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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BULGARIA

-- 2013 --

17-18 December 2014

This report is submitted by Bulgaria to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 December 2014.

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1. Introduction

1. The Commission on Protection of Competition (the Commission, the CPC) is an independent specialised state body whose main goal is ensuring the protection and promotion of competition and free economic initiative, *inter alia* through control over the lawfulness of spending of public resources through public procurement and concession awarding procedures.

2. The main priorities, which the Commission has set itself for 2013 were connected with the goal of achieving national and European antitrust law aims with regard to stimulating free economic initiative, expanding the conditions of competition, and raising the level of wellbeing of consumers and of society as a whole through its practice in applying the Law for Protection of Competition (LPC), the Public Procurement Act (PPA), the Concessions Act (CA) and Articles 101 and 102 of the TFEU.

> "In 2013 the efforts of the CPC were directed towards ensuring the conditions for encouraging competition in the economic sectors which are of greatest importance to the wellbeing of society. Guided by the understanding that competition is a market process which can objectively lead to an increase of the effectiveness of economic activities and of the benefits to consumers, the CPC set as its priority for 2013 facilitating the development of a competitive environment and the expansion of free economic initiative through counteracting antitrust infringements, sanctioning unfair competition practices, taking actions with regard to competition advocacy and guaranteeing the lawfulness of public procurement and concession procedures in the country. The resources and competences of the CPC were utilized to achieve the national and European legal competition goals, complying with the best practices in the sphere of competition protection in the other Member States of the EU, of the European Commission, as well as of the jurisprudence of the Supreme Administrative Court and the Court of Justice of the European Union. Establishing itself as a reliable partner in coordinating European issues and in international cooperation, the CPC has continued to actively interact with the members of the European Competition Network, as well as the competition authorities of the Balkan region within the framework of the Sofia Competition Forum, founded as a joint initiative of the CPC and the UN Conference on Trade and Development. The activities of the CPC in 2013 have resulted in the conclusion that in order to overcome the newly established challenges to the competitive process on the relevant markets, an engagement of the entire institutional capacity of the national competition authority is required, as well as an increase in the competition culture of all stakeholders in the process – undertakings, associations of undertakings, state bodies and others. The level of competition culture is a prerequisite of critical importance for the creation of a favorable business environment in the country and a leading factor for the procompetitive behavior of economic operators, benefitting consumers and the society as a whole."
> (Petko Nikolov, chairman of the CPC)

3. In 2013 the Commission initiated a total of 1553 proceedings for the enforcement of the PPA, CA and LPC. In its 1327 decisions, the CPC has imposed fines and sanctions with a total amount of 8 587 877 BGN.

4. With regard to the most severe infringements of competition law, the Commission initiated 33 proceedings for ascertaining the existence of forbidden agreements among undertakings or instances of an abuse of dominant position. In the antitrust sphere, the CPC issued 26 decisions and imposed sanctions amounting to 5 621 502 BGN, where the sectors in which the CPC focused its inquiries were: electricity, district heating, water supply and sewage treatment services (WSST services), transportation, foods, medicinal products, trade in automobiles and others. The Commission performed 3 on-sight inspections in

undertakings and associations of undertakings, aimed at gathering data regarding their presumed anticompetitive behavior.

5. Throughout the year, the Commission conducted 2 sector inquires – one of the markets of production, trade, transmission and supply with electricity, and one of the newspaper and publications distribution sector, whereby concrete recommendations for improving the competitive environment in these sectors were made.

6. With regard to the control on concentrations between undertakings, the Commission adopted 35 decisions, focusing its efforts on encouraging pre-notification contacts between the notifying party and the CPC by applying the Rules on Imposing Measures and Maintaining Competition in Case of Concentrations between Undertakings, adopted by the CPC.

7. In the area of unfair competition, the Commission initiated a total of 59 procedures and issued 65 decisions, imposing sanctions in the total amount of 2 826 924 BGN. The most common infringements established through the year are connected to behavior in bad faith, contradicting the general ban on unfair competition, unfair attraction of clients, as well as imitation of competitive products. An increase in the number of infringements relating to learning, using and divulging industrial and trade secrets has been observed.

8. In cases of appeals against public procurement procedures, the CPC initiated 1394 procedures and adopted 1147 acts, the most commonly established infringements being connected to decisions of the public authority regarding the order of the participants by their desirability and the choice of an executor in the procedure.

9. With its 32 decisions in the field of competition advocacy, the CPC adopted opinions regarding projects for future or currently applicable normative or general administrative acts. The Commission concluded in-depth evaluations for the compliance with competition rules of more than 20 public authority acts, affecting the entire territory of the country or parts of it, concluding with concrete recommendations towards the competent state organs – the National Assembly, the Council of Ministers, ministers, and local authority bodies. These recommendations regarded amendments and supplements to the legal framework in a series of sectors of the economy: district heating, electricity, water supply and sewage treatment services (WSST services), hospital medical care, trade in medicinal products, trade in medical products, trade in liquid fuels, transportation, forestry, hunting reserves and others.

10. Through its participation in the European Competition Network, the International Competition Network, the OECD Competition Committee and UNCTAD in 2013 the Commission prepared answers to 71 questionnaires from its international partners.

11. Exercising judicial control over the activities of the CPC in 2013, the Supreme Administrative Court confirmed 82% of the adopted acts of the CPC, returned 13% for reevaluation to the CPC and reversed 5%.

2. Prohibited Agreements, Decisions and Concerted Practices.

2.1 Law enforcement practice

12. In 2013 **9 proceedings** were initiated within the Commission, aiming at ascertaining the existence or lack of infringements of Article 15 LPC, **5 of them** initiated under Article 101 TFEU in fulfillment of the obligation of Article 3, paragraph 1 of Council Regulation № 1/2003.

13. The CPC carried out **3 on-sight inspections,** during which it took paper-based, as well as forensic evidence by using its forensic IT laboratory. The inspections were carried out by employees of the CPC with the cooperation of representatives of the Ministry of the Interior and after having received a judicial authorization from the Administrative Court in Sofia.

14. In the period concerned, the commission issued **7 decisions** in connection with the application of Article 15 LPC and imposed sanctions amounting to a total of **2 322 122 BGN.** For the same period, the Commission issued **3 statements of objection** (SO) for alleged infringements of Article 15 LPC, dealing with prohibited agreements between undertakings.

Figure 1. The practice in the area of prohibited agreements among undertakings for the period 2009-2013

2.2 Examples from the practice

15. By **Decisions № 844/11.07.2013, № 898/17.07.2013 and № 1261/25.09.2013**, the CPC established that the producers of refined bottled sunflower oil "Zvezda" AD, "Kaliakra" AD, Bunge Zrt, Bunge Romania Srl and "Biser Oliva" AD and their main distributors have committed infringements of Article 15, paragraph 1, point 1 LPC, consisting of forbidden vertical agreements, which aim at preventing, restricting or distorting competition on the market of bottled sunflower oil through setting resale prices.

16. The proceedings were initiated by a CPC decision, prompted by a sectoral analysis of the competitive environment on the two interconnected markets of production and trade of oil-yielding sunflowers and sunflower oil on the national market. In its sector analysis, the Commission ascertained the presence of contract clauses between the producers of refined oil and their main distributers, the application of which is such a nature, as to be able to restrict competition on the wholesale market of refined bottled oil through distributors.

17. In Ruling № 466/23.04.2013, the Commission claimed a committed infringement of Article 15, paragraph 1, point 1 of the LPC by "Zvezda" AD and "KOOP – Targoviya i turizam" AD.

18. In Ruling № 467/23.04.2013, the Commission claimed a committed infringement of Article 15, paragraph 1 by Kaliakra AD, Bunge Zrt, Bunge Romania Srl and the distributors Gama-Nik-Mitev-2004 OOD, Teodoro Babarov-Klio Commerce ET, D & D Commerce and Delivery OOD, Lucky 2003 OOD and Vuchko 2-Bratya Vuchkovi and Sie SD. In Ruling № 846/11.07.2013, the Commission asserted furthermore an infringement of Article 15, paragraph 1 of the LPC by "Biser Oliva" Ad, "Famileks" OOD, "M. M. Maleshkov" EOOD, "Zagora 2000" OOD and "Velizara 2000" EOOD.

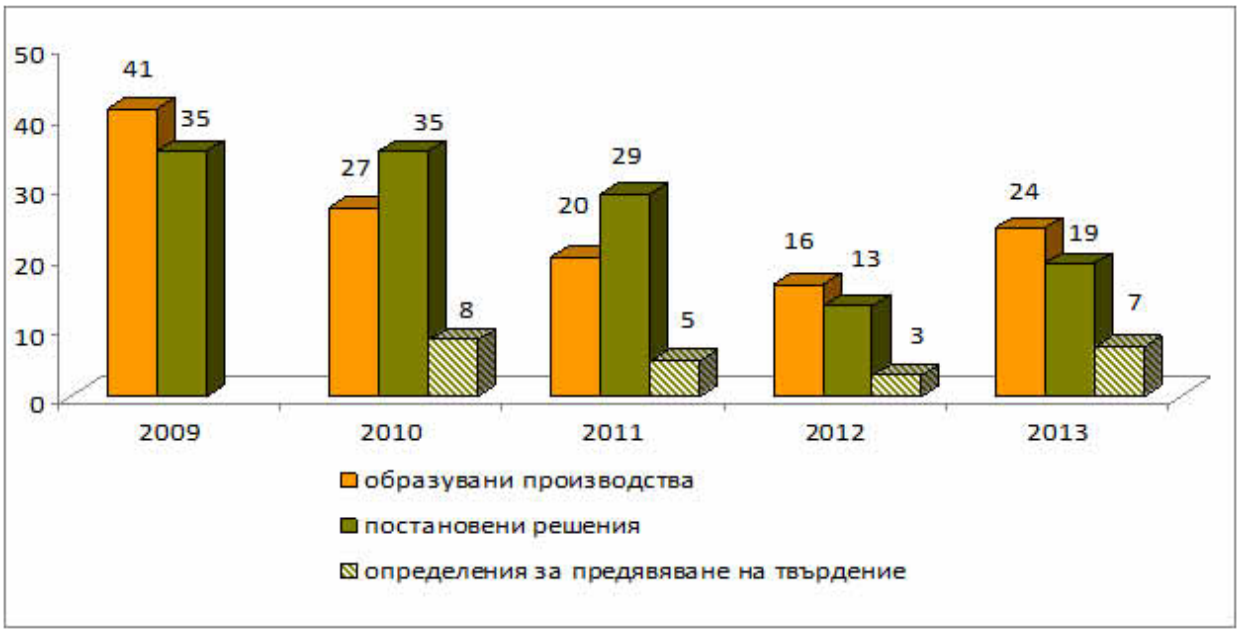
19. With Decision № 844/11.07.2013, regarding the contractual relationship between "Zvezda" AD and "KOOP – Targoviya i turizam" AD, Decision № 898/17.07.2013, regarding the contractual relationship between "Kaliakra" AD and its main distributors, and Decision № 1261/25.09.2013, regarding the contractual relationship between "Biser Oliva" AD and its distributors, the CPC established that mechanisms for determining the resale price of bottled sunflower oil are enshrined in the distribution contracts, aiming at prevention, restriction and distortion of the competition. According to the Commission, the effect of the application of this mechanism is the elimination of price competition among the distributors, and among sub-distributors, affecting the end price for consumers.

