Namely in respect of financing health services the Health Insurance Fund gives precedence to hospitals listed in the Hospital Network Development Plan (hereinafter HNDP), and therefore other health service providers are put in an unequal position in comparison with the hospitals covered by HNDP.

The analysis focused on the issue of whether – in case of certain specialities (e.g. outpatient medical rehabilitation) – the Health Insurance Fund's selection of service providers could be arranged such that HNDP hospitals identified in the development plan were not accorded preference in awarding contracts, and that due selection were to involve all tenderers/ health service providers. Although the analysis used medical rehabilitation as an example, this does not mean that in certain cases the results of the analysis would not be applicable to other health services as well. Feasibility of free competition depends on the particular speciality, and in the case of many highly demanding specialities (for instance, complicated operations, etc.) it is rather doubtful whether free competition would be justified. Therefore the recommendation contained in the analysis is applicable, above all, to those specialities, which have been traditionally rendered by health service providers that are not covered by the HNDP (non-HNDP health service providers).

A contract with the Health Insurance Fund secures a health service provider turnover and patients. Therefore, awarding of contracts for financing medical treatments does affect the competitive situation on the health services market, as it gives service providers with a contract an advantage over the service providers who have not been awarded a contract.

The Health Insurance Act sets out a number of criteria, which the Health Insurance Fund has to consider when concluding a contract for financing medical treatments. Moreover, the Act also prescribes that the Health Insurance Fund has to conclude contracts with hospitals covered by HNDP, at least within a certain scope. The Competition Authority admitted that the Act leaves room for applying rather different methods of distributing finances for medical treatment. However, the Act does not contain any provisions that would directly respond to the question about the ways and principles of deciding on how to distribute finances between HNDP and non-HNDP health service providers. Nevertheless, the Competition Authority has reached the conclusion that the approach applied by the Health Insurance Fund is not probably the only way of implementing the Health Insurance Act.

There is no transparent and unambiguous regulation in current legislation, which could serve as a basis for the Health Insurance Fund for deciding the distribution of funding between the HNDP hospitals and the rest of the health care providers. The Health Insurance Fund has chosen to solely prefer HNDP hospitals. The Competition Authority underlines that free competition may be of great benefit for both the patients and for the Health Insurance Fund. The current approach of the latter preferring solely the HNDP hospitals distorts competition which would be excluded in a normal competitive situation. This may lead to situations where the more expensive and/ or of lower quality service offered by the HNDP hospital is preferred of the others. According to the Authority, possible counter arguments against free competition should be considered on a case-by-case basis and the HNDP hospital

preference should not be automatic in the process of treatment funding. Currently, such a consideration is not carried out.

Therefore, the Authority made a proposal to the Ministry of Social Affairs to initiate the draft to amend the Health Insurance Act in order to add clear and transparent criteria. Only in the case of the fulfilment of these criteria, the Health Insurance Fund could have the right to prefer the HNDP hospitals in certain specialties without any restrictions to funding. In case of health care services that do not meet the criteria, all health care providers should have a chance to compete on equal terms.

The Competition Authority is convinced that a respective amendment of the Act would increase transparency of distributing the funds for financing medical treatments, and in justified cases introducing free competition would improve efficiency. Furthermore, clear and transparent rules would also give the Health Insurance Fund a more convincing mandate to give precedence to HNDP hospitals, if appropriate, and would avert unnecessary disputes.

CONTROL OF CONCENTRATIONS

The Competition Authority controls mergers and acquisitions, because the concentrations between undertakings may create or strengthen dominant position of an undertaking and this may bring along an abuse of dominance. The Competition Act enables to prohibit concentrations that would give rise to a significant impediment to effective competition. A concentration that is controlled by the Competition Authority may not be enforced before the decision to grant permission has been made.

In 2014, 21 notices of concentration were submitted to the Competition Authority and two cases were brought over from 2013. The Authority made 22 decisions to grant permission to concentration, in one case clearance decision with commitments was made. In one case the proceeding was ended, because the concentration was not a subject to the control. In two cases a decision was made to initiate a supplementary proceeding.

20 decisions to grant permission to concentration were made in the first phase of the proceedings, i.e. within the 30 calendar days prescribed by law. In two cases the Authority made a decision to grant permission to concentration in the second phase of the proceedings, i.e. within five months prescribed by law. In two cases the proceedings were suspended in connection with the elimination of deficiencies in the notice. The actual average length of the proceeding in the first phase was 18 days and the actual average length of the additional proceedings was 147 days.

The breakdown by types of concentrations was as follows:

An undertaking acquired control of the whole or a part of another undertaking in the case of 21 concentrations (Competition Act § 19 (1) p 2);

Undertakings jointly acquired control of the whole or a part of another undertaking in the case of 2 concentrations (Competition Act § 19 (1) p 3).

