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Competition Authority
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FOREWORD

Dear reader

2009 was an extraordinary year for all of us. We all know from theory that economy is cyclical and every boom is followed by a recession. Hence it was natural that the 10-year economic growth in Estonia should one day be hit by a backlash but nobody in their worst dreams expected a backlash as vicious, with a 14% decline in economy. By mere chance, the downward trend in Estonian economy coincided with the global economic crisis. However, already in 2009 the first optimistic signs started to show in the deepest economic crisis. By now there is no doubt that the recession will be replaced by new growth and that our economy will emerge stronger than ever. We remember well how the whole economy went into depression after Lehman Brother's bankruptcy and some prophets said that the global financial system would completely disappear. Some even recommended to change all one’s property to gold and then bury it in a pot. However, already in the second half-year of 2009 the first positive signals about the recovery of global economy started to arrive. Still, 2009 will most certainly be remembered as the year of the deepest economic crisis since the 1930s.

We may ask what is the impact of the economic crisis on competition. Lower inflation and the resulting price decline are certainly beneficial for the consumers. The tighter economic conditions should have a positive impact on the general competition and efficiency growth. The number of concentration applications submitted to the Competition Authority is a good indicator of the general economic situation. The number of applications submitted in both 2006 and 2007 was 34, in 2008 – 27, and in 2009 only 17.

It has been discussed extensively whether companies are more prone to making cartel agreements during an economic recession period. The number of investigations initiated by the Competition Authority (10 cases since 2008) may suggest that it is so. However, it is more probable that the figure is not so much related to the economic downturn but to our more vigorous fight against cartels.

In 2009 we were also more active in analysing various market barriers and deviations in the competitive situation. A suggestion to liberalise the overcounter sales of pharmaceuticals is probably the most outstanding among them. As a result, a discussion developed in the media, comparing the hazardousness of paracetamol and a chemical drain cleaner. Surely it is equally dangerous to take an overdose of a drug or to swallow a domestic cleaner but selling chemical cleaners in shops is allowed. The dangerousness of pharmaceuticals is one of the main arguments
why overcounter drugs have not been released into the retail network. Though the liberalisation of retail market has not progressed, the question has been raised and hopefully we can also see some progress.

A similar market barrier exists for pension funds. An owner of fund shares can move from one fund to another only after a long notification period. If a person wishes to change a fund in the middle of November, it will take a year from the application to the transfer from one fund to another. Moreover, a person gathering money for the retirement period has no guarantee that his or her money is maintained and increased in the best possible way. Our media wrote about several cases last year, depicting the issue of junk bonds even in conservative funds, as a result of which owners of shares could only passively watch how their money vanished. In general, free choice for the consumers and functioning competition are the two conditions giving the consumers the best price and quality. Fortunately there is already some progress and the Ministry of Finance is already elaborating the necessary legislative amendments.

In the energy sector, 2009 will be remembered as the year of a sharp decline in natural gas price. This should have been followed by a lower price of heating for the consumers. Here, gaps in the legislation became evident – undertakings have the right to raise heating prices if fuel prices increase but are not obliged to lower heating prices in an opposite situation. Fortunately, our undertakings had enough common sense and understanding and heating prices dropped considerably in the first half of 2009.

2009 will also be remembered for Eesti Energia’s unverified power meters. It is especially striking about this case that it was evident from expert evaluations that in most cases the meters lied for the benefit of the consumer and not the undertaking. However, precise measurement of the consumed energy volumes is important. It is not an excuse that the unverified meters lied for the benefit of the consumers. The Competition Authority made a precept to Eesti Energia to solve the problem, requesting that the unverified meters should be replaced no later than by 1 August 2010. The result is positive: more than half of the unverified meters have been replaced by now and all consumers will receive precise meters by this deadline.

We can be glad about the progress in the communications market. First, it is one of the few sectors where prices have fallen during the last ten years. Secondly, competition functions well in this sector due to the rapid development of technology. Most consumers can now choose freely among various service providers. In the 1990s one or several cable TV networks were built in addition to the telephone network in apartment blocks. It was usual in those times that the telephone network provided telephone connection and cable networks provided the television service. Today, both television and communications systems are based on a digital signal which
can be transferred by the telephone or cable TV network. Consumers can now choose among two or even three networks. For example, Elion now provides both communication and television services via its cable and Starman’s TV-cable makes it possible to make phone calls and to surf in internet. This is a positive example about price competition bringing a benefit to the consumer.

The Competition Authority is proud of having successfully protected free competition in 2009 and we promise to do our utmost to ensure its further promotion.

With best wishes
Märt Ots
Director General
ORGANISATION

Structure

The Competition Authority did not undergo any major structural changes in 2009. The Authority continued to operate under the effective function-based structure developed in 2008 which enables the units to closely co-operate by changing expertise concerning specific fields. According to the statutes of the Competition Authority, the Authority includes three field-based divisions: the Competition Division, the Railway and Energy Regulatory Division and the Communications Regulatory Division. In addition to the divisions there is an administrative unit or the General Administration Department which is responsible for ensuring effective support services. Director General is at the head of the Authority (Figure 1). Structural divisions of the Authority are directed by the Heads of Divisions, who are at the same time Deputy Directors General.

FIGURE 1. Structure of the Competition Authority

According to the statutes, the functions of the Authority are divided between structural units or divisions as follows:
The main functions of the Competition Division are: conducting proceedings of complaints and concentration notifications submitted by undertakings; conducting proceedings of cases on its own initiative; replying to inquiries of undertakings and their representatives; counselling and raising competition related awareness of the public.
The main functions of the **Railway and Energy Regulatory Division** are: price regulation, activity licences, market supervision, security of supply and quality in railway and energy sectors.

The main functions of the **Communications Regulatory Division** are: regulating the communications market; monitoring the performance of imposed measures; monitoring developments in the markets of electronic communications; settlement of competition and electronic communications related disputes regarding communications services and networks; regulating the postal market, organising the provision and exercising supervision of the universal service; settlement of applications, inquiries and complaints regarding postal services.

The main functions of the **General Administration Department** are: coordination of the relations between the Authority and the general public; organisation of international relations; ensuring administrative organisation; administration of state assets and means in the possession of the Authority and organising public procurement; ensuring the existence of tools and inventory; organisation of personnel work and training; preparation of draft budget and performance of financial monitoring; organisation of customer service and document management and administration of archives.

**Personnel**

The Competition Authority employed 55 persons as of the end of 2009. 2 new employees joined the Authority and 3 people left the organisation during the year. The average age of an employee was 40 years for women and 36 years for men.

Officials with up to 10 years of public sector service were in majority.

Most staff members have higher education in economics (business administration, business management, finance, economics, etc.) or in law. The rest are officials with higher education in other disciplines, such as radio electronics, telecommunications, thermal energy, public administration or other.

**Development of the organisation and international relations**

In order to be able to fulfil its goals and tasks, the Authority needs to ensure the presence of competent, initiative taking and dedicated staff and continuous development of the organisation.

An organisation development training project supported by the European Social Fund and consisting of three modules was carried out in 2009 to make the organisation more effective. The main objective of the project was to create team synergy.

The personnel had rather intensive training in 2009, both in Estonia and abroad. The abovementioned organisation development training project was one of the main training courses.
In addition to participating in training courses, many officials gave talks or presentations at various Estonian or international events. Throughout the year all divisions responded to numerous inquiries from undertakings and organisations in Estonia and EU member states. The Competition Authority participates in the work of competition, railway and energy and communications related working groups and unions. Officials of the competition division attended meetings and discussions of ECN (European Competition Network), ECA (European Competition Authorities) and ICN (International Competition Network) working groups and subgroups.

Officials of the railway and energy regulatory division participated in the meetings of CEER (Council of European Energy Regulators) and ERRA (Energy Regulators Regional Association). The Estonian Competition Authority is a member of an organisation comprising European national communications regulators - IRG/ERG (European Regulators Group/Independent Regulators Group) and is actively involved in working groups of mobile and fixed termination rates, cost accounting, transparency and designation of undertaking with significant market power.

The Competition Authority signed an agreement with the Russian Federal Antimonopoly Service

Märt Ots, Director General of the Estonian Competition Authority, and Igor Artemyev, Director General of the Russian Federal Antimonopoly Service, signed a co-operation agreement in Kazan on 2 September 2009, obliging the authorities to develop and strengthen competition related co-operation. The main goal of the agreement is to facilitate co-operation to ensure free and efficient competition, taking into account the legislation of both countries. This co-operation takes place primarily in the form of exchange of experience and expertise in the field of investigation of competition-related offences, including assistance in evaluation of competition situations and organisation of bilateral or multilateral consultations and workshops.
Igor Artemyev, Director General of the Russian Antimonopoly Service, and Märt Ots, Director General of the Estonian Competition Authority

**Competition Day brought together entrepreneurs and competition experts**

The Competition Authority initiated a tradition of supporting awareness raising in the field of competition among entrepreneurs and public authorities and the general public. Entrepreneurs, renowned experts and co-operation partners of the Authority from the private and public sectors came together on the Competition Day, 5 November 2009.

The conference was opened by Juhan Parts, Minister of Economic Affairs and Communications. The speech of Lavly Lepp, leading public prosecutor, focused on the progress of last year concerning the proceedings related to cartel cases and gave case law examples. Tanel Kalaus, Attorney at Law of Raidla Lejins & Norcous, discussed whether competition law is a cure-all. Taavi Veskimägi, soon to take the office as director of OÜ Elering, tried to answer the rhetoric question of whether a free electricity market is just an illusion, and Aivar Rehe, head of the Estonian Banking Association, analysed functioning of competition in the banking sector. The aviation market was discussed by Andrus Aljas, managing director of AS Estonian Air, and the future of water price regulation was introduced by Raili Niine, advisor to the Water Department of the Ministry of Environment. Presentations of the Competition Authority were given by Märt Ots, Director General, Juhan Põldroos, Head of the Supervisory Department, and Margus Kasepalu, Head of the Communications Regulatory Division.
YEAR 2009 IN THE COMPETITION DIVISION

Criminal proceedings as a priority field

Since the profound reorganisation of the Competition Authority at the beginning of 2008, the Authority has considered criminal proceedings against hard core cartels to be one of its priority fields. In 2006-2007 no criminal proceedings were initiated; however, the situation in 2009 was similar to 2008. Eight criminal cases were proceeded in 2009, of which three were given over to the Public Prosecutor’s Office for bringing the matter into court.

Agreements restricting competition are criminal offences according to the Estonian legislation. In this lies a major difference between the Estonian legislation and the legislation of most European countries. Not only legal persons but also natural persons acting in the interest of legal persons bear responsibility for competition restricting agreements. It is important to know that not only classical price agreements but also a wide variety of other agreements that may restrict competition, are illegal. For example, agreements on sharing of goods markets and clients, ignoring a client, etc. are prohibited. The practice of the Competition Authority in 2009 in criminal proceedings proved once more that prohibited agreements between undertakings are extremely varied, e.g. agreeing on the conditions for participating in a public procurement or more complicated schemes aiming at pushing a competitor out of the market.

