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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BULGARIA

-- 2011 --

This report is submitted by Bulgaria to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 24-25 October 2012.

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Introduction

1. The year 2011 had special meaning for the Bulgarian Commission on Protection of Competition (CPC) as it marked the 20th anniversary from the establishment of the CPC in 1991.

2. A number of special events were held on the occasion of the anniversary, the central one being the Competition Day conference on 15th November 2011. Mr. Alexander Italianer, Director General of DG Competition, the chairpersons of the competition authorities of Austria, Belgium, Hungary, Russian Federation and the United Kingdom and Prof. William Kovacic as representative of the academics took part as speakers at the conference.

3. Apart from this conference, the CPC hosted other international seminars and workshops as well – seminar for representatives of all competition authorities, which have bilateral cooperation agreements with the CPC in May 2011 and workshop in June 2011 of the OECD RCC in Budapest. In March 2011 the Commission was a co-organizer of international seminar for the business, legal and academic communities.

1. 2011 enforcement record of the CPC

4. In 2011 the Commission on Protection of Competition (CPC) initiated a total of 1475 proceedings of which 216 under the Law on Protection of Competition (LPC)¹.

5. The CPC ruled on 1250 decisions or rulings by means of which it closed the respective proceedings under the LPC and the PPA. In addition, it claimed alleged infringements or imposed fines on natural persons for infringements they have committed under the LPC or for failure to provide information.

6. By the decisions it adopted in 2011 the CPC imposed fines and pecuniary sanctions amounting to 6 314 687 BGN (~3 230 000 Euro).

2. Changes to competition laws and policies, proposed or adopted

7. In 2011 the Law on Protection of Competition was amended in respect of the number of the members of the collective decision making body (the Commission) and, accordingly, the rules on the quorum for taking a decision. The number of the members of the Commission was increased from five to seven. Accordingly, two new members were elected in 2011.

2.1 Rules on Imposing Remedies in Merger Cases

8. The CPC adopted measures for improving the effectiveness of the control on concentrations between undertakings. Its efforts were directed to drafting a procedure for imposing suitable restrictive measures (in the cases when the negative effect of a notified concentration should be overcome) or measures for restoring effective competition (in the cases when the concentration has been carried out against the law). In this relation, *Rules for imposing measures for preserving competition in case of a concentration between undertakings* were adopted, as well as a sample form containing the information on those measures. The Rules establish the main principles and the specific requirements that the proposed by the persons under Article 78 (1) of the LPC measures for preserving competition should meet in carrying out an in-depth investigation under Article 83 of the LPC. The aim of drafting these rules has to do with ensuring a higher level of legal security of the participants in concentrations proceedings with the CPC, by

¹ 1250 proceedings were initiated under the Public Procurement Act (PPA) and 9 under the Concessions Act (CA) in fulfilment of the CPC competences under these laws as Bulgarian Public Procurement Review Body.

means of introducing transparency, clarity and effectiveness of the procedure on approving the proposed by the persons under Article 78 (1) of the LPC measures for maintaining competition.

2.2 *New Programme on immunity from fines or reduction of fines in case of participation of an undertaking in a secret cartel (Leniency programme) and Rules on its application*

9. The new Programme and Rules ensure the transparency of the CPC policy on immunity from fines or reduction of fines in case of participation of an undertaking in a secret cartel, as well as the legal security of the undertakings participating in the process. The main conditions for receiving immunity from fines or reduction of fines for undertakings, participating in the cartel have been determined by the Law and they remain unchanged.

10. The Programme gives an extra incentive to the undertakings by providing them with the opportunity to get an additional reduction of fines if they reveal their actions and participation in other cartels which are still unknown and have not yet been investigated by the CPC. The adopted Rules facilitate and simplify to a considerable extent the whole process of involvement and participation of the undertakings in the Programme. A standard request form has been introduced which has to be lodged by the undertakings. It is easy to complete the form by checking the required elements. The request forms can be filed not only in person and by fax, but also by email. The transformation of the request for immunity from fines to a request for reduction of fines has been automated. The same applies to receiving the so called “marker” (a deadline for compiling the evidence that will support the request). The opportunity for an initial, anonymous contact with the CPC has been envisaged at this stage during which informal guidance could be provided to the undertakings. After lodging the request, the undertaking may take part in a special meeting with the CPC for discussing all the details related to its participation in the Programme. The Rules have envisaged limits with regard to the confidentiality of the undertaking’s participation in the Programme as well as with regard to the protection of the confidential information that has been provided.

2.3 *Decision on block exemption from the prohibition under Article 15 (1) of the LPC of certain categories of prohibited agreements, decisions or concerted practices.*

11. The amendments reflect the recent changes in the EU legislation in the field with a view to ensuring the legal security of undertakings, on the one hand, and repeal all former decisions of the CPC on block exemption that have been issued in accordance with the LPC, on the other. The Decision refers to agreements between undertakings and associations of undertakings on or outside the territory of the Republic of Bulgaria, and shall be applied when the respective agreements do not affect the trade between the EU Member States. The Decision regulates the conditions for exemption of vertical agreements, agreements in the sector of motor vehicles, agreements in the insurance sector, specialization, research and development agreements, as well as technology transfer agreements. The assessment as to whether and to what extent the respective agreements satisfy the conditions for block exemption from the prohibition shall be carried out by the undertakings themselves.

12. The Decision adopts the same conditions for block exemption for the different categories of agreements as the ones settled in the new EC Regulations on block exemption from the prohibition under Article 101 (3) of the TFEU. The only difference has to do with the vertical agreements between an association of undertakings and its members or suppliers, and is manifested by preserving the maximum threshold of 7 million BGN of annual turnover, introduced by a CPC Decision No 44/ 2011, for each of the members of the association. Just like the new EC Regulations the CPC Decision introduces limitations with regard to the market share and excludes the opportunity for exemption from the prohibition of certain agreements. When the market shares of the participants in the agreements do not exceed the set thresholds and when the agreements do not contain certain types of grave restrictions of competition, these agreements, on the whole, are likely to contribute to the improvement of the production or distribution of

goods, or to the development of the technological and/ or economic progress, by ensuring a fair share of the resulting benefits to consumers. On the other hand, when the market shares of the participants in the agreements exceed certain thresholds, it is not likely for these agreements to give rise to objective benefits which could outweigh their negative influence on the relevant market. The agreements that contain grave („hard”) restrictions, such as direct or indirect fixing of prices, distribution of markets and/ or clients, restricting production and sales, are not exempt from the prohibition under Article 15 (1) of the LPC regardless of the market share of the undertakings participating in the agreements.

13. In accordance with the new LPC, an opportunity has been provided in the new decision of the Commission on the block exemption for repealing the decision with regard to certain categories of agreements or for withdrawing it in any specific case with regard to a given agreement between undertakings. What is more, with a view to ensuring the legal security of the undertakings which are parties under already existing agreements, the decision of the Commission has introduced transition periods with regards to the application of the new regime for block exemption. The Decision will be valid to 31 May, 2023, as it can be further amended by the CPC with a view to adequately reflecting the Commission’s practice on its application.

14. The newly adopted rules take into consideration the best European practices as well as the practice of the Supreme Administrative Court (SAC), and contribute to achieving greater publicity of the measures implemented by the Commission, and greater security and clarity with regard to the compliance of the activity of with competition rules.

2.4 *Guidelines on Exchange of Information between Competitors*

15. In order to enhance the effectiveness of fight against cartels, the CPC took additional efforts to raise the public awareness on the exchange of information between competitors as infringement of the competition law. For this purpose the commission drafted and adopted Guidelines on Exchange of Information between Competitors. The guidelines incorporate the latest developments in the *aquis communautaire* in this area and the results from the roundtable discussion, organized by the OECD. The document includes a Black list of data, which should not be exchanged between competing undertakings, incl. in the framework of association of undertakings.