3. Abuse of a Monopoly or Dominant Position

3.1 Law enforcement practice

20. In 2013, the Commission initiated a total of 24 procedures for ascertaining abuses with a monopoly or a dominant position under Article 21 LPC, and **5 of the proceedings** were connected to the application of Article 102 TFEU, fulfilling the obligation enshrined in Article 3, paragraph 1 of Council Regulation № 1/2003. The Commission adopted **19 decisions** and imposed sanctions amounting to **3 299 380 BGN.** For the same period, the Commission **issued 7 rulings (Statement of objections), claiming an alleged infringement.**

Figure 2. Practice in the area of abuse of a dominant position in the period 2009-2013



3.2 Examples from the practice

21. In **Decision № 506/08.05.2013** the Commission establishes that "Energo – Pro Prodazhbi" AD committed an infringement of Article 21 LPC and imposed a sanction in the amount of 1 687 484 lv.

22. The procedure was initiated by a CPC decision for investigating the possible infringement of Article 21 LPC by "Energo – Pro Mrezhi" AD and "Energo – Pro Prodazhbi" AD, in relation to the discontinuance of electricity supply to the pumping stations of "Vodosnabdyavane i kanalizatsiya" EOOD, Dobrich ("ViK" EOOD, Dobrich), a water supply and sewage treatment undertaking.

23. In Ruling № 210/05.03.2013 the CPC asserted a committed infringement by "Energo – Pro Prodazhbi" AD, consisting of an abuse of a dominant position on the market of supply (sale) of electricity to consumers, which may prevent, restrict or distort the competition and affect the interests of consumers.

24. "ViK" EOOD, Dobrich buys electricity for carrying out its activities – providing water supply and sewage treatment services (WSST services) on the territory of the town of Dobrich, from "Energo – Pro Prodazhbi" AD (end supplier) and as such, is a commercial consumer of electricity for commercial purposes. The trade relationship between the two undertakings is regulated by General Conditions, approved by the State Energy and Water Regulatory Commission.

25. During the investigation, it was established that the reason for discontinuing the electricity supply to "ViK" EOOD, Dobrich, was a delay in the payment of installments owed by the undertaking for electricity consumed, following an agreed protocol for instalment payments, as well as current debt.

26. With a letter, "Energo – Pro Prodazhbi" AD allowed "ViK" EOOD, Dobrich a term for payment of its debt, in which no information was provided regarding a concrete date, initial and end hours for the discontinuing of the electricity supply to the sites of the undertaking, through which it provides its WSST services, as well as regarding which exact sites will be deprived of an electricity supply.

27. In its decision, the Commission maintained that, considering the lack of an alternative supplier of WSST services in the area and the circumstance that Dobrich is a city with a pumping-based water supply, thus requiring electricity supply for the functioning of the pumping stations, the discontinuation of the electricity supply to the pumping stations of the water supply undertaking lead to a stop in the water supply to damage of consumers.

28. The great societal importance of the WSST services, as well as the obligations of "Energo – Pro Prodazhbi" AD under Article 69 of the Energy Law and the importance of WSST operation as a strategic activity for national security, are reasons for the Commission to accept that in the concrete case the method, chosen by the dominant undertaking, namely the discontinuation of electricity supply for 24 hours to be precise, is an extreme measure.

29. The consumers of "ViK" EOOD, Dobrich use the operator's services for drinking, private, commercial and public needs, including for the needs of persons, supported by the state budget, as well as a series of sites connected to the national security, such as hospitals, social institutions, schools, fire departments. Due to this, the WSST operator is included in Chapter III, point 1.1. of the Transitional and Concluding Regulations of Council of Ministers Decree 181/20.07.2009. In this regard, the WSST operator should be informed in detail about the sites, to which the electricity supply will be cut off, as well as the start and end hours of the electricity supply discontinuation, enabling it to take adequate measures in

connection to its obligations when operating WSST systems, as well to inform the persons, to which it offers its services, of the interruption of the water supply.

30. The discontinuation of the electricity supply to the pumping stations of "ViK" EOOD, Dobrich and the lack of water supply for the entire town for 24 hours injures the consumers' interest by depriving them of the usage of an extremely necessary service – drinking water, and creates serious difficulties in the use of their immobile property, especially for commercial consumers, which can suffer considerable damages in connection to their commercial activity.

31. The Commission considers that the behavior of the dominant undertaking hindered "ViK" EOOD, Dobrich to carry out its commercial activity, to provide WSST services to the end consumers on the territory of the municipality Dobrich, in result to which the consumers of "ViK" EOOD, Dobrich were deprived of their drinking water supply, affecting their interests in this regard.

32. When determining the amount of the sanction, the Commission took into account the mitigating circumstances – the short duration of the infringement and the exerted efforts on the part of the energy undertaking, aimed at mitigating the consequences of the discontinuation of the water supply, since it itself proposed providing cisterns, as well as the actions taken by "Energo – Pro Prodazhbi" AD for non-discontinuing the electricity supply of some important sites of "ViK" EOOD, such as the town hospital, a building site financed by the EU and others.

33. In the same decision, the Commission concluded that there has been no infringement of Article 23 of the LPC by "Energo – Pro Mrezhi" AD.

34. In **Decision № 1576/ 20.11.2013** the Commission concludes that "Energo – Pro Mrezhi" AD abused its dominant position on the market of electricity distribution in breach of Article 21 LPC, through managing the production capacities, connected to the network in an disproportional manner. In the same decision the Commission further established that the "Natsionalna Elektricheska Kompaniya" EAD (NEK) and ESO have not abused their dominant positions by breaching Article 21 LPC.

35. The proceedings of case number CPC № 56 of 2012 is initiated after a request by a producer of renewable electricity, connected to the distribution network of Energo-Pro. During the procedure and in relation to the request of the applicant, the CPC examined: the behavior of "Energo – Pro Mrezhi" AD in the management of the production capacities; the behavior of the electricity distribution undertaking and of NEK during the procedure for the applicant electricity plant to join the network; the behavior of ESO, with regard to the distribution of the energy network capacity between the distribution and transmission undertaking.

36. The abuse of a dominant position by "Energo – Pro Mrezhi" AD is established in connection with the behavior of the undertaking regarding managing the production capacities, joined to its network. In the instances, determined by the legislative framework, such as a necessity to ensure the security of the electricity system, ESO orders limitations to the electricity production, which are obligatorily carried out by "Energo – Pro Mrezhi" AD in its position as an electricity distribution undertaking. The Commission establishes that the distribution of limitations ordered by ESO with regard to the incoming energy from the distribution network does not take place in a proportional manner, nor is based on transparent and non-discriminative criteria and in this sense it does not guarantee the requirement for equality among the different producers of electricity.

37. The Commission imposes a sanction on "Energo – Pro Mrezhi" AD in the amount of 1 034 755 lv, as well as a behavioral remedy, consisting of an obligation on the undertaking to manage the production capacities, joined to its own distribution network, in a manner, guaranteeing the requirement of equality

among the various producers of electricity and by distributing the production limitations, imposed by the "Electroenergien sistemen operator" EAD (ESO), in a proportional manner, based on transparent and non-discriminate criteria.

38. With regard to the procedure for connecting the power plant of the applicant to the distribution network, the Commission established that the delay of the joining procedure and the following delay in the start of the exploitation of the plant, as well as the decrease of the initially stated capacity of the site by the applicant are not a result of the one-sided behavior of "Energo – Pro Mrezhi" AD or NEK, but are objectively justified by the regulation of the relevant legal framework and by external circumstances, related to insufficient capacity and necessity of a network reconstruction in the relevant region – substation "Kavarna".

39. In its decision, the Commission concluded that the availability and distribution of the capacity of the electricity network are issues within the competence of the energy regulator and not a result of the one-sided behavior of ESO.

40. With **Decision № 177/21.02.2013** the CPC establishes that "Toplofikatsiya Sofiya" EAD committed an infringement of Article 21 LPC, consisting in an abuse of a dominant position on the market for heat cost allocation of district heating energy among consumers in residential flat buildings (RFB) and imposed a sanction on the undertaking in the amount of 338 094 lv. The infringement can prevent, restrict or distort the competition and affect the interests of the consumers by hindering the entry of a new competitor on the market of heat cost allocation to consumers in RFB.

41. "Toplofikatsiya Sofiya" EAD is an undertaking with a dominant position on the regional market for sale and transmission of thermal energy for private use, while simultaneously participating in the market for heat cost allocation among consumers in RFB and as such is a competitor of the applicant "PMU Engineering" OOD.

42. The investigation established that Toplofikatsiya Sofiya abused its dominant position by delaying the entry of its new competitor on the market for the service of heat cost allocation of district heating. For 3 months (14.12.2011 – 13.03.2012) the thermal transmission undertaking refused to conclude a contract with "PMU Engineering" OOD for carrying out the service, while meanwhile taking action for attracting the clients of his competitor and for acquiring rights for work with the corresponding model devices. In letters to the consumers, in which it offers its services, "Toplofikatsiya Sofiya" EAD does not inform them that it is necessary for them to change their "Minol Mestechnic" devices, which only "PMU Engineering" OOD can read, with new "Siemens" or "Sensus" ones, in case they choose Toplofikatsiya Sofiya as a provider of heat cost allocation services (HCA services).