In 2009, one of the main achievements relating to the fight against competition restricting agreements was a procedure concerning the leniency programme at the Estonian Parliament. Representatives of the Competition Authority who participated a year earlier in the working group that developed the draft leniency program, helped to solve the problems arising at the Parliament during the procedure in 2009. The Parliament adopted the leniency programme in January 2010 and it came in force on 27 February 2010.

The leniency programme, according to which a cartel member, who is the first to notify about a cartel, will get immunity from punishment, is according to global experience by far the most effective means of detection of cartels. In 2009, Estonia was still one of the few countries without this programme. However, it was possible in Estonia to use various general grounds for terminating the proceedings, especially termination due to lack of proportionality of punishment, as laid down in the Code of Criminal Procedure, in relation to persons who co-operated with the Competition Authority and the Prosecutor’s Office. It was clear in 2009 that undertakings showed more interest towards using such opportunities. The new leniency programme created a safe and legally secure framework for them to notify law enforcement authorities of competition restricting agreements. Undertakings can escape not only sanctions but also sentencing on a
criminal offence. The Competition Authority is of the opinion that the leniency programme will offer law-abiding undertakings a worthwhile opportunity to terminate their participation in unlawful activities in a way which harms them the least.

As the Authority initiated a large number of criminal proceedings in competition restricting agreements only in 2008, the number of judgements made in 2009 was still modest. Moreover, while competition related offences are complex, proceedings at court may be rather lengthy. Nevertheless, a significant increase in court cases is forecast for the coming years since several criminal offences brought to the courts by the Public Prosecutor's Office will probably get a judgement in the near future.

The only criminal case in which a judgement was given in 2009 was a case concerning prohibited co-operation among undertakings participating in the public procurement procedure of Jõgeva country development plan. In this criminal case the head of Jõgeva County Development and Enterprise Centre asked another undertaking to submit a fictitious public procurement tender. A staff member of the other undertaking agreed and submitted the fictitious and concerted tender. In its decision of 19 December 2009, the Circuit Court of Tallinn held that the parties to the agreement were guilty in a competition restricting agreement. However, this judgement has now been repealed by the Supreme Court which held that the natural person who concluded a prohibited agreement on behalf of the other undertaking did not act in the interests in that undertaking. Instead, all natural persons participating in the agreement acted in the interests of Jõgeva County Development and Enterprise Centre. Thus, the agreement was not a prohibited agreement between undertakings.

Several important competition related criminal cases involving large-scale financial transactions were proceeded in 2009. The most extensive case was handed over to the Prosecutor’s Office at the beginning of 2010 and concerned timber transportation public procurement procedures organised by the State Forest Management Centre (RMK). Investigation of this case developed into the largest competition-related criminal case in Estonia. RMK carried out several public procurement procedures for timber transportation services at the end of the summer of 2008. A large number of tenders were submitted by various timber transportation companies. After the submitted tenders were opened, the participating undertakings that had submitted tenders with the lowest prices agreed among themselves to take back their tenders, so that the procurement procedures were won by undertakings that had submitted tenders with considerably higher prices. As a result, the price of the timber transportation service bought by RMK under public procurement increased by 41 million kroons. The Competition Authority issued a suspicion on
eight natural persons and nine undertakings and transferred the case to the Prosecutor’s Office at the beginning of 2010. The court has not yet made a judgement.

Investigation of competition restricting co-operation by undertakings participating in a public procurement procedure for street cleaning services in the City of Tartu also took place in 2009. In this criminal case, Argo Luude, director of AS Cleanaway (now AS Veolia Keskkonnateenused) tried to achieve an agreement regarding tender conditions between two undertakings participating in the public procurement for the cleaning of two street areas in Tartu. As a result of the agreement, those two areas would have been divided and tender conditions would have been agreed upon between the two undertakings. The price of cleaning streets in the eastern part of Tartu would have increased by more than 10 million kroons. However, not all undertakings participating in this procurement procedure decided to go along with this unlawful attempt. Charges were brought against AS Cleanaway and Argo Luude and Tänavapuhastuse AS and its director Vello King. The court has not yet made a decision as regards this case.

In May 2009, the Competition Authority sent a criminal case concerning the activities of MTÜ Eesti Rehviliit (Rehviliit) to the Prosecutor’s Office. Rehviliit, one of the activities of which is to collect and reuse used tyres, hindered with its competition restricting agreements the operation of three sellers of tyres – OÜ Oscarrehvid, AS Vallai and AS Jupiter Plus. Rehviliit was not satisfied that these three undertakings, instead of using the services of Rehviliit, decided to switch to a rival service provider for the collection and reuse of used tyres. Rehviliit made agreements with many transport, maintenance and other undertakings, not allowing them to buy tyres from these three undertakings. A settlement procedure was used by which the court found Rehviliit guilty and sentenced it with a fine of 200,000 kroons.

In 2009, the Competition Board also investigated a competition restricting agreement among undertakings selling ready-made shelf companies. In summer 2009 seven undertakings selling shelf companies agreed to raise prices. By today the Prosecutor’s Office has brought charges against 7 undertakings and 5 natural persons. The court has not yet made a judgement.

The Authority is of the opinion that active proceedings of competition related criminal cases help to raise the awareness of undertakings about competition law and protect the interests of consumers. Regulation of competition related infringements is somewhat stricter in Estonia than in the rest of Europe, e.g. natural persons may be imprisoned for competition related criminal offences. Thus it is especially important to know the Estonian Competition Act and to follow it. In addition to avoiding competition offences, it always pays off to co-operate with the Competition Authority, for example by submitting a leniency application.
Control of concentrations

Due to general globalisation, concentrations of undertakings aim at creating value added and increasing competitiveness. The aim of merger control is to assess impacts from the viewpoint of competition law and to prevent competition restricting concentrations.

In 2009, 17 notices of concentration were submitted to the Competition Authority, and 1 case was brought over from 2008. The Authority proceeded 18 cases and made 17 decisions to grant permission to concentration. In one case the proceedings and decision were postponed until 2010. In one case a decision was made to initiate supplementary proceedings.

All 17 decisions to grant permission to concentration were made in the first phase of the proceedings, i.e. during the 30 calendar days prescribed by law; in four cases the proceedings were suspended due to the requirement to eliminate the deficiencies contained in a notice of concentration. The average length of proceedings during the first phase amounted to 19 days (the Competition Act allows up to 30 days) and the average length of supplementary proceedings was four and a half months (allowed up to 30 days plus 4 months).

Breakdown by types of concentration was as follows:

- an undertaking acquired control of the whole or a part of another undertaking in the case of 16 concentrations (§ 19 (1) 2));
- undertakings jointly acquired control of the whole or a part of another undertaking in the case of 1 concentration (§ 19 (1) 3));
- a natural person already controlling at least one undertaking acquired control of the whole or a part of another undertaking, or of several undertakings or parts thereof in the case of 1 concentration (§ 19 (1) 4));

Most concentrations took place among Estonian undertakings (14); in 2 concentrations both parties were foreign undertakings and in 2 cases parties involved an undertaking registered abroad and an undertaking registered in Estonia.

The number of notified concentrations in 2009 was significantly lower compared to previous years, mostly due to the slowing down of market mechanisms and stricter financing conditions.

Due to their weak economic situation, Estonian undertakings were not especially active in increasing their competitiveness through mergers and acquisitions. Foreign investors, including private capital funds, were also less interested in acquiring Estonian undertakings, the reason being the economic recession.
In 2009 concentrations took place in the following goods markets: waste management, production of polyurethane foam, information and telephone directories, wholesale of fruits and vegetables, production of thermal insulation materials, road maintenance (road design, building and repairs), retail sale of heating devices and materials, maintenance of district heating systems, software development and financial software, pharmacy services, security services, logistics services, production and sale of alcoholic beverages, sale of passenger cars, wholesale of construction steel and sale of metal structures.

JCDecaux Eesti OÜ and the activities of Tartu City Government in the installation and maintenance of bus stop shelters and placing of advertising stands

Clear Channel Estonia OÜ (CC) submitted an application to the Competition Authority in July 2004, alleging that an agreement concluded between Tartu City Government (Tartu CG) and OÜ UNICOM Eesti (business name JCDecaux Eesti OÜ since 12 September 2005, hereinafter JCD) limited the outdoor advertising market in the City of Tartu and thus considerably restricted competition. Moreover, Tartu CG had allegedly set additional limitations to advertising undertakings in order to hinder the activities of other outdoor advertising undertakings in the outdoor advertising market in Tartu.

CC and JCD both rent outdoor advertising space. CC has advertising space on garbage cans, mostly smaller than the so-called euro-size (118.5 x 175 cm) provided by JCD. Local governments regulate the installation of outdoor advertising stands in their territory.

In October 2001 Tartu CG approved the conditions for open negotiations for the installation of 60 bus stop shelters. Only one tender was submitted to the negotiations – by JCD whose tender did not completely meet the established conditions. Therefore, Tartu CG declared that the open negotiations had failed and started direct negotiations with JCD who had made the offer on the installation of 60 bus stop shelters. In January 2002, JCD and Tartu CG concluded an agreement on the installation and maintenance of 60 bus stop shelters in streets and in the protection zone of streets belonging to the City of Tartu (Agreement 1). This agreement contained the competition restricting conditions described by CC in its application to the Authority.

Agreement 1 foresaw co-operation to develop public transport infrastructure by the installation and further maintenance of 60 new bus stop shelters (with or without an advertising box). It was agreed that the shelters would be installed in the streets and protection zone of streets belonging to the City of Tartu for a period of 20 years and that they would be in the ownership of JCD. By
the Agreement, JCD had the right to sell advertising space on the walls of shelters and to add an advertising box to a shelter, provided that it had not yet been installed.

Agreement 1 included a condition that Tartu CG did not have the right to give a permit or consent to third persons to exhibit advertising posters in the so-called euro-size or similar size and to place advertising stands on the immovable property or land, or on the buildings and facilities (including roads) belonging to the city, except when placing an advertising poster or a stand was agreed with JCD.

It appeared during the implementation of Agreement 1 that some bus stop shelters were located in inattractive locations as regards advertising, as a result of which LCD addressed Tartu CG in May 2003, requesting a permission to install 40 advertising stands instead of the bus shelters on some other property belonging to the City of Tartu. JCD also made a proposition to develop a city information system on the basis of these advertising stands. In addition, Tartu CG made a proposition to JCD to install 15 new bus stop shelters in the territory of Tartu under the conditions provided in Agreement 1, to which JCD agreed. In July 2003 an agreement on the installation of advertising stands in the roads and on the land belonging to the City of Tartu was concluded between Tartu CG and JCD (Agreement 2).

The first agreement was changed by the second agreement: due to the agreement specifying the right to place 40 advertising stands on the roads and land belonging to the City of Tartu, JCD lost the right to install the 40 advertising boxes still not installed, to the bus shelters. Agreement 2 also provided that JCD would install 15 additional new bus stop shelters in the territory of Tartu under the conditions of Agreement 1 and would have the right to install advertising boxes to these shelters under the conditions of the same agreement.