2.5 *Amendments to the CPC Competition Assessment Guidelines*

16. The CPC amended in 2011 its *Guidelines for assessment of the compliance of legislative and general administrative acts with competition rules*. The document aims at assisting the state authorities, including the bodies of the executive power and the local bodies, in preparing draft acts. It sets criteria on the basis of which, without possessing in-depth knowledge in the field of competition, one can assess whether the proposed regulations might lead to limiting competition. It incorporates the approach in this field of the Organization for Economic Co-operation and Development (OECD) and its Competition Assessment Toolkit, of the European Commission (EC), as well as of other competition authorities in the EU Member State and other countries in the world.

2.6 *Proposal for amendments to the LPC*

17. In 2011 an intergovernmental working group, led by the Ministry of Economy, Energy and Tourism, was set up to discuss and propose possible amendments to the Law on Protection of Competition to regulate the abuse of significant market power. The proposal for such amendments came from a part of the business community complaining about some practices employed by the retail food chains in respect of their contractors. At the time of the submission of this report the amendments are not adopted yet.

3. Actions against anticompetitive practices, including agreements and abuses of dominant positions

18. For the reporting period a total of 26 proceedings under Chapter Three „Prohibited Agreements, decisions and concerted practices” and Chapter Four “Abuse of monopoly or dominant positions” were initiated. Under 5 proceedings an investigation was carried out for establishing infringements under the two chapters at the same time. That’s the reason why those proceeding have been mentioned in the two parts of the report.

3.1 Prohibited agreements, decisions and concerted practices

19. In 2011 the Commission initiated 10 proceedings on potential infringements of Article 15 of the LPC as 5 of these proceedings were initiated upon the written applications or requests by the persons, whose interests were affected or threatened by the infringement of the LPC, and 5 of them were initiated on the Commission’s own initiative.

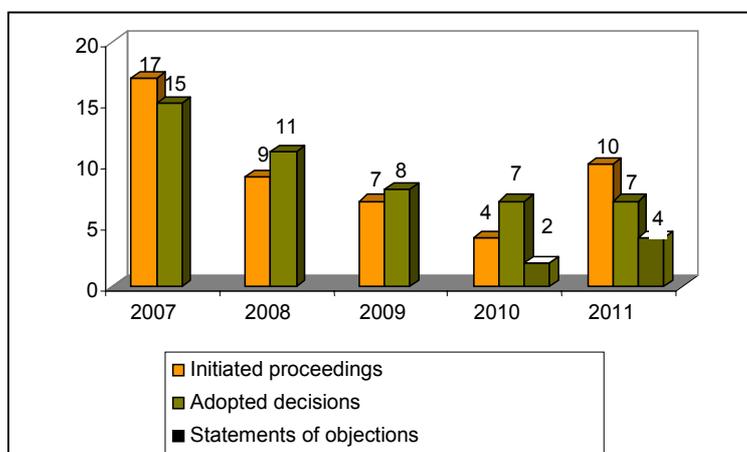
20. In 3 of the proceedings the CPC extended the investigation to Article 101 of TFEU in fulfilment of its duties under Article 15 of Council Regulation No 1/2003, i.e. to apply Article 101 of TFEU to agreements, decisions by associations of undertakings or concerted practices which may affect the trade between the Member States.

21. In 2011 the CPC adopted 7 decisions in relation to the application Article 15 of the LPC. By 5 of its decisions the Commission established infringements under Article 15 of the LPC and imposed sanctions on the infringers. By 1 of those decisions the Commission established that no infringement was committed under Article 15 of the LPC. By 1 of its decisions the Commission approved the commitments proposed by the undertaking without establishing an infringement and ruled that there were no grounds for continuing the proceedings.

22. For the same period by means of 4 rulings the CPC submitted Statements of Objections for an alleged infringement of Article 15 of the LPC to the defendants.

23. In 2011 on the grounds of Article 55 (4) of the LPC and point 18(3) of the Rules on the access, use and storage of documents constituting production, trade or other secret, protected by law (Access Rules), the CPC issued 6 rulings on access to confidential information.

Number of initiated proceedings, adopted decisions and issued rulings under Chapter Three “Prohibited agreements, decisions and concerted practices” of the LPC for the period 2007–2011



3.2 *Abuse of monopoly or dominant position*

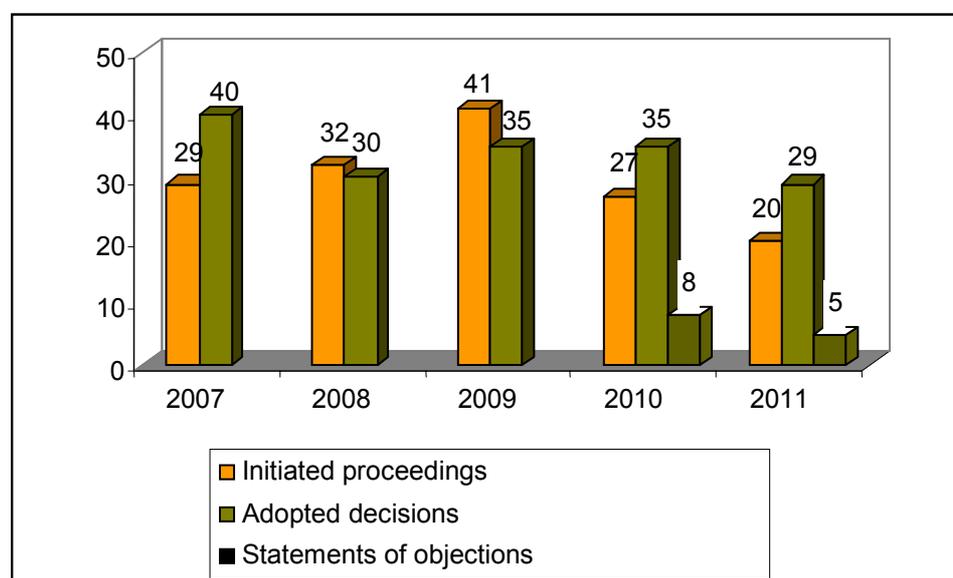
24. In 2011 the CPC initiated a total of 20 proceedings on potential infringements under Chapter Four “Abuse of Monopoly or Dominant Position” of the LPC. 17 of these proceedings were initiated following written applications by persons; 2 proceedings were initiated on the Commission’s own initiative and 1 of the proceedings was reverted by the Supreme Administrative Court to the CPC for a new decision.

25. In 2011 the Commission adopted a total of 25 decisions by means of which it closed the proceedings for establishing infringements under Article 18 of the LPC (repealed), respectively Article 21 of the new LPC and Article 102 of the TFEU. By 2 of its decisions the CPC established an infringement under Article 18 of the LPC (repealed), respectively Article 21 of the new LPC and Article 102 of the TFEU and established the type and size of the sanction in accordance with the respective provisions. By 23 of its decisions the CPC did not establish an infringement under Article 18 of the LPC (repealed), respectively Article 21 of the new LPC, and ruled that there were no grounds for taking actions under Article 102 of the TFEU. By 1 of its decisions the CPC approved the proposed commitments and set a deadline for complying with them.

26. For the same period the CPC issued 5 rulings by which it submitted a Statement of Objections for an alleged infringement under Article 21 of the LPC.

27. During the reporting period the CPC established infringements under Chapter Four “Abuse of Dominant Position” and imposed pecuniary sanctions to the total amount of 3 436 467 BGN (1 757 784 Euro).

**Number of initiated proceedings and adopted decisions under Chapter Four
“Abuse of monopoly or dominant position” for the period 2007 – 2011**



3.3 *Case studies*

3.3.1 *Abuse of dominant position on the energy market - unjustified refusal to supply*

28. By Decision No 359/ 22 March, 2011 the CPC established an infringement under Article 21 (5) of the LPC by E.ON Bulgaria Sales AD. The proceedings were initiated upon the request of Gotar

Investment OOD, Plovdiv, and contained statements of objections for an infringement under Article 21 of the LPC by E.ON Bulgaria Sales AD in the form of an unjustified refusal to supply with electricity a property owned by Gotar Investment OOD in the period 11 September, 2008 – 29 November, 2009.

