

Unclassified

CCNM/GF/COMP/WD(2002)4



Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

03-Feb-2002

English text only

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS  
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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Unclassified

## **OECD Global Forum on Competition**

### **CONTRIBUTION FROM BULGARIA**

*This note is submitted by Bulgaria as a background material for the second meeting of the Global Forum on Competition, to be held on 14-15 February 2002.*

**JT00120257**

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**THE REPUBLIC OF BULGARIA**  
**COMMISSION ON PROTECTION OF COMPETITION**

**1. Actual experiences in international co-operation in cartel and/or merger cases**

The Law on protection of competition that entered into force on April 29th 1998 retains the effect doctrine. Its article 2/1/ is based on the effect principle and provides that the Law shall be applicable to all undertakings, which carry on their activities within or out of Bulgaria if they distort or may distort competition on the territory of the Republic of Bulgaria.

The Commission on Protection of Competition of the Republic of Bulgaria is highly interested in developing international co-operation with other competition authorities. It considers that closer cooperation is needed to deal effectively with restrictive business practices of enterprises from different countries when they affect the interests of one or more other countries and have harmful effect on international trade.

To overcome problems due to national differences in the investigation procedures, the conflicting views related to the jurisdiction of competition laws when applied to conduct or parties outside the national territory, Bulgaria has concluded a number of international agreements for co-operation.

**2. International agreements**

The Europe Agreement establishing an association between the European Communities and their Member states of one part, and the Republic of Bulgaria, on the other part contains the main substantive competition rules, which apply where trade between the EC and the Republic of Bulgaria is affected. The following are deemed to be incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and the Republic of Bulgaria:

1. all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
2. an abuse by one or more undertakings of a dominant position on the territories of the Community of or Bulgaria as a whole or in a substantial part thereof;
3. any public aid which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods.

The Europe Agreement makes it clear that these rules and prohibited practices are to be interpreted in accordance with the criteria arising from the application of Articles 81, 82 and 86 of the EC Treaty. The decisions of the Commission and the case law of the Court of Justice are also relevant.

As far as merger control is concerned mergers are not directly referred to in the Europe Agreement.

### **3. The Implementing Rules**

According to the Europe Agreement, the Association Council had to adopt the necessary rules for the implementation of the above – outlined competition provisions within three years of the entry into force of the Agreements.

With its Decision 2 from 7.10.1997 the Association Council adopted the Rules for the application of the competition rules applicable to undertakings.

According to these Implementing Rules, cases of mutual interest to Bulgaria and the EU, on behalf of the EU, are dealt with by the European Commission, and on behalf of Bulgaria - by the Commission on Protection of Competition. The competencies of the European Commission and the Commission on Protection of Competition derive from the existing legislation respectively in the EC and the Republic of Bulgaria. Both authorities consider cases in accordance with their own substantive rules.

The Implementing Rules for undertakings contain procedures for cooperation between the Commission and the Commission on Protection of Competition, procedures for notification of cases to the other Party and for consultation.

According to art. 4 whenever the competition authority becomes aware of the fact that a case, falling also or only under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the competent authority.

When addressed with such request, the competent authority shall give sufficient information to the extent possible and at a sufficiently early stage before the adoption of a decision or before the settlement of the case to allow the due consideration of the requesting authority's views. Neither competition authority is bound to provide information if disclosure of that information to the requesting authority is prohibited by the statute of the institution disposing of it, or would interfere with important interests of the Party whose authority is in possession of the information. Each competition body agrees to observe, to the fullest extent possible, confidentiality of the information it has acquired by the other authority.

As far as merger control is concerned, Article 7 of the Implementing rules entitles the Commission on protection of Competition to express its view in the course of the procedure under the EC Merger Regulation, where the merger will have a significant impact on the economy of Bulgaria. The European Commission will give due consideration to that view.

After consultation within the framework of the Association Council, where a particular practice is considered incompatible with the competition rules of the Europe Agreement and inadequately dealt with under the implementing rules and if such practice causes or threatens to cause serious prejudice to the interest of the other contracting Party or material injury to its domestic industry, the Community or Bulgaria may take appropriate measures to solve the problem.

### **4. Free trade agreements**

Bulgaria has entered into bilateral Free trade agreements with Lithuania, Estonia, Israel, Turkey, Macedonia and Croatia.

Perfectly in accordance with Articles 81(1) and 82 of the EC Treaty, these agreements provide that restrictive business practices constitute a violation of the agreements if they affect trade between Bulgaria and the respective country. Free trade agreements contain competition rules that prohibit agreements that restrict competition and abuse of a dominant position.

All of those agreements also provide for a solution to competition rules violation. Although the above-mentioned competition clauses have never been applied, they express the common assessment of parties to the danger of restrictive business practices, seek to facilitate cooperation with the respective competition authority and to eliminate the negative effect of restrictive practices on bilateral trade.

For the application of the free trade agreements no special implementing rules were adopted, but the solution of problems could be sought through direct consultations between competition authorities or through Joint Committees supervising the implementation of the agreements in question.

## **5. Programs for cooperation**

Another important tool are the bilateral Programs for cooperation signed between the Commission on Protection of Competition and the competition authorities of Russia, Macedonia and Romania.

These bilateral programs envisage exchange of information on cases involving investigation of restrictive trade practices performed by economic operators with a nationality of the contracting parties. Such cooperation is possible when violations affect the interests of both parties.

Another provision concerns exchange of information on restrictive practices by operators of a third country and aims at avoiding such anti competitive behavior on the territory of the contracting parties.

## **6. Informal cooperation**

Very good is the experience of the Commission on Protection of Competition has established fruitful informal cooperation with the competition authorities of Germany, Macedonia, Romania.

## **7. Technical assistance**

Technical assistance is another important tool for cooperation in the field of competition. The Commission on Protection of Competition has obtained assistance from EC, OECD, ABA, USAID, JICA.

The officials of the CPC have been on visits and internships to the European Commission - Directorate General for Competition, Anti trust Division and the FTC, many of them have participated in conferences, workshops and seminars, organized by the European Commission, OECD, UNCTAD, as well by the competition authorities of different countries.

The Commission on Protection of Competition is well aware that cooperation between competition authorities can be very useful and rewarding for the sound law enforcement.

We believe that the Global Competition Network and this Global Competition Forum can serve as a vehicle for strengthening cooperation between antitrust agencies worldwide.