REPUBLIC OF ESTONIA
COMPETITION AUTHORITY

ANNUAL REPORT 2015

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FOREWORD

Dear readers!

Estonian Competition Authority is glad to present its annual report describing our work and activities in 2015. A large and important part of our work is related to energy issues, therefore 2015 will mostly be remembered for a drop in energy prices. Leaving aside the price shock of crude oil in 2008, the following rapid decline and a new rise in 2009, this is the first time in the last 10 years when we as consumers are able to enjoy low energy prices due to the drop in the prices of crude oil. It can be seen both in petrol stations and on electricity and gas bills. It is also reflected in the continuous decline in consumer prices for two years in a row. Just like in other European Union countries, there have been discussions in Estonia on whether the free energy and gas market really does ensure the best prices for the consumers or if we should continue with the more conservative market model in which the monopoly dictates who sells energy and gas to the consumers. Today, it is safe to say that the EU has chosen the correct path when implementing the free market principles, and Estonia together with the other Baltic States is a fine example to others of a free energy and gas market and integrated connections. It is clearly manifested in both the Estonian-Finnish electrical connections and the Lithuanian-Swedish electrical connection that launched last year. An additional Estonian-Latvian connection should be opened in 2020.

There has been progress in the entire region as to gas connections as well. Let us view, for example, the recently reinforced network in Lithuania that now enables both Estonia and Latvia to buy natural gas from the Klaipeda terminal. The establishment of Lithuanian-Polish and Estonian-Finnish gas connections is also important, ending the gas supply isolation that has prevailed in Finland and the Baltic states for decades. It is extremely relevant in following the principles of both the free market and energy security. At that, we are true leaders at the Estonian-Finnish gas connection project – it is carried out thanks to the Estonian initiative. Naturally, the project has many critics and the debates on its economic efficiency could go on endlessly, but looking at the map of Europe it is clear that there would be no uniform and functional gas market without that connection.

Maybe I have concentrated too much on energy in my foreword this time. After all, we cannot forget that we are called the Estonian Competition Authority, not a supervisory body of regulated markets or something of that kind. Based on our own example, I can make assurances that it is exactly thanks to the field of competition that the regulator has become more open and broad-thinking. The first emotion of a separate regulator who sees a problem is often to add regulation, that is, to fight the consequences, not the causes. We have come to a clear understanding that first and foremost, the causes of the problems need to be tackled and it is often the liberalisation of the respective market that provides the best outcome for a consumer.

There are still sectors in Estonia where we could take steps towards better organisation and diminish regulation, be them the fields of district heating or electronic communication that are clearly overregulated today.

Although everyone is undoubtedly doing a big and important job, I especially want to thank our competition officials for making the price regulator what it is today.

With best wishes

Märt Ots
Director General

ORGANISATION

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

The Amendment to the Government of the Republic Act entered into force on 01.09.2015, modifying the provisions concerning the planning of the competition supervision at the national level. According to the amendment, the planning of the competition supervision and the Competition Authority were brought from the area of government of the Ministry of Economic Affairs and Communications to the area of government of the Ministry of Justice in order to increase the independence of the Authority´s performance of its tasks. With the regard to the amendment the Statutes of the Authority has also changed. The former Energy and Water Regulatory Division is now the Regulatory Division. Changing the name was required in order for it to meet the actual extent and nature of the work of the Division.

Since the 1st of September 2015, the two field-based divisions of the Authority are the Competition Division and the Regulatory Division. In addition to the Divisions, there is also the External and Public Relations Department, which is responsible for ensuring effective support services for the Authority. The Director General is at the head of the Authority. The Heads of Divisions are also acting as Deputy Directors General.

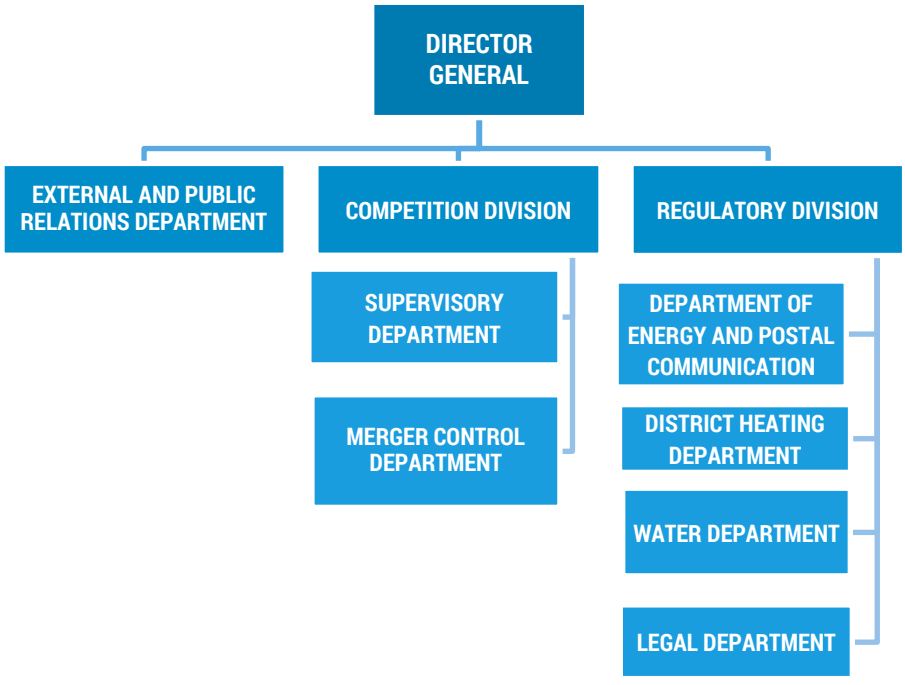

***Figure 1**. Structure of the Authority*

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

The **Regulatory Division** implements price regulation and market supervision in the markets of electricity, natural gas, district heating, water and postal services.

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

The Competition Authority employed 49 persons as of the end of the year 2015.

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

COOPERATION ON INTERNATIONAL AND NATIONAL LEVEL

The Competition Authority routinely participates in the work of competition, energy, water and postal communication related working groups, networks and organisations. The officials of the Competition Division attend meetings and discussions of the ECN (European Competition Network), the ECA (European Competition Authorities), the OECD Competition Committee and the ICN (International Competition Network). The officials of the Regulatory Division participate in the meetings of the CEER (Council of European Energy Regulators), the ERRA (Energy Regulators Regional Association) and the ACER (Agency for the Cooperation of Energy Regulators). The Authority is also a member of the OECD Network of Economic Regulators. In the water sector, the Authority is mostly involved in the work of European Water Regulator (WAREG). Regarding international cooperation in the field of railways, the Estonian Competition Authority is a member of two associations - Independent Regulators' Group-Rail (IRG-Rail) and European Network of Rail Regulatory Bodies (ENRRB). In addition, the Authority participates in the work of European Regulators Group for Postal Services (ERGP), European Committee of Postal Regulation (CERP) and Universal Postal Union (UPU).

The Authority celebrated the World Competition Day hosting a conference „Konkurentsipäev 2015", bringing together experts from various sectors of the economy and specialists active in competition matters. The main themes of the conference were banking, compliance, tourism sector, corruption in public and private sector, IT, higher education, television, medicines and health care.

In 2015 the Baltic Electricity Market Forum and Baltic Utilities Forum took place in Tallinn that brought together energy and utility sectors regulators, representatives from the European Commission, undertakings and other interested parties.

The Network of European Water Service Regulators

The Network of European Water Service Regulators (WAREG) was founded in 2014 by water service regulatory authorities from twelve countries. By today, the network includes 20 members and 4 observers. The Competition Authority as the Estonian regulator joined WAREG in January 2015 when the third larger meeting in Dublin took place.

Since WAREG has been established as a network of European water service regulators, no obstacles have been set for joining as to the number of regulators or the type of organisations. That is why the members of WAREG also have very different expectations to the work of the organisation. Some of the members would like to develop cooperation between different water service regulators to exchange experience and practice, but other members have a broader objective that involves shaping a uniform water service provision policy in the entire European Union.

Starting from May 2015, WAREG is represented and its operations coordinated by the President Alberto Biancardi (Italy) with two Vice-Presidents Katherine Russell (Scotland) and Szilvia Szalok (Hungary). The everyday operations of the network is organised by a three-member secretariat (Hungary, Ireland, Italy).

Two working groups have been established dealing with the development of the water sector: the regulation working group and the institutional working group. Both of these working groups have gathered information from all the members of the WAREG to understand the general legal and operational framework of the European Union Member States in implementing the water regulations. The institutional working group of WAREG deals with the issues related to the affordability of the water service prices, and the regulation working group is viewing the implementation of benchmarking in the water regulation of different countries and the mapping of the key indicators needed for its analysis.

