



REPUBLIC OF ESTONIA  
COMPETITION AUTHORITY



# Annual report 2019

## **ESTONIAN COMPETITION AUTHORITY**

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## Contents

<b>ABOUT THE AUTHORITY .....</b>	<b>4</b>
<b>COOPERATION .....</b>	<b>5</b>
<b>COMPETITION SUPERVISION .....</b>	<b>8</b>
The obligation offered by Piletilevi facilitates the use of several ticket intermediaries by the event organizer.....	8
The Supreme Court took a position on the application of the Competition Act in the waste management sector.....	9
Recommendation for opening notary fees to price competition .....	10
Competition in granting 5G frequency licences .....	10
Compromise with the Estonian Broadband Foundation .....	11
Supervisory proceedings against AS Eesti Post .....	12
Supervision proceedings concerning Narva taxis .....	13
<b>CONTROL OF CONCENTRATIONS.....</b>	<b>14</b>
AllePal OÜ, auto24 AS and VIN Solutions OÜ concentration.....	16
Concentration of UAB Lords LB Asset Management (CITYPARK EESTI OÜ) and Private Limited Liability Company EUROPARK ESTONIA, SIA EUROPARK LATVIA.....	17
Prohibition of the concentration of Estravel Holding OÜ and Aktsiaselts Wris .....	18
<b>VERIFICATION OF THE SUPPLY SECURITY OF THE ELECTRICAL SYSTEM.....</b>	<b>21</b>
<b>NATURAL GAS MARKET DEVELOPMENTS .....</b>	<b>24</b>
<b>WATER SERVICE PRICE DISPUTE WITH AS TALLINNa VESI ENDED .....</b>	<b>29</b>
<b>OVERVIEW OF THE ANALYSIS OF TALLINN`s DISTRICT HEATING NETWORK.....</b>	<b>32</b>
<b>OVERVIEW OF THE RAIL MARKET .....</b>	<b>34</b>
<b>ANALYSIS OF COST-SHARING IN EESTI POST .....</b>	<b>37</b>

# ABOUT THE AUTHORITY

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 Competition Authority is in the area of government of the Ministry of Justice.

The functions of the Authority are divided between two divisions. The Competition Division exercises competition related supervision, control of concentration in all economic sectors, analyses the competitive situation and raises competition related awareness. The Regulatory Division implements price regulation and market supervision in the markets of electricity, natural gas, district heating, water, railways and postal services. The External and Public Relations Department is responsible for ensuring effective support services of the Authority (including international and public relations, personnel work and training coordination, document management).

The Competition Authority employed 39 people as of the end of the year 2019, and 36 were civil servants and 3 were employees. The Authority employed 30% of men and 70% of women. The average age of a staff member was 46 years and the average years of service at the Authority was 13 years.

Most staff members have higher education in economics or law. In addition, there are officials with higher education in other disciplines such as thermal engineering, public administration, chemistry or other.

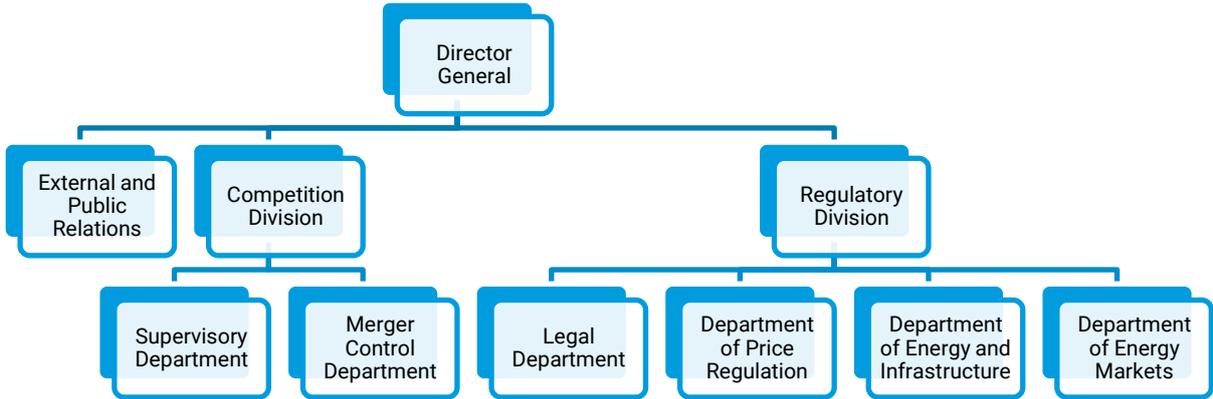


Figure 1. Structure of the Competition Authority

## COOPERATION

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The Authority considers both international as well as national cooperation highly important. The Authority routinely participates in the work of different field-based working groups, networks and organisations.

Competition agencies and sector regulators in various countries share knowledge and experience in the form of bilateral cooperation, but most of the international cooperation is achieved via respective cooperation networks and organisations.

The European Commission's Directorate General for Competition and the national competition authorities in all EU Member States cooperate with each other through the **European Competition Network**. As all the members of the network apply the European competition rules, it is necessary for the competition authorities to pool their experiences and share best practices in order to ensure the effective and consistent application of these rules.

**European Competition Authorities** is a forum of discussion for the competition authorities in the EU Member States, European Commission and the EFTA States to discuss competition related problems and share experiences.

**OECD Competition Committee** is a committee of the Organisation for Economic Cooperation and Development, focusing on competition issues in the area that includes all 35 members of the organisation.

**International Competition Network** is a global network with members from every region in the world ranging from small agencies to large ones with different resources and capabilities. The network is an informal venue and it is mostly addressed to maintain contacts and create convergence towards sound competition policy principles and application thereof.

**Agency for the Cooperation of Energy Regulators (ACER)** a European Union Agency, was created by the Third Energy Package to further progress the completion of the internal energy market both for electricity and natural gas. As an independent European structure which fosters cooperation among European energy regulators, ACER ensures that market integration and the harmonisation of regulatory frameworks are achieved within the framework of the EU's energy policy objectives.

**Council of European Energy Regulators** was established for the cooperation of the independent energy regulators of Europe. It seeks to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market.

**Energy Regulators Regional Association** is a voluntary organization comprising of independent energy regulatory bodies primarily from Europe, Asia, Africa, Middle East and the United States of America. The Association's main objective is to increase exchange of information and experience among its members and to expand access to energy regulatory experience around the world.

The aim of the **OECD Network of Economic Regulators** is to share experiences and good practices in different sectors of economic regulation.

The objective of **Regional Gas Market Coordination Group** is to facilitate an effectively functioning common regional gas market in the Baltic States and Finland.

**European Water Regulators (WAREG)** was created in April 2014 by an initial group of 12 regulators of water supply and sewerage services in Europe. At present, WAREG is made up by 24 regulatory authorities with Member status and 3 regulatory authorities with Observer status, who share the following objectives of cooperation: to exchange and share common practices; to enhance technical and institutional cooperation among WAREG members; and to promote capacity building, stable regulation and consumer protection. In 2016 the Estonian Competition Authority hosted WAREG's working meeting in Tallinn.

**Independent Regulators' Group-Rail (IRG-Rail)** is the „Independent Regulators' Group – Rail”, a network currently comprising independent rail Regulatory Bodies from 30 European countries. The IRG-Rail acts as a platform for cooperation, information exchange and sharing of best practice between national railway regulators in order to face current and future regulatory challenges in railways and to promote a consistent application of the European regulatory framework.

The main task of the **European Network of Rail Regulatory Bodies** is to facilitate the active cooperation of national rail regulatory bodies and information exchange between these bodies and to assist European Commission in the preparation of delegated acts.

**European Regulators Group for Postal Services** serves as a body for reflection, discussion and the provision of advice to the European Commission on postal services. It also aims to facilitate consultation, coordination and cooperation between EU countries and the Commission.

**European Committee of Postal Regulation** examines postal regulatory affairs in a European context taking into account the changes in the borderlines between regulatory aspects and operational aspects in this domain. It also assesses the influence of international regulatory policies.

**Universal Postal Union** unites 192 member countries and is the primary forum for cooperation between postal sector players. It helps to ensure a truly universal network of up-to-date products and services. In this way, the organization fulfils an advisory, mediating and liaison role, and provides technical assistance where needed. It sets the rules for international mail exchanges and makes recommendations to stimulate growth in mail, parcel and financial services volumes and improve quality of service for customers.

The Estonian Competition Authority has very good relations and cooperation with colleagues from neighbouring countries. Often the undertakings are active in many neighbouring countries and authorities are facing similar challenges. Annual meetings take place with Latvian, Lithuanian and Finnish colleagues for discussing competition as well as regulatory issues.

The Authority has contributed to cooperation and foreign aid projects whenever possible in terms of human resources. Just as important as international cooperation is developing cooperation on a national level with both public sector authorities and undertakings or unions thereof.

## COMPETITION SUPERVISION

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The competition supervisory activities are generally divided in two major parts: solving cases related to competition restricting agreements and conducting proceedings related to the activities of undertakings in a market dominant position. For the Authority, that means conducting criminal, misdemeanour or administrative proceedings. In addition, the Authority analyses the competitive situation in different economic sectors and if necessary makes proposals to respective ministries to improve the competitive situation.

