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

-- 2014 --

27-28 October 2015

*This report is submitted by Bulgaria to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 October 2015*

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## 1. Introduction

1. The Commission on Protection of Competition (the Commission, the CPC) is an independent specialised state body whose main goal is ensuring the protection and promotion of competition and free economic initiatives, inter alia through control over the lawfulness of spending of public resources through public procurement and concession awarding procedures.

2. The scope of the Commission's competence is outlined in the Law on Protection of Competition (LPC), the Public Procurement Act (PPA) and the Concessions Act (CA).

3. The CPC's priorities for 2014 were determined both in accordance with the general priorities for achieving economic development endorsed by the Bulgarian Parliament and the country's duty, as a competent member of the European Union, to ensure direct application of the European legislation.

4. The main priorities, which the Commission has set itself for 2014 were connected with the goal of achieving national and European antitrust law aims with regard to stimulating free economic initiative, expanding the conditions of competition, and raising the level of wellbeing of consumers and of society as a whole through its practice in applying the Law on Protection of Competition (LPC), the Public Procurement Act (PPA), the Concessions Act (CA) and Articles 101 and 102 of the TFEU.

5. In its capacity as the national body for protection of competition, the Commission's main goal is to analyse and, subsequently, to discontinue any existent and potential anticompetitive practices in order to maintain the competitiveness of the national market. In order to achieve its goal efficiently, apart from pursuing legal actions for breaches of competition law provisions, the CPC has to utilise the full spectrum of mechanisms afforded to it by the law, including the possibility to conduct sectorial analyses on a regular basis.

6. In 2014 a sectorial analysis of the current state of affairs of the natural gas transportation and distribution market has been conducted and, subsequently, approved. Also, another sectorial analysis examining the level of competitiveness of and determining the existence of anticompetitive practices in the insurance industry sector has been conducted.

7. In order to exercise more efficient control over high priority breaches of competition law such as different cartel practices and instances of abuse of dominant position, the Commission has adopted specific measures aiming at providing undertakings, their corporate structures and society in general with sufficient information regarding the forms, substance and potential negative effects on competition of the exchange of information amongst competitors as well as other forms of competition law violations.

8. In fulfilling its obligation to cooperate in the development of the competitive market environment through exercising its authority in the field of competition advocacy, in 2014 the Commission has conducted 28 legal proceedings, 11 of which were initiated by the Competition Policy directorate.

9. Furthermore, the Commission adopted measures for increasing the efficiency of regulatory control exercised over concentrations between undertakings. The efforts were steered towards increasing the use of the pre-notification contacts between the notifying party and the CPC in the cases of concentrations with purely national dimension as well as ones of multinational importance through the promotion and application of the *Rules on protection of competition in cases of concentrations between undertakings* which were adopted in 2011.

10. In order to improve competition and protect the free economic initiative through its practice of vigorous application of the provisions of the LPC in the field of unfair competition, the Commission has amplified the preventative effect its activities have on the occurrence of breaches in the field of unfair

competition by promoting its practice of detecting breaches in that area through the publication of specialised information, participation in meetings and seminars with business representatives, regulatory bodies, non-governmental organisations etc.

11. The Commission has maintained its sanctions-based preventative policy in accordance with the endorsed changes and additions to the *Methodology for Setting Fines under the Law on Protection of Competition*.

12. Another major priority of the Commission for the previous year was the aim of ensuring the lawfulness of spending of public resources through its practice in pursuing vigorous application of the provisions of the PPA and CA. In order to achieve that aim all the efforts of the Commission were invested in conducting swift analyses of and providing unequivocal rulings on all the received claims against decisions, actions or inactions by public tenderers and persons within the meaning of art. 83 of the CA.

13. The third major goal the Commission has set itself for 2014 was to solidify its position of a trusted partner in the sphere of European and international coordination, as well as to actively collaborate with the national competition authorities of the states from the Western Balkan Peninsula within its participation in the Sofia Competition Forum (SFC), founded by the CPC and UNCTAD:

14. The Sofia Competition Forum is a bilateral initiative of the Bulgarian Commission on Protection of Competition and the Conference of the UN on trade and development (UNCTAD). The aim of the forum is to strengthen the collaboration and the regional relationships amongst the countries from the Balkan Peninsula and hence to achieve further consolidation of the methods of application of the relevant competition law rules. The goal of the project is to facilitate the countries from the region in the process of adopting and, subsequently, applying competition legislation as well as increasing the benefits of well-functioning markets. The founding conference of this substantive initiative was held on the 12<sup>th</sup> of November 2012 in Sofia.

15. In 2014 the Commission on Protection of Competition and the Conference of the UN on trade and development (UNCTAD) held two seminars within the framework of the Sofia Competition Forum.

16. Prominent experts in the field of competition law and policy from the Organisation for Economic Cooperation and Development, the European Commission, the Federal Trade Commission of the USA, the World Bank participated in the seminars as well as representatives from the national competition authorities of Austria, Greece, Italy, the Russian Federation, Slovenia, Turkey etc. The meeting is attended by members of academia and the judiciary as well.

17. The fourth seminar held under the banner of the SCF was dedicated to the topic of “Competition Policy as the engine for economic growth” within the frameworks the attending guests had the opportunity to present their views and to exchange information on their law enforcement practices and competition advocacy. A number of discussions on the relationship between competition policy and sectorial regulation as well as on the new forms of control of the undertakings’ market power were held.

18. The fifth seminar was dedicated to the separate topics of dawn raids and procedural fairness.

19. In 2014 the Commission on Protection of Competition has conducted 1280 legal proceedings in general, 1102 of which on the basis of the PPA, 9 on the basis of the CA and 169 on the basis of the LPC. As a result of all the adopted decisions throughout 2014 the Commission has imposed fines and proprietary sanctions in the amount of 33 912 838.84 BGN.

## 2. Prohibited agreements, decisions and concerted practices

### 2.1 Legal proceedings

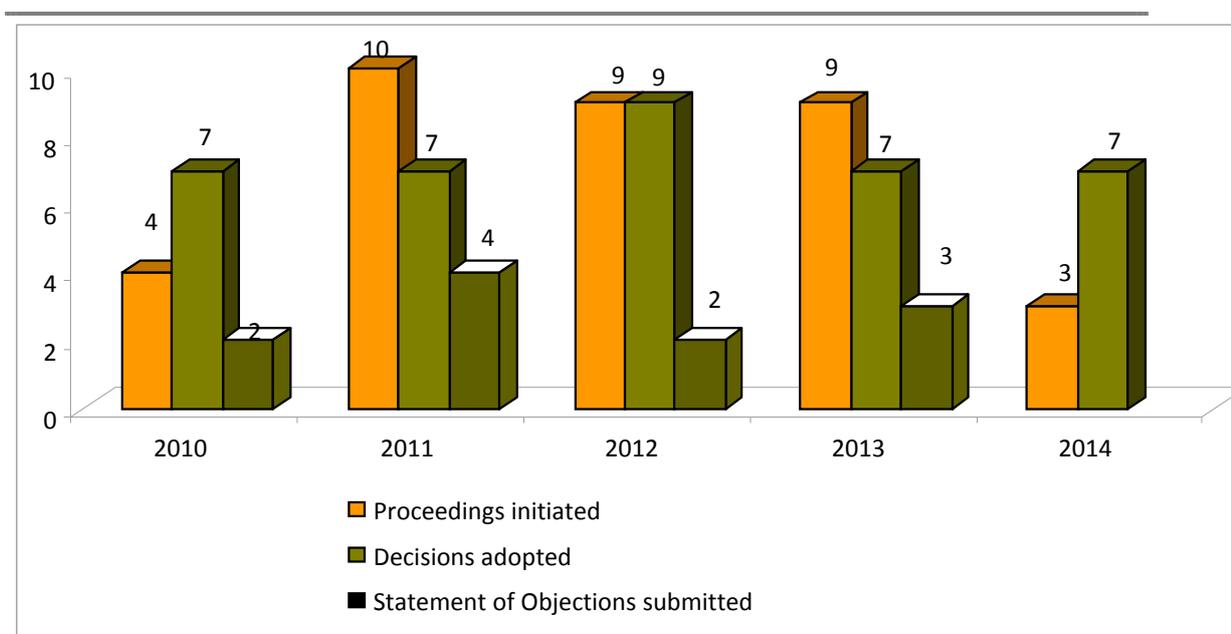
20. In 2014 the Commission has conducted 3 legal proceedings determining the existence or lack of violations of art. 15 of the LPC.