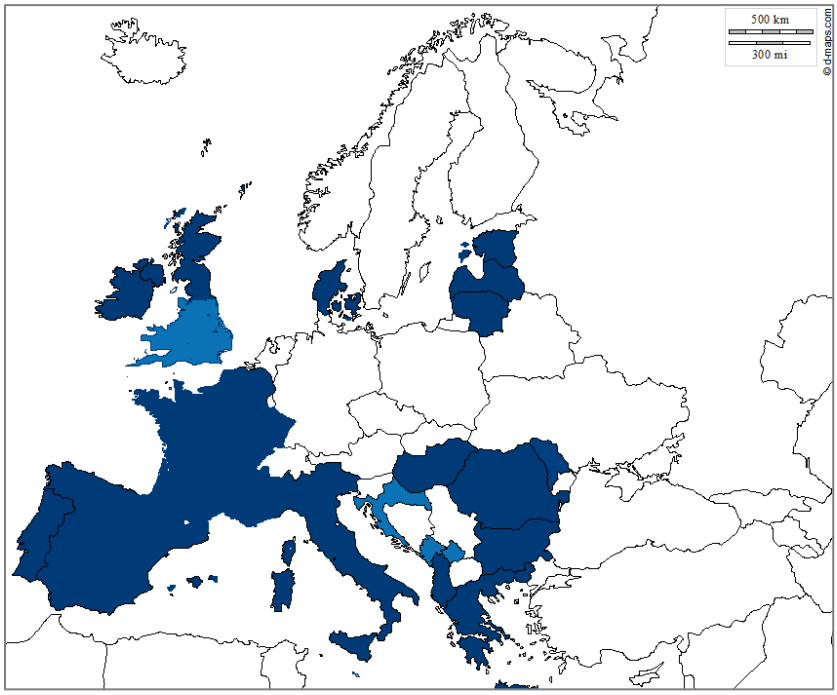

***Figure 2**. Members of the WAREG*

2015 IN COMPETITION SUPERVISION

The Supervisory Department of the Competition Division conducts proceedings, which are addressed to agreements that could restrict competition and proceedings related to the activities of undertakings in market dominant position. Because of the specific nature of the Estonian legal regime, proceedings involving these cases are reviewed in a number of rather different ways, depending on circumstances and types of violation, from less complicated administrative proceedings to extensive criminal matters. Implementation of competition law is rather creative by its nature – the evaluation depends on concrete circumstances, while there are very few of so-called standard situations, and therefore it is considered as one of the most complicated branches of law. This is a reason why proceedings that may seem simple at the first glance could turn out to be unexpectedly extensive.

It is a pleasure to admit that undertakings are increasingly more often accepting the instrument of assumption of obligations, which was added to the Competition Act in 2013. Instead of having the Competition Authority establish a violation of law and issuing the undertaking a percept for it, the undertakings themselves assume in the course of proceeding a binding obligation to solve competition-related problems. Thereby the Authority and the undertaking can hold much more flexible negotiations about how to improve the competitive situation. Furthermore, such practice rules out the risk of delays in improving the situation due to lengthy litigation proceedings. It also serves to prove the ever-increasing readiness of undertakings to remedy any potential breaches of competition law themselves. To illustrate the matter, this annual report presents the obligation assumed by Elektrilevi OÜ to introduce single joint invoice.

In 2015, one of the most extensive, but also the most interesting proceedings in terms of competition law, was the dispute between Viru Keemia Grupp AS (hereinafter VKG) and Eesti Energia AS concerning the access to oil shale resources. This is a rather important problem for VKG, because the distribution of oil shale resources between different undertakings, once established by the State, has become too inflexible in the current situation. Therefore, one of the market participants has started to experience actual deficit of oil shale. This gave rise to a complicated problem concerning competition law, i.e. whether or not, and on what terms should the largest holder of oil shale resources share this resource with other undertakings. Assessment of this case became particularly complicated due to the rapidly changing economic situation in the energy sector.

In respect of criminal cases one of the major events of the year was certainly the judicial proceeding related to the so-called vodka cartel. It could be said that in a number of aspects this was the largest competition-related criminal case of all times in Estonia. While the court of the first instance convicted most of the participants and imposed pecuniary punishments, the amount of which was among the largest ever imposed in Estonia, the circuit court annulled the judgement of conviction because

of procedural errors made by the court of the first instance. At the time of publication of this annual report, the case is pending before the Supreme Court.

In addition to control of activities of undertakings, one of the Authority´s tasks is analysing restrictions of competition contained in legislation. Freedom of enterprise is a right guaranteed by the Constitution of the Republic of Estonia and it may be restricted only with good reason. The example of pharmacy market, presented in this report is a regrettable illustration of imposing restrictions in the market without any credible analysis of the reasons why such restrictions are even necessary or reasonable. If restrictions cannot be substantiated, they should not be set forth in the legislation.

However, a large portion of the supervisory activities does not concern proceedings involving well-known and large companies, featuring cases of much smaller scale. At the same time, these cases are important as well, because participants in smaller markets also need protection against distortion of competition. This is illustrated by the proceedings involving the Estonian Horse Breeders` Society, where the latter attempted to restrict access of new competitors to the market, after the stud-book keeping market opened up. Another example of smaller matters is the case involving the pricing practices of AS Eesti Keskkonnateenused regarding so-called gate opening service. This case confirmed the opinion of the Authority that waste carriers should not charge unreasonably high price for various additional services (e.g. opening of gates, moving containers to vehicles, etc.)

Approval of obligation proposed by Elektrilevi OÜ

On 11 June 2014 220 Energia OÜ, Eesti Gaas AS, Alexela Energia AS, Elektrum Eesti OÜ and Starman AS filed a complaint to the Competition Authority. In the complaint, these sellers of electricity expressed their point of view that Elektrilevi OÜ (hereinafter Elektrilevi) has abused its dominant position, providing only the parent company of the group – Eesti Energia Aktsiaselts - the possibility of issuing single joint invoices for both electricity and network service to residential and small consumers. In the opinion of the sellers of electricity, Eesti Energia Aktsiaselts exercised this right to get competitive advantage in the retail market to sell energy to residential consumers, thereby damaging the interests of both their competitors as well as residential and small consumers.

Based on the information gathered, on 20 February 2015 the Authority served Elektrilevi a preliminary assessment. The Authority was on the opinion that the service area of the distribution network of Elektrilevi covers the most of the geographical territory of Estonia, forming the largest share of all electrical installations and the customers to whom electricity could be provided. All consumers can select their electricity provider, but it is not possible to switch network operator who delivers electricity to the consumers. Therefore, without having access to the network of Elektrilevi, competitors of Eesti Energia Aktsiaselts would have no

possibilities to sell electricity to consumers in the same network area. The Authority found that Elektrilevi meets the criteria of an undertaking in control of essential facilities. In accordance with the Competition Act, an undertaking in control of essential facilities is also an undertaking in market dominant position and thus the respective provisions of the Competition Act are applicable to the network operator. Because the Electricity Market Act does not regulate the matter of providing the option of issuing single joint invoices for electricity and network service, the network operator is free to decide on the possibilities, conditions and procedure of issuing single joint invoices, taking into consideration the restrictions on activities set forth in the Competition Act. In the preliminary assessment, the Authority took the position that since Elektrilevi offers the possibility of issuing single joint invoices to its parent company – Eesti Energia Aktsiaselts – they should apply the same treatment on an equal basis to other sellers of electricity as well. The network operator in the dominant position is obliged to offer services to all its trading partners, including companies belonging to the same group, on equal conditions and any special treatment of trading partners has to be objectively justified. In doing so, such unequal treatment by the network operator should not put their trading partners into competitive disadvantage. Competition in selling of electricity would be more effective in a situation where other sellers of electricity also had the possibility of offering their customer such service of convenience, i.e. the single joint invoice service. Therefore, the Authority is on the opinion that the actions of Elektrilevi have not so far provided other undertakings the possibility to compete on equal basis with Eesti Energia Aktsiaselts in the goods market of sale of electricity. The Competition Authority found that Elektrilevi should establish non-discriminatory standard conditions vis-à-vis invoice services, and to develop an IT solution required for submitting single joint invoices.

From March until October of 2015, representatives of the Competition Authority and Elektrilevi (as well as the Ministry of Economic Affairs and Communications and Elering AS) met for a number of times in order to discuss different aspects related to the arrangements for issuing single joint invoices.

On 13 November 2015 Elektrilevi submitted under the Competition Act an application for the assumption of an obligation, on 22.12.2015 the company amended their application, assuming another obligation to develop a possibility for submitting single joint invoices for electricity and network service. In accordance with the description of the obligation, sellers of electricity may select a consumer segment (residential consumers, business consumers) to whom they wish to offer the single joint invoice option. In order to submit a single joint invoice, the seller of electricity has to conclude a standard term contract with Elektrilevi. Elektrilevi presents the invoice data to the sellers via the data exchange platform (DEP) application of AS Elering. In accordance with the proposed obligation, as of 01.01.2017 Elektrilevi will start sending in the test version the invoice information referred to in the third and the fourth sub indent of § 65 (1) of the Electricity Market Act via the information

exchange platform to all sellers of electricity, who wish to submit their customers single joint invoices. After the obligation has been fulfilled, the seller of electricity under a single joint invoice should receive all network charges. The party submitting the invoice (seller of electricity) will bear the credit risk, and in order to mitigate such credit and payment risks the parties will apply a bank guarantee (including a guarantee provided by the parent company), or pay a security deposit to Elektrilevi's bank account. Such security measures will be applied in case the credit rating of the seller of electricity or their parent undertaking is lower than Baa3/BBB-. According to the proposed obligation, Elektrilevi would not pay sellers any fees for submitting invoices for the network service, and would not compensate sellers of electricity any other incidental costs or losses suffered. Elektrilevi would pass over to the sellers of electricity any network service charge related claims against consumers, which arise from network agreements. During the period from 01.01–01.03.2017 the company, together with the other market participants, will test the functioning of the application, will cure any possible discrepancies and the new single joint invoice template will be available at the expected reliability level as of 01.03.2017.