### **The obligation offered by Piletilevi facilitates the use of several ticket intermediaries by the event organizer**

The Competition Authority initiated supervision proceedings on its own initiative with the aim of ascertaining whether the activities of AS Piletilevi are in accordance with § 16 of the Competition Act. As part of the supervisory proceedings, the Competition Authority investigated the agreements concluded between AS Piletilevi and the organizers of various events. The standard contracts submitted to the Authority contained two contractual clauses, which the Agency considered to be incompatible with competition law. One restrictive clause stipulated that an undertaking that enters into an agreement with AS Piletilevi undertakes to guarantee AS Piletilevi the exclusive right to ticket intermediation for events in case of an exclusive sale. Otherwise, the commission fees according to the price list will be applied, which are listed on the website of AS Piletilevi. The second clause restricting competition stated that if AS Piletilevi finds that in contradiction with the agreements, tickets for the event will also be sold in companies competing with AS Piletilevi, the service fee will be calculated according to the non-exclusive commission table. In addition, the undertaking is obliged to pay a contractual penalty of 190 euros to AS Piletilevi.

As AS Piletilevi is a very important partner for event organizers, agreement conditions in any way restrictive make it extremely difficult for competitors to enter and operate in the market. During the supervisory proceedings, very active communication took place between AS Piletilevi and the Competition Authority, as AS Piletilevi wanted to improve the competitive situation, which is why AS Piletilevi started to renew the standard agreements concluded with its customers. During the proceedings, AS Piletilevi expressed its readiness to accept the obligation, and the Competition Authority approved the obligation on 09.09.2019. The core content of the obligation was to renew the standard agreements and make the fees contained therein more transparent.

The amended agreements do not include a specific discount for the event when purchasing a ticket sales service only or mainly from AS Piletilevi. AS Piletilevi also does not make the amendment of the agreement conditional on the acceptance of other conditions. Even if the event organizer does not want to renew the standard agreement, AS Piletilevi informs the customer that the specific discount, in situations where the ticket sales service is purchased only from AS Piletilevi, will no longer apply.

Regarding the administration fee, the most important point of the obligation to alleviate the competition situation is that the organizer of the event can make the first change of the order submitted to AS Piletilevi without additional charge. AS Piletilevi also allows the customer to independently administer ticket sales under the conditions specified in the obligation and at the customer's request, which means that AS Piletilevi does not charge for event management services and administration services.

With regard to the ticket control service, AS Piletilevi publishes an IT standard with which the ticket files must comply for any undertaking that wishes to sell tickets through several intermediaries and expresses a wish to do so. In a situation where the ticket files sent to Piletilevi comply with the given standard, Piletilevi does not charge a fee for entering tickets in its system for the purpose of controlling.

Thus, the obligation of AS Piletilevi significantly facilitates the use of several ticket intermediaries by the event organizer and thereby enables AS Piletilevi's competitors to develop without obstacles. Although, according to the obligations, some of such service fees will remain, which may theoretically be higher for the event organizer when using the service of a competitor of AS Piletilevi, in the opinion of the Authority, this would take place only in exceptional cases. An event organizer who reasonably plans his/her business has a good chance of avoiding these surcharges altogether. The obligation is valid until 31.12.2021

## **The Supreme Court took a position on the application of the Competition Act in the waste management sector**

The Competition Authority has processed several cases in recent years in the waste management sector, including percepts made to the local government units (Tallinn City Government) or a non-profit association authorized by the local government (MTÜ Lääne-Viru Jäätmekeskus), who have carried out organized waste transport under § 66 section 1 of the Waste Act. By acting in this way, the local government unit or a non-profit association authorized by it mediates the service of waste handlers and carriers to consumers and adds its mark-up to the service fee for keeping records of waste holders and settling accounts. In its decisions, the Authority found that a local government unit operating in this way or a non-profit association authorized by it was acting as an undertaking, and in these cases, as a dominant undertaking, they had imposed an unfairly high price on consumers and obliged them to reduce the price.

On 25 April 2019, the Supreme Court made a decision in which, contrary to the Competition Authority, it found that the activities of MTÜ Lääne-Viru Jäätmekeskus are not entrepreneurship within the meaning of the Competition Act, but exercise of public authority, therefore, the Competition Authority did not have the right to exercise supervision. More specifically, the Supreme Court found that keeping records of waste holders and settling accounts with them is not an independent service for which there would be a separate product market. These activities have only an ancillary function. As the organization of waste transport is a local government task arising from law, where public Authority is exercised, keeping records of waste holders and settling accounts with them is an activity related to the exercise of public Authority which cannot be regarded as entrepreneurship within the meaning of competition law.

The Supreme Court also explained that since the waste management service fee established by a local government or its authorized NPO is a financial obligation under public law, any holder of waste can contest the obligation imposed on him or her in an administrative court if he or she finds it disproportionate.

Although the court clarified that the waste holder has the right to go to court to protect his or her rights, the Authority considers that such a possibility does not ensure real effective protection of consumers' interests, therefore, protecting the interests of consumers in the event of market power in some waste management sectors should be considered in advance when drafting waste law in the future.

### **Recommendation for opening notary fees to price competition**

The Competition Authority recommended setting notary fees not as fixed rates but as an upper threshold (limit prices), notaries then being able to use price lists below that limit and if necessary then to agree more favourable prices with a client. With this the consumer gets the opportunity to choose between notaries offering the same operations for different prices. As a result of the change, competition will drive the prices lower in certifying high-price real estate transactions and other similar operations, the notary fee rates of which currently exceed the cost-based level. Additionally, the price competition will ensure a better transparency upon choosing a notary.

Notary fees are set out in the law, but the revenue from those fees is not going into the public revenue, instead it goes into covering the costs of notaries and into their profits. According to an analysis, the average Estonian notary earns three times, the notary with the highest income even fifteen times the salary of a state judge. The only reason why notaries are able to earn that much is because the state has no way to verify the cost basis of the notary fees. This would not be possible in free market conditions. With price competition, the client would get the opportunity to receive price quotes from different notaries. Currently, notaries earn large income from certifying large real estate transactions but they are not allowed to take notary fees below the rates set in the law.

The setting of limit prices will not deteriorate the access to notary operations in any way. No price competition will occur in the field of socially affordable operations and those will continue to be performed at the upper limit price. In its analysis sent to the Ministry of Justice and the Chamber of Notaries, the Competition Authority presented the reasons why the amendment would not damage the sustainability or independence of the activities of notaries, the quality of their operations, nor accessibility for people with lower income.

### **Competition in granting 5G frequency licences**

The Competition Authority formed an opinion about the competition of frequency licenses in the frequency band of 3,410-3,800 MHz, as a result of which, the undertakings acquiring the licenses will start building a so-called 5G network for communications services.

The Competition Authority finds that the frequency band should not be divided into three or four parts, and sees instead an opportunity to put the frequency licenses on auction as smaller blocks of frequencies. Frequency licenses for 3,410-3,800 MHz band in 5 or 10 MHz blocks have been auctioned in several other European Union countries. This situation would stimulate competition not only between the three major mobile communications operators but would also provide players with new business model with an opportunity to develop a 5G network in Estonia. The estimated application range of the 5G technology is much wider and more varied than merely higher data communication speeds.

The development of the offered communications services will depend on the manner of building the 5G networks. One choice, highly likely to be followed by the owners of nationwide mobile communications networks, is to establish the 5G network on top of the existing network and as an addition to it. Another, differing developmental direction is to establish the new network for 5G services as a stand-alone network, with respect to the choices stemming from the new standard. In the latter case, the owners of the 4G network will have no technological advantage. Business models with a future outlook are the competitive ones. Pursuant to the European Commission's guidelines, the frequency band should be divided into sufficiently large blocks, preferably with the bandwidth of 80-100 MHz. The Competition Authority estimates that the efficient use of the frequency range is not hindered by the blocks sold at auction for being significantly smaller than the total frequency range that a communications company will acquire in the end. Relevant criteria can be deployed at the auction in order to ensure equal opportunities for all participants, while also preventing fragmentation and inefficient use of the frequency range.

Before publishing its opinion, the Competition Authority sent its draft to the Estonian Association of Information Technology and Telecommunications, to the Ministry of Economic Affairs and Communications, and to OÜ Levikom, the applicant. The feedback received did not indicate any significant hindrances to auctioning the aforementioned frequency range in Estonia as small blocks. The Competition Authority recommended that the Ministry consider this solution also when preparing the planned spectrum auction of the 700 MHz frequency range.

### **Compromise with the Estonian Broadband Foundation**

At the end of 2017, the Competition Authority terminated the supervision procedure against the Estonian Broadband Foundation with a precept. The Competition Authority demanded that the Estonian Broadband Foundation relax the conditions for access to the EstWin base network in order to improve the possibilities of providing high-speed internet to the residents of rural areas.

The Estonian Broadband Foundation filed a complaint with the Tallinn Administrative Court to establish the precept of the Competition Authority of 19.10.2017 as void or revoke it. Within the framework of the court proceedings, the parties reached a compromise agreement, which was approved by the court by a court ruling of 10.05.2019. Due to the compromise concluded between the Competition Authority and the Estonian Broadband Foundation, the Estonian Broadband Foundation changed the product conditions of the service “fiber rental for consumer connection” designed for rural areas so that the possibilities of using the service are wider and more flexible than before.

It is extremely important for the Competition Authority that in rural areas, there are reasonable opportunities to use broadband service with the technical solutions preferred by consumers. The renewed product terms reached in the compromise agreement will create better conditions for users of the 'fiber to the consumer' service in rural areas and improve access to high-speed internet for rural residents.

### **Supervisory proceedings against AS Eesti Post**

On the basis of the complaint of AS Express Post, the Competition Authority initiated supervisory proceedings against AS Eesti Post in connection with the application of nationwide discounts for addressed direct mail delivery services and unaddressed direct mail delivery services.