43. The Commission determines a sanction based on the income of the undertaking, derived from heat cost allocation of district heating for 2011, while taking into account the gravity and duration of the infringement, as well as its termination during the procedure, immediately after the intervention of the CPC.

44. In **Decision № 843/11.07.2013** the Commission establishes that "Vodosnabdyavane i kanalizatsiya – Vidin" ("V i K – Vidin") EOOD committed an infringement of Article 21 LPC, imposes a sanction amounting to 211 715 lv and orders the cessation of the infringement. "Vodosnabdyavane i kanalizatsiya – Vidin" EOOD committed an infringement, consisting of an abuse of a dominant position on the market of WSST services in the town of Vidin, which can prevent, restrict or distort the competition and affect the interests of the consumers through an unjustified refusal to supply a service to a real or potential client, in order to hinder the commercial activity it carries out. The procedure is initiated after an application by "Vitrade" OOD.

45. The investigation made clear that on 04.06.2006 “Vitrade” OOD submitted an application for joining the building “furnishing house” to the water supply and sewage treatment system to the operator. “V i K – Vidin” EOOD refused to admit the undertaking as a consumer of these services, despite receiving the required documents to verify the compliance of “Vitrade” with the regulatory requirements for persons which have the right to be incorporated as “consumers of water supply and sewage treatment services”.

46. During the investigation it was established that a decision of the State Energy and Water Regulatory Commission of April 2012 obliged “V i K – Vidin” EOOD to restore the water supply to the building “furnishing house”. Despite this, the water and sewage operator continues to silently refuse to supply the service demanded by “Vitrade” OOD, by refusing to accept the submitted applications by the applicant for changing the name of the account of the site.

47. The Commission considers that despite the existence of different concrete forms of the behavior of “V i K – Vidin” EOOD, in its essence it constitutes a refusal to supply water supply and sewage treatment services to a real client with regard to a site, in which the client carries out its commercial activity. The actions of “V i K – Vidin” EOOD can be related to the incorporated in Article 21, point 5 LPC behavior, consisting of an unjustified refusal to supply a good or a service to a real or potential client, in order to hinder the commercial activity it is carrying out.

4. Sector Analyses

48. In 2013, the Commission carried out 2 sector analyses of the competitive environment in different economic sectors.

4.1 Sector analysis of the electricity market

49. With **Decision № 800/03.07.2013** the CPC adopted a Sector Analysis of the Competitive Environment on the Markets for Production, Trade, Transmission and Supply of Electricity in the Republic of Bulgaria and informed the Minister of Economy and Energy and the National Assembly, respective with their competences, about potentially undertaking appropriate measures for enhancing the competitive environment.

50. During the proceedings, the Commission requested information from electricity traders, end clients on the free market, the State Energy and Water Regulatory Commission, the Ministry of Economy and Energy, the Institute for Energy Management, as well as the energy undertakings carrying out licensed activities in accordance with the Energy Act.

51. In the sector analysis, the requirements of the Third Energy Package of measures from the EU, as well as the Energy Act are reviewed and analyzed.

52. The analysis examines and assesses the regulatory framework in the sector and its application in practice, as well as the structure and organization of each level of the distribution chain for electricity – production, transmission, distribution and supply.

53. Based on the analysis prepared, the Commission highlighted some main issues, which affect the vertical structure of the examined commercial branch in varying degrees. Part of the issues are structurally related to the market for electricity production and the characteristics of the transmission and distribution networks as an essential facility, which cannot be economically justifiably and effectively duplicated; with regard to the provision and supply of electricity, the main issue is related to the development of trade by freely negotiated prices and the exercise of the right of every consumer to freely choose his electricity supplier, a basic prerequisite for achieving full liberalization on the market. As up-coming competition issues on the market, the Commission pointed towards the participation of the transmission operator and

the end-suppliers in the market for electricity supply on regulated prices and the market on freely negotiated prices, as well as the lack of a transparent and exact procedure for the end consumers to change their supplier.

4.2 Sector analysis of the market of newspapers and publications

54. By **Decision № 1454/28.10.2013** the CPC adopted a Sector Analysis of the competitive environment in the sector of newspapers and printed publications distribution in the Republic of Bulgaria and informed the Minister of Finance, the National Assembly, the National Association of Municipalities in the Republic Bulgaria, the Union of Publishers in Bulgaria, the Bulgarian Media Union and the Bulgarian Association of Regional Media, respective to their competences, regarding the potential undertaking of appropriate measures for enhancing the competitive environment.

55. The sector analysis was initiated after the CPC received information signals, as well as publications in the press, connected to the actions undertaken by newspaper and magazine distributors, aimed at restricting the sales of some main periodicals – national daily and weekly publications.

56. The analysis examines the trade relationships among the participants at each level of the vertically connected process from publishing a printed edition to its sale to the end consumer (the reader) and the manner of functioning of this process.

57. The aim, which the CPC set itself, was to establish whether anticompetitive practices existed in the manner and circumstances of their distribution and limitation of their access to the reader audience in the country.

58. After a detailed investigation of the trade relationships among the separate participants operating on different levels on the chain publisher – wholesale distributor – retail distributor, the Commission reached the conclusion that the presented general conditions, contracts, enclosures and annexes do not include clauses which lead to a restriction of the activity of the participants in the sector.

59. The CPC further established that the adopted mechanism for distribution of printed publications has not been altered in years, while the contracts concluded during the reviewed three-year period between publishers and distributers, as well as between distributers operating on different levels (wholesale and retail) have not been significantly altered.

60. The Commission reached the conclusion that the clauses of the submitted contracts do not lead to restrictions to the behavior of the distributors of print publications, since they do not include obligations for exclusive supply, geographic limitations, nor provide for exclusive rights of distribution of printed publications, with the exception of those submitted by "Agentsiya Strela" EOOD with regard to the publications of "MGBH" AD, i.e. among undertakings from the same economic group.

61. The Commission accepted that the market presence of wholesale distributors is determined by the transport routes, which they operate, and that of the retail distributers – by the number of own/rented end points for sale. The Commission highlighted the main participants in the distribution, operating in more than one region, although based on the received information no conclusion with regard to a dominant position of one of these distributors can be made and it cannot be accepted that one of these is independent from the behavior of his suppliers, competitors and clients.

62. Different than the market for printed publications, which is characterized with difficult to overcome barriers to entry, when it comes to their dissemination, the barriers are less burdening.

63. For the period analyzed, unification can be observed between the permanent distributors on the market, aimed at optimizing their expenses and receiving economies of scope and scale. Meanwhile there is no data and proof to enable the CPC to explicitly point to the vertical integration within the sector as a competitive issue, especially this between publisher and wholesale distributor.

64. In connection with the issues within the sector, expressed by the interviewed participants, the Commission gave a recommendation to the competent state organs and to the acting professional associations within the sector of publishing and distribution of printed publications regarding starting an in-depth discussion, aimed at introducing appropriate measures, legal or self-regulative, with which to overcome these issues and stimulate the development of competition in the sector. According to the CPC, it is appropriate to discuss some of the proposals of the publishers and distributors, including: developing a specialized legal framework, regulating the activities of publishing and distribution of printed publications, as well as the relationships among the chain publishers – wholesale distributors – retail distributors of printed publications, without affecting the right of free economic initiative and on the condition of not introducing excessive regulation within the sector; acceptance and publication of General Trade Conditions for delivery and sale of printed publications when carrying out the activity by a publisher or distributor; introduction of measures for strict accounting for the issues delivered and sold, including in case of sales through fiscal devices.

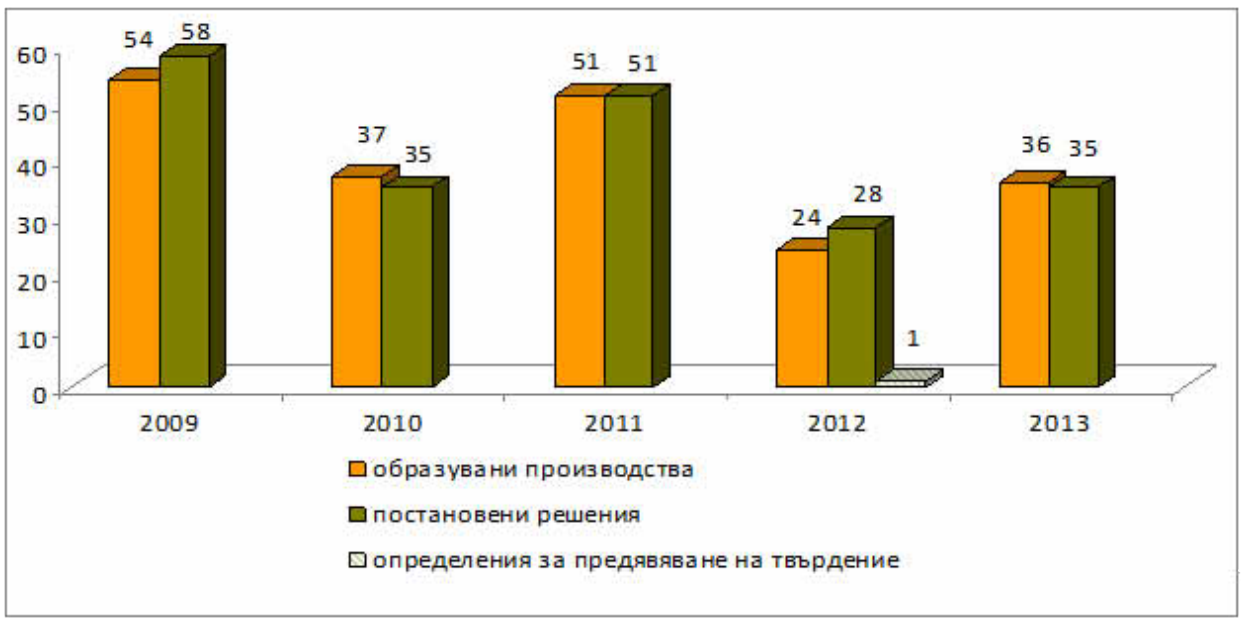
5. Concentrations Between Undertakings

5.1 Initiated proceedings and adopted decisions

65. In 2013 the Commission initiated **36** proceedings in total, based on notifications submitted for an approval of a concentration between undertakings. The CPC adopted totally **35** decisions – with **24** decisions the Commission allows the concentration between undertakings, 1 decision establishes that the deal does not constitute a concentration, and 9 decisions establish that the deal does not fall within the scope of the obligation for prior notification.

