

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Bulgaria****-- 2018 --****5-7 June 2019**

This report is submitted by Bulgaria to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Bulgaria

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 acts issued in infringement of the competition rules. The draft regulatory acts to be adopted accordingly are subject to analysis for their compliance with the 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 meetings of the Competition Committee in 2019, 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. PROHIBITED AGREEMENTS, DECISIONS AND CONCERTED PRACTICES

2.1. Proceedings

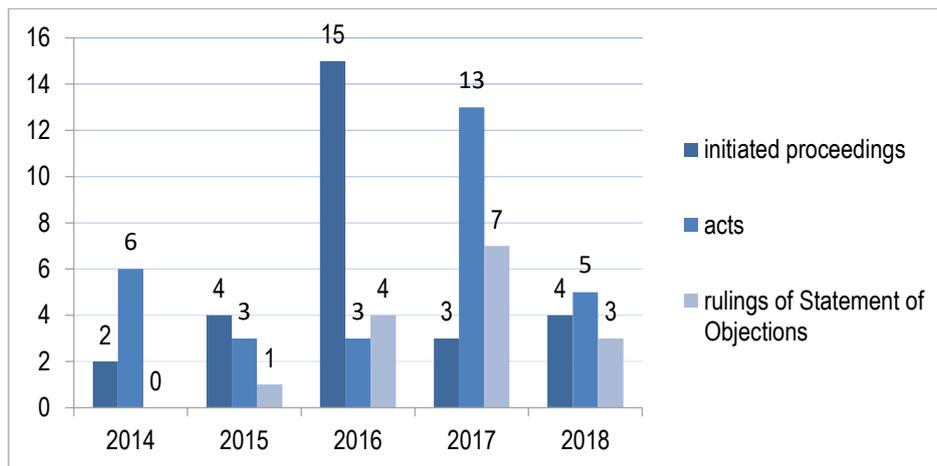
7. In 2018 the Commission initiated **4 proceedings** which have as subject the establishment of the presence or absence of prohibited agreements, decisions and concerted practices of the LPC, as **2** of them are initiated with decisions of the Commission (*ex officio*)

and the rest – on request of persons whose interests are affected or threatened by infringement of the LPC.

2.2. Decisions and rulings

8. In 2018 the Commission adopted **5 decisions** with regard to the application of Art. 15 of the LPC on proceedings initiated in the period from 2013 to 2017.

Figure 1. Proceedings and acts under Chapter Three of the LPC 2014-2018



2.3. Example from the practice

9. With **Decision 448/19.04.2018** in case CPC-634/2016 the CPC approved a proposal from DallBogg: Life & Health AD for undertaking of commitments on the basis of Art. 60 (2), p. 8 with regard to Art. 75 (2) of the LPC. In accordance with the decision the entity commits to make an amendment in the contracts with the insurance brokers which guarantees the freedom of the brokers to make discounts of the insurance premiums at the expense of their commission remuneration respectively that the brokers should not follow any instructions of the insurer for restriction of their price policy. Deadline of three months from the notification of the decision to DallBogg: Life & Health AD has been determined for fulfillment of the commitments.

10. With **Ruling 1412/13.12.2018** the CPC sent statement of objections to 13 undertakings for infringement of Art. 15 (1) of the LPC constituting bid rigging with regard to public procurement within the National Programme for energy effectiveness of multifamily residential buildings opened with Decision 3-OП-34/28.04.2015 of the Mayor of Targovishte municipality.

11. Within the proceedings leniency applications from participants in the public procurement of Targovishte municipality have been received along with additional information and evidence on the basis of which the Commission sent statement of objections for infringement of Art. 15 (1) of the LPC.

12. On the basis of the established facts and circumstances, the Commission considered that the addressees of Ruling 1412/13.12.2018 participate in a cartel within the meaning of § 1, p. 5 of the LPC aiming the prevention, restriction or distortion of competition on the markets of elaboration of research for establishment of the technical characteristics and of

the technical passports of the buildings and elaboration of research of the energy effectiveness of buildings and suggestion of necessary energy-saving measures.

