

Publications

Competition law in Bulgaria. Legal Framework and General Principles

Copyright by: NINOV & ALEXANDROVA LAW FIRM



I.1. Applicable legislation

The core legal Act governing and protecting the competition environment in the Republic of Bulgaria is the Protection of Competition Act (PCA), adopted at the end of 2008. The new PCA aims to harmonize the national Law with the EU competition rules. In compliance with Council Regulation (EC) 1/2003 and Council Regulation (EC) 139/2004, the national competition authority also ensures the application of Art. 101 and Art. 102 TFEU.

**Competition Regime in
Bulgaria**

**Protection of
Competition Act (PCA)**

**PCA Treaty on the
Functioning of the EU
(TFEU)
Art. 101, Art. 102, Art.
106**

The Commission for Protection of Competition (CPC) has adopted secondary legislation such as Methodology for setting fines under the PCA, Methodology on Investigation and Definition of the Market Position of Undertakings in the Relevant Market, etc. In addition, even though the European Commission documents such as Notices and Guidelines are not binding for the Bulgarian competition authorities when dealing with purely national cases, the CPC tends to apply them in its practice.

I.2. Commission for Protection of Competition (CPC)

The CPC is the Bulgarian national competition authority responsible for the enforcement of the Bulgarian Protection of Competition Act (PCA) and Article 101 and Article 102 of the Treaty on the Functioning of the European Union (TFEU).

Other competences of the CPC
<ul style="list-style-type: none">• rule termination of infringements, including appropriate behavioral and/or structural measures;• impose interim measures, grant permits as required by the law, impose fines;• cooperate with the European Commission and the other national competition authorities of the Member States;• draft sector analyses of the competition environment;• make proposals to the competent state authorities and local governmental bodies to revoke or amend their administrative acts that prevent, restrict or distort the competition.

Table 2: Other competences of CPC

I.3. Judicial control

The Supreme Administrative Court (SAC) exercises control over the CPC decisions with regard to their accordance with the Law. If the Court establishes lack of such accordance, it is not entitled to decide the case on the merits and in such cases the Court issues mandatory instructions concerning the application of the Law.

Claims for damages by natural persons or legal entities should be submitted before the Civil District Court. The SAC decision is binding on civil courts as to the fact of the infringement.

CPC
(decisions enforcing the PCA, and/or Art. 101 and Art. 102 (TFEU))



SAC
Reviews both the substantial part of CPC decisions and the amount of the imposed fines

Table 3 Court control over CPC decisions

I.4. Scope of the PCA

The PCA regulates three main types of improper behavior, which may infringe competition and sets out the legal framework of concentrations.

I.4.1. Antitrust - prohibited agreements, decisions and collusive practices

The Law prohibits all types of agreements between undertakings, decisions by associations of undertakings, as well as concerted practices of two or more undertakings, having as their purpose or result the prevention, restriction or distortion of competition on the relevant market.

Agreements, decisions and concerted practices with such effect:

- i. directly or indirectly settled fix prices or other trading conditions;
- ii. share markets or sources of supply;
- iii. limit or control production, trade, technical development or investment;
- iv. apply to certain partners different conditions for equivalent transactions, thereby placing them at a competitive disadvantage;
- v. make the conclusion of contracts subject to acceptance by the other party of additional obligations or to the conclusion of additional contracts which, by their nature or in accordance with the reasonable commercial practice, have no connection with the subject matter of the main contract, or with its performance.

On the other hand, the agreements, decisions and concerted practices with minor anti-competitive effect shall remain valid and enforceable. This concept is known as the rule “de minimis”. However, the rule “de minimis” does not apply to those agreements, decisions or concerted practices having as a result the so-called “hard-core restrictions” on competition, i.e. restrictions such as: price fixing; limitation of output or sales; market sharing, etc.

In compliance with the practice of the European Commission, the Bulgarian competition authority applies block exemptions and individual exemptions.