66. Economic sectors in which concentrations took place on the national market in 2013 are: transportation (land, water and harbor services); media (television, radio, print and websites); agriculture (production, trade with agricultural goods, leases); energy; banking and financial services; insurance; metallurgy (production and trade of steel products and metal goods); trade with fast-moving consumer goods.

Figure 3. Practice in the field of concentrations between undertakings for the period 2009-2013



67. According to Council Regulation № 139/2004 regarding the control on concentrations between undertakings (Merger Regulation), the European Commission provides the Member States with a copy of the concentration notifications and motivated requests of the participants of the relevant deal submitted to it.

68. In 2013 the CPC carried out an analysis of the information included in a total of **299** notifications and motivated requests for concentrations between undertakings, received through the above-mentioned manner, aimed at evaluating the potential application of the procedure of transmissions from/to the European Commission in accordance with the Merger Regulation and the Notice. During the examined period, the CPC did not utilize its capacity to send in a request for transmission of a concentration case to and/or from the European Commission (before notification or after the submission of a notification) since the cumulative legal requirements of Council Regulation № 139/2004 were not fulfilled.

6. Unfair Competition

6.1 Initiated proceedings and adopted decisions

69. During the examined period, **59** proceedings for ascertaining the existence of unfair competition were initiated in the Commission. In the same period the Commission issued **65** decisions in total and imposed sanctions and/or fines in the **amounting to 2 826 924 BGN.**

70. The most common infringements in the field of unfair competition, established throughout the year, are connected to bad faith behavior in contravention of the general ban of unfair competition in Article 29 LPC and the forms of imitation in Article 35 LPC. In 2013, an increase of the decisions finding a breach of the ban on learning, using and divulging an industrial and trade secret is observed.

Figure 4. Practice in the field of unfair competition for the period 2009-2013

6.2 Examples from the practice of the CPC

6.2.1 Unfair attraction of clients

71. In **Decision № 783/03.07.2013** the CPC accepts that an infringement of Article 36, paragraph 2 LPC by "MobilTel" EAD has been established and imposes a sanction on the undertaking in the amount of 440 049 BGN.

72. The proceeding is initiated after an application by the members of the "National Association of Small and Medium Cable Operators TV Club 2000" (NASMCO), Sofia. In the decision it is pointed out that in October 2012 "MobilTel" EAD carried out an advertising campaign entitled "More for you"/"Poveche za teb" and offered packages of services in three variations – economic, standard and expanded, whereby the advertising message was "You want more and you have it. With the package "More for you" you get everything – a tariff plan with up to 1000 minutes to all networks in the country and abroad, speed-light Internet for the home up to 100 Mbps and digital television from Mtel with up to 160 channels, together with a device of your choice". Together with the package "More for you" a device for use, of the consumer's choice, is offered – a portable computer, a television receiver or a phone. The proof in the proceedings does not establish that the devices or their usage were paid for through additionally concluded contracts for usage or leasing for example. On the contrary, the free usage of the provided devices is explicitly declared in the written contracts, concluded with the relevant customers. Furthermore, if the contractual relationship were to take place normally and with regular monthly payments on the side of the consumer, after the contract is over the received device does not need to be returned and due to the perceived by "MobilTel" EAD moral and technical wearing out of the device during its usage, the undertaking does not seek their return by the consumer. With regard to the requirement for submitting a deposit in the amount of 400 lv for the chosen device placed on the new customers, the Commission accepted that its purpose is not to be a barrier to persons, which were not previous customers of "MobilTel" EAD and therefore their attraction through the promotion is not limited by it. The set sum serves as a guarantee for the fulfillment of the contract concluded with the client. Due to this, the Commission accepts that "MobilTel" EAD, together with the provided packaged service, further provides televisions, laptops and phones (devices), constituting supplements with a gratuitous character.

73. In its decision the Commission points out that the devices in question are not an advertising item of insignificant value, they do not constitute a requisite to the offered by the relevant undertaking services and they do not constitute awarding goods in cases of sales in greater quantities.

74. The CPC established that the campaign, organized by "MobilTel" EAD, is extremely attractive, considering the different types of free additions, the possibility for choice according to the needs of the client and their high market value. The offered additional products exceed the regulatory established boundaries and cause the anticompetitive effect of the campaign – the competition does not unfold through its own parameters or the conditions of the services offered, but attract the attention of the consumers through other stimuli.

75. Considering the above-mentioned, the Commission accepted that the observed behavior of the defendant undertaking is in contradiction with good faith trade practice and is able to damage the competitive environment.

76. In **Decision № 1716/18.12.2013** the Commission establishes the committed infringement of Article 36, paragraph 1 LPC by "Pensionnoosiguritelno druzhestvo Aliants Bulgariya" AD / "Retirement savings association Allianz Bulgaria" AD and imposes sanctions on the undertaking in the amount of 104 240 lv.

77. The proceeding is initiated on the basis of Article 38, paragraph 1, point 3 LPC after a request by "ING Retirement savings association" EAD, which expressed concrete assertions regarding *in abstentia* verifications of applications for changing customer participation and transferring of resources from the funds of ING Retirement savings association to the relevant funds of Allianz Retirement savings association, as well as the compiling of inauthentic applications for changing participation and inauthentic retirement contracts, organized by Allianz, including through its insurer intermediaries.

78. In relation to the assertions of the applicant regarding the compiling of inauthentic applications – falsifying the signatures of the persons ensured on the applications for changing participation and transferring of the resources from one fund to another, the Commission accepts that it does not need to express an opinion on the merits. The considerations of the Commission are the following: firstly, the actions concerned constitute crimes according to the Penal Code, excluding the application of the LPC and therefore the competence of the CPC to adopt a decision. Secondly, according to Article 35 of the Penal Code the penal responsibility is a personal responsibility, due to which it is not applicable to legal persons.

79. With regard to the assertions of ING Retirement and savings association (RSA) regarding organized by the defendant, including through its insurer intermediaries, *in absentia* verifications of applications for changing participation and transmission of resources from the funds of ING RSA to the corresponding funds of RSA Allianz, during the procedure it was proven beyond doubt that in the period from 26.06.2011 to 05.09.2011 the defendant undertaking, through its intermediaries, accepted the first copy of applications for changing participation and transmission of resources from the funds of the ensured persons without a notarial certified applicant signature. Consequently, the signatures were verified by the mayor of village Strahilitsa in the absence of the undersigned persons. In this manner, Allianz RSA acts in bad faith and in contravention of Ordinance № 3/2003 and the regulatory order for carrying out notary actions under the Civil Procedural Code. In practice, through its intermediaries the undertaking takes advantage of this illegal notary action, which caused legal consequences, namely the transferal of persons towards participation in the funds of the defendant undertaking and their removal as clients from ING RSA. In this regard, the Commission accepts that, independent of the fact that the insurer intermediaries are not employees of the defendant, during the proceedings it was proven beyond doubt that the intermediaries of the defendant association are bound by the concluded between them contracts for insurance intermediation, by the power of which the insurer intermediaries are obliged to attract clients to the funds of the defendant by concluding contracts on behalf and at the expense of the company. In practice, this points to a direct relation between the insurer intermediaries and the defendant undertaking, because as a result of the concluded contracts with clients, all consequences of this exist in the legal sphere of RSA Allianz – the transmission of the existing resources on the individual accounts of these persons, followed by monthly contributions from their payments, leading to an increase in the market share of the undertaking, allowing it to operate with more resources and to make more investments, therefore increasing its profitability. I.e. through the actions of the intermediaries in attracting clients, including meetings with clients, filling out and verifying applications for changing participation, the defendant gains profits.

80. In this regard, in an unfair manner the defendant undertaking achieved the result aimed at, namely the attraction of already accumulated resources to the Mandatory Universal Pension Fund of the RSA Allianz, whereby as a result of these unfair practices there are terminated contracts between seven private persons and the competitor ING RSA, and were concluded with the defendant. In this way, the undertaking committed the factual requirements of Article 36, paragraph 1 LPC.

6.2.2 Damaging the reputation of competitors

81. **In Decision № 919/24.07.2013** the CPC establishes that an infringement of Article 30 LPC has been committed by "Konica Minolta Business Solutions Bulgaria" (KMBSB) EOOD and imposes a sanction on the undertaking in the amount of 63 020 lv.

82. The proceeding is initiated after a request by "Rais" EOOD against KMSBS for establishing potential infringements of Articles 29, 30, 32, paragraph 1 and 36, paragraph 1 LPC, for ordering the discontinuation of the infringements, as well as for imposing sanctions, as provided for in the law.

83. In the request it is pointed out that "Rais" EOOD has been a principal partner and distributor of the products of Konica Minolta for 12 years, KMBSB and "Rais" EOOD having concluded a partnership agreement in 2009. In October 2012 "Rais" EOOD received a notification from KMBSB for termination of the contract on the basis of a culpable non-performance of the applicant's obligations. After the delivery of the notification and in contravention of the fair competition rules, the defendant began an organized campaign to damage the good name and reputation of "Rais" EOOD, as well as the goods and/or services offered by the undertaking. KMBSB began to spread wrongful assertions and/or distorted facts among the corporate clients of the applicant. Additionally, on 12.12.2012 KMBSB opened its own office in the city of Varna and in this connection used misleading advertising, consisting of the statement that Konica Minolta opens its first office "at the Black sea seaside". This claim is untrue and aiming to mislead, in the opinion of the applicant.

