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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ESTONIA

-- 2010 --

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Foreword

Dear Reader,

The year 2010 was the third year of activity for the new Competition Authority. The general economic development in 2010 can be characterised by the preparation for adopting the euro, the end of the economic depression and the first signs of economic recovery, but also continually high unemployment and accelerating inflation.

Adopting the European single currency undoubtedly has a significant meaning. Besides being the means of payment, the Estonian kroon was the symbol of our independence, freedom and cultural self-awareness. It is a little sad that we can no longer keep banknotes with pictures of our luminaries – Jakobson, Koidula, Tobias, Tammsaare, Hurt, Keres, Baer, Raud - in our wallets. Nevertheless, I am still convinced that our cultural memory is strong enough and important people from our history will not become less significant.

At the same time, adopting the euro and becoming a full member of the OECD are essential for integration. Now we are in a position to state that the more than a century-old dream of Mr Gustav Suits: “Let us remain Estonians, but let us also become Europeans!” has been fulfilled. I am convinced that our national security is also more stable today than ever before. Being a member of NATO, the EU as well as the OECD and having a global currency as the means of payment raises the question as to what is next. It seems that we have accomplished all and one may doubt if we have any destinations remaining. There is an answer to the last question. We do have many high goals to follow – economic welfare, wealth, and higher Human Development Index, just to name a few. Estonia is not among the wealthiest countries in the EU, GDP per capita is remarkably lower than the EU’s average, and thus it is important not to rest on your laurels, but keep on moving forward.

The Estonian Competition Authority plays a certain role in order to achieve previously mentioned goals and to promote economic development and a better business environment. Here we can review some critical subjects in 2010. Let us take the price increase of foodstuff as an example. Estonia is a country with a small and open economy and the price increase on world markets shortly carries over to our prices. That instantly raises a question if the state and government have specific means for repressing price increases, and there are not very many direct options. The turnover tax could be lowered, but that would only provide a short-term effect, because it is not possible to cut it to zero and below that it would already be direct subsidising. What the state can do is creating a better business environment. It means that equal rules apply to all market participants, market barriers for possible new entrants have been removed and the market is not divided with prohibited agreements. It seems somewhat similar to sports competition. It is not acceptable if an athlete achieves results with the help of prohibited substances. In the circumstances of free enterprise there should also be fair rules applied to all. A cartel agreement concluded in order to share a market is the same as doping in a sports contest and economic results achieved with the help of prohibited agreements are not accepted. Strengthening the fight against cartels was one of the main accomplishments of the last year.

In addition, last year will be remembered by the new tasks entrusted to the Competition Authority for price regulation of larger water companies and all heating companies. We have always stressed that the best way to reach economic welfare is promoting free competition, but there are sectors where it is not possible and the monopoly status is inevitably the only option. Considering the technical development today it is unthinkable for each consumer to build an individual bore well or establish an individual power station. Therefore the price regulation of monopoly undertakings is necessary to ensure balance between the interests of undertakings and consumers. We will also do our best in that area to ensure the development of undertakings from one side, but from the other side to guarantee the high quality service for an acceptable price for the consumers.

We hope that the year 2011 will be as successful and the Estonian Competition Authority can assist the economic development and the growth of consumer welfare.

With best wishes, Märt Ots - Director General

1. Highlights

February 4 - 5	European Regulators Group/Independent Regulators Group (IRG/ERG) Contact Network Meeting in Tallinn
February 27	An Amendment Act to the Penal Code, Code of Criminal Procedure and Competition Act entered into force which introduces a leniency programme.
April 1	Partial electricity market opening in Estonia
June 2 - 3	7 th Regional Competition Conference – the annual meeting between the competition authorities of the Baltic States, Finland and Poland in Pärnu
June 4	10 th Baltic Electricity Market Mini-Forum in Kuressaare
November 1	Establishment of Price Restrictions on Monopolies Act entered into force
November 11	Estonian Competition Day 2010 in Tallinn
December 9	Estonia became the full member of the Organisation for Economic Co-operation and Development. The Estonian Competition Authority participates in the work of the OECD Competition Committee.

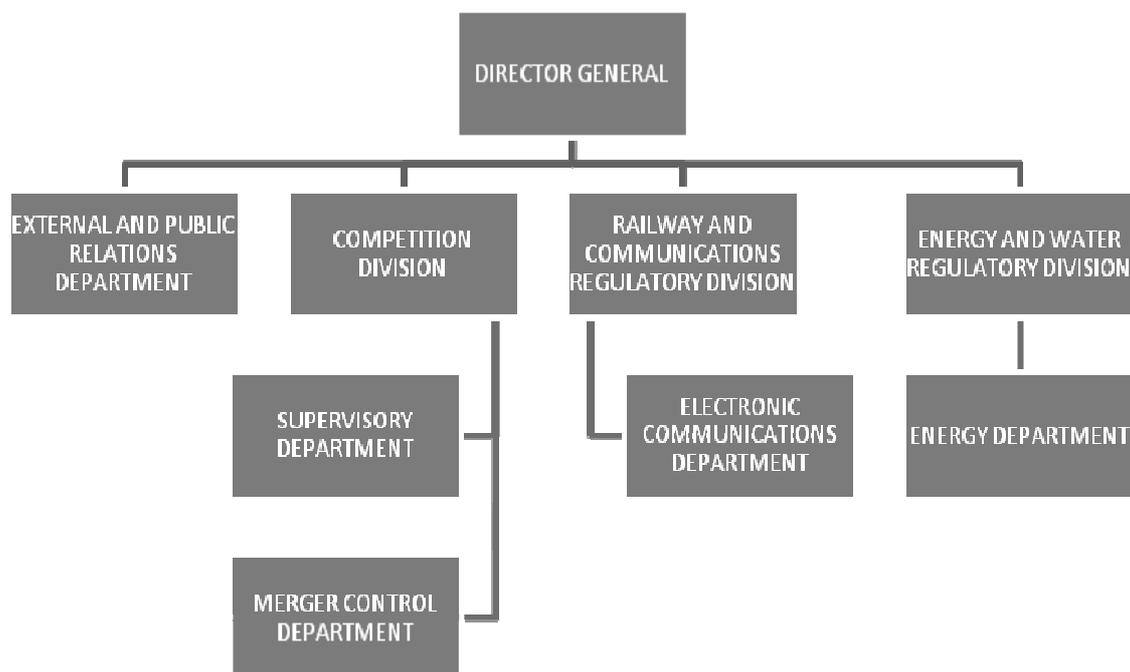
2. Organisation

2.1 Structure

1. In 2010 the Competition Authority underwent structural changes, which also meant changing the names of structural units and to some extent the reallocation of tasks. The Establishment of Price Restrictions on Monopolies Act that entered into force on November 1, 2010, brought along additional tasks to the Authority and therefore it was expedient to implement the certain re-allocation of tasks between structural units. Basically the Authority continued to operate under the effective function-based structure that enables the units to closely co-operate by changing expertise concerning specific fields.