29. In the course of the proceedings the CPC established that on 7 August, 2008 Gotar Investment OOD acquired a property in the city of Novi Pazar, the electricity supply to which had been suspended due to unpaid electricity bills by the previous owner of the property. The situation remained unchanged till 29 November, 2009. The suspension of electricity supply, as provided in Article 14 of the General Conditions of E.ON Bulgaria Sales AD, was carried out by E.ON Networks AD upon the explicit request of E.ON Bulgaria Sales AD. Along those lines, for Gotar Investment OOD to be able to receive electricity from a supplier of its own choice, it has to ensure that the electricity supply to the property had been restored through E.ON Bulgaria Networks AD. The electricity supply, however, cannot be restored without the agreement of E.ON Bulgaria Sales AD which since 29 November, 2009 has put in a claim on unpaid bills of electricity consumed by another consumer.

30. The CPC has reached the conclusion that the refusal on the part of E.ON Bulgaria Sales AD to supply with electricity the property that was recently bought by Gotar Investment OOD, has certainly hindered the activity of the appellant undertaking as far as electricity is of primary importance for the implementation of any economic activity – production, rent, etc. The CPC has also established that E.ON Bulgaria Sales AD enjoys a dominant position in the relevant market and is the only supplier that could provide electricity to the appellant.

31. Up to the date when Gotar Investment OOD lodged a request for changing the name of the electricity account holder, E.ON Bulgaria AD, regardless of the transfers of right to ownership over the property and the accumulation of unpaid electricity bills over the last few years, turned out to be the only undertaking which had taken an action on suspending the electricity supply to the property, even after a considerable delay.

32. According to the CPC, E.ON Bulgaria Sales AD has taken advantage of its dominant position in the market of electricity supply within the boundaries of its license territory in order to satisfy its own interest – payment of the cost of already consumed electricity, regardless of who is going to pay for it. E.ON Bulgaria Sales AD is the only option for the new owner of property to get electricity supply and carry out its activity. The dominant undertaking made the most use of its position which wouldn't have been possible if Gotar Investment had had effective alternatives.

33. In view of the above, by Ruling No 1642/ 29 December, 2010, on the grounds of Article 74 (1) (3), the CPC submitted Statements of Objections for an infringement under Article 21 (5) of the LPC against E.ON Bulgaria Sales AD in a the form of an unjustified refusal to supply electricity to the property of Gotar Investment OOD.

34. Subsequently, by its Decision No 350/2011 the CPC adopted that the behaviour of E. ON Bulgaria Sales AD should be considered an abuse of dominant position under Article 21 (5) of the LPC and imposed on it a sanction to the amount of 3 204 225 BGN (~1 638 990 Euro).

3.3.2 *Abuse of dominant position on the energy market (services of share distribution of heat)-unjustified refusal to maintain established contractual relations*

35. By Decision No 585/04 May, 2011 the CPC established an infringement under Article 21 (5) of the LPC by „Dalkia Varna” EAD in the form of an unjustified refusal to maintain its established contractual relations with Holliday and Reisen EOOD in the context of which it partially terminated Contract No 8-Y/25 January, 2008 without justifying its decision.

36. By a letter of 26 January, 2010, Dalkia Varna EAD suggested to Holliday and Reisen EOOD a termination the contract for providing the service „share distribution of heat among the consumers in a condominium-project building” that they signed in January 2008 by sending an additional agreement to the contract according to which the contractual relations between the two parties should be terminated as of 30 April, 2010.

37. In 2009 Dalkia Varna EAD, through its representatives, tried to convince the clients of Holliday and Reisen EOOD to choose Dalkia Varna EAD as their provider of the “share distribution of heat” service by misleading them that the share distribution of heat can be calculated on the basis of the volume that had been heated, or on the basis of the power capacity of the heating devices installed in the condominiums. A list of subscriber stations in Varna, equipped with share distribution devices of the model Kundo and serviced by Holiday and Reisen EOOD, was presented. Those subscriber stations were transferred to Dalkia Varna EAD for provision of the share distribution service in the period November 2006 – November 2009. The transfer was carried out on the basis of a resolution adopted at the General Meeting of the condominium owners. Along with the request, minutes of some of the General Meetings were presented, that could service as evidence that the owners had explicitly selected Dalkia Varna EAD to provide the distribution of heat service on the basis of volume that was heated.

38. An additional agreement, signed on 1 May, 2009 between Dalkia Varna EAD and Holliday Reisen EOOD, contains clauses on a 2009 summer campaign according to which the reading of the hot water metering devices and the share distribution of heat service for the period 1 May – 30 October, 2009 has do be carried out by representatives of Dalkia Varna EAD and not by the respective providers of the share distribution service, as the latter will receive from Dalkia Varna EAD only 20% of the monthly amount due for provision of the share distribution of heat service.

39. The 2009 summer campaign was discussed on 13 April, 2009 at a meeting between Dalkia Varna EAD and the providers of the share distribution of heat service the undertaking had signed contracts with.

40. Dalkia Varna EAD, in its capacity as a heat transmission company, signs contracts for the provision of the service „share distribution of heat in condominium-project buildings” with providers of the share distribution services, such as Holiday and Reisen EOD, which, on their part, need to be selected to provide the service at the General Meetings of the condominium owners.

41. In the course of the proceedings it has been established without any doubt that Dalkia Varna EAD’s consent to carry out the share distribution of heat was made official, in an inadmissible way, by signing the contracts between the defendant and the respective condominium owners. The signing of each of these contracts led to the termination of Contract 8-Y/25 January, 2008 between Dalkia Varna EAD, as a seller of heat, and Holliday and Reisen EOOD, as a provider of the share distribution of heat service for the respective condominium-project building (a subscriber station).

42. By means of terminating its contract with Holliday and Reisen EOOD, Dalkia Varna EAD, even partially, has hindered the economic activity of the defendant undertaking as the data required for delivering the “share distribution of heat” service could be obtained only from the heat transmission undertaking.

43. In view of the above, by means of Ruling No 166/ 15 February, 2011, and on the grounds of Article 74 (1) (3) of the LPC, the CPC submitted Statements of Objections for an infringement under Article 21 (5) of the LPC by Dalkia Varna EAD, in the form of an unjustified refusal to maintain its established contractual relations with Holliday and Reisen EOOD in the context of which Contract No 8-Y/25 January, 2008 was partially terminated without justification.

44. Dalkia Varna EAD presented its objections on the statements included in the ruling. By Decision No 585/ 4 May, 2011 the CPC established that the behaviour of Dalkia Varna EAD should be considered an abuse of dominant position under Article 21 (5) of the LPC and imposed on it a pecuniary sanction to the amount of 232 242 BGN.

3.3.3 *Application of EC Regulation No 1/2003*

45. In 2011 one proceeding was initiated in fulfilling the Commission's duties for providing assistance under EC Regulation No 1/ 2003. In the period 27-30 September, 2011 the CPC assisted the EC in conducting on inspections (dawn raids) in the premises of Bulgarian undertakings implementing activities in the sector of delivery, transmission and storage of natural gas: the Bulgarian Energy Holding EAD, Bulgartransgas EAD and Overgas Inc. AD.

46. The assistance on the part of the CPC was provided upon EC request under Article 20 (5) of EC Regulation No 1/ 2003 and on the basis of adopted EC Decisions for conducting on-site inspections (dawn raids) in the premises of the above mentioned undertakings. The searches were done in the frame of a preliminary inspection of the undertakings in the sector of delivery, transmission and storage of natural gas operating in 10 EU Member States: Austria, Bulgaria, Germany, Estonia, Latvia, Lithuania, Poland, Slovakia, Hungary and the Czech Republic.

47. In the frame of the above mentioned on-site inspections (dawn raids) teams inspections teams of CPC staff assisted the representatives of the EC.

4. Mergers and acquisitions

48. In 2011 the Commission initiated 51 proceedings of which 48 following a written request to issue an authorisation for concentration between undertakings under Article 22 (1) of the LPC and 3 proceedings on the Commission's own initiative.

