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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BULGARIA

-- 2015 --

29-30 November 2016

This report is submitted by Bulgaria to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 29-30 November 2016.

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1. Introduction

1. The Commission for Protection of Competition (the Commission/CPC) is an independent state authority whose main task is to ensure the protection and create conditions for development of competition and free initiative in the business sector, including through the exercise of control on the legality of the budget spending through the public procurement system and the granting of concessions.

2. The powers of the Commission are set forth in the Law on Protection of Competition (LPC), the Public Procurement Act (PPA) and the Concessions Act (CA).

3. In pursuance of its powers pursuant to LPC, the Commission adopts decisions with which it establishes the presence or absence of violations constituting abuse of monopoly or dominant position, prohibited agreements or concerted practices and unfair competition. It carries out control on the concentration between undertakings and it can permit (including conditionally) or prohibit its implementation. Some of the other powers of the Commission are also preparation of sector analyses and implementation of advocacy for competition, offering the competent executive authorities and local self-government to repeal or amend regulatory deeds issued in violation of the competition rules. The draft regulatory deeds to be adopted accordingly are subject to analysis for their compliance with LPC, for which purpose the Commission accepts positions.

4. CPC is also the authority that hears appeals on the legality of all acts or omissions of contracting authorities and grantors in public procurement award procedures or granting of concessions. Pursuant to the Public Procurement Act and the Concessions Act CPC can stop a public procurement award procedure, respectively the granting of a concession, permit advance enforcement of decisions on selection of a contractor, in the presence of conditions specified in those acts, and impose financial penalties and fines in the cases provided by law.

5. In 2015 the Commission for Protection of Competition initiated a total of 726 proceedings, out of which 557 under the Public Procurement Act (PPA), 10 under the Concessions Act and 159 under the Law on Protection of Competition (LPC).

6. Out of the total number of proceedings under LPC, 28 were initiated with a decision of the Commission, 122 – as per request or notification of stakeholders, 9 – under decisions of CPC returned by the Supreme Administrative Court (SAC) for reconsideration and new pronouncement by the Commission.

2. CPC's practice in the field of antitrust law

7. One of the key priorities of the Commission for 2015 was related in the first place to the following: through its practice in the application of LPC and Article 101 and Article 102 of the Treaty on the Functioning of the European Union (TFEU) to achieve the objectives of the national and European antitrust law related to the stimulation of free initiative in the business sector and expansion of the competition conditions with a view to improving the welfare of the consumers and the society as a whole.

8. In order to achieve this goal, in the first place the Commission monitored sectors of the economy that are significant and sensitive for the consumers and the business, such as provision of utilities, energy, etc., with a view to initiating proceedings for establishment of possible violations committed under Art. 15 and Art. 21 of LPC and/or Article 101 and Article 102 of TFEU.

9. During the period the Commission initiated a total of 17 proceedings¹ and pronounced 24 decisions with respect to the application of antitrust law. The behaviour of companies operating in the country in different markets was the subject of a verification of the compliance of their behaviour with the competition rules – production, distribution and supply of electricity (CEZ Distribution Bulgaria AD, ENERGO-PRO Sales AD, ENERGO-PRO Grid AD, EVN Bulgaria Electricity Distribution EAD), telecommunication services (BTC EAD), heat distribution (Techem Services EOOD), production and distribution of sulphuric acid (Aurubis Bulgaria AD, KCM AD and Aurubis AG - Germany), provision of television programmes (National Association of Small and Medium-Sized Cable Operators “TV Club 2000”), provision of tourist services (Borosport AD), gas transmission and distribution (Bulgargaz EAD and Bulgartransgaz EAD), provision of medical services and other healthcare services (Multi-Profile Hospital for Active Treatment “Sveta Petka” AD and National Health Insurance Fund – NHIF), delivery of toners for copiers and printers upon participation in public procurement award procedures (Panda Cooperation, Stendek OOD and Panda-Pen OOD), rights to distribute television programmes through platform operators (BTV Media Group EAD), etc.

10. In 2015 CPC pronounced:

- **five** decisions established violations in the field of antitrust law in the energy sector and imposed a penalty in the amount of BGN 16,839,917 to CEZ Distribution AD, EVN Bulgaria Electricity Distribution EAD, ENERGO-PRO Grid AD and ENERGO-PRO Sales AD;
- **one** decision established abuse of dominant position in the field of telecommunications and imposed penalties in the amount of BGN 3,746,530 to BTC EAD;
- **one** decision established abuse of dominant position in the field of sale of individual heat distributors, with respect to the service of share distribution on the territory of the country and imposed a penalty in the amount of BGN 160,026 to Techem Services EOOD;
- **nine** rulings with which claims were asserted to parties for violations committed under Art. 15 and Art. 21 of LPC – to Techem Services EOOD, Bulgarian Telecommunications Company EAD, CEZ Distribution Bulgaria AD, EVN Bulgaria Electricity Distribution EAD and ENERGO-PRO Grid AD, Aurubis Bulgaria AD and Aurubis AG - Germany, Panda Cooperation, Stendek OOD and Panda-Pen OOD.

2.1 Prohibited agreements, decisions and concerted practices

11. In 2015 the Commission initiated **5 proceedings**², whose subject is the establishment of the presence or absence of a violation under Art. 15 of LPC, with **3** of them initiated under decisions of the Commission pursuant to Art. 38, para. 1, item 1 of LPC (on its own initiative). One of them was initiated as per request for assistance by the competition authority of Romania.

12. In 2015 the Commission pronounced **3 decisions** with respect to the application of Art. 15 of LPC, **1** of them under proceedings initiated in 2013 and **2** under proceedings initiated in 2014, with which the Commission established that no violation was committed under Art. 15 of LPC on the part of the

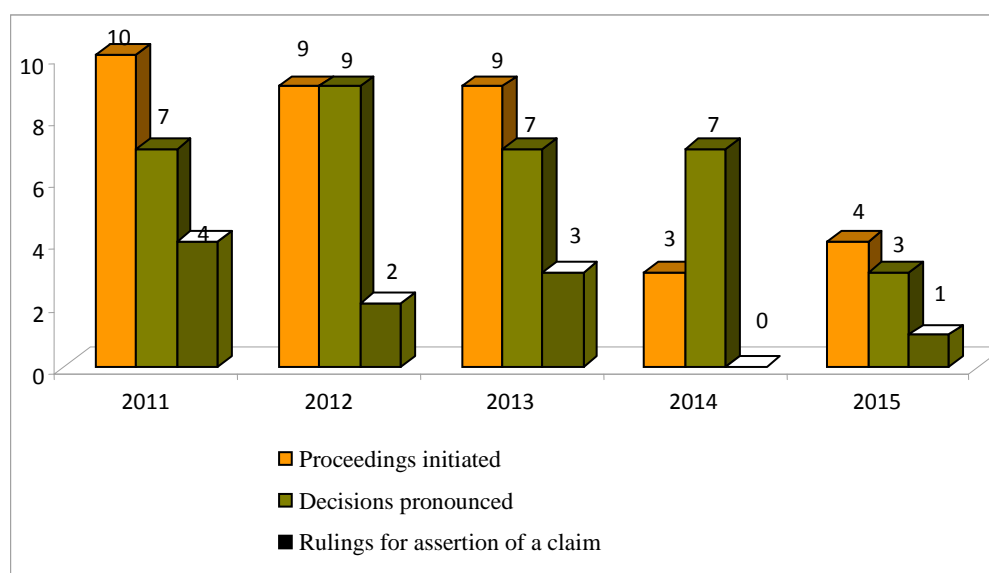
¹ The subject of some of the proceedings is to establish violations both under Art. 15 and under Art. 21 of CPA, therefore the total number of proceedings specified here does not equal the arithmetic sum of the proceedings specified in the other parts of the report that concern ZMGP and ZSRSP [*sic!*].