21. In 2014 the Commission has conducted 2 dawn raids in accordance with the relevant procedural rules and within the competences granted to it by the LPC. As a result of these dawn raids the CPC confiscated paper evidence and forensic evidence exploited through the help of its forensic IT laboratory.

### 2.2 Adopted decisions

22. In 2014 the Commission adopted 7 decisions in relation to the application of art. 15 of the LPC.

**Number of legal proceedings and adopted decisions under Chapter 3 “Prohibited agreements, decisions and concerted practices” of the LPC for the period of 2010-2014:**



## 3. Abuse of monopoly or dominant position

### 3.1 Legal proceedings and adopted decisions

In 2014 the Commission has conducted 20 legal proceedings determining the existence or lack of violations of Chapter 4 “Abuse of monopoly or dominant position” of the LPC.

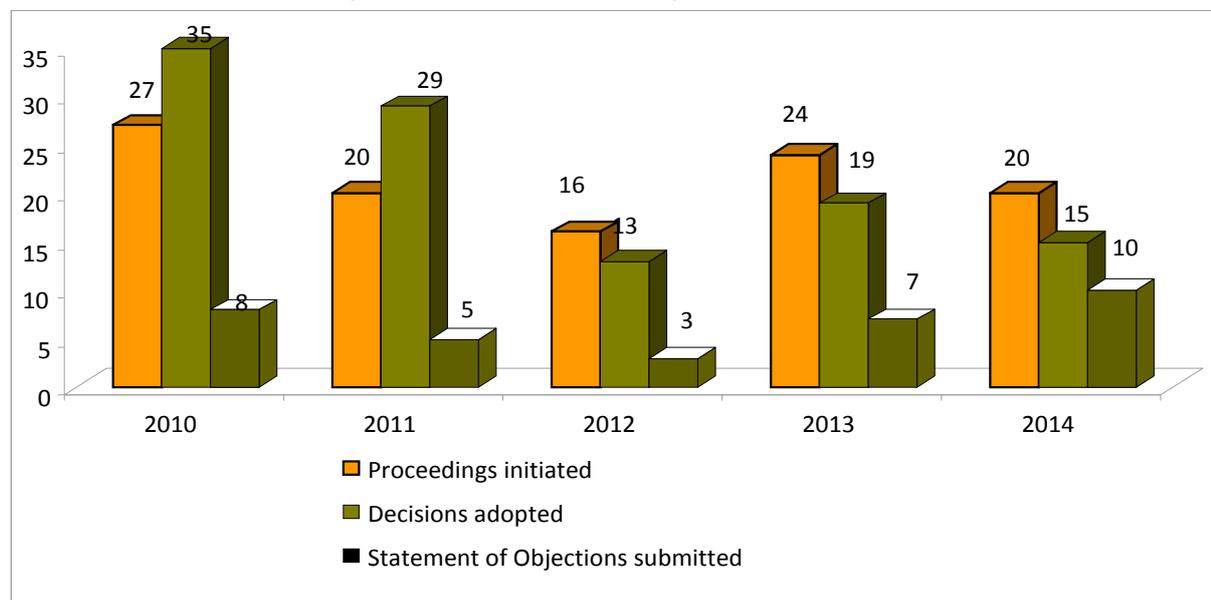
### 3.2 *Adopted decisions*

22. In 2014 the Commission has adopted 15 decisions regarding the application of art. 21 of the LPC and/or art. 102 of the TFEU. Throughout the period accounted for the Commission has made 10 claims for committed violations of art. 21 and/or art. 102 of the TFEU.

23. The Commission has adopted 6 decisions finding that violations of art. 21 of the LPC have been committed and, as a result of these violations, it has imposed pecuniary sanctions in the amount of 28 809 482 BGN as follows:

1. By adopting Decision № 64/22.01.2014 the Commission imposed a pecuniary sanction in the amount of 266 040 BGN to “Energo – Pro Mrezhi” AD for committing a violation of art. 21 of the LPC, namely for abusing its dominant position by undue postponement of the process of connecting a producer of electricity from alternative energy resources to the general electricity network;
2. By adopting Decision № 280/05.03.2014 the Commission imposed a pecuniary sanction in the amount of 25 100 BGN to “Transkom Avtogara”, Rousse and 10 261 BGN to “Galisi Avtogara”, Rousse for committing a violation of art. 21 of the LPC, namely for abusing its dominant position by defining the pricing model of the provided service “sector use” which can prevent, restrict or disrupt the competition on the market for the service “long-distance bus transport”;
3. By adopting Decision № 641/14.05.2014 the Commission imposed a pecuniary sanction in the amount of 61 881 BGN to “Toplofikaciq Sofia” AD for committing a violation of art. 21 of the LPC, namely for imposing unfounded prices for the undertakings responsible for the distribution of thermal energy which has the result of placing them in a disadvantaged position;
4. By adopting Decision № 698/27.05.2014 the Commission imposed a pecuniary sanction in the amount of 4 800 600 BGN to “Sofiiska voda” AD for committing a violation of art. 21, s. 1 of the LPC, namely for abusing its dominant position;
5. By adopting Decision № 1054/29.07.2014 the Commission imposed a pecuniary sanction in the amount of 23 377 600 to “Bulgargas” EAD for committing a violation of art. 21 of the LPC, namely for imposing unfair commercial terms and conditions;
6. By adopting Decision № 1398/29.10.2014 the Commission imposed a pecuniary sanction in the amount of 268 000 BGN leva to “ViK – Steneto” EOOD, Troyan for committing a violation of art. 21 of the LPC, namely for abusing its dominant position by unilaterally imposing pricing models for the provision of services by ViK regarding the reception, passing and filtrating of industrial waste to “Lesoplast” AD (renamed to “Velde Bulgaria” AD).

**Number of legal proceedings and adopted decisions under Chapter 4 “Abuse of monopoly or dominant position” of the LPC for the period of 2010-2014:**



#### 4. Sectoral analyses

24. In 2014 the Commission initiated one legal proceeding for conducting a sectorial analysis of the insurance market.

25. By adopting Decision № 587/08.05.2014 on the basis of art. 91, s. 5, ss. 2 in connection with art. 60, s. 1, ss. 21 in connection with art. 8, s. 10 of the LPC, during the accounted year the Commission endorsed a sectorial analysis on the level of competitiveness of the market of natural gas transportation and distribution in Bulgaria and hence lobbied the Minister of Economy, Parliament and the State Energy and Water regulatory Commission, in accordance with their respective competence, for the eventual adoption of appropriate measures for improving the competition within that market.

26. The analysis examined every single activity related to the process of distribution, transportation and storage of natural gas with the sole purpose of detecting any potential problems in the period of January 2008 to June 2013 related with the functioning and the interrelationship between the different levels.

27. On the basis of this analysis the Commission discerned particular problems which in different severity impacted the vertical structure of that market.

28. The nature of the problems preventing the creation of a competitive market environment in the natural gas market consists of the dependence of the distributions, made to a single location within the territory of the country, by the single distributor who has the capacity to supply the necessary quantities of natural gas. The situation is further burdened by the concentration of legal rights over the relevant transportation infrastructure to and the market position of the pre-existent distributor (Bulgargas), irrespectively of the attempted liberalisation, which has negative impact on the customer distribution market as well.

29. Another issue is the delay in the procedure for awarding “Bulgartransgas” EAD a certificate for becoming an independent operator of the transportation network, the lack of rules governing Bulgartransgas’ transportation network as of this moment and the created possibility for reserving the full capacity of the only gas storage facility on the territory of the country by a single undertaking.

30. The analysis made it clear that solving the problems of the Bulgarian gas market demands further efforts to be made both by the legislative and the executive branches as well as the energy regulator, all acting within their respective competencies. The possible steps in the process of overcoming the already identified issues include the completion of the current investment projects for building gas interconnection systems.