The Competition Authority evaluated the obligation proposed by Elektrilevi and asked electricity sellers to provide their opinion about the same. The Authority assumed the position that the obligation proposed by Elektrilevi would efficiently remedy the problems with competition, which were identified by the Competition Authority in their preliminary assessment. The Authority found that by developing of standard conditions for contracts, intended to be concluded with sellers of electricity who wish to submit their consumers single joint invoices, Elektrilevi has designed a solution that would offer a possibility to harmonise the competition conditions and abolish the potential advantages of Eesti Energia AS in conducting their business, vis-à-vis other sellers of electricity. The Competition Authority approved the obligation proposed by Elektrilevi and made it binding.

The reasonableness of the price charged for oil shale concentrate sold by Eesti Energia Kaevandused

Viru Keemia Grupp AS (hereinafter VKG) requested the Competition Authority to control the compliance of the activities of Eesti Energia Kaevandused AS (hereinafter EEK) with the competition law. In the opinion of VKG, EEK had been abusing their position, by applying different conditions to intra-group and extra-group customers in similar contracts concluded with such customers. Thereby EEK has placed VKG at an extreme competitive disadvantage and has distorted competition. In the opinion of VKG, in order to resolve the situation EEK should be obliged to apply equal prices to different customers.

On 19 October 2015, the Authority ended the supervision proceeding that was initiated on 28 March 2014 based on VKG´s application because of the absence of indications of any violation of the Competition Act in the actions of EEK and Eesti Energia Aktsiaselts.

There are four undertakings in Estonia who are engaged in extraction of oil shale: EEK, which is a subsidiary of Eesti Energia AS; VKG Kaevandused OÜ, a subsidiary of VKG; Kiviõli Keemiatööstuse OÜ; and AS Kunda Nordic Tsement. Companies that extract oil shale mostly use it for their own needs. Undertakings use different technology and therefore need oil shale of different calorific value and fraction size. Based on this, oil shale is divided into energy oil shale and concentrate. VKG uses both concentrate and energy oil shale in the oil production. The group of Eesti Energia Aktsiaselts only use energy oil shale.

In Estonia, the law limits oil shale extraction volumes. According to the Earth´s Crust Act, the annual oil shale extraction rate is 20 million tons. The share of EEK of this volume is nearly 75%.

The Competition Authority established that the product which is circulated in the goods market, is oil shale, i.e. both its concentrate as well as energy oil shale. The geographical goods market is the shale extraction areas in North-East Estonia. The Eesti Energia group has a dominant position in the market of oil shale extraction and supply. At the same time, because of the amendments to the Earth´s Crust Act effective as of 17 July 2015, which will enable undertakings increase the volumes of extraction to limited extent and because of the permits related litigations, the competitive situation in oil shale extraction could change considerably in the future.

Two aspects were carefully evaluated in conjunction. First, the Authority reviewed the allegation that EEK has abused their position, applying in equivalent agreements different terms and conditions to their intra-group customers, as opposed to customers who are not members of the group. Secondly, it was important to decide whether EEK was selling VKG oil shale for a price that was economically sound and fair in terms of the competition law. The Competition Act prohibits undertakings in dominant position to establish or apply, directly or indirectly, unfair purchasing or selling prices.

The Competition Authority established that the price difference between the oil shale sold to VKG and the oil shale sold inside the group was significantly bigger than the difference in production costs. EEK justified the lower intra-group cost with the fact that it is more profitable to generate electricity and produce shale oil by oneself and when oil shale is sold to VKG, the Eesti Energia group would lose that income. The Authority conducted a comprehensive analysis and concluded that EEK´s explanation is economically sound and that it has to be taken into account when the Act is applied. The Authority lacks doubt that VKG itself would not agree to sell oil shale to a customer outside the group if the latter offered price a little higher than the intra-group price, but would result in stoppage of equipment and increased costs.

Therefore, the price for oil shale concentrate established for VKG Oil AS was fair in terms of competition law.

As in the given case, the price charged for oil shale concentrate sold to the VKG group has been fair, the only problem that could be raised is whether, in the case of application of equal terms and conditions, it should be necessary to increase the price charged by Eesti Energia Aktsiaselts within the group. In order to apply respective provision of the Competition Act, it is necessary to prove that establishing different price has placed VKG in a less favourable competitive situation. VKG´s arguments how alleged excessively low price could give an advantage to Eesti Energia Õlitööstuse AS were rather theoretical in nature, and there were no concrete examples in what way has it placed the undertakings of VKG group in a clearly less favourable competitive situation.

There nevertheless is a possibility that because of the situation in the electricity market, Eesti Energia group is no longer commercially capable of consuming the entire volume of the oil shale extracted by EEK. In this case, the argument of so-called variable profit of the last production unit, which was the basis for setting the oil shale price for VKG would not be valid, because selling oil shale to VKG would not cause the stoppage of equipment of Eesti Energia group. In such a situation an undertaking striving to maximise profits would be motivated to sell oil shale to another operator, should the price proposed by that operator match or be higher than EEK´s long-term variable costs of oil shale production. Eesti Energia AS should avoid situations where the group of Eesti Energia has a surplus of oil shale, and other undertakings are prepared to purchase oil shale for an appropriate price, but sales are not carried out due to the actions of Eesti Energia AS.

Proposal concerning the restrictions set out in the Medicinal Products Act

The Competition Authority presented the Minister of Social Affairs, the Minister of Justice and the Minister of Economic Affairs and Infrastructure a proposal to review the Medicinal Products Act vis-à-vis the restrictions set out in § 41 (2)–(6) and § 42 (5) of the Medicinal Products Act, and to cancel any unnecessary restrictions. In the opinion of the Authority, the restrictions jeopardise free competition considerably. Furthermore, there is no evidence and no substantive analysis about whether these restrictions are benefitting the public.

After the Supreme Court had found the restrictions on freedom of establishment of pharmacies to be unconstitutional, a combination of two new sets of restrictions were added to the Medicinal Products Act. According to these restrictions, only pharmacists may hold the majority shareholding of pharmacies, and undertakings related to wholesalers of pharmaceuticals are not permitted to establish pharmacies any more. Competition Authority found that because of the combined effect of the

two new restrictions, free competition is impeded in the same way as it was before under the unconstitutional restrictions.

According to the amendment a pharmacy may be owned by a pharmacist who is either a self-employed person, or a private legal person (pharmacist must own 50% of the shares and control).

The restriction was justified by the need to ensure independence of pharmacy operators, which increases the quality of pharmacy services, medical justification of the selection of pharmaceuticals, and improved usage of medicinal products. According to the explanatory letter, the restriction on ownership would also have an impact in regions with a high level of demand (mostly cities), preventing excessive build-up of the number of pharmacies. This would reduce the professional headhunting pressure, which in turn should help to avoid lack of labour in areas of low demand and the resulting worsening of accessibility of medicinal products. The measure would also help to reduce over-investment into the pharmacy sector in cities, merely to win a larger market share, because it is assumed that a manager of a pharmacy, who is also an owner, would not be interested in operating an unprofitable pharmacy, as opposed to large business operators, who are motivated to act in such manner in order to gain market share.

The Authority found that such regulatory provisions would significantly restrict free competition, and that the actual need for them has not been sufficiently analysed and explained. No references have been made to any analysis that would demonstrate substandard quality of the service provided by pharmacies, which are not owned by pharmacists. Yet demonstration of such omissions in quality should be the first step towards starting to consider making any legislative changes. In other words, if the quality of the pharmacies that are not owned by pharmacists is appropriate, such restriction of ownership makes absolutely no sense in terms of health policy. Even if it turned out that the quality of the service rendered by some of the pharmacies is poor, such problem should be first addressed by applying more direct measures, such as specification of quality requirements and improvement of supervision.

Restriction of ownership represents a major change in the pharmacy market. In order to implement this, more than 200 pharmacies should be forcibly handed over to pharmacists, which constitutes an extremely grave breach of the right of ownership, and could therefore be justified only for good reasons. Moreover, it would be necessary to find the same number of pharmacists who are prepared to become entrepreneurs, have adequate financial resources for purchasing the pharmacies, and are willing to accepts the risks associated with business. Although it is necessary to promote entrepreneurial spirit in people, the present provisions represent an excessively ambitious plan, and it is highly likely that it will be impossible to transfer a large portion of the existing pharmacies to pharmacists. In such case, the activity

license of such pharmacies should be formally cancelled, but this scenario is not in the best interests of the health policy. Furthermore, this would create a rather complicated situation on the labour market for pharmacists. Moreover, it is highly likely that actual enforcement of the currently effective provisions would give rise to a large number of expensive court cases against the State, including cases involving state liability. Business operators, who are forced to close down their pharmacies or transfer them to pharmacists, would be the first to be motivated to challenge such actions of the State.