49. The CPC adopted a total of 51 decisions under Chapter Five of the LPC. By 42 of those decisions the CPC authorised the concentration between undertakings, by 5 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 2 of its decisions the Commission established that no infringement was committed under Article 24 (1) of the LPC; by 1 of its decisions the Commission imposed a pecuniary sanction for an infringement of Article 24 (1) of the LPC; by 1 of its decisions the CPC ruled on the termination of the initiated proceedings.

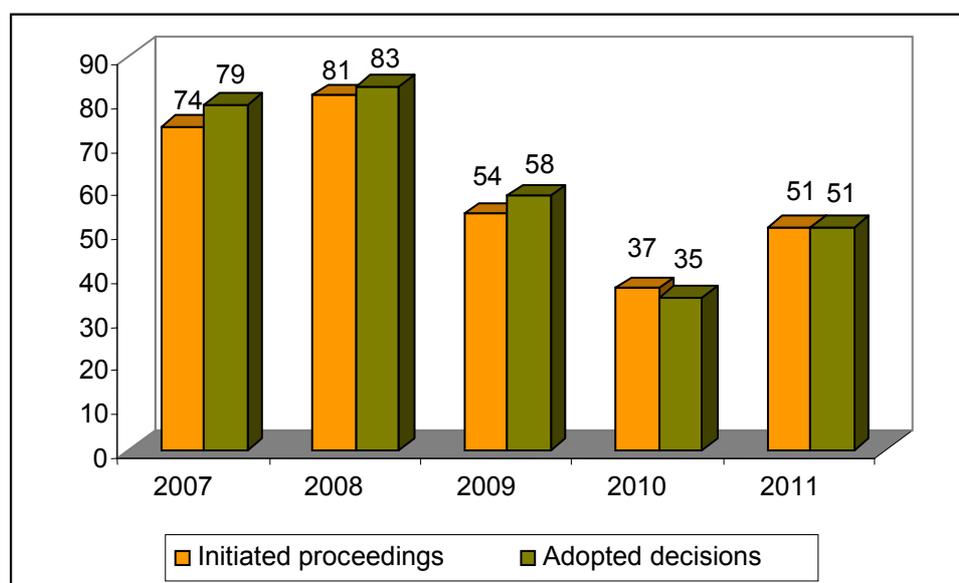
50. For the reporting period the Commission did not adopt decisions for launching an in-depth investigation on the grounds of Article 82 (3) (4) in relation to Article 83 (1) of the LPC as there were no serious doubts that the implementation of the notified concentrations might result in creating or strengthening of a dominant position, or that the effective competition in the relevant market might be significantly impeded.

51. In 2011 the CPC adopted 1 decision by which it imposed a pecuniary sanction for an established infringement under Article 24 (1) of the LPC to the total amount of 27 992 BGN (~ 14 318 Euro) to Jet Eastern Fund II, FKR, Spain. The decision was adopted in relation to mandatory instructions provided by the Supreme Administrative Court with regard to a CPC decision by which a sanction was imposed on the same company in 2009.

52. The number of the concentrations reviewed in 2011 per specific sector were as follows: Energy – 7 concentrations; Financial sector (including bank, insurance, and other financial services) – 5 concentrations; Sales of motor vehicles (including spare parts) – 3 concentrations; Media – 2

concentrations; Trade with fast moving consumer goods – 2 concentrations; Trade with fuels – 2 concentrations; Production and trade with paper and cardboard – 2 concentrations; Services (letting industrial and office space) – 2 concentrations; Construction (roads and highways) – 2 concentrations; Milk processing – 2 concentrations.

Number of initiated proceedings and adopted decisions under Chapter Five “Control over concentrations between undertakings” of the LPC for the period 2007 – 2011



4.1 Case studies

4.1.1 Bank market

53. By Decision No 1672/ 6 December, 2011 the CPC established that the Gramercy Group did not infringe Article 24 (1) of the LPC and authorised the acquisition of joint control, together with CSIF AD, over the Bulgarian-American Credit Bank AD.

54. The proceedings (CPC-750/ 4 July, 2011) were initiated on the initiative of the Commission and on the grounds of Article 38 (1) (1) in relation to a request lodged with the Commission by CSIF AD, Sofia, for establishing potential exercise of joint control by the shareholders Gramercy Emerging Markets Fund, Gramercy Select Master Fund and Dayton Investments Holding over the Bulgarian-American Credit Bank AD (BACB)

55. After the Gramercy Group was notified of the proceedings initiated with the Commission, the defendant undertakings submitted a notification in which they pointed out that in June 2011 the Group increased its share capital in BACB and that it would, in the future, have a decisive role in taking decisions of strategic importance for the behaviour of the bank. A request was lodged with the Commission to ascertain if the acquisition of stakes on the part of the Group had resulted in a concentration, and to authorise the operation, if that was the case. File No CPC – 771/ 06 June, 2011 was opened on the basis of the notification.

56. At the same time, the Commission reached the conclusion that there was a coincidence in terms of the parties and the subject matter of the two proceedings and that it would be in the interest of the notifiers for an investigation to be conducted both of the past period and of the new circumstances.

57. In view of the above, the CPC drew the conclusion that the outcome of the proceedings initiated on its own initiative would determine the approach to File CPC 771/ 2011 in identifying if the three shareholders acquired control over the BACB after they increased their share capital in June 2011, or if they started enjoying control rights before that.

58. The CPC investigated the behaviour of the undertakings within the Gramercy Group at the General Meetings held during the last five years (2007- June 2011). The analysis established that the buying out of stakes had considerably increased the share capital of the Group within the BACB, thus giving the undertakings within it the opportunity to block strategic decisions in 2009 as compared to the number of votes represented at the regular General Meetings of the BACB.

59. The CPC established that the usual quorum at the General Meetings of the BACB comprised between 81-88% of all shares of the regular general meetings that were held in 2009, 2010, and 2011. As of 2009, the Group owned a little more than 1/3 of the votes in the General Meeting of Shareholders (GMS) and respectively had *de facto* the opportunity to block the decisions which needed to be adopted by a qualified majority of 2/3 and which were related to strategic issues.

60. On the other hand, despite the fact that the Gramercy Group has not blocked a strategic decision to the present moment, from the point of view of competition law it is in the position to exercise control by virtue of the opportunity it has to exert decisive influence on the behaviour of a given undertaking. Such a situation can be explained by the opportunity a shareholder has to block a given decision at any moment, regardless of whether or not it has used that opportunity in practice or not.

61. In view of the above arguments the Commission established that the Gramercy Group had exerted control on a factual basis. What is more, the CPC carried out an assessment of whether *de facto* the three shareholders exercised control, as only in that case this control could lead to structural changes in the undertaking itself and in the structure of the market, and could be defined as a concentration. The period of three consecutive calendar years is sufficient for the CPC to claim that the Gramercy Group has been exercising control on a permanent basis. Another important circumstance was established under the case – the Gramercy Group has had and will have the opportunity to exercise control over the bank. This claim can be proved by means of the data collected on the share capital of the Group as of the moment of issuing the Decision. According to the data in question, the share capital of the Group went above 1/3 of the overall capital of the bank.

62. With regard to the period of three consecutive calendar years during which the Group could be considered to have exercised factual control on a permanent basis, the CPC established that the obligation for notifying the joint control over the bank arose after the GMS that was held on 1 June 2011. As it was in June 2011 that the undertakings within the Gramercy Group started to buy up more shares of the BACB capital by means of stock deals, it would have been logical for them to notify the Commission of their final share capital after the operation was completed, and give the national competition authority the chance to assess that operation.

63. On the basis of the arguments outlined in the legal conclusions of the Decision, the Gramercy Group started exercising control (as of June 2011) over the BACB even when the size of its share capital was smaller. In view of the new shares acquired on the part of the Group, the CPC has drawn the conclusion that for the future it will have control on a legal basis as these conclusions are based on the provisions of the current Statute. Provided that till the beginning of July 2011 the undertakings within the Gramercy Group had more than 1/3 of the votes in the GMS in view of the usual quorum, in the future they will have more than 1/3 of all shares that form the capital of the BACB. In this way, even if all shareholders attend the General Meetings (100%), the Group will be in the position to block the appointment and dismissal of the members of the Supervisory Council of the undertaking.