2. According to the statutes of the Competition Authority, the Authority includes three filed-based divisions, which since 01.11.2010 are the Competition Division, the Energy and Water Regulatory Division and the Railway and Communications Regulatory Division. In addition to the divisions, there is an administrative unit, previously named as the General Administration Department which is responsible for ensuring effective support services. Since November 2010 the administrative department has been named the External and Public Relations Department. The Director General is at the head of the Authority (Figure 1). Structural divisions are directed by the Heads of Divisions, who are at the same time the Deputy Directors General.

Figure 1. Structure of the Competition Authority since 01.11.2010



3. According to the statutes, the functions of the Authority are divided between structural units or divisions as follows:

4. The main functions of **the Competition Division** are: conducting the proceedings of complaints and concentration notifications submitted by undertakings; conducting proceedings of cases on its own initiative; replying to inquiries of undertakings and their representatives; counselling and raising competition related awareness of the public.

5. The main functions of the **Energy and Water Regulatory Division** are: price regulation; activity licences; market supervision; security of supply and quality control in energy and water sectors.

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

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

2.2 *Personnel and budget*

8. The Competition Authority employed 52 persons as of the end of 2010, 5 new employees joined the Authority and 2 people left the organisation during the year. The division of personnel between the structural units was as follows:

	No. of employees
External and Public Relations Department	6 persons
Competition Division	19 persons
Energy and Water Regulatory Division	18 persons
Railway and Communications Regulatory Division	16 persons

9. Officials with up to 10 years of public service were the majority. Most staff members have higher education in economics (business administration, business management, finance, economics, etc) or in law. The third group of officials consisted of officials with higher education in other disciplines, such as radio electronics, telecommunications, thermal energy, public administration or other.

10. In 2010 the budget of the Competition Authority was approximately 28.6 million Estonian kroons (approx 1.83 million euros).

3. **External and Public Relations**

11. As regards external and public relations, 2010 was as busy as usual. Besides the everyday work in working groups of international organisations, the Estonian Competition Authority hosted many important events promoting international co-operation. In addition many officials gave talks or presentations at various Estonian or international events and responded to numerous inquiries from undertakings and organisations in Estonia and other states.

12. The Competition Authority participates in the work of competition, energy, communications and railway related working groups and unions. During 2010 the officials of the Competition Division attended meetings and discussions of the ECN (European Competition Network), the ECA (European Competition Authorities) and the ICN (International Competition Network) working groups and subgroups. Officials of the Energy and Water Regulatory Division participated in the meetings of the CEER (Council of European Energy Regulators) and the ERRA (Energy Regulators Regional Association). The Railway and Communications Regulatory Division was actively involved in the organisation comprising European national communications regulators – IRG/ERG (European Regulators Group/Independent Regulators Group) by taking part in the working groups of mobile and fixed termination rates, cost accounting, transparency and designation of undertaking with significant market power.

13. On the 4th- 5th of February the Estonian Competition Authority hosted the IRG/ERG Contact Network meeting, bringing together representatives from 31 IRG/ERG member states.

14. The annual meeting between competition authorities from the Baltic States, Finland and Poland took place in Pärnu on June 2nd-3rd. The Regional Competition Conference was organised for the 7th time and it has appeared to be a mutually effective format of co-operation, helping the exchange of experience and know-how in the competition area. Until 2010 the conference had been divided into two parts – day one was dedicated to a general panel discussion and the second day focused on the sectoral working groups. However as the participants have stated that the main value of the conference is rather the exchange of practical experience on the case handlers level and therefore it was decided to slightly change the format this year by dedicating most of the time to the discussions in a working group. In addition, the heads of the competition authorities introduced the latest developments in legislation and in organisations.

15. On the 4th of June the Authority hosted an international Electricity Market Forum in Kuressaare, which brings together the energy market regulators, undertakings, representatives from the European Commission and other interested parties to discuss creating and developing a single electricity market in the Baltic States twice a year. This year the forum's core attention was focused on creating a single electricity power exchange in Estonia and Lithuania, which is a leap towards a single Baltic electricity market. The Nordic countries presented their experiences in market supervision, overviews of markets and work done to date was given.

16. The year can be described by various international lectures in the framework of development aid projects. The officials of the Authority provided expert advice in Albania, Georgia, Namibia, Turkey and Ukraine.

17. Becoming a full member of the OECD in December was a significant milestone for the Estonian foreign policy in general. The Competition Authority has developed relations with the OECD Competition Committee, which has over the years actively contributed to the training of Estonian competition officials.

18. 2010 was a remarkable year for the Competition Authority, because the public interest towards the Authority's work grew to a great extent in connection with the establishment of various legislative acts and many specific cases attracted extraordinary attention. The Authority has knowingly made efforts to raise competition related awareness in the society and the first steps in that area have provided a remarkable result. The Estonian Competition Day was organised for the second time, which brought together entrepreneurs from different sectors and competition experts. Practitioners from different sectors focused on subjects that have gained the most attention during the year. The Competition Authority is glad to realise that tradition initiated in 2009 has justified itself, therefore the intention is to continue organising this annual event. The Authority tested hosting a so-called regional competition day in Tartu, but found it more expedient to organize a one pan-Estonian event that gladly also welcomes entrepreneurs outside Tallinn.

4. Changes in Legislation

4.1 Establishment of Price Restrictions on the Monopolies Act

19. On 1 November 2010, the Establishment of Price Restrictions on the Monopolies Act (further MHKS)¹ entered into force, which is commonly known as the monopolies control act. This is essentially a package including amendments to several existing acts, mainly the amendments to the Public Water Supply and Sewerage Act (further ÜVVKS) and the District Heating Act (further KKütS).

20. In the stage of legislative proceeding, MHKS was much discussed in the media, concentrating largely on the critics against the profit margin of AS Tallinna Vesi and related political statements. Furthermore, the President of the Republic first refused to proclaim the draft Act due to the insufficiency of the implemented provisions. The implementation side of the act has been much less discussed and it can be asserted on the basis of feedback received by the Competition Authority that the parties of the market have rather different opinions of its legal effects, regulation principles and other aspects of practical importance. This does not mean that the act would be weak, because all parties do not understand all details unambiguously. Taking into account the character of the regulation limiting business freedom, as specified in the act, some disputes will inevitably arise during implementation of the act, part of which shall be resolved in court.

¹ <http://www.riigiteataja.ee/ert/act.jsp?id=13348610>

21. Below we shall discuss some issues that help to explain the objectives of the amendments and implementation problems. For a more detailed overview it is also recommended to read the explanatory report of the draft 597 SE, annexed to the text of the draft and taking into account the later amendments².

22. Compared to the initial text of the draft, MHKS has totally changed in the final version. The part of ÜVVKS was amended, joining the ideas of the initial text of the draft submitted by parties with the provisions related to the economic regulation of the draft prepared in the Ministry of the Environment and taking into account the proposals of the Competition Authority. The draft was also specified in parts of the Penal Code and KKütS.