Majority of concentrations (16) took place among Estonian undertakings, in six cases both of the parties to the concentration were foreign undertakings and in one case the parties to the concentration were both domestic and a foreign undertaking.

The concentrations took place in the following product markets:

- Waste management (2)
- Electronics (2)
- Cereals, milled products (2)
- Healthcare services
- Energy (4)
- Real estate

- Forestry
- Retail and wholesale (2)
- Road management
- Food industry (2)
- Cinemas
- Industrial equipment (2)

One of the most significant concentrations in 2014 was the concentration between Orkla ASA ja AS Gutta, NP Foods SIA, AS Staburadze, AS Laima, UAB Margiris ja SIA Detente. The concentration concerned several markets and its complexity requested remarkable resource and time.

The acquirer was Orkla group, who had following subsidiaries in Estonia:

- AS Kalev (production and sale of chocolate and sugar confectionary products, biscuits and mixtures of flour). AS Kalev owns OÜ Maiasmokk (manufacture of pastry and confectionary products));
- AS Põltsamaa Felix (production and sale of ketchup, mustard, juices, juice drinks, jams, wine, mayonnaise, salad dressings, spreads, preserved vegetables, fish products and other foods);
- OÜ Vilmix (production and sale of ingredients for bakeries and confectionaries);
- Sapa Profiilid AS (production of aluminium profiles);
- Axellus OÜ (marketing of health products and food supplements, undertaking is currently in liquidation).

The acquiree was NP Foods Eesti OÜ, which is mainly active in the wholesale and promotion of sales of NPF group´s products in Estonia. There are products of several undertakings belonging to the NPF group sold in Estonia – juices and soft drinks produced by AS Gutta, chocolate and sugar confectionary products and biscuits produced by AS Laima, biscuits produced by AS Staburadze. In addition cakes produced by AS Staburadze have been started to sell in Estonia, but the sales volumes are still marginal.

The Competition Authority has, in the second phase of the proceedings, granted permission to concentrate on a condition that Orkla ASA commits not to raise prices of the chocolate confectionary products (chocolate candies, tablets, bars and chocolate boxes) in Estonia until 31.12.2016. The commitment not to raise prices does not apply in case of increase in prices of inputs (incl cocoa products, sugar, dairy products, nuts, fat, electricity) or changes in legislation, regulation or administrative measures (incl taxes, excise duties, food safety, packaging or labelling requirements).

YEAR 2014 IN ENERGY AND WATER SECTORS

What is REMIT? Supervision of Electricity and Gas Market

Regulation (EU) № 1227/2011 of the European Parliament and of the Council on Wholesale Energy Market Integrity and Transparency (REMIT) entered into force on 28.12.2011. The objective of REMIT is to prevent market abuse in wholesale energy markets, and thereby to protect end consumers. REMIT lays down the rules, which outlaw insider trading and market manipulation. Supervisory responsibility for the compliance with the provisions of the Regulation rests with the Agency for the Cooperation of Energy Regulators (ACER) that cooperates closely with national regulatory authorities, which in Estonia is the Competition Authority.

REMIT stipulates the prohibitions and obligations applied to market participants;

- prohibition of insider trading;
- obligation to publish insider information;
- prohibition of market manipulation;
- obligation to provide ACER with reports of transactions in wholesale products;
- obligation to register with the national regulatory authority.

In respect of such participants of the wholesale market who enter into transactions and are obligated to report the respective information to ACER and the Competition Authority, REMIT introduces the obligation to register in a uniform database. In Estonia this registration takes place via the Centralised European Register of Energy Market Participants (CEREMP). National regulatory authorities share the information in their databases with ACER. Based on this information ACER shall establish the European register of market participants.

In the meaning of REMIT 'wholesale energy products' are the following contracts and derivatives, irrespective of where and how they are traded:

- contracts for the supply of electricity or natural gas where delivery is in the EU;
- derivatives relating to electricity or natural gas produced, traded or delivered in the EU;
- contracts relating to the transportation of electricity or natural gas in the EU;
- derivatives relating to the transportation of electricity or natural gas in the EU.

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity above 600 GWh per year shall be treated as wholesale energy products.

Therefore, the term 'market participants' means system operators, electricity producers, electricity and natural gas traders who are conducting business on the wholesale markets.

Supervision Proceedings in Respect of Electrical Interconnections EstLink 1 and EstLink 2 between Estonia and Finland

On 12.09.2014 the Competition Authority initiated supervision proceedings under the Electricity Market Act in respect of Elering AS in connection with outages of electricity transmission power between Estonia and Finland (the EstLink 1 interconnection failed on 10.09.2014, and the EstLink interconnection 2 failed on 09.09.2014). The objective of the supervision proceedings was to establish the causes of such failures, and to find answers to the questions of whether these failures could have been prevented.

