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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BULGARIA**

-- 2010 --

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## **Executive summary**

1. The past 2010 was of significant importance for enhancing the role of the Commission on Protection of Competition (the Commission, the CPC) in its capacity as a national competition authority responsible for the free and effective functioning of markets.

2. In 2010 the CPC continued its practice of adopting secondary legislation and guidelines on applying the new Law on Protection of competition with a view to achieving a more detailed approach to interpreting the law as well as clear criteria for applying its provisions.

3. In 2010 the Commission directed its law enforcement efforts towards the markets with significant socio-economic importance on the consumers' welfare and the social welfare as a whole. In this relation the Commission carried out a number of investigations for establishing infringements of antitrust rules applied in the country by exercising all the powers vested in it by the law.

4. In addition, the CPC is using sector inquiries more and more as a tool aimed at collecting and processing comprehensive information for the functioning of the relevant markets with a view to identifying the problems in the field of competition development and to proposing approaches to solving those problems.

5. In 2010, the CPC continued its activities on exercising control on concentrations between undertakings despite the fact that as a result of the global economic crisis a decrease was observed in the number of mergers and acquisitions of undertakings. The CPC successfully applied Council Regulation No. 139/2004 on mergers as under a case study it requested a partial referral of a merger case from the EC to the CPC. In the field of control on concentrations the Commission took measures for improving the exchange of information between the competition authorities of the EU Member States in case of mergers notified in more than one Member State by adopting a model Declaration of Consent for disclosing confidential information to other competition authorities in the EU Member States.

6. In a number of cases in 2010 the CPC exercised its powers for carrying out competition advocacy by suggesting amendments to draft acts or effective legislation to the purpose of preventing, and respectively eradicating, existing restrictions on competition. The CPC has been more active in the field of competition advocacy over last year when it adopted twice as many opinion statements in the field of competition law compared to the previous year.

### **1. Changes to competition laws and policies, proposed or adopted**

7. In the beginning of the year the CPC adopted Rules on examining proposals to undertake commitments by undertakings and associations of undertakings whose behavior is subject to investigation under Article 15 or Article 21 of the Law on Protection of Competition (LPC) or under Article 101 or Article 102 of the TFEU. The Rules outline the criteria and procedures on the basis of which the CPC may approve the undertaking of commitments by undertakings or associations of undertakings without establishing an infringement under the LPC or the TFEU.

8. In addition to that, with a view to enhancing its effectiveness in the fight against cartels, the CPC drafted and promoted Guidelines against bid rigging in public procurement procedures which outline the main competition problems observed in public procurement procedures, the factors determining such behaviour as well as the circumstances indicating its existence. The Guidelines are accompanied by a Checklist of Circumstances, the presence of which raises doubt about bid rigging in public procurement procedures.

## 2. Enforcement of competition laws and policies<sup>1</sup>

### 2.1 *Action against anticompetitive practices, including agreements and abuses of dominant position*

#### 2.1.1 *Prohibited agreements, decisions and concerted practices*

9. The provision of Article 15 (1) of the LPC contains a general prohibition of all types of agreements between undertakings, decisions by associations of undertakings, as well as concerted practices of two or more undertakings having as their object or effect the prevention, restriction or distortion of competition on the relevant market.

10. In 2010 the Commission adopted 7 decisions in relation to the application Article 15 of the LPC. By 1 of its decisions the Commission established infringements under Article 15 of the LPC and imposed sanctions on the infringers. By 4 of those decisions the Commission established that no infringement had been committed of Article 15 of the LPC. And by 2 of its decisions the Commission imposed pecuniary sanctions on the defendants in the proceeding for failure to provide complete and accurate information requested by the CPC in the course of the proceedings.

11. In 2010 the CPC carried out 1 inspection as a first step in the procedure under one of the recently initiated proceedings for establishing prohibited behaviour of undertakings under Article 165 of the LPC. The inspection were carried out in accordance with the procedural rules and in exercising the powers vested in the CPC by the new LPC. In carrying out the inspections the CPC seized paper and forensic evidence which was further analyzed at the Commission's Forensic IT Laboratory.

12. For the same period, on the grounds of Article 74 (1) (3) of the LPC by means of 2 rulings the CPC submitted Statements of Objections for an alleged infringement of Article 15 of the LPC to the defendants whose behaviour is subject to the investigation. The submission of a Statement of Objections for an alleged infringement to the defendant is a new legal instrument introduced for the first time into the Bulgarian legislation with the coming into force of the new LPC (SG, Issue 102 of November 28, 2008, which entered into force on December 2, 2008). This instrument is fully compliant with the best practices in the field of competition law and corresponds to the practice of the European Commission. It is used in proceedings for establishing antitrust infringements when the CPC has established that it has sufficient evidence to adopt a decision in substance, but before that it has to submit a Statement of Objections (SO) for an alleged infringement to the defendants. The SO shall contain the established facts and circumstances as well as an overview of the economic and legal motives which the investigating authority considers have led to committing the infringement. The SO provides a mechanism which can to a greater extent guarantee the right of defence of the parties and which provides an opportunity for finding a more effective solution to the competition problems in the relevant markets.

13. In 2010 the CPC adopted 3 decisions by which it imposed pecuniary sanctions and fines under proceedings for establishing infringements under Article 15 of the LPC and in this relation has imposed pecuniary sanctions to the total amount of 198 428 BGN.

