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COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Bulgaria

-- 2017 --

27-28 November 2018

This report is submitted by Bulgaria to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

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Table of contents

| | |
|--|-----------|
| 1. Competences | 3 |
| 2. LEGISLATIVE DEVELOPMENTS | 3 |
| 3. PROHIBITED AGREEMENTS, DECISIONS AND CONCERTED PRACTICES | 4 |
| 3.1. Proceedings | 4 |
| 3.2. Decisions and rulings | 4 |
| 3.3. Example from the practice | 5 |
| 4. Abuse of monopoly and dominant position | 6 |
| 4.1. Proceedings | 6 |
| 4.2. Decisions and rulings | 6 |
| 4.3. Examples from the practice | 7 |
| 5. Control on concentrations between undertakings | 8 |
| 5.1. Proceedings | 8 |
| 5.2. Decisions and rulings | 8 |
| 5.3. Examples from the practice | 8 |
| 6. Sector inquiries | 9 |
| 7. Competition advocacy | 10 |
| 7.1. Proceedings and decisions | 10 |
| 7.2. Example from the practice | 10 |
| 8. European affairs | 11 |
| 9. International co-operation | 12 |
| 9.1. Sofia Competition Forum | 12 |
| 9.2. Tenth SCF meeting, 27 October 2017 | 12 |
| 10. Administrative capacity and financial activity | 13 |
| 10.1. Human resources management | 13 |
| 10.2. Financial activity | 13 |

Figures

| | |
|--|----|
| Figure 1. Proceedings and acts under Chapter Three of the LPC 2013-2017 | 4 |
| Figure 2. Proceedings and acts under Chapter Four of the LPC 2013-2017 | 6 |
| Figure 3. Proceedings and decisions under Chapter Five of the LPC 2013 -2017 | 8 |
| Figure 4. Proceedings and decisions on competition advocacy 2013-2017 | 10 |
| Figure 5. Higher education fields | 13 |

1. Competences

1. The Commission on 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 enterprise, 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 infringements 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 powers of the Commission are also preparation of sector analyses and implementation of competition advocacy, offering the competent executive authorities and local self-government to repeal or amend regulatory deeds issued in infringement of the competition rules. The draft regulatory acts to be adopted accordingly are subject to analysis for their compliance with LPC, for which purpose the Commission adopts opinions.
4. The CPC is 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, the CPC can stop a public procurement award procedure, respectively the granting of a concession, permit prior enforcement of decisions on selection of a contractor, in the presence of such conditions as specified in those acts, and impose financial penalties and fines in the cases provided by law.
5. The Commission on Protection of Competition is the national authority of the Republic of Bulgaria responsible for the enforcement of the EU law in the field of competition.
6. This summary of the Annual report which is elaborated with regard to the meeting of the Competition Committee on 27-28 November 2018, in accordance with the suggested outline, will not include information concerning the competences of the CPC in the field of unfair competition, public procurement and concessions.

2. LEGISLATIVE DEVELOPMENTS

7. In the end of 2017 the National Assembly of the Republic of Bulgaria adopted Law on amendment and supplementation of the Law on Protection of Competition, which created a whole new chapter in the LPC. This legislative change is an important moment which will contribute to the achieving of interaction between the public and private enforcement aiming at effective exercising of the right of compensation for damages caused as a result of infringement of the national antitrust provisions and Art. 101 and Art. 102 of the Treaty on the Functioning of the European Union. With the new mechanism the persons affected by infringements of the law can claim compensation for suffered harm under new rules ensuring effective exercising of this right.

8. The amendment of the LPC was prompted by the obligation for bringing the national legislation in line with the provisions of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union¹.