AS Express Post provides home delivery in urban areas via its carrier network. In rural areas, AS Express Post does not have its own carrier network, and in order to serve its customers, it must purchase a carrier service from AS Eesti Post.

AS Eesti Post applies discounts to advertising home delivery services, the amount of which depends on the volume of customers' subscriptions nationwide. Due to the discounts, it is not possible for AS Express Post, which purchases the service from AS Eesti Post only in rural areas, to offer nationwide home delivery at a price competitive with AS Eesti Post. As advertising customers buy home delivery from one nationwide service provider, they are motivated to buy both advertising deliveries from AS Eesti Post due to discounts.

During the proceedings, AS Eesti Post was not able to convincingly demonstrate that the nationwide discounts applied to the advertising of home delivery services are objectively justified, therefore, they have an anti-competitive effect both from the point of view of AS Express Post and other potential competitors.

On 20.12.2019, the Competition Authority issued a precept to AS Eesti Post prohibiting the application of nationwide discounts in its current form. AS Eesti Post challenged the precept in court, and a lawsuit is currently pending.

## Supervision proceedings concerning Narva taxis

In July 2018, the news was reported in the media that the ridesharing platform SmileTaxi faced barriers to entering the Narva taxi service and ridesharing services market, which allegedly consisted of a ban by local taxi undertakings for taxi drivers to cooperate with the platform. The Competition Authority initiated supervisory proceedings with the aim of verifying the information published in the press about a possible agreement restricting the access of the ridesharing platform entering the market to the provision of ridesharing services in the City of Narva.

During the proceedings it became clear that the representatives of the three taxi companies operating in Narva held a meeting, which was also attended by the taxi drivers working for these companies. The meeting discussed, among other topics, possible countermeasures against the ridesharing platform entering the market. In addition, it was explained to the taxi drivers that in case they start cooperation with the SmileTaxi ridesharing platform, the cooperation with the respective taxi drivers will be terminated. As a result of the activities of the three largest taxi companies operating in Narva, taxi drivers operating in Narva did not start cooperating with the ridesharing platform, as is done in other cities of Ida-Virumaa, where the ridesharing platform SmileTaxi provided its services.

It is contrary to § 4 (1) of the Competition Act to organize a joint meeting by three taxi companies, which was attended by representatives of all three taxi companies and taxi drivers in a contractual relationship with the taxi company and where any conditions related to the activities of taxi drivers or conditions related to the provision of taxi services were discussed. The position of the Competition Authority was that the taxi companies must decide on the respective issues independently, without consulting and coordinating activities with other taxi companies.

According to SmileTaxi, the situation in the market of Narva taxi services became significantly better during the proceedings, as taxi drivers joined both the SmileTaxi service and Bolt Services EE OÜ, which started offering ride mediating services in Narva. Thus, the Competition Authority found that although the competition was restricted at the meeting, the competition situation in the Narva taxi services market had improved so much during the supervision procedure that it was no longer expedient to continue the supervisory proceedings and the Authority terminated the proceedings.

## CONTROL OF CONCENTRATIONS

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The purpose for control of concentrations is to ensure conditions of competition in product markets and market structures open to competition. The Competition Authority will intervene in a concentration only if the concentration may significantly impede effective competition in the Estonian markets or in a substantial part thereof, especially as a result of the creation or strengthening of a dominant position in the market. The primary way to avoid restriction of competition is to impose conditions on the parties to the concentration to fulfill their obligations, such as the obligation to divest part of their business, etc. However, a concentration may be prohibited if the obligations taken are not sufficient to prevent restrictions of competition or if the parties to the concentration do not propose undertaking obligations. The parties to the concentration also have the opportunity to abandon the proposed concentration. If the parties to the concentration abandon the concentration, the Competition Authority shall terminate the concentration proceedings.

The concentration must be notified to the Competition Authority after the conclusion of the agreement, the conclusion of a transaction, or act for the acquisition of control or the announcement of a public offer, but before the entry into force of the concentration. A concentration may also be notified to the Competition Authority as soon as the parties indicate with sufficient certainty their intention to complete the concentration.

The control applies to concentrations between undertakings if the total turnover of the parties in Estonia in the previous financial year exceeds 6,000,000 euros, and the turnover of at least two parties to the concentration in Estonia each exceeds 2,000,000 euros. A concentration that must be controlled by the Competition Authority may not be enforced until a decision approving the concentration has been made.

During 2019, the Competition Authority had a total of 51 concentration control proceedings, of which 45 concentration notifications were submitted in 2019, and 6 notifications were transferred from 2018. At the same time, 45 decisions to grant permission to concentrate were made within the 30 days prescribed by law, including one permission to concentrate with obligations (AS Aqua Marina and AS Oiltanking Tallinn).

In 2019, two concentration proceeding decisions were made to initiate supplementary proceedings, and two supplementary proceedings were transferred from 2018. Supplementary proceedings will be carried out to gather additional information and to determine whether there are circumstances restricting competition in case of concentration of the subject to control. According to the law, the length of supplementary proceedings may be up to four months. In the course of supplementary proceedings in two cases (UAB Lords Asset Management and OÜ Europark Estonia and SIA Europark Latvia; Parma Oy and AS TMB) the parties to the concentration abandoned the concentration, in one case (Estravel Holding OÜ and Aktsiaselts Wris) a prohibition decision was issued, in one case (AllePal OÜ, auto24 AS, and VIN Solutions OÜ) a permission to concentrate was granted with an obligation. The Competition Authority also made a notification on the non-initiation of the concentration proceedings (Forum Cinemas OÜ and Solaris Kino OÜ) due to the fact that one of the parties to the concentration did not intend to enter into the transaction.

Two proceedings moved to 2020.

**By type of concentration, the concentrations were as follows:**

- ⇒ 47 concentrations involved the acquisition of control by an undertaking over another undertaking or a part thereof (§ 19 (1) 2) of the Competition Act);
- ⇒ 3 concentrations concerned the acquisition of joint control by undertakings over a third undertaking or a part thereof (§ 19 (1) 3) of the Competition Act);
- ⇒ 1 concentration was a merger of undertakings within the meaning of the Commercial Code (§ 19 (1) 1) of the Competition Act).

During the year, the Competition Authority processed concentrations in the following economic sectors:

- commercial real estate (renting and handling)
- production and sale of laminate boards
- production and sale of cement and ready-mixed concrete
- casinos
- sale of coffee and coffee machines
- dairy farming and raw milk production
- forwarding services
- operation of advertising portals
- film production and cinema activities
- growing of vegetables
- manufacture and sale of trailers
- laundry services
- production and sale of meat products
- IT services
- building materials
- shipping container shipping services
- production and sale of concrete elements
- logging and sales
- retail and wholesale of motor vehicles
- publishing of newspapers and magazines
- mining and sale of aggregates (limestone, gravel, sand)
- banking services
- activities of travel agencies and tour operators
- retail sale of automotive fuel (operation of service stations)
- sale of electronic products
- energy production and sales
- advertising services
- parking services
- catering services
- port services
- sale of wooden aluminum windows and doors
- retail and wholesale
- leasing and insurance brokerage services

Most of the concentrations (32) took place between Estonian undertakings, and in the case of 8 concentrations, both parties to the concentration were foreign undertakings. In eleven cases, the parties to the concentration were both an undertaking registered abroad and an Estonian undertaking.

## AllePal OÜ, auto24 AS and VIN Solutions OÜ concentration

On 27.12.2019, the Competition Authority granted permission for the concentration of AllePal OÜ, auto24 AS, and VIN Solutions OÜ, provided that AllePal OÜ transfers the advertisement portal SOOV.

The business activities of the parties to the concentration overlap in the management of the advertising portals. Table 1 lists the advertising portals belonging to the parties to the concentration.

	AllePal OÜ	auto24 AS
<b>Real estate advertisements</b>	<a href="http://www.kv.ee">www.kv.ee</a> ; <a href="http://www.city24.ee">www.city24.ee</a>	
<b>Car advertisements</b>		<a href="http://www.auto24.ee">www.auto24.ee</a>
<b>Generic advertisements</b>	<a href="http://www.soov.ee">www.soov.ee</a> ; <a href="http://www.osta.ee">www.osta.ee</a>	<a href="http://www.kuldnebors.ee">www.kuldnebors.ee</a>

**Table 1.** Advertising portals belonging to the parties to the concentration

The Competition Authority assessed the impact of the concentration on competition between advertisement portals as well as how the concentration may affect competition in the mediation of the publication of real estate advertisements and car advertisements.

Given that car advertisements and real estate advertisements are not interchangeable, belong to different product markets and the business activities of the parties to concentration in terms of real estate advertisements and car advertisement portals do not overlap (see Table 1), according to the Competition Authority, the concentration would change the structure of product markets primarily due to the higher concentration of generic advertising portals. Concentrations between generic advertising portals would be most affected by the concentration. In addition, the business activities of the parties to the concentration overlap in the mediation of car and real estate advertisements through generic advertisement portals, as they contain car advertisements and real estate advertisements.

As the business activities of the parties to the concentration overlapped more specifically in the field of generic advertising portals, in order to speed up the procedure, the parties to the concentration proposed a draft proposal of taking the obligations to an early stage of the supplementary procedure in order to avoid possible competition concerns arising from the proposed concentration. This proposal was the transfer of the generic advertisement portal SOOV. Therefore, the Competition Authority assessed the impact of the concentration on competition in a situation where the generic advertising portal SOOV is transferred.

In assessing the concentration, the Competition Authority came to the opinion that the approval of the concentration, together with the obligation, would not significantly affect the product markets of real estate advertisements and car advertisements.

