

Unclassified

DAF/COMP/WD(2014)108

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

21-Nov-2014

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

DAF/COMP/WD(2014)108
Unclassified

ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Bulgaria --

17-18 December 2014

This document reproduces a written contribution from Bulgaria submitted for Item VIII of the 122nd meeting of the OECD Competition Committee on 17-18 December 2014.

More documents related to this discussion can be found at www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm

JT03366840

Complete document available on OLIS in its original format

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1. Statute and competences of the Bulgarian competition authority

1. The Bulgarian competition authority is an independent specialized state body financed by the state budget. It is neither part of the executive nor of the judicial branch of power. It consists of seven members, including a chairperson, a deputy chairperson and five members. All of them are elected and dismissed by the National Assembly. The Law on Protection of Competition /LPC/ explicitly provides the grounds for termination of their powers, which are: at their own request; when it is impossible for them to perform their duties for more than six consecutive months; for incompatibility with the requirements for election of a member that has occurred after the election; in case of a decease. The powers shall be terminated with a decision of the National Assembly. The members of the Commission cannot receive profits from undertakings in any form nor occupy another paid employment position, except for scientists, lecturers and arbitrators. By May 30 of the following year the CPC shall draft and submit to the National Parliament an annual report on its activities. This report should be published on the Commission's website.

2. The Commission's organization and activity are regulated by Rules of Organization, adopted by the Commission itself and promulgated in the State Gazette. At the moment the Commission is structured in one general /Financial -Administrative Directorate/ and four specialized directorates /Antitrust and Concentrations Directorate, Legal Analysis and Competition Policy Directorate, Unfair Competition Directorate and Public Procurement and Concessions Directorate/. The specialized directorates ensure the implementation of the powers of the authority under the Law on Protection of Competition, the Public Procurement Act and the Concessions Act.

3. The Law on Protection of Competition provides that the Commission's budget is drawn up, executed and accounted for in compliance with the State Budget Act. According to the law the competition authority shall receive to its budget income from:

- fees and expenses pursuant to the Law on Protection of Competition, The Public Procurement Act and the Concessions Act;
- pecuniary sanctions and fines imposed with Commission decisions which have come into force;
- other sources from activities allowed by law.

4. The Commission is empowered to implement the provisions of the Law on Protection of Competition, The Public Procurement Act and the Concessions Act.

2. Competence in the field of protection of competition

5. In exercising its powers under the LPC, the Bulgarian competition authority adopts decisions establishing whether or not infringements have been committed, related to prohibited agreements by undertakings, decisions by associations of undertakings or concerted practices, abuse of monopolistic or dominant position or unfair competition. The Commission also exerts control on concentrations between undertakings as it may either authorize the concentration, including under certain conditions, or prohibit it. The Commission also conducts sector inquires and competition advocacy by proposing to the competent state authorities and local government bodies that they should revoke or amend administrative acts which they issued in infringement of the rules of competition. Draft acts or regulations are often subject to ex-ante scrutiny for their consistency with the LPC, which the Commission does by expressing official opinions.

3. Competence in the field of unfair competition

6. Since 1991, on the basis of the first Competition act the national competition authority has been applying national rules prohibiting the so-called 'unfair competition'. These rules are mainly designed to protect the competitors' interests from any kind of unfair trading practices on the relevant market. In accordance with the general prohibition under Art.29 of the LPC prohibited is every activity or lack of activity in carrying out economic operations which contradicts the good will trade practices and harms or could harm the interests of the competitors. The general prohibition of unfair competition aims at preventing and sanctioning any form of infringement of the so-called "fair trade practice" consisting of the rules, determining the market behaviour, which arise from the laws and the custom trade relations and do not harm the good moralities. In addition, in the special provisions contained in Chapter VII of the Law there several types of unfair trading practices are defined such as: harming the good name of the competitors, misleading and comparative advertising, imitation, unfair attraction of customers, disclosure of manufacture or trade secrets, etc. As regards the trading practices caught by the rules on unfair competition the CPC has the power to establish the infringement and infringer, to impose sanctions and to order termination of the infringement.

7. The CPC's competence in the field of unfair competition has been widely discussed prior to the adoption of the applicable Competition Act of 2008. On the basis of the assumption that these rules are designed to protect mainly the subjective competitors' interests rather than the objective competitive process on the market, there were proposals that these rules should be removed from the Competition Act and, respectively, from the scope of the competition authority's competence, and to be then included into the branch of the commercial law which is dealt with by the civil courts. As result of the wide discussions and given the extensive enforcement practice of the CPC in this field it was ultimately decided that these rules would be much more effectively and consistently applied by an administrative body like the competition authority rather than the civil courts. Currently, the application of the unfair competition rules represents significant part of the CPC's enforcement practice.

4. Competences in the field of public procurement and concessions

8. Since 2006, following the enactment of the amendments to the Public Procurement Act /PPA/ and the new Concessions Act, the Bulgarian competition authority is the body, which examines and takes decisions on complaints against allegedly unlawful acts, actions or omissions in the context of public procurement and concession-awarding procedures. The Commission is the authority to put on hold a public procurement or concession-awarding procedure, as well as impose sanctions and fines for non-compliance with its substantive or procedural decisions after their entry into force.

9. The amendment of the PPA was prompted by the necessity to bring the national legal framework in compliance with the European legislation in the field of public procurement and to overcome the existing shortcomings. Before the amendments the decisions, actions and omissions of the contracting authority were subject to two-instance judicial control, which sometimes could take up to three years before the final decision is adopted. As an alternative the law provided a possibility for conclusion of an arbitration agreement between the arguing parties as an opportunity for timely decision on the case. With the aim to expedite and simplify the procedure for appeal and in compliance with Directive 89/665/EEC and Directive 92/13/EEC the law for amendment of the PPA established a new administrative procedure for appeal of all decisions, actions and omissions of the contracting authority by the interested parties. As a specialized administrative body the PPA appointed the Commission on Protection of Competition. According to the legislator this is the authority which stands closest to the issue as in general the disputes are related to distortion of the competition on the relevant market.

10. An argument against this legislative decision concerned the insufficient resources of the Bulgarian competition authority. This problem was overcome with a decision of the Ministry of Finance to raise the budget and the number of the employees of the Commission with 40 persons. On the other hand, some of the opponents were of the opinion that the decisions, actions and omissions of the contracting authority must be challenged before the court, as they have judicial nature.

11. The new powers in the field of the public procurement were a challenge faced the Bulgarian competition authority. This is mainly due to the fact that shortly after the amendments of the PPA Bulgaria joined the European Union and the competition authority had to combine the enforcement of the European competition rules with public procurement and unfair competition. However, the Bulgarian competition authority succeeded to introduce the best European practices and to ensure effective, consistent and fast application of the law. The administrative procedure before the Commission contributed to the acceleration, simplification and effectiveness of the appeal and guaranteed the lawfulness of the proceedings.

5. Competition and consumer protection responsibilities

12. Over the last few years many countries have perceived the approach for widening the functions of the competition authorities by mergers or combinations with other authorities. In most cases, because of the close interaction between competition policy and consumer protection policy, integration between the competition authorities and the consumer protection agencies is accomplished. This tendency for changes in the institutional design in some of the countries of the European Union raised the question of the necessity for creation of a single authority, empowered to enforce both the competition and consumer law in Bulgaria. There were wide discussions, including in our National Assembly, but no decision was taken on the issue.