

Unclassified

English - Or. English

15 May 2023

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Bulgaria

-- 2022 --

This report is submitted by Bulgaria to the Competition Committee FOR INFORMATION.

JT03518930

Table of contents

Bulgaria	3
1. Introduction	3
2. Prohibited Agreements, Decisions and Concerted Practices	3
2.1. Proceedings	3
2.2. Decisions and rulings	4
2.3. Examples from the practice	4
3. Abuse of Monopoly and Dominant Position	5
3.1. Proceedings	5
3.2. Decisions and rulings	6
3.3. Examples from the practice	6
4. Control on Concentrations between Undertakings	7
4.1. Proceedings	7
4.2. Decisions and rulings	7
4.3. Economic sectors with concentrations on the national market in 2022	8
4.4. Example from the practice.....	8
5. Sector Inquiries	10
6. Competition Advocacy	11
6.1. Proceedings and decisions	11
6.2. Example from the practice.....	11
6.2.1. Coal packages	11
7. European Affairs	12
8. International Cooperation	12
8.1. Participation in the International Competition Network.....	12
8.2. Cooperation in the Organisation for Economic Co-operation and Development (OECD).....	12
8.3. Exchange of information in the networks and organisations in which the CPC participates	13
9. Administrative Capacity and Financial Activity	14
9.1. Human resources management	14
9.2. Financial activity	14

Figures

Figure 1. Proceedings and acts under Chapter Three of the LPC 2018-2022	4
Figure 2. Proceedings and acts under Chapter Four of the LPC 2018-2022	6
Figure 3. Proceedings and decisions under Chapter Five of the LPC 2018-2022	8
Figure 4. Proceedings and decisions on competition advocacy 2018-2022	11
Figure 5. Received questionnaires and replies by the CPC in the period 2008-2022	13

Bulgaria

1. Introduction

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 Law on Public Procurement (LPP) and the Law on Concessions (LC).

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 Law on Public Procurement and the Law on Concessions, 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 includes information concerning the competences of the CPC concerning prohibited agreements, abuse of dominant position, concentrations, sector inquiries and competition advocacy.

2. Prohibited Agreements, Decisions and Concerted Practices

2.1. Proceedings

7. In 2022 the Commission initiated **4 proceedings**¹ which has as subject the establishment of the presence or absence of prohibited agreements, decisions and concerted

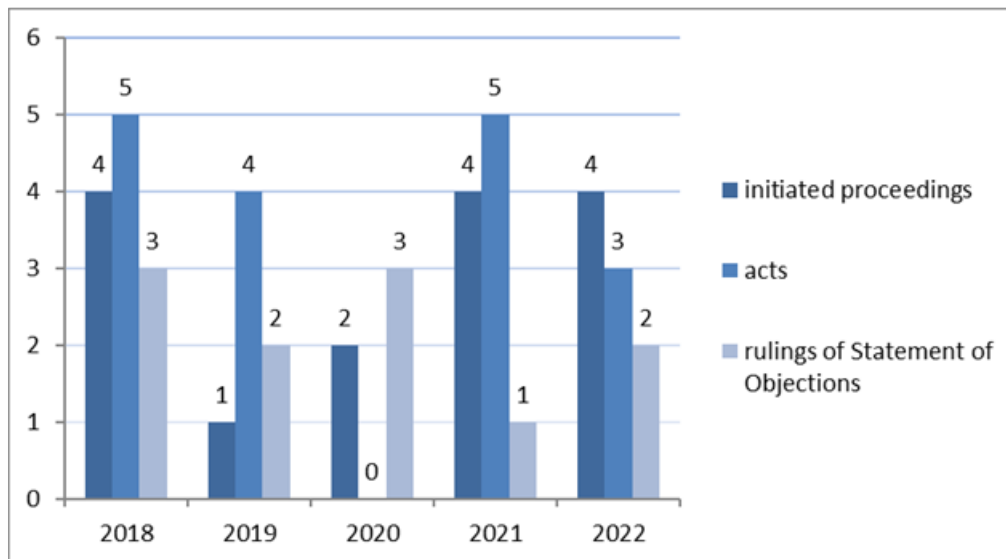
¹ One of the proceedings is initiated for establishment of infringements of both Art. 15 and Art. 21 of the LPC.

practices of the LPC on request of persons whose interests are affected or threatened by infringement of the LPC.