Undertakings in a dominant position or with very high market power are already active in these product markets before the concentration. As generic advertising portals do not exert significant competitive pressure on them, the concentration will not significantly affect the competitive situation in these product markets. The transfer of SOOV eliminates the potential risk of restriction of competition that could have arisen from the loss of competitive pressure resulting from the concentration of two closely competing generic advertising portals, SOOV and Kuldne Börs. It is important to emphasize that this is an elimination of the potential risk of restriction of competition, as the Competition Authority did not analyze whether the concentration of generic advertising portals would actually restrict competition. However, it is clear that if the concentration were to restrict competition, this could only be possible through the concentration of generic advertising portals.

### **Concentration of UAB Lords LB Asset Management (CITYPARK EESTI OÜ) and Private Limited Liability Company EUROPARK ESTONIA, SIA EUROPARK LATVIA**

In February 2019, the Competition Authority terminated the concentration proceedings of UAB Lords LB Asset Management and the Private Limited Liability Company EUROPARK ESTONIA and SIA EUROPARK LATVIA, as UAB Lords LB Asset Management decided not to concentrate in respect of the Private Limited Liability Company EUROPARK ESTONIA. Previously, the Competition Authority had come to the conclusion that the concentration could significantly restrict competition in the market for the provision of parking services in Tallinn and Pärnu, and the obligations assumed by the parties to the concentration are not sufficient to prevent the restriction of competition.

There was a horizontal overlap between the business activities of the parties to the concentration as regards the organization of parking. CITYPARK EESTI OÜ, a company under the control of UAB Lords LB Asset Management, operates open car parks and parking houses in Tallinn and Pärnu. Private Limited Liability company EUROPARK ESTONIA mainly organizes parking in Tallinn, Tartu, Pärnu, Rakvere, and Kuressaare.

Parking management includes, on the one hand, the provision of parking services to vehicle drivers and, on the other hand, the provision of operator services to owners or tenants of parking houses and car parks (hereinafter property owners). These are closely related services. For example, sales revenue from the provision of parking services can be generated in a number of different ways: (a) the undertaking providing parking service collects a parking fee from the drivers to the property owner and the property owner pays a fixed service fee to the parking service provider; (b) the undertaking providing parking services collects a parking fee from the drivers, which is shared with the property owner as agreed in the contract; (c) the undertaking providing parking service collects a parking fee from the drivers and pays a fixed fee to the property owner. The price of the parking fee applicable to drivers is also determined in several different ways: the price is set by the parking service provider, the price is set by the property owner, or the price is decided jointly by the parking service provider and the property owner. Considering the integration of the parking service provided to drivers and the parking operation service provided to property owners, the Competition Authority assessed the impact of the concentration and the

post-concentration position of the parties to the concentration in the parking services market as a whole, without distinguishing between services provided to drivers and services provided to property owners.

The activities of the parties to the concentration in the provision of parking services overlapped in Tallinn and Pärnu. In both Tallinn and Pärnu, it is possible to distinguish between parking in a public parking area belonging to the city and parking in private parking lots (open parking lots, parking houses, parking lots for commercial buildings, etc.). The City of Tallinn has selected a service provider to organize parking in public paid parking areas through a public procurement, while the Pärnu City Government agency Pärnu Haldusteenused organizes parking in the public paid parking area of the City of Pärnu. In Tallinn, in addition to the parties to the concentration, the largest parking service provider was AS ÜHISTEENUSED. However, the combined market share of the parties to the concentration in the provision of parking services in Tallinn was over 50%. In Pärnu, the combined market share of the parties to the concentration in the provision of parking services in private car parks was almost 100%.

As a result of the proceedings, the Competition Authority concluded that the concentration might significantly restrict competition in the provision of parking services in Tallinn and Pärnu, including the negative impact of the concentration on the structure of product markets. In a situation where the number of undertakings providing parking services was relatively small before the concentration (compared to another sector of the economy), only two significant companies (in addition to some very small competitors) would have remained active in the product market, and the choice of buyers of the service would be minimal. Through the concentration, the possibility of the Private Limited Liability Company EUROPARK to influence the price of the service, parking fee, and other conditions would have increased.

### **Prohibition of the concentration of Estravel Holding OÜ and Aktsiaselts Wris**

On 15.08.2019, the Competition Authority prohibited the concentration of Estravel Holding OÜ and Public Limited Liability Company Wris. With this transaction, Estravel Holding OÜ intended to acquire 75% of the shares of Public Limited Liability Company Wris. The Competition Authority found that the concentration would have negatively affected the structure of the goods market and the functioning of competition, especially in the market of travel services intermediation for business customers.

The tourism sector includes many different services, and there are companies with different orientations operating in the sector. The provision of travel services generally takes place at three levels, with the following operators: (i) travel service suppliers (i.e., input providers to the following levels) - air, train, bus or boat operators, accommodation operators, car rental operators, etc; (ii) tour operators - undertakings which create tourism products by purchasing individual services from travel service suppliers and bundling them together into travel package; (iii) travel agents - undertakings which mediate a variety of travel services, including the services of both travel service suppliers and tour operators, to end-users (business or private), which is essentially retail of travel services.

The business activities of Estravel Holding OÜ and Public Limited Liability Company

Wris overlap in the intermediation of travel services (incl. both business and private travel), i.e., at the retail level. Both parties to the concentration offer a wide range of travel services and serve both business and private customers. The services offered to both business and private customers are mainly mediation of airline tickets, hotel accommodation, boat tickets, train tickets, bus tickets, car rental, as well as visa support services, travel insurance brokerage, and 24-hour assistance in resolving unexpected travel situations (24/7 customer service). The parties to the concentration also mediate package tours of wholesale tour operators.

In assessing the concentration, the Competition Authority had to find out whether the concentration would change the structure of product markets in a way that would lead to a significant restriction of competition. Consequently, it was necessary to identify those competitors of the parties to the concentration which exert competitive pressure on them and restrict their independent activities. Therefore, in order to analyze the market for travel intermediation services, the Competition Authority collected data on the sales revenue of undertakings from travel services from all major undertakings operating in the goods market (both tour operators and travel agents) and found that there was a clear distinction between tour operators and travel agents. The Competition Authority also concluded that predominantly companies with IATA accreditation and providing travel services with a wide range of services compete with each other.

In defining the product market and its geographical scope, the Competition Authority took into account the practice of the European Commission, the choice of services provided by the parties to the concentration, and the information gathered during the proceedings. Based on the information gathered during the proceedings, it was confirmed that the needs of business and private customers are different. Moreover, there are also differences in the provision of services to business customers. These differences are mainly due to the degree of complexity of the services to be purchased, the level of flexibility, the additional services required, the terms and methods of payment.

For example, private individuals do not have a number of procedural restrictions on the purchase of travel services that are specific to legal entities and, in particular, to purchasers from state authorities (e.g., the obligation to organize public procurements). As a general rule, the successful tenderer(s) will be selected on the basis of the most advantageous sample offer, but in many cases, the procurement conditions will favor larger companies, as they include criteria relating to both turnover and number of employees. In addition, IATA accreditation is generally required to qualify for procurement. In the procurements, there is a competition between travel agents offering a wide range of services, and the parties to the concentration have been direct competitors in many procurements, in a situation where a relatively small number of different undertakings are involved in the procurements.

The Competition Authority assessed the competition situation in Estonia both in the field of travel services intermediation as a whole and in terms of its sub-markets, i.e., business and private travel intermediation. Following the concentration, the combined market share of the parties to the concentration in the market of travel services intermediation services in Estonia would be over 50%, including 40-50% for business travel intermediation and 60-70% for private travel intermediation. According to the

Competition Authority, a product market structure in which one very large undertaking operates and the remaining ones are significantly smaller, does not promote effective competition, but a company much larger than other undertakings has several advantages over competitors, and this also creates the possibility of foreclosing competitors in the longer term.

In order to prevent the competition restriction resulting from the concentration, the parties to the concentration did not submit any obligations taken, therefore, the Competition Authority **prohibited the concentration** of Estravel Holding OÜ and Public Limited Liability Company Wris.

# VERIFICATION OF THE SECURITY OF SUPPLY OF THE ELECTRICAL SYSTEM

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In 2019, the Estonian Competition Authority thoroughly analysed the security of supply of the electricity system in the context of Estonia and the Baltic States until 2033<sup>1</sup>. The need for analysis arose due to the sharp rise in CO<sub>2</sub> prices and the reduced competitiveness of Eesti Energia AS's Narva power plants in the common European electricity market. The latter created the preconditions that Narva power plant blocks could close faster than forecasted. On the other hand, the analysis was necessary due to the potential impacts of the project of synchronising the Baltic electricity system with the Central European network in 2025, which could increase the needs for reserves in the relevant countries.

## Security of supply in the Estonian context

The analysis showed that the Estonian electricity system is rapidly becoming the most deficient of the Baltic region, having previously been an exporting electricity system. It can be difficult to meet the electricity network's needs (consumption and reserves) with the domestic generation capacities already from 2021 (in a conservative scenario: from 2020). This does not take into account the renewable energy production capacity with its random nature, which may slightly improve the situation. From 2024, when Narva power plants are planned to close their desulphurisation-using blocks, the shortfall in domestic production capacity will be so high that hypothetically the peak load will not be possible to cover even with the maximum use of wind and solar capacity. The volume of capacity deficit varies year by year, reaching up to 600 MW in the base scenario, indicating that the subsequent dependence of Estonian electricity system on imports is high.

