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

Working Party No. 3 on Co-operation and Enforcement

RELATIONSHIP BETWEEN PUBLIC AND PRIVATE ANTITRUST ENFORCEMENT

-- Bulgaria --

15 June 2015

This document reproduces a written contribution from Bulgaria submitted for Item III of the 121st meeting of the Working Party No. 3 on Co-operation and Enforcement on 15 June 2015.

More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/antitrust-enforcement-in-competition.htm>

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-- Bulgaria --

1. Legal framework

1. The legal framework in Bulgaria explicitly establishes the right of the persons to claim damages caused by infringements of the competition rules. The specific statutory basis for claims for damages for breach of the antitrust rules is Art. 104 of the Law on Protection of Competition (LPC). All natural persons and legal entities who have suffered damages even where the infringement has not been directed against them have standing. The claims shall be lodged under the general procedure set forth in Chapter Thirty Three of the Civil Procedural Code. The national legislation does not foresee any specific procedural rules with regard to actions for damages, caused by infringements of the competition law.

2. According to Art.365 and Art.380 (1) of the Civil Procedural Code actions for damages shall be examined by the district court acting as a court of first instance. The decisions by the district court can be appealed before the Appellative courts. The final instance court is the Supreme Court of Cassation.

3. Action for damages for breach of the antitrust rules can be brought by all natural and legal persons who have suffered damages even where the infringement has not been directed against them /Art. 104 (2) of the LPC/. The provision of Art.379 of the Civil Procedural Code provides for the possibility for class actions and representative actions. Under Art. 379 of the Civil Procedural Code collective action could be brought on behalf of the victims of an infringement by persons, who claim that they are victims of an alleged infringement and associations for the protection of victims of an alleged infringement. They can lodge a claim for termination of the infringement; remedy the consequences of the infringement and damages. In open sitting, the Court designates the circle of the injured parties; the way, in which the claim should be made public and the period, within which the injured parties can declare that they would join in the proceedings or would defend themselves independently. In closed sitting, the Court incorporates the claim of other victims or association of victims or excludes the claims of injured parties, who within the specified period of time have declared their will to defend themselves independently.

4. According to the Bulgarian legislation /Art.51 of the Law of Obligations and Contracts/, compensation shall be due for all damages that are direct and immediate consequence of the tort. Thus, victims of tort are entitled to compensation for their actual loss, for the loss of profit plus interest.

5. The infringement does not have to imply fault. According to Art. 45 of the Law of Obligations and Contracts in all cases of tort, fault is presumed until otherwise proved.

6. According to Art. 104 (4) LPC the decisions of the Supreme Administrative Court, which has entered into force and which upholds a decision of the Commission on Protection of Competition (CPC) finding an infringement of the LPC are binding upon the civil court as regards the fact whether the decision of the competition authority is valid and compliant with the law. The decision of the CPC, which has not been appealed against or the appeal application against it has been withdrawn has the same binding force upon the civil court.

7. With regard to the actions for damages, caused by an infringement of the competition rules the national court may order a production of documents, following the general procedural rules, provided in the Civil Procedural Code. Each party may approach the court with a motion to obligate the other party to present a document in the possession thereof, explaining the relevance of the said document to the dispute. The non-presentation of the document shall be evaluated according to Article 161 of the Civil Procedure Code, which states that considering the circumstances of the case, the court may hold as proved the facts in respect of which a party has created impediments to the taking of admitted evidence. Presentation of a document may be refused where the content of the document concerns circumstances of the personal or

family life of the party; this would lead to defamation or to criminal prosecution of the party or of any relatives. Each party may approach the court with a written petition to obligate a person non-participating in the case to present a document in the possession thereof. The third party, who groundlessly fails to present the required document, shall furthermore incur liability to the party for the damages inflicted.

8. The LPC envisages that the right to claim indemnity shall lapse by limitation within 5 years as of the coming of the decision of the Supreme Administrative Court or of the CPC into force in cases of follow-on actions for damages, caused by infringements of the competition rules. Under Section Five, Chapter 2 of the Law of Obligations and Contracts, the limitation period for tort claims shall be five years and shall begin to run upon discovering the offender for stand-alone claims.

9. In order to fulfill the obligation of the Republic of Bulgaria under Art. 15 (2) of Regulation 1/2003 on the implementation of the rules on competition laid down in Article 81 or Article 82 of the Treaty, the Supreme Judicial Council obliged the Chairmen of the Supreme Court of Cassation, the Supreme Administrative Court, the Courts of Appeal, Regional and District Courts in the Republic of Bulgaria to send the Commission on Protection of Competition copies of their decisions immediately after informing the relevant parties to the proceedings, including decisions of the Civil courts of all instances on claiming damages, caused by infringements under Art. 101 or Art. 102 of the TFEU. The CPC has the obligation to send the copies to the European Commission.

10. Up to this date, the Commission has not received any notification in regards to claims for damages for breach of EU and national competition rules.

2. Forthcoming developments

11. As a member of the European Union Bulgaria is obliged to transpose in its national legislation the provisions of the recently adopted Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. In this respect an amendment of the national legislation is in process. The provisions in the national legislation will set rules regarding the disclosure of evidence, the joint and several liability of the undertakings, the effect of the national decisions taken in another Member State, etc. Bulgaria has two years period to bring its national legal framework in compliance with Directive 2014/104/EU.

3. Role of the Commission on Protection of Competition

12. According to Art. 15 (3) of Council Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Article 81 or Article 82 of the Treaty the competition authorities of the Member States, acting on their own initiative, may submit written observations to the national courts of their Member States on issues relating to the application of Article 101 or Article 102 of the TFEU. With the permission of the court in question, they may also submit oral observations to the national courts of their Member State.