2.2. Decisions and rulings

8. In 2022 the Commission adopted **3 decisions**² with regard to the application of Art. 15 of the LPC on proceedings initiated in 2018 (2 of them) and 2021 (1) and **2 rulings** of Statement of Objections.

Figure 1. Proceedings and acts under Chapter Three of the LPC 2018-2022



9. In the reporting year the efforts of the Commission were targeted mainly at the conclusion of proceedings with sent Statement of Objections in the previous years as well as at preliminary investigations aiming *ex officio* initiation of proceedings for finding of bid rigging.

2.3. Examples from the practice

10. By **Decision 699/29.09.2022**, the CPC approved the proposals for commitments by Nikon Europe B.V. and Profiled OOD in relation to allegations of infringement of Art. 15 (1) of the LPC and Art. 101 (1) TFEU.

11. The proceedings before the CPC were initiated upon a complaint filed by PRG International, which has requested delivery of spare parts and provision of technical data, necessary for the performance of aftersales service of Nikon cameras. The necessary components and information have not been provided to PRG International with arguments that the latter did not meet the criteria for admission to the authorized network determined by the manufacturer.

12. By Ruling 1350/12.12.2019, the CPC addressed to Nikon Europe B.V. and Profiled OOD statement of objections for infringement of Art. 15 (1) of the LPC and Art. 101 (1) TFEU. The Commission's preliminary assessment is that the conduct of the parties will

² One of the decisions is also under Art. 21 of the LPC.

have the effect of restricting access to the market, given that only one company is active on the after sales service market.

13. On the basis of Art. 75 (1) of the LPC, Nikon Europe B.V. and Profield OOD proposed to undertake commitments to achieve termination of the above-mentioned conduct. The commitments include the adoption of a Policy containing the criteria for the admission of new service partners, signing of Annexes to the Selective Distribution Agreement with a national importer and the Non-exclusive Distributor Agreement as well as measures to fulfil orders for spare parts from independent specialist repairers. In this proceedings, the Commission for the first time carried out the so-called market test according to Art. 75 (3) of the LPC, by publishing a notice of the proposed commitments in the electronic register. Within the time period specified therein, participants on the relevant market and/or their associations had the opportunity to submit information and an opinion on the proposed obligations.

14. The Commission considers that the proposed commitments will lead to termination of the possibility for the alleged anticompetitive conduct and will remove the CPC's competition concerns. The existence of a clear policy, within which admission criteria and procedures are objective and defined in detail, will provide potential applicants for authorisation with the necessary legal certainty and will lead to the creation of conditions for the restoration of the competitive process in the relevant market, by applying equal conditions of access to all potential service providers.

15. By **Ruling 1005/08.12.2022**, the CPC adopted a Statement of Objections against Miele Bulgaria EOOD for an alleged infringement under Art. 15 of the LPC and under Art. 101 of the TFEU, manifested in participation in an agreement for setting resale prices for the end consumers with the retailers of electric appliances with the brand Miele.

16. The proceedings were initiated by a complaint by Miele Center Max Group EOOD. Based on the evidence, the Commission found that the supplier of electric appliances and the retailers have coordinated the resale prices, which limits the competition on the retail market for middle to high and for high class domestic electric appliances on the national territory. In the course of the investigation the CPC found that Miele Bulgaria EOOD has been sending price lists and instructions for promotional activities, which have mandatory nature as a result of imposed pressure, compliance control and incentives. The aim of this agreement is to eliminate the price competition between the retailers and to limit their freedom to independently set the prices of the offered products as a result of the competitive pressure on the market. The CPC found that with such an agreement, the retailers are deprived of the opportunity to lower the prices as a reaction to the price competition pressure, which further deprives the end consumers of the possibility for more favourable prices.