31. According to the Commission, establishing an open and competitive market for the distribution of natural gas from different suppliers could potentially lead to reduction in the distribution prices which will have positive impact on the competition and the economy of the country.

## **5. Concentrations between undertakings**

### **5.1 *Legal proceedings***

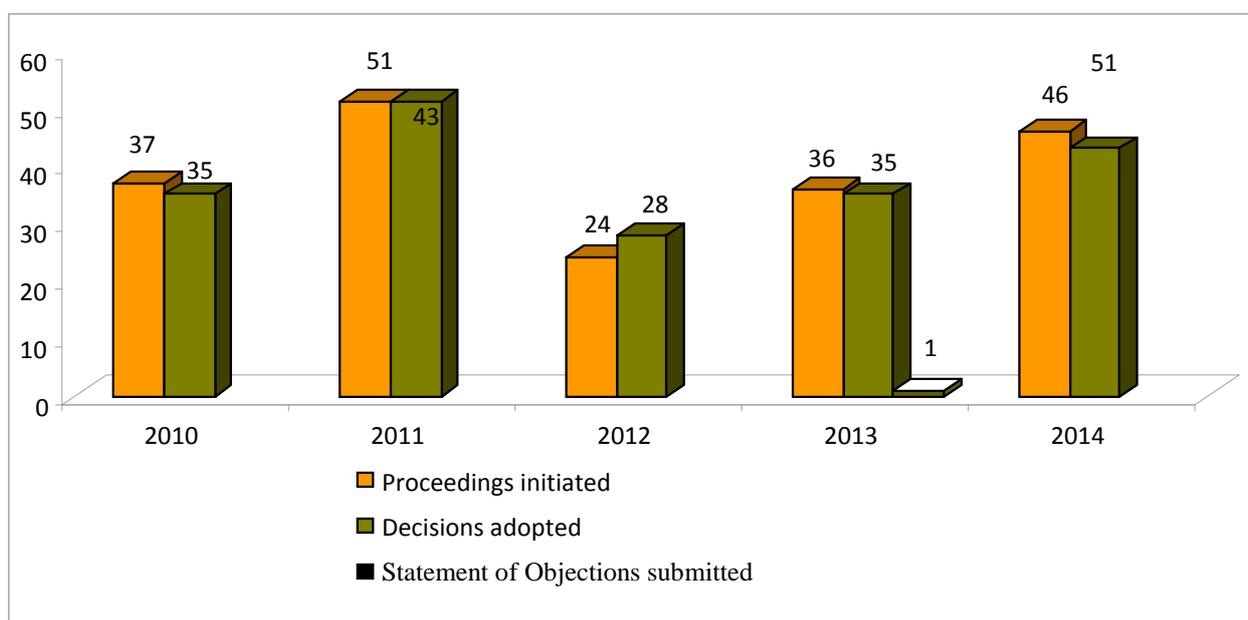
32. In 2014 the Commission conducted 46 legal proceedings as a result of the received notifications for concentrations between undertakings waiting for approval in accordance with art. 22, s. 1 of the LPC.

### **5.2 *Adopted decisions***

33. In 2014 the Commission has adopted 43 decisions under Chapter 5 of the LPC. During the accounted period the CPC has been informed of the completion of two concentrations in the electronic messages sector – the acquisition of Telecom Austria (with its subsidiary on the territory of the country “Mobiltel” EAD) by the Dutch undertaking Karso Telecom, B.V. and the acquisition of a majority controlling package by “BTK” EAD over “NURTS Bulgaria” AD which prompted the CPC, by adopting Decision № 1524/09.12.2014, to initiate an in-depth investigation in accordance with art. 83, s. 1 of the LPC.

34. The Commission has analysed at least one concentration in the following sectors: energy; agriculture; oil and gas trade; banking; tourism; production and trade of beer; pharmacy; trade of flooring; construction; retail; courier services; trade of white and black technology/appliances; repair services.

**Number of legal proceedings and adopted decisions under Chapter 5 “Control over concentrations between undertakings” of the LPC for the period of 2010-2014:**



### 5.3 *Application of Regulation № 139/2004*

35. In accordance with Regulation № 139/2004 on the control over concentrations between undertakings (Merger Clearance Regulation), the European Commission provides Member States with the list of notifications for completed concentrations made to it and the motivated claims submitted to the European Commission by the parties involved in the respective deal.

36. The European Commission is competent to analyse concentrations exceeding the turnover limits set out in art. 1, 2 and 3 of the Merger Clearance Regulation, i.e. these concentrations that have a Community dimension to them. Also, there are mechanisms in place for referring a given concentration to the jurisdiction which is best positioned to analyse it. The legal requirements and applicable timeframes for the referral of concentrations to or from the European Commission are clearly stated in the Commission Notice on the referral of notification of concentrations.

37. In 2014 the CPC conducted analyses on the information contained in 343 notifications and motivated claims for concentrations between undertakings, received in the abovementioned procedural manner, with the sole purpose of determining the applicability of the procedure for making referrals to/from the European Commission in accordance with the Merger Clearance Regulation and the relevant Commission Notice.

## 6. **Unfair competition**

### 6.1 *Legal proceedings*

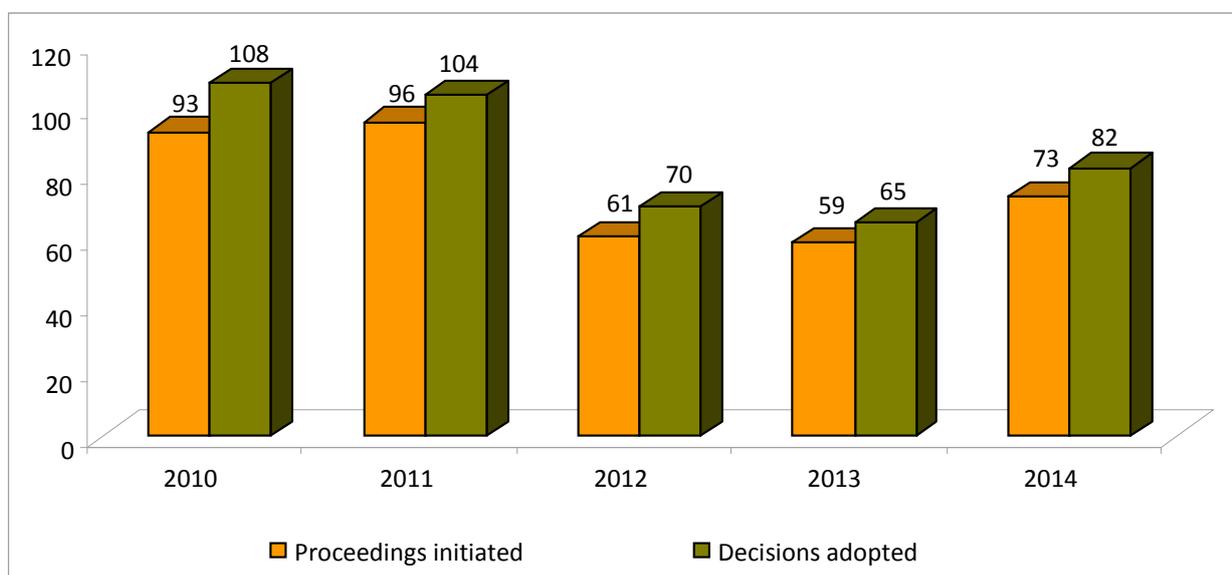
38. During the aforementioned period the Commission has conducted 73 legal proceedings determining the existence or lack of violations under Chapter 7 of the LPC.

## 6.2 *Adopted decisions*

39. During the same period the Commission has adopted 82 decisions concerning the application of Chapter 7 of the LPC and has imposed sanctions and/or fines in the amount of 4 882 475,45 BGN.

40. The most frequent violations in the field of unfair competition committed throughout 2014 concern the breach of good faith by undertakings when engaging in misleading and comparative advertising practices as prohibited under art. 32 of the LPC and breach of the general prohibition of unfair competition as prohibited under art. 29 of the LPC. In 2014 the number of breaches committed in violation of art. 36 of the LPC, governing the unfair solicitation of clients, has been high as well.