According to the proposal, restriction of the circle of pharmacy owners does not serve to improve the accessibility of pharmacy services in rural areas. In those regions where the demand is low pharmacies are being closed down, because running them there is unprofitable. There are no reasons to assume that such pattern would not be valid in case of pharmacies that are owned by pharmacists. Even if one assumes the speculative viewpoint that the restriction of ownership in question does improve the chances of survival of pharmacies in rural areas, because the possibilities of pharmacists, working in these areas, to find employment in cities would become lower, it is the least transparent and efficient solution of all potential solutions for supporting rural pharmacies. Namely, such scheme does not offer any actual guarantees that a particular rural pharmacy will remain running, and its success is difficult, if not impossible to measure. In addition to the above there is the question about whether this restriction is fair towards pharmacists themselves? While opening of pharmacies in cities is essentially limited, the demand for pharmacists on the labour market is limited as well, which in turn means lower levels of wages. In a situation where the overall level of wages of pharmacies in the city is lower, such pharmacists who work in rural areas are less motivated to move to cities. In such case, however, the burden to ensure survival of rural pharmacies would essentially rest on pharmacists, who would bear the brunt of the costs of improvement of the financial standing of rural pharmacies, through their lower level of wages.

According to the explanatory letter, implementation of the restriction on ownership helps to reduce excessive build-up of the number of pharmacies in cities and the risks that pharmacies are opened just to win a market share. The Competition Authority has found that if the market participants decided at a certain point in time (e.g. immediately after opening-up of the market) to start aggressive expansion, this would be the market participants' own business risk, and for the State there are no reasonable arguments, in terms of economic policy, to start limiting this. Secondly, allegations about potential over-investments in the long run are speculative and are not underpinned by impact analyses.

Having regard to the fact that the number of pharmacies in Estonia is relatively large as it is (according to the statistical data of the State Agency of Medicines, as at the 1st day of January of 2014 there was on the average one pharmacy per 2753 persons in Estonia, while in Europe there was one pharmacy per 7000 residents) there are no reasonable economic arguments to support the fear that in the long run operators

would start to over-invest in pharmacies located in cities. Running an unprofitable business over a long period time of time is a rather exceptional situation on any free market, and therefore there is no reason to assume that something of the kind is likely to occur on the pharmacy market systematically and for any lengthy period of time.

In brief, according to the assessment of the Competition Authority it has not been demonstrated that by introducing the pharmacist-owner requirement it would be possible to achieve the objectives set while introducing the same. On the other hand this significantly impairs free enterprise. Should the restriction remain effective in its current form, it could bring about much more harmful consequences for consumers, providers of the pharmacy service as well as the availability of the service vis-à-vis the current situation.

The amendment to the Medicinal Products Act, which entered into effect on 01.07.2014, supplemented § 42 by introducing subsection (5) that bans links between wholesalers of medicinal products and general pharmacies.

According to the explanatory letter, the goal intended to be through by the requirement of separation between wholesalers of medicinal products and general pharmacies, is improving the competition on the wholesale market of medicinal products, which in turn serves to improve availability of medicinal products, raise the level of quality of the service, and increase the wellbeing of patients.

Although vertical separation is sometimes applied in competition law to promote competition, this cannot always be considered an appropriate measure. Above all, this is used in on areas related with access to infrastructure, where there are natural monopolies, while vertical separation is rather uncommon in non-monopolistic markets. Considering the particular features of the pharmacy market in Estonia, the Competition Authority finds that in this case vertical separation does not have any impact that could visibly promote competition. Moreover, it has in effect injured competition instead, while its efficient implementation is problematic as well.

By the time the restrictions on establishment were abolished, the situation in the Estonian pharmacy market was such that around 80% of the pharmacies were connected with one of four pharmacy chains through either their ownership, franchise or other similar cooperation arrangement. Besides, every major pharmacy chain has a wholesale unit, which primarily supplies the pharmacies in their own chain. The competition was and remains to be present, in particular between these four vertically integrated chains as a whole, not separately in the wholesale and in the retail markets. This represents one of the possible models of competition that in itself does not give reason for vertical separation.

After the restrictions on establishment were abolished, there were expectations that these four pharmacy chains will have a possibility of intensifying their mutual competition in the pharmacy market and make more efforts to increase their market share. The pharmacy chains, which are already operating in the market, are interested in expanding in the market, and have the possibilities and the know-how for it, and

therefore it is extremely important from the point of view of well-functioning competition that they were provided the opportunity to realise this interest. Moreover, some of the pharmacy chains had actually expressed their interest in it. By introducing the additional restrictions into the Medicinal Products Act this possibility was revoked, because operators that were linked with wholesalers cannot open any new pharmacies, and the existing pharmacies should be transferred to pharmacists by the end of the transitional period. Therefore it is necessary to maintain that the restrictions, which entered into effect on 01.07.2014 and 20.03.2015, harm competition in the same way as did the restrictions previously declared invalid by the Supreme Court.

The harmful effect on competition has not been mitigated by the expectations that had underpinned the requirement for vertical separation: namely that pharmacy chains that are completely independent of wholesalers will enter the market. In reality, after the restrictions were introduced, the newcomers in the market were sooner such operators who are not necessarily controlled by a wholesaler, but still have visible links with some of them. Since 20.03.2015, when new pharmacies may only be opened by pharmacists, establishment of new pharmacies has virtually stopped – during this period the State Agency of Medicines has granted only one general pharmacy activity license.

There are currently no indications that the ban on vertical integration, in conjunction with the restriction on ownership, serves to improve the competitive situation. Even if the vertical integration disappeared, the market power of wholesalers would not necessarily be reduced. In a situation where the restriction in ownership has entered into its full effect, the wholesalers would have to deal with a large number of rather small pharmacist customers, none of whom would have much negotiating power. Moreover, it cannot be predicted what would become of such wholesalers whose business model has so far been based on supplying their own pharmacy chain.

In addition to considerations arising from competition policies, another fact that speaks against banning vertical integration is that in practice it is extremely difficult to enforce such ban efficiently. It is certainly condemnable when a market share is captured by such business operators with above average readiness to manoeuvre in the ‘grey area’ of the law.

Firstly, although the effective restriction rules out the participation of wholesalers in the retail business, in particular through ownership, in reality links between pharmacies and wholesalers of medicinal products can also be ensured through contractual cooperation arrangement (e.g. by concluding a franchise agreement). Although such cooperation arrangements can bind a pharmacy to a particular wholesaler as efficiently as ownership, it is not necessarily unlawful.

Secondly, the possibilities of the Competition Authority to verify whether a wholesaler of medicinal products does exercise control over a pharmacy are rather limited. Applying the concept of control set forth in the Competition Act it is possible to establish whether or not one business operator or a natural person is able to exercise

significant influence on another business operator. At the same time these regulatory provisions have been adopted for resolving certain matters related to competition law, and are not directly applicable in situations where parties attempt to conceal the alleged control. The main problems with implementing § 42 (5) of the Medicinal Products Act is the lack of possibility of cross-border cooperation with other competition authorities, and it is rather unlikely that such possibility would ever arise. Essentially the Competition Authority cannot verify the existence of control when even some of the owners are located abroad.

The restriction set forth in § 42 (5) of the Medicinal Products Act has been effective for over a year, and at the request of the State Agency of Medicines the Competition Authority has assessed the control related links between operators on five separate occasions. In the course of the assessment the Authority has come across the following questionable situations, where there have been reasonable suspicions about the presence of control exercised by wholesalers. For instance, there was a case where the place of business of a pharmacy operating in Estonia and that of the parent undertaking of the wholesaler were located at the same foreign address, and there was some overlap of employees. In the case of another pharmacy chain the National Audit Office has found that it is in the sphere of influence of a certain wholesaler. The third example reveals family links between the managers of a certain holder of the pharmacy activity license and a wholesaler. Moreover, it is a widespread practice that allegedly independent pharmacy operators are represented in their relationship with the Competition Authority by attorneys linked with wholesalers. The common feature of all these examples reveals that the concept of control set out in the Competition Act is not as such intended for handling situations like that, and the Competition Authority is not necessarily in possession of procedural tools necessary to establish control. Therefore, the effective restriction does not serve to ensure complete separation between pharmacies and wholesalers of medicinal products.

In the opinion of the Competition Authority the restrictions that entered into effect on 01.07.2014 and 20.03.2015 have significantly impaired free competition. Moreover, the legislator has not demonstrated or substantively analysed whether these restrictions do indeed serve to the benefit of the general public. Therefore the Competition Authority has proposed to the Ministers to review the Medicinal Products Act vis-à-vis the restrictions set out in § 41 (2)–(6) and § 42 (5) of the Medicinal Products Act, and to cancel the any unnecessary restrictions.

Excessive price charged for the gate opening

The court dispute with Eesti Keskkonnateenused AS, concerning the fee charged for opening of gates in connection with organised municipal waste transport, reached its conclusion at the end of 2015.

In 2013 Eesti Keskkonnateenused AS won the organised municipal waste transport concession in the rural municipalities of Jõelähtme, Raasiku, Rae and Kiili, and

established in these rural municipalities a fee for holding the key or the remote control, used to open gates to customer properties, in the amount of 11.50 euros per each use. The gate opening service is a service where, in order to access the waste container of the waste generator, it is first necessary to open a barrier, a gate or remove another obstacle. In most cases the waste carrier does not offer customers any reasonable alternatives for opening a gate, and therefore the Authority determined that in respect of the gate opening service Eesti Keskkonnateenused AS is an undertaking in a dominant position.