The outage of EstLink 1 and EstLink 2 resulted in the lack of transmission capacity between Estonia and Finland during the period between 11.09 and 14.09.2014. Therefore, in addition to consumers in Estonia, Latvian and Lithuanian electricity consumers were affected as well, as the electricity price in Estonia also brought about a rise of prices on the electricity markets in Latvia and Lithuania. Table 1 shows the average prices of the energy exchange Nord Pool Spot in the Finnish, Estonian, Latvian and Lithuanian region between 11.09 and 14.09.2014.

Tabel 1. *Average prices of the energy exchange Nord Pool Spot in the Finnish, Estonian, Latvian and Lithuanian region*

Time	Finland, €/MWh	Estonia, €/MWh	Latvia, €/MWh	Lithuania, €/MWh
11.09.2014	39,24	64,75	64,75	64,75
12.09.2014	38,12	63,23	63,23	63,23
13.09.2014	35,03	56,77	56,77	56,77
14.09.2014	34,23	62,55	62,55	62,55

Up till now outages at the EstLink 1 converter stations have been caused by failures of the control systems, own consumption and cooling systems, but lately failures in the cooling system have become particularly frequent. So far outages of EstLink 2 have been resulted from problems in the cooling systems and damages to direct current cable connectors of the reverse current circuit.

In order to improve reliability of these interconnections the Competition Authority proposed Elering AS to carry out an in-depth analysis of the failures, to plan preventive measures, to commission an expert analysis of the causes of damages to the plastic pipes used, etc.

Seeing that EstLink 1 and EstLink 2 represent direct current interconnections of exceptional importance vis-à-vis the development of regional electricity markets, it is essential to ensure that consumers could at all times rely on the availability of electricity at the best possible price.

The Competition Authority holds the position that the current legislation does not sufficiently regulate operation of electrical interconnections. In order to improve the situation the legislation has to be amended by adding quality requirements applicable to the cross-border direct current interconnections EstLink 1 and EstLink 2, for instance by laying down the maximum permissible period of downtime outage.

Changeover to remote-reading meters

Pursuant to the Electricity Market Act a network operator shall ensure that the amounts of electricity supplied to and from its network are determined and that metering data are collected and then processed by means of metering devices conforming to the technical requirements established by legislation, in accordance with legislation and the contract for the provision of network services.

By the year 2020 in all the Member States of the European Union the share of electricity consumers connected to remote reading meters has to reach 80%. Estonia has assumed the obligation to meet this objective as early as 2017. Therefore, it stems from the Grid Code that as of 01.01.2017 the metering system should provide a possibility for metering active energy using a remote reading device. For that reason, changeover to the use of remote reading and hour-based devices for metering electricity constitutes the policy of the state, and the Competition Authority monitors this process in order to ensure that all network operators comply on time with the obligation to change over to remote reading. The matters of how, when and on which terms metering device will be replaced, can be decided by network operators at their own discretion. As replacement of metering devices with remote reading devices is a rather sizable task, both investment-wise and time-wise, it is understandable that network operators tackle this task by stages. This means that remote reading meters are installed in cities by streets and in rural areas – by villages.

Therefore some consumers get remote reading meters earlier than others. Subsequent installation of meters to individual consumers would fragment the activities of the network operator and would be uneconomical. Therefore in proceedings concerning installation of remote reading meters the Competition Authority has found that since network operators are obliged to ensure that devices are installed by 01.01.2017, operators may act on the basis of their work arrangement, and consumers may not without good reason refuse to have their meters replaced at the time prescribed by the network operator.

Remote reading meters offer consumers and market participants a possibility of operating on an open electricity market more efficiently. On an open market switchover from one electricity vendor to another becomes simpler and faster. Moreover, flexible electricity tariffs facilitate controlling of electricity costs and saving of electricity. Consumers can get overviews of consumption on an hourly basis, and it helps them to choose the electricity package with the best price, or to adjust their consumption such that they can get the best benefits from the package selected.

Consumers are also released from their monthly obligation to report their electricity meter readings. Invoices are submitted on the basis of actual readings, estimate-based invoices and problems linked with them would cease to exist. Consumers are not required to report the network operator of any power disruptions and voltage problems. Moreover, remote reading meters make sure that the network operator is notified of any troubles sooner and can remedy it faster.

The network operator also has a real time overview of the load of the network, which facilitates analysing power outage areas and planning of the network's capacity. In case of arrears the network operator can use the switch in the consumer's meter to limit consumption or disconnect the consumer from the network.

Reliability of Gas Supply

Although in 2014 the share of gas of the final energy consumption in Estonia amounted to only about 5% and continues to decline steadily, gas nevertheless represents an essential type of fuel with strategic significance vis-à-vis reliability of energy supply. Seeing that last year was characterised by the Russian/Ukrainian gas crisis and the risks incidental to it, issues connected with reliability of gas supply cropped up in Estonia as well. Therefore in the second half of 2014 the Competition Authority conducted an analysis of the Estonian gas market.