### **Number of legal proceedings and adopted decisions under Chapter 7 "Unfair competition" of the LPC for the period of 2010-2014:**



## 7. **Competition advocacy**

41. In order to protect the free economic initiative and to prevent the restriction or disruption of competition, as laid down by art. 28 of the LPC, the CPC conducts legal analyses in order to determine the conformity of the LPC with any proposals for normative or normative administrative and general administrative acts; any existent and applicable normative or normative administrative and general administrative acts; any proposals for regulatory acts created by associations of undertakings for regulating their members' activities.

### 7.1 *Legal proceedings*

42. In 2014 the Commission has conducted 28 legal proceedings on competition advocacy issues.

### 7.2 *Adopted decisions*

43. In 2014 the Commission has adopted 32 decisions through which it has accepted different statements regarding various proposed or existent normative or administrative acts while at the same time ascertaining the existence or lack of contradiction with the rules on competition. The number of the adopted decisions is the same as it was the two years before that.

44. The CPC has sent recommendations for amendment or supplementation with regard to the following proposals for normative acts:

- Proposals for the Law on Amendment and Supplementation of the Law on Protection of Competition;
- Proposal for a decree by the Council of Ministers on the approval of the fees tariff collected under Chapter 11 of the PPA by the Commission on Protection of Competition and the Supreme Administrative Court.

45. The CPC has submitted proposals for the amendment and supplementation of the following normative acts which have the effect of preventing, restricting or disruption competition:

- Protection and Development of Culture Act
- Medical Establishments Act
- Health Insurance Act
- Independent Financial Audit Act
- Ordinance № 1 of 14.02.2007 on the Registration, storage and access to the Commercial Register
- Ordinance on the Conditions and procedure for awarding the implementation of activities in forest areas – state and municipal ownership and use of timber and non-timber forest products;
- Ordinance № 104 of 22.08.2006 on the Control over the market offering and utilisation of plants protection products;
- Ordinance № 4 of 04.03.2009 on the Conditions and procedure for prescription of medicinal products;
- Code on the Legalisations, attestations and translations of documents as well as the normative or general administrative acts.

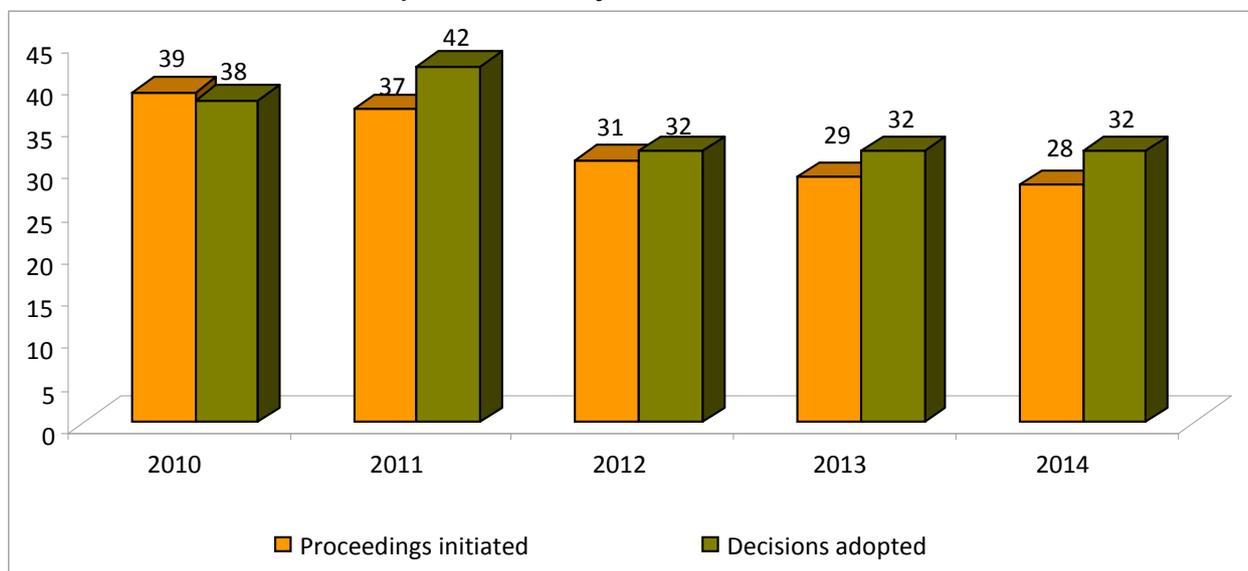
46. The CPC has submitted proposals for the amendment and supplementation of general administrative acts:

- National framework contract;
- Conditions and procedure for the conclusion of contracts for the prescription of and payment for medicinal products under art. 262, s. 6, ss. 1 of the Law on the Medicinal Products in Human Medicine, medicine and diet food supplements used for special medicinal purposes and paid for partially or in-full by the NHIF;
- Standard contract attached to the Conditions and procedure for the conclusion of individual contracts for the provision and payment of medicinal products under art. 262, s. 5., ss. 1 of the Law on the Medicinal Products in Human Medicine, medicine and diet food supplements used for special medicinal purposes and paid for partially or in-full by the NHIF.

47. The CPC has submitted proposals for the amendment and supplementation of proposals for general administrative acts as well:

- Proposal for the amendment/supplementation of the Conditions and procedure for the conclusion of contracts for the provision and payment of medicinal products under art. 262, s. 6, ss. 1 of the Law on the Medicinal Products in Human Medicine, medicine and diet food supplements used for special purposes and paid for partially or in-full by the NHIF;
- Proposal for the amendment/supplementation of the Standard Contract attached to the Conditions and procedure for the conclusion of individual contracts for the provision and payment of medicinal products under art. 262, s. 5, ss. 1 of the Law on Medicinal Products in Human Medicine, medicine and diet food supplements used for special purposes and paid for partially or in-full by the NHIF.

**Number of legal proceedings and adopted decisions under Chapter 6 “Sectorial analyses and Competition Advocacy” of the LPC for 2010-2014:**



## 8. Public procurement and concessions

### 8.1 Public procurement procedures

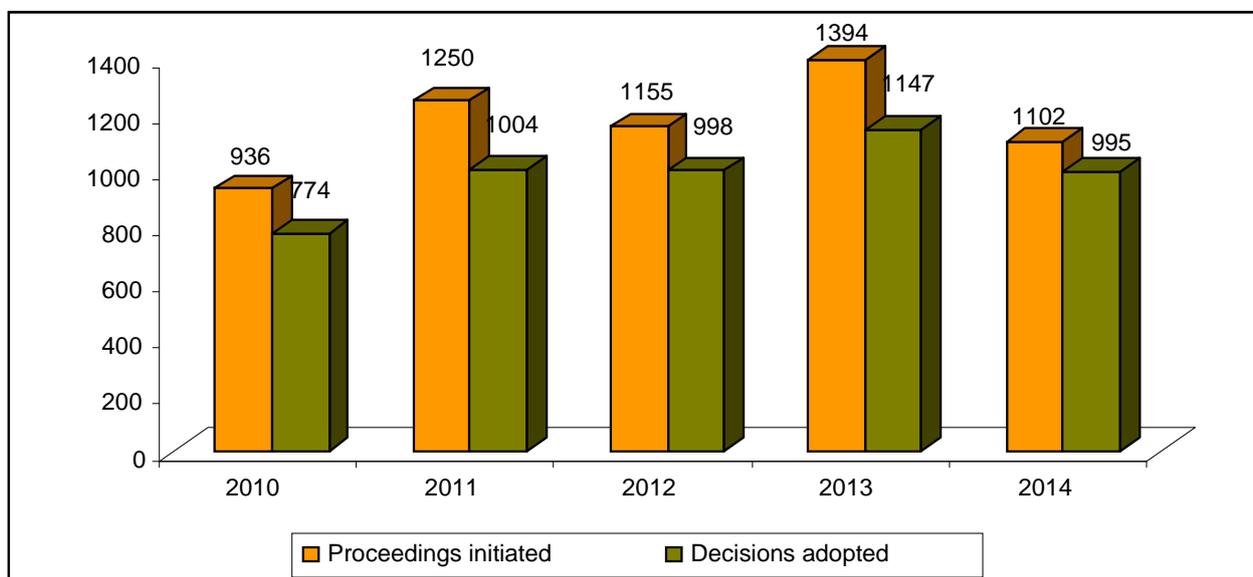
48. According to art. 120, s. 1 of the PPA, every decision adopted by the awarding authority in public procurement procedure is subject to appeal before the Commission on Protection of Competition with regard to its legality. Subject to appeal are any actions or omissions by awarding authorities which have the effect of restricting the access and participation of tenderers in the public procurement procedure.