² In one of the cases the proceedings was initiated under Art. 21 of CPA as well, therefore in this report the same is also included in the total number of proceedings initiated under Chapter Four of CPA

opposing company³. In one of the cases CPC found no reason to take actions due to a violation committed under Article 101, para. 1 of TFEU on the part of the opposing companies.

13. In the same period the Commission has pronounced **1** ruling with which it asserted claims for violation committed under Art. 15 of LPC of the opposing party.

Total number of proceedings initiated and decisions pronounced under Chapter Three “Prohibited agreements, decisions and concerted practices” of LPC for the period 2011 - 2015



14. In 2015 the number of initiated proceedings increased as compared to the previous period. The number of pronounced decisions is smaller than the number reported in the previous year due to the significant factual and legal complexity and duration of the process of collecting and processing the evidence within initiated proceedings.

15. In order to increase the effectiveness of the fight against cartels and abuse of monopoly or dominant position, which is one of the most important priorities of the Commission, specific measures were taken that aim at contributing to raising the awareness of the undertakings, their associations and the entire society about the nature, forms and possible effects on competition of the exchange of information between competitors, as well as about the forms of abuse. The Commission organizes and participates in public events in order to expand the circle of persons knowledgeable about the scope and purpose of the antitrust provisions of LPC and about CPC’s practice in their implementation.

16. The Commission organizes and participates in seminars and international conferences on countering antitrust violations in order to share the best practices in this field.

2.2 *Abuse of monopoly or dominant position*

17. In 2015 the Commission initiated a total of **12 proceedings**⁴, whose subject is establishment of the presence or absence of violations committed under Chapter Four “Abuse of monopoly or dominant

³ In one of the cases the Commission has also made a pronouncement under Art. 21 of CPA as well, therefore the same is also reported in the section of this report that concerns the relevant provision of the Act.

position” of LPC. Out of them **17** were as per request of stakeholders, **2** were on its own initiative and **1** was under a decision of the Commission returned by SAC for new pronouncement. **1** of the proceedings was also initiated pursuant to Article 102 of TFEU in pursuance of the obligation resulting from Article 3, paragraph 1 of Council Regulation No. 1/2003⁵, under which the Commission shall also apply to the abuse of dominant position (together with the national competition law) Article 102 of TFEU, when the trade between the EU member states is concerned.

18. In 2015 the Commission has pronounced a total of **21 decisions** with respect to the application of Art. 21 of LPC and/or Article 102 of TFEU, as follows:

- with **2** decisions the Commission has established a violation committed under Art. 21 of LPC and has determined the type and amount of the penalty in accordance with the provisions under the Act;
- with **5⁶** decisions the Commission established a violation committed under Art. 21 of LPC and determined the type and amount of the penalty, and also it pronounced the termination of the violation;
- with **12** decisions the Commission established no violation under Art. 21 of LPC and under Article 102 of TFEU;
- with **1** decision the Commission imposed a financial penalty in the amount of BGN 102,295 for violation of the obligation to provide assistance to CPC in pursuance of its powers under the Act;
- with **1** decision the Commission initiated proceedings for possible violations committed under Art. 21 of LPC;
- with **8** rulings CPC asserted claims for violation committed under Art. 21 of LPC, and with one of them the Commission asserted claims for violation committed under Article 102 of TFEU as well.
- With **8** decisions⁷ the Commission established violations committed under Chapter Four, Art. 21 of LPC, and in that regard it imposed financial penalties **in the total amount of BGN 20,848,768** (twenty million eight hundred and forty eight thousand seven hundred and sixty-eight).

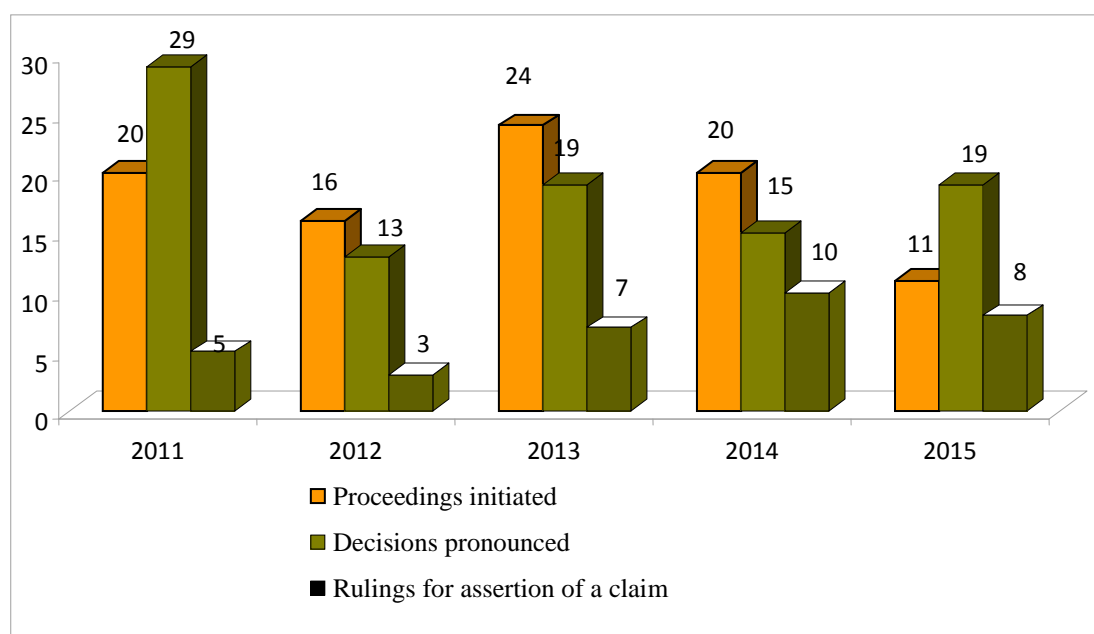
⁴ In one of the cases the proceedings were initiated under Art. 15 of CPA as well, therefore in this report the same is also included in the total number of proceedings initiated under Chapter Three of CPA.

⁵ Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules laid down in Article 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1.

⁶ In one of the decisions CPC has also made a pronouncement under other texts of LPC as well, therefore the decision is also reported in the section of this report that concerns the other provisions of the Act.

⁷ In one of the decisions CPC has also made a pronouncement under other texts of LPC as well, therefore the decision is also reported in the section of this report that concerns the relevant provisions of the Act.

