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Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Bulgaria

-- 2023 --

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

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## *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 2023 the Commission initiated **6 proceedings**<sup>1</sup> which have as subject the establishment of the presence or absence of prohibited agreements, decisions and concerted practices. Two of the proceedings are on request of persons whose interests are affected or

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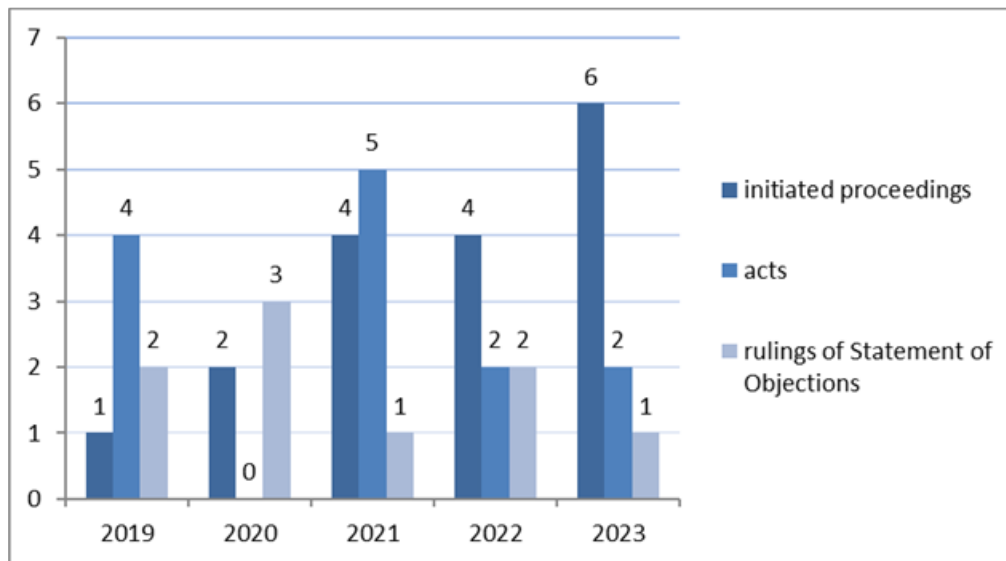
<sup>1</sup> Two of the proceedings are initiated for establishment of infringements of both Art. 15 and Art. 21 of the LPC.

threatened by infringement of the LPC. The rest 4 proceedings are initiated by decision of the CPC, on its own initiative.

## 2.2. Decisions and rulings

8. In 2023 the Commission adopted **2 decisions**<sup>2</sup> with regard to the application of Art. 15 of the LPC on proceedings initiated in 2021 and 2022 and **1 ruling** of Statement of Objections.

Figure 1. Proceedings and acts under Chapter Three of the LPC 2019-2023



9. In the reporting year the Commission was constantly and actively engaged with the problems related to the price increase of the food products at wholesale and retail level. As a result the number of the initiated proceedings increased.

## 2.3. Example from the practice

10. By **Decision 634/29.06.2023** the CPC found that Miele Bulgaria EOOD has committed an infringement of Art. 15 of the LPC and Art. 101 TFEU, manifested in participation in resale price maintenance agreement for the end consumers with the retailers of Miele - branded appliances, which by its purpose prevents, restricts or distorts competition in the retail market of household electrical appliances from medium to high and high end in the territory of the country and imposed a pecuniary sanction on Miele Bulgaria EOOD in the amount of 1 609 078 Bulgarian leva (822 709 Euro).

<sup>2</sup> The decisions are also under Art. 21 of the LPC.