49. During the accounted period the CPC has received 1735 claims based on art. 120 of the PPA. The number of proceedings conducted on the basis of these claims is 1102.

50. In 2014 the Commission has adopted 995 acts (either decisions or rulings) in the process of finalising initiated legal proceedings under the provisions of the PPA. The CPC has adopted 825 decisions and rulings, 154 of which regarding claims for the implementation of interim measures and additional 167 regarding claims for the licensing of premature implementation. By exercising its competence with regard

to the imposition of sanctions, within the scope of 10 decisions in 2014 proprietary sanctions in the amount of 220 881,39 BGN.

**Chart 1. Number of legal proceedings and adopted decisions under Chapter 11 “Appeal” of the PPA for the period of 2010-2014:**



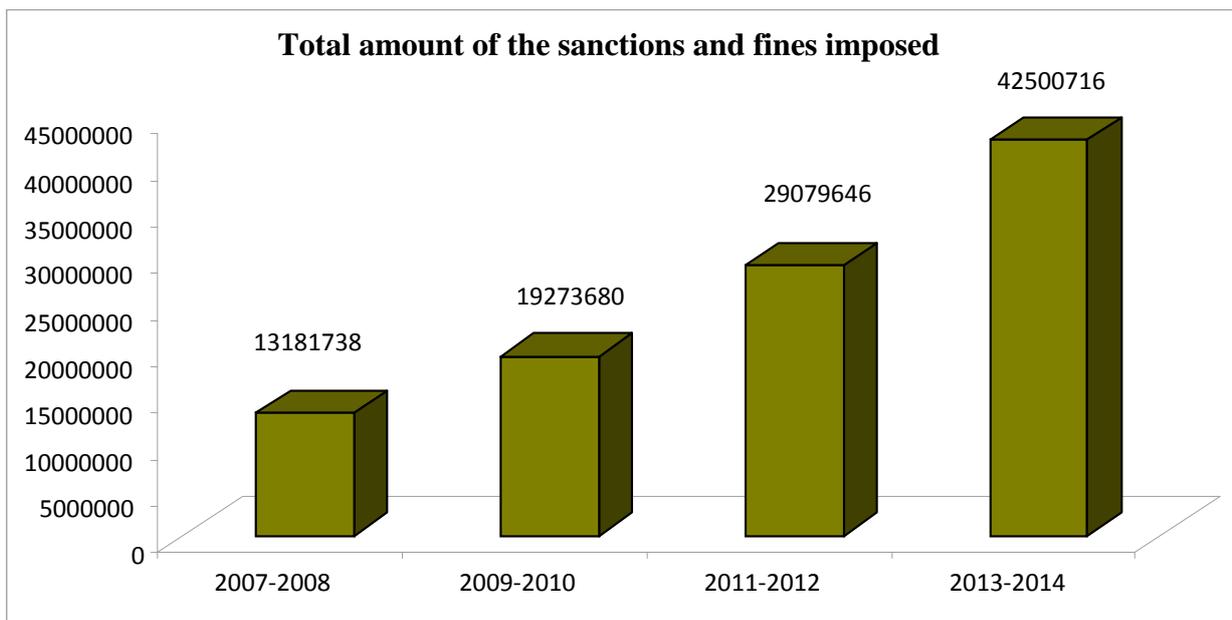
## 8.2 Concessions

51. According to art. 83, s. 1 of the CA, any decision, action or omission by any body, commission or authorised person involved in the procedure for awarding a given concession is subject to appeal before the Commission on Protection of Competition with regard to its legality.

52. During the accounted period the CPC has received 17 claims based on art. 83 of the CA. The number of conducted legal proceedings is 9. During the accounted period the CPC has disregarded 5 rulings regarding claims for the implementation of interim measures and hence has not imposed any interim measures for freezing the awarding procedure. There is only 1 ruling of the CPC regarding a claim for the licensing of premature implementation in accordance with the procedure set out in the CA.

## 9. Imposed fines and pecuniary sanctions

53. In 2014, as a result of its own accord and the adoption of its decisions, the CPC has imposed fines and pecuniary sanctions in the amount of 33 912 838,84 BGN for committed violations of the provisions of the PPA and the LPC, including the end amount of fines imposed for failures or partial failures of natural and legal persons to provide information, and the end amount of fines imposed to natural persons for their liability as a result of their participation in the aforementioned breaches of the provisions of the LPC.

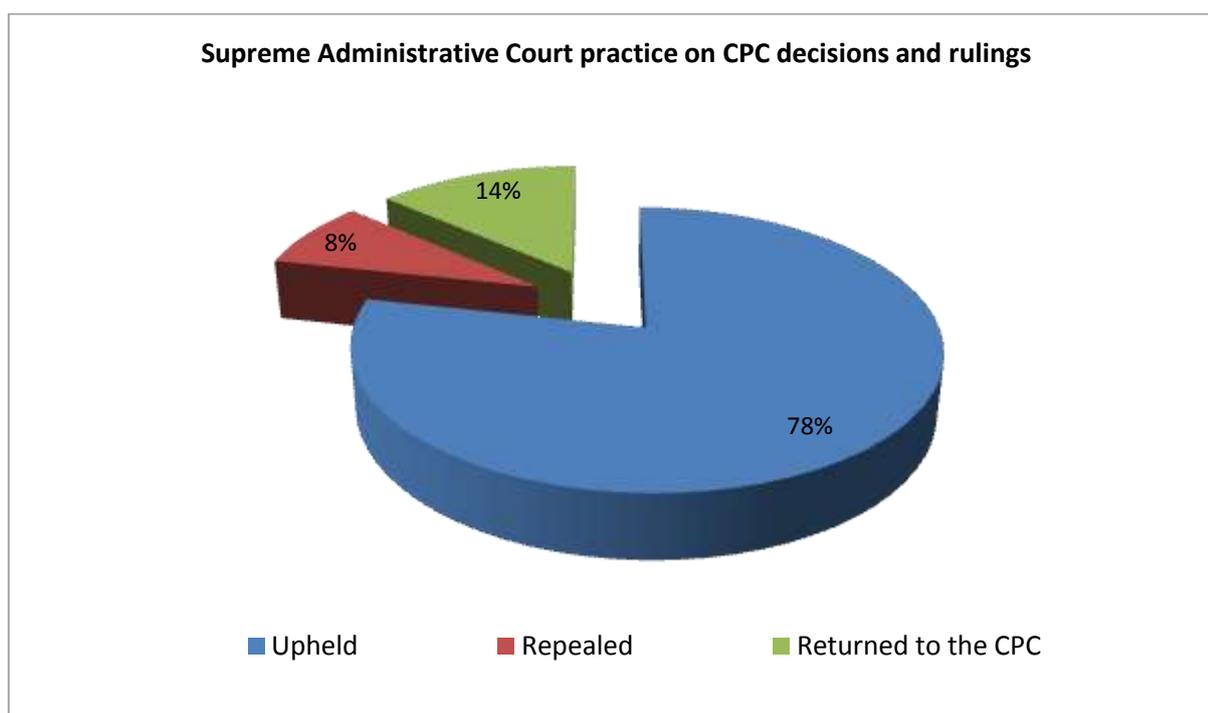


54. Significant rise in the amount of fines and pecuniary sanctions imposed for violations committed in the period of 2013-2014 can be noticed as compared to previous years. Despite the existent differences in the levels of total fines and proprietary sanctions imposed for each year, the current trend of increasing that amount with each year is maintained which constitutes clear evidence of the Commission’s policy on pursuing adequate punishment of violators, leading to the removal the effect of the economic advantages these violators have managed to obtain as a result of the committed violations as well as creating an adequate preventative effect for market participants.