Total number of proceedings initiated and decisions pronounced under Chapter Four “Abuse of monopoly or dominant position” of LPC for the period 2011 - 2015



19. CPC continues to focus its attention primarily on markets where there is a sole supplier of a certain service that owns the only possible infrastructure in a given territory and whose actions most closely affect the interests of the users of these services.

2.2.2 Practice-based example

20. With **decisions No. 449, 450 and 451 dd. 27.05.2015** CPC established that each of the three energy distribution companies – CEZ Distribution Bulgaria AD, EVN Bulgaria Electricity Distribution EAD and ENERGO-PRO Grid AD, has committed a violation of Art. 21 of LPC, expressed in determining and charging unreasonably high prices for using the utility-pole low-voltage energy distribution grid, which prevents, restricts and distorts the competition on the defined affected market and affects the interests of the consumers within the meaning of Art. 21, item 1, of LPC.

21. With those three decisions the Commission has imposed financial penalties in the amount of BGN 558,446 to CEZ Distribution Bulgaria AD, BGN 441,380 to EVN Bulgaria Electricity Distribution EAD and BGN 167,256 to ENERGO-PRO Grid AD.

22. The Commission has pronounced the termination of the violations and an immediate implementation of the decisions regarding the termination.

23. Case file No. CPC - 501/09.05.2013 was initiated pursuant to Art. 38, para. 1, item 3 of LPC as per request of the Bulgarian Association of Cable Communication Operators (BACCO) to investigate the possible committed violation pursuant to Art. 21 of LPC by CEZ Distribution Bulgaria AD, EVN Bulgaria Electricity Distribution EAD and ENERGO-PRO Grid AD, associated with the unilateral imposition of price and other conditions of access and rental use of the utility-pole grid of the energy distribution companies (EDCs). As a stakeholder under the proceedings, a National Association of Small and Medium-Sized Cable Operators – TV Club 2000 – was established.

24. The subject of the proceedings is the conditions under which EDCs grant rights to build electronic communication networks on the utility-pole low-voltage (LV) energy distribution grid (EDG). EPM is owned by EDCs and is used to carry out their principal activity – energy distribution. The rental of parts of the grid is an ancillary activity for EDCs. Moreover, the maintenance of EPM is at the expense of the operating income, i.e. the revenue from the additional activities comes only at the expense of the additional costs directly related to it.

25. The market analysis found that there are no other ways that are an economically viable alternative to the utility-pole LV EDG for building of electronic communication networks, therefore every EDC is an undertaking in a dominant position within its licensed territory.

26. The study found that EDCs do not keep separate accounts for their activities in question, do not apply an accounting model for allocation of the costs into costs imposed by licensing activities and costs caused by the renting out of the utility-pole grid. In this case, even if there are additional costs associated with the additional activities, the lack of separate accounts means that these costs are reported as costs associated with licensing activities.

27. CPC concluded that the rental price was determined without taking into account the factors that objectively affect its amount. As evidenced by the submitted justifications for the price, EDCs report the same costs in the statement of expenditure for both the licensing activities and the activities in question. The inclusion of costs in the price of the service in question, which costs are part of the licensing activities, unduly burden the rental price with an added value and naturally leads to its increase. Because of this the prices in question are unreasonably high and have an exploitative effect on the electronic communication operators and their customers.

3. Concentrations of business

28. In 2015 the Commission also took measures **to increase the effectiveness of the control on concentrations between undertakings**. The efforts were aimed at encouraging pre-notification contacts between the notifying party and CPC upon concentrations of both national and multinational importance. A total of **33⁸** proceedings were initiated and the pronounced decisions are **36⁹**, out of which:

- **25** decisions with which the Commission permitted the concentration between undertakings;
- **3** decisions with which the Commission pronounced that the transaction does not represent a concentration;
- **5** decisions with which the Commission pronounced that the transaction does not fall within the scope of the obligation for prior notification;
- **1** decision with which the Commission initiated proceedings for establishing any committed violation, expressed in the lack of prior notification to CPC for concentration of business;

⁸ Under three of them (KZK-681/02.12.15; KZK-705/16.12.15 and KZK-714/21.12.15) the Commission pronounced decisions in January 2015 and two proceedings were merged into one (KZK-546/15.09.15 and KZK-548/18.09.15)

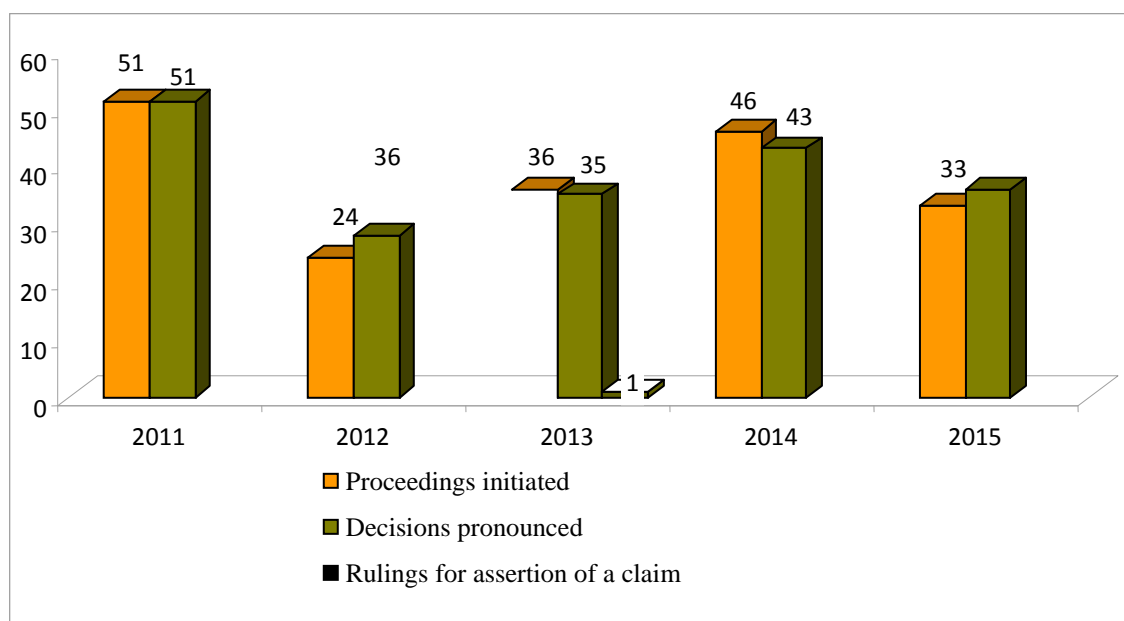
⁹ Out of which: CPC pronounced decisions in 2015 under six proceedings initiated in 2014 (Decision No. 49/20.01.15; Decision No. 50/20.01.15; Decision No. 51 /20.01.14; Decision No. 89/28.01.15; Decision No. 90/28.01.15 and Decision No. 467/03.06.15).