14. The number of adopted decisions in 2010 is similar to the indicators for the previous years. At the same time the number of initiated proceedings has decreased which is due to the fact that the investigation

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<sup>1</sup> All cases, initiated under the repealed Law on Protection of Competition, were concluded under its provisions, as set down in the § 6 (1) of the Transitory and Supplementary Provisions of the new LPC. Therefore, the data on CPC enforcement record in 2009 includes the cases, initiated and finished under the repealed Law on Protection of Competition, and the cases, initiated under the new law.

under proceedings for establishing alleged infringements under Chapter Three of the LPC require a huge amount of information to be collected and the behaviour of a large number of people for a long period of time to be investigated. All those proceedings can be characterised by considerable factual and legal complexity and a long process of evidence collection, processing and analysis which leads to a period of investigation longer than a year.

### 2.1.2 Case summaries - Construction Services

15. By Decision No. 496/04 May 2010 the CPC imposed a pecuniary sanction of BGN 175 000 on the Bulgarian Construction Chamber (BCC) for infringement under Article 15 (1) of the LPC and ruled termination of the infringement. The proceeding was initiated on the Commission's own initiative, on the basis of an alert containing data arising reasonable doubts for alleged infringements of the rules of effective competition and more specifically of Article 15 of the LPC by the BCC as well as on the basis of an observation of the CPC on the publications and information spread in the framework of the national professional association of construction professionals via its webpage.

16. As a result of its investigation on the case study the CPC established that the BCC is an independent, voluntary professional association in the construction sector, established under the Law on the Construction Chamber in Bulgaria with the power to create and maintain a Central Professional Register of the Construction Professionals as well as to enter the names of construction professionals in it. The conduct in question covers the period from November 2007 till January 2010 and consists of adopted decisions and implemented actions which on their own and in their totality fall within the scope of the concept "decision by association of undertakings" in the sense of Article 15 of the LPC, namely:

- collecting and exchanging sensitive price information from construction companies, analyzing the collected information and drafting of documents that set orientation prices;
- taking a decision for the dissemination of these documents; publishing the documents on the Internet; taking actions for updating the information contained in the documents on a regular basis; continuing the activity on developing prices for other construction sectors;
- adopting and publishing in the Code of Conduct of Construction Professionals of a rule for a recommended pricing behavior.

17. The general prohibition under Article 15 (1) of the LPC covers all types of behaviour of undertakings or associations of undertakings which lead to direct or indirect fixing of prices, including not only obligatory, but also tentative, recommended, model or target prices, as well as the exchange of sensitive price information. The fixing of prices, even of recommended prices, has an anti-competitive effect because it allows the participants to have justified expectations with regard to the price policy of their competitors on the relevant market. Thus there is a real danger of replacing the independent market conduct of the participants in the relevant market with coordination between them, which would in turn lead to a distortion of the normal market environment and has an unfavourable effect on the well-being of consumers. The fixing of prices is an infringement of Article 15 of the LPC for which there is no need for the unfavorable effects on the relevant market to be proven or present. *The CPC established the existence of prohibited vertical agreements in the market of establishing cable networks for the provision of Internet in the territory of Studentski Grad (Students' Town) Neighbourhood in Sofia*

18. By its decision the CPC adopted that by means of its conduct the Chamber creates conditions for eliminating the effective competitive pressure as well as for imposing concerted pricing behavior. The orientation prices that were set and disseminated by the Chamber comprise an effective tool with a significant anti-competitive potential for exerting direct influence on the common price level in the

construction sector in the country and can lead to identical market reactions of independent competitors provided that there are no objective market conditions for that. The prohibition of Article 15 of the LPC does not allow the associations of undertakings to disseminate their activities with regard to price formation processes and to turn the results of their work into practically-oriented manuals for modeling market conduct.

## **2.2 Abuse of monopoly or dominant position**

19. The provision of Article 21 of the LPC prohibits the conduct of undertakings enjoying monopoly or dominant position, as well as the conduct of two or more undertakings enjoying a collective dominant position that may prevent, restrict or distort competition and impair consumers' interests.

20. In 2010 the CPC initiated a total of 27 proceedings on potential infringements under Chapter Four "Abuse of Monopoly or Dominant Position" of the LPC. 25 of these proceedings were initiated following written applications by persons, whose interests were affected or threatened by an infringement of the LPC, 1 proceeding was initiated on the Commission's own initiative and 1 was reverted by the Supreme Administrative Court to the CPC for a new decision.

21. The Commission adopted a total of 35 decisions in relation to the application of Article 18 of the LPC (repealed), respectively Article 21 of the new LPC and/ or Article 82 of the EC Treaty (new Article 102 of the TFEU).

22. By 5 of its decisions the CPC established that an infringement was committed of Article 18 of the LPC (repealed), respectively Article 21 of the new LPC and/ or Article 82 of the EC Treaty (new Article 102 of the TFEU) and imposed pecuniary sanctions on the infringers; by 23 of its decisions the CPC didn't establish abuse of dominant position; by of its decisions the CPC established that no actions or omissions were taken by the regulatory authority in relation to the regulation of the process of a service which led to prevention, restriction or distortion of competition on the relevant market; by 6 of its decisions the CPC approved the proposed obligations and set a deadline for their implementation.

23. In 2010 the CPC issued 8 rulings for alleged infringements of Article 21 of the LPC.

24. By the decisions it adopted the CPC established infringements under Chapter Four "Abuse of Dominant Position" and imposed pecuniary sanctions to the total amount of 849 001,50 BGN.

25. In 2010 there was a decrease in the number of initiated proceedings and adopted decisions compared to previous years which to a great extent is due to the existing factual and legal complexity of the investigations and the new legal instrument, i.e. submitting statements of objections for an alleged infringement. Another reason that explains the lower number of proceedings initiated over the reporting period is the approach adopted by the Commission in initiating proceedings on its own initiative according to which the evidence for the respective conduct, which raises doubts about an abuse of dominant position, shall be collected in the framework of the preliminary inspections and proceedings should be initiated only in the cases when there are reasonable doubts that prohibited conduct has been implemented. In this way the resources are used in a more efficient way and the business environment is improved.