13. With **Ruling 1443/20.12.2018** the CPC sent statement of objections to 15 undertakings for infringement of Art. 15 (1) of the LPC constituting bid rigging with regard to public procurement within the National Programme for energy effectiveness of multifamily residential buildings opened with Decision 301/25.03.2015 of the Mayor of Gotse Delchev municipality. On the basis of the established facts and circumstances, the Commission considered that the addressees of the ruling participate in a cartel within the meaning of § 1, p. 5 of the LPC aiming the prevention, restriction or distortion of competition on the markets of elaboration of research for establishment of the technical characteristics and of the technical passports of the buildings and elaboration of research of the energy effectiveness of buildings and suggestion of necessary energy-saving measures.

14. Within the same proceedings with **Decision 619/05.06.2018** the Commission imposed sanction for non-compliance with the obligation for assistance under Art. 46 of the LPC with regard to an inspection on spot under Art. 50 of the LPC in the amount of 30 000 Bulgarian leva.

15. The established infringement consists of:

- failure to grant access for about 5 hours to business digital and electronic information stored on information systems and servers;
- failure to grant access to specific folders located on a server used by the company;
- failure to grant access to the e-mail of the manager of the company;
- failure to grant access to the business computer of the manager with its current content at the moment of the beginning of the inspection.

16. Each of the listed four forms of behaviour individually makes the composition of the infringement under Art. 100 (3), p. 1 of the LPC but since they are strategically and objectively connected for the achievement of one and the same unlawful result – the obstruction of inspection on spot, the CPC reviews them as one complex infringement of the obligation for assistance and determines one sanction. In this case the performing of the inspection on spot can be neither repeated, nor continued and that is why the CPC has not determined deadline within which the party has to fulfil its obligation for assistance and the CPC has not imposed periodic penalty payment for obstruction of inspection under Art. 100 (7), p. 3.

3. ABUSE OF MONOPOLY AND DOMINANT POSITION

3.1. Proceedings

17. In 2018 the Commission initiated **4 proceedings**¹ with subject establishment of the presence or absence of infringements under Chapter Four “*Abuse of monopoly or dominant*”

¹ In two 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.

position” of the LPC, initiated on request of persons whose interests are affected or threatened by infringement of the LPC.

3.2. Decisions and rulings

18. In 2017 the Commission adopted a total of **9 decisions**² with regard to the application of Art. 21 of the LPC and/or Art. 102 TFEU.

19. 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.

3.3. Examples from the practice

20. With **decision 404/05.04.2018** in case CPC-141/2017 the CPC found that Society of composers, authors of music-related literary works and music publishers for collective copyright management “Musicautor” has committed infringement under Art. 21, p. 5 of the LPC, consisting of abuse of dominant position on the market of granting of rights for wireless broadcasting of music and literary works from the repertoire of “Musicautor”, the transmission and retransmission of the works through electronic communications network for suppliers of radio services on the territory of the country which can prevent, restrict or distort competition and harm the interests of the consumers through unjustified termination of existing contractual relations with the Bulgarian national radio (BNR) which hinders the activity performed by the radio. The proceedings is initiated on request of the Bulgarian national radio.

21. The subject of the investigation in the proceedings is the behaviour of Society “Musicautor” with regard to the termination of the relations between “Musicautor” and BNR existing by virtue of Contract for licence of usage of music and literary works on the radio and the consequent inability of the public radio to use in its programmes the repertoire of the Society.

22. In the course of the investigation the Commission found that the relations between the parties in the proceedings with regard to the granting of rights of usage of the repertoire of “Musicautor” are arranged with a contract for licence of usage of music and literary works on the radio, concluded between the parties on 19.12.2011. The contract is terminated from 01.01.2017 through prior notice of “Musicautor” of 21.11.2016.

23. From the negotiations led by the parties and from the overall behaviour of “Musicautor” in this regard, a conclusion can be drawn that the termination of the contract in force between the parties represents a way of achieving the required by the Society conditions for determination of the due remuneration for licensing of the relevant rights.

24. The Commission reached to the conclusion that through the termination of the contract with BNR, “Musicautor” as an undertaking with dominant position deprives the national radio of the possibility to effectively compete on the market on which it operates.

² In three 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.