64. As far as the Gramercy Group, via the undertaking which concentrate its share capital in the bank, and CSIF AD have the opportunity as shareholders to block strategic decisions, the Commission has established that they will exercise joint control over the BACB in the future.

65. In view of the fact that as of now the Gramercy Group has not taken actions to exercise the voting rights it has as a result of the shares it acquired by means of stock deals and increase of share capital, it should be clear that it will exercise the established type of control in the future.

66. In view of the above, the CPC has established that the acquisition of shares of the capital of BACB on the part of Gramercy Group should be considered an acquisition of joint control on a legal basis which, from now on, will be exercised in cooperation with CSIF AD, and which will lead to a concentration of undertakings in the sense of Article 22 (1) (2) of the LPC.

67. In this relation the CPC has analysed the extent to which the requirements for prior notification were met and the effect that the concentration will exert on the competition in the relevant market where the participants in the concentration operate.

68. On the basis of the evaluation, the CPC authorised the acquisition of joint control on the part of the Gramercy Group and CSIF AD over the Bulgarian-American Credit Bank AD due to the lack of horizontal or vertical effects or relations in the related markets.

69. The decision has entered into force.

4.1.2 *Food voucher operators*

70. By Decision 897/8 July, 2011 the CPC established an infringement of Article 24 (1) of the LPC by Tombow Bulgaria OOD.

71. On the grounds of Article 38 (1) (1) in relation to Article 78 (3) of the LPC the CPC initiated a proceeding on establishing a potential infringement under Article 24 (1) of the LPC in relation to Article 22 (1) (2) by Tombow Bulgaria OOD, Sofia, on the basis of a request lodged by VM Finance Group – Plovdiv Branch AD, Sofia.

72. According to VM Finance Group – Plovdiv Branch AD a concentration was established between Tombow Bulgaria OOD and Cheque Dejeuner Bulgaria EOOD as all office assets, including machines, software, servers for printing and reading the food vouchers were transferred from Cheque Dejeuner Bulgaria EOOD to Tombow Bulgaria OOD. In this relation a request was lodged with the CPC for investigating if by their actions the undertakings infringed Article 24 of the LPC in relation to Article 22 of the LPC.

73. After an analysis of the information and the evidence that were collected in the course of the investigation, the CPC reached the following legal conclusions:

74. In its practice the CPC has always shared the view that acquisition of control over assets is in place only when the assets comprise a part of an undertaking and could form an individual business (economic activity) which, on its part, could be associated with a certain turnover and which, by means of providing access to the relevant market, could give the acquiring undertaking the opportunity to establish or increase its market presence. In this way, the acquired assets might be defined as an individual activity by means of which goods/ services might be provided to third parties.

75. After Cheque Dejeuner was deprived of its licence to carry out activities as an operator of food vouchers under Ordinance No 7/2003, the undertaking transferred assets related to this activity to Tombow

Bulgaria. The CPC holds the opinion that these assets cannot be isolated as a separate business, nor do they (even in their totality) provide an opportunity for offering services to third persons. The use of the transferred assets is not related to the realization of own turnover which can be related to them. This is so due to the circumstance that the assets sold to Tombow are only auxiliary to the activities carried out by an operator of food vouchers and can, in general, be used in the implementation of other commercial activities. In view of the above, these assets shall not be considered as a separate activity and the transfer of ownership over them could not lead to acquiring control on the part of a third person over an established business.

76. In the course of the proceedings it has also been established that on the strength of sales contracts Cheque Dejeuner has not transferred a specific product for printing food vouchers and that the undertaking does not possess such assets. According to the Bulgarian legislation, the undertakings running the business of food voucher operators are not obliged to own voucher printing machines with the required protection; the common practice is for the undertaking to commission voucher printing to printing houses which possess the necessary technical equipment.

77. The transfer of most of Cheque Dejeuner's staff to Tombow Bulgaria by means of signing new labour contracts with the latter was inevitable as Cheque Dejeuner was prevented from carrying out activities as an operator of vouchers and did not have an economic interest in paying salaries to employees. Each of the employees was given the opportunity to decide whether to sign a labour contract with Tombow Bulgaria or not. Labour contracts are signed by mutual consent and there's no data that conditions have been laid down to the former employees of Cheque Dejeuner that no other option exists in front of them but signing a labour contract with Tombow.

78. The intentions of Cheque Dejeuner shall also be taken into account. When its licence for carrying out activities as an operator of food vouchers was taken away, the undertaking took court action to defend its rights. If the outcome of the court case is favourable for Cheque Dejeuner, the undertaking is planning to continue its activities. Such a development excludes an intention on the part of Cheque Dejeuner to transfer its food vouchers business to another undertaking. The temporary difficulties that Cheque Dejeuner is currently experiencing have logically led to the economically justified actions for selling certain assets.

79. With regard to the users' (clients') contracts that Cheque Dejeuner transferred, it has to be noted that the undertaking did not transfer all its clients to Tombow Bulgaria. Some of the users of the vouchers were directed to companies different from Tombow Bulgaria.

80. In the letters by means of which Cheque Dejeuner informed its clients about the temporary suspension of its activities due to the fact that its licence had been taken away, the company did not issue a recommendation to its clients to go to any other food voucher operator. In the letters, it has been highlighted that the undertaking will continue operating on the national market ones the court disputes are solved.

4.1.3 Application of Council Regulation No 139/2004

81. In accordance with Council Regulation No 139/2004 on the control over concentrations of undertakings (Merger Regulation) the EC shall refer to the Member States copies of all concentration notifications and reasoned submissions it has received.

82. The European Commission is competent to evaluate concentrations which cover the turnover thresholds under Article 1 (2) and (3) of the Merger Regulation, i.e. those which have a Community dimension. At the same time, mechanisms have been envisaged for referral of concentrations to the

respective jurisdiction which is in the best position to carry out an evaluation of the respective case. The legal requirements and the deadlines for referring concentrations from or to the EC have been provided in detail in a Commission Notice on the referral of correspondence on concentrations.

83. In 2011 the CPC analysed the information contained in a total of 342 notifications and reasoned submissions for concentrations between undertakings with a view to assessing the relevance of applying the procedure of referral to/from the EC in accordance with the Merger Regulation and the Notice.

84. During the reporting period the CPC did not exercise its powers for requesting a referral of case study of concentrations from and/ or to the EC (before notification or after the submission of the notice) as the legal requirements under Article 4 (4), Article 4 (5), Article 9 (2) and Article 22 of Council Regulation No 139/ 2004 were not satisfied.

5. Competition advocacy activities

85. In accordance with Article 28 of the LPC in order to protect free economic enterprise and prevent restriction or distortion of competition, the CPC shall assess the compatibility of the provisions of this Law with draft legislative or regulatory administrative or general administrative acts; effective legislative or regulatory administrative or general administrative acts; draft acts of associations of undertakings, which regulate the activities of their members.

86. In 2011 the trend observed in the previous year of focused activity of the CPC in the field of competition advocacy was confirmed by means of an increase in the number of the position statements adopted by the CPC. This increase comes as a result of the Guidelines for assessment of compliance of legislative and general administrative acts with competition rules that were adopted by the CPC in October 2009. For the reporting period, the Guidelines led to an increase in the number of requests from other state authorities for assessing the compliance of their acts with competition rules. With a view to increasing the effectiveness of the Commission in the discussed field, by Decision No 177/ 20 December, 2011 the CPC updated its Guidelines which correspond to the latest trends and achievements in assessing competition rules compliance and take into account the best practices in this area of the OECD and some EU Member States.