26. The number of decisions adopted by the CPC in 2010 remains the same as the previous year and some of them are related to proceedings initiated in 2009. The Commission carried out in-depth investigations aimed at clarifying in a comprehensive way the circumstances around the issues - subject of the investigations. In submitting a claiming an alleged infringement the complainant and the defendant, in accordance with Article 74 (2) of the LPC, shall have the right to submit within a deadline specified by the CPC, their written objections on the submitted Statement of objections as well as all evidence they have in

support of their case. Thus the effectiveness of the protection of the competitive environment from actions or conducts of undertaking enjoying a dominant position on the relevant market is enhanced.

27. The attention of the Commission was directed mainly to the markets with a single provider of a certain service who possessed the only possible infrastructure on the given territory and whose actions to a great extent affected the interests of the consumers of this service. Such markets are the markets of electricity and heat-power supply for which there is no alternative supply and which enjoy great public interest.

### 2.2.1 Case summaries: Trade fairs

28. In 2010 the CPC initiated a proceeding upon a request of the Association “Association of Companies providing Fair and Exhibition Services – Bulgaria” for establishing an infringement of Article 21 of the LPC by “International Fair Plovdiv” AD. In the request it has been pointed out that by CPC Decision No. 858/07 October 2008, which entered into force on 09 July 2009, a pecuniary sanction was imposed on “International Fair Plovdiv” AD for an infringement of Article 18 (1) of the LPC (repealed) manifested in an excluding price abuse taking the form of tightening the margin and imposing unfair trade conditions and the termination of the infringement was ruled on. It has been pointed out that the defendant association has dishonestly used the circumstance that the appeals lodged to the SAC prevent the entering into force of CPC Decision No. 858/ 07 October 2008, as in the course of the proceedings in front of the CPC and the Fair continued collecting the higher amount of the so called fee for “right to construction” amounting to 35 Euros per square meter VAT included, respectively 25 Euros per square meter VAT excluded.

29. In the course of investigation, the CPC found out the company had taken advantage of its dominant position in providing the service “building of exhibition constructions”, had increased the price of the service only in relation to rival companies and had preserved its package price for building exhibition constructions. In this way “International Fair Plovdiv” AD deprived the other participants on the market of the opportunity to make profit and had eliminated actual competition. The decision was upheld by the Three-Member Chamber of the SAC.

30. By Decision No. 858/2008 the CPC established that by taking advantage of its monopolistic position on the market for access to the Fair billboards where the services “right to construction” and “attesting a project” are provided, International fair Plovdiv AD provides to itself more favorable for providing the service “building of exhibition constructions” at the International Technical Fair Autumn 2007 compared to the other participants in the Fair. The defendant association established a considerably lower price for the service “building” when the IFP AD was implementing it compared to the prices offered by the external construction companies. The described conduct of “IFP” AD has been classified by the CPC as an abuse of dominant position in the for tightening the margin which leads to impossibility for the other participants in the market of building exhibition constructions to exert any type of competitive pressure on IFP AD as a result of which the service is provided in lack of actual competition which leads to damaging the interest of consumers due to limiting their choice. The described conduct has been qualified as excluding financial abuse pursuant to Article 18 (1) of the LPC for which the CPC imposed a pecuniary sanction to IFP AD and ruled on termination of the infringement.

31. The CPC decision was upheld by Decision No. 2455 of 23 February 2009 of a Three-member Chamber of the SAC and Decision No. 9255 of 09 July 2009 of a Five-member Chamber of the SAC.

32. In the course of the investigation it was established that despite Decision No. 858/2008 of the CPC and the court acts of the SAC, for the International Technical Fair taking place in the period 28 September 2009 – 03 October 2009 the IFP AD was again collecting the higher size of the fee for “right to

construction” as the fees remains the same, 35 Euros per square meter VAT excluded, regardless of the location of the exhibition facilities whatever difference in the fee might have existed. The defendant association violated the prohibition established by CPC decision No. 858/07 October 2008 not only by not reducing the size of the fees to their size before the increase in 2007, but also by further increasing them.

33. By Ruling No. 321/23 March 2010 the CPC submitted to International Fair Plovdiv AD a Statement of objections for an alleged infringement of Article 21 (1) of the LPC manifested in a price press in terms of the ratio between the prices of the service “right to construction” and “stand rent” provided at the International Technical Fair 2009 in accordance with the General Conditions and the Tariff for participation in the international fairs and exhibitions in Plovdiv, organized in the period 15 August – 15 October 2009 adopted by a decision of the Board of directors of the IPF AD pursuant to Protocol of 04 August 2009.

34. By Decision No. 555/2010 the CPC imposed a pecuniary sanction on International fair Plovdiv AD to the amount of 219 630 BGN.

### 2.2.2 *Electric power supply*

35. In 2010 the CPC established an infringement of Article 21 (1) of the LPC by EVN Bulgaria Elektrorazpredelenie AD. The proceeding was initiated on request containing claims for abuse of dominant position on the market of electric power supply manifested in suspension of electricity power supply of property owned by the applicant due to unpaid bills by a third person, a former tenant of the property.