From a technical point of view, the capacity deficit can be reduced by keeping Narva power plants' desulphurisation-using blocks in operation in the period of 2024-2030 (after 2030, this will no longer be possible due to technical and environmental constraints). This solution would provide an additional capacity of up to 658 MW and would ensure the covering of the peak load with domestic capacities. However, it may no longer be possible to keep the blocks operational after the end of 2023, from an economic perspective.

Estonia, however, has a strong transmission network and sufficient external connections with neighbouring countries. Transmission capacities will be able to cover the production capacity's deficit. Thus, taking into account the import capacity, the security of supply of the Estonian electricity system is still covered until 2033 in both the base scenario and the conservative scenario. A slight deficit may occur in the conservative scenario in the case of an increased peak load from 2031, but the likelihood of a simultaneous occurrence of the relevant circumstances is extremely low.

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<sup>1</sup> The analysis of the security of supply by the Estonian Competition Authority can be found in the report on the electricity and gas market: [https://www.konkurentsiamet.ee/sites/default/files/elektrija\\_gaasituru\\_aruanne\\_2018.pdf](https://www.konkurentsiamet.ee/sites/default/files/elektrija_gaasituru_aruanne_2018.pdf)

## Security of supply in the European context

The analysis also looked at the results of the analysis of the pan-European security of supply (MAF – Medium Adequacy Forecast). The analysis was carried out by the European Network of Transmission System Operators for Electricity (ENTSO-E) in 2018, with results up to 2025. The MAF analysis identified a 500 MWh deficit for Estonia for two hours by 2025 in the conservative scenario. In addition, it was indicated by the analysis that there is a shortage of production capacity in most European countries, suggesting that there may not always be a maximum import capacity behind transmission capacities and that the full dependence of countries' security of supply on imports is therefore unsustainable. In 2020, ENTSO-E will prepare a new MAF analysis which will predict the security of supply of electricity systems in European Member States until 2030.

## Security of supply in the regional context of the Baltic States

As the Baltic States are interconnected with AC lines and are synchronously closely connected, both in the current unified Russian IPS/UPS electricity system and after the joint synchronisation at the end of 2025, when they will be connected with the Central European network, the security of supply in the Baltics should also be viewed as unified. Connections to the Nordic countries are DC connections, which means that they are significantly easier to turn off or limit when problems arise. However, for the three Baltic States, which are in one synchronous area and closely linked by AC lines, it is likely that if the problem of security of supply arises in one country, it will be transferred to the other two countries as well. Consequently, in the regional analysis, the Estonian Competition Authority examined the security of supply of the three Baltic States together. The analysis pointed out that the Baltic electricity system in total has a deficit of production capacity from 2020. Looking at the Baltic region's countries separately, in the near term, deficit is foreseen in all those countries. As of 2024, the internal deficit of production capacity in the Baltic States against peak consumption in the normal scenario, without accounting for wind and solar energy, is over 1200 MW. In Lithuania, deficit has already realised; in Estonia, a more serious deficit will emerge from 2024 and Latvia from 2026.

In the baseline scenario, imports from transmission capacities will be able to cover the deficit more or less until 2032. However, in the event of transmission capacities failing or being out of operation, there will be problems with the security of supply in the Baltic States even earlier.

## Summary and further steps

A more detailed overview of the scenarios analysed and the situation of security of supply in Estonia and in the Baltic States is shown as the security of supply matrix, Table 2.

The security of supply analysis by the Estonian Competition Authority set out the following further steps:

- ⇒ Specify a standard for security of supply that provides a framework for the scope of permitted restrictions on electricity supply.
- ⇒ Conduct a socio-economic analysis to determine the potential cost of the

strategic reserve in comparison with the cost to society due to restrictions on electricity supply.

- ⇒ Prepare an overview of the existing market failures that would enable security of supply to be improved without the creation of a strategic reserve – facilitation of entry into the flexibility market; correspondence with the real value of balancing market prices; reduction of the impact of Russian imports not compliant with EU’ s environmental requirements by establishing a network charge.

Competition Authority's normal scenarios	Scenario	Competition Authority's Base Scenario				Competition Authority's Conservative scenario				
		Normal peak load		10% higher peak load		Normal peak load		10% higher peak load		
		Normal network situation	N-2	Normal network situation	N-2	Normal network situation	N-2	Normal network situation	N-2	
	Estonia	√	√	√	√	√	√	2031	2031	
	Estonian Summer	√	√	√	√	–				
	Baltic Regional	2032	2032	2026	2024	2029	2029	2026	2021	
	Baltic synchronous area's island operation scenario, 10% probability	2026	2026	2024	2024	2025	2025	2021	2021	
Elering's scenarios	Elering's Base scenario					Elering's Conservative scenario				
		Normal peak load		10% higher peak load		Normal peak load		10% higher peak load		
		Normal network situation	N-2	Normal network situation	N-2	Normal network situation	N-2	Normal network situation	N-2	
		Estonia	–				√	√	√	√
		Baltic-Finland regional	√	√	–	–	2031	2023-2024 and 2031	–	
		Baltic synchronous area's island operation scenario, 10% probability	2029	2029						
	Baltic emergency response scenario, probability 1%	2020	–							
MAF	MAF's Base scenario					MAF's Conservative scenario				
	Pan-European	√ (known until 2025)					x 2025 (2 h and 500 MW deficit)			

**Table 2. Supply security matrix**

\* The red year numbers shown in the table indicate from which year there will be a problem with security of supply

\*\* The scenario of the performance of Estonia's vital service, which was also examined by Elering, has not been included in the table as this scenario only foresees the provision of 200 MW of consumption. It can be said that to this extent, the vital service will be covered by domestic production until the end of the considered period i.e. 2030.

## NATURAL GAS MARKET DEVELOPMENTS

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In 2019, preparations were under way to open the regional gas market from 01.01.2020.

The important milestones for that were:

- **completing Balticconnector by the end of 2019;**
- **agreeing on the FINESTLAT (Finland, Estonia and Latvia) market area's details;**
- **agreeing on the rules (standard terms) of the common balancing area of Estonia and Latvia;**
- **deciding on the appropriate transmission price for the FINESTLAT market area in accordance with European Union's network rules.**

### Completing Balticconnector

The projects to strengthen Balticconnector (maximum capacity 81 GWh/day) and the Estonian-Latvian connection (maximum capacity 105 GWh/day) aim to connect the Baltic States and Finnish gas transmission networks and thereby create the preconditions for establishing a common gas market in the Baltic States and Finland. The estimated market volumes are: Finland 25 TWh/year, Lithuania 24 TWh/year, Latvia 13 TWh/year and Estonia 5 TWh/year – thus the total for the market area is 67 TWh/year.

Investments will improve regional security of supply and will create a positive environment for the development of a functioning regional gas market. A higher regional market volume will create preconditions for additional supply chains ensuring a decrease of Russian influence in gas supply.

Connecting markets through infrastructure will bring benefits through market integration and increased competition. Market integration is expected to result in the convergence of gas market prices in the Baltic States and in Finland and a decrease in possible geographical price discrimination due to a single gas supplier. This may reduce the price of gas for the end consumer. In addition, the larger connected and open market has more opportunities for competing gas providers.

Strengthening Balticconnector and the Estonia-Latvia connection will provide Finland with access to the Inčulkans underground gas storage facility and, after the deployment of the Lithuanian-Polish connection (GIPL), a connection for the region to the European gas network.

The implementation of the projects will allow the postponement or decrease of domestic investments in both Estonian and Finnish networks, which would otherwise have been important for security of supply.

The Balticconnector project (with a cost of 250 million euros, of which 75% is European Union's aid) was built by Estonian and Finnish transmission system operators acting in cooperation and it consists of the following parts:

- Inkoo-Paldiski offshore pipeline of 77 km in the Gulf of Finland (pipe diameter 500 mm, maximum working pressure 80 bar);
- Siuntio-Inkoo onshore pipeline of 20 km in Finland (pipe diameter 500 mm, maximum working pressure 80 bar);
- Kiili-Paldiski onshore pipeline of 55 km in Estonia (pipe diameter 700 mm, maximum working pressure 54 bar);
- Kiili gas pressure control station;
- Inkoo natural gas metering station with a compressor station;
- Paldiski natural gas metering station with a compressor station.
- by the end of 2019, the pipe system was completed allowing the connection to be put into service with a partial load (up to 35 GWh/day) from 01.01.2020. After the completion of the compressors on the Estonian side in June 2020, the transmission capacity of 73.5 GWh/day will be available to use. After additional repairs of the Tallinn-Vireš gas pipeline (2021-2022), the designed capacity of 81 GWh/day will be available to put into service.
- The Balticconnector project was accompanied by the project to strengthen the Estonian-Latvian connection (with a cost of 37 million euros, of which 50% was European Union's aid), built by Elering AS and consisting of:
  - Karksi (bi-directional) natural gas metering station;
  - Lilli line valve unit;
  - Puiatu compressor station.

Karksi natural gas metering station and Lilli line valve unit were ready by the end of 2019, Puiatu compressor station will be ready together with Paldiski compressor station in June 2020.

In the first months of the introduction of Balticconnector in 2020, the gas connection has been in active use, mainly for transporting gas from the Inčukalns underground gas storage facility to Finland. 99% of the provided trading capacity has been used in the EE>FI direction, and 8% of the capacity in the FI>EE direction.

## **Creating the FINESTLAT market area**

In cooperation with the regulators in the Baltic States and Finland (the Estonian Competition Authority (EE), the Public Utilities Commission (LV), the National Energy Regulatory Council (LT), and Energiavirasto (FI)), an international procurement was carried out in 2017 to find a consultant to carry out the survey titled "Creating a price model for the natural gas entry-exit system for the single gas market of the Baltic States and Finland."

