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## **Global Forum on Competition**

### **COMPETITION AND COMMODITY PRICE VOLATILITY**

#### **Contribution from Bulgaria**

-- Session I --

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## COMPETITION AND COMMODITY PRICE VOLATILITY

-- Bulgaria --

### Introduction

1. The subject of agricultural commodities has attracted a mounting public and political attention both in Bulgaria and internationally. The importance of each individual market such as cereals (wheat, flour and bread), dairy products and sunflower oil is obvious; however the continuous price fluctuations have raised a number of discussions concerning the competition within each sector. In this line of observations, the Bulgarian Commission on the Protection of Competition (CPC) has undertaken a number of initiatives, as follows:

#### 1. Initiatives of the CPC in the agricultural commodity sector

##### 1.1 *Cartel Investigations*

###### 1.1.1 *Sunflower cartel - CPC Decision № 1150 of 27.12.2007*

2. The Commission initiated an investigation of prohibited price fixing agreements/decisions by the producers of sunflower oil and the industry's trade association. The procedure started on September 18<sup>th</sup>, 2007 and closed on December 27<sup>th</sup>, 2007; see CPC Decision № 1150, dating 27.12.2007.

3. Essentially, the cartel targeted horizontal effects within the markets of production and distribution of sunflower seed, procession of seed, and production and trade in sunflower oil. The legal basis was addressed in Art.9 (1) of the LPC (repealed).

4. The detected conduct concerned the Union of Producers of Vegetable Oils and Oil Products (UPVOOP) that organized regular meetings with members, where the purchased price of sunflower was discussed. The investigation established that the seed of harvest 2006 was directly fixed and the market price for sunflower oil was indirectly fixed as well. The UPVOOP also collected sensitive price information from its members and used it to coordinate their market policies.

5. The duration of the infringement lasted from 2002 to 2007. The remedies imposed involved fines: UPVOOP was charged a fine of BGN 5 000 (EUR 2 500) and 13 other undertakings – members of the UPVOOP were charged individual fines amounting in total BGN 1 710 000 (EUR 855 000). The then existing LPC, repealed in December 2008, did not provide for a proposal of commitments procedure. CPC's Decision was appealed by the UPVOOP and the relevant undertakings before the Supreme Administrative Court, which upheld the Decision of the CPC but reduced the amounts of fines imposed to individual undertakings to a total amount of BGN 813 000.

6. The case did not involve any cooperation with foreign competition authorities.

*1.1.2 Bread cartel – CPC Decision № 622 of 22.07.2008*

7. On July 26<sup>th</sup>, 2008 the CPC initiated an investigation of prohibited decisions of associations of the following undertakings: 1) Federation of Bread and Pastry Producers in Bulgaria (FBPPB); 2) Association of Bread and Pastry Producers “Bread for Bulgaria” (ABPPBB); 3) Regional Union of Bread and Pastry Producers – Bourgas (RUBPP).

8. The cartel targeted horizontal effects within the markets of production and distribution bread. The legal basis was addressed in Art.9 (1) of the LPC (repealed). All of the three associations of bread producers (two operating at the national level and one at the regional level) coordinated the pricing and commercial policy of their members and organized an exchange of price information among them. The associations collected data on retail prices from members and disseminated the information with pricing policy instructions.

9. The duration of the infringement lasted from 2002 to 2007. The remedies imposed involved fines: 1) FBPPB was charged a fine of BGN 15 000 (EUR 7 500); 2) ABPPBB was charged a fine of BGN 10 000 (EUR 5 000); 3) RUBPP was charged a fine of BGN 10 000 (EUR 5 000). The then existing LPC, repealed in December 2008, did not provide for a proposal of commitments procedure. The CPC Decision was appealed by the three associations before the Supreme Administrative Court, which upheld the Decision against two of the associations (FBPPB and RUBPP) and confirmed the fines imposed, but repealed the CPC Decision with respect to the other association (ABPPBB).