**10. Litigation before the Supreme Administrative Court**

55. In 2014, 88 claims have been filed in the Supreme Administrative Court against decisions and rulings adopted by the Commission on Protection of Competition.

56. In 2014, the Supreme Administrative Court has ruled on 121 claims against decisions and rulings adopted by the Commission, 41 of which have received final rulings by the court.



## 11. European Affairs

57. Bulgaria's membership of the European Union (EU) imposes an obligation on the CPC to actively participate in the application and enforcement of the EU competition rules in cooperation with the European Commission (EC) and the national competition authorities of the other Member States. This cooperation takes place mainly within the framework of the European Competition Network (ECN). The Network plays a key role in distributing the workload amongst the national competition authorities, the EC and the courts and also guarantees the effective application of the rules on competition. The participation of the CPC in the ECN guarantees the permanent exchange of information with the rest of the national competition authorities and facilitates the process of achieving and protecting effective competition within the internal market of the EU.

### 11.1 Participation in the European Competition Network

58. As a result of Bulgaria's accession to the EU, the CPC, in its capacity as the national competition authority in Bulgaria, has become a competent member of the ECN. Commission's representatives participate in a number of ECN's working groups and also they can attend and participate in the hearings of the Advisory Committee on Restrictive Practices and Dominant positions and the Advisory Committee on Concentrations. The purpose of these hearings is to provide undertakings' representatives to submit their views on a particular case. The Advisory Committees fulfil a consultative role as they produce expert statements on decisions proposals and other official acts provided by the EC.

59. In 2014 the CPC participated in 17 hearings of horizontal working groups and sectorial subgroups (specialised in different sectors of the economy) of the ECN where ideas and experience in dealing with various issues are exchanged amongst the members of the network. The CPC's representatives took part in 3 plenary sessions throughout which questions, related to the policy and practice of applying the rules on competition, are discussed, statements, on questions presented by the working groups, are made and documents, produced within the framework of the different working groups,

are endorsed. The CPC’s representatives took part in two plenary sessions of the Advisory Committee on Restrictive Practices and Dominant Positions as well in the capacity of rapporteur.

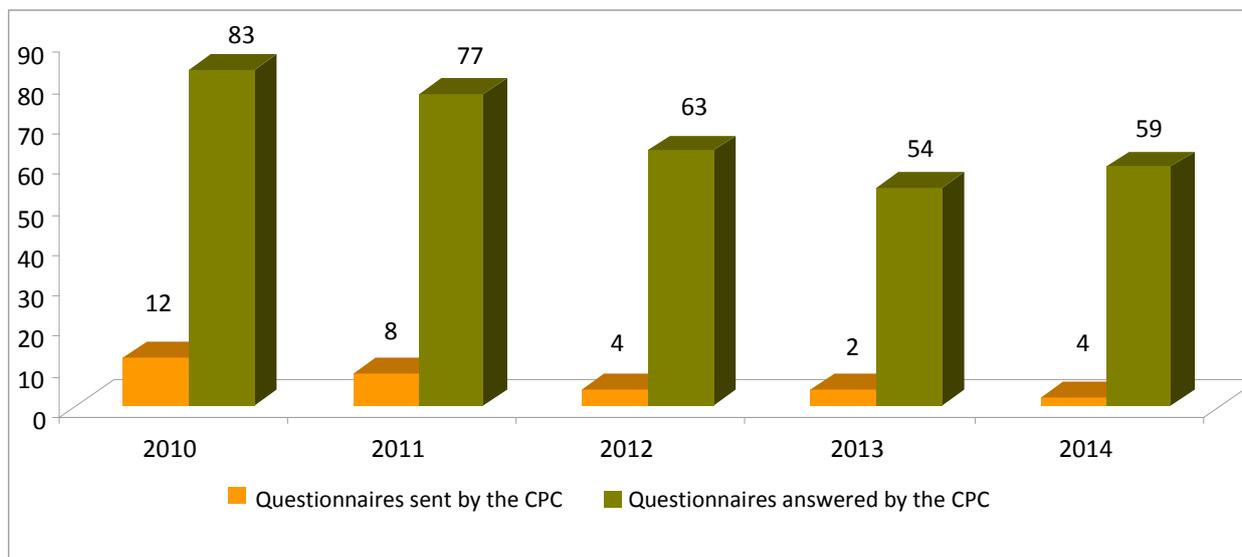
60. In June and November representatives of the CPC attended the meetings of the chairmen of the national authorities, members of the ECN. Among other issues, during the two meeting future steps of development in relation to the 10<sup>th</sup> anniversary of the application of Regulation 1/2003 were discussed.

61. The Chairman of the CPC, Mr. Petko Nikolov, gave a lecture on the forum organised within the framework of the Italian chairmanship of the EU, on the European day of competition held in October 2014 in Rome, Italy.

### 11.2 Exchange of information within the ECN

62. ECN provides national competition authorities and the EC with the opportunity to constantly exchange information between each other which appears to be an effective tool for researching the practice of the EU with regard to a particular issue. In that regard the ECN is also a platform where its members procure specific type of cooperation by forwarding and responding to questionnaires on particular cases or other issues within the competition law/policy area. Within the context of close cooperation prescribed by EU law, during the last four years the CPC has been maintaining high levels of responsiveness to questionnaires which clearly indicated the CPC’s position as a competent and reliable partner within the ECN.

**Questionnaires within the ECN**



63. In 2014 the CPC responded to 59 questionnaires sent to it by the European Commission, different working and sectorial groups within the ECN as well as by other national competition authorities within ECN. During the previous year the CPC again used this form of cooperation as it sent out questionnaires to other national competition authorities within the ECN twice.

### 11.3 Participation within the Organisation of the European Competition Authorities

64. In 2014 the CPC took part in the working process of another major forum for discussing various European issues – Organisation of the European Competition Authorities (ECA).

65. The chairman of the CPC, Mr. Petko Nikolov, participated in the organisation's annual meeting which was held in May 2014 in Prague, the Czech Republic.

#### ***11.4 Coordination of European cooperation***

66. In 2014 the CPC, in its capacity as the lead national competition authority within working group №5, "Competition", of the Council on European Affairs, continued to fulfil its duties as envisaged by Decree № 85 of 17.04.2007 on the organisation and coordination of European affairs.

### **12. International Cooperation**

#### ***12.1 Participation in the International Competition Network (ICN)***

67. In its capacity as a member of the International Competition Network (ICN), in 2014, the CPC maintained its active participation in the working groups of the network. ICN examines issues in the area of antitrust legislation and competition policy. The inherent aim is to increase the cooperation amongst the national competition authorities and hence to achieve further consolidation of the competition legislation and the relevant procedures for its application. In April 2014 the CPC took part in the Annual conference of ICN in Marrakech, Morocco.

#### ***12.2 Cooperation in the Organisation for Economic Cooperation and Development (OECD)***

68. In 2014 the CPC maintained its active participation within the Competition Committee and the working groups of the Organisation for Economic Cooperation and Development (OECD). The Commission obtained the status of an observed of these structures in 2009.

69. Representatives of the CPC participated in all three annual sessions organised by the Competition Committee (OECD) as well as in the annual Global forum on competition. For the aforementioned meetings the Commission produced and presented 7 reports on topics related to competition law and policy – Competition law related questions in the process of distribution of medicinal products; Competition in the air transport; Research of completed concentrations and concentrations exempted from notification; Generic medicinal products; Changes of the institutional structure of competition authorities; The use of markers in Leniency programmes on immunity from fines or reduction of fines; Annual report on the activity of the CPC for 2013.

70. The Commission actively participated in the long-term projects of the OECD by answering questionnaires and taking part in discussions on the creation of indicators for evaluating competition policies and the level of international cooperation.

71. For the first time in 2014 the Commission was invited to participate in the plenary sessions of the Consumers Committee of the OECD.

72. Experts of the CPC actively participated in the seminars organised by the Regional centre for competition (OECD) in Budapest on the topic – "Public tenders and bid-rigging"; "Concentrations on retail markets" and "Evidence in the process of proving violations".