The results of the analysis give reason to acknowledge that in comparison with preceding years the reliability of supply on the gas market in Estonia has not notably improved. The fact that the only entity with significant influence, importing gas into Estonia is OAO Gazprom from Russia, still remains a considerable problem. The situation is such because for historical reasons Estonia has natural gas connections only with Russia and Latvia; these connections were built during the Soviet period and are still functioning essentially in the same way. The required pressure in the Estonian gas system is provided either by the compressor stations of the Russian transmission system or by the Latvian Inčukalns underground gas storage. Moreover, Estonia does not have any gas storages or liquefied gas terminals.

Seeing that Estonia has only one major gas supplier, the compliance with the requirements set out in the Regulation (EU) No. 994/2010 concerning measures to safeguard security of gas supply, have not been met. The European Commission has also expressed its concern in relation to this situation, stating in the gas supply stress test published on 16.10.2014[1] that if Estonia were unable to rely on the Inčukalns storage, the country could run out of gas within five days.

At the same time disruption of gas supply rather represents a black scenario that would presume coincidence of several negative circumstances, the realisation of which in practice is quite unlikely.

Based on the conducted analysis the Competition Authority has established that one of the solutions that could improve reliability of gas supply would be acquisition of Estonia's own gas stocks, which would ensure supply of gas to consumers even in cases of disruption of deliveries. One of the alternatives would be establishing emergency gas stocks, similar to the liquid fuel stocks, which would be managed by the Estonian Oil Stockpiling Agency. This would require amending the legislation. The impact analysis of the Competition Authority reveals that the price impact on consumers stemming from the acquisition of gas stocks would not be considerable.

However, after the analysis there have been positive developments on the Estonian gas market. Thus for instance, in December 2014 Estonia imported through Latvia the very first 100 000 cubic metres of natural gas purchased from Lithuania, and the gas volumes purchased from Lithuanian market participants and consumed in Estonia amounted to 26.8 million cubic metres, i.e. 14.2% of the total volume of gas imported in the first quarter of the current year.

[1] Available at: http://ec.europa.eu/transparency/regdoc/rep/1/2014/ET/1-2014-654-ET-F1-1.PDF

Reference Price of Cost-Effective District Heating System

In the process of amending the District Heating Act the Ministry of Economic Affairs and Communications came up with an idea to apply a reference price to heat sold to end consumers. According to this idea the Minister of Economic Affairs would – on the basis of the proposal submitted by the Competition Authority – establish the reference price of a cost-effective district heating system. In case of an effective district heating system this would entail modelling of an ideal district heating boiler-house with an ideal district heating network, which uses modern and optimal technological solutions that would ensure production of heat with the least expensive fuel, and distribution of heat via an efficiently functioning network. It is presumed that such boiler-house and the district heating network would be built from so-called Greenfield scenario. If a heating undertaking is able to sell heat at a price that does not exceed the reference price, the undertaking does not need to coordinate the maximum price of heat with the Competition Authority. Such heating undertaking has already reached an efficient level of production, distribution and selling of heat, and therefore there is no need to have the heat price approved. Moreover, establishing a reference price would serve as a benchmark for consumers of heat, as well as traders and local municipalities when determining district heating regions and compiling a detailed plan in locations where the maximum price of heat being sold is still very high. By making the investments necessary to recondition an inefficient district heating system it is possible to reduce the price of heat being sold.

Last year the Competition Authority developed the preliminary model for calculating the reference price of a district heating system, the inputs (pricing parameters) used therein were audited by the Institute of Thermal Engineering of Tallinn University of Technology and the results were presented in the report “Audit of the model for calculating a reference price for an efficient district heating system”. The authors of the report came to the conclusion that the calculation model had been compiled logically and appropriately. The report makes suggestions about values of certain input parameters of the calculation model and the manner of their presentation, which should help to take better account of the size and particular features of a concrete district heating system. The analysis of the calculation model showed that calculating a reference price only for one district heating region with a certain area would not render an appropriate result, and prices should be found for network regions of different sizes.

The Competition Authority disagrees with the opinion that the size and particular features of a concrete district heating system need to be taken into consideration. In essence this would mean that as a result of high investment costs reference price applied in network regions where sales volumes and consumption density are low would be considerably higher, which cannot be taken as a reference price of the most cost-effective district heating system. For instance in an inefficient system with low consumption density and stranded assets this would render possible selling of heat at an unreasonably high reference price.