3. PROHIBITED AGREEMENTS, DECISIONS AND CONCERTED PRACTICES

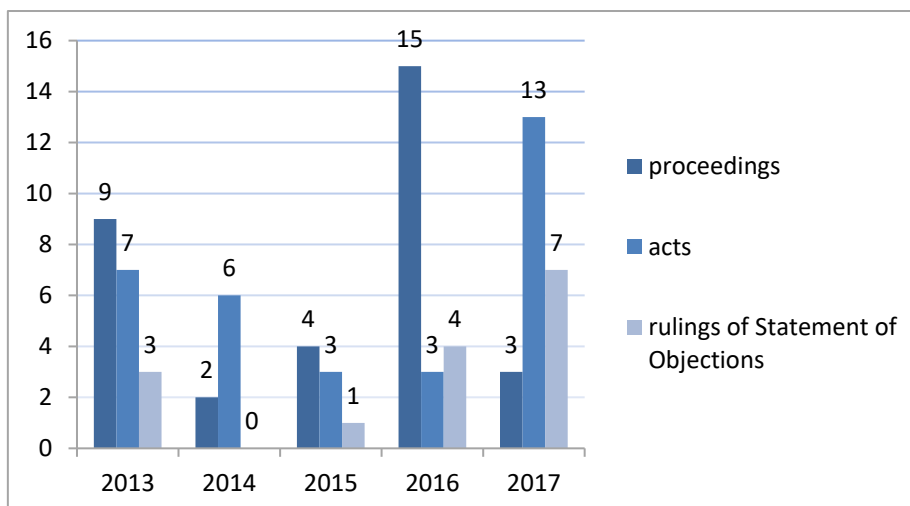
3.1. Proceedings

9. In 2017 the Commission initiated **3 proceedings**² which have as subject the establishment of the presence or absence of an infringement of Chapter Three *Prohibited agreements, decisions and concerted practices* of the LPC, as **2** of them are initiated with decisions of the Commission **on the basis of Art. 38, para. 1, p. 1 of the LPC (on its own initiative)** and the rest – on request of persons whose interests are affected or threatened by infringement of the LPC.

3.2. Decisions and rulings

10. In 2017 the Commission adopted 13 decisions with regard to the application of Art. 15 of the LPC on proceedings initiated in 2015 and 2016. The completing of more proceedings under Chapter Three of the LPC with a final act led to the adoption of 10 more decisions in comparison to 2016.

Figure 1. Proceedings and acts under Chapter Three of the LPC 2013-2017



¹ OJ L 349/1 of 05.12.2014

² In one of the cases the proceedings are initiated also under Art. 21 of the LPC and therefore in this report the same are included also in the total number of proceedings initiated under Chapter Four of the LPC.

11. As it can be seen from the chart, in the reporting year 2017 the number of the initiated proceedings has decreased in comparison with the previous period. Two of the proceedings are initiated on initiative of the CPC and are with subject establishment of infringements under Art. 15 of the LPC in the form of bid rigging. In 2016 as well as in 2017 the Commission pays special attention to the manipulations in the tender procedures which are one of the heaviest antitrust infringements.

12. In 2017 the number of the decisions has increased significantly in comparison to 2016 which is due mainly to the large number of initiated proceedings in previous periods.

13. In 2017 with 7 rulings the CPC sent Statements of Objections for infringement representing imposition of prohibited vertical agreements for setting the resale price in the intermediary contracts with the insurance brokers. With regard to this the Commission approved the proposals for undertaking of commitments received by the insurers which is expected to improve the price competition between the brokers. The insurance companies have to enter into force the prescribed measures within the deadlines determined in the decisions of the CPC and to inform the Commission in due course for the fulfilment of the commitments.

3.3. Example from the practice

3.3.1. Removing of vertical restrictions in the pricing of intermediary commission remunerations

14. Within the framework of the sector analysis of the competitive environment of the insurance market in the Republic of Bulgaria the Commission established the presence of conditions arranging the trade relations between the insurance companies and the insurance brokers which limit the possibility of the insurance brokers to make a rebate to the their end clients from their own remuneration.

15. The CPC found that in the relations insurance company – insurance brokers there is imposed compliance with lasting mechanism which appears to be restriction of the possibility of the insurance broker to determine freely its trade behaviour as an independent undertaking as well as to create prerequisites for distortion of the effective price competition between the insurance brokers. With regard to this the Commission reached the conclusion that between the insurance company and the insurance brokers, who have signed contracts for insurance intermediation with it, there is an agreement within the meaning of Art. 15, para. 1 of the LPC which restricts the intermediary to lower on his behalf the effective price that the client pays.