Agreement 2, concluded for the period of ten years, included the same competition restriction condition as Agreement 1, i.e. that Tartu CG did not have the right to give a permit or consent to third persons to exhibit advertising posters in the so-called euro-size (118.5 x 175 cm) or similar size (size difference should not exceed 25%) or place advertising posters or stands on the immovable property or land, or on the buildings and facilities (including roads) belonging to the city, except when placing an advertising poster or advertising stand was agreed with JCD.

The Competition Authority made a conclusion during the proceedings that Tartu CG operated as an undertaking when entering into agreements with JCD, due to which § 4 of the Competition Act applies. Tartu CG is a local government unit that, on the one hand, exercises public authority, and to which, on the other hand, provisions of the Competition Act regulating the operation of undertakings may be extended if the city participates in a goods market in a similar way to undertakings, primarily by selling goods or offering services. Giving one's property to
another person free of charge or for a payment may generally be considered as providing a service. Similar to local government units, other owners may agree to the placing of an advertising stand on their land or building by entering into respective agreements with advertising companies.

§ 4 (1) of the Competition Act provides that it is prohibited to share goods markets or sources of supply, including restriction of access by a third party to a goods market or any attempt to exclude the person from the market. The Authority is of the opinion that conditions included in the agreements between Tartu CG and JCD directly restricted the opportunity of third advertising undertakings to place euro-size or similar size advertising stands on the land belonging to the City of Tartu, restricting thus the opportunity of these undertakings to compete in the outdoor advertising goods market.

It is laid down in § 6 (1) of the Competition Act that the prohibition provided in § 4 (1) of the Competition Act shall not be imposed concerning an agreement, activity or decision which:

1) contributes to improving the production or distribution of goods or to promoting technical or economic progress or to protecting the environment, while allowing consumers a fair share of the resulting benefit;

2) does not impose on the undertakings which enter into the agreement, engage in concerted practices or adopt the decision any restrictions which are not indispensable to the attainment of the objectives specified in clause 1) of subsection 1;

3) does not afford the undertakings which enter into the agreement, engage in concerted practices or adopt the decision the possibility of eliminating competition in respect of a substantial part of the goods market.

In relation to § 6 (1) (1) of the Competition Act, the Authority agreed to the statements of Tartu CG and JCD that their agreements on the installation and maintenance of bus stop shelters and the related advertising stands help to improve the provision of public transport in Tartu and allow the consumers a fair share of the resulting benefit. This complies to the condition laid down in § 6 (1) (1) of the Competition Act. Under the conditions of the agreements, JCD installed bus stop shelters and carriers of city information, both of which serve general interests, without spending public finances. Thus, in addition to the business interests of the undertaking there is also wide public interest since the City of Tartu and the population of Tartu were able to use the benefits resulting from these agreements – bus stops shelters and city information system – without any considerable maintenance costs for the city.
As regards § 6 (1) (2) of the Competition Act, the Authority assessed whether the competition restrictions in the agreements were indispensable for achieving the above mentioned positive results. The Authority came to the conclusion that the competition restrictions were necessary for JCD to install the bus shelters. There are two reasons for that. First, the competition organised by Tartu CG in 2001 for bus shelters failed and Tartu CG was able to conclude an agreement with JCD on the installation of bus shelters only after competition restricting conditions were included in the agreement. Thus, at least at the time the agreement was concluded, advertising companies were not actively ready to enter into a bus shelter installation agreement without competition restricting conditions. Secondly, the information given by JCD indicated that the business profit earned by JCD under these agreements was not higher than usual. The Authority is of the opinion that earning a profit higher than usual is one of the characteristics of restriction of competition; however, it was not the case here. JCD had had losses in spite of the competition restrictions, proving that JCD’s losses would have been even bigger without the restrictions. Considering this, no rationally behaving undertaking would have agreed to enter into the above agreements with Tartu CG without competition restricting conditions. The Authority also agreed to JCD’s viewpoints that the development and maintenance of bus shelters is considerably more expensive than that of other advertising space. The Authority, although agreeing to the necessity of competition restrictions, was of the opinion that the restrictions may be justified only during the investment, i.e. during the lifetime of bus stop shelters. Bus stop shelters depreciate within 10 years but Agreement 1, including its competition restriction, was concluded for 20 years. Thus, Tartu CG and JCD shortened the time period for the competition restriction to 10 years, as suggested by the Authority.

As regards § 6 (1) (3) of the Competition Act, the Authority assessed whether the agreements eliminated competition in a substantial part of the goods market. For the purpose of this case the Authority limited the goods market to at least the provision of outdoor advertising carriers in Tartu. The Authority came to the conclusion that other advertising channels did not belong to the same goods market as outdoor advertising carriers. However, as the agreements did not eliminate competition in a substantial part of the goods market even if the goods market was defined to be narrower, it was no more necessary to define the goods market in greater detail. The Authority took into account in its assessment that the competition agreement was applicable only to the so-called euro-size or approximately similar-sized advertising space and did not concern other formats. Moreover, the City of Tartu owns only 10% of the city’s territory and thus, depending on the area, there were other possibilities to place advertising in the territory belonging to other persons. The Authority also took into account that although other advertising
channels probably did not belong to the same goods market as outdoor advertising carriers, they could still offer some competition.

The Competition Authority terminated the administrative proceedings in May 2009 after Tartu CG and JCD had significantly improved the competitive situation in the goods market by shortening the competition restriction period in the agreement to 10 years.

**Analysis of the competitive situation in the field of public water supply and sewerage**

The Competition Authority initiated an analysis of the competitive situation in the field of water supply and sewerage in December 2008 and requested financial information from the larger water undertakings. The analysis focused, inter alia, on the economic activities of AS Tallinna Vesi (Tallinna Vesi), the largest water undertaking in Estonia, and compliance of its pricing policy with the legislation. According to the Public Water Supply and Sewerage Act (PWSSA) the price of services of supplying water and leading off waste water (water service) must be cost based.

It is laid down in § 14 of PWSSA that water service pricing is in the competence of the local government. As the price is established by a regulation, a legislative act of the local government, the Competition Authority has no power to regulate it. According to PWSSA, the Authority has no price regulator tasks to control the water service price before the price is established (ex ante) or by monitoring (ex post). On this basis, by using its experience as a regulator in similar fields of general interest, the Authority analysed the economic activities of Tallinna Vesi and compared it with the best regulation practice in the water field. The Authority tried to find an answer to the question of what would the pricing of Tallinna Vesi be like if it were regulated by an independent regulator following generally acknowledged price regulation principles. The Authority sent its analysis to the Legal Chancellor in whose competence it is to check the compliance of legislative acts, including water service pricing regulations, with the constitution and other legal acts. The Legal Chancellor came to the viewpoint that the regulation establishing the water price in Tallinn does not comply with PWSSA and the constitution. This dispute is now in the Supreme Court.

Price regulation has long traditions. A price regulation theory has developed over time and is followed by regulators in most developed countries. Side by side with this theory a regulation theory for calculating a reasonable profit has developed. Calculation of a reasonable profit as a price component of a monopolistic service is necessary for limiting the profit earned by the undertaking and avoiding a situation where an infrastructure undertaking may have an opportunity to earn excess profits on the sale of its services. Limiting the profit is also necessary because of lack of competition in the market which otherwise, due to the existence of market
economy, would ensure a reasonable profit for everyone in a natural way. Under the conditions of free market it is not possible for companies to earn excess profits because the consumers would buy the product from a competitor if the price went up. The productivity of a company operating under free market conditions can be higher than that of a monopoly but in this case it is directly the result of risks taken by the company.

Tallinn City Council approved the procedure for price regulation of the service of public water supply and leading off waste water in Tallinn with its Regulation no. 47 of 22 December 1999. The procedure foresees that the price of water service of the water undertaking must cover the following costs and elements: production costs, compliance with quality and safety and environmental protection requirements, justified profit and development of the public water supply and sewerage system. Moreover, upon privatisation of Tallinna Vesi in 2001, the undertaking agreed with Tallinn City Government on the principles for the formation of water and sewerage tariffs. The price primarily consists of consumer price index (CPI) and K-coefficient. K-coefficients were determined by the extent of investments made by the undertaking. The agreement was reviewed in autumn 2002 and the initial rapid price increase was replaced by a smoother one which was extended over a longer time period.

The Competition Authority did not understand how it was possible for Tallinna Vesi to ensure that its water service price was cost-based, as provided in the legislation and the procedure for price regulation, and at the same time perform the agreement entered into upon the privatisation of AS Tallinna Vesi which included the basis for the formation of water and sewerage tariffs (CPI, K-coefficient). The Authority found that due to the principal difference in the mechanisms for price formation included in the procedure and the agreement it was practically not possible to apply them in parallel and the two mechanisms would yield the same price only in some exceptional cases. As the Tallinn City Government had decided to follow the agreement concluded upon the privatisation of AS Tallinna Vesi, it is evident that the price regulation procedure has not been followed. Regardless of the inquiries of the Authority the Tallinn City Government did not submit any calculations for a breakdown of the water and sewerage service by price components, although it would have shown that the prices had been formed on the basis of costs and justified profitability laid down in PWSSA.

The prices of water supply and waste water discharging services have increased from year to year in the main operation area of Tallinna Vesi. On the average, the prices increased by 10.8% in 2007, by 11.7% in 2008 and by 12.8% in 2009. According to Regulation no. 75 of 30 September 2009, prices for all services were reduced by 0.9%. In 2005-2007 the change in the sales revenues and operating profit of AS Tallinna Vesi considerably exceeded the change in CPI, for example
the change in sales revenues exceeded that of CPI by 3.6 times in 2005 and by 4.5 times in 2006. The change in operating profit exceeded that of CPI by 2.7 times in 2005 and by 1.6 times on 2006. In 2008, change in sales revenues exceeded the CPI change by 1.1 times while the change in operating profit was by 1.4 times smaller than that of CPI.

In its analysis based on public data the Competition Authority did not assess in detail whether the costs of Tallinna Vesi were justified. Still, it should be underlined that a regulator performing a proper price evaluation is also obliged to perform a detailed analysis of the costs of an undertaking. Price regulation should be based only on costs and to perform such an analysis on the basis of public data is not possible. The Authority noted, however, that the fixed costs of Tallinna Vesi have increased rapidly in some periods – by 17.3% in 2007, exceeding CPI growth by 2.6 times. A regulator must analyse such rapid growth in expenses critically. As mentioned above, it was not clear to the Authority to which extent Tallinn City Government, taking into account the untraditional pricing of Tallinna Vesi, actually analyses the costs of the undertaking.

In order to assess the profitability of Tallinna Vesi the Authority first calculated its weighted average cost of capital (WACC). The calculations took account of the following: expected rate of return on 10-year German risk-free bonds, the premium on the Estonian sovereign risk, risk premium on the undertaking’s debt capital, market risk premium and sector risk. The calculations showed that the WACC of Tallinna Vesi was 8.31%.