As a result of the study, the use of the so-called "postage stamp" methodology in the market area of the Baltic States and Finland was agreed upon, as the study showed that the "postage stamp" starting price methodology provides the best social welfare for gas users, as in the case of equal entry prices, the cheapest gas offered will always access the market.

As the transmission system operators of Estonia, Finland and Latvia failed to reach an agreement with the Lithuanian transmission system operator on cost compensation (ITC), the creation of a common market continued with the aim of establishing the FINESTLAT market area in cooperation between the countries of Finland, Estonia and Latvia as of 2020. The main source of disagreement was Lithuania's desire to receive compensation from the other parties for the investments made and to be made in the Lithuanian gas infrastructure.

In 2019, transmission system operators in Estonia, Latvia and Finland, together with national regulatory authorities, prepared the necessary documentation for the establishment of the FINESTLAT common market area.

The keywords for the FINESTLAT common market area to be launched are:

- until 2022, the FINESTLAT common market area will consist of two balancing areas (Finland and Estonia-Latvia); Finland will join the balancing area of Estonia-Latvia in 2022 and a common balancing area of the three countries will come into being;
- no tariffs are to be set at the interconnection points between the countries participating in the FINESTLAT market area (Inkoo-Paldiski, Kornet, and Karksi);
- All entry points in the market area (Imatra, Narva, Värskä, Luhamaa and Kiemenai) will have an equal capacity-based entry price of 142.77 €/MWh/day/year. The receipt of entry revenue will be ensured through ITC. In addition, the variable costs of the compressors, required for the operation of the gas system, will be compensated for the transmission system operators through ITC;
- each country has a different exit price set in accordance with the regulations in force in the country.

The FINESTLAT market arrangement ensures that consumers have access to the gas markets of all three countries for the lowest gas price offered on entries in the region, without additional costs at interconnection points.

Still, in parallel with the creation of the FINESTLAT market, efforts by the Baltic and Finnish regulators, transmission system operators and respective ministries will continue in order to include Lithuania in the common market area as well.

### **Estonia-Latvia Common Balancing Area**

In 2019, Estonian and Latvian transmission system operators, together with national regulators, prepared the necessary documents to launch the common balancing area of Estonia and Latvia from 01.01.2020.

The transmission system operators (Elering AS and AS Conexus Baltic Grid) presented the regulators (the Competition Authority of Estonia and the Public Utilities Commission of the Republic of Latvia) with the common standard Terms and conditions of the network rules of the Estonian-Latvian gas region and the standard terms and conditions of the gas balancing rules for an approval.

The transmission system operators explained the need to change the standard terms and conditions with the fact of the common gas market area of Estonia and Latvia being established in 2020, resulting in replacing the current standard terms and conditions of the gas balancing rules and of the transmission network rules in Estonia (as well as in Latvia) with new common rules.

However, as of January 2020, the “Standard Terms and Conditions for the National Gas Transmission Service of Elering AS” (approved with the Estonian Competition Authority’ s Decision No 7-10/2019-006 of 06.09.2019) will continue to apply to the consumers of the national transmission service in Estonia.

The advantage of the common balancing area is that the balance provider’ s imbalance is accounted on a regional basis rather than on a national basis, which should enable the balance provider who operates in both countries to save costs on providing the balance.

Decision No 7-10/2019-007 of the Estonian Competition Authority dated 30.09.2019 approved the “Common Standard Terms and Conditions for Network Contracts” and the “Standard Terms and Conditions for Gas Balancing Rules”, published on the Authority’ s website.

## **New transmission prices**

Up to 01.01.2020, commodity-based transmission exit prices were in force. Entry price was not applied in Estonia. In addition, a transit price had been set for the Izborsk-Korneti gas flow.

With the implementation in Estonia of the Commission Regulation (EU) 2017/460 establishing a network code on harmonised transmission tariff structures for gas, the prices of transmission services changed significantly and substantially. As a result, from 2020, entry and exit prices for intra-system network use and inter-system network use started to apply, approved by the Estonian Competition Authority’ s Decision No 7-3/2019-054 dated 30.09.2019. In addition to the separate entry and exit price, the Decision also established capacity product multipliers.

In accordance with the procedure laid down in the Regulation, a consultation with market participants was also carried out in 2019 prior to price approval and a consultation document was submitted for analysis to the Authority for the Cooperation of Energy Regulators.

The new prices follow the new transmission system price methodology, the most important principles of which are:

- ✓ pursuant to Regulation (EU) 2017/460 of the European Commission, price cap regulation is applied in Estonia;
- ✓ a separate “postage stamp” initial price methodology is applied for the calculation of transmission prices in Estonia;

- ✓ entry prices are harmonised with neighbouring countries by means of an adjustment based on the average entry price of the Member States of the European Union, together with the margin of error, found in a comparative study;
- ✓ the interconnection points between the market area's countries will be abolished for the calculation of starting prices;
- ✓ the expected compensations (ITC) between transmission system operators will be minimised through the exit tariffs of each participating country.

The average transmission tariff (4.010 EUR/MWh) based on the data underlying the prices of the coordinated network service was 1.6 times the actual average transmission tariff (2.461 EUR/MWh) applicable at the time of the decision. This difference in average transmission tariffs is due to the addition of additional costs to Elering AS (operating costs and depreciation on investments) in connection with the construction of Balticconnector and the strengthening of the Estonia-Latvia connection.

## WATER SERVICE PRICE DISPUTE WITH AS TALLINNA VESI ENDED

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According to the Public Water Supply and Sewerage Act, the price of water services taken by water undertakings operating in larger areas must have the approval of the Estonian Competition Authority. A years-long water service price dispute between the Estonian Competition Authority and AS Tallinna Vesi came to an end in 2019. The roots of the dispute extend to 2011, when the Estonian Competition Authority did not agree to approve the prices of AS Tallinna Vesi's water service, which the company wished to raise on the basis of a service agreement signed with Tallinn City Government upon privatisation of the company and a price agreement contained in that service agreement. Conversely, in 2011, the Estonian Competition Authority concluded that there was no legal basis for the increase in the price of water services and that the water undertaking in the nation's capital should instead lower the price of water services to consumers. The Estonian Competition Authority therefore requested AS Tallinna Vesi with its 2011 precept to submit a price application to the Authority for approval pursuant to Public Water Supply and Sewerage Act, rather than the prices agreed in the service agreement.

As a result of the refusal to approve the water service prices and of the precept made, a long litigation between the Estonian Competition Authority and AS Tallinna Vesi began. The water undertaking disagreed with the Authority's view that there is no legal basis to increase the price of the water service in accordance with the service agreement. Almost every year, the company submitted a request to the Competition Authority to increase water service prices based on the prices agreed upon in the service agreement. However, in so far as the Authority did not consider it possible to process applications that were not based on the Public Water Supply and Sewerage Act, the company's price applications were dismissed. Also, all of these views of the Estonian Competition Authority were challenged by AS Tallinna Vesi in court. The disputes were merged into a major joint litigation, the substance of which was a dispute over whether a water undertaking's water service prices would have to be set on the basis of what was agreed in the service agreement concluded at privatisation or on the basis of the pricing procedure provided for in the Public Water Supply and Sewerage Act.

In October 2014, AS Tallinna Vesi and its shareholder United Utilities (Tallinn) B.V., registered in the Kingdom of the Netherlands, started international arbitration proceedings against the Republic of Estonia under an investment promotion and mutual protection agreement between the Kingdom of the Netherlands and the Republic of Estonia, filing a damages claim against the State of Estonia.

In the domestic litigation, the Supreme Court made a final judgment on 12 December 2017. The Supreme Court concluded that the Estonian Competition Authority does not have to comply with the agreement on water service prices set out in the service agreement concluded between the water undertaking and the City of Tallinn upon privatisation, and AS Tallinna Vesi has to comply with the Estonian Competition Authority's precept to submit a new price application in accordance with the Public Water Supply and Sewerage Act. Following the decision of the Supreme Court, which

ordered the company to comply with the Estonian Competition Authority's precept and to submit a price application pursuant to the law, AS Tallinna Vesi submitted a new price application to the Authority in March 2018 for the approval of water service prices in the cities of Tallinn and Saue.

However, the new price application by the company did not yet conclude the disagreement between the Estonian Competition Authority and the water undertaking regarding the price level of the water service in the nation's capital. In December 2018, the Estonian Competition Authority refused to approve AS Tallinna Vesi's price application as the Authority disagreed with the costs underlying the water service price calculation submitted by the water undertaking. The Estonian Competition Authority concluded that the water undertaking had forecast the price of the water service in the cities of Tallinn and Saue with an excessive cost of nearly EUR 10 million. According to the price application, AS Tallinna Vesi would have earned a sales revenue of 44.5 million euros in the cities of Tallinn and Saue at those water service prices, but the Estonian Competition Authority assessed the justified sales revenue to be earned from the price applied to consumers as limited to only 34.5 million euros. According to the law, the overestimated pollution charge and the extraordinary cost component of the water service price, which was not based on the capital invested by the company, were not justified. Consequently, the Estonian Competition Authority could not approve the prices of the water supply and waste water lead-off and treatment services requested by the company.