Some agreements, decisions and concerted practices may benefit from an individual exemption on one of the following grounds:

- i. if the agreements, decisions and concerted practices contribute to the improvement of the production or distribution of goods, or to the promotion of technical or economic progress, granting the consumers a fair share of the resulting benefit as far as they do not:
 - impose on the concerned undertaking such restrictions, which are not indispensable to the attainment of these objectives;
 - enable such undertakings to eliminate the competition on a substantial part of the relevant market.

A new important aspect of the exemption, introduced by the new PCA, is the fact that it is the undertaking itself to decide on and to prove whether the agreement, decision or concerted practice complies with the criteria for exemption. No prior notification to, or approval by CPC is required.:

- ii. if the agreements, decisions and concerted practices have been explicitly exempted by a decision of CPC (the so called “block exemption”).

I.4.2. Abuse of monopolistic or dominant position

The Law prohibits abuse of monopoly or dominant position by an undertaking or by two or more undertakings enjoying a collective dominant position, which may prevent, restrict or distort competition and impair consumers’ interests. The legislation provides a non-exhaustive list of concrete forms of such abuse.

- i. price fixing;
- ii. limitation of output, trade and technical development impairing the consumers’ interests;
- iii. application of dissimilar conditions to certain partners for equivalent transactions, thereby placing them at a competitive disadvantage;
- iv. making the conclusion of contracts subject to acceptance by the other party of additional

obligations or to the conclusion of additional contracts which, by their nature or in accordance with the reasonable commercial practice, have no connection with the subject of the main contract/agreement or to its performance;

- v. unjustified refusal to supply goods or to provide services to actual or potential customers in order to impede their economic activity.

In order to impose fines or other measures on such undertaking, CPC first defines the “relevant market” in each particular case and subsequently analyses whether the undertaking actually enjoys the alleged monopolistic or dominant position. An undertaking is considered to have a dominant position when, in view of its market share, financial resources, possibilities for market access, level of technology and economic relations with other undertakings, may hinder competition on the relevant market, as it is independent of its competitors, suppliers or consumers.

I.4.3. Unfair competition

The last form of infringement prohibited by law is the unfair competition conducted by an undertaking.

As a general rule the law prohibits any action or omission of an undertaking in the course of its business activity which is contrary to the good commercial practice and damages or may damage the interests of the competitors.

I.4.4. Mergers

The law prohibits the concentration of undertakings only if it leads to the creation or strengthening of a dominant position, as a result of which the effective competition in the relevant market would be significantly impeded.

Under the Bulgarian law the concentration may take one of the following forms:

- i. merger or acquisition of undertakings;
- ii. acquisition of control over other undertakings or part of undertakings – such control (direct or indirect) may be acquired through acquisition of shares, securities, assets or other rights by means of a contract or other relevant way. The essential characteristic of the term “control” is the decisive influence that the acquiring undertaking shall have over the acquired undertaking by means of:
 - acquisition of right of ownership or right of use over the whole or part of the assets of the undertaking;
 - acquisition of rights, including contractual rights, by virtue of which the acquiring undertaking may exercise decisive influence over the composition, voting or decisions of the undertaking’s bodies
- iii. establishment of a joint venture acting as an autonomous economic entity.

The parties are bound to notify CPC of the contemplated concentration after they conclude the agreement, publicly announce the offer for concentration or acquire the control, but in any case before taking any actions for the actual implementation of the transaction. In exceptional cases, the parties may request from CPC to assess the concentration prior to conclusion of the agreement or

the public announcement of the offer.

As a general rule, CPC shall not authorize a concentration, which leads to creation or strengthening of a dominant position, as a result of which the effective competition in the relevant market would be significantly impeded. However, even if the concentration has such anti-competitive effect, the same shall be authorized, if its goal is to modernize of the respective economic activity, improvement of market structures, better meeting the interests of consumers and overall the positive effects outweigh the negative impact on competition.