The Competition Authority then evaluated the pricing of Tallinna Vesi by the method of rate of return on investment, a method widely used in the price regulation of various industries. Economic theories have also proved that this method is adequate for assessing whether the profit of an undertaking is justified. The Authority’s calculations showed that the value of assets invested by Tallinna Vesi in 2007 amounted to 2,235,956 thousand kroons, comprising the residual value of fixed assets and the modified total operating capital. The undertaking’s residual value of fixed assets amounted to 2,234,036 thousand kroons in 2008. Its operating profit was 377,362 thousand kroons in 2007 and 405,360 kroons in 2008. Calculations based on these figures showed that rate of return on investments was 16.9% in 2007 and 18.1% in 2008.

The above calculations indicate that the rate on return of Tallinna Vesi on investments in 2008 (18.1%) was significantly higher (18.1/8.31=2.18 times higher) than the weighted average cost of capital (8.31%) which is taken as the basis when calculating justified rate of return. In 2008, the rate of return of AS Tallinna Vesi on investments was by 2.8 times higher (18.1/6.5=2.8 times higher) than the average rate of return on investments of water supply and sewerage companies in England and Wales and by 2.5 times higher (18.1/7.3=2.5) than the rate of return on investments of the water company United Utilities (a shareholder in AS Tallinna Vesi).
The Authority found on the basis of the above analysis that the prices of water services provided by Tallinna Vesi would be considerably lower if they were regulated by a price regulator and based on internationally recognised principles. The analysis of the Authority was actually a simulation showing the pricing of Tallinna Vesi in the above described situation. It follows logically from these facts that the Tallinn City Government, when regulating the pricing of AS Tallinna Vesi, has not acted as a regulator following internationally recognised principles. The price regulation mechanism arising from the privatisation agreement of Tallinna Vesi and used by the Tallinn City Government has not given the results of a proper price regulation mechanism. The rate of return of this undertaking has been too high for a monopoly and the interests of consumers which are in the centre of any price regulation, have not been properly protected.

On 30 November 2009, based on its analysis, the Competition Authority made a recommendation to AS Tallinna Vesi to bring the pricing of its services in compliance with the legislation. Based on § 61 of the Competition Act it was recommended that Tallinna Vesi should address the Tallinn City Government for bringing the price of water supply and waste water discharging service in compliance with the legislation.

Proposal to sell over-the-counter medicines outside pharmacies. Support to abolishment of restrictions on establishment of pharmacies

In relation to the proceedings related to concentrations in the pharmacies market, the Competition Authority made a more detailed analysis of sale of pharmaceuticals in Estonia and assessed the impact of the rules governing these activities on competition.

The Authority found, taking into account the marketing practice of over-the-counter medicines that selling such medicines exclusively in pharmacies was no more justified. Many pharmacies have developed into self-service pharmacies – customers can take pharmaceuticals from open shelves themselves without any prior advice from the pharmacy staff, similar to choosing food products and primary consumer goods in a food store. However, so far the only reason given why over-the-counter medicines should be only sold in pharmacies, is the advice given by the pharmacy staff. Self-service pharmacies also indicate that the awareness of the consumers has grown. Consumers are now able to find the necessary over-the-counter medicine on the shelf. Therefore, from the consumers’s perspective it is not necessary any more to restrict the sales by giving an exclusive right to pharmacies. The Authority came to the conclusion that this unjustified and unnecessary restriction to entrepreneurship is excessive and places obstacles to free competition.
A more lenient organisation of the sale of over-the-counter medicines would give impetus to competition and would have a positive impact on the product mix and general price level of over-the-counter medicines. If new sellers of medicines come to the market, it will put pressure on the present concentrated market structure where two undertakings practically hold 80-90% of the marketing of pharmaceuticals in Estonia (import → wholesale → retail sale in pharmacies). Based on the practice of other countries, supermarket chains selling food and primary consumer products and petrol stations could be alternative over-the-counter marketing channels. Those chains have strong purchasing power and should have the same position in negotiations with pharmaceutical companies as the current larger wholesalers of pharmaceuticals. Larger supermarket chains have their own logistics centres for purchasing and distributing the goods between the outlets. This centralised purchase model makes it possible for many producers to sell their products directly to the retail seller. If it were possible to sell over-the-counter medicines in the supermarket chains, most probably a direct scheme (producer → retail seller) would be used, leaving out the wholesaler. Such practice would put more pressure on the wholesalers of pharmaceuticals currently operating in the market and would motivate them to purchase cheaper over-the-counter medicines. The Competition Authority found that product-specific competition would be possible, thanks to the wide choice of pharmaceuticals, different price level of similar medicines and lack of many pharmaceuticals in Estonia. Competition is technically possible if the new retail sellers of pharmaceuticals will not only use the services of Estonian wholesalers but also direct and parallel imports as an alternative.

In order to support its viewpoint the Competition Authority studied the practice of other European countries in the marketing of over-the-counter medicines. The replies sent to the Authority showed that such medicines were sold outside pharmacies in the following countries: Bulgaria, Netherlands, Norway, Poland, Sweden, Germany, Finland, Denmark, Czech Republic, Hungary, UK. These countries also submitted lists of over-the-counter medicines sold outside pharmacies. The Authority also commissioned AS EMOR to conduct a survey on the availability of over-the-counter medicines in smaller settlements. The survey mapped all possible barriers to the availability of such medicines. The results showed that the most frequent obstacle to the availability of over-the-counter medicines was price – almost half of the respondents mentioned this factor. About one quarter of the respondents were of the opinion that location and opening hours of pharmacies were an obstacle. The attitude to sale of over-the-counter medicines outside pharmacies in outlets holding a respective permit was rather positive than negative. 58% of all respondents had a positive or rather positive attitude and 37% a rather negative and very negative
attitude. The attitude was more positive in South-Estonia where pharmacies are on the average at a greater distance.

As regards its viewpoint to abolish restrictions on the establishment of pharmacies, the Authority reasserted its position when the draft for the amending act of the Medicinal Products and Narcotic Drugs and Psychotropic Substances and Precursors Act was sent for opinions by the Ministry of Economic Affairs and Communications. The Authority indicated that according to the statistics collected by the State Agency of Medicines the restrictions set out in § 42¹ of the Medicinal Products Act have not fulfilled their purpose — to ensure a more even distribution of pharmacies over the country. Since 2006 the number of general pharmacies has decreased by 4.8% in cities and by 11.5% in the countryside. Thus, contrary to the purpose of the restriction, access to the pharmacy service has become more uneven, i.e. the distribution of pharmacies over the country has changed even more to the benefit of cities. The Authority is of the opinion that such competition restriction can not even theoretically function as intended. The explanatory letter to the draft of the Medicinal Products Act states that investors will decide to open pharmacies in the countryside if no more pharmacies can be opened in urban areas due to administrative restrictions. In reality, investors’ decisions are based on how must return a business plan may yield and not on the fact that implementation of another business plan is administratively hindered. If a pharmacy in the countryside is economically not viable, it will not come into being and the opportunity to open a pharmacy in an urban area has no significance for this decision. The Authority’s position is that the restrictions set out in § 42¹ of the Medicinal Products Act for the issue and alteration of an activity licence for a general pharmacy are unnecessary and do not fulfill the intended purpose.

Unfortunately no changes had taken place in the regulation of the two competition restrictions concerning medicinal products by March 2010. There are still restrictions to the freedom of establishing a pharmacy and pharmacies still have the exclusive right to sell over-the-counter medicines.
RAILWAY AND ENERGY REGULATORY DIVISION IN 2009

Ensuring stable conditions in the electricity, district heating and natural gas market for the consumers is one of the main tasks of the Railway and Energy Regulatory Division. The work of the division is governed by the principal legal acts regulating the energy and railway sector: the Electricity Market Act, the Natural Gas Act, the District Heating Act, the Liquid Fuel Act, and the Railways Act.

Compared to 2008, fuel and energy prices were more advantageous both for the consumers and undertakings in 2009. Due to the lowering of natural gas and shale oil prices, heating prices went down considerably, on the average by 35-40%. The Competition Authority monitored price changes in the fuel market continuously and checked if the maximum prices for heat were cost-based. Electricity, gas and district heating sectors depend directly or indirectly on the price of crude oil in the global market (Figure 1).

USD/barrel

![Figure 1: Change in crude oil price from March 2009 to March 2010](source: www.finanzen.net)

FIGURE 2. Change in crude oil price from March 2009 to March 2010

The figure shows that the price of crude oil fell by about 43% in the period July 2008 - 1 January 2010. As a result, the price of natural gas dropped as well and was considerably lower in 2009 than in the second half of 2008. The lower price of crude oil and changes in currency exchange
rates have an impact on the consumers of natural gas and the district heating service in Estonia. These changes do not directly affect the consumers of electricity because electricity is mostly generated from oil shale.

The Authority can influence the price of natural gas only by regulating the price of network services. However, network service costs for a standard district heating boiler house working on gas form are only less than 10% of the end price. For a household gas consumer the respective figure may vary between 10% and 20%. This may be compared with the share of network service in the end price of electricity for a household consumer – up to 60%. It shows that the Authority has an important role in the pricing policy for the consumers also under the conditions of a free electricity market.

The pricing of a network or infrastructure service depends primarily on the local economic conditions, such as the need for investments, change in the prices of goods and services in accordance with household inflation and technical efficiency. Thus, infrastructure service fees have no relation to changes in the global fuel price, the prices of these services are stable and as a rule lower than inflation. It is provided for in the current legislation that an invoice submitted to the consumer by an undertaking must separately show the cost of the used infrastructure services and the cost of energy or fuel, so that every consumer can see the different components in the invoice.

In accordance with the EU directive 2003/55/EC concerning common rules for the internal market in natural gas, and 2003/54/EC concerning common rules for the internal market in electricity, all electricity and gas consumers must be ensured free access to the network. It means that consumers have the right to choose the electricity or gas seller themselves and to shift to a new seller, if desired. Estonia has a transition period as regards the opening of the electricity market until 2013. Estonia opened 35% of its electricity market in 2009, as a result of which larger industrial consumers can themselves choose a suitable electricity seller or producer. An electricity exchange was opened in 2010, making it impossible for eligible consumers to buy electricity for a regulated price. Estonia had no transition period for the gas market and all consumers have had the right to choose their gas seller as of 1 July 2007.

§ 66 (10 ) of the Alcohol, Tobacco and Fuel Excise Duty Act sets out that the excise tax for natural gas is 367 kroons/th m³ as of 1 July 2009. Moreover, since May 2007 all consumers of electric energy pay the fee for supporting renewable energy sources and co-generation plants, amounting to 2.18 s/kWh in 2007, 3.03 s/kWh in 2008 and 6.07 s/kWh in 2009. VAT is added to this price for the end consumer.
Establishment of co-generation plants of thermal and electrical energy in Tallinn and Tartu was an important milestone. Both 25 MW plants operate on peat and wood and considerably contribute to a more stable heating price and improvement of the security of supply of electricity. In addition, a wind farm at Aulepa was put in operation. This wind farm with its power of 39 MW is the largest in the Baltic countries and helps to increase the share of renewable energy sources in the energy balance.