### 3. Abuse of monopoly and dominant position

#### 3.1. Proceedings

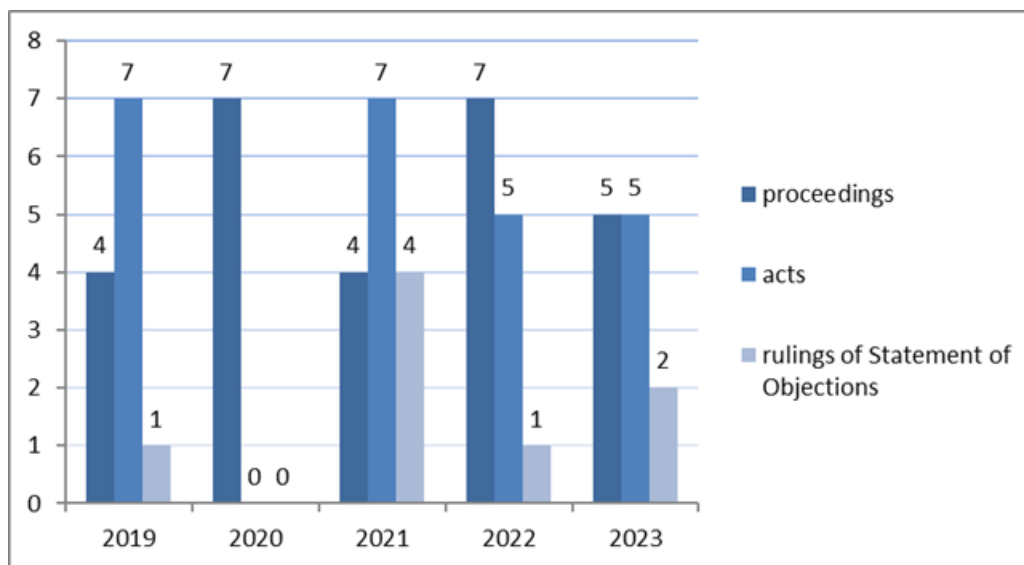
11. In 2023 the Commission initiated **5 proceedings**<sup>3</sup> with subject establishment of the presence or absence of infringements under Chapter Four “Abuse of monopoly or dominant position” of the LPC as 4 of them are initiated on request of persons whose interests are affected or threatened by infringement of the LPC and 1 of them is initiated with regard to a judgement of the Supreme Administrative Court, by which the case is returned for new decision with compulsory instructions.

#### 3.2. Decisions and rulings

12. In 2023 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 2020 and 2022.

13. In 2023 the Commission adopted **2 rulings** for sending Statement of Objections for infringement of Art. 21 of the LPC.

Figure 2. Proceedings and acts under Chapter Four of the LPC 2019-2023



#### 3.3. Examples from the practice

14. By **Decision 184/16.02.2023** the CPC imposed a pecuniary sanction in the amount of 67 771 454 Bulgarian leva (34 650 994 Euro) on Lukoil-Bulgaria EOOD for infringement of Art. 21 of the Law on the Protection of Competition, consisting in an abuse of a dominant position in the form of margin squeeze, performed against the company’s competitors in the wholesale trade of motor fuels on the national territory, which can prevent, restrict or distort competition on the fuel markets and affect the interests of the consumers.

<sup>3</sup> Two of the proceedings are initiated for establishment of infringements of both Art. 15 and Art. 21 of the LPC.

15. By **Decision 332/04.04.2023** the CPC imposed a pecuniary sanction in the total amount of 195 136 175 Bulgarian leva (99 771 542 Euro) for an infringement committed by Lukoil-Bulgaria EOOD and Lukoil Neftohim Burgas AD under Art. 21, p. 2 and 5 of the LPC and Art. 102 (b) TFEU, consisting in an abuse of a dominant position on the market for storage of motor fuels by not granting access to importers and producers of motor fuels to Lukoil-owned tax warehouses, restricting imports by sea by blocking the tax warehouses, related to port terminals Rosenets and Petrol Varna, and by not providing access to the group's petroleum product pipelines for the transportation of other producers and importers of motor fuels, which may prevent, restrict or distort competition and affect consumer interests by hindering the imports of motor fuels into the country.