- 1 decision with which the Commission pronounced the termination of initiated proceedings due to lack of competence and forwarded the case file to the European Commission;
- 1 decision with which the Commission pronounced the termination of initiated proceedings due to withdrawal of a request for authorization of concentration.

29. The Commission has not imposed measures pursuant to Art. 86, para. 1 of LPC that are directly related to the implementation of concentration between undertakings, which measures are necessary to preserve effective competition, neither has it imposed any measures to restore effective competition pursuant to Art. 90 of LPC.

30. The Commission assessed and pronounced decisions to permit concentrations between undertakings in the following economic sectors: electronic communication services (3 decisions); banking and finance (3 decisions); pharmaceuticals (2 decisions); healthcare (2 decisions); agriculture (2 decisions); only one concentration in: trade in fuels; trade in non-food products; construction; trade in fast-moving consumer goods; trade in white and black appliances; real estate; hotel management/restaurant-keeping; media; dairy industry; sales of furniture; tobacco production; production of ceramic tiles; construction.

Total number of proceedings initiated and decisions pronounced under Chapter Five “Control on concentrations between undertakings” of LPC for the period 2011 - 2015



31. As evidenced by the chart, in 2015 the number of initiated proceedings, respectively pronounced decisions in the field of concentrations, decreased as compared to the previous year and reached the 2013 levels.

3.1 Practice-based example

32. With **decision No. 467/6.3.2015**, following a comprehensive study pursuant to Art. 83 of LPC, CPC permitted the Bulgarian Telecommunications Company (BTC) EAD to acquire direct sole control of NURTS Bulgaria JSCo.

33. In the course of the study CPC found that the concentration will affect the markets for distribution of radio and television signals and also the service “collocation”.

34. In the decision CPC stated that the distribution of radio and television signals shall be separated into two separate product markets, namely a market for terrestrial radio broadcasting and a market for distribution on cable, satellite and IPTV (the so-called “pay-TV”). The analysis showed that the market for terrestrial television broadcasting, as per the purpose of this infrastructure and the Plan for Introduction of Digital Terrestrial Television Broadcasting laid down by the Council of Ministers, shall be defined in narrower limits, namely including the terrestrial broadcasting of the programmes of commercial radio and television broadcasters. Thus the multiplex operator, which serves the public radio and television exclusively, is excluded from the scope of the product market.

35. After implementation of the planned concentration, the BTC group acquired a company with a 100% market share (NURTS Digital JSC) of the product market so defined. Thus the combined undertaking will operate simultaneously on two adjacent product markets – that of terrestrial digital broadcasting of TV programmes and that of their distribution through paid platforms – satellite and Internet Protocol with a [10-20]% market share, calculated on the basis of the number of subscribers.

36. In its analysis during accelerated study CPC concluded that the participation of the BTC group in both product markets could give possible post-transaction competitive advantages over the other pay-TV platform operators, such as upon negotiating the price of granting the right for distribution of programmes (copyrights) with media content providers. In this regard CPC has received positions from the undertakings surveyed, the sector regulator and industry associations.

37. In view of the above stated, the purpose of the comprehensive study was for CPC to investigate how such an advantage could arise and whether it would violate the effective competition in the market for distribution of TV programmes via satellite, cable and IPTV.

38. The study showed that CPC has no reason to conclude that after the transaction BTC EAD will coordinate the activities of the merged business group, which operates the simultaneous distribution of radio and television signals through terrestrial broadcasting and pay-TV platforms, the result of which will impair the effective competition both between television broadcasters and in their vertical relations upon negotiating the terrestrial broadcasting or the transmission to the related market of cable, satellite and IPTV platform operators.

39. With regard to the concerns expressed as to the strengthening of the market presence of the acquiring group by selling its services as a package, CPC considered that this is a common practice in the supply of electronic communication services, said practice used by all participants, offering more and more attractive packages at affordable prices, which the end-user is interested in. Package services facilitate the introduction of new products, improve market structures and lead to more effective competition among the participants in the market with the purpose of meeting the needs of customers more fully and attracting new ones.

40. With regard to the colocation market, CPC found that the participants in the concentration have a very well-developed infrastructure, part of which can be defined as being of strategic importance. The largest customers of NURTS Bulgaria JSCo using the colocation service are three mobile operators, one of which (BTC EAD), following the completion of the transaction, will be the owner of the acquired undertaking. For mobile operators there is no opportunity to duplicate the NURTS infrastructure, since the construction of their own facilities at a number of “key locations” (in terms of carrying out electronic communications) would be practically impossible and/or economically inexpedient, given the substantial investment required. A large number of the facilities are located in national parks, protected areas and

reserves with the status of public state property, the construction in which is forbidden. That is why any possible restriction of the access to this infrastructure (or any unjustified termination of contractual relations) would create serious difficulties for the activities of mobile operators and would affect the quality and price of the services provided by telecommunication companies.

41. Within the comprehensive study CPC concluded that the assessed transaction will not create difficulties for the competitors of BTC EAD with respect to the provision of the infrastructure in question that is owned by the acquiring group, since there are guarantees for its unimpeded use on a level playing field created by the sector regulator with a decision issued by the same.

42. The final conclusion reached by the Commission is that the transaction will not obstruct the competition on the relevant markets analysed and that the concentration is permitted under Art. 26, para. 1 of LPC. The decision has entered into force.

4. Unfair competition

43. In order to develop the competitive environment and protect free business initiative through its practice in applying the provisions of the LPC concerning unfair competition, the Commission raised the preventive function of its activities by promoting its practice in establishing violations under Chapter Seven of LPC, by publishing specific information, participation in meetings and seminars with the business sector, regulatory authorities, NGOs, etc.

44. In 2015 the Commission initiated **83 proceedings**, aimed at establishing the presence or absence of a violation under Chapter Seven of LPC "Prohibition of unfair competition". Of these, **65** were initiated as per request of persons whose interests are affected or threatened by a violation of the LPC, **10** – by a Decision of the CPC, and **8** – by decisions of the CPC returned by CPC for reconsideration. In 2015 there were no requests from persons whose interests are affected or threatened by violations under Chapter Seven "a" of LPC - "Abuse of strong bargaining position" and therefore no proceedings are initiated.