The railway and energy regulatory division made 284 decisions and 1 precept in 2009. The number of decisions was most of all affected by the declining prices of gas, shale oil and woodchips, but also changes in the price of electrical energy. The co-ordination process of prices is the most labour-intensive. As of 2009, the Authority performs supervision over undertakings in the following fields: electricity transmission network (1), electricity distribution networks (39), natural gas transmission network (1), natural gas distribution networks (27), district heating undertakings by network regions (50), electricity and heat cogeneration, oil shale mining (3), railway undertakings (30).

**Regulation of electricity network operators**

To the cost price of electricity generated by AS Narva Elektrijaamad (Narva Power Plant) the sales and service costs of Eesti Energia AS (Eesti Energia) are added. This becomes the weighted maximum average price for electricity needed to fulfill the obligation of selling electricity. To the electricity price the network price, fee for renewable energy and excise tax are added, all of which make up the price for the end consumer. If electricity is sold in a closed market under a selling obligation to consumers who are not eligible consumers, the weighted maximum average price for electricity must be approved by the Competition Authority. Network service prices must be approved by the Authority both as regards consumers in a closed market and eligible consumers.

Indexation of electricity network prices of Eesti Energia Jaotusvõrk OÜ was continued in 2009. Since 2005, network prices of electricity are approved for a three year period and are changed every year in accordance with the consumer price index (CPI). Our experience shows that indexation has been successful, and will be continued in the future. The second regulation period started on 1 March 2008 and lasted until 1 March 2010. For Fortum Elekter AS the new regulation period started on 1 January 2010.

**Approval of the prices of AS Narva Elektrijaamad and Eesti Energia AS**

The price of electricity sold by Eesti Energia has decreased on the average by 6.4% since 1 August 2009. This is due to Regulation no. 36 of 9 September 2009 of the Minister of
Environment on the requirements for establishment, use and closing of landfills. The regulation abolished the fivefold coefficient for Narva Elektrijaamad for ash disposal since the ash disposal landfill now meets the requirements. Thus, the costs of ash disposal have decreased. The reduction of environmental fees by almost 300 million kroons made it possible for the undertaking to lower the electricity price.

**Price regulation for natural gas undertakings**

The Estonian Parliament adopted the amended Natural Gas and District Heating Act on 10 June 2009. By the amended act, sellers of natural gas do not need any more an approval of the Competition Authority for the maximum price of natural gas sold to household consumers. All sellers of gas have to publish the selling prices of gas and to inform the consumers at least one month before the prices are applied. However, this did not change the obligations of network operators by which all network operators must publish the approved prices for their licence territory and inform the consumers in their licence territory at least three months before the prices are applied.

The obligation to approve the selling price of gas sold to household consumers applies only to the undertaking in a dominant position as AS Eesti Gaas. The gas undertaking in a dominant position shall set the price of the gas to be sold to household customers based on the principle that the weighted average price of the gas to be sold contains the price of the gas bought into the state and the sales margin added thereto. In addition, the gas undertaking in a dominant position on the market shall buy gas in compliance with good business practice and at the lowest possible price. The gas undertaking in a dominant position on the market shall seek the approval of the Competition Authority for the maximum rate of the sales margin. The maximum rate of the sales margin shall cover the costs incurred in the sale of gas and ensure justified profitability. In order to calculate the maximum price the Competition Authority has developed a standard methodology for calculating the maximum sales margin on gas sold to household consumers. This methodology is published on the Authority’s website. The Authority approved the maximum sales margin on the selling price of gas sold to household consumers on 1 October 2009. If the weighted average price of the gas sold during a calendar year differs from the weighted average buying-in price of gas of the same period, whereto the sales margin has been added, AS Eesti Gaas shall settle the accounts relating to the price difference with the customer within three months and shall submit the corresponding statement to the Competition Authority not later than by 1 May each year. The settlement of accounts shall be reported as a line item in the gas sales invoice.
Price regulation for district heating undertakings

The District Heating Act sets out that a local government has the right to determine district heating regions within the boundaries of its administrative territory. Only district heating may be used in a district heating region (except for persons who did not use district heating at the time a district heating region was established) and the consumers may not choose an alternative way of heating (e.g. local electric heating, geothermal heating, stove heating, etc.). Thus, a district heating undertaking is in a dominant position. The Competition Authority is of the opinion that more efficiency has to be achieved in usage of fuels. As the larger groups, such as AS Eraküte and Fortum Termest AS, operate several network regions in Estonia and in accordance with § 8 (3) of the District Heating Act the maximum price of heat must be set for each network region, separate price analyses and decisions for price approval were made for the network regions of both undertakings. Most maximum prices of heat were calculated on the basis of a formula which, on the request of a heating undertaking, is used for the approval of the maximum heat price if factors which are beyond the control of the heating undertaking and which affect the price of heat become evident (especially if fuel prices change).

Changes in the service region of AS Tallinna Küte

The Authority established a new service region for AS Tallinna Küte (Tallinna Küte) as of 1 May 2009 – the single Tallinn network region. In accordance with the changed activity licence also the former service regions of AS Eraküte in the city of Maardu and in various districts of Tallinn now belong to the Tallinn district heating region. As a result of the expansion of its activities, the service region of Tallinna Küte changed as of 1 May 2009 and the undertaking now provides services also to customers who live in the regions added to the undertaking’s existing service region and who were formerly the customers of AS Eraküte. The single network region made it necessary to streamline the costs and to ensure reliable, efficient supply of heating meeting the environmental requirements and needs of the consumers in all network regions. In addition, the maximum price of heat was levelled off in the region to avoid large gaps in the heat price for consumers living not far from each other. The figure below shows the dynamics of heat prices of AS Tallinna Küte (Figure 3).
Almost 46% of the heat sold by AS Tallinna Küte is produced in its own boilerhouses. The rest is bought from Iru Power Station of Eesti Energia, Tallinn Power Station (both working in cogeneration regime) and other smaller heat producers. Tallinn Power Station operates on the basis of local fuel, enabling to reduce the dependence on natural gas. The power station was connected with the district heating network of AS Tallinna Küte in 2009. As a result the amount of heat purchased from Iru Power Station has declined. However, it is so only if the price of heat purchased from Tallinn Power Station is lower than that sold by Iru Power Station. If the heat price of Iru Power Station is lower (as a result of a significant decline in the price of natural gas) than the price of heat produced by Tallinn Power Station, AS Tallinna Küte will have to take the price of heat produced by Iru Power Station as a basis for its own price formation. However, today the price of heat produced at Tallinn Power Station from wood chips is cheaper than the heat produced at Iru Power Station.

Reviewing of activity licence applications. Decisions and directives

79 electricity undertakings\(^1\), 28 gas undertakings and 27 heating undertakings are holders of activity licences issued on the basis of acts regulating the energy sector – the Electricity Market

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\(^1\) Two electricity undertakings are holders of formal activity licences but have in reality transferred their activities. These undertakings have not been included in the above figures.
Act, the Natural Gas Act and the District Heating Act. In general undertakings have been issued several activity licences for operating in various fields (e.g. in co-generation, activity licences have been issued for the production of electricity and heat and for selling heat). Also, the market licences issued pursuant to the Energy Act\(^2\) to four electricity undertakings and two district heating undertakings are still valid.

In 2009 the total of 47 decisions were taken as regards activity licences and 16 directives were issued in the railway sector in respect of activity licences granted under the Railway Act. The number of producers generating electricity from renewable sources increased. The most important change in the railway sector was the division of AS Eesti Raudtee into AS EVR Infra and AS EVR Cargo on 14 January 2009. AS Eesti Raudtee became a holding undertaking and, as a result of the division, transferred a part of its assets to the undertakings that started to operate independently in the market. The division took place mainly because of the necessity to ensure separate accounts for the revenues and costs of the undertaking providing cargo transport services and the undertaking operating the railway infrastructure. Due to the lack of separate accounts for revenues and costs there had been many disputes concerning fees for the use of railway infrastructure in previous years. In 2009, since separate accounts had been put in place, the Authority did not receive any more complaints on this issue.

**Disputes between market participants**

Resolving of disputes between market participants is set out in the Electricity Market Act, the Natural Gas Act and the District Heating Act. The aim of resolving complaints submitted by market participants is that a market participant can address the Competition Authority instead of the court. The Authority will make the decision sooner than the court – within 90 days as of submission of the complaint.

The Authority made 12 decisions on complaints in 2009 (11 cases concerned the electricity sector and 1 case the railway sector). The number of replies to complaints and information requests was 208; and one precept was made. In order to ensure the electricity consumers their rights by law, the Authority constantly monitors the methodologies used for calculating connection fees, the standard terms and conditions and other aspects set out in the legislation. In 2009, 28 decisions were proceeded and made as regards the methodologies for connection fees (5) and standard terms and conditions (23).

\(^2\) The Energy Act was repealed on 30 June 2003 and was replaced by the Electricity Market Act and other acts.
Correction of natural gas quantities

At the end of 2008 and in 2009, based on § 231 of the Competition Act, several gas undertakings sought the approval from the Competition Authority for changes in the standard terms and conditions of their network contracts. The main change to be introduced was the principle that a gas undertaking will be entitled to mathematically correct the amount of consumed natural gas according to the temperature so that it complies with the terms of the agreement, or to replace the gas meter of a consumer by a gas meter that automatically corrects the amounts of gas. Gas undertakings applied for this change because, if the consumed gas temperature is different and not corrected, it would not be possible to ensure the balance between the quantities of gas entering and leaving the network.

In order to determine the need for correcting natural gas quantities it would be necessary to investigate the whole supply chain for natural gas from the importer to the end consumer. The importer purchases gas at the border for an agreed price. Regardless of the external temperature around a gas pipe in open air, be it -30 ºC or +30 ºC, the temperature of gas inside the pipe is measured at all times and a meter automatically corrects it. Thus, as theoretically shown by calculations, an importer purchases gas at the border at the temperature of +20 ºC and at the pressure of 1.01325 bar. The same procedure is followed when gas is transferred from the network of an undertaking to the network of another. In other words, the temperature is measured at all times notwithstanding the surrounding conditions and, in accordance with the calculated correction coefficient, gas is sold in the transactions between the network operator and eligible consumers at a theoretical temperature of +20 ºC and at a pressure of 1.01325 bar. All corrections are made continuously and automatically by a meter. In order to ensure the balance of quantities of natural gas entering and leaving the network, a small network operator would have to resell its gas to household consumers after making exactly the same corrections. However, changes in the agreed terms have to be applied to the whole supply chain from one end to the other. If corrections are not made at even one point of ownership change, the whole chain will be disrupted, meaning that when gas enters the network of a network operator, its quantity will be corrected and seemingly raised to +20 ºC. If a small network operator has no means to correct the quantities of its gas when gas leaves its network, it will sell gas in smaller quantities compared to the quantities bought (balance is not ensured).