On the basis of the 2018 price application, the Estonian Competition Authority approved the prices of additional services related to the water undertaking's monopolistic service, for which no contradiction with the law was found by the Authority. In the price approval proceedings, the Estonian Competition Authority concluded that the price of the water service implemented by the water undertaking in the cities of Tallinn and Saue, as well as the revenue generated by it, was also unduly high and did not comply with the pricing principles laid down in the Public Water Supply and Sewerage Act. Given that the Authority estimated the justified sales revenue to be limited to only EUR 35 million and that AS Tallinna Vesi earned an even higher sales revenue (EUR 46 million) at the current water service prices than requested in the price application, the total price of the water supply and sewerage service to the consumers should have been 25% lower than the current price. The Authority found that on the basis of the prices in force, the weighted average price of the water and sewerage service was 2.31 EUR/m<sup>3</sup>. However, the reasonable price could be considered to be 1.74 EUR/m<sup>3</sup>. Thus, the prices in force were higher than the justified price level by 0.57 €/m<sup>3</sup>, which is why on 6 December 2018 the Estonian Competition Authority started supervisory proceedings concerning AS Tallinna Vesi to align the prices of the water service in Tallinn and Saue to the price establishment set in the Public Water Supply and Sewerage Act.

On 21 June 2019, an international arbitration tribunal issued a ruling in the arbitration proceedings between AS Tallinna Vesi, United Utilities (Tallinn) B.V. and the Republic of Estonia concerning the violation of the investment promotion and mutual protection agreement between the Kingdom of the Netherlands and the Republic of Estonia. The tribunal decided by a majority vote to not satisfy the claims of AS Tallinna Vesi and United Utilities (Tallinn) B.V..

In September 2019, AS Tallinna Vesi submitted a new water service price approval application to the Estonian Competition Authority, in which the company had significantly lowered the water service prices submitted for approval in the cities of Tallinn and Saue. The new price for the water service submitted for approval no longer included excessive costs or unduly high sales revenue, as was the case in the 2018 price application. As the price of the water service submitted for approval complied with the law, on 18 October 2019 the Estonian Competition Authority approved the prices of the water supply and waste water lead-off and treatment service requested by the water undertaking in the cities of Tallinn and Saue and in the region of the small town of Harku.

AS Tallinna Vesi began implementing the Authority's approved water service prices from 1 December 2019. As a result of the new prices, the price of water supply and sewerage services in the cities of Tallinn and Saue fell on average by 27% for household customers and by 15% for commercial customers. In addition, as part of a new price application by the water undertaking, the Estonian Competition Authority also approved the prices of the water supply, sewerage and rainwater lead-off services provided to other water undertakings that AS Tallinna Vesi is supplying drinking water to or treating waste water received from. In the light of the new water service prices established in accordance with the law, the Estonian Competition Authority also concluded the supervisory proceedings regarding the water supply and sewerage service prices of AS Tallinna Vesi in October 2019.

As of now, all disputes between the Estonian Competition Authority and AS Tallinna Vesi concerning the price of water service have ended.

# OVERVIEW OF THE ANALYSIS OF TALLINN'S DISTRICT HEATING NETWORK

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In 2019, the Competition Authority commissioned a study on “Connecting investments for district heating systems in Tallinn’s network area and separate district heating networks”. OÜ Pilvero qualified to conduct the study.

In view of the potential of combined generation, the study was aimed at analysing the 5-year investment plan of AS Utilitas Tallinn – whether and how the perspective of connecting separate district heating networks of the city of Tallinn has been taken into account, and assessing the economic feasibility of investments. While doing that, it was also assessed whether the costs included in the investment plans were sufficient to ensure the development of district heating, energy efficiency, connection of district heating networks, etc.

AS Utilitas Tallinn’s initial plan to replace within 20 years all pipes without pre-insulation and all pipe sections built before 1995 needed changing. This was due to the fact that, according to the original long-term investment plan, some sections of the pipeline would have been more than 60 years old in 2040. It was therefore decided that the renewal of the entire district heating network should be completed in 15 years. As a result of the implementation of the investment plan, the entire district heating network should be fully reconstructed by 2035, resulting in a significant decrease in absolute and relative heat loss compared to previous indicators.

**According to the plan for extending the district heating network**, it is appropriate to connect AS Utilitas Tallinn’s district heating networks and Ülemiste City – Airport area (which is part of the district heating region of Tallinn as of 2017), by establishing a district cooling network there as well. Until 2035, 60 Ülemiste City consumers and the Airport complex are planned to be connected to the district heating network, bringing a total heat load of 45 MW and an annual heat consumption of 85,000 MWh. The length of the pipe to be constructed up to the Airport would be approximately five kilometres.

In addition, the plan to extend the district heating network of AS Utilitas Tallinn includes the establishment of a district cooling network in the city centre area and the connection of separate district heating networks within Tallinn to the main network of the company. The connection of separate district heating networks has also been negotiated with Adven Eesti AS, but no agreements have been made on specific deadlines and conditions.

**In AS Utilitas Tallinn’s investment plan for district heating networks**, the most important focus is on improving the reliability of the district heating network and on lowering the temperature of water returned from consumers because:

- a lower return water temperature reduces heat loss in the district heating network;

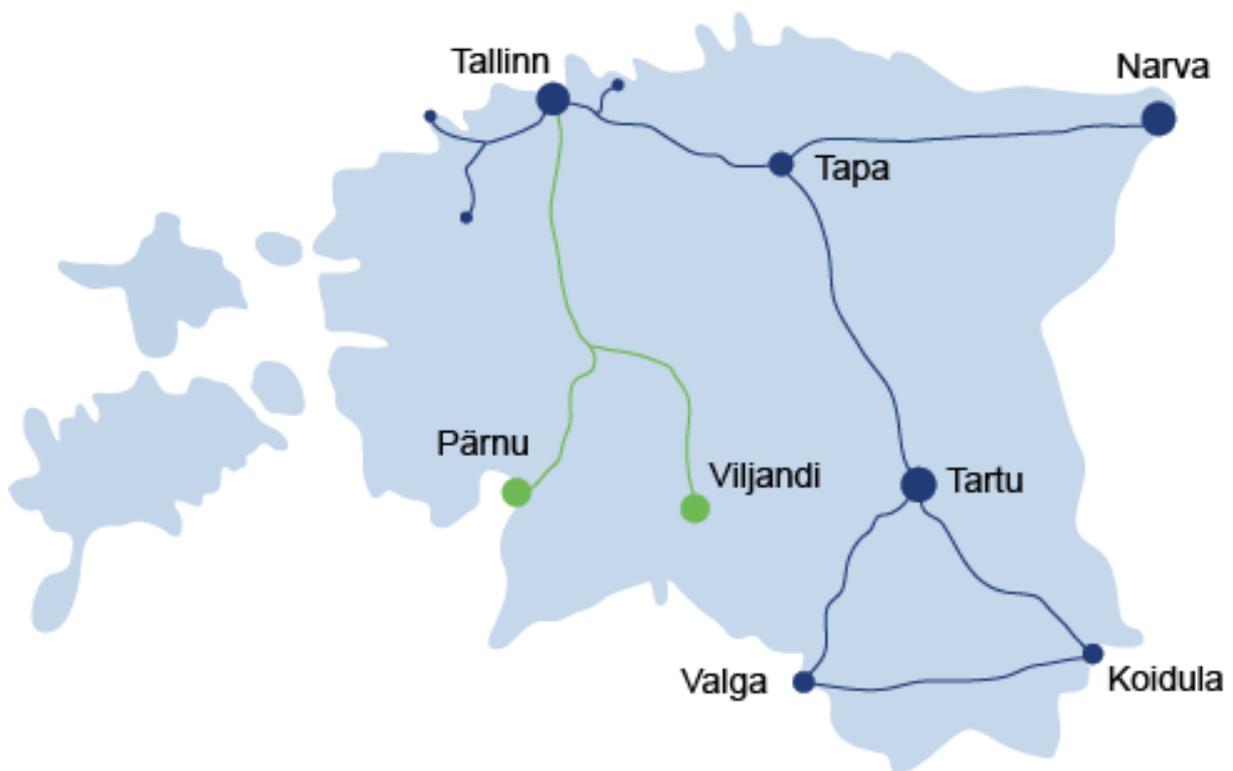
- a lower return water temperature increases the amount of heat received from flue gas condensers at biofuel combined generation plants (increasing the heat efficiency of the plants);
- the better regulated and functioning the consumer heating systems and heating units are, the lower the temperature of the return water. On this basis, the author of the study recommends applying a two-component heat price to the network region of Tallinn, which would be one very effective way of stimulating consumers to make their heating units and heating systems more energy-efficient.

## OVERVIEW OF THE RAILWAY MARKET

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The Estonian Competition Authority takes measures to eliminate discriminatory or otherwise unfair treatment in the rail services market. It is also one of the important tasks of the Estonian Competition Authority to deal with complaints made by railway undertakings. If a railway undertaking considers that it has been unfairly treated by the infrastructure manager when approving a railway network statement, allocating capacity, organising coordination proceedings, declaring a capacity exhausted, drawing up a traffic schedule, organising traffic management, planning upgrades, carrying out maintenance work, or setting a user fee, it may lodge a complaint with the Estonian Competition Authority.

In Estonia, there are **infrastructure managers** i.e. AS Eesti Raudtee and Edelaraudtee Infrastruktuuri AS, the railways managed by whom are designated for public use. AS Eesti Raudtee manages 1,229 km of railways and provides the service of giving railway infrastructure into use to railway undertakings and rolling stock owners, together with traffic management. Edelaraudtee Infrastruktuur AS manages 223.8 km of railways, providing similar services.



**Figure 2.** Railway infrastructure in Estonia

\* AS Eesti Raudtee marked with blue and Edelaraudtee Infrastruktuuri AS with green colour.