45. During the same period the Commission has pronounced a total of **84 decisions** with respect to the implementation of Chapter Seven of LPC, including **10** decisions to initiate proceedings on its own initiative. Out of the total number the Commission has pronounced **1** decision under proceedings initiated in 2013, **27** decisions under proceedings initiated in 2014, and **56** – under proceedings initiated in 2015, out of which:

- with 31¹⁰ decisions a total of 43 violations under Chapter Seven of LPC were established, since in some of them the Commission has established more than one violation; the Commission establishes the committed violation and the violator under the relevant prohibitions of Chapter Seven of LPC, including physical persons who have committed or contributed to committing the violation of this Act;
- pursuant to Art. 98, para. 1, item 3 of LPC the Commission found that there was no violation under the provisions of Chapter Seven of LPC - 51 decisions. With these decisions 76 cases were established, in which the alleged violations were not committed;

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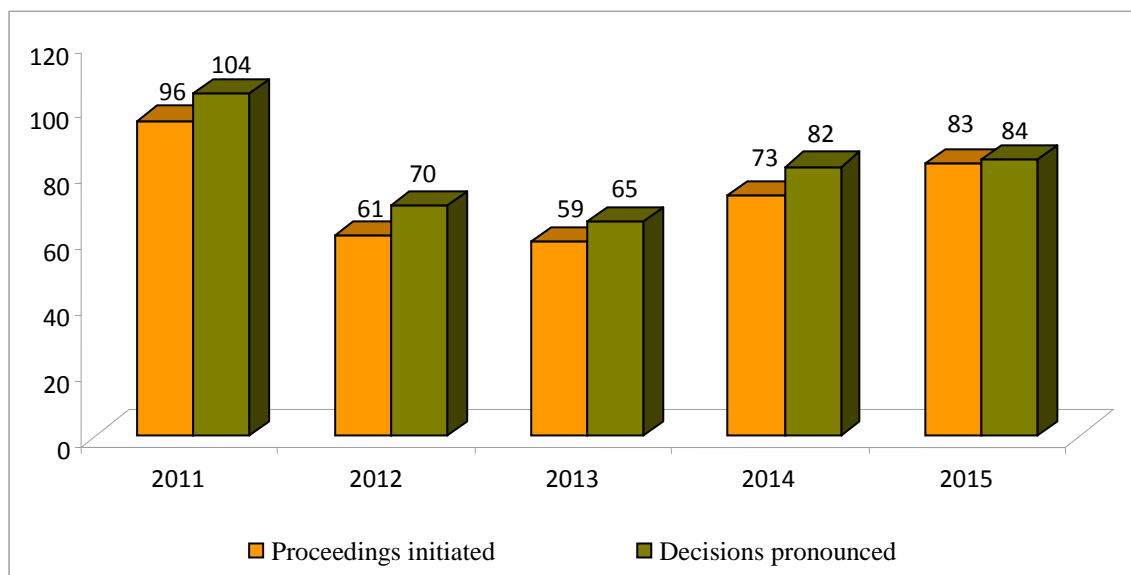
In some cases the same decision imposed more than one financial penalty, or a penalty was imposed for a certain action, and no violation was established for another action, therefore statistically the same decision was reported both in the number of decisions establishing a violation and in the number of decisions by which the Commission established that there was no violation.

- pursuant to Art. 98, para. 1, item 4 of LPC the Commission terminated the proceedings - 8 decisions.
- pursuant to Art. 100, para. 1, item 7 of LPC the Commission established a failure to enforce the decision and imposed a penalty - 1 decision.
- pursuant to Art. 100, para. 2, item 3 of LPC, with respect to Art. 47, para. 4 and para. 5 of LPC, the Commission established non-fulfilment of the obligation to provide assistance and imposed a financial penalty – 4 decisions.
- With 36 (thirty six) decisions the Commission established violations committed under Chapter Seven of LPC and/or imposed financial penalties and/or fines in the total amount of BGN 3,982,015.92.

46. During the reporting period, in violation of its obligations pursuant to Art. 47, para. 4 and para. 5 of LPC, expressed in untimely delivery or provision of incomplete, inaccurate, false or misleading information requested of CPC under proceedings for establishment of a violation under Chapter Seven and Chapter Seven "a" of LPC, the Commission has imposed **total financial penalties in the amount of BGN 109,630**.

47. The most common violations in the field of unfair competition established in 2015 are associated with deception contrary to the prohibition on imitation pursuant to Art. 35 of LPC, followed by deception contrary to the general prohibition of unfair competition pursuant to Art. 29 of LPC and deception contrary to the prohibition on misleading and comparative advertising. In 2015 there was also a large number of decisions establishing violations pursuant to Art. 36 of LPC - unfair customer acquisition.

Total number of proceedings initiated and decisions pronounced under Chapter Seven “Unfair competition” and under Chapter Seven “a” “Abuse of strong bargaining position“ of LPC for the period 2010 - 2015:



48. During the period from 01.01.2015 to 31.12.2015 the number of initiated proceedings for unfair competition increased as compared to the previous two years. The number of decisions pronounced is almost equal to the number of proceedings initiated, which reflects the overcoming of the trend to extend the deadlines for investigation from the previous years.

49. In 2015 a total of 10 proceedings were opened ex officio, based on reports submitted by citizens and as a result of CPC's own monitoring of various markets.

5. Sector analyses

50. As a national competition authority, the Commission has as its main objective the research and the establishment of specific anti-competitive problems, respectively restoring the effective competition in the relevant markets concerned. To achieve this goal, along with the proceedings to investigate committed violations, it uses all other statutory powers of the CPC, including performing sector analyses.

51. In 2015 the Commission initiated **two** proceedings for performing sector analyses.

52. With decision No. 550/2016 proceedings were initiated for performance of sector analysis of *the markets for production and sale of gasoline and diesel fuel* due to the following reasons:

53. Firstly, a detailed analysis of the competitive conditions on the relevant markets in order to establish to what extent the trend of significant decline in oil prices on international markets is transferred to the price of automotive fuels for end customers.

54. Secondly, an analysis of the changes in the pricing model in the retail market with fuels from some of the participants on it, which introduce new marketing strategies to attract and retain loyal customers by providing discounts from the already announced final price.

55. Finally, analysis of the recent entry of new participants in the market.

56. For the second time CPC initiates the performance of sector analysis of the markets for production and sale of gasoline and diesel fuel in the country. The first analysis of this market covers the period from 2009 to 2011, adopted with decision No. 1059/27.07.2011. As a result of the findings in the sector analysis, the Commission has initiated proceedings to establish a violation pursuant to Art. 15 and Art. 21 of LPC, and it has informed the competent state authorities of the need to take measures to improve the competitive environment in the sector.

57. With decision No. 447/2015 proceedings were initiated for performance of sector analysis of the market for the retail sale of medicinal products paid entirely or partially by the National Health Insurance Fund (NHIF).

58. The main tasks of this sector analysis are concentrated around: precise definition of the market of medicinal products paid entirely or partially by NHIF; identifying the affected services within the market of medicinal products paid entirely or partially by NHIF and their pricing to consumers of health services; tracking the changes in the market structure; indicating the main participants in this market and tracking the changes in their market behaviour; tracking the changes in the conditions of supply and demand as a result of changes in the government's regulation, the regulatory framework and the general economic situation in the country; clarifying the causes of any identified competition problems.

59. The analysis will serve as a basis for a broad public discussion on the specific issues identified in the provision of medicinal products paid entirely or partially by NHIF to improve the competition in the sector. As a result of the sector analysis, the Commission may also initiate specific proceedings for the establishment of violations pursuant to Art. 15 or Art. 21 of LPC.