The Competition Authority came to the conclusion that it is necessary to ensure precise calculations of natural gas quantities. This requirement is also set out in the Natural Gas Act. On this basis the Authority decided to approve the standard terms and conditions of gas undertakings, including the opportunity and the principles for correcting the quantity of gas. The
Authority also noted in its decision on the approval of the standard terms and conditions for gas undertakings that corrections to the quantities of gas may be made mathematically or by using a specific meter. Replacing the current meters is an economic issue and it is evident that replacing all the meters for all consumers simultaneously is not possible. Thus, the Authority is of the opinion that network operators have to use meters with a correction device in order to avoid an imbalance caused by differences in temperature, and if this is not economically feasible now, to use upon an agreement with the consumer, a mathematical correction equivalent to a meter with a correction device. Therefore a practice has developed by which small network operators, when purchasing gas for their networks, apply corrections which are based on the monthly average of gas temperatures measured by AS Eesti Gaas. These undertakings then apply this correction equivalently in respect of all their consumers. Consumers who are not satisfied with the application of average coefficients and wish the precise environmental conditions in their location to be taken into account, may request the network operator to install a meter with a correction device. Correction of natural gas quantities by a mathematical formula is not allowed if a meter with a correction device has been installed for the consumer. It is important that the consumer has the right to request the use of a meter with a correction device. However, pursuant to the measuring obligation set out in the Natural Gas Act a network operator shall ensure that all quantities of gas which enter or leave its network are measured even if no agreement is reached with the consumer on the use of mathematical corrections. In that case the network operator will be entitled to replace the meter without a temperature corrector by a meter with a correction device.

Refusal to approve the price request of AS Fortum Tartu

The Competition Authority refused to approve the heat price of 814 kr/MWh submitted by Tartu Keskkatlamaja AS, the largest district heating undertaking in the city of Tartu. In November 2009 the undertaking sold heat for the price of 640.48 kr/MWh. Therefore, if the Authority had approved the new price, it would have increased the price by 27% for the consumers.

The undertaking stated that a price rise was justified by a change in producing process to co-generation of heat and electricity at the plant of AS Anne Soojus. Heat and process. Heat can be separately produced in boilerhouses where the only product is heat. Electricity can be produced under a condensation regime specifically installed in a power station for that purpose. Electricity and heat may be produced together with the help of a co-generation device. In that case, heat and electricity are produced simultaneously in a co-generation process.
If only heat is produced in a boilerhouse, a relatively high efficiency is achieved – 90%-95% for natural gas and 85%-90% for woodchips and peat. When electricity is produced under a condensation regime, a considerably lower efficiency is attained – not over 40%. For example, the efficiency factor of electricity generated in Eesti Elektrijaam under the condensation regime is only 32%, meaning that 68% of the energy is lost. This is a law of physics because when the heat generated during electricity production is not used but is directed to the condenser and cooled off, a significant part of the energy will be lost. Therefore, co-generation is the most feasible way of production both in the economic and environmental aspects.

In the case of co-generation which yields two products simultaneously, the efficiency factor of the whole cycle (showing how much of the process energy was used) is rather high. This factor amounts to 90% for gas engines, 86% for AS Anne Soojus co-generation plant and 95% for heat produced by flue gas scrubber. Thus, energy loss compared to the condensation regime is small.

For heat consumers there is no benefit when heat is produced in a co-generation plant and there is no environmental benefit from the efficient use of energy because even higher efficiency of heat production may be achieved in a boilerhouse. If AS Anne Soojus produced only heat in a boilerhouse, using the same fuels (wood chips and peat), the efficiency factor would reach 85-90%. A co-generation process of combined electricity and heat production (the whole cycle) would have an efficiency factor of 85-86%. Co-generation gives the economic, energy efficiency and environmental benefit in electricity production because a condensation process would only have a 40% efficiency. If the same quantities of heat and electricity were produced in a boilerhouse (only heat production) and in a condensation process at a power plant (only electricity production), it would be inefficient to produce electricity because almost 60% of it would be lost. Production of heat, however, is efficient in both processes.

Therefore it is highly important to consider heat production on an equivalent footing with electricity production and ensure that co-generation does not harm the interests of heat consumers. The distribution of costs between electricity and heat should ensure equal treatment for both and prevent cross-subsidiation between these two activities. For this it would be necessary to calculate the price of heat as if it were produced in a boilerhouse instead of co-generation. As mentioned, production of heat in a boilerhouse is as efficient and environmentally friendly as the production of heat in a co-generation process.

Pursuant to § 1 (2) of the District Heating Act a district heating undertaking has to ensure a secure, reliable and effective heat supply at a justified price in compliance with environmental requirements and the needs of the final customer.
The Authority is the opinion that the heat consumers for whom AS Fortum Tartu as a group is an undertaking in a dominant position and who can not choose an alternative heat source, must not financially suffer if co-generation is used. The price of heat sold to the consumers may not be higher than the price of heat produced in a boilerhouse.

Co-generation by using local fuels is absolutely justified as it brings about energy conservation. However, the introduction of modern co-generation technology, the accompanying energy conservation and use of local fuels should also have a benefit for heat users and not only for electricity generation.

**Precept to Eesti Energia Jaotusvõrk OÜ**

The Competition Authority initiated proceedings in respect of Eesti Energia Jaotusvõrk OÜ (hereinafter distribution network), in order to check whether the undertaking’s activities comply with the Electricity Market Act. § 67 of this Act sets out that the distribution network has to ensure that measurement data are collected and then processed by means of metering devices conforming to the technical requirements.

A TV programme of the Estonian national television alleged on 9 September 2009 that the verification period of devices used by the distribution network electricity meters had expired. Thus, it appears that the distribution network has not installed devices conforming to the requirements of legislation to determine the amounts of electricity transmitted through its network. The distribution network told the Authority that it really had some meters in use whose verification period had expired, justifying the situation by the fact that the planned transfer to smart-meters (remote reading meters) had been postponed by a decision made in September 2008. The distribution network intended to solve the problem of meters whose verification period had expired and would yet expire, under the planned transfer to smart-meters. Hence, due to economic reasons, it did not intend to replace the meters whose verification period had expired. The undertaking informed the Authority that readings of meters whose verification period had expired were still taken at about 54,000 metering points as of the end of 2009. The distribution network also submitted a draft project to the Authority specifying how it intended to terminate its violation of legislation – planning to do it by the end of 2011 at the latest. The Authority did not agree to this plan and made a precept on 30 October 2009 to end the violation, the date of compliance being 1 August 2010. The Authority will check by that date whether Eesti Energia Jaotusvõrk OÜ has complied with the precept.
DEVELOPMENTS IN ELECTRONIC COMMUNICATIONS MARKET

Compared to other sectors, the electronic communications sector has coped relatively well with the economic crisis. The 2009 turnover of the sector was almost the same as in 2008. Communications undertakings have a somewhat better situation than undertakings in other fields because their periodic cash flows for services are rather stable and make it possible to continue their activities.

The estimated turnover of telecommunication services of undertakings operating in the electronic communications market amounted to 11.2 billion kroons in 2009, being only by 1% lower than in 2008. The turnover was negatively affected by a decrease in sales of interconnection and telephony services but the total turnover got a boost from an increase in volumes of data connection service and other supplementary services.

When the economic conditions are tough it is important to ensure effective competition to support the sustainability of the electronic communications sector. However, any regulatory intervention of the Competition Authority must be well justified since excessive measures may even hinder the sector’s development. Nevertheless, the data for 2009 show that regulatory intervention is necessary and justified in several electronic communications markets and the applied measures have helped to improve the competitive situation. Regulatory intervention also supported stability of prices at the time of rapid economic growth when CPI increased fast.

FIGURE 4. Changes in price indices

The following developments took place in the electronic communications market in 2009:
- continuing decrease in telephony services;
- decrease in interconnection services turnover;
- continuing increase in data communication service and mobile data communication service;
- stabilisation of volumes of mobile telephone service and cable television service.

The electronic communications market comprises eight segments: telephony, mobile telephony, data communication, leased line, interconnection, access, cable television and other services, including broadcasting and radio communication.

The total turnover of telephony services continued to decrease, falling by 14.6% compared to 2008. The share of telephony service in the total turnover of the electronic communications market dropped from 13.8% to 12%. The larger service providers were Elion Ettevõtted Aktsiaselts (Elion), Tele2 Eesti AS (Tele2), Elisa Eesti AS (Elisa) and AS Starman (Starman). The number of users of telephony service decreased by almost 10,000 consumers in 2009. The retail market for mobile telephone service also had a small decline. The number of end users of this service fell by 3.3%. Thus, it may be concluded that the rapid development phase for mobile telephone service had ended and the market has reached the stage of a developed market where redistribution of the customer base between service providers takes place. The economic crisis also had its impact, as a result of which end users have reviewed their mobile telephone service costs.

The interconnection market comprises interconnection services for the fixed and mobile telephone networks. This market’s turnover in the total turnover of the electronic communications market fell by 2.4% while the turnover of interconnection market even dropped by 16.2%. Due to the regulatory intervention of the Competition Authority the continuing
decrease in call termination fees in mobile telephone network had a significant impact on the
decrease in interconnection turnover. The access service market made up a very small part of
the turnover of electronic communications market – only 0.1%. Its total turnover has, however,
increased due to an increased number of end users of the access service. The retail market of the
data communication service witnessed continuous growth in the number of end users of
internet broadband service – by 7%. Turnover of this service increased even by 10%. However,
compared to previous years the number of end users increased at a slower pace, most probably
due to the economic crisis. The market for leased line service is one of the smallest in the
electronic communications market. Consumption in this market stayed on the level of 2008.
Cable television market had previously been one of the fastest growing markets but in 2009 its
turnover fell by 3%. This is probably a temporary standstill caused by the economic crisis because
undertakings are making investments in cable television networks in order to expand the
coverage and to offer the consumers new and higher quality services.

Developments in data communication market

Data communication service retail market is a rapidly growing and developing market. As of 31
December 2009, the retail market comprised 82 active service providers, of whose the largest
were Elion, Starman, AS STV (STV) and Televõrgu AS. The number of end users of broadband
service (without mobile broadband) increased by 7% compared to 2008. Elion, STV and Starman
brought service packages to the market, offering downloading speed of up to 100 Mbit/s.

![FIGURE 6. Broadband use by technologies in 2004-2009.](image)

In this market competition increased mainly between undertakings with a network infrastructure.
The larger service providers were: Elion that mostly provided the ADSL service, and cable
television undertakings Starman and STV that provided the broadband service via cable modems
or fibre-optic cable network. 82% of the end users use the broadband service of Elion, Starman and STV. The market shares of these undertakings did not change in 2009. In 2009, the Authority started to collect data on the number of mobile broadband service users using this service mainly to access internet via a computer (via data communication terminals, USB modems, etc.). Mobile broadband connection makes competition for fixed data communication increasingly tighter since the service prices and connection speeds are equal to and sometimes even better than the prices of fixed data communication connection. Full replacability is still hindered by volume limitations and quality problems concerning the connection speed.

In the broadband service market services were bought mainly via telephony network, fibre-optic cable network and cable television networks. It is estimated that 53% of households used the broadband service as of the end of 2009.