16. The Commission found that the Lukoil Group owns the biggest storage and related transport infrastructure, which, combined with its high market share in the market for the storage of motor fuels, makes it a dominant undertaking on the relevant market. Based on the analysis of the behaviour of the companies, it was found that the undertakings applied an overall strategy consisting of several anticompetitive practices, which, applied consistently and cumulatively for a period of more than 5 years, raised barriers to fuel imports, preventing them entirely or rendering them economically ineffective. The Commission got to the conclusion that entities from the group have abused their dominant position through a combination of actions consisting of not providing fuel admission and storage services in their own tax warehouses, restricting access to tax warehouses linked to the country's largest marine oil terminals and not providing access to the group's oil pipelines for the transport of imported fuels.

17. By **Decision 1352/21.12.2023** the CPC approved commitments of National Railway Infrastructure Company with regard to a Statement of objections for an infringement of Art. 21 (3) of the LPC and of Art. 102 (c) TFEU, adopted in January 2023.

18. The proceedings is initiated following a complaint by Bulgarian Railway Company EAD, a company performing licensed rail freight transport.

19. Based on the information collected in the course of the proceedings and the conducted economic and legal analysis, in its preliminary conclusions the Commission formed competitive concerns regarding certain practices of National Railway Infrastructure Company, due to their potential possibility to place a company from the economic group of National Railway Infrastructure Company – BDZ Freight Services in a more advantageous competitive position compared to other railway carriers, participants in the rail freight transport market. With regard to this, on the basis of Art. 75 (1) of the LPC, National Railway Infrastructure Company proposed commitments in order to stop the abovementioned behaviour. It proposed to establish and maintain in the future the same conditions for services related to access and use of the railway infrastructure on the territory of the country and for those related to access and transmission of electrical energy through its electrical distribution networks through 1) the introduction of two standard contracts for the provision of these services, which it will publish on its website and by 2) the introduction of General Terms and Conditions for postponement and rescheduling of liabilities of railway carriers.

20. The Commission found that the proposal consists of equal and specific conditions, applicable to all carriers as well as transparent mechanism for postponement and rescheduling of liabilities. After a market test, the CPC approved the commitments.

## 4. Control on concentrations between undertakings

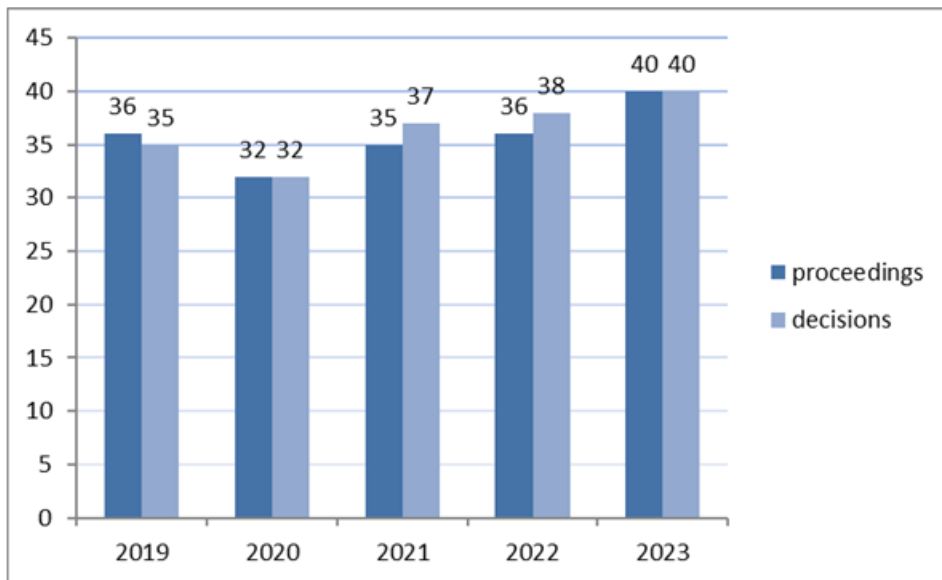
### 4.1. Proceedings

21. In 2023 the Commission initiated a total of **40 proceedings** on the basis of notifications for authorization of concentration between undertakings. During the period the CPC has not initiated proceedings *ex officio*.