Above all, district heating is effective due to the economy of scale and particularly in densely populated areas. In recent years there are many examples of how shale oil has been replaced by wood chips in network areas with low consumption density and sales volumes, but yet the expected results have not been achieved as the configuration of the district heating network is inefficient. Moreover, problems have emerged in connection with excessive investments accompanied by drop in consumption volumes, as consumers are becoming more energy conservation-minded. Therefore, it is impossible to establish competitive heat prices in network regions with low sales volumes and consumption density, even by investing, and it would be economically more feasible to convert to alternative heating solutions.

The Competition Authority has prepared an analysis, which consists of the model for calculating a reference price for an effective district heating system, and the reasons of the inputs used therein. The current low interest rates (weighted average cost of capital) and the low primary energy fuel prices, which historically have been higher, were taken as the basis for determining the reference prices. Calculations made by the Authority on the basis of three alternative annual sales volumes (5000 MWh, 50 000 MWh and 300 000 MWh) produced three rather similar reference prices varying from 49 to 52 euros/ MWh. Based on these results the weighted average reference price was taken as 50 euros/MWh.

Therefore the Competition Authority holds that it is reasonable to apply only one reference price to the most cost-effective district heating system; this price would be based on the weighted average reference price obtained with the calculation model, rounding the result to the nearest integer. The idea of applying the reference price is targeted, above all, at such undertakings operating in network regions, which have made the required investments and can already sell heat either at or below the reference price calculated by the Competition Authority. Undertakings, which are unable to do this, would still need to have their maximum heat prices approved by the Competition Authority.

Regardless of whether the idea of applying the reference price will actually be realised, the Competition Authority updates annually the input data of the calculation model, which can be affected, *inter alia*, by the state of the economy and the legislation. Moreover, publication of these calculation results offers consumers a possibility of assessing by how much the price of heat in a particular network region differs from the reference price of the most cost-effective district heating system.

All in all it is important to take into consideration that heating undertakings are not natural monopolies, as they are in competition with alternative heating solutions. The reference price indeed serves as an indication of whether or not the price of heat sold in a particular network region is aligned with it. If for instance the heat price charged is much higher than the reference price, this would serve as a signal for the local municipality, that it is time to start planning for alternative heating solutions.

Decision of European Commission on Complaint of AS Tallinna Vesi

Following the privatisation of AS Tallinna Vesi in 2001, the City of Tallinn and AS Tallinna Vesi entered into the Services Agreement, in which the parties agreed, *inter alia*, on the principles of amending service prices for a five year term. The Services Agreement was amended in 2002 and in 2007, and with the latest amendment the effective term of the Agreement was extended until the year 2020.

The new version of the Public Water Supply and Sewerage Act (hereinafter PWSSA) entered into effect on 01.11.2011; this amendment modified, among other provisions, the procedure for establishing the prices for water services, stipulating that instead of local governments, that had been regulating the prices thus far, the prices for water services would have to be approved by the Competition Authority. At the end of 2010 AS Tallinna Vesi, referring to the Services Agreement, submitted the Competition Authority an application on establishing the water services prices. The Authority verified the conformity of the water services prices with PWSSA, and found that the prices for water services submitted for approval are not conformant with law. The Competition Authority refused to approve the prices for water services submitted by AS Tallinna Vesi for approval, and following supervisory proceedings issued the water undertaking a precept demanding that the water services prices be brought into conformity with the effective Act. AS Tallinna Vesi did not bring the water services prices into conformity with the Act, and submitted the dispute to the court. The court froze the water services prices charged by AS Tallinna Vesi at the 2010 level.

In addition to that, on 12 December 2010 AS Tallinna Vesi filed a complaint to the European Commission who is also in charge, *inter alia*, of free movement of capital within the European Union. The European Commission reviewed the complaint of AS Tallinna Vesi for a rather long period of time, but in great detail, and rendered its final decision on 14.05.2014.

In brief, the European Commission expressed the opinion that the version of PWSSA that entered into effect in November of 2010 does not discriminate against AS Tallinna Vesi, as the new rules are applied equally and fairly to all water undertakings operating in Estonia. In the opinion of the European Commission the effective rules for calculating water tariffs are sufficiently clear and precise allowing potential investors to take commercial decisions, and do not discourage future investors against investing in the Estonian water sector.

The European Commission further pointed out that the version of the Act effective as of November 2010, which modified the procedure of setting the tariffs agreed at the time of privatisation of AS Tallinna Vesi, does not affect the compliance of the new national horizontal measures with the rules of the EC Treaty vis-à-vis free movement of capital and the freedom of establishment. According to the case law of the European Court of Justice the Member States, when exercising the authorities granted to them by the law of the European Union, shall observe the principles of legal certainty and legitimate expectation. However, undertakings cannot have legitimate expectations in relation to preservation of the existing situation, if authorities of a Member State may employ their discretionary powers to modify the same.