3. Abuse of Monopoly and Dominant Position

3.1. Proceedings

17. In 2022 the Commission initiated **7 proceedings**³ with subject establishment of the presence or absence of infringements under Chapter Four "*Abuse of monopoly or dominant*

³ One of the proceedings is initiated for establishment of infringements of both Art. 15 and Art. 21 of the LPC.

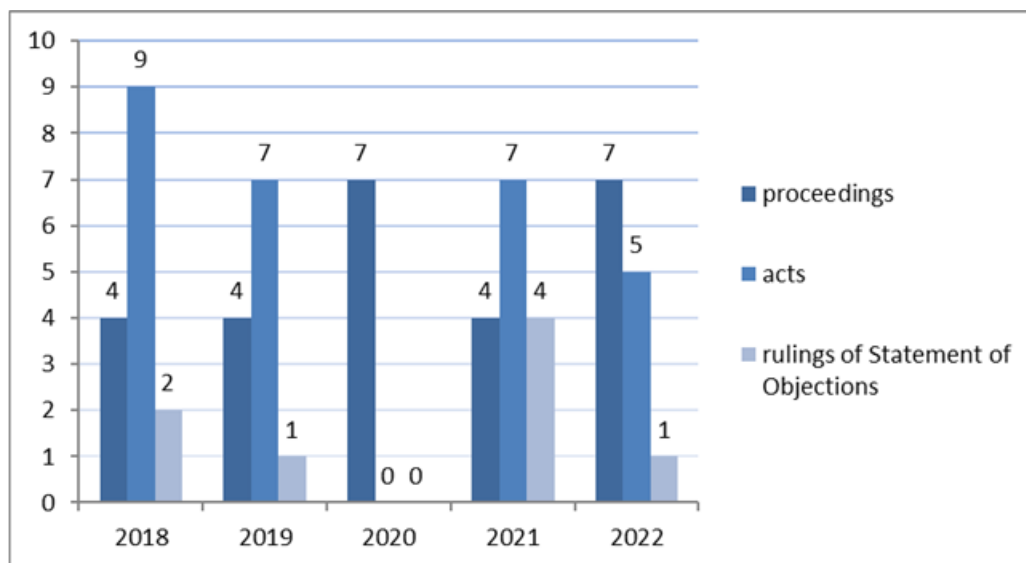
position” of the LPC as all of them are initiated on request of persons whose interests are affected or threatened by infringement of the LPC.

3.2. Decisions and rulings

18. In 2022 the Commission adopted a total of **5 decisions** with regard to the application of Art. 21 of the LPC on proceedings initiated in the period between 2018 and 2021.

19. In 2022 the Commission adopted **1 ruling** for sending Statement of Objections for infringement of Art. 21 of the LPC.

Figure 2. Proceedings and acts under Chapter Four of the LPC 2018-2022



3.3. Examples from the practice

20. By **Ruling 698/29.09.2022** the CPC has addressed a Statement of Objections for abuse of dominant position under Art. 21 of the LPC and Art. 102 of the TFEU by „Lukoil Bulgaria“ EOOD expressed in applying margin squeeze against its competitors in the wholesale trade of motor fuels on the territory of the country which may prevent, restrict or distort competition on the fuel markets and to affect consumer interests.

21. Lukoil Bulgaria EOOD is part of the vertically integrated Lukoil group, which operates along the entire chain from fuel production to final sales and has a highly developed warehouse and transport infrastructure, which is a competitive advantage over the other companies active on the fuel markets in the country. The entity also has a high market share and is the market leader in the wholesale motor fuel market in the country.

22. The CPC identified competitive problems related to the pricing policy applied by the company in the wholesale of motor fuels on the territory of the country. According to the Commission, the company applied a margin squeeze on its competitors by gradually changing the wholesale price conditions and removing volume discounts, which could prevent, restrict or distort competition on the fuel markets and affect the interests of consumers. In the CPC’s view, this conduct of Lukoil-Bulgaria EOOD constitutes a general strategy to restrict the wholesale of fuels in the country in order to strengthen its dominant position on the wholesale fuel market.