23. In case of the latter a completely new amendment was added to the draft, regulating the access of a third party to the district heating network, while formerly these issues were not at all regulated in the District Heating Act. Thus the general regulation of an operator possessing the dominant position in the market specified in the Competition Act also extended to network operators. Pursuant to this, a network operator (e.g. AS Tallinna Küte) had to also enable other heat operators to access the network, i.e. to enable the sale of the heat produced by them to the network, avoiding discrimination of different heat operators on any basis. Unequal treatment of other heat operators by a network operator can be caused by various considerations. For example, preference of one producer may take place due to the used fuel, its security of provision, production technology, etc. In several cases, special treatment can be considered justified. However, discrimination can be caused by the interests of the network operator related to mutual competition of the producers for access to the district heating network. This is especially probable in a situation where the network operator or an operator belongs to the same group of companies also operating as a heat producer. In such case he can actually sell heat to the network under the conditions set by himself and reject any other offers, which could be more favourable for the end consumer, but will not ensure similar profitability for the heat operator. A monopoly heat operator is interested in excluding the access of competing producers to the district heating network or the provision of unfavourable conditions for the competitors, not enabling them to actually compete for the access to the district heating network. The method used in practice has been a conclusion of long-term bilateral supply contracts, restricting or excluding access of a third party to the district heating network. During the proceeding of the draft in the Riigikogu a proposal was made to enter clearly into the act not only the obligatory approval of long-term supply contracts by the Competition Authority, but also the basis for the refusal of the approval to easily exclude simple disputes regarding the refusal in the course of implementation. Unfortunately this proposal was not taken into account.

24. An amendment to the act provides for the preference of heat purchased to the district heating network depending on the energy sources used for production, facilitating the use of renewable energy sources, cogeneration of electricity and heat and other environmentally sustainable technologies. The preference takes place mainly on the account of the use of fossil fuels, such as natural gas.

25. As a central amendment, MHKS assigns to the Competition Authority the tasks of a price regulator for all district heating operators and major water operators. The tasks of a regulator differ from the regular public supervision first and foremost with the fact that the price applied by the operator shall first pass the stage of approval. This is an important restriction of business freedom, which is justified, proceeding from the economic interests of the consumers and public interest related to competition. In the fields of the services of general interest such as the sale of gas and electricity, district heating and water services, the general competition supervision has not been considered sufficient and the price formation of a monopoly operator has been subjected to the preliminary control of a regulator with special competency. This is the case in the USA and in most EU member states. Thereby the price regulation of power and gas networks is obligatory for all member states. In the price regulation procedure the operator shall submit a

² http://riigikogu.ee/?page=en_etapid&op=ems&eid=790420&u=20100818135806

price application to a competent regulator, who shall assess the compliance of the application with predetermined methodology. Sale with a non-approved price is prohibited. Preliminary regulation is the most suitable guarantee for controlling the cost-orientation and reasonable cost benefit of the service provider in a situation where the provision of a service of general interest has been privatised and the operator is not directly subordinated to the control of public authorities.

26. In many cases the price formation of water operators has not functioned as necessary in Estonia. Although the earlier act also limited the price of the water service with the requirements of cost-orientation and reasonable cost benefit, the following of these requirements was questionable. The act provided only general principles of price formation and their following was completely subordinated to local governments, who were often simultaneously in the role of the controller and the controlled, as water operators are partially or completely in municipal ownership. The conflict of interests prevented the realisation of an efficient economic regulation and therefore the inclusion of the Competition Authority as an independent regulator was necessary. An essential development compared to the former situation takes place in the procedural stage. While in the past the local government established the price with its regulation, then according to the new act the price of a water service shall be established by the water operator, who shall be completely responsible for the compliance of the price with legal requirements. Before the price takes force, he shall obtain the approval of a competent regulator, i.e. the Competition Authority in case of approximately 70 major water operators and local government in case of smaller operators. The amendment to KKütS also brings under the regulation of the Competition Authority all smaller heat operators, whose price limit was formerly approved by the local government. In addition to the preliminary control, the new act entitles the Competition Authority to control the prices of the water service and subscription fees through supervision.

27. In the past, when the prices of water services were established by the local governments, there was no possibility to ensure the legality of price formation with the means of competition supervision. Price formation of a water operator could be analysed on the basis of the Competition Act, but price regulations of local governments remained valid anyway. Regulations can be disputed in the constitutional review proceedings, which is outside the competence of the Competition Authority. In case of AS Tallinna Vesi, the Competition Authority submitted its economic analysis to the Chancellor of Justice. The latter took it forward to the Supreme Court, which assumed the opinion that the regulation was a general order, while disputing it is also outside the competence of the Chancellor of Justice. Thus the former practice of administrative courts, where price regulations had been treated as regulations and therefore did not proceed, was considered wrong. In conclusion the problem is fortunately rather theoretical, as the indicated weakness in the supervision system was corrected with MHKS, according to which prices are not established with an act of public authority, but by the water operator himself. Before implementation of the price the water operator shall obtain approval for the price, which shall be effected as a resolution of the regulator. The new act is undoubtedly a major step forward towards an operative and transparent economic regulation, even if it will not bring along the expected decrease of prices immediately. The regulation will start to function proactively and some disputed issues shall be first clarified, before starting to take extreme coercive measures such as an establishment of temporary prices, etc.

28. Price regulation conducted on the basis of specific law, including supervision, is methodologically much more precise, leaving less space for disputes than the general competition supervision. In the price regulation procedure the operator is an actively involved party interested in a positive result. He shall coordinate his prices with the regulator pursuant to the law and, for example, delay tactics cannot provide any expected result here. As the operator is interested in a fast procedure, he is also ready to participate actively in the information exchange needed for approval. The practice of heat price regulation based on KKütS shows that approval procedures usually end without any time-consuming court disputes. If a water operator still decides not to follow the price regulation, the law has specified a possibility to apply a penalty payment, necessary elements of misdemeanour, criminal punishment and as

an extreme measure the establishment of temporary prices by the Competition Authority. It should be noted that the former ÜVVKS did not specify any punishments applicable to water operators at all. As the regulator of price formation and the subscription fee, the local government often acted in a situation where there was a conflict of interests, being a controller from one side and the owner of a water operator from the other side.

29. Punishment provisions specified in MHKS are divided into two – necessary elements of misdemeanour in ÜVVKS (similarly the violation of the rules of price regulation is punishable on the basis of KKütS, the Electricity Market Act and the Natural Gas Act) and necessary elements of a criminal offence criminalising illegal price formation in the Penal Code. For the latter it has been said that when proceeding from the priority of criminal law, a criminal procedure should always be initiated, and therefore relevant necessary elements of misdemeanour become unnecessary (R. Rüütel „Kommunaalteenõjatest kommunaalkurjategijateks“, 16.08.2010, raamatupidaja.ee). However, from the text of provisions it becomes obvious that necessary elements of misdemeanour are not identical with the necessary elements of a criminal offence, but cover various violations of the rules of price formation. Thus the necessary elements of misdemeanour are not unnecessary. For example, they can be applied in case when an operator subordinated to the price regulation pursuant to the law is violating the rules, but at the same time his activities are not qualified as a distortion of competition according to the Penal Code § 399 (1¹). The referred punishment norm belongs to the offences related to competition, and the attribute is an abuse of a dominant position. Necessary elements are applicable only in case of specific subjects, such as monopoly operators listed in the provision who are also subordinated to regional price regulation. In case of doubt it should first be clarified if the rules of price regulation have been violated. Then it should be assessed if it is simultaneously a crime related to competition described in the Penal Code § 399 (1¹). In case of a violation of the rules of price regulation specified in the law, where the Competition Authority does not find an abuse of a dominant position, a procedure can be initiated on the basis of the necessary elements of misdemeanour specified in the relevant specific law. Upon detection of a crime related to competition the main task of the body conducting proceedings is not the determination of a relevant market (as it is generally indisputable in case of a network monopoly), but an assessment of the possible abuse of a dominant position. Any minor violation of rules cannot be qualified as a crime related to competition, for which a fine up to 250 million EEK has been prescribed.