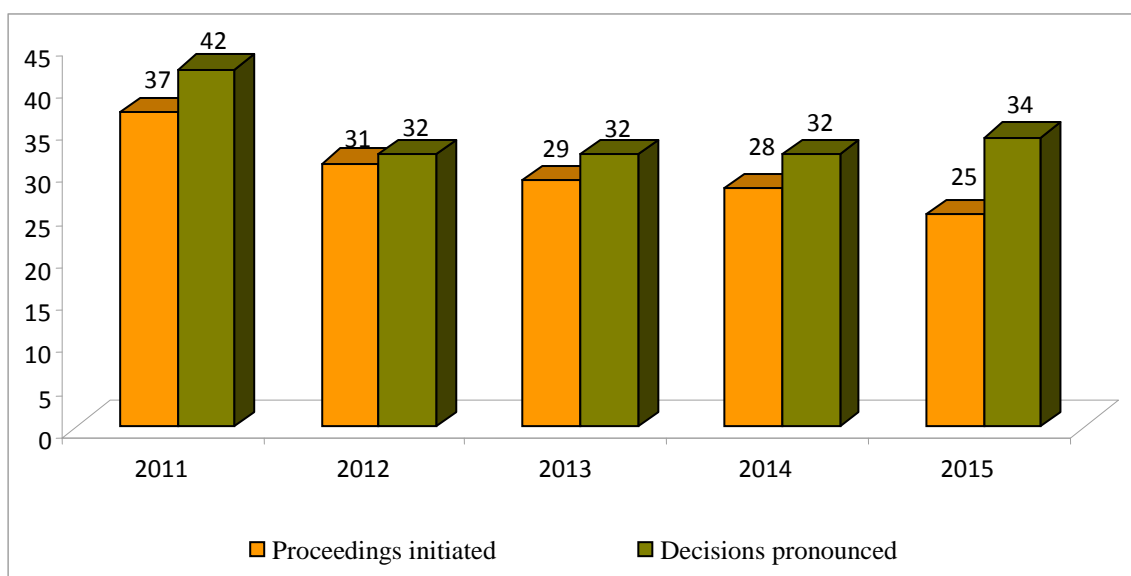
6. Competition advocacy

60. In fulfilment of its obligation to cooperate in **the development of the competitive environment by exercising its powers on competition advocacy**, in 2015 the Commission initiated a total of 25 proceedings, 9 of them - on its own initiative, on newly-arisen issues in the field of competition law and policy. Pursuant to Art. 28 of LPC, in order to protect free business initiative and prevent any restriction or distortion of competition, CPC **assesses the compliance with the provisions of the CPA** on draft regulatory or regulatory-administrative and general administrative deeds; existing regulatory or regulatory-administrative and general administrative deeds; draft deeds of associations of undertakings that regulate the activities of their members.

61. In 2015 with certain decisions the Commission considered on its own initiative the assessment of the compliance with the competition rules of the Ordinance on the conditions, rules and procedures to regulate and register the prices of medicinal products; the regulatory framework regulating the activities on training candidates to obtain a driver’s license; the legal framework of the technical supervision of high-risk facilities; the legal framework of the services provided by elevator fitters; the legal framework of the services provided by engineers in geodesy, cartography and cadastre; the legal framework of the activities on providing legal services; the legal framework in the field of energy, etc.

62. CPC has made proposals for amending and supplementing 13 draft general administrative deeds and/or effective regulatory deeds, since it has agreed that separate provisions therein create conditions for the prevention, restriction or distortion of competition. The proposals concern the Waste Management Act, the Radio and Television Act, the Energy Efficiency Act, draft Public Procurement Act, draft Act amending and supplementing the Law on Protection of Competition, draft Act amending and supplementing the Public Procurement Act, draft Act amending and supplementing the Advocacy Act, the geodesy and Cartography Act, etc.

Total number of proceedings initiated and decisions pronounced on competition advocacy for the period 2011 - 2015:

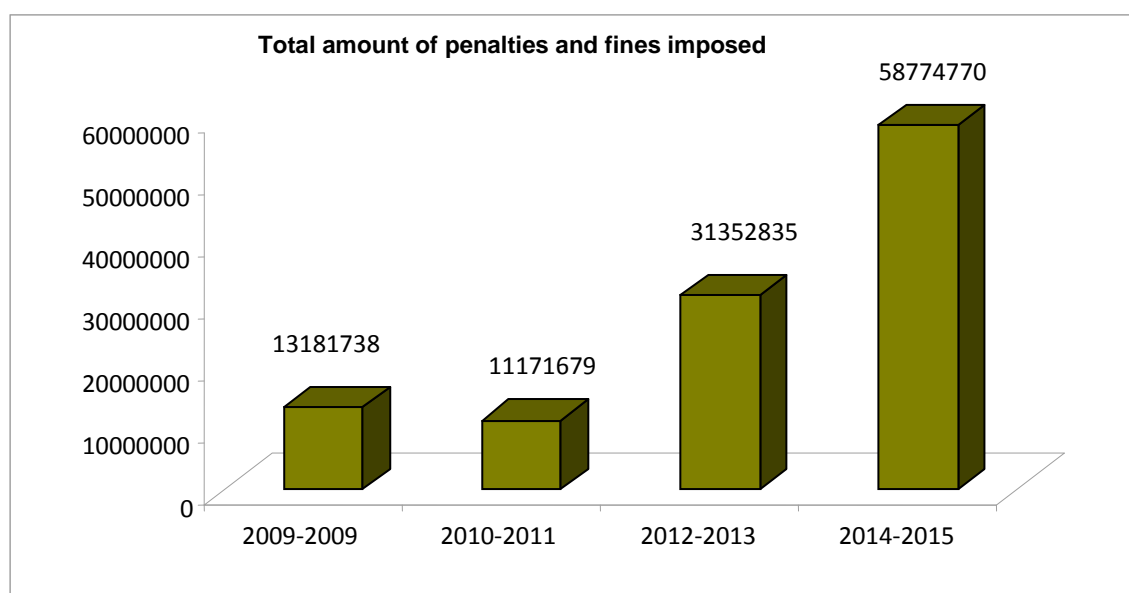


63. In 2015 the number of initiated proceedings decreased slightly, which is mainly due to the relatively small number of requests from state authorities, as of the total of 11 requests received 5 were from the Communications Regulation Commission within the envisaged cooperation between the two

regulators. This means that in 2015 only six requests were received from state authorities for coordination of draft regulatory deeds. The decrease in those requests in recent years can be attributed to the lack of obligation to other state authorities to carry out a preliminary assessment of the compliance with the competition rules, using the "Guidelines for assessing the compliance of regulatory and general administrative deeds with the competition rules" adopted with Decision of CPC No. 1777/20.12.2011. The aim of the Guidelines is to help state authorities, including the executive authorities and local self-government, as early as when preparing the regulatory framework to be able to identify possible anti-competitive effects. The Guidelines represent criteria that can easily assess whether the draft regulatory deed could lead to restriction of competition, using a checklist for initial assessment of possible restrictions of competition, divided into 4 main groups in the form of questions.

7. Penalties imposed

64. In 2015 with certain decisions the Commission imposed financial penalties and fines for violations committed pursuant to PPA and LPC, as well as for failure to provide or incomplete provision of information, as well as fines to physical persons in relation to their cooperation in committing violations pursuant to LPC in the total amount of **BGN 24,861,930.52**.