23. By **Decision 890/10.11.2022**, the CPC found an infringement by „Veolia Energy Varna“ EAD expressed in an abuse of dominant position, aimed at restricting trade and technical development on the market of heat cost allocation by promoting its allocation without technical devices for its measurement, as well as by unilateral replacement of water meters of customers, serviced by other provider of heat cost allocation. This behaviour leads to hindering of their activity, which directly or indirectly affects the interests of consumers on the territory of Varna. The sanction imposed for this infringement is in the amount of 845 794 Bulgarian leva (432 448 Euro).

24. „Veolia Energy Varna“ EAD is the only participant and an undertaking with a dominant position on the market of transmission and supply of heating energy in condominium buildings in Varna. This market, in turn, has a direct impact on the vertically integrated market for heat cost allocation, where Veolia is a competitor of the complainant “Holiday and Raisen” EOOD and the other heat cost allocation companies.

25. The CPC found that the analysed behaviour of „Veolia Energy Varna“ EAD is carried out by implementing an overall strategy of restricting the market of heat cost allocation in Varna in the period 2015-2020, leading to an outflow of consumers and subsequent reduction in the activity of the heat cost allocation companies, operating on the market.

26. The conclusion of the CPC is that the strategy of „Veolia Energy Varna“ EAD is to motivate the customers to leave the heat cost allocation market through practices, carried out in its capacity of heat transmission enterprise. These practices are generally characterized in promoting allocation by “heated volume and maximum power” without taking into account the actual amount of the consumed heat energy, as well as the free replacement of individual water meters of customers, who are serviced by other heat cost allocation companies, thus hindering their activity and in the long term affecting the consumer interests.

4. Control on Concentrations between Undertakings

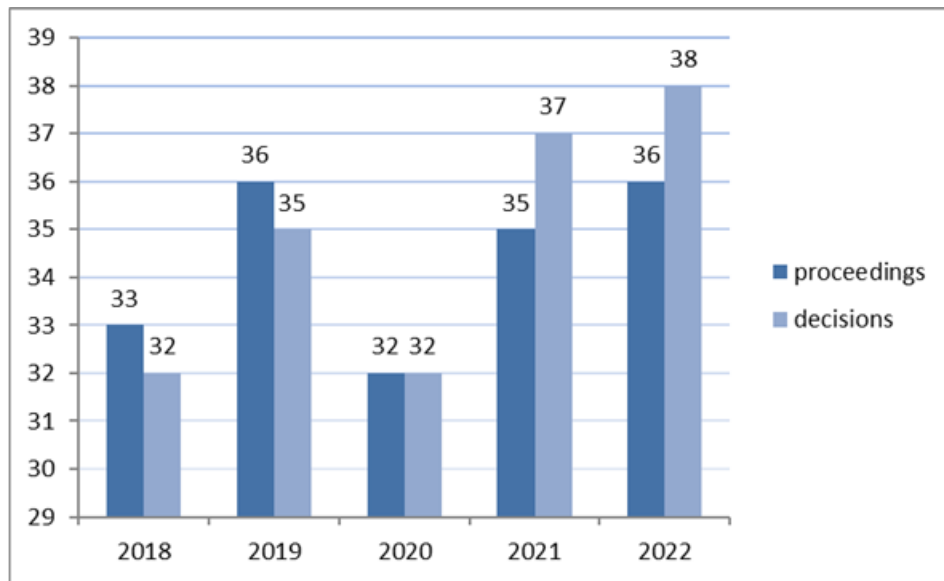
4.1. Proceedings

27. In 2022 the Commission initiated a total of **35 proceedings** on the basis of notifications for authorization of concentration between undertakings. The CPC initiated also one proceedings *ex officio* with regard to media publications and received signals for implemented concentration in infringement of the obligation for prior notification under Art. 24 (1) of the LPC.

4.2. Decisions and rulings

28. In 2022 the Commission adopted a total of **38 decisions** under Chapter Five of the LPC.

Figure 3. Proceedings and decisions under Chapter Five of the LPC 2018-2022



29. In 24 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.

30. In one case the CPC authorized a concentration in accordance with changes proposed by the participating undertakings.