4.2 *Leniency Programme*

30. On 27 February 2010, an amendment (Amendment Act) to the Penal Code, Code of Criminal Procedure and Competition Act entered into force which introduces a specific leniency programme. It means that a person that is involved in anti-competitive agreements, concerted practices or decisions of association of undertakings set out as punishable in § 400 of the Penal Code will have a chance to be released from liability or obtain a remarkable penalty reduction if the person will be the first to submit a leniency application to the Competition Authority and will meet other conditions stipulated in the Competition Act.

31. Similar leniency programmes exist in almost all EU member states and are also used by the European Commission. Upon detection of an anti-competitive cooperation of operators (especially cartels) the major problems are verifiability of the act and a low amount of information available to the body conducting proceedings. Therefore the confession of a party itself and the submission of evidences will provide essential assistance in the detection and further verification of cartels. At the same time the party is motivated to cooperate with the Competition Authority and the Prosecutor's Office due to the opportunity to be exempted from liability or achieve an essential reduction of the punishment, first and foremost in a case when the operator is actually wishing to stop participation in the anti-competitive cooperation.

32. A participant in anti-competitive agreements, concerted practices or decisions of association of undertakings may submit a leniency application to the Competition Authority in the form enabling written reproduction. This can be done by a natural person on behalf of himself or a representative of a legal person on behalf of the legal person. Implementation of leniency and the fulfilment of the necessary terms and conditions shall be decided by the Public Prosecutor's Office, whose regulation shall terminate the criminal procedure against the compliant applicant for leniency, who has first submitted the relevant application, if the information included in the application enables to initiate the criminal procedure. If the criminal procedure related to anti-competitive cooperation has already been initiated, the criminal procedure shall be terminated for the applicant who has first submitted a leniency application together with the evidences providing essential assistance to the prosecution in the opinion of the Prosecutor's Office. Against an applicant for leniency, who meets the conditions of leniency, but has not submitted the leniency application first, a reduction of punishment can be applied in proportion with the support received from this person in the criminal procedure.

33. In addition to the due submission of a leniency application the person shall also meet other conditions specified in the Competition Act. Among other things, the applicant for leniency may not have induced other persons to commit the crime specified in the Penal Code §400 or organised its preparation or commission. The applicant for leniency shall also fulfil a cooperation obligation during the procedure, making all evidences concerning the crime mentioned in the Penal Code §400 disclosed to him available in full, openly and without distortions, as much as possible, and may not destroy or remove any relevant evidences in the procedure of the relevant crime in bad faith before or after the submission of the leniency application. The applicant for leniency may not disclose the circumstances of leniency application or criminal procedure without the permission of the Prosecutor's Office. The applicant for leniency shall follow the condition specified in the law seriously, because even if after the order is issued for the termination of the criminal procedure against the applicant for leniency, any circumstances are identified which do not allow to implement leniency, the Public Prosecutor's Office may renew the procedure against the applicant for leniency with its order.

34. Based on the experiences gained from the implementation of the 2010 leniency programme, the Competition Authority can say that the new regulation has generally met its main objectives. Several leniency applications were submitted to the authority in 2010 and on their basis criminal procedures were also initiated to investigate relevant anti-competitive cooperation, which has also increased the number of criminal proceedings handled by the authority. Operators as well as their lawyers have had a positive attitude towards the programme and the interest in it has been remarkably high. Although the work for a better introduction and implementation of the leniency programme and development of related practice will continue for a longer period, the initial application of the programme can be considered successful at the moment.

4.3 *Group exemptions*

35. Similarly to the European Commission, the regulation applicable to vertical agreements was renewed in 2010. From June 1 the new Regulation No. 60 of the Government of the Republic adopted on May 27, 2010 "Granting of permission for the conclusion of anti-competitive or potentially anti-competitive vertical agreements (group exemption)" took force, regulating resale relations restricted to the territory of Estonia.

36. From June 1 the resale agreements related to the trade between member states are subjected to the Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices. A 1-year transfer period is valid for the agreements having been in force at the moment of enforcement of the regulation.

37. The Estonian national regulation of group exemption is based almost entirely on the abovementioned relevant regulation of the European Commission. Thus the major amendment of both regulations means that while being in accordance with the formerly valid regulation of group exemption in the application of a group exemption, the main attention is paid to the market share of a supplier, which may not exceed 30%. Then in accordance with the new regulation the market share of the purchaser on the purchase market is also important, which similarly may not exceed 30%.

38. The mentioned Regulation No. 60 of the Government of the Republic also includes the regulation of the agreements related to the repair and maintenance services of motor vehicles and the sale of spare parts. Marketing agreements of motor vehicles are subjected to the Regulation No. 66 of the Government of the Republic from 03.06.2010 "Granting of permission for the conclusion of anti-competitive or potentially anti-competitive vertical agreements related to the marketing of motor vehicles (group exemption)", which is similar to the former group exemption of motor vehicles³. The latter regulation will be valid until May 31, 2013, after which the general vertical group exemption (i.e. Regulation No 60) shall also be applied to the marketing agreements of motor vehicles. Marketing agreements of motor vehicles affecting the trade between member states are subjected from June 1, 2010 to the Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector. The mentioned regulation specifies that the period of application of the provisions of Regulation (EC) No 1400/2002 relating to vertical agreements for the purchase, sale and resale of new motor vehicles shall be extended until May 31, 2013. The agreements related to the secondary market of motor vehicles shall be subjected to the general vertical group exemption or the Commission Regulation (EU) No 330/2010 and also the provisions of the Commission Regulation (EU) No 461/2010.

39. In addition to the regulations applied to vertical agreements, the regulations also applied to horizontal agreements amended at the end of 2010. From the beginning of 2011 a new group exemption will take force for research and development agreements⁴ and specialisation agreements⁵. As in the development of practice, the Competition Authority is also proceeding from the relevant guidelines of the European Commission, and the guidelines for horizontal cooperation⁶ will provide good instructions for operators for the assessment of information exchange between competing operators, establishment of standards, purchase agreements and trade agreements.

5. Year 2010 in the Competition Division

5.1 Competition supervision

40. In 2010 special attention was continuously paid to the fight against hard core cartels. Since the reorganisation of the Competition Authority at the beginning of 2008, the Authority has considered

³ Regulation No 195 of the Government of the Republic from June 18, 2002 "Granting of permission for the conclusion of anti-competitive or potentially anti-competitive vertical agreements (group exemption)."