36. In the frame of the proceeding the CPC established that EVN Bulgaria Elektrosnabdiavane AD had its disposal legal methods for collecting its claims and liabilities but had not taken the actions envisaged in the legislation and had exercised economic force on the new owner of the property by refusing to restore the suspended electricity supply unless the new owner paid the bills electric supply consumed by the tenant. In the course of the proceeding it was established that the former tenant of the property person had accumulated large amounts of collectibles to state bodies and legal entities. In view of the difficulty of EVN Bulgaria Elektrosnabdiavane AD to collect its existing claims from the debtor due to the fact that the latter couldn't be found as well as in view of the accumulated collectibles EVN Bulgaria Elektrosnabdiavane AD has imposed his obligations on a third person with regard to the relation for electricity supply between the supplier and the tenant. There is no legal grounds for imposing that obligation on the applicant on the part of EVN Elektrosnabdiavane AD. This action has been dictated only by the desire of the latter undertaking to ensure an easier way for collecting its collectibles from a third person by taking advantage of its dominant position on the market of supplying electricity to consumers.

37. On the basis if what was established as a result of the analysis conducted pursuant to Article 74 (1) (3) of the LPC, by Ruling No. 990/29 September 2009 the CPC submitted to EVN Bulgaria Elektrosnabdiavane AD a statement of objection for an infringement of Article 21 (1) of the LPC manifested in imposing unfair trade conditions in providing electricity supply.

38. As a result of the submitted statement of objections for an alleged infringement EVN Bulgaria proposed to take the obligations in the sense of Article 75 (1) of the LPC thus terminating the conduct in relation to which the proceeding had been initiated. More specifically, the proposal has to do with adopting by EVN Elektrosnabdiavane AD of Rules for Working with Consumers (the Rules) which should be approved by the State Commission for Energy and Water Regulation as an inseparable part (Annex 4) of License No. JI-141-11/13 August 2004 for public electricity supply.

39. With regard to the proposal on the part of EVN Bulgaria Elektrosnabdiavane AD with its Decision No. 258/2010 the CPC held that according to the adopted Rules for Reviewing Proposals and



Taking Obligations under the LPC, the implementation of the proposed obligations shall not depend on adopting acts which are of the competence of other bodies of the central or local authorities. And for the purpose of the proposed obligations to be approved, they have to be unconditional as their implementation depends entirely on the will and the conduct of the defendant party which has proposed them. In this case the proposed Rules for Working with Consumers of EVN Bulgaria Elektrosnabdiavane are subject to approval by another body – the State Commission for Energy and Water Regulation and respectively their entering into force and implementation does not depend only on the will of the respective undertaking.

40. In the decision it has been pointed out that in order for the undertaking of the respective obligations to be approved by the CPC, these obligations shall lead to termination of the conduct in relation to which the proceeding was initiated. The rules proposed by the defendant not only wouldn't lead to elimination of that conduct but also would legislatively increase the chance for it to happen.

41. With a view to the above, the CPC adopted that the conduct of EVN Bulgaria Elektrosnabdiavane AD should be considered an imposition of unfair trade conditions and should be regarded as an infringement in the sense of Article 21 (1) of the LPC as a result of which a sanction was imposed on the undertaking amounting to 256 024, 50 BGN.

### 2.2.3 *Telecommunications*

42. A proceeding was initiated at the CPC for an alleged infringement of Article 21 (5) of the LPC on behalf of the Bulgarian Telecommunications Company AD („BTC” AD). After conduction an investigation, by means of a CPC Ruling No. 659 of 10 June 2010 a statement of objection for an infringement was submitted to the undertaking. The specific conduct of the telecommunication operator which led to the Ruling of the CPC is manifested in an unjustified refusal for providing fixed telephone services.

43. The CPC adopted that the historical operator enjoyed dominant position on the market of providing service through a fixed electronic communication network. In the specific case BTC AD initially restricted the access of the applicant to the use of outgoing fixed voice and fax services, and at a later stage terminated all types of services used by him. There is no dispute among the parties in the proceedings with regard to this circumstance and thus, in the proceeding the CPC explains to what extent the refusal has been justified. The defendant undertaking arguments its conduct only with the presence of an unpaid penalty for preliminary breaking of a contract for an ADSL service signed between the parties.

44. On the basis of the collected evidence the CPC adopted that an unjustified refusal was in place for providing a fixed voice telephone service and the fax service related to it with regard to the consumer Elevat EOOD which should be considered an infringement of Article 21 (5) of the LPC. As a result of the of the issued ruling BTC AD decided to take advantage of the legal opportunity for undertaking obligations under Article 75 (3) of the LPC with a view to restoring the competitive environment and terminating the proceeding without the CPC establishing an infringement.

45. The CPC carried out an evaluation of the proposals of the telecommunication company by Decision No. 1630/22 December 2010, approved the obligations undertaken by the defendant and set a deadline for their implementation. By means of the proposed obligations the BTC AD commits itself to both the specific defendant in the proceeding and the whole circle of current and future consumers. The association is obliged to undertake specific measures which guarantee impossibility for binding the payments under two different services on the part of the operator, including through a change of the common conditions for providing the ADSL service, as well as through changing the rules of the operator which would lead to improving the awareness and of the consumers and the services provided to them.

### 2.3 *Mergers and acquisitions*

46. In 2010 the Commission initiated 37 proceedings of which 32 following a written request to issue an authorisation for concentration, 1 on the Commission's own initiative; 3 were reverted by the SAC to the CPC for a new decision on the size of the pecuniary sanction; 1 in relation to a submitted notification for a proceeding on a concentration (Case COMP/M.5790-LIDL/Plus Trei Romania/Plus Trei Bulgaria) initiated by the EC on the grounds of Article 19 (1) of Council Regulation No. 139/2004.