31. In the reporting period the Commission on the basis of Art. 83 (1) of the LPC adopted two decisions for initiation of an in-depth investigation.

4.3. Economic sectors with concentrations on the national market in 2022⁴

32. In 2022 the Commission has assessed and adopted decisions for authorization of concentrations between undertakings mainly in the following economic sectors: IT (3 decisions); finances (3 decisions); import and sale of motor vehicles and spare parts (2 decisions); gas (2 decisions); real estate (2 decisions).

4.4. Example from the practice

33. By **Decision 941/24.11.2022**, the CPC has approved the acquisition of sole control by „VP Brands International“ AD over „Veda“ OOD in accordance with changes proposed by the parties.

34. During the investigation in Phase I, the Commission found that the concentration will have an impact on the markets for the production and sale of vinegar and vinegar substitutes (acid products) on the territory of the country.

35. Within the investigation, the CPC found that there is a partial substitutability between the different types of vinegar on the one hand and between vinegar and acid products on the other hand, given the differences mainly in production technology, nutritional composition and prices.

⁴ Includes only the decisions for authorization of concentrations.

36. With regard to the market of wholesale of bottled vinegar, the Commission found that the proposed transaction would lead to the creation of a dominant position of the united group. The merging companies “VP Brands International” and “Veda” are leading market participants prior to the notified transaction.

37. Given the consolidated market share of the parties in the transaction, the CPC has concluded that none of the other competitors in the relevant market has a market position that would constitute a significant competitive restriction for the united group.

38. Veda is one of the main manufacturers of vinegar and acid products for private labels owned by the independent undertakings that compete in retail sales with the own brand products of Veda and of the acquiring company. On the analysed markets there are certain economic barriers to entry, such as specific production equipment (vinegar acetator) at considerable value; storage equipment; investments for bottling of vinegar/ acid products, for distribution, etc.

39. Based on the collected information, the Commission concluded that the notified transaction increases the risk for competition as a result of reducing the number of competitors, having a real opportunity to exert competitive pressure on the new united group. In this regard, the planned concentration gives rise to serious doubts that, as a result of its implementation, the effective competition on the relevant market will be significantly impeded.

40. In connection with the concerns raised by the Commission, on the basis of Art. 80, para. 4 of the LPC „VP Brands International“ proposed changes in order to eliminate the anticompetitive effects of the transaction, namely:

41. 1. Guarantee (preservation) of capacity and making it available to independent undertakings for the production of vinegar and acid products under “private” labels;

42. 2. Suspension of the usage of a certain trademark for the production and sale of acid products, as of the beginning of the acquisition.

43. The Commission conducted a market test of the proposed changes to the conditions of the concentration in order to assess whether their scope, expedience and efficiency could address the concerns about the competitive environment and to preserve the conditions of effective competition in the relevant market.

44. The market test found that the first remedy is aimed at protecting effective competition as a whole, not individual market players. The proposed changes to the conditions of the concentration will provide sufficient production capacity for the independent undertakings that sell bottled vinegar under a private label and which are direct competitors to the united group in retail sales, and at the same time it is a premise that these undertakings will have a restraining effect over the parties in the notified transaction.

45. In respect to the second proposed remedy, the CPC considers that by implementing it, the united group will reduce its market presence in the relevant market and will create an opportunity for development and/or entry of new players in the affected market.

46. Given the above considerations, the Commission considered that the proposed changes are sufficient in scope and appropriate to eliminate the serious doubts regarding possible anticompetitive effects and authorized the concentration in accordance with the changes proposed by the notifying party.

5. Sector Inquiries

47. By **Decision 1072/22.12.2022** the CPC adopted a sector inquiry of the competitive environment on the markets of production, transmission, supply and cost allocation of heating power in the Republic of Bulgaria.

48. The inquiry reviews the relevant legislation, the structure of the markets, the main market participants, the barriers to entry of new competitors, as well as the way of functioning of each of the vertically connected markets.