### 4.2. Decisions and rulings

22. In 2023 the Commission adopted a total of **40 decisions** under Chapter Five of the LPC.

Figure 3. Proceedings and decisions under Chapter Five of the LPC 2019-2023



23. In 30 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.

24. In one case the CPC authorized a concentration after an in-depth investigation.

25. In the reporting period the Commission on the basis of Art. 83 of the LPC adopted three decisions for initiation of an in-depth investigation.

### 4.3. Economic sectors with concentrations on the national market in 2023<sup>4</sup>

26. In 2023 the Commission assessed and adopted decisions for authorization of concentrations between undertakings mainly in the following economic sectors: telecommunications (3 decisions); construction (3 decisions); pharma (2 decisions); energy (2 decisions); milk processing (2 decisions); agriculture (2 decisions); trade in fuel (2 decisions).

<sup>4</sup> Includes only the decisions for authorization of concentrations.

#### 4.4. Example from the practice

27. By **Decision 1056/19.10.2023**, the Commission authorized Smurfit Kapa Bulgaria EOOD to acquire the part of the commercial enterprise of Artemis OOD, related to the production and sale of plastic foils and foil packaging bags of the type “bag-in-box” as well as real estate owned by Hel Bul Estate OOD and used for the implementation of this business.

28. The Commission found that the planned transaction leads to a horizontal overlap in the market of flexible packages in the territory of the EEA. In the course of the investigation, the CPC determined the market position of the participants in the concentration based on the number of packages sold, both in the market of flexible packages (in the EEA) and alternatively in the segment of flexible packages for food products, including (a) dairy products, (b) beverages and (c) confectionery. In its assessment, the Commission took into account the fact that market participants serve the demand for flexible packages in multiple countries within the EEA, rather than limiting it to the country of production. Therefore, there is a high degree of movement of import and export of products between countries in Europe. There are numerous European and international suppliers operating in the affected relevant market, as well as new European competitors entering. Additionally, as a result of the tax on plastics introduced in the EU from 1 January 2021 with a single rate across the entire market, product prices are similar across all EU Member States. The combination of the mentioned factors presupposes the presence of homogeneous conditions of competition within the EEA. Based on the overall assessment of the notified transaction, the CPC did not accept as well founded the concerns expressed by Vinex Slavyantsi AD that Smurfit Kapa Bulgaria EOOD will impose a monopoly on the sales of “bag-in-box” in Eastern Europe and that it will increase the prices of the products offered. According to the CPC, any significant increase in the prices of the products offered by the merged entity could not be profitable for it, due to the lack of significant market power and the resulting possibility for customers to switch to other alternative suppliers without significant costs and difficulties. At the same time, according to the notifying undertaking, a number of competitors (including BIB Poland, Tessereaux, AZ Pack, Liquibox, Technologia) have recently purchased the necessary equipment to expand their production capacity. In this regard, the acquiring undertaking would have no incentive to raise prices, given that its competitors would be able to react by significantly increasing their production in response to such a commercial strategy.

29. Based on the assessment carried out, the Commission accepted that the notified transaction could not lead to a significant impediment to effective competition on the relevant market, in particular as a result of the creation or strengthening of a dominant position.