87. The CPC Guidelines aim at assisting the state authorities, including state bodies and bodies of the local government, in identifying the potential anticompetitive impacts at the stage of drafting the regulatory framework. The CPC Guidelines provide criteria by which one can easily determine whether a proposed draft act contains provisions that could harm competition on the basis of a check list for initial assessment of the potential restrictions of competition, divided into 4 groups in the form of questions

88. In 2009 a total of 37 proceedings were initiated under which the CPC exercised its powers under Article 28 of the LPC as follows: 28 of these proceedings were initiated on requests submitted by state bodies; 8 of the proceedings were acted upon written applications of legal persons for CPC opinion statements with regard to the conformity of the general legal or administrative act with the rules established by the LPC; 1 proceeding was initiated on the Commission's own initiative.

89. In 2011 the CPC adopted a total of 42 decisions which contain position statements on draft legislative and other acts and establish the presence or absence of compliance of legislative, administrative or other acts with competition rules.

90. The Commission has made recommendations for amendments to the following draft legislative acts:

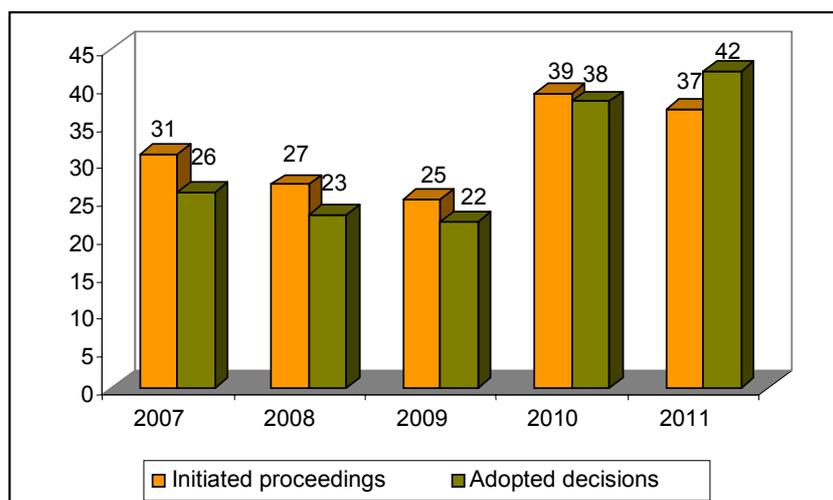
- A draft Ordinance on rules for ensuring access to the network of the postal operator with an obligation for providing a universal postal services and on forming the prices for ensuring access;
- a Draft Law on amending the Public Procurement Act;
- a Draft Law on amending the Electronic Media Act;
- a Draft on amending Ordinance No 10 of 24 March, 2009 on the conditions and order for purchasing medicinal products and products under Article 262 (4) (1) of the Law on medicinal products in humane medicine, medicinal devices and diet foods for special medical purposes;
- a Draft law on amending the Commercial Law;
- a Draft Law on amending the Radio and Television Act.

91. The CPC has also expressed its position on the compliance of the proposed amendments to the Radio and Television Act with the rules of competition.

92. The CPC has made proposals for amending current legislative acts which create conditions for preventing, restricting and distorting competition such as:

- Ordinance No 10 of 24 March, 2009 on the conditions and order for purchasing medicinal products under Article 262 (4) (1) of the Law on medicinal products in humane medicine, medicinal devices and diet foods for special medical purposes;
- Ordinance No 5 of 15 May, 2003 for assessing and approving textbooks and training aids;
- Ordinance on the long-term levels, conditions and order of setting the target annual levels of the quality indicators of water supply and sewerage services and Ordinance on regulating the prices of water supply and sewerage services;
- Electronic Communications Act.

Number of initiated proceedings and adopted competition advocacy decisions for the period 2007 – 2011



5.1 *Case studies*

5.1.1 *Market of medicines*

93. By Decision No 187/ 17 February, 2011 the CPC adopted a position statement by proposing to the competent authorities amendments to Ordinance No 10 of 24 March, 2009 obliging producers/importers of medicines to designate which wholesalers will deliver to the pharmacies the medicines on the Positive List of Drugs reimbursed by the National Health Insurance Fund. The CPC analysed the effect of that requirement on competition and established that such a requirement would lead to the following anticompetitive effects:

94. The producer/importer could unilaterally influence competition in wholesale trade in medicines, restricting the access of licensed wholesalers to the market of medicines reimbursed by the state. As a result, wholesalers would not have incentives to offer better terms of delivery and payment to the pharmacies;

95. The application of the provisions of Ordinance No 10 contravenes the Law on Medicinal Products in Human Medicine (Law on Medicinal Products in Human Medicine, Prom. SG. 31/13.04.2007, latest amend. SG. 12/8 Feb 2011) as it does not allow a wholesaler to purchase medicines paid by the state from another wholesaler unless they are both declared by the producer/importer. Competition in the wholesale trade of certain medicines paid by the state is therefore limited only to those wholesalers who are declared by the producer/importer but in this case such a deal would not make sense from an economic point of view.

96. The pharmacies are restricted in their choice of wholesalers since they can only purchase medicines from wholesalers that have been officially declared by the producer/importer. This is to the detriment of the end-users of medicinal products.

97. The CPC held that the introduction of the relevant provisions of Ordinance No 10 couldn't be justified by the arguments pointed out by the NHIF and would lead to an unjustified restriction of competition. The legislation envisages strict requirements regarding the storage of medicines and foresees mechanisms designed to ensure effective control by the competent authorities at all levels of the economic chain from the producer of medicinal products to consumers. At the same time the regulation is not applied to medicines, which can be sold freely, which should also be stored properly in order to protect public health. The CPC was of the opinion that other means could be used to inform pharmacies which have signed contracts with the NHIF about wholesalers that offer medicines from the Positive List of Drugs that would not lead to restriction of competition.

98. As a result of the position statement of the Commission the obligation of producers/importers of medicines to designate which wholesalers will deliver to the pharmacies which have signed contracts with the NHIF the medicines on the Positive List of Drugs reimbursed by the National Health Insurance Fund, was repealed.

5.1.2 *Markets of textbooks and training materials*

99. By Decision No 707/ 02 June, 2011 the CPC adopted a position statement on the provisions of Ordinance No 5 of 15 May, 2003 for assessing and approving textbooks and training materials as well as on Degree No 104 of the Council of Ministers of 10 May, 2003 on adopting the Ordinance on textbooks and training materials.

100. The CPC holds the opinion that the right of textbook publishers to participate in procedures for approving textbooks with an unlimited number of projects is procompetitive as it ensures free economic

initiative on the part of undertakings. This is a way to encourage publishing houses to produce textbooks of better quality that would be of benefit to both teachers and students.

101. The fixing of a maximum price for each set of textbooks is a justified restriction as the provision of free textbooks requires budget expenses that need to be planned and forecasted. The maximum price per set ensures a certain level of certainty for the publishers in setting the price for each textbook against the background of various factors.

102. The Commission proposed the restriction on approving a maximum of three textbooks to be dropped out. According to the CPC, such a restriction would lead to limiting the number of participants in the market which would reduce the number of their incentives for producing textbooks of better quality. On the other hand, the restriction on a maximum of three textbooks narrows down options that teachers have for choosing a textbook that fully corresponds to the needs of their students. The CPC holds the opinion that this restriction leads to establishing an oligopoly market structure which contributes to the setting of similar, or even identical, prices offered by the publishers of textbooks.

5.1.3 Market of the products offered at the optician's

103. By decision No 839/ 28 June, 2011 the Commission adopted a position statement on the compliance of competition rules of Article 26a of the Law on Health in its part where oculists are given the opportunity to take part in the market of sales of products and services offered at the optician's. The proceedings were initiated on the initiative of the National Association of Bulgarian Optometrists and Opticians (NABOO).

104. Everybody can own an optician's in Bulgaria but it can be run only by oculists, optometrists or opticians. In accordance with the legislation, health consultations related to eyesight can be provided only by oculists. The Commission took into consideration the position statement of the Ministry of Health that the education of opticians and optometrists was not adequate and sufficient for carrying out activities on determining eye refraction. The experience of the EU Member States, which was also taken into account, showed that in most of the investigated countries the optometrists, entitled to determine eye refraction, had graduated university programs of 2 to 4 years. In this relation, the CPC holds the opinion that such a barrier to entering the market of determining eye refraction is necessary and justified with a view to protecting public health.

