

Unclassified

CCNM/GF/COMP/WD(2004)33



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

09-Feb-2004

English - Or. English

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS  
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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## **OECD Global Forum on Competition**

### **HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT**

#### **Contribution from Bulgaria**

-- Session IV --

*This contribution is submitted by Bulgaria under Session IV of the Global Forum on Competition to be held on 12 and 13 February 2004.*

JT00157962

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## **HOW ENFORCEMENT AGAINST PRIVATE ANTICOMPETITIVE CONDUCT HAS CONTRIBUTED TO ECONOMIC DEVELOPMENT**

1. The Constitution of Bulgaria, which has been in force since 1991, sets up the basis for the development of competition. It provides that the Bulgarian economy is based on free economic initiative. Paragraph 2 of Article 19 establishes and guarantees to all citizens and legal persons equal legal conditions as regards economic activity, preventing abuse of monopolistic position, unfair competition and consumer protection.
2. In the 2002 Regular Report of European Commission on Bulgaria's Progress towards Accession, it was concluded that Bulgaria is a functioning market economy. Such an evaluation indicates that Bulgaria has already achieved liberalisation of its economy and has opened up its markets. The Commission for the Protection of Competition of Bulgaria (CPC, Commission) plays an important role as regards its enforcement activities as well as in the field of competition advocacy.
3. On the one hand, in the last few years, the privatisation process in Bulgaria has been extremely intensive. CPC has taken a very active part in the process, as far as an approval of the Commission was a condition for enforcing the deals. Thus liberalisation of the market was launched and foreign investment and private initiative were encouraged.
4. The efforts have been directed to liberalisation of the prices of goods and services; opening the markets for new entrants and promoting competition. According to CPC, it should be noticed that its tasks have been to participate in drafting the relevant legislation and through its enforcement record to prosecute and restrain the anti competitive conduct of economic agents.
5. The process of liberalisation of Bulgarian the economy continued in 2003. CPC made efforts to focus its work on the investigation of serious distortion of competition like restrictive agreements, abuse of a dominant position, and merger control. The latter tendency is to be followed and sufficiently deterrent sanctioning policy be established against any anticompetitive behaviour.
6. With this policy, CPC aims to prevent future distortion of the anti-trust rules; to encourage the economic agents to be more disciplined by respecting the LPC and to guarantee effective competition on the different markets in Bulgaria. As a result CPC believes it will contribute to the economic development of Bulgaria.
7. In the context of abovementioned points and the latest enforcement record of CPC one of the best examples for Bulgaria is the insurance sector.
8. The Bulgarian Commission for Protection of Competition (CPC, the Commission) investigated a suspected infringement of LPC Art. 9 (LPC: Law on Protection of Competition) by nine insurance companies and the National Bureau of Bulgarian Motor Insurers. The procedure was triggered by a newspaper publication of June 3, 2002 stating that as of April 1<sup>st</sup>, 2002, the cheapest civil liability insurance policy for motoring abroad ("green card" or "GC") has risen twice.

## 1. Investigation

9. Prior to April 1st, 2002 Bulstrad Insurance and Reinsurance Plc (“Bulstrad”) had been the sole provider of green card coverage on the Bulgarian market, enjoying the status of a National Bureau. With effect from April 1st, 2002 ten licensed GC insurers formed a National Bureau tasked with receiving international claims under policies written in Bulgaria and dispatching them to the local insurer concerned. The National Bureau of Bulgarian Motor Insurers (“the Bureau” or “the National Bureau”) was registered by virtue of Sofia City Court Decision as a non-profit organisation with a wide scope of activity, including, among other things: membership in the Council of Bureaus and acting as a sole “National Bureau” for Bulgaria.

10. The Charter of the National Bureau vests powers in the General Assembly to approve resolutions on the common tariff policy in respect of GC insurance. Any member of the Bureau is liable to be expelled for non-adherence to the minimum tariffs and maximum agent commission levels for green card insurance as established by the General Assembly.

11. For the year 2002, the General Assembly of the National Bureau of Bulgarian Motor Insurers approved a single tariff of minimum green card premiums charged to vehicle owners for their liability outside Bulgaria, with effect from April 1st, 2002.