84. During the investigation it was established that in reality employees of "KMBSB" EOOD were in contact with clients of the applicant. During the meetings with some of the applicant's clients, representatives of the defendant undertaking expressly pointed out that "Rais" EOOD is no longer a part of the official structure of the brand Konica Minolta for the country, as well as that the trade relationship between "KMBSB" EOOD and "Rais" EOOD were terminated. The facts, presented in such a manner, should be viewed as the objective reality. With regard to the given period in the procedure, the two parties of the proceedings had already terminated their contractual relationship and "Rais" EOOD was no longer an authorized partner of Konica Minolta. On the other hand, however, the representatives of the defendant pointed out further that "Rais" EOOD probably would not be able to provide original parts and supplies for the existing machines of the clients. They went even further by saying that the undertaking would not be able to carry out its contractual obligations in the future. This assumption on the side of the defendant's representatives took place in a manner of using words such as "probably", "most probably", as well as "it could be that", in two of the meetings with clients reformulating it as explicit and clear declaration, that "Rais" EOOD "will no longer be able to fulfill its obligations with quality from now on" and that the client undertaking "will not be able to receive more original spare parts and supplies for their existing machines", as well as that the quality of the support offered by "Rais" EOOD will deteriorate. Therefore, based on a real fact, namely the discontinued contractual relationships with its partner, the defendant undertaking made on its own account the supposition, in two of the cases a categorical conclusion, that its competitor will not be able to fulfill its contractual obligations with a high quality in the future, and spread it among the current clients of the applicant. Such a behavior constitutes a distortion of the facts of the objective reality under the meaning of Article 30 LPC.

85. Meanwhile, during the investigation indisputable evidence was gathered, pointing to the terminated contracts of clients with "Rais" EOOD as a consequence of the bad faith behavior of the defendant undertaking. Considering the above, the Commission accepts that "KMBSB" EOOD committed an infringement of Article 36, paragraph 1 LPC.

86. With regard to the contentions of the applicant of the existence of misleading advertisement, these are found to be ungrounded, due to the message carrying only information that the undertaking opens an office in the city of Varna for the first time.

87. In conclusion, the Commission accepts that the behavior of the defendant party should be examined on its merits under Article 29 LPC, in connection to the initiated by it termination of its contractual relation with "Rais" EOOD, further to be analyzed of whether or not the termination of the contract is based on a valid reason. The examined behavior is caused by contractual relations between the parties to the procedure and not in connection to their commercial activity as competitors. In this view, a question from the field of the law of obligations arises, lying beyond the scope of the capacity of the CPC. The Commission does not discuss the merits of the brought up arguments regarding a purposeful bad faith policy on the part of "KMBSB" EOOD, aimed at the removal in an unlawful manner of "Rais" EOOD as a competitor on the market, since no irrefutable proof exists, pointing to such actions, being in a causal relation to the change in the manner of activity of "KMBSB" EOOD with regard to a serious entry on the market of direct sales to end consumers and the failed acquisition of "Rais" EOOD by the defendant.

7. Competition Advocacy

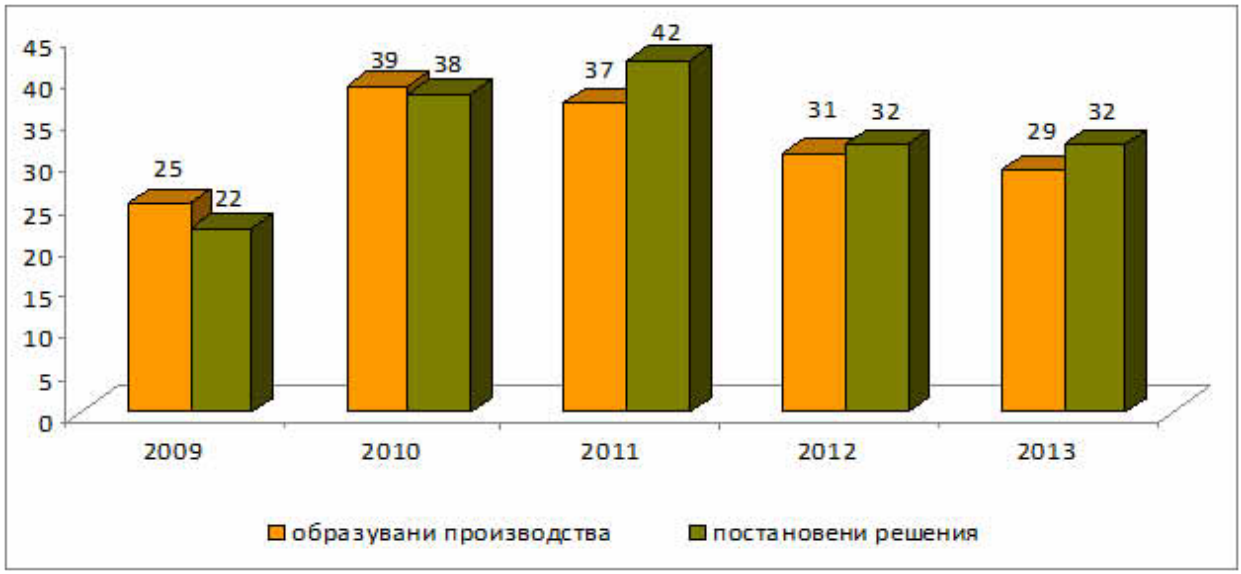
7.1 Initiated proceedings and adopted decisions

88. According to Article 28 LPC, in order to protect the free economic initiative in commercial activity and to prevent the restriction or distortions of the competition, the CPC carries out an **evaluation of the compliance with LPC clauses** of projects of regulatory or regulatory administrative and general administrative acts; projects of acts of associations of undertakings, regulating the activity of their members. As a result of this evaluation, carried out after a request of a state body, of an interested party or on its own initiative, the CPC can recommend to the relevant competent organs of power to repeal or amend their acts which distort competition in the country.

89. In **2013**, **29 proceedings** were initiated, whereby the CPC exercised its powers under Article 28 LPC by issuing a total of **32 decisions**, adopting opinions on projects for or applicable regulatory or general administrative acts and establishing the existence of restrictions on competition which would follow to be corrected by the competent authority bodies. In its opinions, the CPC carried out in-depth evaluations of the compliance of more than 20 acts, applying on the territory of the entire country and on parts of it, whereby the **CPC made concrete recommendations for amendments and supplements of the regulatory framework in a series of economic sectors,** among which: district heating, electricity, water supply and sewage treatment services, hospital medical care, trade in medicinal goods, trade in medical products, trade in liquid fuels, forestry, hunting reserves and game breeding, transportation services for passengers, and others.

90. In its recommendations to the organs of central and local authority, among which: the National Assembly, the Council of Ministers, ministers, state and executive agencies, the National Health Insurance Fund, municipal councils and mayors, the CPC has always advocated its principled position that **public restrictions to competition, ensuing from authoritative acts, lead to an especially negative effect on the conditions for carrying out commercial activity in the country and can reduce or even abolish the benefits to society of an effectively functioning competitive market.** Due to this reason, the recommendations and proposals of the CPC in the area of competition advocacy, although not legally binding with regard to its addresses, can aid the state organs in carrying out their public policies in a way which does not restrict the competition in the country. In this regard, the CPC has also published **Guidelines for the evaluation of compliance of authority acts with the rules of competition,** in which it has provided all bodies with general instructions regarding ways to establish and prevent public restrictions to competition.

Figure 5. Practice in the area of competition advocacy in the period 2009 – 2013



7.2 Examples from the practice

7.2.1 District heating sector

91. With **Decision № 623/30.05.2013** the CPC adopted an opinion regarding the compliance with the rules of competition of:

- The Energy Act (Chapter Ten "Thermal supply");
- Ordinance № 16-334 of 6 April 2007 regarding thermal energy supply.

92. After carrying out a detailed analysis, the CPC established the existence of clauses, which can disrupt or restrict the competition on the market for district heating and heat cost allocation, to the loss of the wellbeing of the consumers.

93. With a view of avoiding the unfair distribution of the expenses for thermal energy for warm water among the separate consumers in a residential flat building, the CPC proposed that this thermal energy is not determined by way of calculation of a formula, but by being measured with additional measuring appliances – heat meter(s) in the heat substation of the building, installed at the expense of the district heating undertakings.

94. The Commission, furthermore, established that an effective sanctioning mechanism is lacking, which would coerce defaulting consumers to install water meter(s) for warm water in their property, allowing for their consumption to be calculated on a basis, which leads to improper distribution of thermal energy among the separate consumers.

95. The CPC considers that the regulative framework should include all possible methods for the determination or measurement of thermal energy for a building installation, whereby the general assembly of the residential flat building must decide which method should be used in the specific building. The

analysis of the CPC shows that during the application of the formula, pointed to in the Ordinance, it is possible not to take into account important thermal-technical characteristics of various buildings.

96. The CPC proposed that the ban on the physical separation of radiators from the building installation is repealed, allowing for the removal of radiators outside the heating season. The effective competition presupposes that the suppliers aim to keep their clients and attract new ones through improving the quality of their services, and not through regulatory prohibitions and procedures, limiting the opportunities for canceling the services in question.

97. The CPC called for examining regulatory possibilities for the effective establishing and sanctioning heat energy theft, since the opportunity foreseen in the regulatory framework for transferring the thermal energy expenses from defaulting onto paying consumers has a direct influence on the wellbeing of the consumers and indirectly on the district heating undertakings through the partial or full refusal by the paying consumers of district heating.

98. In its opinion, the CPC asserted other legal competitive issues as well connected to the insufficient clarity of the elements of some of the formulas from the Methodology to the Ordinance, with the distribution of thermal energy, the installation and support of the control heat meters and water meters and the limitation of the possibility for cancelling the use of central heating in the cases, when a few buildings are connected to the same heat substation, etc.

99. In its opinion, the CPC further established two main competitive issues, connected to the service of heat cost allocation – the limited opportunity for the consumers to change the providers of this service and the limitation of competition among the firms providing heat cost allocation services.

100. With regard to the mandatory use of the heat cost allocation system, the Commission is of the opinion that, from the stand point of competition law, this deprives the consumers of the opportunity to choose the method suitable to them for distribution of the thermal energy, used in reality in residential flat buildings. The CPC considers that the competent organs should discuss the possibilities for regulating other methods for heat cost allocation among consumers, which correspond to the requirements of European law for encouraging energy efficiency.

101. The other issue, identified by the CPC, is the binding of the heat cost allocation service of with the purchase of devices for heat cost allocation from the firm, offering the service. This limits the "mobility" of the consumers in their choice of a provider of the service and creates obstacles to the effective competition among the heat cost allocation undertakings, including the price competition among them.