10. The case did not involve any cooperation with foreign competition authorities.

*1.1.3 Dairy Processors Association cartel - CPC Decision №650 of 24.07.2008*

11. In September 2007, the Commission launched an investigation of prohibited decisions of associations of undertakings- the Association of Dairy Processors in Bulgaria (ADPB) and National Association of Dairy Processors (NADP). The cartel targeted horizontal effects within the markets of production and distribution of white and yellow cheese and the related market of purchase of raw cow milk.

12. The associations organized regular meetings where purchase prices of raw cow milk were discussed and additionally issued recommendations to their members on purchase price setting, bonus and rebates schemes. NADP had adopted a decision on setting a minimum price level of white cheese and raw cow milk. Both associations collected and disseminated sensitive price information to members. The duration of the infringement lasted as follows: 1) ADPB: 2002 – 2007; 2) NADP: 01.12.2006 - September 2007. The imposed fines are: ADPB BGN 15 000 (EUR 7 500) and NADP - BGN 10 000 (EUR 5 000). Under the former LPC, repealed in December 2008, there was no provision for a proposal of commitments procedure. The Decision was appealed by both associations before the Supreme Administrative Court, which upheld the Decision against both associations and confirmed the fines imposed.

13. The case did not involve any cooperation with foreign competition authorities.

*1.1.4 Union of Poultry Breeders - CPC Decision № 601 of 17.07.2008*

14. In September 2007, the Commission initiated an investigation of prohibited agreements of undertakings producing poultry meat and eggs and prohibited decisions of an association of undertakings - Union of Poultry Breeders in Bulgaria (UPBB). The cartel targeted horizontal effects within the markets of production and distribution of poultry meat and eggs, and the related markets of eggs intended for industrial processing.

15. The infringement concerned the behavior of the association and its members, acting individually or in concert with the UPBB, adopted agreements/decisions in fixing minimum prices of poultry and eggs, production limits and production quotas. In addition, they also shared sensitive information on produced quantities of chicken, poultry meat and eggs in order to monitor their compliance with the abovementioned decisions. The period of the infringement encompassed 2002 - 2007. The sanctions amounted to: 1) UPBB, a fine of BGN 5 000 (EUR 2 500); 2) 26 undertakings – members of the UPBB, 19 of them active in market for eggs, 5 acting in the market of poultry meat and 2 of them carrying out activities in both markets- individual fines for a total of BGN 288 000 (EUR 144 000).

16. CPC Decision was appealed by the UPBB and the relevant undertakings before the Supreme Administrative Court (SAC), which upheld the Decision of the CPC and confirmed the fines imposed. The Decision of the Supreme Administrative Court (at the first instance) is being appealed by the undertakings before the cassation instance of the SAC. The case did not involve any cooperation with foreign competition authorities.

*1.1.5 Retail stores chains - CPC Decision №121 of 03.02.2011*

17. In May 2009, the CPC initiated investigation of prohibited agreements/concerted practices among large retailers (Metro Cash and Carry Bulgaria, Billa Bulgaria, Kaufland Bulgaria and Co., HIT Hypermarket, Maxima Bulgaria and Piccadilly).

18. The case was also initiated to investigate possible abuses of dominant positions by large retailers. As none of the retailers was found to hold a dominant position on the relevant markets (supply and retail distribution of fast moving goods- bread, meat and eggs, milk and dairy products, oils and fats, perfumery and cosmetic) the CPC issued a separate decision (CPC Decision No121 of 03.02.2011) on the absence of an infringement under Art.21 of the Law on Protection of Competition.

19. Proceedings are still pending with respect to prohibited agreements/concerted practices.

20. CPC finds that a potential cooperation among the biggest names in the fast moving consumer goods sector in Bulgaria could have serious horizontal effects. The relevant market encompasses the supply and retail distribution of fast moving food (bread, meat and eggs, milk and dairy products, oils and fats) and non-food (perfumery and cosmetic) products.