The Authority established that the price 11.50 euros per opening, charged for the service, is not based on costs, and is therefore unjustly high. Therefore, the Competition Authority issued a precept according to which the business operator, being an undertaking in a dominant position, has breached the Competition Act. The Authority obliged the undertaking to stop charging the fee for opening of gates in the waste transport areas of the rural municipalities of Jõelähtme, Raasiku, Rae and Kiili, in excess of the reasonable amount.

The Competition Authority has taken a principled position that the waste carrier may charge only a cost-based fee for any additional services, if the customer has no alternatives. Such additional services include, for instance various minor services incidental to waste transport, e.g. opening of gates, moving containers from distant locations to the transport vehicles, etc. In the given case the court confirmed the validity of such position in particular with regard to the gate opening service. Generally the amount of additional services is not considered when waste transport contracts are awarded, and therefore waste carriers have been free to establish the same at their own discretion. The precept sets out that these fees shall be established based on the requirements applied to undertakings in a dominant position, according to which the fee must not be unfairly high.

Both the Tallinn Administrative Court as well as the Circuit Court dismissed the complaints of the undertaking, and the Supreme Court refused their appeal in cassation. On 14.12.2015 Eesti Keskkonnateenused AS notified the Competition Authority of their compliance with the precept, and removed the gate opening fee from the list of prices charged for waste transport in the rural municipalities of Jõelähtme, Raasiku, Rae and Kiili.

Percept issued to the Estonian Horse Breeders´ Society, ordering to stop the abuse of dominant position

The Competition Authority conducted the supervisory proceedings to evaluate the lawfulness and validity of the fee charged by Estonian Horse Breeders´ Society (hereinafter EHBS) for deregistration of horses from the studbook. The proceeding was initiated based on the application submitted by a horse breeder.

EHBS is the keeper of the stud-book of certain horse breeds, that provides within the scope of their competence horse breeders services of carrying out activities in

connection with stud-book. In early 2015 the management board of EHBS decided to include a new type of service – deregistration of a horse from the stud-book (25 euros) – in their services pricelist, applied to the members and non-members of the EHBS.

The Competition Authority established that EHBS holds a dominant position in the market vis-à-vis keeping of several stud-books and offering related services. The Authority did not establish that the deregistration from the stud-book would mean carrying out certain activities that created value for the horse breeders and would bring along costs for the EHBS. It turned out that the main actions connected with the change of breeding societies by horse breeders and transfer of data of horses, are carried out by the Veterinary and Food Board. The latter is authorised to make the respective changes of entries in the Register of Equidae, changing the name of the breeders´ association for the respective animal and entering the document concerning the transfer (owner´s application) of management and the date of registration. The breeders´ association, from which the animal is transferred, is not obliged to perform any specific actions.

Therefore, the Competition Authority came to the conclusion that EHBS does actually not provide the service of deregistration from the stud-book and the actions of EHBS upon charging a fee for such service does not comply with the competition law. The price for the service in question established by EHBS was also not justified, being proportionately higher than, for instance the price for registration in the stud-register. The Competition Authority took the position that such difference in prices clearly points to the intention of EHBS to impede the activities of competing breeders´ associations, and thereby EHBS abused its dominant position through unfair pricing and operating conditions.

The EHBS was issued a percept ordering them to amend the pricelist of their services and fees, and to remove from the list the fee for deregistration of horses from the stud-book. EHBS complied with the percept of the Competition Authority by the set deadline.

CONTROL OF CONCENTRATIONS

The aim of the control of concentrations is to assess impacts in terms of competition law and, above all, to prevent the emergence or strengthening of a dominant position in the market, which could serve to hinder efficient competition in the goods market or a significant part thereof. In order for the market economy to function properly, the competition law has established certain rules that provide possibilities for maintaining efficient competition through exercising control of concentration.

In 2015, there were 32 concentration related proceedings conducted by the Competition Authority, 31 notices were submitted in 2015 and one case was brought over from 2014. The Authority made 31 decisions to grant permission. In three cases, the Authority decided to initiate a supplementary proceeding.

The Authority made 28 decisions to grant permission to concentration in the first phase of the proceedings, i.e. within the 30 calendar days prescribed by law. In three cases, the Authority made a decision to grant permission to concentration in the second phase of the proceedings. In six cases, the proceedings were suspended in connection with the elimination of deficiencies in the notice.

The breakdown by types of concentrations was as follows:

An undertaking acquired control of the whole or a part of another undertaking in case of 29 concentrations (Competition Act §19 (1) p 2);

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

The concentrations took place in the following goods markets:

- Food industry (3)
- Metalworking (3)
- Paper industry (1)
- Waste management (3)
- Sale of IT products (2)
- Pharmacy services (2)
- Wholesale of veterinary medicinal product (1)
- Media (2)
- Real estate (2)
- Wholesale of horticultural products (1)
- Motor fuel (1)
- Forestry (1)
- Maritime transport (1)
- Retail sale of books (1)
- Construction (1)

- Security services(1)
- Sale of equipment (1)
- Dental services (2)
- Sports clubs (1)
- Gambling games (1)

The concentrations that requested remarkable time were the following transactions

UP Invest OÜ/AS Eesti Meedia; Osaühing Selteret/Aktsiaselts SCHETELIG EV and OLYMPIC CASINO EESTI AS/AS MC Kasiinod.

The majority of the concentrations (16) took place between Estonian undertakings, while in case of seven concentrations both the participants were foreign undertakings. In nine cases, the concentration involved both undertakings registered abroad and undertakings registered in Estonia. Compared to the preceding year the number of transactions subject to the Competition Authority´s control has increased by 48%.

2015 IN THE REGULATORY DIVISION

The Regulatory Division of the Estonian Competition Authority performs supervision in the areas of electricity, natural gas, district heating, postal communications, public water supply and sewerage, and railways. In 2015, the Authority was involved in the amendment of ten different legal acts and in the work of relevant working groups.

The draft Act to amend the Electricity Market Act concerned the bases stipulated for the support of the production of electricity from renewable sources or via an efficient co-production process. The positive developments outlined in the draft Act that affect the consuming public and energy markets in Estonia are welcome in every respect; however, the Authority pointed out, among other things, that the analysis requires augmentation specifically on what impact the implementation of a new support scheme will have on the renewable energy rates. The analysis should clearly convey the objective of achieving national targets for the consumption of electricity produced from renewable energy sources with minor market distortions, ruling out support for excessively profitable projects and significantly reducing the economic burden on the consumer of electricity.

The most important change in the draft District Heating Act is the introduction of a reference price. Among other things, heat production undertakings are provided with the opportunity to have the price of heat approved on a dual rate basis, consisting of fixed and variable components.

The Energy Sector Organisation Act, now pending in the Riigikogu, lays down the measures for the achievement of energy efficiency and savings. Under the draft Act, the functions of the Estonian Competition Authority will be augmented, among other things, in relation to the monitoring of operators' compliance with the energy efficiency obligation.

Under the Railways Act, the Estonian Competition Authority monitors the competitive situation on the railway services market. In addition to monitoring and assuring the competitive situation, the main functions of the Estonian Competition Authority include the implementation of procedures related to the licences of railway undertakings as well as the performance of control of the costs and revenues of railway infrastructure managers and of compliance with the principles of accounting unbundling. Another important function of the Estonian Competition Authority is the review of complaints filed by railway undertakings. Amendments to the Railways Act entered into force from 1 April 2016. As a result of the changes, there will be an increase in the scope of the Estonian Competition Authority's entitlement to check compliance with the requirement of accounting unbundling and with the requirements for non-discriminatory access to railway infrastructure.

Assessment of the results of regulation

In the energy sector, a legal basis for price regulation was created with the entry into force of the Energy Act in 1998. The Act laid down both the bases for the formation of prices in the gas, electricity and district heating sectors and the creation of an independent regulator, the Energy Market Inspectorate. In 2003, specific laws regulating the energy sector entered into force: Electricity Market Act, Natural Gas Act and District Heating Act. In that respect, pricing was guided by principles similar to the Energy Act. From 1 January 2008, the Energy Market Inspectorate was merged with the Estonian Competition Authority, with the Estonian Competition Authority becoming the regulator. In 2010, the Public Water Supply and Sewerage Act was amended, designating the Estonian Competition Authority as the price regulator also for major water undertakings. Previously, local governments performed the role of a price regulator. At the same time, the District Heating Act was also amended, with the Estonian Competition Authority designated as the price regulator for all heat production undertakings. Previously, local governments had approved prices for smaller heat production undertakings

Alongside price regulation, a regulation theory on the calculation of reasonable operating profit has evolved. Calculation of a reasonable operating profit as a component in the price of a monopolistic service is needed in order to restrict the profit earned by infrastructure undertakings and avoid a situation whereby it might become possible for an operator to make an excess profit from the sale of its service. Restriction of profit is also based on the fact that there is no competition on the market to shape a reasonable profit by means of a market economy. Various laws lay down an identical principle for price regulation whereby the prices of operators subject to regulation have to be formed based on cost, include justified costs, assure cost-effectiveness and make it possible to enjoy justifiable profitability (operating profit) on the capital invested by the operator. Accordingly, price regulation aims to assure a high-quality service at a cost-based price.