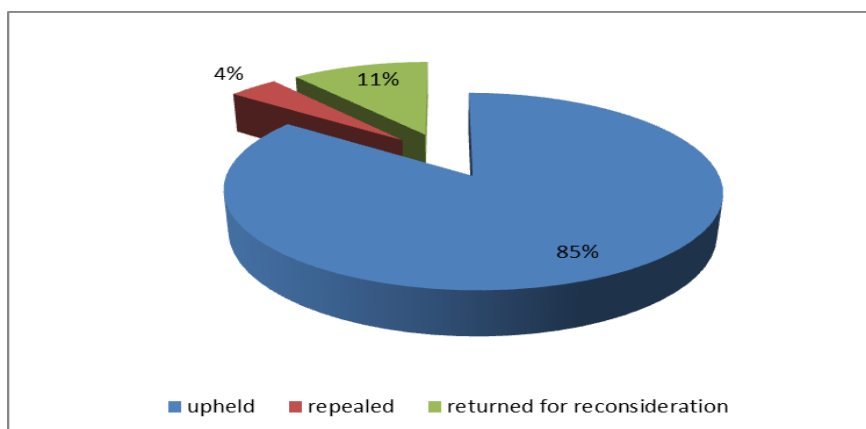
65. There is a significant increase in the amount of financial penalties and fines imposed for violations committed in 2014-2015 as compared to the previous periods. Despite the existing differences over the years, the trend for higher penalties as a whole remains, which reflects the policy applied by the Commission for adequate punishment of violators, thus achieving the goal to remove all the advantages that the undertakings that have violated the LPC have received from the violation, as well as to ensure a sufficient deterrent effect.

8. Judicial control over the decisions of CPC

66. In 2015 a total of **91 complaints** were filed to the Supreme Administrative Court (SAC) against the decisions and rulings pronounced by the Commission for Protection of Competition.

67. In 2015 the Supreme Administrative Court pronounced **88** court rulings on complaints filed against decisions and rulings of the Commission under the Law on Protection of Competition, and SAC ruled on **55** final decisions or rulings as follows:

- **32** deeds of the Commission are fully upheld;
- **15** deeds of the Commission are partially upheld;
- **2** deeds of the Commission are completely repealed;
- **2** deeds of the Commission are returned for reconsideration by the Commission;
- **4** deeds of the Commission have been returned for reconsideration by three-member panels of SAC.



68. In 2015 the Commission participated through its legal representative in **111** sessions of SAC, out of which **87** before a three-member panel of SAC and **24** before a five-member panel of SAC, as well as in **2** sessions of the Administrative Court - Sofia City and in **1** session of the Commission for Protection against Discrimination of the Republic of Bulgaria.

9. International cooperation

9.1 Sofia Competition Forum (SCF)

69. One of the main priorities of CPC in 2015 was strengthening its role as a reliable partner in the field of coordination of European affairs and international cooperation, as well as carrying out active cooperation with competition authorities from the Western Balkans within SCF, the latter established at the initiative of CPC and the United Nations Conference on Trade and Development (UNCTAD):

70. SCF is a joint initiative of CPC of the Republic of Bulgaria and UNCTAD. The forum aims at improving the cooperation and regional relations of the Balkan countries, thereby achieving uniform and consistent application of competition rules. The project aims at assisting the countries in the region in the adoption and implementation of legislation in the field of competition, as well as at increasing the benefits of well-functioning markets. The founding conference of this important initiative took place on 12 November 2012 in the city of Sofia.

71. In 2015 CPC and UNCTAD organized and held **two meetings** within SCF.

72. Among the participants in the meetings were representatives of UNCTAD, the Organisation for Economic Cooperation and Development (OECD), the Directorate-General for Competition of the European Commission, the competition authorities of Austria, Italy, Portugal, Slovenia, Turkey and all the countries of the Western Balkans, as well as the Association for Development of Competition from Ukraine.

73. **The sixth meeting** of SCF was dedicated to the theme of “Procedural Legality under Competition Law Enforcement”. Reports on the subject were read by the representatives of the competition authorities of Slovenia, Austria, Italy, Bulgaria, as well as by the OECD Competition Committee and by UNCTAD, as well as by representatives of the Bulgarian judiciary.

74. **The seventh meeting** was devoted to the topic of “Penalties upon Violations of Competition Law and Policy for Exemption from Penalties or Reduction of the Size of the Penalties”. Then the successfully completed joint project of the Balkan competition authorities was submitted, namely: “**Comparative Overview of the Balkan Competition Regimes in the Field of Inspections on Spot**”, which is a continuation of the project “**Comparative Overview of the Balkan Competition Regimes**”, which was completed a year earlier. The seminar ended with the presentation of the first edition of the Annual Bulletin of SCF.

9.2 *European Competition Network (ECN)*

75. Bulgaria's full membership in the European Union (EU) requires of CPC to actively participate in the implementation of the competition rules of EU in cooperation with the European Commission and the national competition authorities (NCAs) of the EU member states. The cooperation takes place mainly within the European Competition Network (ECN). The network plays a key role in the distribution of the work between the national authorities, the European Commission and the courts and ensures consistent application of the competition rules. The participation of CPC in ECN means a continuous exchange of information with other authorities, which helps to achieve and protect the effective competition within the EU's internal market.

9.3 *International Competition Network (ICN)*

76. As a member of ICN, in 2015 CPC continued its active participation in the working groups of the Network. ICN addresses issues in the field of competition law and policy. The aim is to improve the cooperation among the competition authorities and to achieve the harmonization of the legislation and law enforcement. CPC participated in a seminar of the working group “Unilateral Conduct” of ICN, held in November 2015 in Istanbul, Turkey. In April 2015 CPC participated in the ICN Annual Conference in Sydney, Australia.

9.4 *Organisation for Economic Cooperation and Development (OECD)*

77. In 2015 CPC continued its active participation in the work of the OECD Competition Committee and the working groups thereto. The Commission obtained an observer status in such bodies in 2009.

78. Representatives of CPC participated in both annual sessions of the OECD Competition Committee, as well as in the annual Global Forum on Competition. For those meetings the Commission prepared and presented **5 papers on topics related to competition law and policy** – Interrelation between public and private law enforcement; Competitive neutrality; Possible approaches to problems in the oligopolistic markets; Cross-platform parity agreements; Competition creates or kills jobs – relation between competition and employment.

79. Experts from CPC participated actively in the seminars of the OECD Regional Centre for Competition in Budapest on the following topics – “Imposition of measures and assumption of

obligations”, “Evidence in cases studies for establishment of a cartel” and “Issues in the sectors of information and telecommunication technologies”. The Commission was also represented at the annual meeting of department heads.

9.5 Organisation of the European Competition Authorities (ECA)

80. In 2015 CPC also participated in the work of the other main forum for cooperation on European issues – the Organisation of the European Competition Authorities (ECA). A representative of the CPC participated at the annual meeting of the organisation held in June 2015 in Bergen, Norway.