47. In 2010 the Commission adopted a total of 35 decisions under Chapter Five of the LPC "Control on Concentrations Between Undertakings". By 19 of those decisions the CPC authorised the concentration between undertakings, by 10 of its decisions the Commission ruled that the deal should not be considered a concentration or did not fall within the scope of the obligation for prior notification; by 5 of its decisions the Commission imposed a pecuniary sanction for infringements of the obligation for prior notification of the concentration between undertakings; by 1 of its decisions the Commission requested partial referral on the grounds of Article 9 (2) of Council Regulation No. 139/2004 of concentration on Case COMP/M.5790-LIDL/Plus Trei Romania/Plus Trei Bulgaria for the EC to the CPC.

48. In 2010 the CPC established infringements of the obligation for prior notification of the concentration in accordance with article 24 (1) of the LPC (repealed) and imposed sanctions to the total amount of 419 379 BGN.

49. For the reporting period the Commission did not adopt decisions for launching an in-depth investigation as there were no serious doubts that the implementation of the notified concentrations might result in creating or strengthening of a dominant position, or that the effective competition on the relevant market might be significantly impeded. Respectively, the Commission did not impose measures directly related to the implementation of the concentration for maintaining or restoring effective competition.

50. The main economic sectors in the national market that saw concentrations of undertakings in 2010 were:

- Financial sector /including banking, insurance and other financial services /- 2 concentrations;
- Media - 2 concentrations;
- Electronic communications – 2 concentrations;
- Trade with fast moving consumer goods – 2 concentrations;
- Pharmacy – 2 concentration;
- 1 concentration in each of the following sectors: distribution of tobacco products; food industry; trade with fuels; production and trade with paper and cardboard; production of juices and fizzy drinks; energy sector.
- Other - 5 concentrations.

51. In 2010 a steady decrease in the number of initiated proceedings, respectively in the number of adopted decisions in the field of concentrations, could be observed, as there is a significant decline in comparison with the period 2006 – 2008. This circumstance can be explained by the change in the thresholds for obligatory prior notification introduced with the new LPC which entered into force on 02 December 2008. The LPC introduces two cumulative criteria for the turnover realized by the participants

in the concentration on the territory of Bulgaria for the previous financial year – a cumulative turnover of all participants in the concentration above 25 million BGN and a turnover above 3 million BGN realized by each of at least two the undertakings, or alternatively by the undertaking which is the object of the acquisition. The legislative change related to the increase of the amount of the total cumulative turnover of the participants in the concentration, realized in the country, as well as to the introduction of a second cumulative criterion aims at encompassing the concentrations which would have relevance to the national market.

52. According to a study conducted by “Deal Watch Emerging Europe” the reason for the decrease in the number of the deals on mergers and acquisitions in Bulgaria in 2010 can be attributed to the lack of desire on the part of owners to sell their businesses at lower prices motivated by the economic crisis. The insufficient liquidity of the Bulgarian Stock Exchange and the postponed privatizations in the energy and tobacco sectors are also factors that have exerted their influence on the market.

53. In 2010 CPC administrative staff carried out a number of preliminary consultations on the request of participants in future concentrations in the national market with a view preparing them to complete the standard concentration notification form in compliance with the requirements of Article 79 (1) of the LPC and the detailed instructions for its completion issued with a CPC Decision of 20 January, 2009.

#### 2.3.1 *Case studies: TV market*

54. By Decision No. 385/08 April 2010 the CPC authorized the acquisition of Balkan News Corporation EAD (BNC), Sofia and TV Europe B.V, the Netherlands, by Central European Media Enterprises Ltd. (SME), Bermuda.

55. The immediate horizontal effect of the deal were reviewed by the CPC on the “market of television distribution” in which the CPC included the radio and TV operators with a license to use an individually determined limited resource - a radiofrequency spectrum (broadcasting televisions) as well as the television operators broadcasting their program by means of specialized transfer platforms (cable networks, satellites, etc). The establishment of the market position of the participants in the concentration and their rivals is based on the presentation of TV operators on the market of advertisements. The CPC considered the clarification of this presence to be able to provide a reliable, objective and economically justified evaluation of the market presence of the respective media on the TV broadcasting market.

56. The combined market share of the new group of the SME in Bulgaria on the market of TV advertisements in case of TV broadcasting was established to be respectively 56,99 % for 2008, and 58,66 % for 2009. In view of the market shares of the participants in the concentrations and their biggest rival – the MTG Group, the CPC drew the conclusion the relations on the market are similar to those in oligopoly. This conclusion as well as the established market share of MTG demonstrate the mutual competitive impact in the activities of the two biggest players.

57. The CPC looked for risks of arising of potential vertical effects with regard to the “market of television content” which basically includes the ways for ensuring of program content, i.e. by means of: (i) production of content for own use and production of content for sale and (ii) licensing of broadcasting rights.

58. In relation to the activities of the participants in the concentration the market of radio services was also taken into consideration. As far as this market was concerned, the combined share of the participants in the concentration was evaluated as comparatively low.

59. On the basis of the conducted analysis, the CPC reached the conclusion that the concentration would not change the position of the BNC, and mostly the bTV channel, on the market of television

broadcasting, and in particular with regard to contractual relations with the advertisers. According to the CPC, the forthcoming digitalization of the air will make it possible for those relations to be exposed to an additional competitive pressure.

### 2.3.2 *Telecommunications*

60. By Decision No. 1515 of 30 November 2010 the CPC authorized the direct or indirect acquisition of 100% of the capital of the associations Spectar Net AD and Megalan Network AD by Mobitel EAD. Despite the fact that the deal refers to the acquisition of two separate associations, the CPC adopted that deals which are bound by a condition in which the control is acquired by one and the same undertaking (in this specific case Mobitel) should be considered one concentration.