16. The formal or factual ban, or agreement with the insurers which restricts the price policy of the brokers can lead to maintenance of the prices for resale of the insurance products.

17. The defendants offered to undertake commitments under Art. 75 of the LPC. The proposals for undertaking of commitments are related with specific actions of the insurance companies that will remove the alleged by the CPC restriction of the price policy of the brokers. Specific amendments are offered in the documents of the companies used in their trade relations with brokers that explicitly guarantee the freedom of every broker to take advantage of his remuneration by making rebates of the end price of the premium. The Commission assessed that the undertaking of commitments would lead to quick and effective discontinuation of the unlawful conduct of the defendant

undertakings; it is likely to lead to creation of conditions for restoring the competition on the relevant market. The CPC adopted decisions on the separate proceedings approving the commitments proposed by the insurance companies.

4. Abuse of monopoly and dominant position

4.1. Proceedings

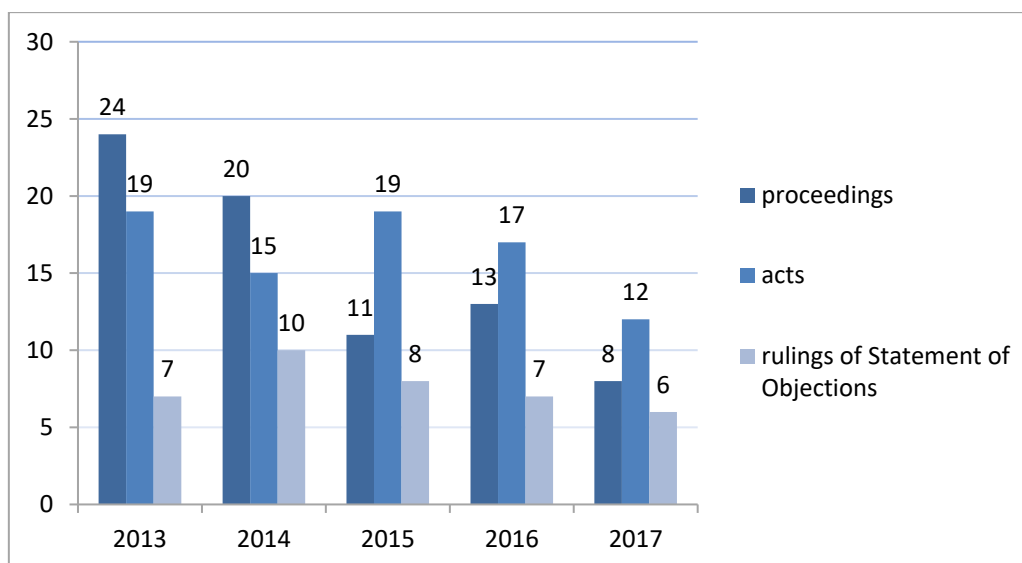
18. In 2017 the Commission initiated a total of 8 proceedings³ with subject establishment of the presence or absence of infringements under Chapter Four “*Abuse of monopoly or dominant position*” of the LPC, initiated on request of persons whose interests are affected or threatened by infringement of the LPC.

4.2. Decisions and rulings

19. In 2017 the Commission adopted a total of **12 decisions**⁴ with regard to the application of Art. 21 of the LPC and/or Art. 102 TFEU.

20. In 2017 the Commission on the basis of Art. 74, para. 1, p. 3 of the LPC with 6 rulings sent Statements of Objections for infringement of Art. 21 of the LPC.

Figure 2. Proceedings and acts under Chapter Four of the LPC 2013-2017



21. In 2017 the number of the initiated proceedings and of the adopted decisions has decreased in comparison to their number in the preceding year.

³ In one of the cases the proceedings are initiated also under Art. 15 of the LPC and therefore in this report the same are included also in the total number of proceedings initiated under Chapter Three of the LPC.