![FIGURE 7. Change in number of broadband service end users in 2004–2009.](image)

More and more end users use services in parallel (broadband service, telephony service, cable television service, mobile telephone service). This has considerably increased the popularity of packages of communication services where at least two communication services are used for the same monthly fee. At the end of 2009 almost 64% of the broadband service end users used such a package. The price of such packages is often more attractive than the price of the broadband service separately.

**Data communication wholesale markets** consist of two parts: market for access to local loop and market for access to broadband. The Authority has found that Elion is an undertaking of significant market power in these markets. Obligations concerning access, equal treatment, transparency and price were applied to Elion’s services in 2007. The number of access lines given into the use of other service providers increased in 2009. The turnover of access services increased by 63% compared to 2008 (mainly due to the fact that Elisa’s access service turnover was previously not shown apart from turnover from other source).
Developments in cable television service market

In 2009, 17 undertakings operated in the cable television service (including IPTV service) market, the largest being Starman, STV and Elion. Elion’s entry to the market in 2005 accelerated increase in the number of end users in this market which so far had been rather stable, as well as the development of the market. This process continued in 2009 in relation to the transfer to digital television. The number of cable television service end users grew by 4% in 2009 (by 13,000 end users). This brought about some changes in the market shares of service providers.

Developments in mobile telephone service market

The aggregate data for 2009 for the retail market of mobile telephone service showed a rather stable market. However, the fierce fight among the three larger operators for customers makes this market one of the most competitive in the electronic communication sector. In 2009 there
were three network operators in the mobile telephone service market: AS EMT (EMT), Tele2 and Elisa; two virtual mobile telephone service providers: ProGroup Holding OÜ and Top Connect OÜ; and two re-sellers of services (OÜ Infosoft Pluss and Bonatel Mobilsideteenused OÜ). By the end of 2009 the number of end users did not increase any more. The number of post-paid users dropped by 0.3% compared to 2008 and the number of prepaid users decreased for the second year in a row and fell by 9% (Figure 13).

![Graph showing the change in the number of mobile telephone post-paid and prepaid users in 2001–2009.](image)

**FIGURE 10.** Change in the number of mobile telephone post-paid and prepaid users in 2001–2009.

![Graph showing the density of mobile telephone service end users per 100 inhabitants in 2001-2009.](image)

**FIGURE 11.** Density of mobile telephone service end users per 100 inhabitants in 2001-2009.

Mobile telephone service is still the call service most preferred by end users. Calls initiated in a mobile telephone network form 60% of all initiated calls; only 40% of the calls come from the fixed network. Due to the development of mobile data communication services and 3G/3.5G networks the consumption of data communication services via GPRS ja 3G/3.5G networks upsurged considerably in 2009. The main developments as regards the provision of this service are:

1) operators significantly expanded their 3.5G network coverage;

2) EMT increased mobile internet speed up to 21 Mbits/s;

3) Elisa and Tele2 started to offer mobile-ID service in addition to EMT in 2009.
The market shares of undertakings in the mobile telefone networks interconnection market are more equally divided than the shares in the telephone interconnection markets, probably due to stronger competition in the retail market for mobile telephone service. Compared to 2008 the number of terminated call minutes in mobile networks (including calls taken from fixed networks and international calls) increased by 2%.

The maximum price for termination of a voice call, as established by the Competition Authority, is 1.36 kr/min as of July 2009 (previously 1.37 kr/min). The price is currently slightly higher than the EU average but, as a result of the used price methodology (based on the European average), it will again come down to the EU average in the first half of 2010.

Source: ERG.

**FIGURE 12. Mobile telephone networks interconnection prices in the EU (kr/min).**

On 18 June 2009 Regulation no. 544/2009 of the European Parliament and Council, amending regulation (EU) no. 717/2007 on roaming in public mobile telephone networks (hereinafter Regulation) in the European Community was adopted. The text is applicable in the whole European Economic Area\(^3\) (EEA). The Regulation ensures that users of mobile phones do not have to pay, while travelling in the EEA, an excessive price for roaming compared to the domestic prices. Roaming means making and receiving a call, sending and receiving SMS and data communication service. The Regulation established rules for charges or the so-called Eurotariffs which mobile communication operators may take for providing a roaming service in the EEA if the use of such service originates and terminates in the EEA. The Regulation is applicable to the

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charges taken between network operators on the wholesale level and to the charges of the home operator on the retail level. The retail charge of Eurotariff (without VAT) which a home service provider may take from its roaming customer for a regulated roaming call may differ for each roaming call but may not exceed the maximum prices in the periods shown in the table below.

Any regulated roaming calls made or received to which the Eurotariff is applied, are subject to per second billing by home service providers from 1 July 2009. As an exception, a home service provider may apply the minimum call tariff to the calls made to which the Eurotariff applies, within the first 30 seconds of the call. The transfer to per second billing has so far been the most extensive change in making prices more transparent and lower. Control activities of the Authority have shown that Estonian service providers have so far well adjusted to the amendment.

From 1 March 2010 all home service providers must provide an option to their roaming customers to choose knowingly and free of charge a mode to receive information on their previous consumption either in terms of volume or in the currency of the invoice for regulated roaming services, ensuring that the total costs of regulated roaming services do not exceed a certain predetermined maximum sum, unless the customer has given his or her express consent. For this, a home service provider must offer one or several cut-off limits for a certain period, presuming that the customer has previously been informed of the corresponding data volumes. One of these cut-off limits (default limit) for the monthly accounting period must be about 50 euros (782 kroons) (without VAT) and may not exceed it.

As of 1 July 2010, the default limit mentioned in the second and third paragraph is applied to all customers who have not chosen another cut-off limit. Moreover, every home service provider must ensure that a roaming customer receives a notice via a SMS message, e-mail or a computer pop-up window when the use of data roaming services has reached 80% of the agreed sum or data volume. The notice shall describe the procedure to be followed by the customer if he or she wishes a continuation of these services, and the costs related to the use of each new unit. If the

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<td>7,323</td>
<td>6,572</td>
<td>2,065</td>
</tr>
</tbody>
</table>

VAT 20%

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4 The home service provider may, as an alternative, establish a cut-off limit to the volume of data, presuming that the customer has been previously informed of the charges for data volumes. One of these cut-off limits (default limit for data volume) for the monthly accounting period must be about 50 euros (782 kroons) (without VAT) and should not exceed it.

Home service providers may offer their roaming customers other limits with higher or lower maximum charges per month.
roaming customer does not reply in the way referred to in the notice, the home service provider will promptly terminate the provision of regulated roaming services to the customer and stop taking a charge for these services, until the roaming customer applies for a continuation or relaunch of the services. The Authority had tight co-operation with the regulatory agencies of other countries, the Ministry of Economic Affairs and Communications and representatives of the European Commission at the time the regulation on maximum limits was elaborated, so that the requirements would be feasible also for the communications undertakings of small countries, such as Estonia. The Estonian communications undertakings have promised to do their utmost to comply with the requirements of the regulation by the deadlines specified therein at the latest.

The Authority collected information related to the roaming service for the fourth quarter of 2008 and the first quarter of 2009, in order to check compliance with the roaming regulation of the EU. Ten controls have been made and the information has been forwarded to the European Commission. It was identified during the controls that the roaming prices of Estonian communications undertakings comply with the prices established by the EU roaming regulation (Figure 13).

![FIGURE 13. Roaming prices of Estonian communications undertakings](image)

**Developments in the telephony service market**

In 2009, Elion, Tele2 and Starman were the largest service providers in the telephony service market.

The number of end users of telephony services declined by 2.6% in 2009; however, the number of subscriber lines in use remained the same. Only Starman gained more end users.
The telephony market is a slowly declining market. The number of calls initiated in telephone networks fell by almost 8% in 2009.

In the interconnection market Elion was still the undertaking with significant market power. Because of that specific obligations had been established for the undertaking, e.g. the obligations to provide the interconnection service and the call initiation and termination service. The Authority also applied price controls of these services (cost-based prices) to Elion. The other service providers (total of 10 undertakings) are undertakings with significant market power in the call termination market. Fixed communications networks interconnection market means (telephone) networks which are used to provide the interconnection service needed for the functioning of a voice call. The larger operators in this market were Elion, Elisa, ProGroup Holding, Starman and Top Connect.

The number of terminated call minutes in the fixed communications network was stable in 2009 (Figure 15).

![Figure 14](image1)

**FIGURE 14. Number of telephony service end users in 2002-2009.**

![Figure 15](image2)

**FIGURE 15. Number of terminated calls between Estonian fixed communications networks in 2004-2009.**
In 2009, Elion increased the average prices for calls initiated and terminated at a determined location in its telephone network. The prices of other communications undertakings did not change.

**Universal service**

Universal service is a set of services set out in a respective EU directive, ensured to the end-user with the quality specified to all end-users, irrespective of their geographical location, and at an affordable price. Universal service includes:
1) provision of access at a fixed location;
2) public pay telephone service;
3) access to comprehensive directory enquiry services and directories.

As of 31 December 2009 there was one undertaking in Estonia obliged to provide the universal service – Elisa. The universal service must make it possible to make and receive domestic calls, as well as fax communication and data downloading service up to the speed of 56 kbit/s. The only undertaking providing the public pay telephone service in Estonia is Elisa with its all-Estonian network. In the market for comprehensive directory enquiry services and directories there is competition in Estonia. In internet various databases on telephone and mobile phone users are available free of charge. These services are reasonably accessible on the whole territory of Estonia and the needs of end-users are sufficiently met. Therefore there is no need to determine a provider of universal services as regards the public pay telephone or the comprehensive directory enquiry services and directories.

**Leased line service market**

Leased line service market is one of the smallest electronic communications markets in Estonia. The turnover of this service declined by 3% in 2009. The number of leased lines remained the same. The service became a niche service used primarily by large undertakings and other electronic communications service providers. In 2009, 8 undertakings provided this service. The larger undertakings in this market are Elion and Televõrgu AS. A slight increase in the number of lines continued in 2009.

**Monitoring in the field of electronic communications**

Several proceedings concerning complaints related to access to the underground cable network of Elion, proceeded mainly on the basis of the Competition Act, were completed in 2009. During
the proceedings several joint viewpoints regarding access to the underground cable network, as well as solutions to competition problems were elaborated.

However, the Authority is of the opinion that the Competition Act as a general act is not detailed enough to sufficiently solve all issues related to access to the underground cable network. Thus, the Authority established field-specific obligations as regards access to the underground cable network in the market for fixed wholesale access. A new service offered by Elion since April 2009 – the so-called co-location service by which interested undertakings may build a parallel underground cable network – has also considerably facilitated finding a solution to the problems of underground cable networks.

In 2007-2008 obligations concerning access, non-discrimination, transparency and price, established for undertakings with significant market power, came in force in ten electronic communications markets. The Authority monitored compliance with these obligations in 2009 by carrying out five controls of price and cost accounting for Elion and monitoring for Elisa, ProGroup Holding and Levira. These checks did not reveal any significant irregularities.