The Authority assessed the results of long-term price regulation in Estonia. The Authority analysed return on capital, price dynamics and the quality of the service sold to consumers (supply security indicators for service and electricity) in the case of operators subject to regulation and, in the context of the above results, also the efficiency of the utilisation of energy (electricity and heat losses). In summary, it may be said that price regulation has been successful over the past 15 years. One of the main objectives of the regulation – to provide consumers with price stability and to prevent monopolists from making excessive profits – has been met. The results are the best in terms of energy savings. During the period considered, both electricity losses and losses in district heating pipelines have declined significantly. Whereas the reliability of Estonian electricity networks has indeed increased, they are not very weatherproof, and the reliability of the networks suffers under more extreme conditions.

Impact of Elering AS´ investments on Network charges

The Estonian Competition Authority analysed the impact of various investments in the electricity transmission network on network charges. The network charges must make it possible for a network operator to perform the obligations arising from legislation and fulfil the conditions of the authorisation, and to ensure the justified profitability of invested capital. Under the methodology of the Estonian Competition Authority, network charges consist of the following components:

- variable costs;
- operational costs;
- cost of capital (depreciation of fixed assets);
- justified profitability.

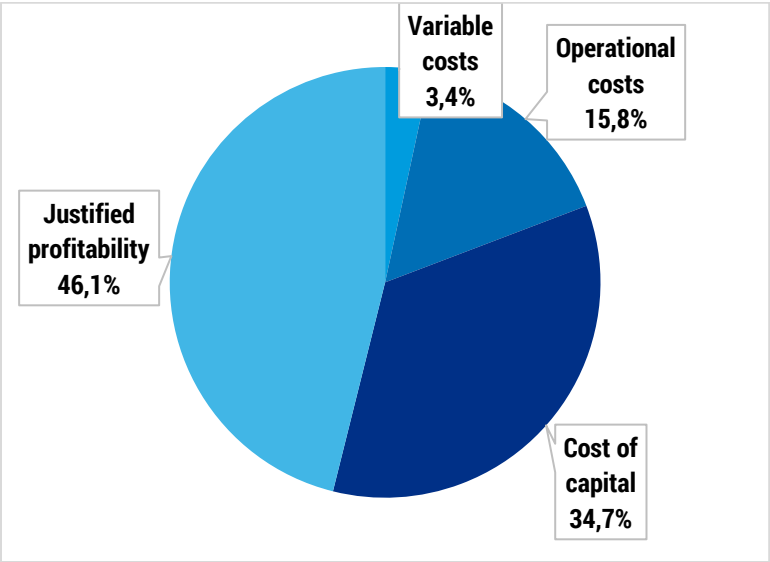

***Figure 3**. Proportion of costs and profitability in Elering AS´ Network charges*

Figure 3 shows that the network charges of Elering AS (hereinafter: Elering) include 80.8% of the operator's costs and profitability related to investment in the electricity transmission network.

At the same time, most electricity consumers do not pay transmission network charges directly but rather through a distribution network service. This means that they have concluded a contract with electricity distribution network operators. The make-up of the network charges of Elektrilevi OÜ (hereinafter: Elektrilevi), Estonia's biggest distribution network operator, is shown in Figure 4.

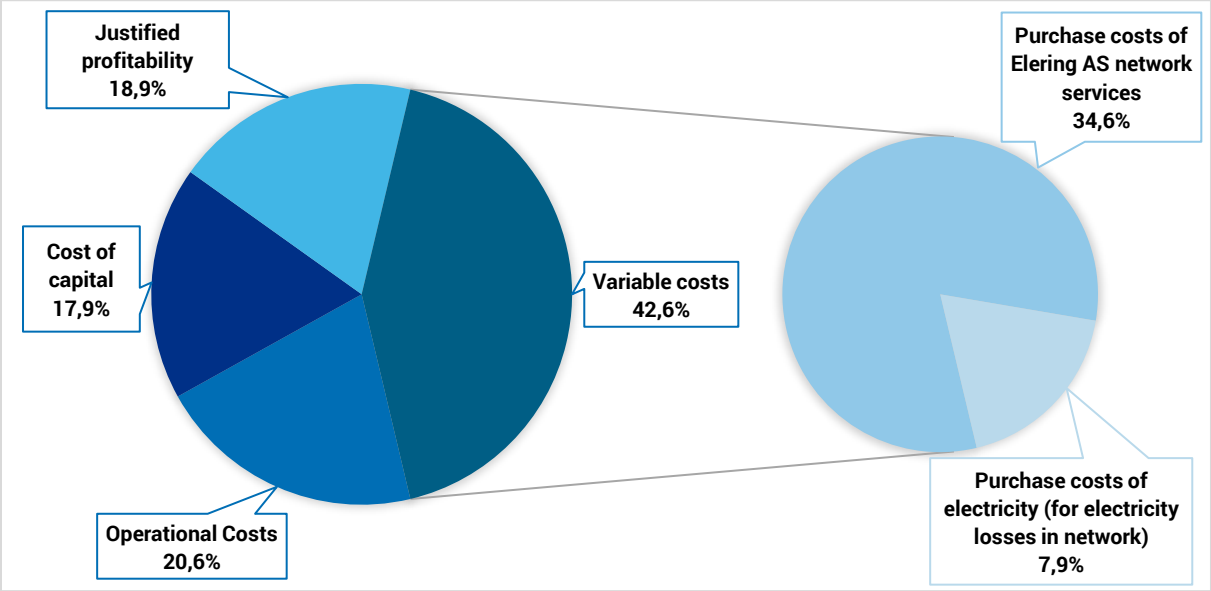

***Figure 4**. Proportion of costs and profitability in Elektrilevi´s Network charges*

Figure 4 reveals that Elering's network charges amount to 34.6% of the cost of Elektrilevi's network charges. Since the proportion of transmission network investments in Elering's network charges is 80.8%, the proportion of transmission network investments in Elektrilevi's network service prices is 28%. Accordingly, Elering's investments affect network charges for most electricity consumers to a very significant extent.

Whereas in 2003 the residual value of Elering's electricity transmission network fixed assets was 255.2 million euros, as of today, the operator has made significant investments, and the regulatory residual value of its fixed assets (as at 1 January 2015) has grown to 644.1 million euros. In this respect, a significant share of regulatory investments (in the amount of 288 million euros, or 45% of the entire value of the investments factored into network charges since 2003) is related to integration with Finland (EstLink1 and EstLink2 and emergency reserve power plants). Thanks to the above investments, Estonia is now economically linked to the Nordic electricity market, and the price of electricity is formed under the conditions of free competition.

The capital cost in the amount of 30.6 million euros factored into Elering's network charges consists of two components: capital cost in the amount of 15.6 million euros calculated on the residual cost of old fixed assets, or fixed assets purchased before 2003, and capital cost in the amount of 15 million euros calculated on the acquisition cost of new fixed assets, or fixed assets purchased since 2003. Since the capital cost of old fixed assets is linear, the capital cost component will decline in 2019, and only the capital cost of new fixed assets will be included in Elering's network charges subsequently.

The Estonian Competition Authority analysed various scenarios and their impact on the company's network charges. As a result of the analysis, the Authority concluded that the greater the investments by Elering are, the higher the operator's network charges will end up being. For example, given a level of investments of 33 million euros a year, by 2025 the operator's network charges in real terms would be 12.2% higher compared to a level of investments of 20 million euros a year. Compared to the network charges applicable today, in 2016, Elering's network charges in real terms would be 23.8% higher in 2025 given a level of investments of 33 million euros a year. Given a level of investments of 20 million euros a year, however, the difference in the company's network charges in real terms in 2025 as compared to the network charges applicable today, in 2016, would be 10.3% smaller.

The greater the investments by Elering, the greater the impact of WACC (weighted average cost of capital) on network charges. For example, given the data used for the analysis of the impact of the above investments, the difference in WACC worked out to be greatest (two percentage points) in 2019, and this affected network charges in real terms 16.0% given a level of investments of 33 million euros a year and 15.4% given a level of investments of 20 million euros a year.

From 2019, after the complete depreciation of the old fixed assets, Elering's network charges will be shaped only based on capital cost calculated on the acquisition cost of fixed assets for the electricity transmission network acquired since 2003 (inclusive) and of the justified profitability calculated on residual cost. This means that through 2044, only pressure on network charges to grow may be expected. Stabilisation in network charges may be expected only in 2044, when the fixed assets purchased (investments made) in 2003 will have depreciated, and subsequently fixed assets purchased (investments made) in the years following 2003 will begin to depreciate.

Accordingly, in preparing its investment plans Elering will have to very carefully analyse the actual need and justification for the investments and identify opportunities for reducing its investment budgets in order to reduce network charges or the rate at which they are rising.

Requirements under REMIT

On 28 December 2011, Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT) entered into force. REMIT aims to prevent abuse on the energy wholesale market and thereby protect final consumers. REMIT introduced rules forbidding insider trading and market manipulation. Among other things, REMIT laid down the obligation to submit transactions effected with energy wholesale products to ACER and register with the national regulatory authority.

Market participants entering into transactions under REMIT are obliged to register in a single database. In Estonia, registration is performed via the Centralised European Register of Energy Market Participants (CEREMP). CEREMP consists of five different sections; in the first section, information on the market participant has to be entered; in the second, parties pertaining to the market participant; in the third, who the final beneficiary of the market participant is; in the fourth, the business relationships of the market participant; and in the fifth, last, section, who will provide ACER with the necessary transactions.