#### 5. Sector inquiries

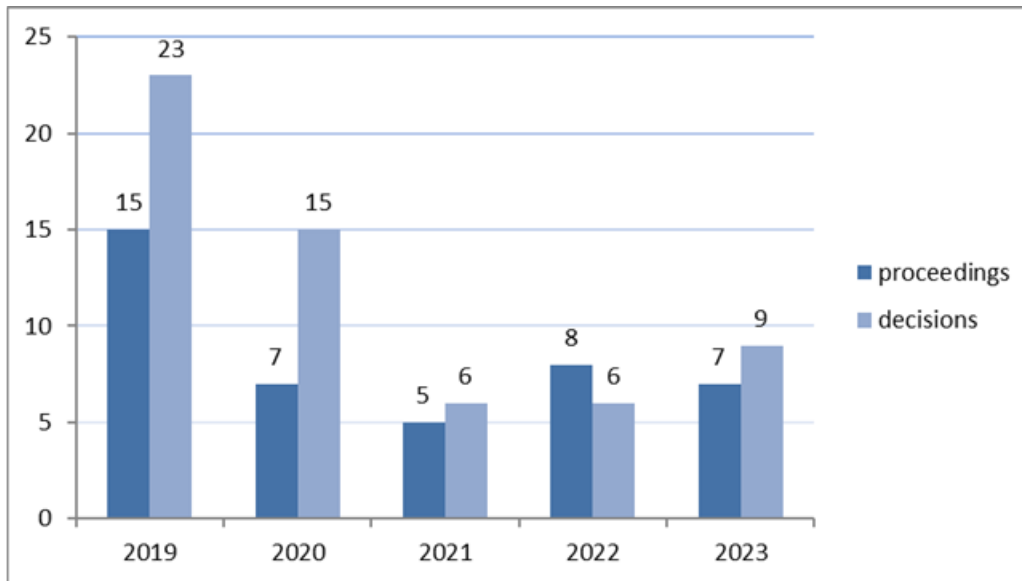
30. The CPC is continuing its work on the sector inquiry of the competitive environment on the markets of production and trade in sunflower oil and wheat flour as well as on the sector inquiry of the market of e-commerce.

## 6. Competition advocacy

### 6.1. Proceedings and decisions

31. In **2023** the Commission initiated a total of **7 proceedings** and adopted **9 decisions** with opinions on draft or effective legislative or administrative acts and finding the presence or absence of contradiction with competition rules.

Figure 4. Proceedings and decisions on competition advocacy 2019-2023



### 6.2. Example from the practice

32. By **Decision 327/30.03.2023**, the CPC expressed an opinion regarding the compliance with the competition rules of the provisions of the Law on Payment Services and Payment Systems, regulating access to payment accounts. The CPC considers that the absence of provisions guaranteeing the right of access to a payment account for basic operations also for legal entities leads to restriction of competition, as it enables banks to unreasonably refuse to open payment accounts to persons providing services based on crypto assets and thus prevent the entry into the market of services that are competing with those offered by them.

33. Considering that the fight against money laundering and the financing of terrorism are objectives of primary public importance, it should be borne in mind that there are many measures related to the fight against money laundering and the financing of terrorism, incl. in the field of exchange of virtual currencies. The refusal to open a payment account leads to a limitation of the possibility of entering the market by legal entities whose activity is carried out by means of virtual currencies, but in fact crypto assets are not illegal in themselves, neither the operation with such means, nor the exercise of activity itself by means of crypto currencies constitutes a crime. The refusal of the banks should not be based on a lack of sufficient information, but on data and facts that lead to a reasonable suspicion of committing a crime.

34. Given that the presence on the relevant market should be determined by the state through its bodies, and not by private legal entities such as banks, the CPC proposed the

scope of Art. 119 of the Law on Payment Services and Payment Systems to be extended so that the guarantees for the right of access to a payment account for basic operations for individuals also apply to legal entities.

## 7. European affairs

35. In 2023 the CPC participated in 12 in-person and 18 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 2 in-person 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 an Advisory Committee in connection with a legislative initiative of the European Commission.

36. In June and November 2023 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 Brussels and Budapest, 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

37. As a member of the International Competition Network (ICN), the CPC continued its active participation in the working groups of the Network in 2023. 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)

38. The main focus of the cooperation of the CPC with the OECD in 2023 was the process of elaboration of technical assessment by the committees of the Organisation of the readiness of Bulgaria for membership in the OECD. The CPC is designated as the leading authority with regard to the implementation of the technical review by the OECD Competition Committee. After the replies of the CPC to a detailed questionnaire in the end of 2022, in April 2023 representatives of the OECD held a one-week technical mission in the CPC. During the mission the replies of the CPC were discussed and complemented. Meetings were organized and held between the OECD team and representatives of the judiciary, other state authorities, business organisations, representatives of the legal and the academic community.