49. The inquiry identified some problems related to the competitive environment. With regard to the market of production of heating power, the CPC found that the main reason for the lack of competition are the economic barriers, including a high amount of initial investments and a long period of their return. In connection with the transmission of heating power, the CPC has identified in its practice competition law problems concerning the joining of clients of heating power for household needs to the heat transmission network. The problems are related to the unilateral imposition by the transmission network operators of unfair commercial conditions on the customers and the assumption of additional obligations. Regarding the heat supply market, the Commission found that the discounts and marketing strategies, offered by the heat transmission companies, could constitute a competition law problem. For example, fixing maximum prices for heated area or volume, or for heating of hot water, could have a negative impact on the related market of heat cost allocation.

50. A number of competition issues have been identified in relation to the heat cost allocation market, which can be summarized as follows:

- - The entry in the register of heat cost allocation companies under Art. 139a of the Law on Energy requires that the company is a producer of individual allocators of heat power or duly authorised representative of such a producer;
- - Lack of public information in the register under Art. 139a of the Law on Energy, regarding the individual heat and water meters, that the heat cost allocation companies handle;
- - Obligation for re-equipment of the devices for heat cost allocation when changing the heat cost allocation company;
- - Lack of publicly available information about the potential customers in the heat cost allocation market;
- - Problems with the procedure for changing the heat cost allocation company, leading to possibility of distributing the delivered heating power by volume and/or maximum power of the heating appliances and the possibility of dismantling them;
- - The pricing of the heat cost allocation market implies proving costs and negotiating a rate of return with the heating company, which is a competitor of the heat cost allocation companies;
- - Problems with fixing the percentage of heating power to be allocated to a building installation, based on the decision of the owners in a condominium.

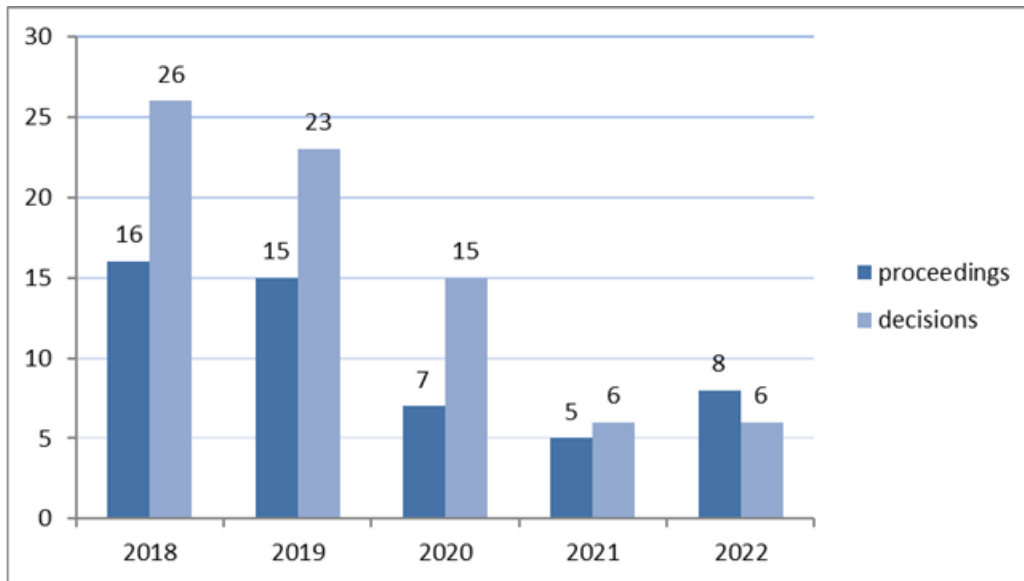
51. With regard to the problems identified in the sector, the CPC made recommendations to the competent authorities, aimed at improving the competitive environment.

6. Competition Advocacy

6.1. Proceedings and decisions

52. In **2022** the Commission has initiated a total of **8 proceedings** and has adopted **6 decisions** with opinions on draft or effective legislative or administrative acts and finding the presence or lack of contradiction with competition rules are adopted.