61. With the acquisition of the two internet providers Mobitel would expand its portfolio by means of providing fixed broadband access to the Internet to end-customers as a service on its own right as well as in a package with the other telecommunication services traditionally offered by the operator.

62. In its investigation the CPC established that the notified concentration would affect the markets of the fixed voice telephone service; transfer and broadcasting of paid television programs (Pay-TV); mobile voice telephone service and the retail market of broadband access to internet by means of fixed networks. The CPC reached the conclusion that the concentration would have a positive influence on the first two markets.

63. In view of the maturity of the market of the mobile voice telephone service which has reached a high level of saturation, as well as the established barriers of structural and legal-administrative character which can hardly be overcome, the CPC came up with a proposal that it was more likely that the concentration would lead to a certain redistribution of the current users of the mobile voice telephone service. Due to the oligopolic character of the analyzed market, an investigation had to be done whether the notified concentration could lead to restricting the competition among the main players by creating conditions for some of them, through adapting to the market conditions, to act on their own in a way which would considerably weaken the competitive pressure between the market participants and as a direct consequence would allow them to a considerable extent to act independently of suppliers, rivals and clients. In this relation, in the analysis it was established that the other participants on the market of telecommunications possess the technological means to react to the new market situation by offering analogical services (including as a part of a package) to their clients.

64. With regard to the retail market of broadband access to the Internet by means of fixed networks, the size of the combined market share of the participants in the concentration in 2009 has values which would not allow it to turn into a dominant position and to lead to negative consequences for the competition on the market.

65. With a view to the overall analysis the CPC adopted that the effective competition wouldn't be affected as a result of the operation to the extent to which after the implementation of the current concentration the acquiring undertaking would not enjoy or strengthen a dominant position on any of the analyzed markets. What is more the, implementation of the planned deal would stimulate the competitors for adopting an adequate market conduct with a view to maintaining and increasing their market position which would lead to benefits for the consumers in terms of the faster introduction of innovation technologies and services.

#### 2.4 *Judicial review of CPC decisions*

66. All CPC decisions adopted under the LPC are subject to judicial review by the Supreme Administrative Court (SAC). SAC reviews on decisions under the LPC are carried out at two instances: a Three-Member Chamber and a Five-Member Chamber.

67. 105 of all 223 decisions adopted by the CPC in 2010 were contested before the Supreme Administrative court (SAC). In 2010 the SAC issued 123 court decisions on appeals against CPC decisions.

68. Of all 65 final decisions adopted by a Five-Member Chamber of the SAC in 2010 36 decisions of the Commission were upheld, 5 decisions of the Commission were repealed and reverted to the CPC for re-examination, 6 decisions of the commission were repealed and 15 decisions were partially repealed by the SAC.

69. The Court upheld sanctions to the total amount of 938 000 BGN for prohibited decisions for associations of undertakings in the food industry (bread milk, vegetable oil).

70. By Decisions No. 5104/20 April 2010; No. 47/04 January 2010 and No. 10444/2010 a Five-Member Chamber of the SAC upheld the pecuniary sanctions imposed by the CPC on the associations of bread producers and milk processing companies as well as of the producers of vegetable oil in Bulgaria for infringements they committed of article 9 (1) (1) of the LPC manifested in prohibited agreements and decisions for association of undertakings for direct or indirect fixing of prices and other trade conditions, which may objectively lead to restricting, distorting or preventing the competition on the relevant market.

71. By Decision No. 5104/20 April 2010 the SAC upheld the facts established by the CPC for organizing general meetings of the members of the Federation of Bread Producers and Confectioners in Bulgaria and the regional Union of Bread Producers and confectioners, Burgas, at which the prices of wheat, flour and bread were discussed. Thus, without fixing specific values for the price of bread, the two associations had worked in the direction of coordinating the conduct of their members with regard to the price of the good as well as with regard to forming their price policy on the market. The Court upheld the conclusions drawn by the CPC that the direct or indirect fixing of prices is an infringement which, in its objective prevents, restricts or distorts competition not only between the members of the association (by exerting influence on them in fixing the price of the product which goes counter to the market principles), but also with the other participants in the market as the negative influence on the competitive environment is in place regardless of whether or not specific actions are taken by specific participants in the market. The Court pointed out that the infringement is not productive as a result of which the lack of such could not be justified by the influence of objective factors on the price and for its actual commitment it made no difference whether the price of the product precedes the price of the raw material or not.

72. With regard to the association "Association of the Milk Processing Companies in Bulgaria" The SAC adopted with decision No 47/ 04 January 2010 that the linking of the prices of milk with its quality by establishing a single system of bonuses and sanctions shall be considered a direct fixing of trade conditions and a way for the association to intervene in the price mechanism for purchasing raw milk. In this way both the market of milk products and the market of raw milk are distorted. The discussion of a strategy for purchasing raw milk in its different manifestations shall be considered a common will for fixing its price and can be characterized as a decision for association of undertakings. Even if it didn't have a binding effect and didn't lead to actual unity of action as a result, in its nature this will restricts competition on the market because the actions of rivals, who have to form their trade policy independently, are no longer transparent.

73. With regard to Association "National Association of Milk Processing Companies" the SAC acknowledged the factual and legal finding of the CPC which established the presence of a prohibited

decision in the sense of Article (1) of the LPC (repealed) with clearly and explicitly formed will for intervention in the sector of milk processing and milk production. At the meeting of the Board of Directors of the Association the discussion on the proposals for fixing a minimum threshold of the prices for the respective production ended with adopting a decision of the Association which unambiguously reflects the will of the association to fix a minimum amount for the value of the raw material used in the production process as well as of the end product. Regardless of the fact that not specific values were indicated for the raw milk, the cheese and the yellow cheese, the Association had indirectly worked in the direction of coordinating the conduct of its members with regard to the price of the two products.