10. Application of PPA and CA

81. Another key priority of the Commission in 2015 was to use its practice under PPA and CA to assist in **the lawful spending of public finances**. For this purpose, efforts were focused on rapid consideration and uncontroversial pronouncing on complaints submitted against decisions, acts or omissions of the contracting authorities and the parties pursuant to Art. 83 of CA.

82. In its practice under PPA and CA the Commission continues to apply best European practices in this field.

83. Steps were taken to promote the rules and practice of the Commission in the field of appealing against public procurement award procedures and procedures for granting concessions.

11. Public Procurement Act

84. Pursuant to Art. 120, para. 1 of the Act any decision of the contracting authorities under public procurement award procedures is subject to appeal on its legality before CPC. Acts and omissions of contracting authorities that hinder the access and participation of parties in the procedures shall be subject to appeal.

85. During the reporting period 914 complaints pursuant to Art. 120 of PPA were filed in the registry of CPC.

86. The Chairperson of CPC has issued orders under 400¹¹ complaints, with which they refuse to initiate proceedings pursuant to Art.121, para. 6 of PPA, out of which:

87. The total number of initiated proceedings under case files is 557¹², 10 of which were related to an enforceable decision or ruling of SAC, which repeals a deed of CPC, and the case file is returned for further consideration and pronouncing.

- **248** of the initiated proceedings under case files concern complaints against public procurement award procedures under PPA, and
- **309** of those proceedings are complaints against public procurement award procedures to be announced in the Official Journal of EU under Art. 45c of PPA.

¹¹ Orders of the Chairperson of CPC issued in 2015, but with regard to complaints filed at the end of 2014, are also included.

¹² The number of initiated proceedings does not correspond to the difference of the total number of complaints and those with regard to which there is an issued order for refusal of initiation, since part of the proceedings were initiated under complaints filed in 2014, and also part of the complaints submitted in the last days of 2015 were filed in 2016.

88. In 2015 the Commission has pronounced **a total of 740 deeds (decisions or rulings) in proceedings under PPA**, and in **40 cases** there is a merging of two or more proceedings under case files because they have the same subject and for the purpose of procedural economy, in which case CPC pronounces a joint decision or ruling.

89. In 2015 CPC pronounced 447 decisions on the merits of the case¹³, out of which:

- dismisses the complaint for lack of committed violations in **256 decisions**;
- repealed as unlawful a decision of the contracting authority to open a public procurement award procedure in **36 decisions**;
- repeals the decision or an unlawful act or establishes an unlawful omission and returns the case file for resumption of the public procurement award procedure from the last lawful decision or act, or for termination of the proceedings in **158 decisions**;
- declares null and void the decision of the contracting authority in **2 decisions**;

90. The most frequently contested deed of the contracting authority in the public procurement award procedures is the decision to rank the participants/candidates and the selection of a contractor. There is significant prevalence in the number of complaints against decisions for opening of public procurement award procedures as compared to the number of complaints against decisions to terminate public procurement award procedures.

91. Under the “type of procedure” criterion the largest is the number of contested open public procurement award procedures.

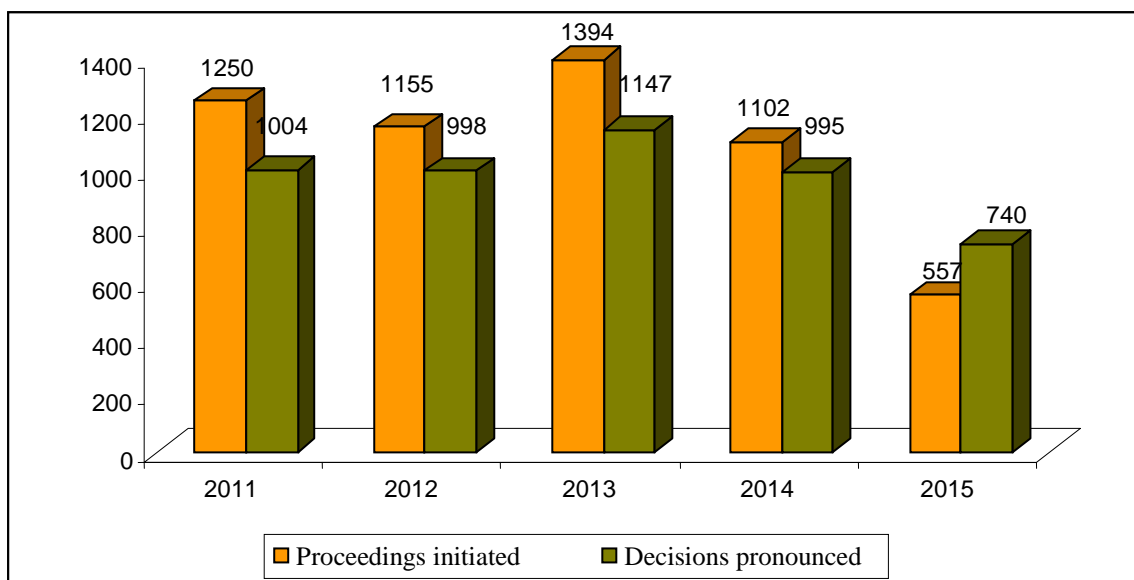
92. The distribution of the complaints according to the subject of the public procurements is as follows:

1. construction and instillation works;
2. delivery of food and foodstuffs;
3. road repair, maintenance and rehabilitation;
4. security services;
5. delivery of medicinal products;
6. passenger transport;
7. waste collection, waste transportation, waste disposal, maintaining cleanliness;
8. almost equal is the number of the complaints with respect to public procurement award procedures whose subjects are insurance services, delivery of computers, hardware, software, supply of medical equipment, consumables and medicines;
9. other.

¹³ In the cases of merged proceedings under case files, the decision of CPC contains 2 or more operative parts. In some cases the decision includes two or more identical operative parts, and in some cases – two or more different operative parts, e.g. one operative part dismisses the complaint of one of the participants, and the other operative part repeals the decision appealed against, with regard to the allegations of a second complainant.

93. Most of the times the alleged violations contained in the complaints and established afterwards by CPC are related to the setting by the contracting authorities of discriminatory conditions for participation, unlawful removal of candidates and ranking of participants, incorrect application of the assessment methodology or lack of statement of reasons on the decision for ranking of the participants and selection of a contractor

Total number of proceedings initiated and decisions pronounced under Chapter Eleven of PPA for the period 2011 - 2015:



12. Concessions Act

94. Pursuant to Art. 83, para. 1 of CA, any decision, act or omission of any authority, of the Commission or of an official under the procedure for granting a concession is subject to appeal on its legality before the Commission for Protection of Competition.

95. During the reporting period **11 complaints** pursuant to Art. 83 of CA were filed in the registry of CPC.

96. The total number of initiated proceedings is **10**.

97. CPC pronounced decisions on the merits of the case, out of which:

- in **6 decisions** the complaints were dismissed due to lack of committed violations;
- in **5 decisions** CPC has repealed the unlawful decision of the authority or it has established an unlawful decision and with mandatory instructions it has returned the case file to the authority to resume the procedure for granting a concession from the last lawful decision or act;
- **3** of the proceedings were initiated in late 2014 and therefore they were completed with a decision in 2015.