#### ***12.3 Partnership with the UN Conference on trade and development (UNCTAD)***

73. The CPC participated in the 14<sup>th</sup> session of the intergovernmental expert group on competition law and policy organised by the UNCTAD in Geneva, Switzerland where the representatives of the CPC gave a presentation about the Sofia Competition Forum and presented the joint project of the Commission and the UNCTAD.

#### **12.4 Sofia Competition Forum (SCF)**

74. The Sofia Competition Forum is a joint initiative between the CPC and the UNCTAD launched in 2012 which has its main purpose to increase cooperation amongst the national authorities of the states from the Western Balkan Peninsula. The audience of the forum consists of representatives from the national competition authorities of the countries probationers for joining the EU, the countries that could potentially become probationers for joining the EU and the countries who have recently become members of the EU (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Republic of Macedonia and Serbia). Depending on the type of the existent issues beneficiaries of the forum can be representatives of various regulatory bodies, ministries, agencies and courts from the countries in the Western Balkan Peninsula.

75. Two seminars within the framework of the Sofia Competition Forum were held in 2014 – the Fourth meeting of the SCF held on the 16.05.2014 and the Fifth meeting of the SCF held on 13-14.11.2014.

##### *12.4.1 The Fourth meeting of the SCF held on the 16.05.2014*

76. Special guest to the event was the Member of Parliament Dr. Mukisha Kitui – secretary general of the UNCTAD who made the first ever visit of an UNCTAD’s secretary general in Bulgaria. The opening ceremony was attended also by Mrs. Zinaida Zlatanova – deputy prime minister and justice minister of Republic of Bulgaria, and Mr. Dragomir Stoynev – minister of economy and energy. Amongst the participants of the seminar were other representatives from the UNCTAD, the OECD, DG-Competition of the EC, the World Bank, the Federal Trade Commission of the USA, the national competition authorities of Italy, Austria, Turkey, Russia and the countries from the Western Balkan Region.

77. The morning part of the event began by the presentation of the preliminary results of the evaluation of the competition legislation of Albania which was conducted by the UNCTAD. Reports on that topic were presented by representatives of the UNCTAD and other independent experts who participated in conducting the evaluation.

78. Afterwards a plenary session on the topic “Competition policy as the engine for economic growth” was held which included a presentation by the OECD, the DG-Competition of the EC and the World Bank. After the plenary session, two parallel panels discussing topics such as “The relationship between competition policy and sector regulation” and “New forms of control over market power” were held. Within these panels the beneficiaries of the SCF actively participated by sharing their experience with regard to the discussed issues.

79. The results of the special project of the SCF called “Comparative overview of the competition legislative regimes in the Balkan region” were presented within the framework of the seminar as well.

80. The participation of the secretary general of the UNCTAD and of high representatives from the Bulgarian government in this meeting serve as a positive indicator for the quality of the initiative and, undoubtedly, contributed to the prestige of our country as the leader in the Balkan region.

##### *12.4.2 The fifth meeting of the SCF held on 13-14.11.2014*

81. Taking into account the previous success of the SCF, in November for the first time the forum lasted for two days. The opening ceremony of the conference was conducted by Mr. Petkov Nikolov – deputy head secretary of the UNCTAD and Mr. Bojidar Loukarski – minister of the economy of Republic of Bulgaria. The USA, Japan, South Korea, Latin America, Italy, Spain, Austria, Turkey, Georgia, Germany, the Court of Justice of the European Union and many others shared their experience of law

enforcement. This authoritative international participation received a lot of public interest and hence was broadcasted by the media.

82. Taking into account the challenges identified in the comparative analysis report which the national competition authorities of the region are facing, the focus of this edition of the SCF fell on issues such as dawn raids and procedural fairness. These topics were preferred by the beneficiaries of the forum as topics of high priority. All the participants were presented with the opportunity to share their experience and exchange views on the aforementioned topics and to gain valuable knowledge with respect to these topics from the competition authorities of Germany, Spain, Japan and the USA. After the end of the plenary session all the participants were split into different groups and were presented with a hypothetical case scenario on the topic of dawn raids which they had to solve. The role-playing form of the discussion that took place received high interest and earned the active participation of the audience.

83. For the very first time a meeting between the national competition authorities and the authorities on consumer protection from the West Balkan Peninsula was organised within the framework of the forum. During this meeting, the amendment proposal of the Guidelines of the UN on consumer protection were presented, the common features between the two policies were discussed and the potential opportunities for active cooperation between the two authorities were examined.

#### **12.5 *Bilateral international cooperation of the CPC***

84. The CPC maintains its active cooperation with a number of national competition authorities and in 2014 it took part in several international forums which were held in Russia, Austria, Slovenia etc.

85. Experts of the Commission attended a meeting of the working group “Pharmacy” – a common initiative between the Russian Federal antimonopoly services (FAS) and the Italian competition authority. Also, the representatives of the CPC participated in a conference organised by the Eurasian Economic Community in Kaliningrad.

86. The CPC was also represented in the 7<sup>th</sup> annual Eastern European seminar organised by the Federal Trade Commission of the USA in Ljubljana, Slovenia; in the international conference on the anniversary of the Russian FAS; in the international seminar in Vienna, Austria.

87. Like every year, in 2014 representatives of the Commission and the Russian FAS completed bilateral study visits within the framework of the official Programme for cooperation between the two institutions.

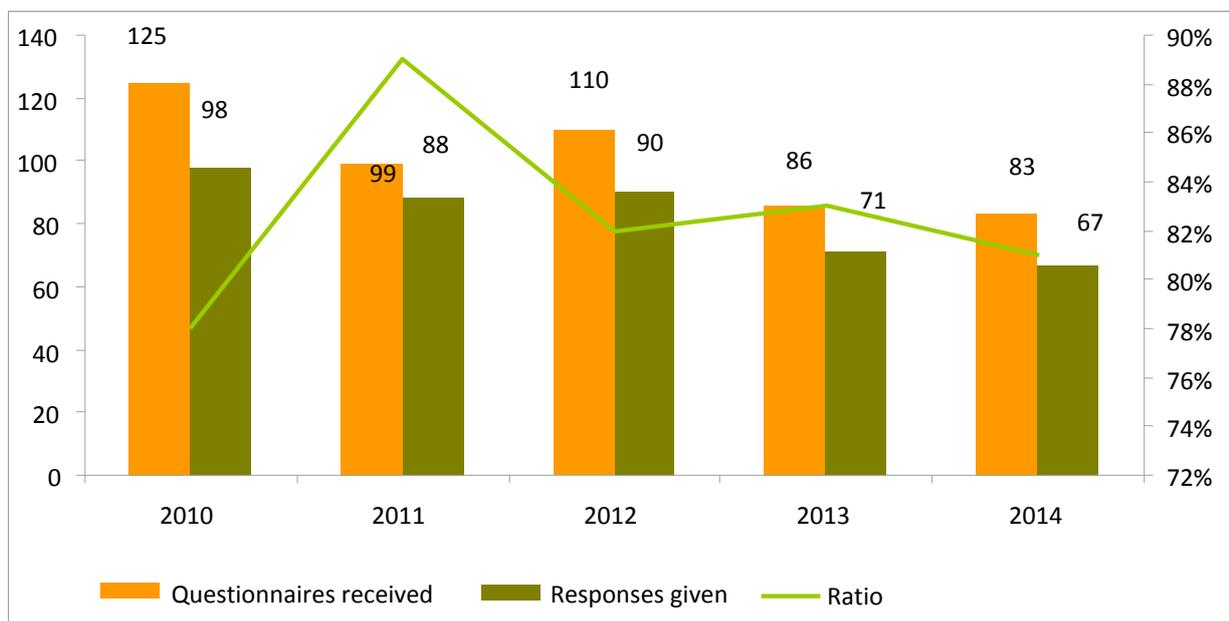
#### **12.6 *Exchange of information within the international networks and organisations of which the CPC is a member***

88. In 2014 the CPC received a number of different questionnaires as a result of its membership in the ECN, ICN, OECD, UNCTAD and other international organisations.

89. Despite the decrease in the number of the questionnaires that the CPC received throughout 2013, in 2014 the number was still relatively high – 83. The number of responses the CPC sent back in 2014 was 67, accounting for 81% of the number of received questionnaires which supports the trend of providing a high number of responses (between 78% and 89%).