74. By Decision No. 10444/2010 the SAC adopted that the minutes of the meetings of the Board of Directors of the Union of the producers of vegetable oils and oil products in Bulgaria objectify the concerted will of the producers of sunflower oil for fixing the purchase price of the raw material used in the production - unharvested sunflower seed – and putting in a certain price frame, and as such possesses at one and the same time the characteristics of a prohibited agreement between undertakings and of a decision for association of undertaking with a significant anticompetitive effect which fall in the scope of application of Article 9 of the LPC (repealed). The content of the process protocols shows that an agreement has been achieved by independent undertakings who happen to be direct rivals on the relevant market with regard to the price range in purchasing the raw material, which on its own, is indicative of wrongful coordination of economic conduct on the market. The adopted decisions for the price of unharvested sunflower seed over the purchasing campaigns in 2006 and 2007 lead to the conclusion for the presence of an agreement between the producers and a decision of the Association that fall within the scope of the prohibition of Article 9 (1) of the LPC (repealed). From the point of view of loyal competition, the very discussion of the purchase prices of sunflower seed and the agreement on a price threshold for 2006 and 2007 is illegal regardless of whether it has had an actual and objective impact on the natural market mechanisms, which determines the considerable anti-competitive effect of the decisions. The SAC adopted unambiguously the established direct link and dependence between the value of the raw material used in the production (unharvested sunflower seed) and the price of the end-product – vegetable oil. The Court adopted that the purchase price of the unharvested sunflower seed is a key element in the price formation of sunflower oil, forming about 80% of its cost price. In such a situation the sharp increase in the price of the raw material justifies the respective increase in the price of the end product.

75. On the other hand, the SAC didn't acknowledge the presence of coordinated fixing on the part of the undertakings of the prices of the end-product, the vegetable oil, due to the huge discrepancy between the planned (negotiated) and the actual price at which the undertakings have bought the sunflower seed from the new harvest. The Court motivated this part of its decision with the lack of direct evidence for concerting or coordinating the prices of the end-product for the period May-October 2007. The Court adopted that the established increase of the price of sunflower seed oil on its own does not provide sufficient evidence for drawing a conclusion for the presence of a prohibited agreement, respectively anti-competitive coordinated conduct on the part of the investigated undertakings.

76. Thus the CPC act was partially adopted – with regard to fixing the purchase price of sunflower seed. As to fixing the price of the end-product – vegetable oil, the CPC decision was repealed.

77. By means of those decisions the SAC confirmed the CPC conclusions that the direct or indirect fixing of prices is an infringement which by means of its purpose prevents, restricts or damages competition. Even if a certain conduct in this direction is not followed by concrete actions for its implementation, the intention for coordinating the price conduct on the part of associations of undertakings remains which goes in contradiction with the market mechanism.

78. The Court upheld a CPC decision which established abuse of dominant position of CEZ Electro Bulgaria AD and CEZ Razpredelenie Bulgaria AD and confirmed sanctions amounting to respectively 150 000 and 100 000 BGN.

79. The Court adopted that the actions of CEZ Electro Bulgaria AD in relation to collecting an interest on the prognostic values for consumed electricity in a three-month reading should be considered and infringement of Article 18 (1) of the LPC (repealed). The obligation for paying an interest rate in case of delaying payments has been envisaged in Article 35 of the General Conditions of CEZ Electro Bulgaria. The consumers who do not fulfill their obligation to pay within deadline the amount due for consumed electricity, owes the supplier an indemnity for the delay amounting too the legal interest for each overdue day. At the same time after the introduction of the three-month reading, the bills for consumed electricity for the first two months are prognostic and do not reflect the exact amount of the actual amount due for the service. In the end of the three-month period established the amount of the consumed electricity but not of the consumption for each month. At the same time Article 35 of the General Conditions envisages an interest in case of a delayed payment of consumed electricity, this obligation sets as a condition a precisely calculated value of the actually consumed electricity. On the basis of the analysis of the bills for consumed electricity it was established that in 100% of the cases a change was needed to the amount due regardless of whether reducing or increasing it. The Court adopted that to the benefit of consumers no opportunity had been envisaged for restoring in a proportional manner the size of the interest paid for delayed payments for the periods where no reading was carried out of electric meters if it turns out that in the end of the three-month period the forecast amount is larger than the amount that is actually due. Thus for the specific infringement the Court adopted the sanction to the amount of 150 000 BGN to be lawful.

80. With regard to CEZ Rezpredelenie Bulgaria AD the Court adopted that the company has committed an infringement of Article 18 (2) of the LPC (repealed) in assigning a follow-up check of electric meters of CEZ Laboratoris Bulgaria EOOD.

81. Under the case it was established that the two undertakings belong to one and the same economic group. The court adopted that, on the one hand, CEZ Razpredelenie had appointed a company belonging to the same economic group to conduct a follow-up check, i.e. the two companies are not economically independent which creates an opportunity for exerting common control, influence and coordination of the conditions. What is more, the consumers do not have the chance to select the company which they would like to carry out the check of electric meters provided that they doubt that the readings of the meters are correct, and provided that they pay the expenses on the checks of the meters. As a result, the company took advantage of its monopolistic position on the market of the service "share distribution" and influenced the functionally related market of the follow-up check of electricity meters on its licensing territory through non-market mechanisms. The established percentage ratio of the checks assigned to CEZ Laboratoris Bulgaria AD and Emsis-6 EOOD are 72,5% to 27,5% in favor of the economically related company is also indicative of the anticompetitive orientation of the conduct of the company for electricity distribution. The conditions imposed on the relevant market restrict the access of other participants and should be considered a restriction of trade. That act has been qualified by the CPC as a abuse of dominant position on the market of distribution of electricity which has reflected on the functionally related market of a follow-up check of metering devices. The CPC imposed a pecuniary sanction on the infringer too the amount of 100 000 BGN.