105. The opportunity for oculists to own or run an optician's does not put the other opticians in a disadvantaged position as their competitors. Every person who registers an optician's is obliged to provide the required experts (an optician, a optometrist) with a view to providing health consultations related to eyesight. This is related to certain expenses and investments which are necessary and inherent to the carrying out of economic activity at the optician's.

106. In its request the NABOO claims that the oculists, who have registered opticians', forward their patients to their own optician's. It has to be noted that in general oculists could forward their patients not only to their own optician's but to optician with which they have an agreement. Regardless of the potential recommendations of the oculist, the consumers of goods and services are free to choose the optician's from which to buy a certain product or service. The choice of consumers comes as a result of the competition among the opticians and the provision of products and services of better quality and lower prices.

107. The introduction of the prohibition of oculists to take part in the market of sales of glasses is related to depriving them of the opportunity to own and run their own optician's which could lead to reducing the number of participants in the market. Depriving oculists of the right to participate in the activity of the optician's would lead to dropping of the opportunity for health consultations on the

problems of eyesight, and on determining refraction in particular, to be provided at the optician's. Thus the consumers will not have the opportunity to get the overall service of having their eyes tested and buying glasses at one place.

108. The Commission holds the opinion that the issue of forwarding of consumers from oculists who carry out eye test to certain opticians couldn't be solved by means of depriving the oculists of the opportunity to own or run such shops. Such forwarding of patients to certain opticians could be regulated through ethical self-regulation norms within the sector.

5.1.4 Market of the services on the drafting of investment projects

109. By Decision No 947/ 14 July 2011 the CPC adopted a position statement on the provision of Section III of the Requirements for drafting investment projects from Priority Axis 1 of Operational Programme Environment (OPE) 2007-2013 that was approved by the Minister of Environment and Waters.

110. The CPC holds the opinion that the published values of the different types of activities in Section III of the Requirements for drafting investment projects from Priority Axis 1 of Operational Programme Environment (OPE) 2007-2013 shall not be regarded as prices in the sense of competition law, but rather as a way of setting the maximum size of the grant provided by the OP Managing Authority. Those values are aimed at the municipalities in their capacity as applicants under grant procedures, and not to the participants in the public procurement procedures. In this way, the Managing Authority fulfils its obligation to manage and control the economic, effective and efficient use of the EU funding. The beneficiaries under the programme can set higher values but in that case they will get funding only to the size of the values recommended by the OP Managing Authority, the remaining funds have to be provided by other sources.

111. At the same time, the Commission holds the opinion that by publishing the values and the mechanism for determining the size of the grant this information becomes accessible not only to the beneficiaries, but also to the potential participants in public procurement procedures, which could lead to concerting of prices and silent coordination on the part of the undertakings participating in public procurement procedures. Such a situation would threaten the main objective of public procurement procedures – ensuring free competition. Due to that reason, the CPC holds the opinion that Section III should be used by the Managing Authority of OP Environment 2007 – 2013 *only as an internal document* with a view to facilitating its work on evaluating project proposals and exerting control on acquiring the EU funds in accordance with the principle of good financial governance.

6. Sector inquiries

112. In 2011 the CPC initiated 4 proceedings on conducting a sector inquiry of the competitive environment in relation to indications of potential competition problems in separate sectors of the economy, namely:

- a sector inquiry of the competitive environment of two interrelated markets: production and trade with oil-yielding sunflower and sunflower oil;
- a sector inquiry of the competitive environment of the markets of production and realization of petrol and diesel fuel;
- a sector inquiry of the competitive environment of the interrelated markets on the chain in “bread seed – wheat flour – mass wheat bread”;

- a sector inquiry of the competitive environment in the sector for distribution of newspapers and print issues.

113. For the same period the Commission adopted 2 decisions under Chapter Six of the LPC by means of which it adopted sector inquiries of the competitive environment in two sectors of the economy.

6.1 Case studies

6.1.1 Tourism sector

114. By Decision No 1058/27 July, 2011 the CPC adopted a sector inquiry of the competitive environment in the sector of tourism. The analysis investigates the market of offering hotel services by different categories of hotels for the period 2006 – 2010 by types of tourism: sea, spa, mountain/ ski, business/ cultural-ethnographic-historical.

115. The CPC conducted its analysis and drew its conclusions on the basis of the information provided by the interviewed owners of hotels and representatives of municipalities; the Ministry of Economy, Energy and Tourism; the Bulgarian Association of Hotel and Restaurant owners (BAHRO); the Bulgarian Tourist Chamber; the Union of Owners – Sunny Beach, NGO „Tour Club Remark”; Association of Hotel and Restaurant Owners and Tradesmen – Chepelare; the Bulgarian Association for Alternative Tourism and the Bulgarian Association of Tourist Agencies.

116. In the course of the investigation the characteristics of the market were taken into account, the demand and supply of hotel services, the dynamics of the prices and market shares of hotels in the respective municipalities, the types of tourism segmented by categories, the contractual relations between hotels and tourist agents, the role of the branch organisations in the sector, etc.

117. In view of the specificities of the market and the information provided by the interviewed parties, the Commission established a strong degree of price elasticity of the hotel product as well as considerable level of the importance of the activity of tourist agents with regard to the realisation of some types of tourism

118. The observed price dynamics reflects the changes in the economic situation which, parallel to the established bed capacity and the respective oversupply, turns out to be one of the main challenges in the sector.

119. In the course of the analysis some contractual clauses between tourist agents and hotels were investigated. They could be of the nature to have a negative impact on competition. With a view to the collected evidence in the sector, no characteristics or circumstances were observed that could give rise to anticompetitive behaviour.

120. The CPC discussed the practice of offering packages that combine accommodation and ski lift passes. Such a practice could be qualified as abuse only if the package price is so low that, with a view to the difference between it and the individual prices of the two, it wouldn't be profitable for the other competitors in the market to sell their competitive products.

121. The CPC paid attention to the fact that some of the investigated practices related to the role of the national and regional branch associations in the setting of the price policy in the sector might go beyond the standard for acceptable and useful cooperation according to the provisions of the LPC.

6.1.2 *Auto fuels market*

122. By Decision No 1059/27 July, 2011 the CPC adopted a sector inquiry of the competitive environment of the markets of production and realization of petrol and diesel fuels in the country. The investigation and the analysis of the fuels market was carried out for the period from 2009 to the middle of 2011 when Decision No 1059/27 July, 2011 was adopted.

123. One of the main objectives of this analysis was to shed light on the functioning of the competitive environment in the markets of production and realisation of petrol products in the Republic of Bulgaria in the context of observing the principles and requirements valid for the common European market.

124. An analysis was carried out of the level of vertical integration and establishment of trade relations in the vertically related markets on the chain “production –wholesale trade – retail trade” with the aim of offering the products to end consumers, as well as of the specific practices that could be associated with those relations. An in-depth analysis was conducted with regard to the formation of the selling price of fuels as part of the policy of each of the undertakings on the chain. The Commission carried out a detailed analysis of the legislation with regard to the petrol products that is active both on the territory of the Republic of Bulgaria and within the European Union.

125. In the frame of the sector inquiry the CPC reached the following conclusions:

- General conclusions about the sector

The consumption of petrol and diesel fuel on the territory of the country has been satisfied by the production of „Nefothim Bourgas” oil refinery. Petrol and diesel fuel consumption is realised only through Lukoil Bulgaria EOOD or by means of import. The oil refinery realises its production on the territory of Bulgaria and through export. For the period in question the share of export with regard to A 95H petrol fuel follows a growing trend while the produced quantities of diesel fuel are realised mainly on the territory of the country.