⁴ Regulation No 9 of the Government of the Republic from January 13, 2011 "Granting of permission for the conclusion of anti-competitive or potentially anti-competitive research and development agreements (group exemption)" (RT I, 19.01.2011, 3)

⁵ Regulation No 197 of the Government of the Republic from December 30, 2010 "Granting of permission for the conclusion of anti-competitive or potentially anti-competitive specialisation agreements (group exemption)" (RT I, 04.01.2011, 11)

⁶ Commission communication – Guidelines for applicability of Article 101 of the Treaty on the Functioning of the European Union to the horizontal cooperation agreements in EEA, applicable text *Official Journal C 011 , 14/01/2011*

criminal proceedings to be one of its priority fields. The number of criminal proceedings increased, as well as their complicacy. Extensive cases and analyses should also be highlighted, which have observed the organisation of some business sectors as a whole. In several cases the Competition Authority submitted proposals for the amendment of acts.

41. In the supervision department the characteristic feature of the year 2010 was a significant increase of the number of **criminal proceedings**. While in 2009 the number of criminal proceedings was 8, then only a year later the relevant figure was 14. Such development brought along an extremely high load for the staff overseeing the criminal matters and furthermore several employees inside the division were involved in the assistance. At the end of the year the recruitment of new employees started due to the increased workload.

42. One major factor causing an increase of the load of criminal proceedings was the enforcement of the leniency programme. In global practice leniency programmes are extensively used for the detection of cartels. According to the programme, the person having first informed the law enforcement authority of a cartel or cooperated essentially with the authority shall be exempted from liability. Before the enforcement of the leniency programme, Estonia was one of the few developed countries lacking this programme in a clear form. During the year several applications were submitted to the Competition Authority, on which basis criminal procedures were initiated. Although the experiences of several countries have shown that launching a leniency programme could be rather difficult, the Estonian experience should be considered successful. It is good to say that various leading law offices dealing with competition law have understood that a leniency programme is a serious instrument and its use should be recommended to the clients.

43. In the beginning of 2010 the criminal case concerning timber transportation public procurement procedures organised by the State Forest Management Centre (RMK) was handed over to the Prosecutor's Office, which developed into the largest charge of a so-called cartel crime in Estonia until now. RMK carried out several public procurement procedures for timber transportation services at the end of the summer of 2008, where according to the accusation the tenderers were involved in extensive cooperation. As a result, the price of the timber transportation service purchased by RMK under public procurement increased by 41 million EEK. The court has not yet made a judgement in this criminal case.

44. The year 2010 also included the main part of the procedure of an extensive criminal case related to the Estonian flour producers, investigating the agreement concluded between AS Tartu Veski and AS Stahlhut in 2006, according to which the latter terminated flour production. The Competition Authority passed the materials of the case to the Prosecutor's Office in the beginning of 2011.

45. The procedure was also initiated in several criminal cases drawing the excessive attention of the public. In August the Competition Authority conducted the first procedural acts in the so-called cases of milk and bread cartels. These are extremely large criminal cases, where the final result will not be reached very quickly.

46. In 2010 the court passed judgements in two competition-related criminal cases, which have been enforced by now. The Supreme Court decided not to proceed with the appeals in cassation submitted in the so-called cartel case of ready-made shelf companies, and therefore the judgement of the Tallinn Circuit Court from 17.12.2010 took force, keeping in force the judgement of the Harju County Court from 24.09.2010 convicting several undertakings and natural persons dealing with the sale of ready-made shelf companies and were found guilty according to the conclusion of the anti-competitive agreement. In summer 2009 the persons and undertakings agreed to raise the price of their provided service which was the foundation of companies. According to the judgement of the Harju County Court the convicted persons were punished with pecuniary punishments in the range from 10 000-150 000 EEK, in total 464 500 EEK, part of which was not enforced immediately. Another important judgement was the judgement of the

Supreme Court of 07.05.2010, annulling the judgement of the Circuit Court, which held that the persons submitting tenders in the public procurement procedure of the Jõgeva County development strategy were guilty in a competition restricting agreement. The Supreme Court admitted that both the agreement as well as the concerted practice was present in the drafting of tenders, but after consideration of the specific circumstances of the case it was decided that this was not an agreement or concerted practice between the undertakings. In this case the Supreme Court provided several important interpretations of competition provisions, and therefore this was a judgement of crucial importance.

47. In the field of **administrative proceedings** the Competition Authority conducted several major researches and analyses, which influenced further operation of the relevant business sectors. The examples could be the proceedings conducted in the district heating sector, in which the Riigikogu amended the District Heating Act. The first of these concerned the conditions under which AS Tallinna Küte (further Tallinna Küte) purchased heat from the Iru Cogeneration Plant belonging to AS Eesti Energia (further Eesti Energia). In some periods the latter offered heat for a lower price than the Vao Cogeneration Plant belonging to the same concern as Tallinna Küte. The second case concerned AS Kohtla-Järve Soojus (further KJ Soojus), which did not provide any clear answer to the sales offer of heat submitted by AS VKG (further VKG) for a long time. According to all assessments and the available district heating practice, the heat of VKG produced from retort gas and offered for sale is significantly cheaper than the heat produced from natural gas and would enable to provide heat for a more favourable price to the end consumers connected to the Ahtme-Jõhvi heat network of KJ Soojus. In both cases the Competition Authority issued a precept warning both operators of the district heating network, stating its clear suspicion that these operators could have abused their dominant position. A warning is the last action before issuing a precept, where the objective is to provide to the operator a possibility for the submission of any possible objections. First and foremost in the result of the case of Tallinna Küte a political resolution was adopted to regulate the conditions of access to the district heating network more in detail in the District Heating Act. In result of the amendments that took force from 01.11.2010 a globally unique system was implemented in Estonia, where some heat producers are entitled to a certain advantage in the sale of heat in order to protect investments, but at the same time the owner of a heat network is obliged to organise a transparent competition for the purchase of heat under certain conditions.

48. In addition to the aspects related to district heating the interests of homeowners were also undoubtedly affected by the disputes raised by the Competition Authority in the field of waste handling. Although traditionally the waste has been taken to one certain waste management facility in many local governments, several new possibilities to choose waste management facilities have arisen recently in connection with technical and business-related development. In the opinion of the Competition Authority such development has been positive, creating preconditions for investments into new and more progressive waste management facilities. However, many local governments have still tried to send waste to a certain waste management facility, thus excluding the competition. The Competition Authority finds that first it is not clear if such activities comply with the law, and second, the restriction of competition in waste handling is lacking any sense. The issue culminated in the beginning of 2010, when the Tallinn City Government considered a possibility to direct all municipal waste generated in Tallinn to one certain facility. The Competition Authority issued a recommendation to the Tallinn City Government, which was essentially fulfilled. The discussion over waste management facilities will undoubtedly continue in 2011, whereby it is very likely that the results of several court proceedings held under similar circumstances will affect the market. The Competition Authority does not exclude the submission of any necessary proposals for the initiation of legal amendments.