25. The infringement is qualified as not very grave within the meaning of p. 9.4 of the Methodology³ for determination of sanctions under the LPC taking into account that it does not lead to foreclosure of the market or of the competitors and does not lead to lasting in time impact on the competitive environment. A sanction is imposed for the committed infringement under Art. 21 of the LPC in the amount of 56 678 Bulgarian leva.

4. CONTROL ON CONCENTRATIONS BETWEEN UNDERTAKINGS

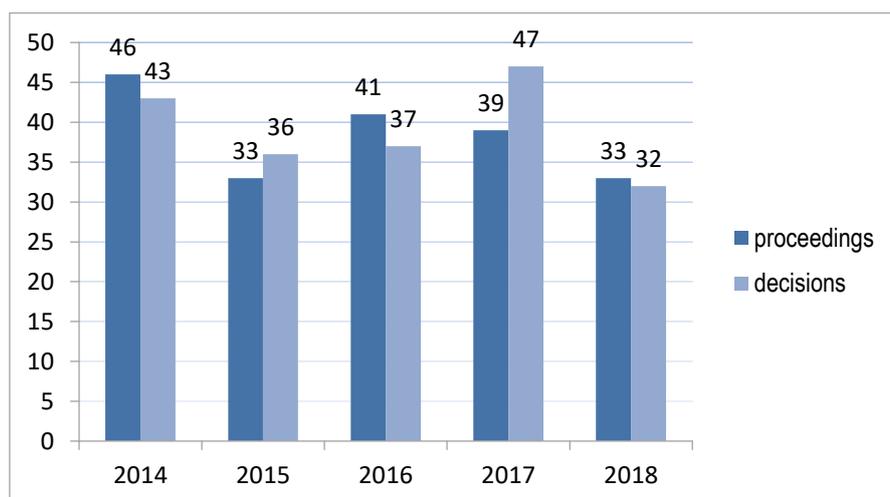
4.1. Proceedings

26. In 2018 the Commission initiated a total of **33 proceedings**. One of them is initiated with decision of the Commission.

4.2. Decisions and rulings

27. In 2018 the Commission adopted a total of **32 decisions** under Chapter Five of the LPC, one of which in proceedings initiated in the end of 2017.

Figure 2. Proceedings and decisions under Chapter Five of the LPC 2014 -2018



28. In 21 of the initiated cases the CPC, in the course of preliminary investigation under Art. 80 and Art. 81 of the LPC, authorized unconditionally the realization of the notified transactions.

29. In the reporting period the Commission on the basis of Art. 83 (1) of the LPC adopted one decision for initiation of an in-depth investigation.

³ Methodology for determination of sanctions under the Law on Protection of Competition, adopted with Decision 71/2009 of the CPC, amended and supplemented with Decision 1024/2009, Decision 330/2011, Decision 900/2015.

30. In 2018 the Commission adopted two decisions (804/2018 and 805/2018) for blocking of concentration. The deals affect sectors with great public significance (media and energy).

4.3. Examples from the practice

31. During the analysis of the deal, consisting of the acquisition of sole control by PPF TMT Bidko 2 B.V., the Netherlands over “Nova Broadcasting Group” AD and its subsidiaries, the Commission took into account the leading positions of the acquired undertaking in the field of media services, the financial and organizational resources that it has as well as the possibility of realization of economies of scale and scope. The considerable number of media which the united group will have will give it a significant advantage over the other participant providing media services. In this way the participants in the concentration would have incentive and a real possibility to change their trade policy in different forms consisting of restriction of access, increase of prices or change in the conditions of the concluded contracts. In view of all this and taking into account the considerable experience of the acquiring company and its investment intentions, the CPC reached the conclusion that prerequisites are created for the deal to lead to establishment or strengthening of dominant position which would significantly hinder competition on the relevant markets. Such behaviour would restrict and distort not only the competition on the market but also the interests of the end consumers considering the public significance of the media.

32. As regards the second transaction of acquiring control by “Inercom Bulgaria” EAD over the undertakings of the group of “CEZ” a.s. in the Republic of Bulgaria, the CPC found that it leads not only to horizontal effects (on the market of production and wholesale supply of electricity by photovoltaic power plants) but also to vertical effects on the downstream markets and namely: the markets for distribution of electricity, of supply/delivery of electricity, of trade in electricity and the trade-related services of coordination of the balancing groups.