DEVELOPMENTS IN POSTAL SECTOR

The General Part of the Economic Activities Code Act (GPEACA) which establishes the requirements to the commencement, pursuit, termination and resumption of economic activities, the maintenance of a register and the state supervision and liability in various sectors of industry, entered into force on 01.07.2014. This Act also applies to the postal sector: while previously all provisions governing the postal sector were gathered into the Postal Act, from now on in matters concerning economic activities the provisions set forth in GPEACA must be observed as well.

Furthermore, the Regulation governing the delivery of registered and insured items via the universal postal service (UPS) was also amended last year. According to the amendment large items of correspondence are now treated as postal parcels. Items of correspondence the dimensions of which exceed 230×330×20 mm (length, width, thickness) are issued to the addressee at the nearest post office, and no attempts need to be made to deliver these items to the addressee's postal address. The addressee is delivered a notice informing about the arrival of such postal item. In case of small items of correspondence one attempt is still made to deliver the item to the addressee's postal address. In 2014 the Competition Authority held a public tender for finding a UPS provider, as the latest five year license period ended in October. The tender was held in the spring and summer of 2014. The only party submitting a tender was the current UPS provider AS Eesti Post, who was also declared the successful tenderer, and in the autumn of 2014 the company was issued a new license for the period from 2014 till 2019.

The license conditions have remained largely the same. A UPS provider has still to maintain at least 320 post offices and 2777 letterboxes across Estonia. Also UPS has still to be provided to all interested parties five days a week and at least two hours a day (at the post office) on equal terms and for an affordable fee, which is established by the Regulation of the Minister of Economic Affairs and Infrastructure.

The term of validity of four licenses (forwarding of domestic and cross-border items of correspondence and forwarding of domestic and cross-border postal parcels) issued to AS Eesti Post expired last autumn. As a result of the amended legislation it is no longer required to apply for a separate license for the provision of domestic and cross-border services. At the same time undertakings cannot apply for having their license extended, instead they need to apply for new licenses. Therefore, instead of four applications submitted up till now, this time AS Eesti Post submitted the Competition Authority two license applications (forwarding of domestic and cross-border items of correspondence combined, and forwarding of domestic and cross-border postal parcels combined). The Authority issued the undertaking these licenses for the period of 2014–2019. In general, the terms and conditions of the license remained the same.

The second provider of postal services is AS Express Post, whose license is effective until 2018.

Supervision over Postal Services

The Postal Services Act lays down the percentage of items of correspondence forwarded as ordinary items that are deposited with the universal postal service provider for the provision of domestic postal services, which have to be received by the addressee on the working day following their depositing with the postal service provider. These are letters, which can be deposited through letterboxes of AS Eesti Post, which are situated across Estonia.

In 2005 the then effective requirement prescribed that at least 90% of items of correspondence deposited with the postal service provider in cities or county centres had to be delivered to the addressee at the latest by the next working day, and 90% of the items of correspondence deposited in rural areas had to be delivered on the second working day after their depositing. The requirement adopted as of 2006 prescribes that at least 90% of items of correspondence shall be delivered to the addressee across Estonia on the working day following the day when they were deposited with the service provider. This requirement applies to letters, which are deposited into letterboxes before the latest prescribed time of collection.

The Competition Authority has normally inspected the delivery of items of correspondence and the compliance of the service with the requirements of the Postal Act once a year by making inspection deliveries. For this purpose the Competition Authority has deposited in letterboxes test letters and has monitored the rate of their delivery. The results of the last ten years are shown on Figure 2. The percentage of letters delivered on the working day following their posting is shown as the blue column, and the percentage of letters delivered on the second working day after posting is shown as the dark blue column.