21. A Statement of Objections was issued on February 3<sup>rd</sup>, 2011.

22. The SO addressed allegations against METRO, BILLA, KAUFLAND, PICCADILLY, MAXIMA and HIT accusing them in acting in a concerted practice, by coordination of their behaviour in the market of supply of fast moving food and non-food products. Also, CPC established that similar methods were applied in coordinating actions in the market of retail sales of these products during promotion campaigns. These common coordination practices consist of:

- “most favoured customer” clauses in vertical agreements with suppliers, allowing retailers to coordinate the level of supply prices and rebates, negotiated with their suppliers,
- “hub-and-spoke” information exchange through common suppliers of sensitive commercial information concerning the supply prices for the same products, as well as information concerning the marketing strategies of their competitors (planning of promotion campaigns),

- clauses in vertical agreements with suppliers, limiting the freedom of suppliers to participate in promotional campaigns of competing retailers and affecting the level of their delivery prices and rebates to competing retailers.

23. The parties are still to formulate their objections to the SO after the Supreme Administrative Court has rendered a decision on issues raised by the parties concerning the access to file to the contents of the SO, which remained undisclosed due to trade secret of the respective parties.

24. The case did not involve any cooperation with foreign competition authorities.

25. In all of these cases proceedings were initiated following series of press releases and publications concerning the sharp increase of the prices of bread, cheese, poultry meat and eggs, as well as sunflower oil in the period May - August 2007. In all of these publications senior representatives of national and/or regional trade associations (representing producers of bread, dairy processors, producers of poultry meat and eggs, as well as of sunflower oil) were interviewed giving their comments and statements explaining the reasons and predicting the exact rate and the exact dates for the increase in prices.

26. Infringements established in the Bread case, Cheese case and the Sunflower Seed and Oil cases involved price fixing, as well as exchange of price information among members of trade associations. In the Poultry Meat and Eggs case, in addition to price fixing and exchange of price information, a separate infringement was identified concerning agreements/decisions on production limits and production quotas allocation for eggs.

27. The abovementioned practices represent serious restrictions of competition by object as they essentially lead to collusion. During the proceeding at CPC and the appeals before the Supreme Administrative Court, the concerned undertakings and associations pleaded that such acts were necessary in order to stabilize prices and revenues and counter the adverse effects price volatility stemming from dumped imports, or inputs price volatility (raw materials and animal feedstuffs). CPC discussed these claim, finding that the nature and scope of the anticompetitive effects of these agreed restrictions clearly outweighed the competitive benefits claimed by the defendant undertakings and trade associations.

## **1.2 Sector Inquiries – Market Studies**

28. In its practice, CPC has performed a number of sector inquiries in the agricultural commodity sector, as follows:

### *1.2.1 Sector inquiry in the market for milk - CPC Decision №1641 of 29.12.2010*

29. In December 2010, the CPC launched a sector inquiry in the milk sector, focusing on the functioning of the markets of production and buying out of raw cow milk, milk processing and distribution of dairy products. The goal of this research was to clarify the sources of competition concern in a market, undergoing processes of restructuring and consolidation and yet demonstrating a significant level of fragmentation. The last had enabled processors to impose on dairy producers low prices for buying out of milk, in addition to other unfavourable conditions.

30. The market study was initiated on February 25<sup>th</sup>, 2010 and finalized on December 29<sup>th</sup>, 2010. The Commission inquired after the production of raw cow milk; the buying out of raw cow milk by the authorized purchasers/ processing industry; and the supply and distribution of liquid milk and dairy products through traditional wholesalers and retailers, and modern retailers.