33. On the market of distribution and supply/delivery of electricity the acquired group is with natural monopoly position for the territory defined in the licences issued to it for performing of these activities. Besides “CEZ Electro Bulgaria” AD and “CEZ Trade Bulgaria” EAD form significant market share on basis of trade volumes of electricity on the free market.

34. On the basis of the whole analysis the CPC concluded that taking into account the vertically integrated acquired group CEZ which has stable financial resources and experience in the electricity sector, prerequisites are created for the notified transaction to lead to establishment or strengthening of the dominant position of the united group. The presence of significant vertical effects will lead to considerable advantage of the participants in the concentration over their competitors which would hinder the effective competition in the analysed markets.

35. With regard to the wide scope of activities of the acquired companies and their importance for the electricity system of the Republic of Bulgaria the present concentration is of strategic importance for the country.

4.4. Economic sectors with concentrations on the national market in 2018⁴

36. The Commission has assessed and adopted decisions for authorization of concentrations between undertakings in different economic sectors: renting of real estate (3 decisions); banking and financial sectors (2 decisions); energy (2 decisions); information technologies (2 decisions); one decision in the sectors: insurance; media; production and sale of spirits and wine; import and sale of transport vehicles; sale of fuel; courier services; transport; chemical industry; production and trade in ice cream and ice cream products; pharmacy; production of sanitary fittings and sanitary ceramics; production and trade in metals; production of spare parts for industrial equipment and construction.

5. SECTOR INQUIRIES

37. In 2018 there is considerable increase in the number of the initiated proceedings (total 4) for conducting of sector inquiry of the competitive environment with regard to the presence of data for possible competition problems in certain sectors of the economy and namely:

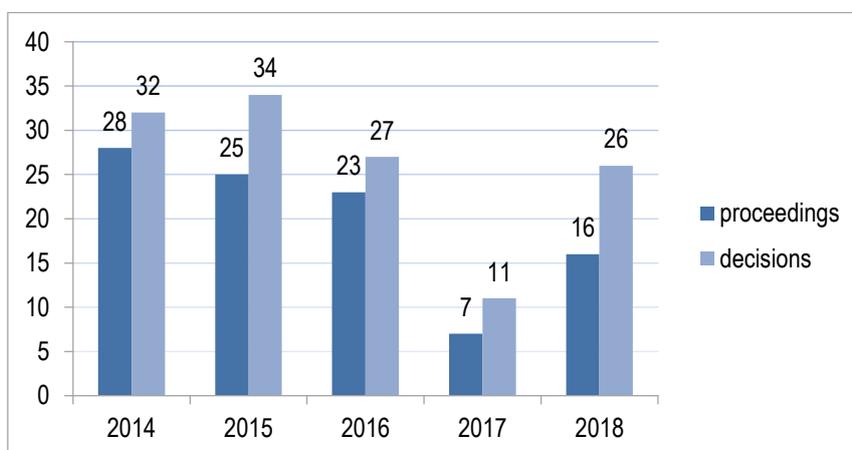
- proceedings for conducting of sector inquiry of the competitive environment in the **electricity market in the country;**
- proceedings for conducting of sector inquiry of the competitive environment in the **media market in the Republic of Bulgaria;**
- proceedings for conducting of sector inquiry of the competitive environment in the **market of provision of bank services by the banks – members of the Association of banks in Bulgaria;**
- proceedings for conducting of sector inquiry of the competitive environment in the **markets for production and sale of gasoline and diesel fuel in the country.**

38. The decisions for initiation of the four sector inquiries arise from the social-economic significance of these markets and the necessity of conducting of a detailed research of the situation on them in order to give up-to-date information about the market processes, about the possible problems in these sectors as well as to envisage possible measures of the Commission in accordance with the provisions of the LPC which would contribute to the correct and effective functioning of the competitive market environment.

6. COMPETITION ADVOCACY

39. In **2018** the Commission has initiated a total of **16 proceedings** and has adopted **26 decisions**. With these acts opinions on draft or effective legislative or administrative acts and finding the presence or lack of contradiction with competition rules are adopted.

⁴ Includes only the decisions for authorization and blocking of concentrations (total 23).

