



# **MERGER CONTROL IN THE BALTICS: PURSUING NATIONAL ECONOMICS THEORIES?**





Merger control regimes in the Baltic countries are longstanding and well-established, however, 3 recent pan-Baltic transactions in the food processing industry showcase divergent approaches between the Baltic competition authorities towards merger review scrutiny. Striking differences in willingness to subject parties to intense and lengthy proceedings in the Baltics must be assessed before entering into definitive transactional agreements.

When the same transaction undergoes merger control review in different countries, it is natural to expect same or similar outcomes. Such expectation seems to follow common sense, firstly, given that the competition authorities follow the same substantive rules concerning assessing potential competition effects of the transactions, established under the European Union law; and, secondly, because the Baltics, similarly to Benelux and Scandinavia, are often viewed as a single market due to similarities in size, demographics, market traditions and many other market characteristics.

In this context, the acquisition of Baltic Mill (which owned Lithuanian pasta producer Amber pasta, Lithuanian flour producer Malsena and Latvian flour producer Rigas dzirnavnieks) by Dobeles dzirnavnieks, (which is a subsidiary of Estonian flour producer Tartu Mill), a pasta producer is a very illustrative case. After almost two-year process, the Lithuanian competition authority blocked the transaction at the end of August 2022, whereas the Estonian and Latvian competition authorities permitted the transaction by granting their clearances several months earlier (in case of Latvian competition authority – even half a year earlier).

Importantly, Latvian & Estonian competition authorities grounded their decisions on the fact that Rigas dzirnavnieks, Baltic Mill food production facility located in Latvia, was undergoing serious financial difficulties, which in turn lead the authorities to conclusion that notwithstanding if the deal was to be implemented or not, in either case Rigas dzirnavnieks would be forced to leave the market, thus affecting the food production capacities available in the market.





The decision adopted by the Lithuanian competition authority does not consider the topic of Rīgas dzirnavnieks difficulties at all, thus raising open questions why the authorities' assessments of the same transaction and similar competition concerns were different.

In terms of intensity and length of proceedings, as a rule, the Latvian competition authority in cross-border transactions adopts their decisions first, whereas the Lithuanian competition authority is often the last to adopt decisions.

Besides Dobeles dzirnavnieks / Baltic Mill, this trend was also observed in acquisition of Kauno Grudai by Linas Agro, both important Baltic agriculture conglomerates possessing poultry processing capacities, where the Lithuanian competition authority adopted its decision almost half a year later than the Latvian competition authority. Most recently, the Latvian competition authority finished their review of the acquisition of HK SCAN Baltic meat processing companies by Estonian meat producer Maag Grupp just after two months from signing definitive transactional documents. In this instance, the Estonian competition authority parallel review is still pending.

Against this background, from our experience in advising businesses on cross-border transactions, including transactions mentioned already, it is unfair to credit market differences behind divergent merger control reviews.

Our experience shows that review standards (i.e. evidential burden), scope and volume of information production demands, which underly the extent of merger review timelines, are often different in seemingly similar situations. Even though it is impossible to pinpoint accurately, it is likely that the institutional traditions, risk of litigation, case experience and formal education, all contribute towards observed differences. For instance, the Latvian competition authority staff has many case handlers with non-law background (economists, financial analysts, etc.), who by the nature of their formation are more focused towards analyzing economic concerns, whereas the other two are mostly comprised of lawyers.