31. The research results established the existence of a gap between primary producer prices for raw milk and processor prices as well as consumer prices for liquid milk and dairy products. Following a steep

parallel increase in all prices along the milk supply chain (producer prices for raw milk, processor prices and retail consumer prices for liquid milk and dairy products) in the second half of 2007 and during 2008, price trends in 2009 provided evidence of price stickiness at the level of processor prices and unequal distribution of returns primarily in favour of dairy processors. Despite the significant decline of the farm gate prices of raw milk in 2009, the level of processor and consumer prices for liquid milk and dairy products remained relatively stable, with a slight decline in the level of processor prices and almost no change at the consumption level.

32. The Commission established that domestic price trends for raw milk in follow the EU market, remaining at the average level of raw milk prices in most of the new member states. The inquiry did not identify evidence of infringement of Art.101 or 102 of the TFEU or of the equivalent national provisions of the Law on Protection of Competition. Infringement of the provisions of national competition law (prohibited decisions of associations of dairy processors) was established in an earlier antitrust investigation (see under Cartel investigations)

33. The analysis compared the development of farm gate price for raw milk in Bulgaria with its EU counterparts, but did not follow the development of retail prices for liquid milk and dairy products. The inquiry did not identify any buying alliances or buyer power concerns. Such issues related to the existence of buyer power were identified in a separate antitrust investigation on the relations among large trade chains and their suppliers (described in the relevant case sheet). The inquiry did not prompt specific proposals for regulatory or legal changes. The conclusions stressed the need for implementing the existing instruments of the CAP, the provisions of the EU and national competition law to resolve structural problems, resulting from the imbalance in the bargaining power among farmers and the processing counterparty. The analysis did not result in specific structural remedies proposals or proceedings or the identification of other issues leading to competition constraints.

34. At the beginning of 2011, CPC launched two **sector inquiries** in the food sector.

35. **The first inquiry** aimed to analyze the interrelated markets of production and marketing of oil bearing sunflower seeds and sunflower oil. It was initiated on 28.02.2011 and is expected to be finalized in the beginning of 2012. The analysis covers the following related markets: 1) production and trade in sunflower seed; 2) production and trade in sunflower oil.

36. CPC initiated the sector inquiry in order to study the reasons for the sharp increase in the prices of sunflower oil in the period August - October 2010. The goal is to determine the market structure and to examine whether price trends are grounded by objective economic factors, or due to any distorting anticompetitive practices.

37. Conclusions are not available at this stage.

38. **The second inquiry** is focused on the interrelated markets of bread wheat, wheat flour and bread for mass consumption. It was initiated on 29.03.2011 and expected to be finalized in the beginning of 2012. The inquiry covers the following related markets: 1) production, storage and trade with wheat; 2) production and trade of flour; 3) production and trade of bread.

39. The reason for launching this sector analysis is the recent increase of bread prices. The CPC has a reason to believe that there could be a particular asymmetry of the price increase for the ingredient flour and the wheat, which requires a close study of the entire production chain. CPC would seek that price increases are objective and market based.

40. Conclusions are not available at this stage.

41. Both inquiries were initiated as a result of the sharp increase of prices for end consumers and are aiming to establish whether price trends are due to objective economic factors or potential anticompetitive practices.

### **1.3 Merger Cases**

42. In relation to merger assessments in the fast moving consumer goods sector the CPC adopted 3 decisions during the reporting period. Markets concerned in all three cases are the retail trade with fast moving consumer goods via modern distribution channels (supermarkets, consumer markets, discounters, etc.) and via traditional small-area sales facilities (e.g. neighbourhood store, kiosk, grocery store, minimarket, etc.).

#### *1.3.1 Acquisition by “Maxima Bulgaria” Single Member Ltd. of the “Kaleya” retailer trade chain (CPC Decision No1244/07.10.2010)*

43. The CPC authorized the concentration as there were no concerns that the deal could have had a negative impact on competition.