102. According to the CPC, an especially serious issue from the point of view of competition is the 2006 transition, through amendments to the Energy Act, towards a model whereby the providers of heat cost allocation services are "subcontractors" of the district heating undertakings with regard to the heat cost allocation in residential flat buildings. The lack of direct contractual relations between the consumers and the heat cost allocation firms, including with regard to the price of the services, leads to serious anticompetitive effects due to the lack of economic stimuli for the service providers to increase the quality of their services; the price of the service heat cost allocation is not determined based on supply and demand, which is one of the most serious infringements of the law of competition; opportunities for abuse with a dominant position by the district heating undertakings, which are also registered as service providers of heat cost allocation, are created, etc.

103. In its analysis of the regulatory framework, the CPC established that it includes limited possibilities for the entry of alternative providers to supply heat energy to consumers – citizens and

undertakings, and to be real competitors of the district heating undertakings. Right now the role of the suppliers is of "intermediaries" of the district heating undertakings, aiming at higher collection of sums for delivered heat energy by the district heating undertakings.

7.2.2 Water supply and sewage treatment (WSST) services

104. By way of **Decision № 508/08.05.2013** the CPC adopted an opinion regarding the compliance with the rules of competition of:

- Ordinance № 4/14.09.2004 regarding the requirements and the manner of connecting consumers and usage of the water supply and sewage treatment systems

- General requirements regarding the provision of WSST services to consumers by WSST operator "Sofiyska voda" AD

105. During the analysis of the regulatory framework in force, the CPC established that the joint responsibility between immobile property owners and their tenants leads to a competitive legal problem, consisting of the unjustified limitation on the possibility of consumers of WSST services and electricity to exercise a disciplinary market influence. The CPC considers that for the consumers, whether owners of tenants of a propriety, supplied with water, an opportunity should be offered to conclude individual contracts with the WSST operators. Analogically, there is no legal obstacle the tenants of immobile property, despite not having ownership rights over it, to be considered consumers of electricity and, therefore, to conclude independent contracts with energy undertakings. The CPC considers that, keeping in mind clarity and legal certainty, it is recommendatory that this possibility be expressly provided for in the applicable regulatory framework.

106. The CPC recommends the amendment or repeal of **Articles 8 and 9 of Ordinance № 4,** regarding the requirement of joint responsibility of the owner and tenant of the property, supplied with water, with regard to the sums owed to the WSST operator for the services provided by it, as a prerequisite for transferring the account of the tenant. The requirement for taking on joint responsibility results in a competitive issue, consisting of an unjustified limitation of the possibility of consumers of WSST services to exercise a disciplinary market function over the WSST operators.

107. The CPC proposes to the competent bodies to amend or repeal Articles 2, paragraph 3 of the General requirements regarding the offering of WSST services to consumers by the WSST operator "Sofiyska voda" AD, with regard to the requirement of joint responsibility of the owner and tenant of the property, supplied with water, for the sums owed to the WSST operator for the services supplied by it, a necessary precondition for the transferal of the account of the tenant. This limitation on the WSST services' consumers, regulated by the law of obligations, to enter in independent market relations with the WSST operators, as well as the lack of active legal opportunities for concluding individual contracts for the supply of WSST services, not allowing for derogations from the general conditions of the WSST operators, contradicts the competitive market model.

7.2.3 Electricity

108. With **Decision № 541/15.05.2013** the CPC adopted an opinion regarding the compliance with competition rules of the General conditions for the contracts for sales of electricity of "CEZ Electro Bulgaria" AD.

109. The CPC proposes to the competent organs to take actions for amending or repealing Article 4, paragraph 3 of the General conditions for the contracts for sale of electricity of "CEZ Electro Bulgaria"

AD, since the provision laid down in the cited Article requires the taking on of joint responsibility between the owners of immobile property and their tenants, causing an unlawful and unjustified restriction of the opportunity of consumers to exercise a disciplinary market function on the energy undertakings.

7.2.4 Pharmaceuticals

110. With **Decision № 507/08.05.2013** the CPC issues an opinion regarding the 2013 "Model of a standard contract" between the National Health Insurance Fund (NHIF) and pharmacies, in their function of retail traders in pharmaceuticals, reimbursed by the Fund.

111. In the Model of a standard contract a medium length of 6 minutes is determined for the work with a prescription in the pharmacy and 9 minutes for the compiling of a protocol for providing medicinal products, paid for fully or partially by the NHIF. In the Model contract, a formula is included which calculates the maximum number of prescriptions which every pharmacy can process in the framework of one accounting period, depending on the number of the employees with Masters in Pharmacology it has. In the Model contract it is further laid down that the NHIF will not reimburse pharmacies for prescription medicine, exceeding the maximum number, calculated through the formula.

112. The CPC is of the opinion that the minimum time for processing of prescriptions and protocols for reimbursed medicines and the formula, setting the maximum number of prescriptions to be paid by the NHIF to pharmacies, has the effect of a quota restriction. According to the Commission, in this way the competition on the market of resale trade with reimbursed medicine is disrupted and the wellbeing of the consumers (patients) is affected in a few different aspects:

- Patients are redistributed among the pharmacies, independent of the quality of service and the price of the offered medicinal products;
- The stimuli for the more efficient pharmacies to offer a higher quality service at more competitive prices decline;
- Certain pharmacies are presented with more favorable conditions than others;
- The stimuli for pharmacies to offer medicinal products, reimbursed by the NHIF decline;
- The quality of service in the pharmacies is lowered;
- The choice of patients regarding the pharmacy where they will buy the necessary medicine, is restricted;
- There is a danger of the patients not receiving their prescribed medication, reimbursed by the NHIF, on time, *inter alia* due to the fact that the pharmacies, especially in small populated areas, have finished their prescription processing limit.

113. The Commission considers that the motives for including these clauses in the Model contract, namely: increasing the quality of service and counteracting the sale of medicine in illegal objects outside pharmacies, cannot balance the above-mentioned negative effects.

7.2.5 Medical products

114. With **Decision № 540/15.05.2013** the CPC adopted an opinion regarding the compliance with competition rules of the "Methodology for negotiating the value, up to which the NHIF pays for medical

products in the area of hospital, private practice and home care", adopted with a decision of the Supervisory Council of the NHIF.

115. The methodology of the NHIF aims at establishing the manner and conditions, under which the NHIF concludes contracts for the value which it will reimburse for medical products with producers and traders. The methodology foresees that as a result of the negotiation, the NHIF is to determine the lowest value of medical products, which it will reimburse to hospitals and pharmacies.

116. The CPC considers that the following clauses of the Methodology are able to negatively affect the competitive process on the market of medical products, reimbursed by the NHIF:

- The discriminatory conditions, allowing entry of participants to the contracting procedure: They limit the participation on the market for reimbursed medical products of current or potential producers/traders.

- The ban on a possible surcharge payment by the patient for products, which are more expensive than those contracted by the NHIF, which will lead to a foreclosure on the market of reimbursed medical products and to restricting the competition on it.

- The lack of full, precise and clear specification for the contracted medical products; the lack of a transparent procedure for determining the value of the goods, which the NHIF will reimburse. This puts in doubt the objectivity of the competition between the participants in the negotiation.

- The participation of producers of medical goods in the negotiation is liable to encourage the conclusion of forbidden vertical or horizontal agreements on the market of reimbursed medical goods (for example distribution contracts, cartel agreements), as a result of which the participants on the market could limit the price and non-price competition.

117. The CPC proposes to the NHIF to amend or repeal the clauses of the Methodology cited in its decision, in accordance with the above-mentioned considerations.

7.2.6 Hospital care services

118. With **Decision № 1193/18.09.2013** the CPC adopted an opinion regarding the compliance with competition rules of the legal framework, regulating the activity of medical establishments for hospital care, more specifically:

- Medical Establishments Act

- Health Insurance Act

- Decree № 5 of the Council of Ministers from 10.01.2013 accepting the volumes and prices of medical care under Article 55, paragraph 2, point 2 of the Health Insurance Act for 2013

119. With regard to the Medical Establishments Act, the Commission makes the following conclusions and recommendations:

1. The setting of a maximum number of beds and maximum number of medical establishments in the regional and national health maps constitutes quantitative restrictions to the offered medical services for hospital care and a geographical distribution of the relevant market.

2. Available, NHIF financed hospital care should be ensured through stimulating the effective competition between separate medical establishments, independent of their form or ownership. The criteria and rules for providers of medical services regarding the conclusion of a contract with the NHIF, as well as the manner of exercising control over their application, should be regulated in a normative administrative act of the Ministry of Health.

3. The inexact evaluation of the clinical "pathways" and the presence of objectively unjustified disproportions in their prices could create circumstances, distorting the effective competition between medical establishments. A serious analysis of the evaluation of medical activities in the hospital care is necessary.

4. The departmental medical establishments should compete with all other medical establishments from hospital care, independent of their ownership (the state, municipal, state/municipal, private) with regard to the attraction of health insured clients, whose treatment is covered by the NHIF.

5. The CPC proposes to the competent organs to amend and/or supplement the normative framework, taking account of the criteria of equality and prohibition of discrimination, by providing the opportunity emergency aid to be given by all medical establishments, independent of their legal-organizational form and their ownership, whereby all these medical establishments receive payment for the provided medical service from the republican budget,

120. With regard to Decree № 5 of 10.01.2013, the CPC expresses the opinion that the value of the clinical "pathways" is determined empirically and historically, dependent on the provided resources in the Law for the Budget of the NHIF, without an objective analysis of the real expenses of the medical establishments on the separate clinical "pathways". Decree № 5 of the Council of Ministers of 10.01.2013 does not lay out the group expenses, which are included in the value of the clinical "pathways". Such are not established in the National Framework Contract for 2012, in the Annex "Clinical pathways".