90. Data about the number of questionnaires, responses by the CPC and the percentage of questionnaires responded to is illustrated by the graph.

Received questionnaires and responses given by the CPC for the period of 2008-2014:



### 13. Priorities and goals for 2015

91. The CPC's priorities for 2015 are determined both in accordance with the general priorities for achieving economic development endorsed by the Bulgarian Parliament and the country's duty, as a competent member of the European Union, to ensure direct application of the European legislation. The main priorities of the Commission are:

- i) **First, to support competition and free market initiative through its practice of applying the LPC, art. 101 and 102 of the TFEU. In order to achieve that goal the CPC will:**
  - *Increase the efficiency of its counteraction to prohibited agreements and abuses of monopoly or dominant position. The efforts will be directed towards:*
    1. Overseeing sectors of the economy which are important and sensitive to consumers and business such as the energy sector with particular focus on electricity production etc., so that legal proceedings for the determination of potential violations of art. 15 and art. 21 of the LPC and/or art. 101 and art. 102 of the TFEU are initiated;
    2. Conducting thorough process of overseeing undergoing public procurement procedures, investigating signals for bid-rigging violations and initiating legal proceedings on the basis of art. 15 of the LPC and art. 101 of the TFEU;
    3. Exercising permanent regulatory control over sectors important for competition and consumers by conducting sectorial analyses which would help to the CPC to produce a thorough analytical report on the regulatory framework and business environment within that sector as well as to establish the current development trends and their effect on competition;

4. Applying the best practices on the standard of proof of antitrust violations within the reach of the European competition legislation.
  - *Increase the efficiency of control exercised over the completion of concentrations between undertakings. The efforts will be directed towards increasing the use of the pre-notification contacts between the notifying party and the CPC in the cases of concentrations with purely national dimension as well as ones of multinational importance through consultations, producing statements and promoting the practice of the CPC with regard to concentrations. Encouraging the notifying parties to exercise their rights under art. 86, s. 2 of the LPC through the promotion and application of the 2011 Rules on protection of competition in cases of concentrations between undertakings*
  - *Support the development of competition by exercising its authority with regard to competition advocacy issues. It envisages to:*
    5. Further develop and participate in the creation of the normative act transposing Directive 2014/104/EC of the European Parliament and the Council of 26.11.2014 on certain rules governing actions for damages under national law for infringements of competition law provisions of the Member States and of the European Union;
    6. Support the development of competition by systematising the practice of CPC in competition advocacy in respect of the different sectors of the economy. The end result will be useful for both private subjects and administrative bodies dealing with public policies;
    7. Increase business awareness with regard to the rules on competition by producing Guidelines for assessing the conformity of normative and general administrative acts with the rules on competition which would be tailor-made for entrepreneurs and businesses;
    8. Set itself the aim of adopting supplementary measures by which it will raise the awareness of administrative bodies with respect to the necessity and benefits of conducting conformity assessments, including by further promoting the 2009 and amended in 2011 Guidelines by the CPC on assessing the conformity between administrative acts and the rules on competition;
    9. Increase the cooperation with the executive and legislative branches, sectorial regulators and local law enforcement agencies in order to achieve more efficient assessment of the conformity between administrative acts and the rules on competition;
    10. Insist on the introduction of mandatory conformity assessment measures so that all public bodies would request from the CPC in case that the acts of the former can affect competition. These assessments will be complemented by statements of the CPC which would recommend amendments and/or supplementation of the assessed acts. These statements provided by the CPC should not be legally binding on their addressees so that the competence of public bodies with regard to their specific functions will not be restricted;
    11. Initiate the process of expanding the scope of its competence to conduct conformity assessment so that these can be conducted with regard to other regulatory acts such as standard contracts or general terms which are subject to acceptance, approval or validation by another public body or regulator. Furthermore, the provisions of the LPC allow for such conformity assessments to be made with regard to proposals for normative or general administrative acts; enforceable normative and general administrative acts and proposals for

acts of associations of undertakings. The experience in competition advocacy shows that regularly problems for competition arise as a result of the endorsement of individual administrative acts which the CPC is not allowed to assess for conformity with the rules on competition;

12. Initiate legal proceedings on competition advocacy with regard to sensitive issues within the area of politics and competition. Initiating legal proceedings allows the Commission to focus its limited resources on the most sensitive sectors where the existent public limitations on competition have detrimental effects on the efficiency of the market and hence that has negative impact on consumers;
  13. Participate in international activities and projects, including seminars, conferences and meetings where the CPC will present its achievements in the spheres of law enforcement and competition advocacy. The participation of the CPC on international level provides the Commission with the opportunity to share its best practices in the sphere of conformity assessments between normative and general administrative acts and the rules on competition;
  14. To maintain, in its capacity as cofounder of the Sofia Competition Forum, its effort to establish close ties for cooperation with the national authorities of the countries from the Balkan Peninsula who are about to become members of the European Union. In that regard the CPC will maintain its role as a leader in working on common projects such as the production of comparative analyses of the legislations and practices in particular areas of competition and information exchange patterns. It envisages the production of a report called "Comparative overview of the Balkan competition regimes in the field of inspections on spot". Also, the release of periodical bulletin is envisaged as well which would help to increase cooperation and the process of exchange of information amongst national competition authorities.
    - *Support the development of competition and protect free economic initiative by its practice of applying the provisions of the LPC on unfair competition. In order to achieve this goal it is envisaged to:*
      1. Increase the preventative function of the Commission by:
        - Promoting the CPC's experience in investigating violations under Chapter 7 of the LPC through the publication of specialised information, participation in meetings and seminars with business representatives, regulatory bodies, nongovernmental organisations etc.;
        - Procuring preventative, sanctions-based policy in conformity with the 2011 amendments and supplementations of the *Methodology for Setting Fines under the Law on Protection of Competition*.
      2. Increase the efficiency of law enforcement by the CPC with respect to violations under Chapter 7 of the LPC by monitoring the behaviour of economic entities and engaging in constructive dialogue and cooperation with other public bodies, regional organisations and self-regulating organisations.
- ii) **Second, through its practice of enforcing the provisions of the PPA and the CA, to cooperate for ensuring the legality of spending of public finances. Therefore, the efforts will be directed towards:**

1. Achieving swiftness and efficiency in investigating claims against decisions, actions and omissions by the awarding authority under provisions of the PPA and decisions of the administrative bodies under art. 83 of the CA.
  2. Establishing permanent and unequivocal practice on the enforcement of the PPA and the CA in order to ensure legal certainty and raise awareness.
  3. Creating general criteria for assessment of the circumstances surrounding the process of examining and ruling on claims for the imposition of temporary freezing order on the procedure and for allowing the preliminary execution of the appealed decisions of tenderers and concessioners.
  4. Harmonising the law enforcement practice with regard to the provisions of the PPA and the CA with the current European trends within this area of jurisprudence.
  5. Promoting the rules and practices of the CPC in the area of appeals of public procurement and concession procedures.
- iii) Third, to maintain its role as a reliable partner in the sphere of coordination of European affairs and international cooperation as well as to actively cooperate with the other national competition authorities from the Western Balkan region within the framework of the Sofia Competition Forum, co-founded by the CPC and the UNCTAD:**
1. Active participation in the activities of the ECN and the ICN by sending of and answering to questionnaires in both networks;
  2. Participation in international seminars, conferences and meetings where the CPC will present its practice and achievements in the sphere of competition law and also to exchange law enforcement practices;
  3. Active participation in the activities of the Global forum and the Competition Committee of the Organisation for Economic Cooperation and Development (OECD) by presenting expert reports regarding the issues that were raised;
  4. Organisation of conferences, seminars or webinars within the framework of the SCF on sophisticated expert issues in the area of competition law, policy and economics.
- iv) Fourth, to develop professionally and technically the members of its administration in order to achieve the rest of its goals. In light of that the Commission will:**
1. Initiate projects for attracting and maintaining highly-qualified and motivated experts at the Commission;
  2. Promote constant professional development in the spheres of competition, public procurement and concession procedures;
  3. Ensure the participation of the CPC's team in national and international forums.