49. Throughout the year the Competition Authority also conducted various important procedures in the postal sector. The postal market was opened to competition from April 1, 2009. In 2010 AS Express Post was the only licensed postal service provider operating on the open postal market beside AS Eesti Post. To enable the development of functioning competition in the provision of postal services it is

inevitable that AS Eesti Post as a historical owner of the largest postal network covering the whole of Estonia would enable the competitors to access its postal network. In particular, it is unrealistic that smaller competitors would establish a network duplicating the postal network of AS Eesti Post in sparsely populated areas. The Competitive Authority found that AS Eesti Post has not fulfilled its obligation to enable a non-discriminating access of another postal service provider to its postal network for the provision of a postal service and issued a prescript for the termination of a relevant violation in the beginning of 2011.

50. These are just a few examples of the activities of the Competition Authority in various business sectors. In 2011 the supervision department of the Competition Authority will continue the following of formerly undertaken lines of activity. The end of the economic depression will inevitably also change the competitive situation in several fields of activity, which will also mean new challenges for the public supervision. In parallel to the increase of prices on the global market and the recovery of domestic demand for various goods, pressure can be expected to increase prices. Such a situation will also cause an increase of the risk of illegal cooperation between the operators. The competition division with its limited resources is considering it essential to concentrate on the most essential and high-priority competition problems, which often require making difficult and complicated choices. Furthermore, the updating of the Competition Act is planned for the year 2011, in which the competition division has high expectations. First and foremost, the reformation of the proceeding principles of the abuse of a dominant position is necessary in order to make the supervision more efficient. Currently it is based on the misdemeanour procedure in Estonia. This is a very exceptional method in global practice, which was initially meant rather for the simple and rapid proceeding of minor violations (such as driving without a seat belt). The proceeding of complex economic violations in a misdemeanour procedure is unnecessarily (not to say impossibly) complicated for several reasons and therefore also rather inefficient, compared to other countries. The competition division hopes that the year 2011 will bring a positive development in this aspect, to facilitate the intensification of supervision in the future.

5.2 *Recommendation of the Competition Authority related to the issuing of line permits*

51. On 18.02.2010 the Competition Authority submitted to the Ministry of Economic Affairs and Communications and on 22.04.2010 to the Economic Commission of the Riigikogu its opinions of the competition restrictions found in the Public Transport Act. In the opinion of the Competition Authority there are no public interests that would justify the restriction of the appearance of new carriers to the market and an extension of the companies already operating on the market.

52. In the last seven years the main aspect assessed upon granting permits for a long-distance regular service has been the issue of whether the line permit would interfere with the currently provided regular services in economic terms. In the opinion of the Competition Authority the provisions of the Public Transport Act § 41 (2)(2) constitute a very exceptional mechanism, which has not been specified in any other fields of business. In other fields usually no restrictions are set for the new operators, regardless of whether it interferes with the business of the existing active operators. The restriction included in the Public Transport Act limits business freedom and causes damage to competition as a public interest. Market concentration of some lines is very high, causing modest competition. However, according to the Constitution the business freedom may be restricted only if it is in a reasonable relationship with the objective. In this case the proportionality of restriction may not be ensured in the situation where the law grants to the administrative body a potentially unlimited right to refuse to grant a line permit, if the entry of a competitor would interfere with the operation of the operator already possessing the line permit and established on the market. In practice, this ensures a dominating position, excluding entry of competitors to the market and enabling a permanent advantage to one operator.

53. The results of the analysis conducted by the Competition Authority allow us to conclude that economically it would be most practical to open the market of long-distance regular services completely to competition. Hereby it is important to notice that for example on the long-distance lines Tallinn-Tartu, Tallinn-Narva and Tallinn-Pärnu the carriage takes place fully on commercial bases and without the implementation of any public subsidies. As competition restrictions may essentially harm the interests of the consumers, they can be applied only in case of major public interests and if a similar result cannot be achieved with other measures less harmful to competition. In this case there are no public interests for which the protection of business freedom should be restricted in such a way. To ensure security and convenience in the markets of long-distance regular services the use of competition restrictions is not a suitable measure, on the contrary – in this context it would be the most non-transparent and irrelevant. Security should be ensured through technical supervision and for ensuring convenience various standards can be set for the carriers, without damaging their competition. The buses should be technically in good repair, but upon the fulfilment of the established requirements any operator should have a possibility to participate in the market. Furthermore, the competition restriction has been justified with the claim that it enables the carrier to keep less profitable lines on account of the profitable ones. Although many carriers are protected from competition on several lines, there is no legal mechanism that would enable to demand from them the operation on less profitable lines. It is also not clear, if and how much there are actually such lines. Furthermore, the currently operating carriers have not reached the market in result of a transparent competition, but for various historical reasons. As said above, the Competition Authority considers it justified to open the market completely to competition, but if the main remaining problem would be the possible lack of interest of the operators to provide services on less profitable lines, then the use of the so-called controlled competition model could also be considered, where line permits or groups of line permits are put for competition. In such case it should be ensured that there is actually a relevant need and that it would not unnecessarily increase the administrative burden of the state or set limits to free competition.

54. The Competition Authority has the opinion that public interests do not justify the serious competition restriction included in the Public Transport Act §41 (2)(2). An authority granting the line permits should only have the right to demand that long-distance lines would not depart from a bus station with such a small interval that it would be mutually obstructive physically. Proceeding from the above, the Competition Authority recommended that the Ministry of Economic Affairs and Communications initiate the relevant amendment to remove the restriction specified in the Public Transport Act § 41 (2)(2) and also submitted its opinions to the Economic Commission of the Riigikogu.

5.3 *Proposal for amendment of the Funded Pensions Act*

55. On 21.07.2010 the Competition Authority submitted to the Ministry of Finance the amendment proposals of the draft for the amendment of the Funded Pensions Act and related acts. The Authority had already before repeatedly stressed the need to make the regulation of a mandatory funded pension more flexible for the consumers and more efficient from the standpoint of competition between trustees.

56. On July 2, 2010 the Ministry of Finance submitted the draft for amendment of the Funded Pensions Act and related acts to the ministries for approval. Pursuant to the Funded Pensions Act valid at that moment the units of a pension fund could be changed only once a year. In the opinion of the Competition Authority this was a serious restriction of the freedom of choice of the consumers and thus also of the competition between the trustees and the entry of new service providers to the market was difficult. Pursuant to the draft submitted by the Ministry of Finance the consumers would have had the possibility to change the existing units of a mandatory pension fund three times a year and channel new payments to another fund in three business days. The Competition Authority has the opinion that even the possibility to change a mandatory pension funds three times in a year still restricts the freedom of choice of the consumers and efficient competition. It would be difficult for new service providers to enter the market in a situation where it is possible only three times a year to compete efficiently for the clients.