⁴ In two of the cases the Commission has ruled also under Art. 15 of the LPC and therefore the decisions are accounted also in the relevant part of the report concerning this provision of the law.

22. In 2017 with 4 decisions pecuniary sanctions were imposed for infringements of Art. 21 of the LPC in a total amount of 6 282 641 Bulgarian leva (3 212 263 Euro).

4.3. Examples from the practice

23. With decisions 1475/14.12.2017 and 1476/14.12.2017 the Commission on Protection of Competition found that taking advantage of their dominant positions on the markets of distribution and supply with electrical energy for business users of medium and low voltage, the undertakings of the economic groups of CEZ and EVN apply common strategy and practices which discriminate the traders of electrical energy at freely negotiated prices outside their groups.

24. The Commission found that the unilateral conduct of the above mentioned companies is related to practices of hindering the process of initial change of the end supplier with supplier at freely negotiated prices. The CPC established that the access to the information which is essential for transition from supply at regulated prices to supply at freely negotiated prices gives competitive advantage to the trader with electrical energy at freely negotiated prices who is part of the groups of CEZ and EVN and in practice deprives its direct competitors – the independent licensed traders, of possibility for equal start. The Commission on Protection of Competition imposed sanctions in a total amount of nearly 6 million Bulgarian leva (around 3 million Euro) to the distribution and supply undertakings of the economic groups EVN and CEZ.

25. With Decision 1510 of 21.12.2017 the Commission on Protection of Competition found that “CEZ Razpredelenie Bulgaria” AD has committed an infringement under Art. 21, p. 1 of the Law on Protection of Competition, expressed in abuse of dominant position on the market of distribution of electrical energy including the activity on joining of producers of electrical energy from renewable energy sources. The Commission found that “CEZ Razpredelenie Bulgaria” AD imposes unfair trade conditions on its clients, producers of electrical energy from renewable energy sources with the aim to achieve unreasonable financial benefits with regard to the joining in the electricity distribution network.

26. The CPC found that in the reviewed period the defendant “CEZ Razpredelenie Bulgaria” AD applies towards producers of electrical energy from renewable energy sources who have submitted applications for joining of objects to the electricity distribution network, two groups similar unfair trading conditions which can be summarized in the following way:

- Imposition of costs which according to the applicable legal framework “CEZ Razpredelenie Bulgaria” AD has to bear with regard to the joining of producer of electrical energy from renewable energy sources to the electricity distribution network;
- Imposition of costs which should be borne by “CEZ Razpredelenie Bulgaria” AD with regard to the joining of its own object to the transmission network.

27. As a result of the imposed unfair conditions even at the moment of taking a decision of the CPC the affected undertakings have not concluded preliminary contracts for joining of their objects to the distribution network which hinders their activity on production and sale of electrical energy from renewable energy sources.

28. With its decision the CPC imposed on “CEZ Razpredelenie Bulgaria” AD pecuniary sanction in the amount of 288 000 Bulgarian leva (147 252 Euro) and ordered termination of the established infringement.