121. With regard to the Health Insurance Act, the CPC expresses the opinion that, from the point of view of competition rules, there are two possible approaches when distributing the financial resources (Article 55, paragraph 2, point 1, Article 59b, paragraph 1, Article 59 of the Health Insurance Act), connected to the hospital care of the health insured persons:

- The first approach presupposes that the NHIF concludes contracts with all medical establishments, which meet the criteria of the Medical Establishments Act for carrying out activities on various clinical pathways. In this approach, the element of selectivity and limitation of the number of medical establishments-participants in the reimbursing market of hospital services is not present, which is positive for the competition on the market. On the other hand, however, the limited financial resource of the NHIF are distributed among many medical establishments, which does not provide the more effective participants on the relevant market with the opportunity to take advantage of the possible broadening of the scope and scale of their activity and increase of the quality of the offered medical services.

- In the second approach, the NHIF financing could be distributed on a competitive principle, based on objective, indiscriminate and publicly available criteria for quality, which exceed the minimum, required for licensing carrying out an activity as a medical establishment. In this approach, it is potentially possible to limit the number of the medical establishments-participants on the reimbursed market; however, the ones that do participate would have the opportunity to prove their effectiveness and quality and to increase their market share, accumulating a greater financial resource through the natural market mechanisms.

122. According to the CPC, considering that the NHIF is the only organization, responsible for managing the health insurance payments of the Bulgarian citizens from their mandatory health insurance, the regulatory framework should guarantee that this institution abides by the competition rules, excluding the possibility that the NHIF makes decisions based on considerations (including financial) whether or not to conclude a contract with a provider of medical services for hospital care. In this regard, the Commission considers that the criteria and the rules for contract conclusion between the NHIF and the providers of medical services, as well as the manner for exercising control regarding their application, should be regulated in a normative administrative act of the Minister of Health – the competent organ in the country, responsible for the carrying out of the state policy in the area of health.

7.2.7 Taxation policy

123. With **Decision № 587/22.05.2013** the CPC adopted an opinion regarding the compliance with the rules of competition of a Project for an Order of the Executive Director of the National Agency on Revenues for the Introduction of an Accelerated 10-Day Return of the Value Added Tax (VAT) to Undertakings, which Fulfill a Set of Criteria, the so called "Golden standard".

124. During the analysis of the criteria of the "Golden standard", the CPC established that its introduction will lead to an unjustified exemption from the general timeframes under the Value Added Tax Act only to a limited number of undertakings, whereby they will benefit from shorter periods for VAT refunds. The "Golden standard" and its criteria, formulated in this way, would put smaller and medium enterprises, as well as new-coming undertakings on the market in an unequal position, since either the condition for a total amount of the request for a VAT refund or the condition for a three-year tax history will not be fulfilled for them.

125. According to the CPC, the presented project for a "Gold standard" under the VAT Act would lead to an increase to the barriers to entry on the market, which would lead to an increase of the concentration on certain markets.

126. In its position, the CPC has further cited Article 60, paragraph 2 of the Constitution of the Republic of Bulgaria, according to which tax alleviations and aggravations can be established only through a law.

127. The Commission proposed that the aims incorporated in the "Golden standard" be fulfilled by foreseeing unified, objective, clear and public criteria, ensuring equality of all real and potential participants on the relevant market and abiding by the rules for state aid, laid down in the Treaty on the Functioning of the European Union (TFEU) and applicable to Bulgaria in her quality as a Member State of the EU.

7.2.8 Forestry

128. With **Decision № 1727/18.12.2013** the CPC adopted an opinion regarding the effect of the Forestry Act and the related secondary legislative acts on the competition on the markets of production, yield and sale of wood from forest territories – property of the state and the municipalities. The Forestry Act envisages the state forest/hunting reserves and the municipalities – owners of forests, to provide a certain quantity wood for yielding or processing to traders, who are based and with a management address on the territory of the relevant reserve or municipality and who carry out their activity in the same territory. The CPC considers that this constitutes distribution of quotas for yielding/trade with wood, as well as a market division on a geographical principle. In this way, barriers to entry of new participants on the relevant market are posed and certain commercial subjects are put in an unprivileged position compared to

their competitors. Furthermore, the opportunity of traders from other Member States of the EU to participate on the wood yield and/or trade market is limited.

129. The CPC considers that the criteria for access to the public procurement procedures for yield and sale of wood, laid down in the Ordinance (existence of certain capacities, own equipment and employees hired) constitute discriminatory conditions which limit the participation in the procedures of part of the participants on the wood market. In this way, the opportunity for participation of distributors of the already yielded wood is abolished and the big wood processing undertakings and wood biomass energy producers benefit. Additionally, the possibility for assigning contracts for a period up to 15 years can foreclose the market for a long period of time.

130. The CPC established, that as a result of these limitations, the regulatory framework leaves an undistributed portion of ~7% of the market for yield and sale of wood from forest territories, owned by the state and municipalities, which themselves constitute a dominant part of the forest resources on the territory of the Republic of Bulgaria. The CPC considers that a new mechanism should be introduced, encouraging the effective competition on the relevant markets for use of wood in forest territories, owned by the state and the municipalities.

131. Besides this, the CPC proposed the repealing of the possibility for tenants and lessees of land property in forest territories – state or municipally owned, to be able to demand the introduction of temporary restrictions or bans to access in the areas, used by them, when this is necessary for carrying out their activities under contract. According to the Commission, the access to forest territories should be unhindered, expect in consideration of the protection of the territories themselves or the health and safety of the people.

7.2.9 Hunting reserves

132. With **Decision № 413/16.04.2013** the CPC adopted an opinion regarding the compliance with competition rules of:

- The Hunting and Game Preservation Act
- The Rules for the Application of the Hunting and Game Preservation Act

133. According to the evaluation regarding the compliance of the Hunting and Game Preservation Act, the CPC proposes that it be expressly foreseen that the National Hunting Association does not have the right to redirect, refuse or alter the requests of the hunting-angling societies under the National Program for Game Resettlement, except in a limited number of laid down circumstances, when this would be justified and acceptable, for example with a view of preventing the genetic contamination of a certain kind of game. Simultaneously, the CPC recommends that the existing normative regulation framework be supplemented, so as to unambiguously lay down the manner in which the game production facilities could participate in the activities, foreseen in the National Program for Resettlement, in this way preventing or removing any obscurity regarding the conditions for participation in this program.

8. Public Procurement and Concessions

134. During the reviewed period, 1800 applications under Article 120 of the Public Procurement Act (PPA) and 24 applications under the Concessions Act (CA) were submitted to the CPC. The total number of the initiated proceedings is 1394. During the period, the CPC has adopted 957 decisions on the merits, 153 rulings on requests for interim measures and 201 rulings on requests for preliminary execution.

135. The most commonly appealed act in the public procurement procedures is the decision of the assignor for ordering the participants/candidates by their desirability and the end-choice of an assignee, while the most commonly appealed public procurement procedures regard the following subjects: building-installing works; delivery of food products; telecommunications services; security activities; repair, maintenance and rehabilitation of roads; waste collection, waste transportation, depots for waste, maintaining cleanliness.

Figure 6. Practice in the field of public procurements and concessions in the period 2009 – 2013

9. Sanctioning Policy of the CPC

136. In 2013, through its decisions the Commission imposed sanctions and fines for infringements of the Public Procurement Act and the Law for Protection of Competition, as well as for refusal to provide or providing incomplete information, and fines to private persons for assisting in the commission of the infringement of the LPC, amounting to a total of **8 587 877 BGN.**

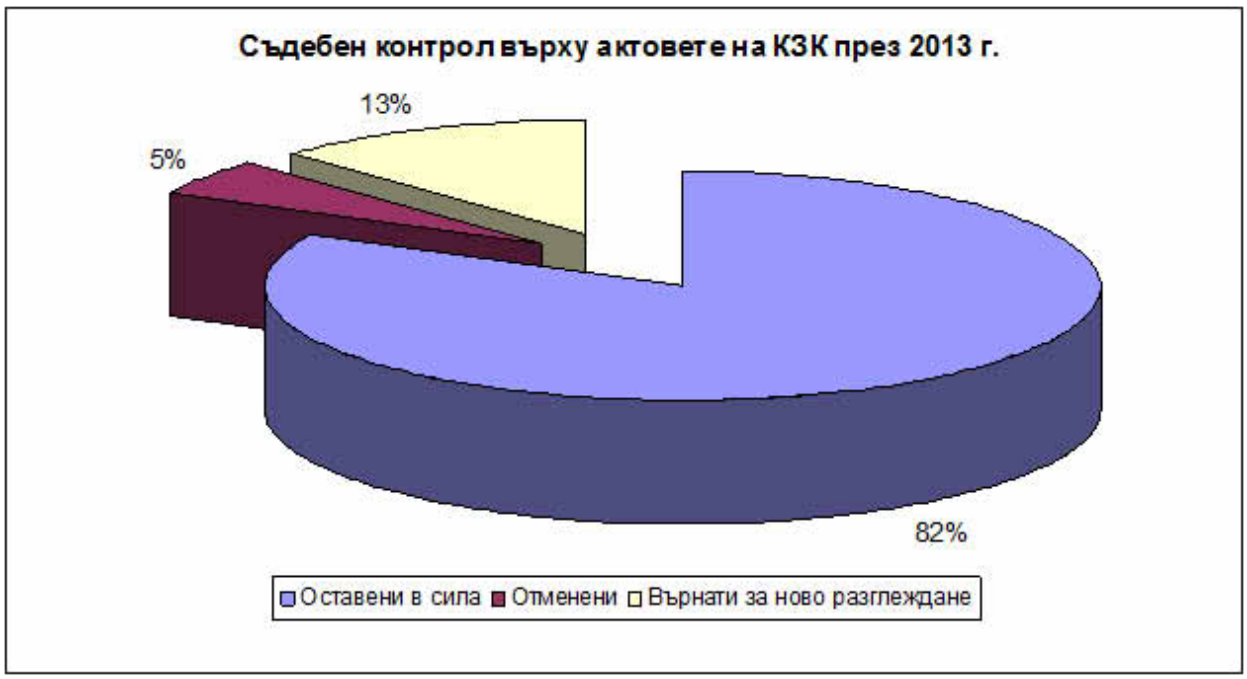
Figure 7. Sanctions imposed by the CPC in the period 2006-2013

137. A general tendency towards increasing the amount of the sanctions and fines imposed for infringements is observable, despite the existing differences between the years. This is due to changes in the sanctioning policy of the Commission, laid down in the regulations of the new LPC, which entered into force in December 2008, and according to which the amount of the imposed sanction is determined as a percentage of the revenue of the infringer from the preceding financial year. This ensures that the sanctions imposed on undertakings are adequate punishments to the infringer, removing all advantages which he has gained from the infringement and acting as a sufficient deterrent.