### **3. The role of the competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial polices**

#### **3.1 Competition advocacy**

82. As a result of the "Guidelines for assessment of compliance of legislative and general administrative acts with competition rules" adopted by the CPC in October 2009, in 2010 a significant increase in the activities of the CPC on competition advocacy can be observed, mainly in terms of an increase in the number of the position statements adopted by the CPC.

83. In 2010 a total of 39 proceedings were initiated under competition advocacy. 21 of these proceedings were initiated on requests submitted by state bodies; 9 proceedings were initiated following

requests of legal persons for discussing the conformity of effective legislative or administrative acts with the rules established in the LPC; 8 of the proceedings were acted upon written applications of persons for CPC opinion statements with regard to the conformity of the general terms they offer to customers with the LPC; 1 proceeding was initiated on the Commissions own initiative.

84. In 2010 the CPC adopted a total of 38 decisions, containing position statements on draft legislative and other acts and establishing the presence or absence of contradiction of legislative, administrative or other acts with competition rules.

### **3.2 Case studies**

#### *3.2.1 Share distribution of heat*

85. By Decision No. 245/09 March 2010 the CPC adopted a position statement on the conformity of the legislation regulating the activities on the share distribution of heat in condominium-project buildings with competition rules.

86. The CPC proposed to the competent bodies to amend the sector legislation in the following directions:

- eliminating the obligatory use of the service share distribution of heat;
- restoring the direct contracts between the consumers and the legal persons providing the service “share distribution of heat”;
- creating opportunities for free price formation with regard to all share distribution services which would lead to competition in view of prices and the quality offered by the legal persons providing the service “share distribution of heat”;
- eliminating the legal requirement for the consumers to be own the metering devices for the share distribution of heat;
- eliminating the obligation of the consumers who belong to one абонатна станция in a condominium-project building to use metering devices of the same model, delivered or approved by the same supplier as an opportunity is created for using interchangeable share distribution devices.

87. The proposed measures come as a result of the conclusion that the sector legislation with regard to the share distribution of heat eliminates the opportunities for the consumers to use the advantages that result from the model of effective market competition between the providers of the service “share distribution of heat”. The proposed amendments would give the legal entities providing the service ‘share distribution of heat’ to compete among one another in order to attract clients by means of prices, quality and scope of offered services.

#### *3.2.2 Relations between trade chains and their suppliers*

88. By Decision No. 495/04 May 2010 the CPC adopted a position statement on the need and expediency of introducing a new legislative regulation guaranteeing loyal competition and non-admission of market distortion through exerting monopolistic pressure on the suppliers of goods and services.

89. The CPC analyzed the different regulatory approached and their effect on competition. A possible approach to overcoming the problems in the relationship supplier – retail trader, is the application of the current legislation in the field of competition. In using this approach, however, the establishing of unfair trade practices resulting not from the market power of the buyer but form the unequal position in



carrying out negotiations. That's why the sanctioning of those practices does not fall within the scope of competition law and respectively within the competencies of the CPC in its capacity as a competition authority.

90. In its position statement the CPC pointed out that in introducing a special sector law there is a risk of reorienting retail traders to suppliers from neighboring countries where such a regulation had not been adopted yet. In this way it is possible the law which aims at protecting suppliers to achieve the reverse effect – terminating the trade relations with local small and medium-sized enterprises.

91. Other potential variants for regulating the trade relations between the trade chains and the suppliers are a law on private trade as an act of private (commercial) law as well as initiatives such as information campaigns and a Code of Conduct.

### *3.2.3 Minimum price of bread*

92. By Decision No. 598/27 May 2010 the CPC adopted an opinion statement on request of the Ministry of Finance with regard to determining the minimum protective price of bread. The CPC ruled that adopting a minimum protective price is not an expedient measure the useful effect of which might compensate for the damages caused by restricting the economic activity of the participants in the relevant market. The CPC holds the opinion that the fixing of such a price would restrict or eliminate one of the main forms of competition – the price competition, which would lead to restricting the economic initiative of the participants in the market and to considerably affecting the interest of consumers. The result of setting a minimum threshold for the end-consumer price of bread would be similar to the result observed after a prohibited agreement between undertakings for fixing the prices of this product.

93. The CPC reminded that there were alternative instruments to overcoming the problems on the market. The fixing of a minimum price of the bread cannot on its own guarantee the observance of quality standards or the implementation of tax obligations.

## **4. Resources of competition authorities**

### **4.1 Resources overall**

#### *4.1.1 CPC budget*

94. The Commission on Protection of Competition is an independent institution funded entirely by the state budget. The budget income is formed on the basis of a budget subsidy and own incomes by virtue of the provisions of the Law on Protection of Competition, the Public Procurement Law and the Concessions Act, , as well as from pecuniary sanctions and fines imposed with Commission decisions which have come into force. The state fees collected by the Commission shall be approved with a degree of the Council of Ministers.

95. The budget of the CPC was approved by a Council of Ministers Degree No. 324/ 30.12.2009 for implementing the national budget of the Republic of Bulgaria to the amount of 9 000 000 BGN of which 4 506 457 BGN were spent.

#### *4.1.2 CPC staff*

96. The administrative staff of the Commission numbers 115 full time employees, most of whom hold a university degree in law or economics. 64% of the CPC experts are lawyers, 21% of has degree in economics, 5% are engineers, and 6% have a degree in humanities.