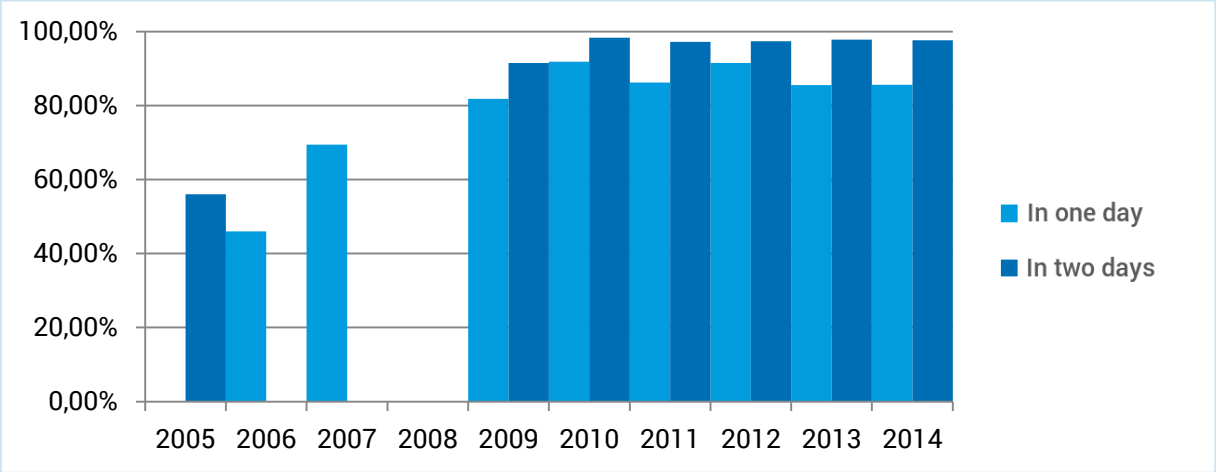

***Figure 2**.Quality of delivery of ordinary items of correspondence in 2005-2014*

** Inspection was not carried out in 2008*

While in 2005–2007 the result fell considerably short of the required level, as of 2009 AS Eesti Post has improved the quality of the service. In two years the result has been above 90%, and though it has fallen short of the target in the remaining four years, the figure has still been above 80%. The percentage of letters delivered on the second working day after their posting has consistently been above 90%, and in 2010 it reached as high as 98.3%.

In 2014 the inspection of the postal services' quality was carried out in November. Altogether 1300 ordinary items of correspondence addressed to different recipients were deposited into letterboxes of AS Eesti Post. Participants in the inspection returned the Competition Authority 1294 letters, 1245 of which were taken for the purpose of determining the quality of the service. In total 1065 i.e. 85.5% letters were delivered to the addressee on time (i.e. on the working day following the day of depositing). 150 of the letters, which were received late, were delivered to the addressees on the second working day after their depositing (delay one working day). 30 letters were late by two or more days (see Figure 3).

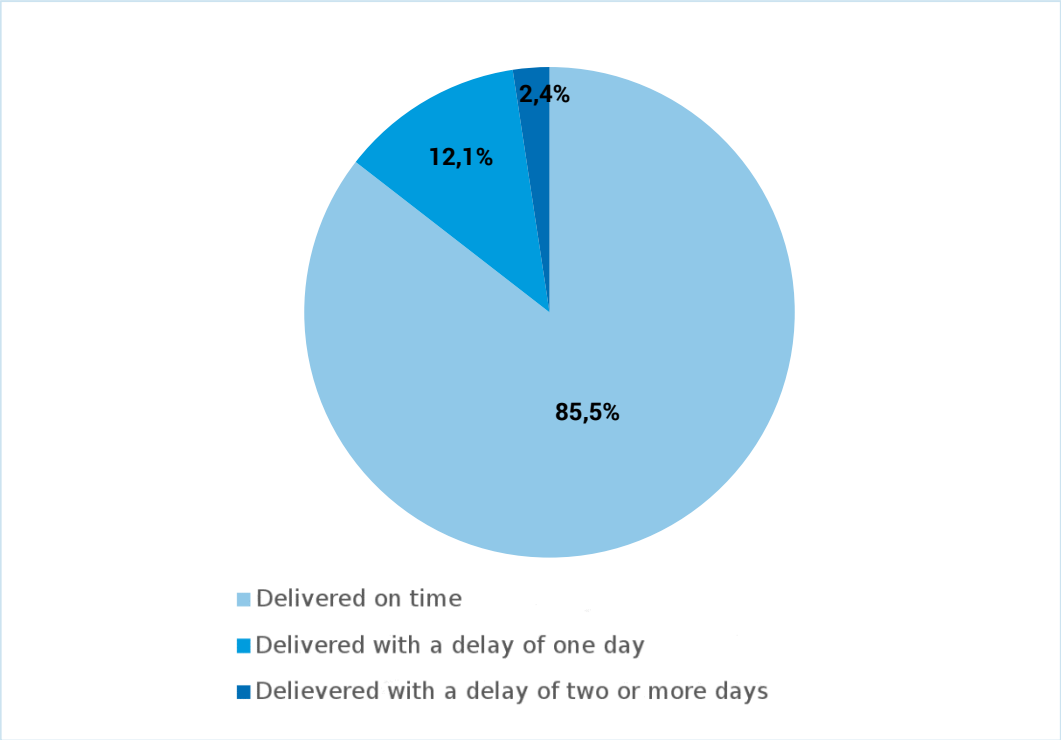

***Figure 3**. Quality of delivery of ordinary items of correspondence in 2014*

The inspection of the quality of the postal service showed that the rate of delivery of ordinary items of correspondence sent by UPS fell short the required quality level by 4.5 percentage points. This result was almost the same as that of 2013. AS Eesti Post has subsequently remedied the situation by implementing a change in its logistics that helps to avoid delays with emptying certain letterboxes. The company has also developed an integrated delivery network concept, which further improves the letter delivery quality.