5. Control on concentrations between undertakings

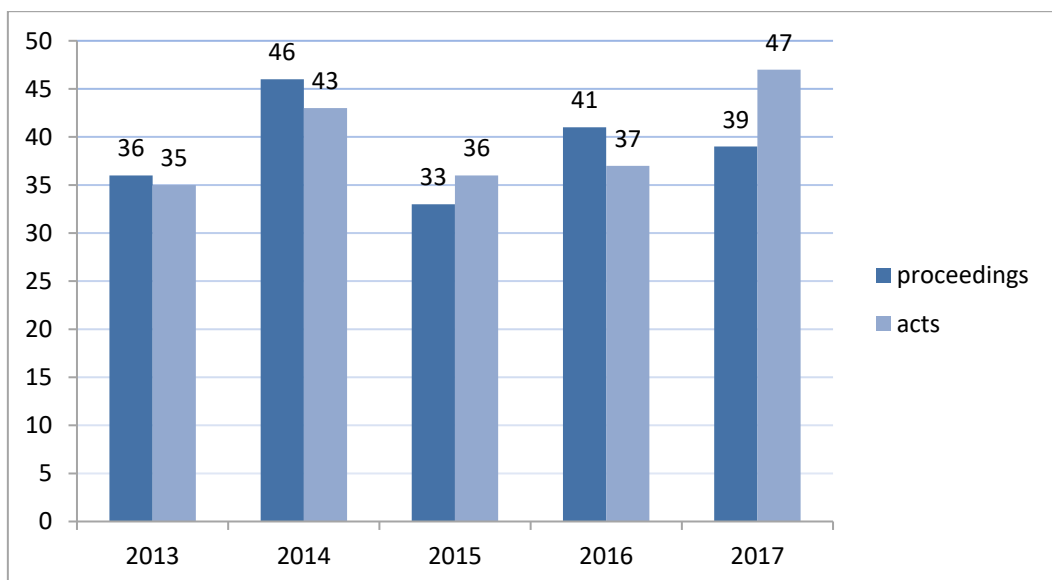
5.1. Proceedings

29. In 2017 the Commission initiated a total of 39 proceedings on the basis of Art. 38, para. 1, p. 6 – on received notifications for authorization of concentration between undertakings under Art. 22, para. 1 of the LPC.

5.2. Decisions and rulings

30. In 2017 the Commission adopted a total of 47 decisions.

Figure 3. Proceedings and decisions under Chapter Five of the LPC 2013 -2017



31. As it can be seen from the chart in 2017 the number of the initiated proceedings in the field of concentrations marks insignificant decline in comparison to 2016 but generally the outlined tendency of constant increase after 2015 is kept.

32. The Commission has assessed and adopted most decisions for authorization of concentration between undertakings in the banking and financial sector (8 decisions).

5.3. Examples from the practice

33. After conducting of an in-depth investigation under Art. 83, para. 1 of the LPC, the Commission with Decision 209/23.02.2017 authorized “VIP Security” EOOD to acquire control over “G4S Security Solutions” EOOD and ordered immediate

implementation of the decision. The final conclusion that the CPC makes is that no security company has independence from its clients and every participant on the market who has the necessary staff and equipment can be a potential provider of security services and the transition from one supplier to another is not hindered. The decision is appealed before the Supreme Administrative Court.

34. After conducting of an in-depth investigation under Art. 83, para. 1 of the LPC, the Commission with Decision 1207/24.10.2017 authorized “Sopharma Trading” EAD to acquire sole control over 19 trade objects which form the chain of pharmacies “Pharmastore” and ordered immediate implementation of the decision.

35. In the course of the preliminary investigation the CPC found that there is horizontal overlap between the activities of the participants in the concentration on the market of retail trade in medicinal products. The transaction also leads to vertical effects as far as the group “Sopharma” participates in the markets of production and wholesale trade in medicinal products which are vertically connected with the market of retail trade in medicinal products in the country.

36. As the market share of “Sopharma” on the national market of production of medicinal products is insignificant ([0-5]%) and “Sopharma Trading” AD does not have leading role on the market of wholesale trade in medicinal products, possible restriction of the supply of the medicines produced by the group only through its distributor would be economically inexpedient as it would possibly deprive it of significant part of its revenues. After the realization of the concentration the newly formed chain of pharmacies would operate a total of 35 pharmacies in the country and the market share of the united group on the market of retail trade in medicinal products intended for human medicine will be insignificant on national as well as on regional level in the cities where both pharmacy chains operate. The analysis reveals that the pricing is made in the same way and on the basis of the same criteria for both the concentrating pharmacy chains and the rest of the pharmacies.

37. With Decision 385/11.04.2017 the CPC authorized unconditionally within the preliminary investigation “KBC Bank NV”, Belgium to acquire sole control over “United Bulgarian Bank” AD, “Interlease” EAD and several connected Bulgarian business assets within the meaning of Chapter Five of the LPC. The CPC found that the markets of bank services are competitive with low level of concentration and though there are market leaders none of them has dominant position. On the markets of retail and wholesale banking the group united after the concentration will have market share which will not exceed 15%. After the concentration a change in the competitive environment on the market of distribution of insurance products is not expected taking into account the combined market share of [5-10]% of the participants in the concentration. On the market of life insurance the Commission found that the total market share of the participants in the concentration after the transaction will be above 15% but below the presumed 40%.