On 13 March 2015, the Estonian Competition Authority published CEREMP, and by the end of that year 25 market participants had registered via CEREMP in Estonia. According to ACER, more than 4 500 market participants were registered across the entire EU as at the end of 2015.

On 17 December 2014, European Commission Implementing Regulation (EU) No. 1348/2014 was adopted on data reporting implementing Article 8(2) and Article 8(6) of REMIT. The Implementing Regulation defines the details of reportable wholesale energy products and fundamental data. The Implementing Regulation also establishes appropriate channels for data reporting. Under the Implementing Regulation, time limits were introduced for the submission of information by market participants, networks and transmission network operators. Since 7 October 2015, market participants have had to provide ACER with transactions effected with energy wholesale products on an organised market and the essential information (on the capacities and use of facilities) for ENTSO-E (European Network of Transmission System Operators) and ENTSO-G (European Network of Transmission System Operators for Gas). Since 7 April 2016, market participants have been obliged to provide ACER with the rest of the transactions effected on the wholesale market (over the counter standard or non-standard supply contracts or transport contracts), and transmission network operators have to provide ACER with any other essential information.

Risk assessment of the security of gas supply and updating of emergency plans

The Estonian Competition Authority carried out a new risk assessment of the security of gas supply in Estonia. The risk assessment is based on Regulation (EU) No. 994/2010 (20 October 2010) of the European Parliament and of the Council whereby the risk assessment will be updated for the first time not later than upon the lapse of 18 months from the adoption of the first preventive action plan and emergency plan and subsequently every two years.

The initial new risk assessment of the security of gas supply in Estonia was carried out in 2010. This was augmented as part of the risk assessment of the security of joint gas supply in the Baltic States in 2012. A preventive action plan and an emergency plan were adopted by the decree of the Minister of Economic Affairs and Communications on 5 June 2013.

Compared to 2010, risks had changed as follows, according to the new assessment:

1. In 2010, the infrastructure standard (N-1) had not been met whereby in the event of the biggest gas infrastructure disruption, viewed separately, the technical capacity of the remaining gas infrastructure should be at least equal to the total daily gas demand in the calculation area on a day with an exceptionally high gas demand likely to occur once every 20 years. The 2015 risk assessment established that the infrastructure standard is 104.5% and that the requirement under the Regulation has been met. It became possible to meet the requirement, since, further to written certification from OOO Gazprom Transgaz Sankt-Petersburg, as of today up to 3 million cubic metres of gas may be supplied in a 24 hour period via the Narva link if necessary.
2. Estonia's supply security has increased thanks to an improvement in the competitive situation for gas import, as apart from Eesti Gaas AS, the sole importer, Baltic Energy Partners OÜ, Eesti Energia AS and Reola Gaas AS also began to import gas from Lithuania. In 2015, import from Lithuania accounts for 20% of total import.

The most serious gas supply disruption risk is the non-conclusion of a long-term contract by OAO Gazprom after the expiry of the contract period or the introduction of economic sanctions for political considerations, forbidding OAO Gazprom to sell gas to Estonia or any of the Baltic States.

By decree No. 15-0295 of 14 September 2015, the Minister of Economic Affairs and Communications approved the updated "Action plan to prevent gas supply security risks and plan to cope with gas supply disruptions" submitted by the Estonian Competition Authority.

Anti-competitive conditions in a notice of intent to purchase heat

In Estonia's district heating network areas, most heat production undertakings engage in heat production, distribution or sale that is, being active as network operators. There are around twenty heat production undertakings engaged only in heat production. The consumer can buy heat from the network operator to whose network the consumer installation in its possession is connected. The consumer cannot buy heat directly from the heat producer. This means that, for a heat producer, only a network operator may be a buyer. An undertaker operating as a heat production undertaking only has to be provided with access to the district heating network, as heat produced cannot be resold without it.

On 1 November 2010, a legislative amendment entered into force introducing a section governing the organisation of the purchase of heat into the district heating Act, which clarified the conditions for parties interested in the production of heat to be able to access a district heating network in order to assure fair competition and equal treatment for the heat producers. The conditions of the competition approved

by the Estonian Competition Authority, however, assure the most favourable price of heat for consumers of heat from a district heating network, which results from tenders.

Regulation on the organisation of the purchase of heat stipulates that the heat producer should invest in the production of heat and that the network operator should conclude contracts, as needed, to assure the security of investment (hereinafter: contract) for a term of up 12 years from when production is begun with production equipment. Where a need arises for new production capacity and/or if multiple operators have expressed their interest in concluding contracts in writing, the network operator will have to hold a competition for the award of a contract.

In instances provided for in § 141 of the district heating Act, purchase of heat for a district heating network by a network operator is regulated by the procedure for the organisation of competitions and the methodology for the evaluation of tenders submitted for the competition, as established by the regulation of the Minister of Economic Affairs and Communications. Under the Regulation, the network operator notifies the Estonian Competition Authority in writing about its intent to award a contract for the purchase of heat and publishes a notice on its website and in the print edition of at least one daily newspaper with a nationwide distribution including the essential terms of the proposed contract as known to the network operator by the time of the publication of the notice.

Since the entry into force of the regulation on the organisation of the purchase of heat, the Estonian Competition Authority has come across several anti-competitive conditions in notices of intent to award contracts for the purchase of heat, which restrict the submission of expressions of interest by interested parties and, accordingly, conflict with the purpose of the obligation of notification.

The Estonian Competition Authority considers that in a notice of intent to award a contract for the purchase of heat, it is unreasonable for a network operator to require those submitting expressions of interest to meet the following conditions:

1) ensure the completion of an installation within an unreasonably short time limit (e.g. a time limit of 9 months)

The deadline for the completion of an installation has to be realistic and take into account the time needed for holding a competition, which may run to 240 days in certain instances. Given the requirements and time limits for holding a competition for the purchase of heat, a time limit of less than 1.5 years for the completion of the installation as required in the notice of intent to award a contract for the purchase of heat is unreasonably short. The deadline for the completion of an installation required by the network operator should enable the heat producer who has won the invitation to tender to carry out the activities needed for the construction of the installation. If a network operator itself has made the necessary investments in heat production and itself proves the winner of the competition, it itself has to be able to meet the requirements and time limits stated in the notice.

2) before a written expression of interest is submitted, seek approval from the district heating network operator for the layout of the connection assembly and pipes.

To require compliance with this condition in the notice is not appropriate, since the conditions and the requirements for the layout of the assembly connecting to the heat network and for the connecting pipes will be described when the conditions of the competition are approved.

3) before a written expression of interest is submitted, seek approval for the technological layout of the installation from the new consumer to be added

A notice cannot require an interested producer to perform obligations imposed on a network operator by law, since consumers cannot buy heat directly from the heat producer. The consumer buys heat from the network operator, and the contract for the purchase and sale of heat is concluded based on a supply service agreement concluded with the network operator beforehand.

4) use wood chips as fuel

Restriction of the use of fuel types to just wood chips is anti-competitive. Under the main conditions of regulation, where possible preference is given to heat produced predominantly from renewable energy sources or from renewable energy sources predominantly via an efficient co-production process, from waste for the purposes of the Waste Act, to heat produced from peat or oil shale processing retort gas, and to the best available green technology. Accordingly, it is acceptable if a notice indicates that an installation uses renewable fuels or peat.

5) provide the physical and mechanical properties of the fuel used

This requirement cannot be considered an important condition without which an interest party is prevented from submitting an expression of interest.

6) provide a precise description of the production technology used

It is not reasonable to request a precise description of the production technology used; as a result, a brief description of it will have to suffice. A precise description of the production technology will be provided when the conditions of the competition are approved.

7) present certification that the builder of the installation has been issued with the design criteria or, in the absence thereof, a certificate from the local government in the area of location to certify that the property has a current detailed plan for the construction of the installation.

The requirement of the above conditions and documents is anti-competitive for the reason that potential interested parties need not have a property in the area with a current detailed plan specifically for the construction of an installation related to the production of heat. Compliance with conditions of this kind can only be conceivable in the case of an interested party who has had a significant advantage with respect to the terms of the conclusion of a prospective contract intending to purchase heat

and who, using the above information, has been able to meet the cited terms ahead of time.

8) heat production undertaking should operate as a heat producer in several network areas.

There are no objective explanations based on which an operator engaged in the production of heat in multiple network areas could be considered more competent than an operator engaged in the production of heat in one network area.

9) heat production undertaking has to have successfully completed at least two boiler house reconstruction projects funded by the Environmental Investments Centre (EIC).

There are no objective explanations based on which an operator involved in projects for the reconstruction of boiler houses funded by EIC could be considered more competent than an operator which has funded the (re)construction of a boiler house itself.

10) before the submission of a written expression of interest, pay a deposit (e.g. in the amount of 30 000 euros), which has to be proven with a letter of guarantee from a credit or financial institution.

A deposit may be required following the announcement of a competition, on the terms set out in the invitation to tender. In this respect, it should be taken into account that the submission of a written expression of interest does not oblige the interested party to participate in the competition or submit a tender.