Figure 4. Proceedings and decisions on competition advocacy 2018-2022



6.2. Example from the practice

6.2.1. Coal packages

53. By **Decision 460/09.06.2022**, the CPC expressed an opinion on the compliance with the competition rules of Art. 4 (1) of the Ordinance on the requirements for the quality of solid fuels used for domestic heating, the conditions, order and manner of their control. The CPC considers that the requirement that solid domestic heating fuels to be offered only in 25 kg packages restricts competition by eliminating the opportunities for suppliers to implement different marketing strategies by offering different package sizes, which in turn limits consumer choice. In addition, the provision also restricts competition by giving an advantage to suppliers who have been offering coal in 25 kg packages even before the introduction of the requirement.

54. Considering the extreme importance of the regulatory objective of improving the quality of air, the CPC found that the stated reasons for introducing the requirement to offer the solid fuels for domestic heating only in packages of 25 kg have no relation to this objective. The judgement of the Court of the European Union in case C-488/15 of 5 April 2017 does not include an obligation to introduce requirements for the weight of coal packages. The argument that the requirement is for the purpose of ensuring an effective control activity, which is expressed in taking a certain number of packages from each inspected object, cannot be accepted either, since from Art. 17 and 18 of the Ordinance it is clear that samples are taken from the packages and not the entire packages. At the same

time, there are alternative measures aimed at reducing air pollution from heating with solid fuels, which could achieve the regulatory objective without restricting competition.

7. European Affairs

55. In 2022 the CPC participated in 6 in-person and 27 virtual meetings of horizontal working groups and sectoral subgroups (specialized in sectors of the economy) in the European Competition Network (ECN), in which ideas and experiences are exchanged on issues of interest to the members of the network. Representatives of the CPC also took part in 1 in-person and 1 virtual Plenary meetings, at which issues related to the policy and practice of the application of competition rules were discussed, opinions were expressed on issues raised by the working groups, documents developed within the respective working groups were adopted. The CPC took part online in 1 meeting of the Advisory Committee on Antitrust in the role of a rapporteur, as well as in 5 meetings of an Advisory Committee in connection with a legislative initiative of the European Commission.

56. In June and November 2022 the Deputy Chairman of the CPC, Mr. Dimitar Kyumyurdzhiev took part in the meetings of the chairpersons of the competition authorities of the ECN, held respectively in Athens and Brussels, where legislative initiatives of the European Commission as well as topical issues in the field of antitrust and concentrations were discussed.

8. International Cooperation

8.1. Participation in the International Competition Network

57. As a member of the International Competition Network (ICN), the CPC continued its active participation in the working groups of the Network in 2022. Representatives of the CPC took part in a number of webinars organized within the working groups of the ICN.

8.2. Cooperation in the Organisation for Economic Co-operation and Development (OECD)

58. Representatives of the CPC took part in the online sessions of the OECD Competition Committee in June and December 2022 as well as in the Global Forum on Competition in December 2022.

59. Representatives of the CPC participated virtually also in the OECD Competition Open Day in February 2022.

60. Experts of the CPC joined actively in the online and in-person seminars of the Regional centre for competition of the OECD in Budapest.

61. On 10 June 2022 Bulgaria officially received a Roadmap for accession to the organization, adopted by the OECD Council during the annual ministerial meeting held on 9-10 June 2022 in Paris. By Decision No. 444 of 11 June 2021 of the Council of Ministers, the Commission on Protection of Competition was included in the Inter-institutional Coordination Mechanism for Accession to the OECD. By Decree No. 242 of 11 August 2022 of the Council of Ministers, the CPC was designated as the leading authority with regard to the implementation of the technical review by the OECD Competition

Committee. The CPC actively participates in all activities and meetings of the Inter-institutional Coordination Mechanism.

62. The main activity in connection with the accession of Bulgaria to the OECD was the preparation of the Initial Memorandum of the Republic of Bulgaria, which represents the first self-assessment of the compliance of Bulgarian legislation, policies and practices with the current legal instruments of the OECD. The CPC prepared self-assessments on 11 legal instruments of the OECD on competition, which were included in the Initial Memorandum, approved by the Council of Ministers on 17 November 2022 and submitted to the OECD. The CPC participates with a contribution in accordance with its competences in the preparation of self-assessments on legal instruments of the OECD, in which other authorities of the Bulgarian administration are leading.