39. The CPC participated with contributions in accordance with its competences in the preparation of the replies to the questionnaires of other OECD committees with other leading authorities of the Bulgarian administration.

40. The CPC elaborated contributions for the sessions of the OECD Competition Committee in June and December 2023 on the topics “Assessment and communication of benefits of competition interventions” and “Competition and sport” respectively.

41. Experts of the CPC participated actively in the seminars of the Regional centre for competition of the OECD in Budapest.

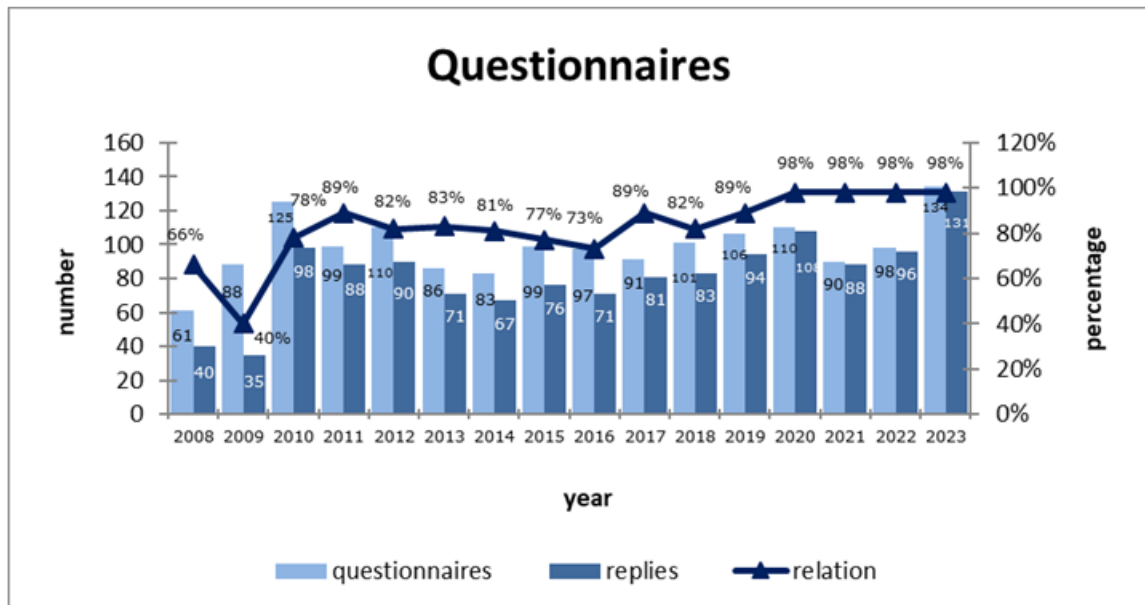
### 8.3. Exchange of information in the networks and organisations in which the CPC participates

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

43. After in 2021 the trend of increase in the number of the received questionnaires, which is observed since 2018, was broken, since 2022 again there is the same trend and in 2023 their number increased to the record 134. Nevertheless, for fourth 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 record number of replies (131).

44. 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 2008-2023



## 9. Administrative capacity and financial activity

### 9.1. Human resources management

45. 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.

46. High qualified specialists are working in the Commission, 94% of which with higher education whose educational level meets the aims and tasks of the CPC.

## 9.2. Financial activity

47. The approved expenses in the budget of the Commission on Protection of Competition for 2023 are in the amount of 7 203 200 Bulgarian leva (3 682 938 Euro).

48. In 2023 the revenue collected from fees, pecuniary sanctions and other non-tax revenues are in the amount of 6 719 809 Bulgarian leva (3 435 784 Euro).