57. The restriction of the change of pension funds has been mainly explained by the fact that permission of more frequent change would incline the investment policy of trustees to orientate towards an undesirably short-term benefit and would send the wrong signal to the unit owner, whose knowledge of investment is probably not too high. On the other hand, restrictions may cause a decrease of competition and welfare of consumers through an increase of the price level and/or a deterioration of quality. In this case the restriction of the change of pension funds did not directly oblige the pension funds to develop their investment policy in a certain direction. Therefore it should have been considered if it would be possible and practical to regulate the investment policy of trustees with other, more suitable means. It is doubtful if the restriction of the freedom of choice would improve the investment decisions of the consumers.

58. In the opinion of the Competition Authority a system should be created, where a unit owner would have a right to change his units against the units of another pension fund in a reasonably short period of time and without any restrictions. The establishment of such a system should in turn have a positive effect on the activities of trustees and make their competition more efficient. Therefore the Competition Authority is supporting the cancellation of the restrictions applied against the change of pension funds in the largest extent possible and submitted a proposal to the Ministry of Finance to enable a unit owner to change the pension fund after 30 days from the submission of the relevant application. The Competition Authority also found that the draft should make remuneration of trustees more transparent, specifying in the Funded Pensions Act the specific requirements for the disclosure of service charges. In the situation of the former regulation it was often difficult for the consumers to understand how much they had actually paid service charges to the trustee.

59. On January 10, 2011 the Riigikogu adopted the Act on Amendment of the Funded Pensions Act and Related Acts, supplementing the requirements set to the trustees and amending the procedure of reporting and disclosure related to pension funds with the objective to make activities of the funds more transparent and better understandable for the owner of the unit of the pension fund. The rules of change of mandatory pension funds became more flexible and the change of funds once a year was replaced by the possibility to change the funds three times in a year. The act will take force from August 1, 2011.

5.4 *Recommendation to the Tallinn City Government for the improvement of the competition situation in the field of waste handling*

60. On 10.02.2010 the Competition Authority submitted an assessment for the possible plan of the Tallinn City Government to direct all waste generated on the administrative territory of Tallinn to a waste incineration plant established by a single operator. The relevant resolution of the City Government may affect the competition situation for district heating as well as the electricity market. The Competition Authority submitted to the Tallinn City Government a recommendation to avoid granting the sole right or any other advantage to a single waste management facility.

61. The Competition Authority received information (mainly through media) that the City of Tallinn was intending to conclude a contract for the directing of all municipal waste generated in the city of Tallinn to a single operator for handling, whereby the selection probably would have been made from among waste incineration plants. The Competition Authority is a national regulator in the field of district heating and electricity markets, whose one task is the provision of opinion to the administrative restrictions established in the mentioned fields. Therefore the Competition Authority initiated the supervision procedure in order to assess the situation.

62. The Competition Authority found that the Waste Act does not oblige a local government to choose only one waste management facility, but there can be several such facilities. In addition to the issue, if a local government was obliged to choose one waste management facility, it is also important in this case if it still has the competency to make such a choice notwithstanding the lack of direct obligation.

The Waste Act does not specify directly any such competency. The Tallinn City Government did not explain to the Competition Authority which legal acts provide its competency to conclude a contract, according to which all municipal waste generated in the city would be directed to a single waste management facility. It is important to note that the Competition Authority does not dispute the competency of a local government to establish various legal requirements to waste management facilities, which has also been specified in the Waste Act. For example, a local government may restrict the number of waste management facilities proceeding from the geographic criterion. However, this does not allow limiting the choice of waste management facilities to only one operator, and the possibility to provide the service must remain open to all operators meeting the legal criteria.

63. The answer sent from the Tallinn City Government to the Competition Authority did not provide a clear explanation as to what is the advantage of the reservation of waste to a single operator, compared to the situation where all operators meeting certain criteria would compete for the waste. Thus it also remained vague as to which public interests are served by the decision of the city government to grant the sole right to a single operator, while several operators would like to provide a similar service. Granting of any sole right by the state or local government is a serious restriction to competition and it can only be justified with dominant public interest.

64. Proceeding from the above, the Competition Authority recommended that the Tallinn City Government was not to grant the sole right or any other advantage to any waste management facility. If the city government still finds that granting of the relevant sole right would serve public interests, it should organise a relevant transparent competition in compliance with the Competition Act §14. Therefore other operators providing the service could also make their offer under transparent conditions.

5.5 *Analysis of the Competition Authority of the support for renewable energy sources*

65. In May 2010 the Competition Authority conducted an analysis of the impact of the support paid on the basis of the Electricity Market Act § 59 on the competitive situation, justification of the economic burden set on the electricity consumers as a renewable energy fee and the support rates.

66. The support scheme of the Electricity Market Act § 59 has been developed, taking into account the objectives and indicators specified in the development plan “Development Plan of the Estonian Electricity Sector until 2018”:

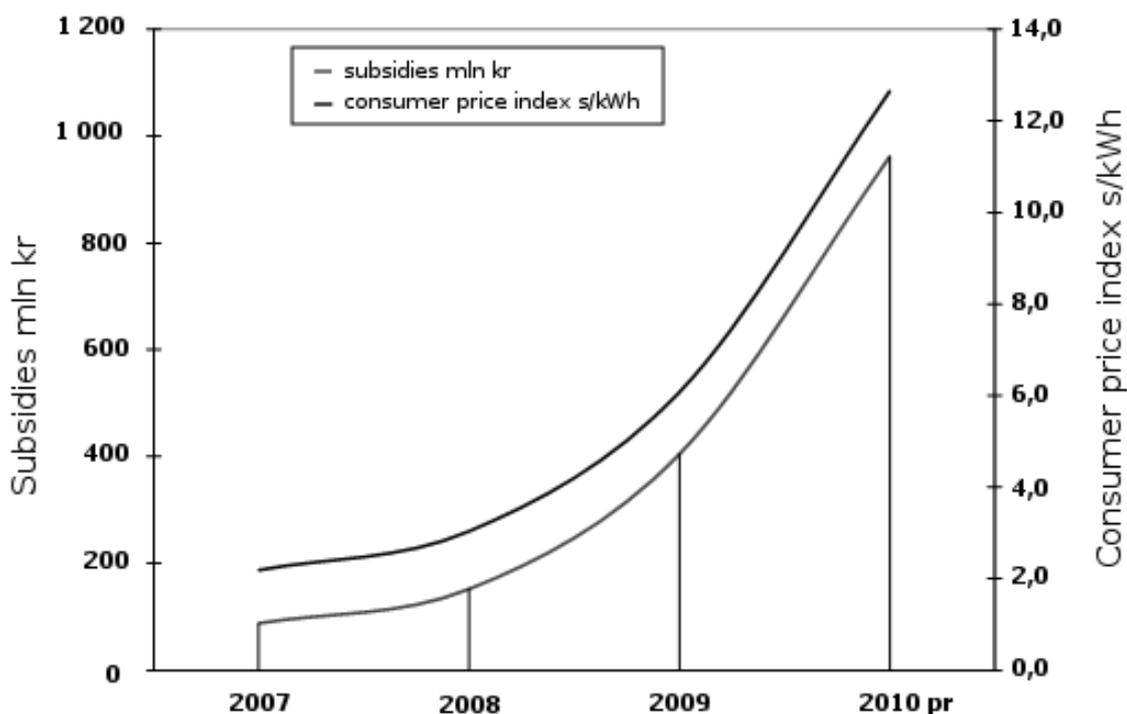
- The percentage of renewable electricity in gross consumption has an increasing trend and will form at least 5,1% by 2010; at least 15% by 2015.
- By 2020 the electric energy produced in a cogeneration regime will form at least 20% of the gross consumption.