6. Sector inquiries

38. In 2017 with 1 its decision on the basis of Art. 38, para. 1, p. 1 of the LPC, in conjunction with Art. 91, para. 1 and Art. 27 of the LPC, the Commission initiated proceedings for conducting of a sector inquiry of the markets of trade in food and fast moving goods. The aim of the sector inquiry is to give general idea about the mechanisms

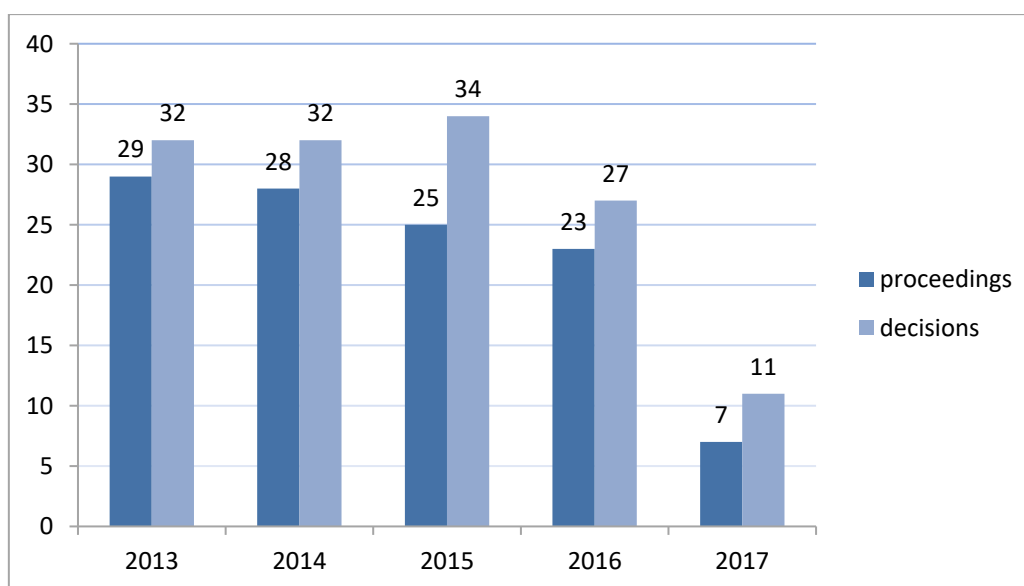
of negotiation and the processes of pricing of the goods with private labels of the trade chains and of the goods with brands of a producer.

7. Competition advocacy

7.1. Proceedings and decisions

39. In 2017 a total of 7 proceedings are initiated, in which the CPC has exercised its competences under Art. 28 of the LPC.

Figure 4. Proceedings and decisions on competition advocacy 2013-2017



40. In 2017 the tendency of decrease in the number of the initiated proceedings continues. The decrease in the number of requests for initiation of proceedings in the recent years is due to a great extent to the lack of obligation for the other state authorities to perform preliminary assessment for the compliance with competition rules by using the adopted with Decision of the CPC 1777/20.12.2011 “Guidelines for assessment of the compliance of legislative and general administrative acts with competition rules”.

41. In 2017 the Commission has adopted a total of **11 decisions on competition advocacy**.

7.2. Example from the practice

7.2.1. Retail trade in food products and beverages

42. With Decision 228/28.02.2017 the Commission on Protection of Competition adopted an opinion of Draft law for amendment and supplementation of the Food law.

43. The CPC reckons that the introduction of provisions that regulate the usage of the word “Bulgarian” with regard to the packaging, labelling and advertising of food is not necessary as these issues are already regulated at EU level.

