Interview: Šarūnas Keserauskas – Chairman, Lithuanian Competition Council (KT)



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Šarūnas Keserauskas, chairman of the Lithuanian Competition Council (KT), discusses his decision to return to Lithuania from the UK, EU collaboration, and the level of competition within Lithuania's healthcare and life science industry.

From the personal standpoint, after working nearly two years in the British National Competition Council, what triggered you to come back to Lithuania in 2011 and lead the KT?

Well I spent almost eight years in the UK, two of them I worked for the Office of Fair Trading, which was a competition authority in the UK and is now a CMA. I never lost touch with Lithuania and I always wanted to come back. The opportunity came up and I could not turn down the offer, it's as simple as that. I had practice with the authority abroad, I did my PhD on what the priorities of a small country's competition authority should be, so I talked the talk and I had an offer to walk the walk, so I accepted the challenge.

The KT holds a quite remarkable positioning being considered as one of the continent's great advocates for competition principles as well as one of the most professional competition authorities in the world. What are the facts that support such positive recognition and what has been your strategy to drive the council to such positioning?

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It is difficult to assess yourself. I will try, but it is easier to leave it to others. If some say we are doing well, I am glad to hear that. We are trying our best. We try to attract the best people and give them freedom and responsibility. That's it. We are a young authority in terms of age, and that brings lots of energy. We also have a good combination of youth and experience, and I think that gives us lots of energy to go – it's never boring. So that's how we work; we empower people and give them freedom and responsibility. The team is central to our success.

Did you build your team here? Was it exactly the same before you arrived in 2011 or is it something you've created?

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It is a never-ending project. It is not like you build the team once and continue forever. Throughout history, the competition authority, the teams were being created, renewed and so on. I joined in 2011 just after the crisis when the size of the authority was cut, we were short of people and financial resources, so we had to recreate the authority in some sense. Lots of new people arrived, most of them were recent graduates from law school or economics. So that was a challenge itself. For those people to work together – on the one side you had experienced staff, and then you had lots of new faces – they had to blend in, and I think we managed that.

So you would say the positioning reflects the ambitions you had in 2011?

I don't remember what ambitions I had. It was always just to do the best I could, and I think what I really feel here and what was probably lacking before, with all due respect to my former home, the City of London, is greater emotional connection to the things that I do. Of course as a professional you do your best wherever you work. So being in my own country is one of the main drivers.

Moving to healthcare, what is the relevance of such subject within the KT's overall duties?

The healthcare sector is one of the most important sectors and people's most important concerns. If you look at our enforcement practice, you will find investigations, market studies, and, of course, our advocacy efforts which continue to this day to improve the system so it works better for patients.

In 2016, the KT conducted a market study on reimbursable pharmaceuticals in Lithuania that revealed that the current legal regulation in the market of reimbursable pharmaceuticals is inefficient and results in higher prices for both consumers and the state. Can you expand on the main conclusion behind this study?

We could probably spend a whole day discussing that study. The old system of reimbursable pharmaceuticals looked like a swamp, the water does not come in and does not leave. I say this because it was difficult to get on the reimbursable pharmaceutical list and once you're there it was next to impossible to be kicked-out of it. That meant that the incumbents had a good time being on the list. For a new competitor, it was difficult to get on the list, and for the incumbents it was nearly impossible to be dropped. The barriers to entry were very high, and they were created by regulation. We recommended to the regulators – the ministry and the parliament – that they lower the barriers to entry so more new competitors could have a chance of being on the list of reimbursable pharmaceuticals. We thought there should be a system that looked into the existing list and saw what is there and dropped the pharmaceuticals that are too expensive. In the old days, you had this list, and it would not be renewed for years. So we recommended there should be a systematic way of looking at the list and renewing it based on the prices. That is one of the things that the minister of health is trying to implement. This list will be renewed every quarter.

What specific actions are you putting in place in order to continue enhancing the national pharmaceutical system?