#### *1.3.2 Acquisition by Lidl Bulgaria GmbH, Germany of “Plus Bulgaria” Single Member Ltd. retailer trade chain (CPC Decision No1199/07.10.2010)*

44. In this case CPC exercised its power under Article 9 (2) of Council regulation No 139/2004 by requesting partial referral of case COMP/M.5790-LIDL/Plus Trei Romania/Plus Trei Bulgaria from the EC to the CPC.

45. After conducting a preliminary analysis of the data contained in the notification, the CPC decided that the legal criteria of the provision had been implemented and that the deal would have exerted influence on the competition on the number of local Bulgarian markets.

46. To the extent to which the deal lead to the rise of horizontal effects on the retail market of fast moving consumer goods the EC agreed the case to be partially referred to the CPC in order for it to evaluate the effect of the deal with regard to the territory of the Republic of Bulgaria within the specified deadlines and in accordance with the national legislation.

47. With its Decision the CPC approved the concentration for the transaction did not seem to lead to establishing or strengthening of a dominant position.

#### *1.3.3 Acquisition by Delhaize ‘The Lion’ Nederlands B.V of “Delta Maxi” Ltd., Serbia, including the retailer chain “Piccadilly” PLC owned by “Delta Maxi” Ltd. (CPC Decision No456/12.04.2011)*

48. Delhaize ‘The Lion’ Nederlands B.V was not active on the Bulgarian market. The contract had no effects on the relevant market in Bulgaria. The CPC authorized the concentration given that there was no change to be expected in the market position of the participants in the transaction after its implementation that is, the transaction would not have given rise to any horizontal or vertical effects or relationships with respect to the markets concerned.

### **1.4 Advocacy cases**

49. CPC makes extensive use of the competition advocacy tool to address concerns in the food sector.

*1.4.1 Minimum retail price of bread*

50. In May 2010, following a request by the Ministry of Finance, CPC adopted an opinion for setting a minimum retail price of bread for mass consumption (Decision No 598/27 May 2010). The request was related to the implementation of an anti-crisis government measure designed to directly regulate markets in order to prevent monopoly pressure on suppliers and to guarantee fair competition.

51. The CPC took into consideration in its analysis the possible reasons for the introduction of a regulated minimum price of bread, such as the termination of below-cost selling, protection of the interests of producers and consumers, fight against the informal economy in the sector. Ultimately, the Bulgarian authority reached the conclusion that the introduction of a minimum retail price of bread was not justified and its positive effects would not have compensated for the competition harm.

*1.4.2 Regulation of the relations between supermarket chains and suppliers*

52. Recently the CPC has been asked on several occasions to give an opinion on the necessity of introducing a regulation that would govern the relations between supermarket chains and suppliers.

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

54. The Bulgarian authority examined the experience of other EU Member States, as well as EU initiatives on the supply chain in Europe, in view of the different regulatory approaches and their effect on competition.

55. One possible approach to the problems in the supplier-retailer relations would be to enforce the existing competition rules. Its disadvantages, however, are rooted in the unfair practices stemming out of the bargaining power rather than the market power of the actors and, hence, as such fall outside of the scope of the competition law and the powers of the CPC respectively. Another possible solution would be to amend the current competition legislation by introducing the concept of “significant market power”.

56. A third approach would be to design a separate law on unfair legal practices exercised by retailers on suppliers. However, it bears the risk that supermarkets may look into suppliers from neighboring countries, where conditions are less strict. It is also possible that supermarket chains would favour bigger suppliers. Thus, this separate law could have an adverse effect on the small suppliers it would be designed to protect in the first place. Another main problem would be the possible overlap of competences of the competition authority and the authority enforcing this separate law, which would lead to legal uncertainty.

57. The Bulgarian authority analyzed other possible initiatives, such as launching information campaigns, introducing a code of ethics, strengthening suppliers’ bargaining power through establishing professional organizations, which would protect their collective rights.

58. Considering the importance of the agricultural commodity sector, the Commission on Protection of Competition makes use of all available tools in order to ensure conditions for effective competition and the protection of consumers’ welfare.