Figure 3. Proceedings and decisions on competition advocacy 2014-2018

40. Though there is no obligation for the other state authorities to make a preliminary assessment for such compliance they can use 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 2018 the CPC has made recommendations for amendment and supplementation of the following draft legislative acts:

- Draft Law for amendment and supplementation of the Law on energy;
- Proposal for introduction of minimum prices in the categorized accommodation;
- Draft Ordinance for the conditions and order for joining of consumers and for usage of the water and sewerage systems.

42. Besides the CPC has made recommendations with regard to:

- Draft model contract for access to the post network of “Bulgarian post” EAD;
- Draft decision of the Communications Regulation Commission for amendment and supplementation of the Methodology for the conditions and order for definition, analysis and assessment of the relevant markets and the criteria for defining of undertakings with significant market power.

43. The CPC has made proposals for amendment and supplementation of the following legislative and legislative administrative acts in force as they create conditions for prevention, restriction or distortion of competition:

- Law on energy;
- Ordinance 16-334 of 6 April 2007 on heat supply;
- Ordinance 2 of 23 February 2017 for the specific requirements for production, collection, transport and processing of raw cow milk, offering on the market of milk and milk products and their official control;
- Law on forests;

- Ordinance for the conditions and order of assignment of the performing of activities in the forest territories – state and municipal ownership, and for the usage of wood and non-wood forest products as regards the activities related to the sale of wood;
 - Law on the Financial Supervision Commission;
 - National framework contract for the medical activities 2018.
44. As evident from the above listing in 2018 the CPC has adopted opinions for the compliance with competition rules of the provisions of legislative acts in force which arrange public relations of significant importance for the society.

7. EUROPEAN AFFAIRS

7.1. Working Party G.12. “Competition” of the Council of the EU

45. The participation of representatives of the CPC in Working Party G.12. “Competition” of the Council of the EU passed extremely successful and was related to the basic work of discussion and adoption of the draft text for Directive, called briefly ECN+.

46. The national law is to a great extent in line with the texts of the ECN+ Directive. Some of the new legal positions that should be introduced in it are:

- besides the current power of the CPC to make unannounced inspections on spot of premises, land and means of transport of undertakings or of associations of undertakings, the Directive envisages possibility also for inspections of other premises, land and means of transport, including the homes of directors, managers and other members of staff, when there is a reasonable suspicion that documents and records which may be relevant to prove an infringement are kept there;
- when a sanction is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association is obliged to call for contributions from its members to cover the amount of the fine;
- the cooperation between the competition authorities of the EU Member States will be enhanced, including in carrying out inspections or interviews on behalf of and for the account of other national competition authorities;
- in certain cases a cross-border collection of imposed sanctions is allowed when the sanctioned undertaking or association of undertakings does not have sufficient assets in the Member State of the applicant authority.

7.2. European Competition Day

47. The CPC organized European Competition Day within the framework of the Bulgarian Presidency of the Council of the EU which was held on 31 May 2018 in Sofia. There were representatives of the European Commission, of the national competition authorities of the EU Member States as well as of authorities from countries which have long-standing relations of cooperation with the CPC. There were also participants from international organizations such as OECD and UNCTAD as well as from state authorities, the judiciary, law firms and the academia. The total number of participants was over 130, of which over 50 were foreign guests.

48. Special guest at the European Competition Day was the European Commissioner for Competition, Ms Margrethe Vestager who in her keynote speech highlighted that the ECN+ Directive will give more powers to the competition authorities. This in turn will allow them to make decisions that bring benefits to consumers. The key legislative developments in the European competition law which will have determining influence on the enforcement of competition rules in the forthcoming years were discussed at the event: the ECN+ Directive which aims to provide the national competition authorities of the Member States with the necessary powers for effective enforcement of competition rules and the expected effects of the application of the recently transposed in the Member States Directive 2014/104 EU on actions for damages in the field of competition which removes the practical obstacles to compensation for all victims of infringements of competition. Attention was also paid to cases that arise before the competition authorities in the energy sector. During the discussion of the three topics notable speakers from the European Commission, from national competition authorities, from UNCTAD and OECD, world recognized professors, lawyers and economists in the field of competition shared their experience and views.