I cannot speak for all national healthcare systems, I can only say what we've focused on and that is reimbursable pharmaceutical market study. Our main tool is advocacy. I think if you ask market players and the minister of health they would confirm that we are very active and we are trying to push regulators to improve regulation based on the findings in our market study. I must say that it has not been completed, yet there are some steps being made in that direction. We still have doubts about some of those steps and we encourage regulators to remove unnecessary barriers to entry and simplify regulation. If you are an incumbent, the more complex regulation, the easier it is for you because you are less likely to be challenged.

The government has implemented several pricing regulatory changes in order to increase the level of competition in the pharmaceutical industry and lower the price of both patent and off patent medicines. From the patients' benefit standpoint, what are your conclusions in this front?

We have mixed feelings on this. On the one hand, we see the minister of health's attempts to reduce prices. Especially for reimbursable drugs. However, in our view, those attempts mostly rely on the direct regulation of prices. So you can reduce prices by putting a price cap. But is this creating long-term incentives to compete? It's much more reliable to expect the prices to be reduced because of competition as opposed to direct price regulation. So, what we are saying and are still in discussion with the ministry of health about is if the ministry should be more focused on

efforts to incentivize competition as opposed to imposing price caps. The latter may not be sustainable long term. The risk is that if price caps are too low, they may create a deficit.

What do you mean by opening the market?

For example, in our market study we said that one of the most important barriers to entry was the requirement for certain pharma products to be cheaper than the existing ones by 50%. Intentions may have been good, but the outcome was that there were very few newcomers. In the old system we had 14 groups of drugs, and competition was within a particular group. The ministry of health increased the number of groups by changing regulation. So the number of competitors in the group became smaller. If the number was less than three, then all incentives to compete disappear.

From the international standpoint, how are you collaborating with the European Commission and EU competition authorities in order to identify and implement the best competition practices in Lithuania?

There is a general cooperation of authorities within the EU. We also cooperate on an at-home basis, but if we need something we can always access our colleagues in different countries. When it comes to reimbursables, our experts look quite a lot at other EU, and OECD countries and see how things are working there. We don’t want to reinvent the wheel, if practices work somewhere else why not accept them. That said, we are still a competition authority. We are not a regulator. It’s mostly a task for regulators to look at practices of other countries. It’s mostly about looking at any unnecessary regulation that creates barriers for competition.

How is the competition landscape in the healthcare industry in Lithuania?

Based on our reimbursable pharmaceuticals market study, our general assessment was that competition could be better for off-patent drugs. The lack of competition is to a large extent because of regulation. Taking a wider look at the healthcare industry, in 2017 we issued one infringement decision against two companies that were enrolled in so-called resale price maintenance. The companies were found to have been fixing minimum resale prices of bone regeneration products used in implant dentistry. That’s the most recent case in this sector. In 2011, we closed a big investigation in the pharma sector involving lots of companies. We did not find an infringement. We closed the case with commitments. That is the pharma companies committed to removing some provisions from the contracts with distributors that caused doubts as to whether those provisions could encourage resale price maintenance.

To Wrap Up, Šarūnas, this is your second and last term as Chairman of the Competition Council of Lithuania, which started on 5 April 2017. What is the legacy that you want to leave before moving onto the next step?

When you leave, you always want the organization to continue to work properly. It's no good to say "when I was there, things worked so well, now I've left and it's all in shambles." I think it is my responsibility to create an organization that continues to work well in the future. When it comes to competition and markets, I think the biggest challenge for us remains explaining to society the benefits of competition. Unfortunately, some business practices are not seen as morally wrong, and we have to change that. If you ask people on the street if it is morally wrong – not just illegal – to be involved in a cartel, many would say no. To tackle this, we are going to regional centers in Lithuania meeting with local business people, people from local municipalities and we discuss how competition works. Another initiative we have is going to schools and talking to pupils aged 14-18. They have a totally different understanding of competition. For them, many things that we discuss, they take it naturally. They don't have ideas of price regulation. They were born and grew up in the market economy, so many things that we discuss are simply accepted as they are.

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