**On the international passenger train line Tallinn-St.Petersburg-Moscow**, AS GoRail carried out passenger transport; the company also sells tickets for all passenger trains to the Baltic States, the CIS countries and the countries in connection with them, including onward journeys between Finland and Russia. The competent authority for passenger transport in rail traffic is the Ministry of Economic Affairs and Communications (MKM); for passenger transport in rural or urban areas, it can also be the local authority. MKM has entered into a public service framework contract for 2018-2022 with AS Eesti Liinirongid (according to the company's trademark Elron) for the entire extent of public passenger transport capacity within Estonia. Elron's trains run in four directions:

- west direction (Tallinn – Pääsküla – Keila – Riisipere/Turba/Paldiski/Kloogaranna);
- south-west direction (Tallinn – Rapla – Türi – Viljandi);
- east direction (Tallinn – Aegviidu – Tapa – Narva/Tartu);
- south-east direction (Tartu – Koidula/Valga).

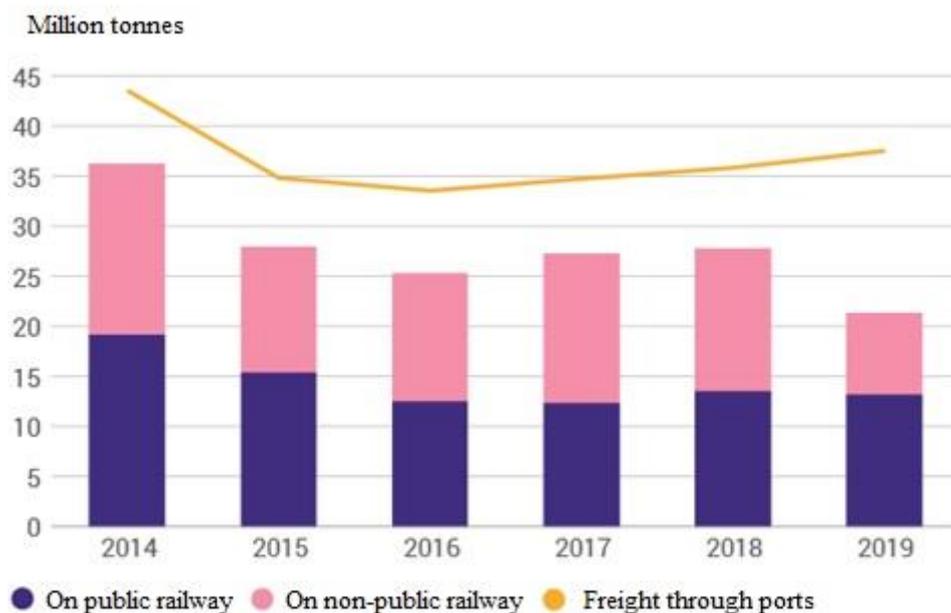
According to Elron, its trains were used by passengers nearly 8.3 million times in 2019 and the number of passengers increased by 8 percent compared to 2018.

As of 2019, 16 undertakings held operating licences for rail transport of goods, but the majority of them were restricted to non-public railways, i.e. local transport of goods (e.g. ports and mines). Until March 2019, transport of goods on Edelaraudtee's public railway routes of Tallinn-Viljandi and Tallinn-Pärnu was carried out by AS Edelaraudtee (from 18.03.2020: bearing the business name EdelaVara Aktsiaselts) and by AS GoRail (on the basis of the operating licence for rail transport of goods issued from 18 March 2019). The activity of LEONHARD WEISS OÜ, which holds an operating licence for rail transport of goods, is mainly the construction, repair and maintenance of railways and the transport of maintenance and construction materials and special equipment. In 2019, E.R.S AS exited the market of transport of goods. AS Operail was the largest undertaking operating on the public railways of Eesti Raudtee AS.

**According to Statistics Estonia**, rail transport of goods has decreased sharply in 2019 compared to 2018. The volume of transport of goods by rail decreased by 23.3% to 21.3 million tonnes.<sup>2</sup> There were 13.2 million tonnes of goods on public railways in 2019, which is 2.6 percent less than the previous year. Transport by public rail accounted for almost two-thirds of the volume of transport of goods by rail last year; previously, as much or less goods have been transported on public railways than on non-public railways.

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<sup>2</sup> Available at: <https://blog.stat.ee/tag/kaubavedu/>



**Figure 3.** Transport of goods by rail, 2014-2019. Source: Statistics Estonia

The Estonian Competition Authority conducted a **public railway market analysis**<sup>3</sup> to identify problems related to the sector and to present MKM, the Consumer Protection and Technical Regulatory Authority (TTJA), as well as the market participants with views and proposals to address the problems.

A situation has developed on the Estonian public railway market where goods and passenger transport services are concentrated in the hands of essentially two companies.

As a measure to improve the market situation, the Estonian Competition Authority recommends, among other things, that TTJA review the current procedures of setting user fees and take a direction towards the principle that user fees will be set for a longer period.

Additionally, **as a measure to improve the competitive situation**, a stronger distinction could be considered between Estonian Railway AS, Operail AS and Eesti Liinirongid AS (Elron), which have been in the administrative area of MKM until now – to move these companies into the administrative areas of different ministries. Although, at the moment, it is difficult to assess the real impact of such a measure on improving the competitive situation, the Authority considers that it would still ensure better transparency in the public railway market.

<sup>3</sup> Available at: [https://www.konkurentsiamet.ee/sites/default/files/13.04.20\\_ka\\_raudtee\\_analuus.pdf](https://www.konkurentsiamet.ee/sites/default/files/13.04.20_ka_raudtee_analuus.pdf)

## ANALYSIS OF COST ALLOCATION IN EESTI POST

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AS Eesti Post has an obligation to provide a universal postal service (UPT) for a price that does not exceed the affordable price imposed by the Minister of Foreign Trade and Information Technology with a regulation. This means that AS Eesti Post is not free in its UPT pricing. The prices imposed by the Minister are primarily based on the purchasing power of the population and its changes in time and may not be commensurate with the costs of providing the UPT. That is why a situation has developed in practice that the affordable price the users are allowed to be charged for the provision of the UPT does not cover the actual costs associated with the provision of the UPT. For an event like this, the legislator has laid down a method of covering the difference between the revenue from providing the UPT for an affordable price and the costs of providing the service – the Estonian Competition Authority has the task of collecting a UPT service charge from the postal services of those undertakings, the services being similar to those of the UPT bundle.

Pursuant to the Postal Act, AS Eesti Post has the right to seek compensation once a quarter to cover UPT's losses and make a reasonable profit. In its request, it must indicate and justify the costs necessary for the provision of the UPT and the extent to which the revenue generated from the UPT's prices did not cover the costs necessary for the provision of the service. The Estonian Competition Authority shall analyse the requests made and verify the reasonableness of the costs and the correctness of their allocation to services. The compensation shall be paid only to the extent that the UPT's prices did not cover the reasonable costs and did not allow a reasonable profit to be made. The compensation shall be paid at the expense of the UPT prices collected in advance from the postal services market.

After the end of the accounting year, AS Eesti Post has an obligation to provide the Estonian Competition Authority with audited data for the accounting year. The Authority is entitled to verify the accuracy of the quarterly applications on the basis of audited annual data. For this purpose, a further analysis of the previous year as a whole is carried out in the spring-summer season of every year. The most important aspect is the verification of the correctness of cost allocation. The reason for this is the fact that the different services provided by AS Eesti Post use the same resources. For example, with a single sorting line, items of many different services are sorted. Items of many services are collected or delivered in the same car and with the same employee. An incorrect allocation of the common costs can therefore lead to unjustified benefits for one service and unjustified losses for another service at the same time.

The Estonian Competition Authority conducted an analysis in the first half of 2019 to **verify Eesti Post's cost allocation of 2018**. Among other things, the Authority checked the cost allocation of AS Eesti Post's distribution network. The distribution network is composed of the means and personnel through which the delivery of items to the recipient takes place. AS Eesti Post has organised its work in such a way that items of correspondence posted in the orange colour letterboxes of AS Eesti Post, are also collected along the delivery route. The delivery routes are generally carried out by means of a vehicle, but there may also be on-foot deliveries in cities. Thus, the delivery costs mainly composed of the remuneration of the employees and the cost of

maintenance of the vehicles.

AS Eesti Post has an obligation to deliver periodicals on six days a week. UPT items must be collected and delivered five days a week. Pursuant to the Postal Act, cost allocation must be objective and conform to the principle of causality. This means that a cost must be related to the activity that causes it.

The analysis revealed that AS Eesti Post had allocated a fixed and significant part of the delivery cost to the collection from letterboxes and from there to services, the items of which could be posted in a letterbox. The remaining cost was divided to services according to the number of items delivered. The cost of collection from letterboxes was also allocated to the services for the days when the collection from letterboxes did not actually take place. This meant that the principle of objectivity had not been respected when allocating a fixed part of the delivery cost to the collection from letterboxes. The principle of causality was not followed when the costs were allocated to the collection from letterboxes for the days when the collection from letterboxes did not take place. If there is no activity then it is not justified to allocate the cost to the services. As a result, there was an unreasonably high share of costs for the services involved in the collection from letterboxes and an unreasonably low share of costs for the rest of the services.

In the course of the analysis by the Estonian Competition Authority, AS Eesti Post brought the principles of cost allocation into line with **the principle of objectivity and causality**. The cost allocation was changed so that part of the delivery cost was allocated to the collection from letterbox according to the number of letters collected. On days without the collection from letterbox, the cost of the collection from letterboxes was no longer allocated to the services. Thus, after the change, delivery cost allocation on services was carried out fairly and was in line with the principles set out in the Postal Act.