Scope of the PCA			
Antitrust	Abuse of dominance	Unfair competition	Mergers
<p>PCA prohibits:</p> <p>Agreements, decisions and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition on the relevant market</p>	<p>PCA prohibits:</p> <p>Agreements, decisions and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition on the relevant market</p>	<p>Forms of unfair competition (non-exhaustive):</p> <p>Damage of the good name of a competitor;</p> <p>Misleading as to substantive characteristics of the goods/services; Misleading advertising; Prohibited comparative advertising;</p> <p>Imitation Unfair solicitation of clients; Disclosure of manufacturing or trade secrets of competitors contrary of good faith.</p>	<p>Prior notification to CPC, if:</p> <p>Total turnover of all participants in BG during the preceding year exceeds BGN 25 mil., and turnover of at least two participants in BG during the preceding year exceeds BGN 3 mln.</p>
<p>Legal consequence: such agreements are null and void</p>	<p>Definition of the relevant market: product & geographical</p>		<p>Turnover of the acquired undertaking in BG during the preceding year exceeds BGN 3 mln.</p>
<p>Unless: a block exemption or an individual exemption lies</p>			

Table 4 Scope of the PCA

I.5. Investor's liabilities and fines imposed by

CPC

The new PCA complies with the European Commission model for setting fines and sets the latter as a percentage of the undertaking's turnover.

While assessing the amount of the fine in each particular case, CPC takes into consideration a number of relevant factors such as gravity and duration of the infringement, along with circumstances mitigating or aggravating the liability. The CPC has adopted a Methodology for assessing the exact amount depending on the particular type of infringement. The main principle followed by CPC in determining the fine is that the latter should be of such amount as to restore the competitive environment and to allow the infringing undertaking after paying it to continue its business activity.

However, the infringing undertakings may elude paying fines for participation in a secret cartel, if they provide CPC with specific information set out in the law. Further, CPC may decrease an imposed fine of such undertaking, which provides CPC with a substantial evidence for the infringement by the end of the proceedings.

Along with the fine CPC may impose other measures (structural or behavioral) aiming to restore the competition such as division or merger of capitals, shares or assets, termination of joint control, etc.

Fines imposed by CPC		
Up to 10 % of the total turnover of an undertaking for the preceding business year for: <ul style="list-style-type: none"> • execution of prohibited agreements, decisions and concerned practices, abuse of monopoly or dominant position; • conduct of unfair competition; • completion of concentration, prohibited by Law; • lack of notification to CPC upon concentration; • non-compliance with decisions or rulings of CPC. 	Up to 1% of the total turnover of an undertaking for the preceding business year for: <ul style="list-style-type: none"> • non-compliance of an undertaking with its obligation to cooperate with CPC; • non-compliance with the obligation to present to CPC full, accurate and not misleading information, etc. 	Periodic penalty payments - up to 5% of the average daily turnover for the preceding business year (per day) for: <ul style="list-style-type: none"> • non-compliance with the imposed termination of the infringement or the imposed structural/behavioural measures; • non-compliance with injunctions; • non-compliance with commitments imposed by CPC.

Table 5 Sanctions under the PCA.

This material aims to inform the recipients about the latest legal developments in the Bulgarian Competition Law sector. It does not constitute legal advice or a legal opinion on any specific facts or circumstances and the content is intended as general information only. The advice of legal counsel should be obtained for specific questions and concerns. For further information, please contact us at Ninov, Toshev & Alexandrova Law Firm, Bulgaria, Sofia 1000, 30 "Tzar Samuil" Str. 2-nd floor, app.3, Tel: +359 (2) 981 28 60; Fax: +359 (2) 981 28 60, www.ninovtoshev.com; e-mail: office@ninovtoshev.com.

The present material reflects the applicable Bulgarian legislation as of October 1, 2014.

Copyright (C) 2018 Libralex