8. INTERNATIONAL COOPERATION

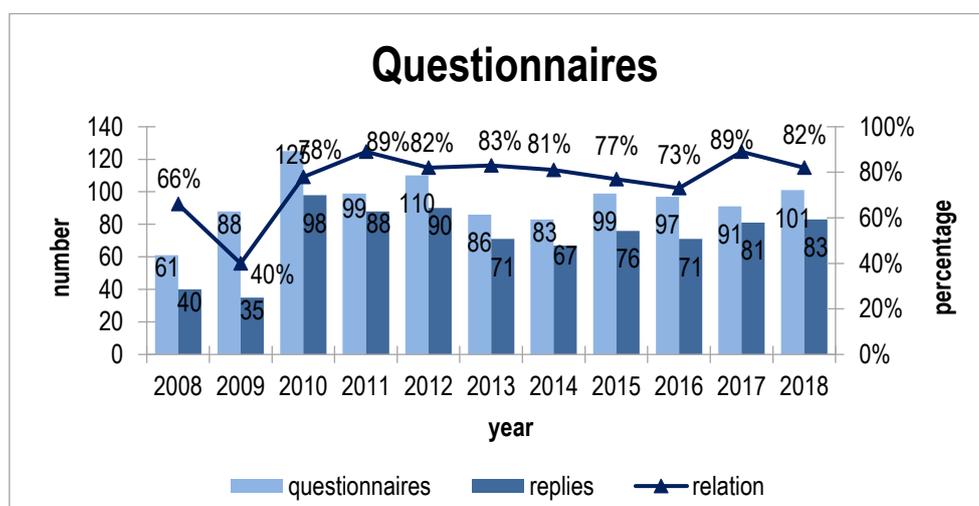
Exchange of information in the networks and organizations in which the CPC participates

49. The CPC receives multiple and various questionnaires arising from the cooperation within the ECN, ICN and other organizations.

50. **In 2018 there is an increase in the number of the received questionnaires to 101 which is the highest number since 2012.** The replies also mark an increase to 83. Thus the percentage of the replied questionnaires keeps high value (82%) as this is the second highest percentage of replied questionnaires for the last five years after 2017 when the percentage of the replies equalized the record level of 89%.

51. The chart presents data for the number of questionnaires, the replies by the CPC and the percentage of the replied questionnaires.

Figure 4. Received questionnaires and replies by the CPC in the period 2008-2018



9. ADMINISTRATIVE CAPACITY AND FINANCIAL ACTIVITY

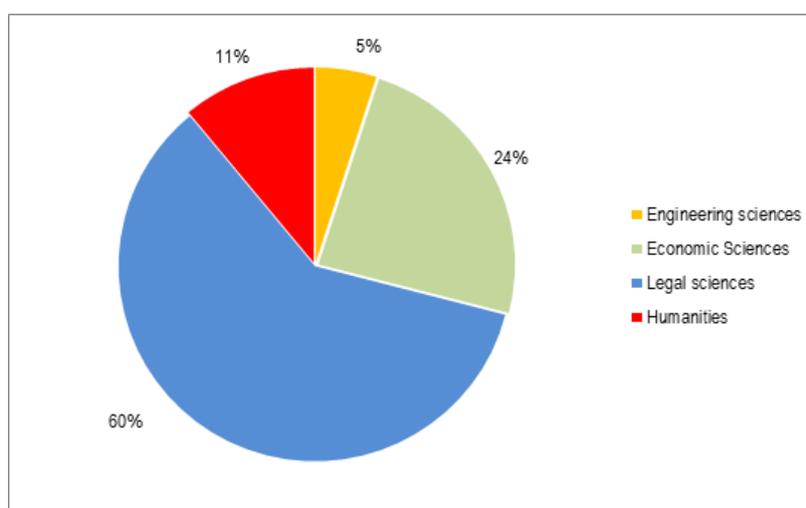
9.1. Human resources management

52. 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 – 80 employees.

53. High qualified specialists are working in the Commission, 96% of which with higher education whose educational level meets the aims and tasks of the CPC.

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

Figure 5. Higher education fields



9.2. Financial activity

55. The approved expenses in the budget of the Commission on Protection of Competition for 2018 are in the amount of 4 692 000 Bulgarian leva (around 2 400 000 Euro).