## 2. Position of the Bureau

12. The position of the Bureau, discussed and approved by all its members, was that the Bulgarian legislator has placed the insurance business under control by the State, which stipulates the minimum *Civil Liability* (CL) and *Carrier Liability* premiums charged to vehicle owners, holders, users and drivers (both being compulsory). These premiums are defined in an order issued by the Director of the Bulgarian *Agency for Insurance Supervision*, and are published in the State Gazette.

13. By analogy to the minimum premiums for the compulsory *Civil Liability* insurance, which has been introduced by Government Decree, the Bureau adopted a Single minimum tariff for green card insurance policies in 2002. The fixing pertained only to the minimum price of insurance policies. The Bureau maintained that the measure is about controlling the behaviour of market players providing green card coverage. The measure sought to prevent small insurance companies from dumping market prices for this type of insurance in order to attract more clients, which may render them incapable of honouring claims when damages occur. In other words, free pricing threatens to make smaller insurers insolvent as they try to offer lower premiums. Thus the Single Tariff of minimum premiums safeguards both individual insurers from defaulting on claims and the other members of the Bureau from incurring joint liability in respect of such defaults. The Uniform Agreement of Bureaus obliges each National Bureau to cover the claims unsettled by any of its members. Thus the consequences of a member’s non-performance would affect the remaining members and their stability.

14. The insurers from the National Bureau maintained that the premiums must be priced such as to ensure sufficient reserves to cover liabilities incurred outside Bulgaria. Insurance prices are accorded to the condition of Bulgaria’s market economy, while insurance compensations for international occurrences are defined by the conditions, insurance limits and legislative requirements of the country, where the insured event has taken place. In contrast with the Bulgarian legislation, which limits the amount of insurance compensation, a majority of other countries have legislated unlimited compensation rules, especially in the case of non-material (intangible) damages, hence there is appreciable variance between compensation levels.

### **3. Legal background**

#### **3.1 *The Insurance Law***

15. Following the amendments to that Law (published in the State Gazette, No. 96 of October 11, 2002), the *Agency for Insurance Supervision* began to define the minimum premiums for compulsory CL policies issued to vehicle owners, holders, users and drivers when motoring abroad. In the most recent amendment to the same Law (the State Gazette, No. 8/2003), the above provision was repealed and replaced by Art. 16(1)(9) of the newly-adopted *Law on the Commission for Financial Supervision* (CFC), according to which the CFC Vice-President in charge of Insurance Supervision Directorate is authorised to set the minimum premiums for compulsory insurance.

#### **3.2 *Directive 90/232/EEC***

16. Directive 90/232/EEC (OJ L129, 19/05/90) requires in its Article 2 that: “Member States shall take the necessary steps to ensure that all compulsory insurance policies against civil liability arising out of the use of vehicles:

- cover, on the basis of a single premium, the entire territory of the Community, and
- guarantee, on the basis of the same single premium, in each Member State, the cover required by its law or the cover required by the law of the Member State where the vehicle is normally based when that cover is higher.”

#### **3.3 *Charter of the National Bureau***

17. The Charter requires that each member shall provide to the Bureau, not later than March 31, 2002 a six-year guarantee to the amount of 600,000 Euro payable at sight, issued in favour of the Bureau by the Bulgarian National Bank. The bank guarantee covers the Bureau’s claims to any member for payments made or due by the Bureau in lieu of such member, in case the member goes bankrupt or insolvent; as well as the Bureau’s claims to a member for payments made or due by the Bureau for liability incurred under fraudulent, non-authentic or forged documents, etc.

#### **3.4 *Relevant Market***

18. According to the Bulgarian Insurance Law, property insurers may not provide life insurance. Hence, the market is divided in two sub-markets: property and life insurance and each sub-market may be subdivided in as many insurance segments, as are the types of insurance, because each type of insurance has specific features, premium structures and objectives, and thus becomes non-substitutable from the user’s perspective.

19. One type of property insurance is civil liability of vehicle owners, holders, users and drivers for material or non-material damages caused to third parties. This type of insurance is a market of its own extending in two directions depending on territorial coverage: Bulgaria and all other countries (green card). The insurer’s liability is defined according to the minimum motor liability rules prevailing in the country of accident.

### **4. Relevant market players**

20. There are 20 licensed property insurers in Bulgaria. Of these, 18 hold licenses to sell motor insurance, with only 9 of them being members of the National Bureaus and as such authorised to issue green cards.

21. BULSTRAD is the leader among the property insurers with nearly 33% of the market. Its share of green card sales appreciably declined during the investigated period of 2002, which may be attributed to the fact that green cards were not demonopolised before the beginning of April 2002.