44. The CPC expresses the opinion that the obligation for the supermarkets with annual turnover over 2 million Bulgarian leva part of the quantities of certain groups of products to be produced in Bulgaria restricts competition in several aspects. This regulation creates geographical barriers to the free movement of goods which is related to a risk of market exit of some foreign suppliers including of some products that are not substitutes with Bulgarian ones. This leads to many unfavourable consequences for the consumers such as limited choice, higher prices, risk of deficit of goods in case the Bulgarian products are not sufficient to cover the minimum percentage, risk of products of poor quality contrary to the motives of the draft concerning the health of the citizens. Besides the provision sets in a privileged position not only the Bulgarian towards the foreign suppliers but also the small towards big retailers. The provision for minimum percentage of Bulgarian products restricts also the ability of the retailers to determine the strategy to attract consumers. The market economy is based on the interaction between demand and supply and hence the natural market mechanisms and not regulations would create supply that would meet the demand. It has to be taken into account also that in the legal framework in force there are envisaged means for protection of the producers from unfair trading practices of the retailers and that is why it is not necessary to introduce additional measures in this regard that restrict competition.

45. The definition of fresh fruits and vegetables which excludes those that are not produced in Bulgaria could also restrict competition by limiting the free movement of goods creating risk of going back in the times of deficit of fruits and vegetables out of their season which has been typical for the period before the liberalisation of the international trade.

46. The regulatory determination of shorter term for payment of perishable goods is additional unnecessary interference in the freedom of contract which could turn out to be in detriment of the suppliers it is meant to protect in case of renegotiation of other contract terms.

47. The CPC reckons that the support for the Bulgarian producers should not be made with measures which not only do not fulfill the aims but also restrict competition but instead with measures which comply with state aid rules and within the legal possibilities provided by the Common Agricultural Policy of the EU.

8. European affairs

48. The Commission on Protection of Competition participated in the meetings of Working Party “Competition” of the Council of the EU (G.12.) on the basis of Art. 7 of the Internal rules for the activity of the Council on European affairs at the Council of Ministers.

49. The basic accent in the activity in 2017 of Working Party “Competition” was the Proposal made by the European Commission on 22.03.2017 for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (2017/0063 (COD)). The proposed draft of a Directive, called briefly ECN+, aims to introduce in the national legislations of the EU Member States additional

legal instruments, guaranteeing the uniform application of the EU competition rules as envisaged in the Treaty on the Functioning of the European Union and Regulation (EC) No 1/2003.

50. In the past year representatives of the CPC participated in 5 meetings of Working Party “Competition” of the Council of the EU (G.12.) at which the Draft of ECN+ Directive was under discussion. The participation of the representatives of the Commission in these meetings was of particular importance because the discussion of the Proposal for a Directive continues during the Bulgarian Presidency of the Council of the EU.

9. International co-operation

9.1. Sofia Competition Forum

51. The Sofia Competition Forum (SCF) is a joint initiative of the Commission on Protection of Competition and the United Nations Conference on Trade and Development (UNCTAD). The established in 2012 SCF aims to enhance the cooperation and the regional relations between the countries of the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia) as well as Georgia by assisting the countries in the region in adopting and enforcing the legislation in the field of competition and as a result to increase the benefits for these countries of well-functioning markets.

52. Within the project in 2017 a seminar was organized which had as its aim the increase of the knowledge of the competition authorities of the beneficiary countries.

9.2. Tenth SCF meeting, 27 October 2017

53. The Commission on Protection of Competition, jointly with UNCTAD, organized the 10th meeting of the Sofia Competition Forum on 27 October 2017 in Sofia. The SCF is funded with the Bulgarian Development Aid in cooperation with the Ministry of Foreign Affairs. The seminar was attended by all SCF members (Albania, Bosnia and Herzegovina, Croatia, Georgia, Kosovo, Macedonia, Montenegro, Serbia), UNCTAD, European Commission, OECD, EBRD, Italy, Austria, Japan, Russia, Ukraine, Cyprus, Estonia, the Center for Law and Economics of the University College of London as well as by the law firms DLA Piper and SRS Advogados.