67. To achieve the objectives set in the development plan, the provisions related to support in the Electricity Market Act adopted by the Riigikogu in 2003 have been essentially improved and amended. From 27.02.2010 the electricity producers are entitled to the following support pursuant to the Electricity Market Act § 59:

- From July 1, 2010 for the electricity produced from a renewable energy source, except biomass, 84 cents/kWh;
- From July 1, 2010 for the electricity produced from biomass in cogeneration regime 84 cents/kWh; if electricity is produced from biomass in a condensation regime, no support shall be paid;
- For electricity produced in an efficient cogeneration regime if waste within the meaning of the Waste Act, peat or oil-shale processing retort gas is used as a source of energy, 50 cents/kWh;

- For electricity produced in an efficient cogeneration regime with a cogeneration installation which has an electric capacity not exceeding 10 MW, 50 cents/kWh;
- For usability of the installed net power of a production installation operating with oil shale, if the production installation has been commissioned in the period from January 1, 2013 to January 1, 2016, 22-25 cents/kWh depending on the price of CO₂ quota.

Figure 2. Renewable energy support in the period 2007-2010



68. Figure 2 shows that the consumers paid 2,18 s/kWh for the support of renewable energy in 2007, 3,03 s/kWh in 2008, 6,07 s/kWh in 2009 and 12,64 s/kWh in 2010. Thus the support has increased from 2,18 s/kWh to 12,64 s/kWh or approximately 6-fold.

69. While in 2009 the total sum of support paid for 619 GWh of electricity was 405 million EEK, the estimated total sum of support of 2010 for the produced 1202 GWh of electricity is 962 million EEK. Thus in 2009 support was paid to 7,9% of the produced electricity (the total amount of electricity produced in Estonia in 2009 was 7 884 GWh). In the situation where the number of applicants for support is constantly increasing in Estonia, their percentage on the electricity invoice issued to the consumers has achieved an essential degree.

70. Production price of electricity of the major electricity producer of Estonia (Eesti Energia Narva Elektriijaamad AS) sold to the closed market is 46,01 s/kWh. As the support sum of 12,64 s/kWh was added in 2010 to the production price paid by the consumer, the actual consumer price was 58,65 s/kWh. Thus the percentage of support in the consumer price was almost 22%. Taking into account the planned support for the new wind parks (the support limit was increased from 400 MW to 600) and the addition of new electricity producers, the percentage of the support of a renewable energy fee in the final price of electricity will still increase.

71. Proceeding from the above, the Competition Authority analysed if the support paid on the basis of the Electricity Market Act § 59 are economically justified from the standpoint of the producer as well as the consumer and what is the impact of the support on the competitive situation. The Competition Authority has the opinion that in case of the valid support scheme the addition of new cogeneration plants, wind parks and hydroelectric stations will be achieved, but due to a distorted market situation, should be avoided. Due to the support an investor would not proceed from the price formed on the basis of the actual offer-demand ratio, but the entire business project would be built up on as short a payback period as possible, based on the support. An example would be cogeneration plants, as thermal capacity exceeds the actual heat needed in the relevant area, because the target is to achieve as high a power capacity as possible, in order to get the support. Thereby the produced electricity is sold to the open electricity market, where the producers of other countries (Finland, Latvia, Lithuania) are also participating in the conditions, where the market price is essentially exceeding the subsidized production price. The investor will earn a groundlessly high profit, which shall be paid by the consumer through the renewable energy fee. Thus some producers have a significant competitive advantage guaranteed by the state and much lower economic risks compared to the producers who do not receive the support. Therefore the situation, where new production capacities are established only due to various support schemes, is causing problems. With such consistency most of the producers will soon receive support and subsidised electricity production will increase in Estonia. Thereby the consumer will pay, in addition to the renewable energy fee, also for the electricity, a price that has developed on the open market. The Competition Authority reached the conclusion that the consumer is constantly more forced to pay for the financing of the support specified in the Electricity Market Act §59. Although the fulfilment of objectives set in the “Development Plan of the Estonian Electricity Sector until 2018” is important, the consumers would still expect to fulfil the mentioned objectives with reasonable costs, thereby not incurring any groundless economic burden. The support system based on the Electricity Market Act does not guarantee the fulfilment of legal expectations of the consumers, as the support will ensure an unreasonably high profit to some producers and unreasonable expenses for the consumers. Another essential disadvantage of the existing scheme is the fact that the paid support does not take into account the actual market price of electricity and the higher the market price, the higher the profitability will be of the producer. The Competition Authority submitted the summary of the analysis to the Minister of Economic Affairs and Communications, and also made the proposal that the established support scheme is not sustainable in a longer perspective from the point of view of the electricity market and the support rates specified in the Electricity Market Act § 59 should be revised, correcting them in accordance with the actual situation. The proposal was driven by the intention to improve the competitive situation on the Estonian electricity market and reduce the unreasonably high economic burden of the electricity consumers.

5.5 *Control of Concentrations*

72. For the market economy to operate optimally, there exist certain rules in the competition law, which enable to preserve effective competition in a goods market through the control of concentrations. In the last year the number of concentrations between undertakings has decreased significantly.

73. In 2010, 10 notices of concentration were submitted to the Competition Authority, and 1 case was brought over from 2009. Thus the Authority proceeded with 11 cases and made 10 decisions to grant permission to concentration. In one case the proceedings and decision were postponed until 2011. All 10 decisions to grant permission to concentration were made in the first phase of the proceedings, i.e. during the 30 calendar days prescribed by law; in three cases the proceedings were suspended due to the requirement to eliminate the deficiencies contained in a notice of concentration. The actual average length of proceedings of the first phase was 18 days.

74. The breakdown by types of concentration was as follows:

- an undertaking acquired control of the whole or a part of another undertaking in the case of 8 concentrations (§ 19 (1) p 2));
- undertakings jointly acquired control of the whole or a part of another undertaking in the case of 3 concentrations (§ 19 (1) p 3));

75. Four concentrations took place among Estonian undertakings; in two concentrations both parties were foreign undertakings and in seven cases parties involved an undertaking registered abroad and an undertaking registered in Estonia.

76. The number of notified concentrations in 2010 was significantly lower compared to previous years, mostly due to the slowing down of market mechanisms and stricter financing conditions. Due to their weak economic situation, Estonian undertakings were not particularly active in increasing their competitiveness through mergers and acquisitions. Foreign investors including private capital funds were more active in acquiring Estonian undertakings.

77. In 2010 concentrations took place in the following goods markets:

- Production and sale of concentrated feed and fertilisers;
- Sale of tobacco products, food and consumer goods, alcohol;
- Confectionery;
- Concrete products;
- Building material;
- Services.