## 5. Analysis and measures taken against the restrictive agreements

22. The activities of the insurance companies from February 15<sup>th</sup>, 2002 (the date, on which the Single Tariff was approved) until the end of 2002 ought to be examined from the perspective of agreements or concerted practices undertaken by independent undertakings.

23. The companies providing green card insurance are “undertakings” within the meaning of the Bulgarian Law on Protection of Competition. On the other hand, the National Bureau of Bulgarian Motor Insurers is a non-profit organisation established to the private benefit of its members and, looking at its actual functions, there are no reasons to classify the Bureau as an “undertaking” within the meaning of LPC.

24. Seen from the conducted analysis, all members carry out their green card business in compliance with the Bureau’s decisions. CPC considered that the activities of the insurance companies from Feb. 15<sup>th</sup>, 2002 (the date, on which the Single Tariff was approved) until the end of 2002 had to be examined from the perspective of agreements or concerted practices undertaken by independent undertakings.

25. The amended Article 22(1) of the Insurance Law tasked the *Agency for Insurance Supervision* with defining the minimum premiums charged for compulsory insurance policies *civil liability incurred abroad*. In practice, the Agency defined these premiums for the first time in 2003, hence by the end of 2002 the nine insurers carried their business on the basis of their agreement and therefore the Commission’s analysis focused on their conduct during that period.

26. A specific feature of the market in question is that transactions are not considered to be terminated with the sale of the insurance policy. Instead, each transaction is subject to a contingent event, in the occurrence of which the insurer becomes liable to cover the resulting loss or damage. All this requires sufficient resources to be generated. To this end, the Bureau has established a Guarantee Fund, to which each member submits a 600,000 Euro guarantee. The Bureau has also approved a Single Tariff fixing the minimum prices charged for green card insurance policies.

27. However, what actually concerns CPC is not the necessity as such (which has a bearing on the stability of each individual insurer and is commensurate with the requirement for loyal and good-faith conduct of their business), instead, the Commission is concerned about the uniform levels agreed and the minimum thresholds fixed by the players, which boil down to elimination of market competition. The idea to avoid unfair solicitation of clients by “price dumping” in respect of green cards has obviously evolved in an agreement among all insurers operating on that market, aimed at guaranteeing their sales by all means, irrespective of market conditions.

28. Strict adherence to the agreed terms is guaranteed by the Charter of the Bureau, according to which any member offering lower premiums or higher commissions is liable to be expelled from the association. All this supports the conclusion that the intent of the nine companies was to prevent, or at least restrict, competition among them.

29. While the intent of the parties to an agreement is based on their will, the effect of their agreement should be derived directly from the market as such. The starting price stipulated in the above-quoted Tariff should be such as to leave space for competitive developments over and above the bottom threshold level. The essential element of any insurer’s business, namely the price of the products provided, has become strictly fixed and applied in an absolutely identical fashion by all players operating on the relevant market,

which bereaves the competitors from any freedom or flexibility in defining their market behaviour. Therefore, no competition whatever exists among the nine insurance companies.

30. The Commission decided that by adopting a Single Tariff, the companies in the National Bureau have entered into an agreement within the meaning of LPC Art. 9, which has not been notified to the CPC and as such the parties are liable to be fined. On the other hand, the Commission found that the agreement contains provisions on minimum greed card premiums, which violate the prohibition of Art. 9 and may not, in their present form, be exempted under LPC Art. 13.

31. The CPC believes that the fines should be commensurate to the actual market position of the companies involved. What is more new entrants to this insurance market should not be burdened financially more than what is necessary. Further, the Commission took into account the fact that development of new insurance services and getting a foothold in new markets are effort- and resource-intensive exercises and should not be further encumbered. In addition, the CPC recognizes the parties' cooperation in providing detailed and timely information.

32. On the basis of all these considerations, the Commission took the position that the fines should be set between the minimum and medium levels prescribed in the Law on Protection of Competition, depending on the market position and the financial resources of the respective party.

## **6. Conclusions**

33. The further efforts of CPC should be focused on the restrictive activity of the private economic agents, which aim at establishing barriers for the other competitors in order to ensure their own position on the relevant market. This direction of competition policy could guarantee good conditions for a further economic development. The enforcement of CPC disciplines private economic agents and encourages them to do business in conformity with competition rules.