54. The general topic of the meeting was “Information exchange between competitors“. The prohibited agreements on the basis of exchange of information between competitors are common in the SCF member countries. The topic provoked a lot of questions for discussion and gave possibility of the SCF beneficiaries to share their practice as well as to discuss issues which would be useful in their enforcement.

55. In the morning plenary session the invited speakers from national competition authorities (Italy, Austria and Japan), international organisations (European Commission and OECD), academia (the Center for Law and Economics of the University College of London) as well as from the legal community (the law firms DLA Piper and SRS Advogados) made presentations, while in the afternoon the SCF members and the other participants in the meeting shared their experience, views and challenges concerning information exchange between competitors.

56. At the meeting the preliminary findings of the SCF project on “Comparative overview in the field of sanctions and leniency” were presented. This is the fourth study in the series of SCF comparative studies after the general “Comparative overview of the competition regimes”, the “Comparative overview in the field of inspections on spot” and the “Comparative overview in the field of procedural fairness”.

57. At the end of the meeting the third issue of the SCF Newsletter was presented.

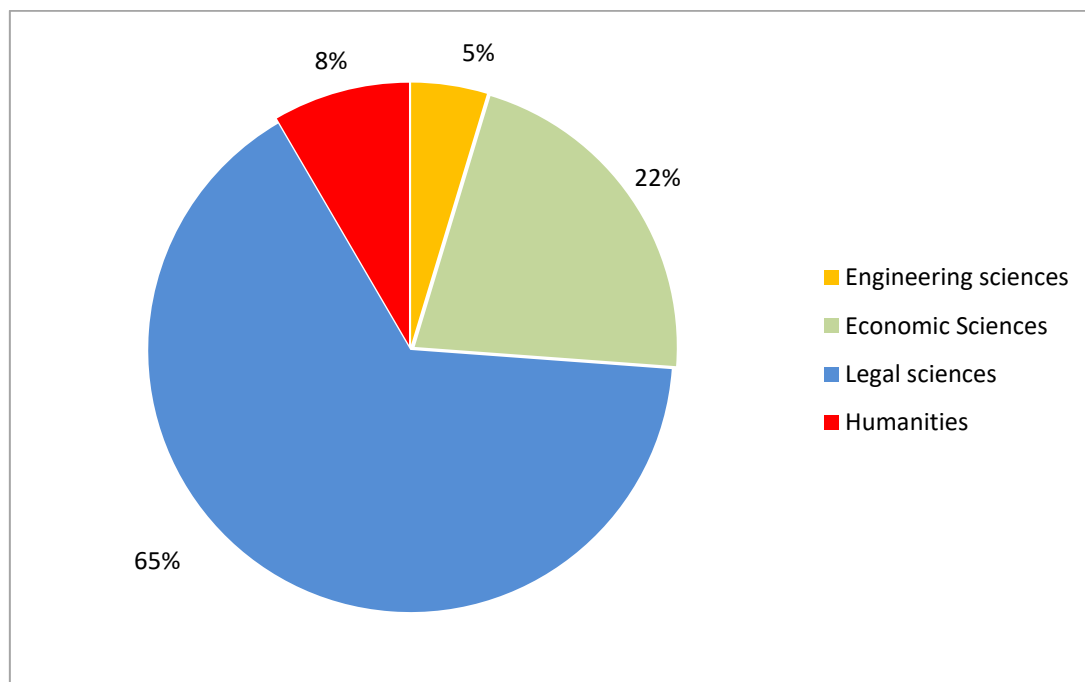
10. Administrative capacity and financial activity

10.1. Human resources management

58. The organizational structure and the size of the administration are set out in the Commission’s Rules of Procedure. The total number of positions – 117, include: Chairperson, Deputy Chairman, five Members of the Commission, Chief Secretary, Information Security Officer, General Administration – 23 employees, and specialized administration – 85 employees.

59. The allocation of the employees by field of education is presented in the chart below:

Figure 5. Higher education fields



10.2. Financial activity

60. The approved expenses in the budget of the Commission on Protection of Competition for 2017 are in the amount of 4 222 750 Bulgarian leva.