10. Judicial Control over the Activities of the CPC

138. In **2013** a total of **96 appeals** to the Supreme Administrative Court (SAC) were submitted against decisions and rulings adopted by the Commission. SAC issued a total of **86** judicial acts on appeals, by which 82% of the CPC decisions were finally confirmed, 5 % were repealed and the rest 12 % were turned back to the CPC for reconsideration.

Figure 8. Judicial control over the CPC acts in 2013



11. European Issues and International Cooperation

11.1 Participation in the European Competition Network (ECN)

139. The full membership of Bulgaria in the European Union demands the active participation of the CPC in applying EU competition rules in cooperation with the European Commission (EC) and the national competition authorities (NCA) of the Member States of the EU. The cooperation takes place mainly within the framework of the European Competition Network (ECN). The network plays a key role with regard to the distribution of work among national organs, the EC and the judiciary and guarantees a unified application of competition rules. CPC's participation in the ECN means a constant exchange of information with the other authorities, contributing to the establishment and protection of effective competition within the borders of the EU internal market.

140. The ECN provides the Member States' competition authorities and the EC with the opportunity to benefit from a constant exchange of information, which constitutes an extremely effective tool for examining the practice in the EU on a certain issue. In this regard, within the ECN there is a specific form of cooperation taking place between the members of the network through sending and replying to questionnaires regarding concrete cases and issue in the field of competition law and policy. Within the context of the principle for close cooperation among the members of the network, foreseen in EU law, in the last four years the CPC has sustained high levels of answering to questionnaires, which has additionally established it as a reliable ECN partner.

Figure 9. P Questionnaires within the European Competition Network in the period 2009 – 2013

11.2 Participation in the International Competition Network (ICN)

141. In its position of a member of the International Competition Network (ICN) in 2013, the CPC has continued its active participation in the working groups of the network. The ICN examines issues in the field of antitrust legislation and competition policy. The aim is to deepen the interaction between competition authorities and to reach a conversion on the legislation and law enforcement.

142. The CPC participates actively in the project of the working group "Competition advocacy" with the ICN, dealing with the evaluation of the compliance of regulations with competition rules, as well as in a seminar of the working group, which took place in December 2013 in Rome, Italy. In April 2013 the CPC participated in the Yearly Conference of the ICN in Warsaw, Poland.

11.3 Cooperation within the Organization for Economic Cooperation and Development (OECD)

143. In 2013 the CPC continues its active participation in the work of the Committee on Competition and its working groups with the Organization for Economic Cooperation and Development (OECD). The Commission received an observer status in these organs in 2009.

144. Representatives of the CPC participated in all three annual sessions of the Committee on Competition of the OECD, as well as in the annual Global Competition Forum. For these events, the Commission prepared and presented 7 reports on topics, connected to competition law and policy – Methods for Distribution of Contracts or Licenses for Providing Local or Regional Transport Services; competitive issues with television rights and broadcasting rights; presenting the Bulgarian legal framework, of the regulation of concentrations between undertakings; the practice of the CPC on the fuel market; the practice of the CPC in the food sector; reactive and proactive methods for establishing cartels; a report on the activity of the CPC in 2012.

145. The Commission actively participated through filling in questionnaires, participating in discussions, and in a few long-term projects of the OECD, connected to indicator preparation for evaluating competition policy, as well as to the field of international cooperation.

146. CPC experts, furthermore, participated actively in seminars of the Regional Competition Centre of the OECD in Hungary by presenting the CPC practice from the field of competition law enforcement. In 2013, events took place in Budapest and in Rovinj, Croatia.

11.4 Partnership with the UN Conference on Trade and Development (UNCTAD)

147. The CPC was introduced to the 13th session of the International Expert Group in Competition Law and Policy, organized by UNCTAD in Geneva, Switzerland, where the CPC participated actively through its representatives.

11.5 Sofia Competition Forum (SCF)

148. In 2013 two events of the Sofia Competition Forum took place – a joint initiative of the CPC and the UN Conference on Trade and Development (UNCTAD), founded in 2012.

149. The SCF aims at deepening the cooperation and relations in the Western Balkan region, thus resulting in the unified application of competition rules. The CPC and UNCTAD combined their efforts in the creation of an active informal platform for technical assistance, exchange of experience and consultations in the field of competition law and policy of the Balkan countries.

150. The target audience of the project is the competition authorities of the countries, which are candidate-members, potential candidate-members or members, recently accepted in the EU (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Republic of Macedonia, and Serbia). Depending on the issues brought up, further beneficiaries can be representatives of regulatory bodies, ministries, agencies and the judiciary of the Western Balkan countries.

11.6 Bilateral international cooperation of the CPC

151. Within the framework of its bilateral relationship with related competition authorities, in 2013 representatives of the CPC participated in a series of international events, which took place in the Russian Federation, Ukraine, Austria, Switzerland, Serbia, and Slovenia.

152. Commission experts furthermore participated in the meetings of the working group "Pharmacology" – a joint initiative of the Russian Federal Antimonopoly Service (FAS) and of the Italian competition authority, as well as the working group "Fuels", organized jointly by the Russian FAS and the Federal Anticartel Service of Austria.

153. The chairperson of the CPC participated in the international conference on the topic of "Prevention and compliance with competition rules", organized by the Federal Anticartel Service of Austria. At the event, Mr Nikolov presented the adopted by the Commission Guidelines regarding the corporate programs for compliance with competition rules.

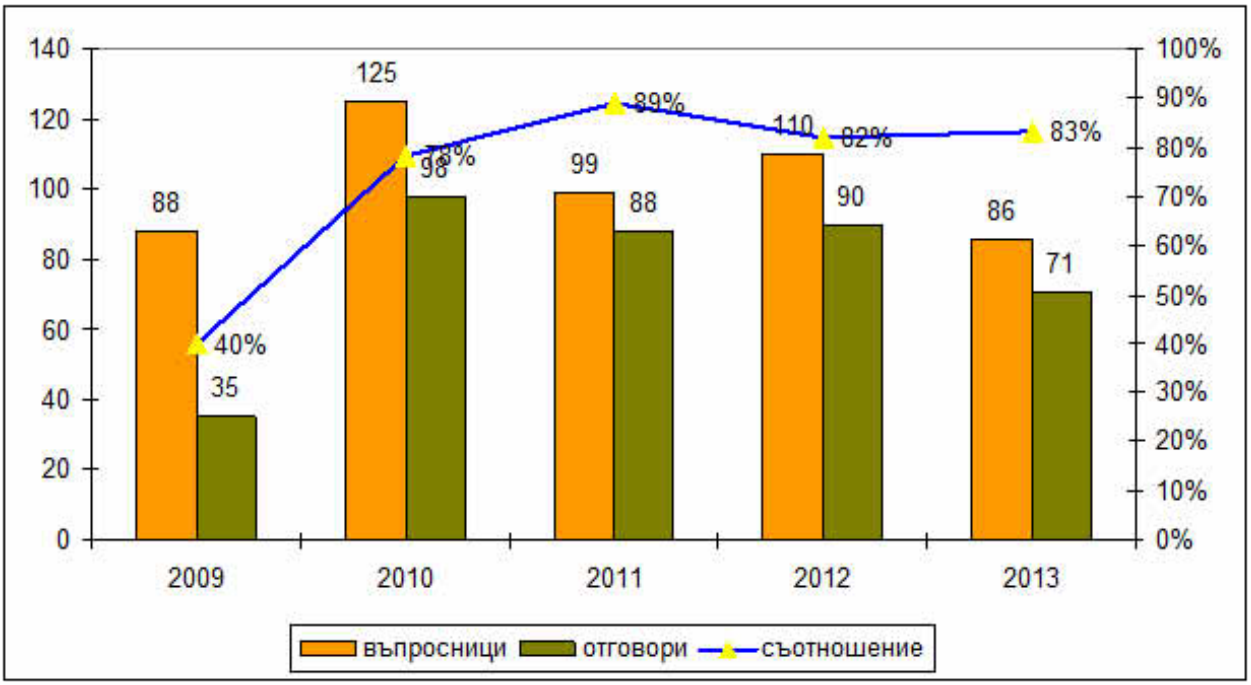
154. In 2013 in Ljubljana, a Memorandum for Cooperation in the Field of Public Procurement Procedures was signed between the Commission and the public procurement authority of Slovenia.

155. As any year, also in 2013 representatives of the Commission and of the Russian FAS exchanged visits within the framework of the signed Program for Cooperation between the two institutions.

11.7 Information exchange in the international networks and organizations, in which the CPC participates

156. The CPC receives multiple and various questionnaires, originating from its cooperation within the frameworks of the ECN, ICN, OECD, UNCTAD and other international organizations.

Figure 10. Questionnaires received and replies by the CPC for the period 2009 – 2013



12. Public Relations

157. In 2013, press releases were prepared for a large portion of the CPC adopted acts, which were sent to all national media and published on the official Internet site of the Commission. All the messages distributed by the CPC, a total of 358 throughout the year, are reflected by information agencies. The press-center of the CPC produced a daily media-monitoring summary, which aims at providing information regarding the main economic topics in the country.

158. The CPC was represented by its experts and members in discussions, analyses, answers to current public issues and interviews on various topics throughout the year, in television stations: the Bulgarian National Television, "bTV", Nova television, "TV 7", "Bulgaria On Air"; in radios: "Horizont", "Hristo Botev" Darik Radio; and in newspapers: "24 chasa", "Trud", "Kapital", "Kapital Daily", etc. In part of the specialized legal and economic publications ("Targovsko pravo") representatives of the CPC published legal analyses in connection to the application of the LPC, PPA and CA.

159. The Commission library is available to all interested persons, who would wish to acquaint themselves with the practice of the CPC and with the international literature on competition law.

160. The CPC uses its official internet site as one of its main information channels to the public and to specialized audiences. The page reflects the work of the authority in detail and is actualized every day with information regarding newly received applications, demands, and initiations of procedures under the LPC, PPA and CA. All adopted decision and rulings of the CPC are published in the electronic public register immediately after their preparation.