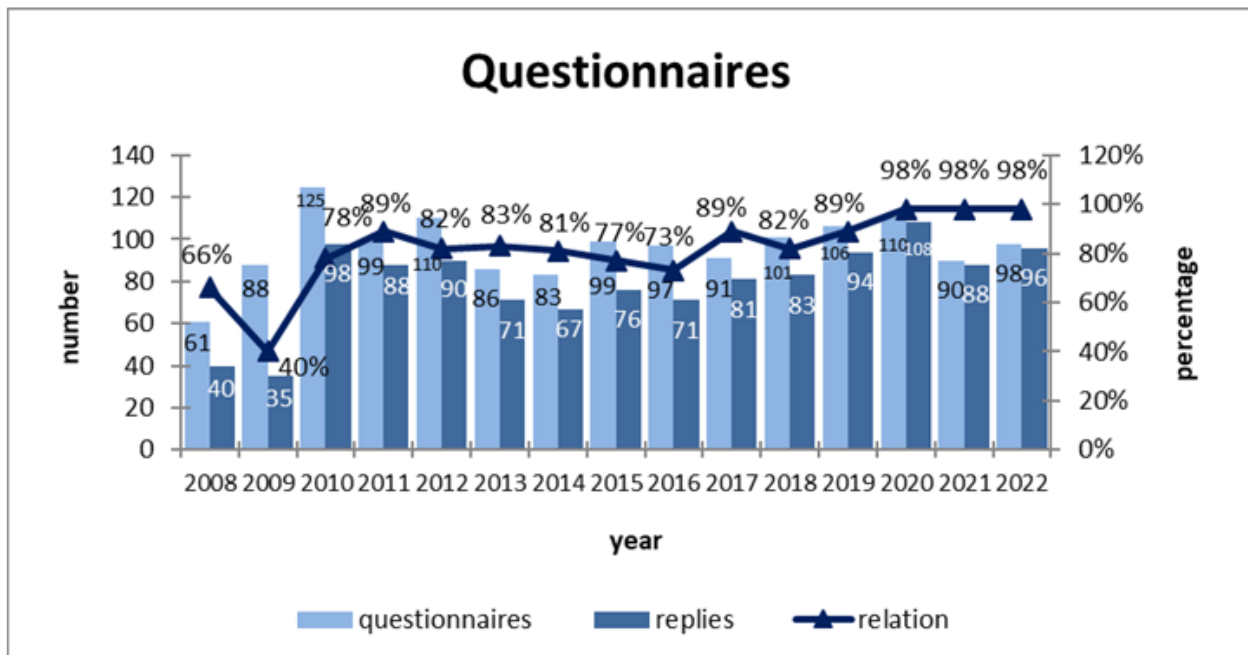
8.3. Exchange of information in the networks and organisations in which the CPC participates

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

64. After in 2021 the trend of increase in the number of the received questionnaires, which is observed since 2018, was broken, in 2022 their number increased to 98. Nevertheless, for third consecutive year the CPC manages to maintain percentage of the replied questionnaires at the record level of 98%, which due to the higher number of received questionnaires is equal to a higher number of replies (96) in comparison to the previous year.

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

Figure 5. Received questionnaires and replies by the CPC in the period 2008-2022



9. Administrative Capacity and Financial Activity

9.1. Human resources management

66. 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.

67. High qualified specialists are working in the Commission, 95% of which with higher education whose educational level meets the aims and tasks of the CPC.

9.2. Financial activity

68. The approved expenses in the budget of the Commission on Protection of Competition for 2022 are in the amount of 6 233 017 Bulgarian leva (3 186 891 Euro).

69. In 2022 the revenue collected from fees, pecuniary sanctions and other non-tax revenues are in the amount of 7 691 546 Bulgarian leva (3 932 625 Euro).