The provisions of the Postal Act governing misdemeanour procedure were abolished as of 01.01.2015, because on one hand the number of misdemeanour proceedings conducted under the Postal Act was very small, and there was no need for keeping these provisions. On the other hand, the compliance with the requirements of the Postal Act can easily be ensured by applying measures of administrative coercion.

Packaging of postal items and acceptance of damaged postal items still continues to cause problems to users of postal services. When a postal item is packaged, it is essential that the sender carefully observes the packaging instructions established by the service provider. The common practice applied by postal services providers is that the responsibility for appropriateness of packaging rests with the sender. The reason behind this is that the sender has the best understanding of the content and particular features of the postal item. Normally an item is deposited with the postal service provider already in its package, and therefore a postal operator cannot be responsible for appropriate packaging. If the sender has observed all the required packaging terms, but the item is nevertheless damaged, the postal service provider is naturally liable for the damage. A typical mistake made by senders, which certainly rules out such responsibility, is failure to observe the packaging instructions. The consequence of this mistake is that an item might be packaged insufficiently, considering its nature, or the special labelling, e.g. in case of fragile items, required to be made on the package, is omitted.

Any damages to a postal item have to be always recorded upon the receipt of the package in the presence of the postal service provider. Otherwise it is impossible to prove that the postal item was damaged during the provision of the postal service, not for instance after it was released to the addressee. Therefore in their standard terms and conditions service providers have normally set out that after the item is handed over to the recipient and no claims have been made, the undertaking is released from any responsibility.

When using postal services it is advisable to be aware of the standard terms and conditions, because these documents set out the rights and obligation of the parties (the sender, the addressee, the service provider). According to the common practice postal services providers are only responsible for direct damages. Such are damages that are caused by loss or destruction of the postal item (value of the postal item), incl. postal charges. Any consequential damages (lost profits, moral damages, expenses incidental to resolving a complaint, etc) are not subject to compensation. With this regard it is also necessary to bear in mind that there are maximum limits established to compensation for damages, which depend on the postal service used. The Competition Authority resolves complaints on the basis of the Postal Act and the standard terms and conditions. If the standard terms and conditions rule out compensation for consequential damages, the Authority cannot order the service provider to pay such damages. To reclaim such damages postal service users may have recourse to courts.

Future Trends of Postal Sector

Along with the development of information technology services the modern postal services market has witnessed a very rapid change and traditional postal services are facing ever increasing competition from easily available and affordable services provided via telephone, internet and other electronic environments. This has lead to a considerable drop in volumes of ordinary letters delivered by UPS, which – in addition to Estonia – is experienced by many other countries as well. Although based on statistical data this is an expending trend, it does not mean that the service of forwarding of ordinary items of correspondence would in future disappear altogether, because no alternative information technology service offering possibilities for exchange of information is capable of carrying the same value as a greeting card or another personal message of sentimental significance received in an ordinary letter. On the other hand one should not disregard the fact that the development and availability of IT solutions differs from country to country, and thus a letter sent from Estonia or entering into Estonia can be the most easily available and convenient form of information exchange.

This leads to the conclusion that the postal sector has already been and continues to be affected by considerable changes, which – in addition to introduction of new and innovative business models – will bring along the need to review and adjust the standards and rules governing the provision of postal services. In this respect the Estonian postal sector is not an exception, and although the foundation established by the amended Postal Act effective as of 01.01.2009 offers reliable protection of users' interests, the regulatory provisions that have remained virtually unchanged since, would certainly need updating.

For instance, as the volume of ordinary items of correspondence is declining, ensuring compliance with the requirements to maintain a postal network needed to provide appropriate universal postal services is becoming ever more unprofitable for an undertaking. Because a UPS provider has to guarantee that postal items are picked up and delivered to recipients across the entire territory of Estonia on all business days, not less frequently than five days a week and at least once a day, AS Eesti Post does collection trips, regardless of whether or not this is needed. Moreover, the results of inspections carried out by the Competition Authority to verify the quality of UPS demonstrate that in many regions in Estonia there is no need to have the letterboxes emptied five times a week. According to the monitoring carried out by AS Eesti Post, at least one half of the letterboxes are such that receive up to one item of correspondence a month.

In addition to the above it is essential to point out that while an undertaking complies with the requirement set forth by the Postal Act to ensure forwarding of ordinary letters for an affordable price, the service is in fact provided below cost. This situation is not sustainable, and in order to ensure that interests of the service provider as well as consumers continue to be protected, services offered in the course of regular and normal economic activities should not be provided at a loss.

In light of information technology services, which are competing ever more aggressively with traditional postal services it is also questionable whether the requirement demanding that at least 90% of items of correspondents have to be delivered to addressees across Estonia on the working day following the day of posting, is reasonable. In the opinion of the Competition Authority it would be advisable to consider if this requirement could be amended such that the 90% quality criteria set to delivery of items of correspondence could also be deemed met by taking into consideration the number of items delivered on the second working day after posting.