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

**HEARING ON ACROSS PLATFORM PARITY AGREEMENTS**

-- Note by Bulgaria --

**27-28 October 2015**

*This document reproduces a written contribution from Bulgaria submitted for Item 7 of the 124th OECD Competition Committee on 27-28 October 2015.*

*More documents related to this discussion can be found at [www.oecd.org/daf/competition/competition-crossplatform-parity.htm](http://www.oecd.org/daf/competition/competition-crossplatform-parity.htm)*

Please contact Ms Cristiana Vitale if you have any questions regarding this document [phone number: +33 1 45 24 85 30 -- E-mail address: [cristiana.vitale@oecd.org](mailto:cristiana.vitale@oecd.org)].

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**Introduction**

1. Agreements between suppliers and retailers that specify the retail terms of trade have caught the attention of Competition Authorities worldwide for a long period of time. The discussion about whether specific price relationship agreements may be considered anti-competitive is ongoing, and every case is assessed individually.

2. The Commission for protection of competition of Bulgaria has engaged in the assessment of several cases in recent years.

**1. CPC Practice**

***1.1 CPC Decision №121 dated 03.02.2011 and CPC Decision №833 dated 19.07.2012***

3. In May 2009, the CPC initiated a prohibited agreements/concerted practices investigation by the large retail food chains (Metro Cash and Carry Bulgaria, Billa Bulgaria, Kaufland Bulgaria and Co., HIT Hypermarket, Maxima Bulgaria and Piccadilly).

4. The case also included an investigation of possible abuse of dominant position by large retailers. As none of the retailers was found to hold a dominant position on the relevant market (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 № 121 dated 03.02.2011) on the absence of an infringement under Art.21 of the Law on Protection of Competition.

5. In CPC Decision № 833 dated 19.07.2012, the Commission concluded that cooperation among the biggest names in the fast moving consumer goods sector in Bulgaria could have serious horizontal effects. The relevant market encompassed 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.

6. The decision addressed the allegations against METRO, BILLA, KAUF LAND, PICCADILLY, MAXIMA and HIT accusing them of coordinating their behaviour on the relevant market for supply of fast moving food and non-food products. Also, CPC established that similar methods had been applied in coordinating the actions on the retail market for sale of these products during promotion campaigns. These common practices consist of:

- “most favoured customer” clauses in the 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.

7. The CPC adopted a commitment decision obliging the parties to remove some of the clauses in the contracts with their suppliers in order to eliminate the existing competition concerns.

### **1.2 CPC Decisions № 844/2013, № 898/2013 and № 1261/2013**

8. The CPC initiated on its own initiative proceedings against three oil producers for possible violation of Article 15 of the LPC as a follow-up to the findings in the concluded sector inquiry- CPC Decision № 686/2012.

9. The decision addressed the allegations against the oil producers accusing them of concluding prohibited vertical agreements aiming at preventing, restricting or distorting the competition on the retail market for oil-yielding sunflower seed and sunflower oil on the territory of Bulgaria.

10. The investigation proved that the undertakings concerned concluded agreements with their distributors, which set forth an obligation for the latter to comply with a specific pricing policy, i.e. established recommended retail prices of the products. Thus, the distributors had been deprived of the opportunity to freely set prices.

11. Moreover, the distributors were not allowed to sell products to third parties below the price established in the approved by the producer price list. The amendments to the established prices had to be communicated and approved by the producer prior to the conclusion of any contractual agreements with third parties.

12. The vertical agreements assessed included a sanctioning element for incompliance with the established policies.

13. The Commission concluded that the distributors have been deprived of the opportunity to freely design his market behaviour and specifically the pricing policy. By establishing the terms of trade in the contractual agreements with the distributors (Resale price maintenance), the producer influences negatively the competition between distributors on the retail market, thus affecting the price paid by the final consumers.

14. The CPC concluded there to be a violation of Article 15, paragraph 1 of the LPC and imposed sanctions on the parties engaged in the prohibited practices.

### **1.3 CPC Decisions № 1292 dated 06.11.2012**

15. The Commission concluded an investigation concerning a possible infringement of Article 15 of the LPC and Article 101 TFEU. The parties engaged in the prohibited conduct are the authorized distributor and the authorized dealers of Hyundai on the national territory of Bulgaria.

16. The relevant market has been defined as the market for sale of new motor vehicles and genuine spare parts, and provision of repair and maintenance servicing to Hyundai motor vehicles.

17. The Commission concluded that the parties have infringed Article 15 LPC and Article 101 TFEU by concluding vertical agreements stipulating serious restrictions, thus affecting the competition between the authorized dealers and the repair and maintenance shops, and entry into the relevant market.

18. The investigation concluded that the authorized distributor and dealers had concluded contracts, which set forth specific pricing policy (establish fixed or minimum sales prices for new motor vehicles and genuine spare parts, and prices for provision of repair and maintenance services). The contractual agreements included clauses prohibiting sales of competing brands of motor vehicles by the dealers. Moreover, these agreements included clauses prohibiting sales of other spare parts of the same quality, produced by competing brands, to be used in the provision of repair and maintenance non-guarantee services to the Hyundai motor vehicles.

19. The evaluated agreements establish a selective distribution system, i.e. authorized deals were prohibited to actively sell motor vehicles and genuine spare parts outside their regional market.

20. The CPC concluded there to be a violation of Article 15 of the LPC and Article 101 TFEU and imposed sanctions on the parties engaged in the prohibited practices.

## **2. Recent developments**

21. As of the present moment the CPC has not engaged in an assessment of a case including across platform parity agreements. The ongoing market development and specifically the growing volume of transacting concluded online demand a closer evaluation of the influence platforms have on traditional trade.