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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

HEARING ON OLIGOPOLY MARKETS

-- Note by Bulgaria --

16-18 June 2015

This document reproduces a written contribution from Bulgaria submitted for Item 5 of the 123rd meeting of the OECD Competition Committee on 16-18 June 2015.

More documents related to this discussion can be found at www.oecd.org/daf/competition/oligopoly-markets.htm.

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BULGARIA

1. In the recent years, the market structure in most of the economic sectors in Bulgaria tends to have oligopolistic characteristics. Some valuable reason for the current situation could be found in the process of globalization, the “Common market” in the European Economic Community, the liberalization process in previously “monopoly” sectors (such as electricity and gas supply) and many others.

2. The Commission on Protection of Competition (CPC) is empowered to enforce the Law on Protection of Competition (LPC) as well as Art. 101 and Art. 102 of TFEU. Similarly to TFEU, in the Bulgarian national law all types of agreements between undertakings having as their object or effect the prevention, restriction or distortion of competition are prohibited.

3. Dealing with cases, where an oligopoly structure is observed, the CPC often faces the so called “oligopoly problem”. If there is collusion on the market, the economic theory doesn’t make difference between explicit or tacit one. The reason is the outcome on the market. In both cases the collusion will end up with higher – supracompetitive prices. On the other hand, according to the current legal standard in European Union, in case of cartels there is need of direct evidences of explicit actions between the players on the relevant market in order to prove a violation of the rules.

4. Such a situation could also appear when dealing with abuse of dominance cases. Sometimes it is difficult to find a single dominant firm on the market. Very often there is one leader on the market and few competitors who are simultaneously following the strategy of the leader. Again, the market outcome is supposed to be worse than competitive one. Thus, even using all the legal instruments the CPC has, proving a joint dominance could be a difficult exercise.

1. Relevant cases

5. The CPC has dealt with many cases, concerning possible interaction between firms and has taken different types of measures to protect the competition on the market and the final consumers. There are official proceedings in sectors, such as the cement sector, the pharmaceutical sector, and few cases concerning tendering procedures in the public procurement sector, the “Road fuel” case, the “Retail chains” case, the “Airline ticket” case and many others.

6. Some of them ended up without any sanctions imposed, because of absence of direct evidences for explicit collusion. In others, the CPC has proved a cartel between the firms, even without direct evidences, but because there was not any other reasonable explanation of firm’s pricing policy. Also, there are commitment decision cases, where the firms proposed to cease certain practices.

1.1 Road fuel case¹

7. CPC has established that the wholesale market of road fuel was prone to collusion because of its characteristics – homogenous product, entry barriers, frequent interaction among firms, stable demand and others. In addition, some of the firms were publishing their wholesale prices on the firm’s webpage.

¹ CPC Decision No. 888/2012

8. CPC pursued with the analysis of the price variation of the main players and detected that all the firms were following the same price, the published one. The assessment of the analysis showed that such practice could be used as a focal point and could lead to supracompetitive final price of the good. In order to lower the price transparency on the market, the parties involved proposed to cease that practice. Therefore, the CPC adopted a commitment decision obliging them to remove the practice of publishing their prices on the web in order to eliminate the existing competition concerns.

1.2 Retail chains case²

9. The retail chain case is also dealing with an oligopoly market. In Bulgaria, there are few, very big international chain stores. Their aggregate market share at 2011 was about 80 % of the supply of dairy products. Each of them possesses very high degree of market power, resulting to very restrictive terms during the negotiation process with their suppliers. However, the degree of market power was not sufficient to ensure the independence of the retail chains compared to other competitors in the market and no conclusion about the existence of a dominant position of any of these retail chains could be made.

10. The CPC also found that some of them were implementing common mechanisms for the coordination of trade policy on the market for supply of goods and of their marketing policy in terms of promotions in breach of Article 15(1) LPC. After addressing its Statement of objections to the defending companies, they made proposals to correct their market behavior by taking commitments which, at discretion of the CPC, were sufficient to restore the effective competition. Therefore, the CPC adopted a commitment decision obliging them to remove some of the clauses in their contracts in order to eliminate the existing competition concerns.

1.3 Airline tickets case³

11. Background of the case: The case is about a centralized tendering procedure in the public procurement sector for airline tickets. The winners of the procedure were supposed to supply all the airline tickets needed for the central administration traveling purposes. The duration of this supply was for a period of 1 year. The competitors were supposed to offer individual price for 30 destinations in three different categories – “Economy 1”, “Economy 2”, “Economy 3”, and an individual price for one customer airport services and a final average price for category (more than 90 variables). There were 7 bidders, all of them acting on the market of airline tickets. Three of the firms set a very similar or even equal bid price for all the position in the tender. Some of the positions differed to each other with a slightly amount of money. The final average price offered by these three firms was equal in total (605,015 BGN for destination and 29,337 for passenger services)

12. The CPC analysis showed that in principle the airline tickets market is an oligopolistic one. Few big firms with high levels of market shares, high barriers to entry and price transparency (all the firms are using the same software for doing their business – Amadeus). Even though the tender procedure is a unique market (the competition is not “on the market”, “but for the market”), the CPC concluded that these market characteristics could be applied for the purpose of the procedure itself.

13. The parties argued that all the similarities between them are because of the software they use (Amadeus) and they did not communicate with each other during the process of setting the tendering price.

14. In the final decision, CPC concluded that there is no objective justification for such pricing behavior even though there is high level of price transparency on the market. Moreover, the final price is supposed to be a sum of the firm’s costs and revenue, but the software system Amadeus is giving only the input price, and firms were free to choose the rest of the variables needed for setting the price. Therefore, firms pricing behavior is not unilateral but a result of concerted practice between them.

² CPC Decision No. 121/2011 and CPC Decision No. 833/2012

³ Decision No-220-01.03.2012

2. Final remarks

15. The way the oligopoly markets are functioning in practice could raise some issues to the competition authority while dealing with them. From an institutional point of view, there is a certain level of risk for making mistakes (Type I or Type II errors). Still, there are lots of legal instruments that can be used within the investigation and the possibility of mistakes could be minimized. However, the need of additional tools in the assessment of certain firm or group of firms' behaviour should be considered carefully before been implemented into practice in order to avoid the risk of over regulation on the market.