In summary, the above conditions (requirements) conflict with the principles of the Regulation and have been mainly due to the network operators' desire to impede interested heat producers' access to the district heating network in order to assure for the party publishing the notice, a continued exclusive right to produce, distribute and sell heat. Under § 5 (1) of the Law Enforcement Act, such behaviour of network operators is be regarded as a disturbance; accordingly, the Estonian Competition Authority has the right to impose, by virtue of a precept on a person responsible for public order, an obligation to counter the danger or eliminate the disturbance, and to warn him about the application of administrative coercive measures.

Access to public water supply and sewerage

In Estonia, the right to collect an access charge is held only by a water undertaking designated by the council of the local government. Water undertakings calculate the access charge amount based on the methodology approved by the Estonian Competition Authority or the local government.

In Estonia, there are still water undertakings who have not sought approval for their methodologies from the Estonian Competition Authority or the local government and who are subject to legislation enacted under the law in effect prior to 2010. The latter option is indeed permitted; however, it is not recommended, since legislation enacted

under the version of the law in effect prior to 2010 might not be consistent with the applicable legislation.

The Estonian Competition Authority has been granted the right to require the introduction of methodology from water undertakings consistent with the applicable law. In the light of the above, in 2016 the Water Department of the Estonian Competition Authority is devoting itself to ensuring that as many water undertakings as possible seek approval from the Estonian Competition Authority for their methodologies, consistent with the applicable law, based on which access charges are calculated.

One of the biggest problems is the collection of an access charge in a situation where the consumer's property is supplied with water and wastewater is drained, and a water undertaking designated by the council of the local government begins to serve the area. Under the applicable law, access charges may not be collected again or additionally for connection to public water supply and sewerage where a different water undertaking begins to service an area. In such instances, the first task is to ascertain whether the consumer's property was being provided with a service through a statutory public water supply and sewerage system and whether the area was being provided with a service by a water undertaking within the meaning of the law. Public water supply and sewerage are involved when the system of structures and equipment needed for the provision of services is managed by the water undertaking or when the consumer's properties are provided with a service through a system serving 50 or more residents (with the number of residents determined based on the records in the population register). A water undertaking is a legal person governed by private law that provides public water supply and sewerage services for consumers. There are also cases where the service has been provided via public water supply and sewerage, but the operations were within the framework of a legal relationship between a non-profit association and its member, without the payment of any access charge. In the same situation, if the council of the local government designates a water undertaking, the water undertaking will be entitled to collect an access charge from consumers, since the water undertaking has already incurred costs for the provision of a service in the area.

Another big problem is the refund of access charges. The Act stipulates that where public water supply and sewerage have been constructed solely for a client who has fully paid the costs incurred for the connection with its access charge, since the water undertaking was not aware of anyone else seeking access and this public water supply and sewerage is accessed over seven years by additional clients, the water undertaking is to refund, within three months of access by each new client, a portion of their access charges to those owners of properties who had paid access charges previously. Often, a water undertaking enables a party gaining access to pay the access charge over a longer period, for example, over ten years. The above means

that a water undertaking should:

- monitor the refund obligation for 10 years, effecting a refund 10 years later within 7 years from the connection of the first consumer, out of the access charges received from other consumers (i.e. the obligation of the first consumer is performed sooner than the lapse of 10 years), or

- cut the refund period during 7 years after the connection of the first consumer at the expense of refundable access charges received from other consumers.

Inspection of the postal service´s quality

The Postal Act stipulates what number of letters, transmitted as ordinary items within the country as part of a universal postal service (UPT), have to reach the recipients on the business day that follows their being posted.

In 2015, the Authority ran the inspection in September and October. A total of 1300 letters transmitted as ordinary items to various recipients were placed inside Omniva's mailboxes. Participants in the returned 1291 letters to the Estonian Competition Authority, of which 1271 were counted for the purposes of quality determination. In terms of the letters counted, 1057 letters, or 83.2%, were delivered on time (on the business day following the date when they were handed over). In terms of delayed letters, 165 were delivered on the second business day following the date when they were handed over (delay of one business day). There were delays of two or more business days in the case of 49 letters (see Figure 5).

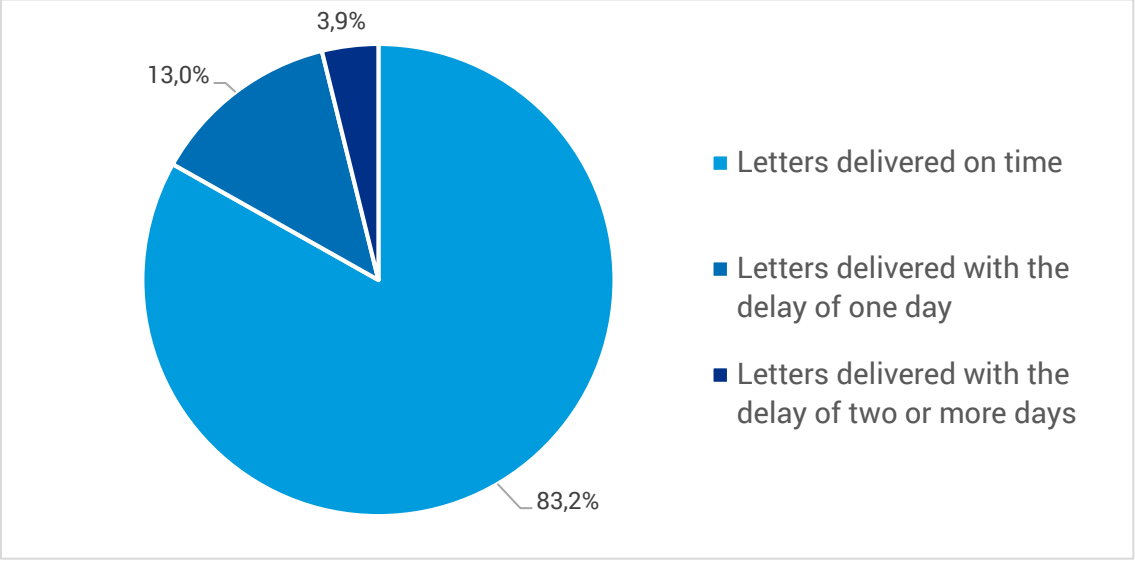

Figure 5. *Delivery of letters transmitted as ordinary items in 2015*

The inspection showed that letter transmission speed is 6.8 percentage points below the required level. According to Omniva, the delay was due to the improper emptying of mailboxes, a sorting machine error and insufficient speed in the preparation of

letters for delivery. To avoid these causes in the future, Omniva has purchased additional mailbox control chips, updated the relevant software solution and informed its staff about the issues. In addition, Omniva is looking for a software solution for the improvement of the sorting machine.

The requirement under the Postal Act that at least 90% of items of correspondence transmitted as ordinary items should be delivered on the business day following the date of their being handed over has remained unchanged since the current Postal Act entered into force in 2006. During this time, however, the use of the above service has declined significantly (see Figure 6).

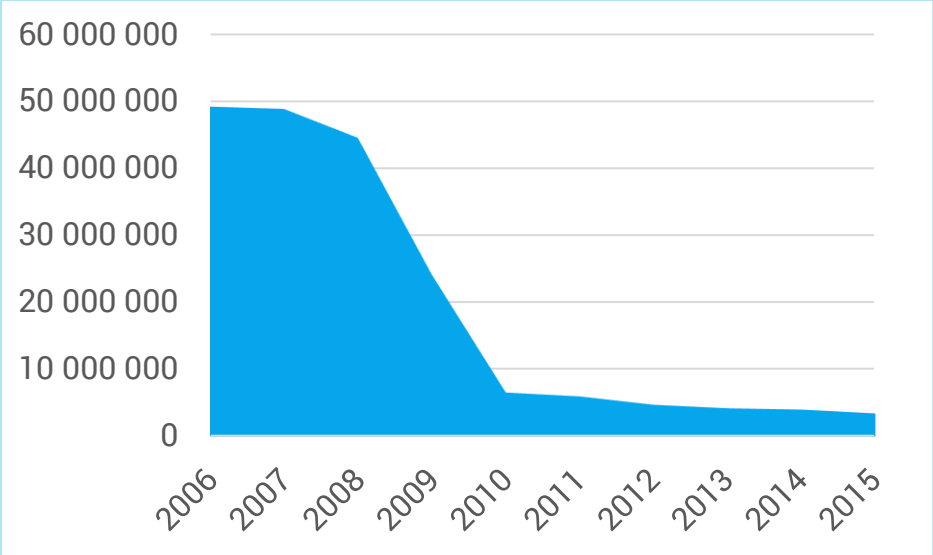

Figure 6. *Number of items of correspondence transmitted as ordinary items, 2006 – 2015*

The figure demonstrates unequivocally that the need of postal service users for this service has declined over the years. The decline is more than 14-fold. At the same time, the quality requirement for the speed of transmission has remained unchanged. In the assessment of the Estonian Competition Authority, it is worth considering a relaxation of the quality requirement by, for example, one business day, since a higher quality requirement would also translate into a higher cost of the service. Today, however, it is more expedient to use information technology channels for the transmission of urgent notices. As a result, the Estonian Competition Authority has also discussed the subject with the Estonian Ministry of Economic Affairs and Communications in order to make the relevant amendment to the Postal Act in the near future.