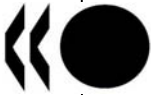


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OECD Global Forum on Competition

**THE OBJECTIVES OF COMPETITION LAW AND POLICY
AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY**

-- BULGARIA --

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BULGARIA

THE OBJECTIVES OF COMPETITION LAW AND POLICY AND THE OPTIMAL DESIGN OF A COMPETITION AGENCY WITHIN THE OVERALL GOVERNMENT

The Constitution of the Republic of Bulgaria in its Chapter 1 proclaims the general principles forming the construction of the democratic state. One of these, stated in Art.19 is the free market economy. Paragraph 2 of the provision goes on saying that “the state shall establish and guarantee equal legal conditions for economic activity to all citizens and corporate entities” and mentions the specific tool to be used to this end, i. e. the prevention of abuse of monopoly status and unfair competition to the benefit of consumers. Thus the protection of competition is expressly recognized as a pillar of the sound functioning of the market and the development of economy.

The Constitution recognizes the equality of all economic agents, irrespective of their nationality. They are given the possibility to set up cooperatives and other forms of associations of citizens and corporate entities in the pursuit of economic and social prosperity. Finally, the Constitution expressly states that competition protection should be ensured by law.

In accordance with the so determined architecture of Competition policy and legislation in this field, in 1991 the National Assembly adopted the first Law on Protection of Competition. Following the efforts to achieve a functioning market economy and with view to Bulgaria’s will to join the EU, in 1998 a completely new, presently in force, Competition Act replaced the previous one. Its major characteristic and its advantage to its predecessor is the new philosophy laid into it. It aims at ensuring protection and conditions to promote competition and free economic activity. Its provisions are expression of completely new approach meant to guarantee the legitimate interests of the economic actors on the market and to develop market conditions themselves.

On the basis of this body of law, like in the EU, competition policy in Bulgaria focuses on four main areas of action:

- prohibition of agreements, decisions and concerted practices that have as their object or effect the prevention, restriction or distortion of competition and of abuses of dominant position;
- the control of mergers between undertakings, whenever as a result of a transaction dominance occurs on the market;
- the liberalization of monopolistic economic sectors;
- the monitoring of State aid.

The Law on Protection of Competition¹ (Competition Act) sets up a specialized institution to implement its provisions. It is the Commission on Protection of Competition (CPC) that is responsible to carry out competition policy. CPC is an independent State body financed through the State budget.

¹ Adopted by the XXXVIII National Assembly on April 29, 1998, promulgated in State Gazette, N 52. on May 8, 1998; in force on May 12, 1998

According to Art. 4 of the Competition Act the Commission shall be a collective body, consisting of eleven members -- a chairman, two deputy chairmen and eight members, seven of which should be lawyers and four - economists, elected and dismissed by the National Assembly for a five years' term of office. They may be re-elected for another five-year period.

Having imposed the requirement for a particular educational background the Law provides for a standard, regarding the professional and social performance of the members of the CPC. The chairman of the Commission must be a qualified lawyer, with practical experience in his speciality not less than ten years. The members of the Commission shall be Bulgarian nationals who have university degree in law or economics and a practical experience in their field not less than five years, with high professional and moral standing, not sentenced to imprisonment for intentional indictable crimes. They may not occupy any other paid positions, save for the exercise of scientific or teaching activities.

Exhaustively the powers of the institution are envisaged in Art. 7 of the Competition Act. They fall into four groups:

1. Powers to establish the offences of the Law and impose the penalties provided for the violations. Besides its sanctioning power, the CPC can equally issue acts favorable for the undertakings by authorizing concentrations of economic activity.
2. Powers to submit proposals to the competent authorities of the executive branch and of local self-government to cancel secondary legislation, issued in violation of this law, or bring actions before the court for the reversal of individual administrative acts contravening the Competition Act. Those proposals have advisory character and are not binding to their addressees.
3. Consultative functions – CPC is obliged to pronounce on requests relating to competition law. Practically, this is a possibility for the executive power and for the undertakings to consult the CPC before adopting an act or assuming a behavior that might restrict or damage competition on the relevant market.
4. CPC could order the termination of an offence of the Competition Act and restoration of the initial situation. Because of its nature and legal consequences this possibility is a separate power.

In the performance of its activities, the Commission is given several tools:

1. to conduct studies and determine the position of undertakings on the relevant market according to guidelines adopted by the Commission;
2. to interact with other State authorities and institutions, with the bodies of local self-government, and with non-governmental organizations by means of participation in the elaboration of draft legal instruments, exchange of information and other forms of co-operation;
3. to give opinions, requested by the corresponding State and local authorities, about the projects for transformation and privatization of undertakings or of parts of them, where this law might be violated;

4. to carry out and co-ordinate the international co-operation of the Republic of Bulgaria with international organizations or with institutions from other countries in the field of competition protection.

Although CPC is ranking a ministry, the institution does not form part of the government. At the same time, having taken into consideration the powers of the CPC, provided by the Competition Act, in its Ruling N 22/1998 the Constitutional Court of Bulgaria gave a construction to certain provisions of the Act and out of them concluded that CPC is an institution with **administrative character**. This conclusion lead to very important legal consequences especially as far as the procedure before the CPC was concerned. Thus CPC was restricted in the possibility to apply by analogy the Civil Procedural Code when the Competition Act did not contain a specialized provision to solve a problem. Instead, despite of its quasi-judicial functions, CPC had to fit into the tighter administrative procedural norms.

In the light of the above-made description of the present design of the CPC, the most positive about the statute of the institution is its independence from the executive power. The control over its activity is exercised by the independent Judiciary through the possibility of the undertakings to appeal the decisions of the CPC before the Supreme Administrative Court. Besides that, the Competition Act obliges the institution to publish annually a report of its activity that is public and could be obtained absolutely free of charge by everyone who is interested.

What are the shortcomings? With view to the amendment of the Competition Act in the next months that follow, the present design of the competition protection system imposes a major challenge before the legislator and that is where the CPC fits between the executive and the legal power. Answer to this question should be given with view to the overall design of the Bulgarian legal system and the principles laid into its basis and stated by the Constitution.

Another important issue to consider is the inter-institutional cooperation between the CPC and the other State bodies. Until now in the process of its work, CPC often found itself deprived of or lacking information it needed to intervene effectively. Decisions of the executive power contravening the Competition Act got know to the institution only after their adoption or implementation. This creates a major problem with view to the consultative character of the CPC acts adopted on such occasions. The ex post intervention in certain cases is hardly effective where, for example, legislative amendment is needed to repair the violation. Such deadlock situations might be evaded if the Chairman of CPC is permitted to assist the meetings of the Council of Ministers with consultative power. Thus a double objective will be achieved - the adoption of secondary legislation or of individual administrative acts contrary to the Competition Act will be avoided and advocacy of competition law and policy at the highest possible level will be a fact.