The Supreme Court refused to proceed a cassation complaint of Tele2 in 2008. The complaint concerned decisions of the Competition Authority of 2006 and 2007 to establish mobile termination rates of 2.05 kroons and 1.66 kroons in the mobile telephone network. In January 2009 Tele2 waived its complaint against the 2008 decision of the Authority by which a termination rate of 1.37 kroons was established in the Tele2 mobile telephone network. With this, the court dispute concerning Tele2, which had begun in 2006, came to an end.

However, there are still no final judgements in the court proceedings related to Elisa’s complaints about the price obligations imposed on it in the market for call termination in mobile telephone network, and on attributing it the status of an undertaking with significant market power in the market for call termination in telephone network.

**Analyses of communications market in 2009**

Pursuant to § 41 (1) and (2) of the Electronic Communications Act, the Competition Authority has the right, for the sector-specific regulation of markets, to define the communications markets, conduct market analysis on limited markets, determine the undertaking(s) with significant market power and apply to them regulatory measures set out in the Electronic Communications Act.

In March 2009 the decision of the Competition Act on the market for voice calls in mobile telephone network came in force, determining that EMT, Elisa, Tele2 and ProGroup Holding
were undertakings with significant market power. By this decision the above undertakings, from 1 July 2009, upon applying the mobile termination rate (MTR), have to take into account the arithmetic average rate of countries, published by the European Regulators Group in the annual comparison table of basic data (from 1 July 2009, the applicable MTR is 1.36 kroons per minute). The Authority also considered it justified to set a limit of ±10% to changing the MTR applied to communication undertakings – in case the average of the European countries changes very rapidly, the MTR applied to communications undertakings may not change more than by 10%. The Authority is of the opinion that this restriction will help to keep call termination rates stable and will prevent a risk of rapid change in the rates, otherwise communication undertakings would not be able to earn a reasonable profit and make investments.

In 2009 the Authority terminated its analyses concerning the wholesale markets of fixed access and broadband access. In these markets Elisa was determined to be the undertaking with significant market power. The Authority issued a decision by which Elisa must ensure access to its underground cable network in addition to other infrastructure access services. As regards access to fibre-optic cable, the Authority came to the conclusion that this service is a new and developing service and therefore it would not be justified to establish full field-specific obligations. Hence, an obligation for Elisa was established that it has to inform other communications undertakings 6 months in advance if it intends to replace its local loop network by a fibre-optic network and that it has to ensure access to it.

The Authority found as regards the competitive situation in the broadband access market that it would not be necessary to impose any more restrictive obligations on Elion in addition to those already established in the first round of market analyses.

Market analyses were initiated in 2009 also for the markets for call initiation and termination and the respective draft decisions were sent for national consultation at the end of October 2009. The Authority made a proposal to determine that Elion is an undertaking with significant market power in the market for fixed call initiation, and Elion, Elisa, Eleks Telefon, Starman, STV, Televõrk, Linxtelecom, Top Connect, RIKS and ProGroup Holding are undertakings with significant market power in the market for fixed call termination.

Upon establishing price obligations in the market for fixed call termination, the Authority followed the principle of efficient and symmetric rates as specified for fixed call termination services in the European Commission Recommendation of 5 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU. By this principle all undertakings with significant market power which operate in the market for fixed call termination have to apply the same call termination rate – the fixed call termination rate of Elion calculated on the
basis of the cost accounting methodology established by the Competition Authority. Pursuant to this methodology the fixed call termination rates of Elisa and ProGroup Holding will decrease considerably; the rates of other undertakings will remain the same.

It is planned to enforce the decisions related to these markets in the first quarter of 2010.

A draft decision on the market for access of private and business customers to telephone network at a determined location was also sent for national consultation in 2009. The Authority will continue to conduct market analyses in 2010.
THE FIRST EXPERIENCE IN OPENING THE POSTAL MARKET

The Third Postal Directive specifies that the postal market shall be opened in the EU member states by 31 December 2010 at the latest. Estonia decided to open its postal market on 1 January 2009 and to abolish the exclusive right of the provider of universal postal service (USP) to provide a specified postal service.

The provision to abolish the exclusive right of the USP provider to provide a reserved service (from 1 January 2009) was already present in the Postal Act in force in 2008. An amendment to the Postal Act was developed at the end of 2008 in order to bring it in compliance with the Third Postal Directive. The amendment postponed the opening of the postal market by three months; hence, the market was actually opened on 1 April 2009.

The opening meant above all that a barrier to service providers to provide certain services was abolished. It had been regulated previously that only the USP provider (AS Eesti Post, hereinafter Eesti Post) may forward domestic letters of up to 50 grams as ordinary items. Other postal service providers were allowed to do it if charge taken from the user of postal services was equal to or higher than 2.5 times the charge established regarding the lowest weight category of letters by the universal postal service provider. This barrier inhibited competition to a great extent because it was economically not feasible to provide a service of forwarding domestic letters for a charge which was by 2.5 times higher. In 2008, the service reserved for Eesti Post constituted more than 75% of the domestic letter forwarding service performed under activity licences. Thus, the competition restriction barrier applied to almost three quarters of the forwarded letters for which there was practically no competition and for which Eesti Post had the status of a monopoly.

After the opening of the postal market all postal service providers can provide postal services on equal basis. The USP provider does no more have an exclusive right to provide certain services. There are no more barriers to postal service charges (except USP) and pricing is free.

It is important to note as regards the opening of the market and facilitation of competition that the Postal Act that came in force at the beginning of 2009 specified in more detail the aspects related to the use of a postal network of another postal service provider.

By this Act, a provider of postal services, if so requested by another provider of postal services, must conduct negotiations in good faith to enable the use of its postal network, provided that it is needed for the provision of a postal service. Access may be requested, inter alia, to the following components or facilities of a postal network:

1) the postcode system;
2) post office boxes;
3) the re-direction service;
4) the return to sender service;
5) the distribution network.

When a postal service provider uses the postal network of another postal services provider, it need not have a complete network for the provision of postal services and thus, it does not require major investments to commence its activities. This opportunity facilitates entry of new undertakings. For example, a postal services provider may deliver letters on its own in a certain region but transfers this activity to another postal services provider in other regions (where it has no distribution network).

The densest network belongs to Eesti Post because this undertaking, due to its USP activity licence, has the obligation to provide certain services all over Estonia. Other undertakings may apply for access to the postal network of Eesti Post because in such a small country as Estonia it is not feasible to develop several all-Estonian competitive networks. Although it is provided in the Postal Act that it is possible to conclude an agreement on the use of a postal network, postal undertakings still have sufficient motivation to improve their own networks and increase their capacity all over Estonia. This is exactly what postal undertakings holding an activity licence have done. For example, AS Express Post (Express Post) has included Viljandi Post Office in its postal network.

Another important aspect of the Postal Act specifies that an USP provider may now apply for other postal services activity licences in addition to the USP provision licence. Earlier it was not allowed for an undertaking holding the USP activity licence to apply for activity licences for forwarding letters and postal parcels under a service external to the USP. The amendment was made because USP excluded bulk items which meant that Eesti Post would not have been allowed to forward letters and postal parcels as bulk items.

A bulk item is a letter item given by the sender to the postal service provider to be forwarded simultaneously to at least 100 addressees, or a postal parcel given over to the postal service provider by the sender to be forwarded simultaneously to at least 25 addressees.

As bulk items were excluded from the USP services, it was necessary to make it possible for Eesti Post to provide this service as a service external to USP. As bulk services constituted the majority of the previous USP volume and USP is regulated more strictly, it may be said that most of the postal services entered the free market in 2009.

At the time the postal market was opened there were three undertakings providing postal services and holding an activity licence in the market: Eesti Post – the provider of USP, Express Post which did not yet provide actual postal services under an activity licence in 2008, and D2D LLC.
Eesti Post and D2D LLC had already provided postal services earlier but Express Post started to provide postal services under an activity licence in the second quarter of 2009. In 2009, Eesti Post applied for activity licences for forwarding letter items and postal parcels externally to USP. This licence was issued by the Competition Authority.

The Postal Act that came in force at the beginning of 2009 imposed on all postal service providers the obligation to bring their activities in compliance with the amended Postal Act, specifying a transition period. All the service providers mentioned above submitted a confirmation to the Authority on having brought their activities in compliance.

In 2009 no applications were submitted to the Authority for an activity licence for postal services provision, except the applications submitted by Eesti Post for the activity licence for forwarding letter items and postal parcels as a service external to USP (bulk items) and the application for USP activity licence of Eesti Post (the Authority organised a public procurement procedure in 2009 to find a USP service provider).

Thus, at the end of 2009 there were still only three postal service providers with an activity licence in Estonia regardless of the opened postal market. However, taking into account the smallness of Estonia, it cannot be presumed that tens of undertakings would plan to enter the postal market. It is more probable that only a couple of undertakings with a licence will enter this market in the next years.

The situation between the postal service providers with a licence has remained about the same after the opening of the market. Eesti Post is still the largest service provider and has maintained most of its market share. The total market volume has decreased because of the trend of transfer of traditional post to electronic channels.

Eesti Post has the advantage of a denser postal network compared to its competitors and thus of higher capacity to provide services all over Estonia. However, the opened market and the legislation offer an opportunity to other undertakings to use the network of Eesti Post under an agreement on the use of a postal network. This improves competition and gives an option to the users of postal services concerning the choice of a provider for forwarding their postal items. This, in its turn, makes it possible for the competitors of Eesti Post to participate in procurement procedures and competitions which set the conditions of an all-Estonian activity licence and of service provision capacity.

The Postal Act that came in force at the beginning of 2009 includes the definition of affordability of USP. The affordable price shall be determined for each service belonging to the set of universal postal services by a regulation of the Minister of Economic Affairs and Communications on the proposal of the Estonian Competition Authority throughout the
territory of the state. A provider of USP may not charge from the users of postal services a price higher than the affordable price.

The compensation mechanism for USP costs was also determined for cases when affordable prices do not cover the costs of service provision. All postal service providers who have a financing obligation will pay a USP charge each quarter which Eesti Post may apply each quarter to cover its costs arising from the unfairly burdensome costs related to its obligation to provide the USP. A postal service provider with financing obligation is a postal service provider holding an activity licence (except USP licence). In 2009 Eesti Post, Express Post and D2D LLC were the undertakings with financing obligation. The USP charge is paid on postal services provided under an activity licence (except USP for which the charge is collected).

The charges valid in 2009 were established by Regulation no. 46 of the Government of the Republic of 5 March 2009 on the establishment of universal postal service charges. The regulation establishes USP charge rates per unit for postal service providers with financing obligation. However, the charge for postal parcels was zero already in 2009 and it is expected that the USP charge for letter items may also be gradually lowered to zero. In this case postal service providers would be able to offer a better price to the users of postal services also for non-USP services.

Although the first year after the opening of the Estonian postal market did not bring about new service providers, there is moderate competition from Express Post to Eesti Post. Express Post has created a good client base and found its niche in the market. Moreover, a market as small as the Estonian market cannot accommodate too many postal service providers with an activity licence, considering that traditional communication is being increasingly replaced by electronic communication and the volume of the postal market is decreasing.