Lukoil Bulgaria EOOD has a leadership position as a supplier both on the wholesale market of A 95H petrol fuel, and on the wholesale market of diesel fuel. In 2010, as compared to 2009, a trend of a diminishing market presence of Lukoil Bulgaria EOOD could be observed in the two product markets, which is more tangible in the market of diesel fuel. Regardless of that trend the undertaking has preserved its position as a leader.

Lukoil Bulgaria is a vertically integrated undertaking which participates in all levels of the realisation of the two oil products to end consumers. In addition to that, it is the only participant in the wholesale market which does not participate in it as a buyer. The undertaking occupies an important position as an owner of tax warehouses for storing petrol and diesel fuel.

The other participants in this market are the undertakings that carry out import activities. The major importers are OMV Bulgaria OOD, Naftex Petrol EOOD, Rompetrol Bulgaria AD, Eco Bulgaria EAD. The position of the above mentioned importers of petrol was more stable in 2010 compared to 2009, as there were hardly any other undertakings importing petrol on the territory of the country. The position of those two undertakings on the diesel market weakened in 2010 as the quantity of imported diesel oil realised by other importers almost doubled.

The retail market of petrol and diesel oil has an oligopoly structure. The main participants as suppliers are Lukoil Bulgaria EOOD, OMV Bulgaria OOD, Petrol EOOD, Shell Bulgaria EAD, Eco Bulgaria EAD and Rompetrol Bulgaria AD as the first four undertakings have a major share

of the market. The shares of the first four undertakings were relatively stable for the period 2009–2010. Lukoil Bulgaria had the largest market share of the retail market of petrol and diesel oil for the period 2009 – 2010.

- Concessions with regard to the influence of the legislative requirements of import

The Commission analysed whether the provisions of the Excise Duties and Tax Warehouses Act (EDTWA) and its amendments adopted in 2009, as well as other legislation and requirements, could be defined as barriers to entering the market of realisation of petrol and diesel fuel and whether those barriers could be overcome.

In the course of the analysis it was established that undoubtedly the recently adopted legal provisions could be regarded as barriers to entering the wholesale market of realisation of petrol and diesel fuel. Despite that, the CPC did not establish serious changes with regard to the volume of import after their adoption. Along these lines, the barriers themselves have to be regarded as surmountable.

What is more, the above mentioned legislation, and especially the provisions of EDTWA related to the obligation for excise duty goods to be discharged only at registered tax warehouses, have to be assessed in relation to Bulgaria's obligations for harmonising its national legislation with the European legislation, and as one of the measures for fighting against tax fraud and restricting the illegal trade with fuels.

6.1.3 *Established problems in relation to competition*

- Considerable increase of the net retail price of fuels as well as a parallel movement in the prices of the different participants

With regard to the retail market of fuels the CPC established that it exhibited an oligopoly structure and that there was price parallelism in the behaviour of the main participants (almost complete identity of prices and an identical trend of price change for the period under investigation, i.e. 2009 – February, 2011). The first four undertakings possessed a market share of above 60 % for the period 2009 – 2010. It has to be noted, though, that oligopoly price formation (or silent coordination) is not necessarily linked to the lack of effective competition.

According to the practice of the EC, in the case of lack of evidence for the existence of an explicit agreement the parallel price behaviour of the participants in a given market (actual prices) cannot be regarded by itself as a concerted practice but it can serve as a clear indication of the existence of such a practice. For the purpose of establishing a concerted practice, evidence is needed on direct or indirect contacts between the participants in the market. In the case of oligopoly markets, parallelism can often be observed. It can be explained by the characteristics and the conditions in the market, as for example by the way of announcing the prices to the end-users, as well as by the great elasticity of demand with regard to price. In this case, the unifying of the market behaviour of the undertakings should be regarded as adapting to the expected actions on the part of the competitor.

Beyond doubt, the unifying of the behaviour of the participants in a given market is easier in markets with the following characteristics: fewer suppliers; presence of competitors with similar market shares; homogeneous products and competition based mainly on price; similar structure of expenses; barriers to market entry which stop the new entrants when the prices go up; high

level of transparency which makes it easier for the competitive undertakings to observe their market behaviour; stable level of demand.

Two main trends were outlined in the analysis of the investigated market which, in the long run, had the potential to exert unfavourable influence on the competitive environment.

- Public announcement of wholesale process of petrol and diesel fuel

After the Commission summarised the information received from the undertakings, it was established that the main parameters that determine the wholesale price of petrol and diesel fuel are the quotations published on the “PLATT’S” platform, or the prices published on the website of Lukoil Bulgaira EOOD. In the detailed analysis of the price behaviour of two of the undertakings it was established that they followed and took into account the prices which were announced in the way mentioned above as they usually changed their prices within the same limits, and published them on their website on the same day. Such a practice could lead to a higher level of transparency in the market and could serve as an indication of concerted practices in determining wholesale prices, as the latter was also supported by the detailed analysis of price dynamics. The use of the price, published on the electronic site of Lukoil Bulgaria EOOD was imposed not only directly on the relations between the undertaking and its contractors, but also indirectly, on the contractual relations of those contractors with other undertakings which were not direct clients of Lukoil Bulgaria EOOD. In view of the vertical integration of most of the participants, „the price of a producer”, published on the electronic site of Lukoil Bulgaria EOOD, could easily be used down the chain.

In the cases when the price increase is announced in advance, it aims at eliminating the insecurity between undertakings that take part in the market with regard to their future behaviour. Thus the risk, inherent to each independent change in their market behaviour, has been eliminated as the market becomes more transparent with regard to the size of the increase. In its practice, the EC holds the opinion that the preliminary announcing of prices at the absence of non-regulated exchange of price information should not be regarded as behaviour that necessarily falls under the scope of the anticompetitive legislation. If the announcement of prices is directed mainly to the clients with the aim of helping them envisage their expenses, it can be regarded as a potential or alternative explanation about the parallel behaviour in the market. In this case, it is important to be noted that the price increase realised by one participant that is followed by a price increase realised by the other participants in the market, might be regarded as an intelligent adaptation that comes as a result of the interaction between the undertakings and the characteristics of the market, and might create preconditions for concerting their market behaviour.

The contractual relations of Lukoil Bulgaria EOOD with the contracting parties – clients on the wholesale market of realisation of petrol and diesel fuel, were reviewed and analysed, as well as specific trade practices that were being applied.

In relation to the sector inquiry, the CPC initiated one proceeding for establishing infringements under Article 15 of the LPC, respectively under Article 101 of the TFEU, as well as for establishing infringements under Article 21 of the LPC, respectively under Article 102 of the TFEU, and informed the Minister of Finance about the need, in accordance with his powers and the enforceable EU legislation, for adopting the right measures aimed at improving the competitive environment.

7. Supreme Administrative Court decisions on competition cases

126. The decisions of the Commission on Protection of Competition are subject to appeal before the Supreme Administrative Court (SAC). 85 of the decisions, adopted by the CPC under the Law on Protection of Competition, were appealed before SAC in 2011. At second instance (five judges chamber), the court adopted that year a total of 64 final decisions as follows:

- 51 decisions of the CPC were upheld;
- 3 decisions were sent to the CPC for new investigation;
- 5 decisions of the CPC were revoked as a whole;
- 5 decisions of the CPC were partially revoked.

8. Resources of the CPC

8.1 Annual budget

127. The Commission on Protection of Competition is an independent institution funded entirely by the state budget. 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 (~4 693 580 Euro), of which 3 705 167 BGN (~1 895 226 Euro) were spent. In 2011 a change was made to the spending part of the CPC budgeted was made as a result of which the expenditures in the CPC budgeted as of 31 December, 2011 amount to 3 755 167 BGN(~1 920 802 Euro). As of 31st December, 2011, 99,9% of the updated CPC budget for 2011 was used.

8.1.1 Number of employees

- Economists - 21
- Lawyers - 72
- Other professionals - 12
- Support staff – 5
- All staff combined - 110

8.1.2 Human resources as per enforcement sector

- Antitrust and Merger enforcement – 34
- Advocacy efforts - 11

8.1.3 Period covered by the above information

- Year 2011