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INDEPENDENCE OF COMPETITION AUTHORITIES - FROM DESIGNS TO PRACTICES

Contribution from Bulgaria

-- Session III --

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INDEPENDENCE OF COMPETITION AUTHORITIES - FROM DESIGNS TO PRACTICES

-- Bulgaria --

1. Status of the Competition Authority

1. The Bulgarian competition authority has been established as an independent specialized state body financed by the state budget. Thus, the Commission for Protection of Competition (hereinafter the CPC) is structurally separated from the executive branch and the judiciary. The structural separation makes the CPC an operationally independent authority, which is empowered to enforce the Law on Protection of Competition (LPC), The Public Procurement Act and the Concessions Act.

2. Appointment and Dismissal of the Members of the Competition Authority

2. The CPC is composed of seven members – a Chairperson, Deputy-chairperson and five members. The National Assembly of the Republic of Bulgaria conducts the process of selection and appoints the members of the Commission. In accordance with the LPC, the Chairperson should possess a degree in law and have at least ten years of legal professional experience. The members of the Commission need to have a degree in law or economics and possess at least five years of relevant professional experience. The amendment to the LPC of 2015 introduced a new provision, establishing the selection procedure to be public. In addition, the members cannot be immediately reappointed after the expiration of the initial five-year term of appointment.

3. The Law on Protection of Competition explicitly provides the grounds for the termination of the term of office of an individual member, as follows:

- upon a member's own request;
- when it is not possible for the member to perform his duties for more than six consecutive months;
- in case of an incompatibility with the requirements for election of a member that has been established following the election;
- in case of a decease.

4. The National Assembly shall terminate the powers of any member on the above-mentioned grounds by adopting a decision.

3. Financial resources

5. The Law on Protection of Competition provides that the CPC's budget is drawn up, executed and accounted for in compliance with the State Budget Act. According to the law, the competition authority shall receive to its budget income from:

- fees and expenses collected in accordance with the Law on Protection of Competition, The Public Procurement Act and the Concessions Act;
- pecuniary sanctions and fines imposed with Commission decisions which have come into force;
- other sources from activities allowed by law.

4. Safeguards for impartiality

6. The LPC contains a provision regarding the remuneration of the competition board members – the monthly salary of the Chairperson is fixed at 90% of the monthly salary of the Chairperson of the National Assembly of the Republic of Bulgaria. The remuneration of the Deputy-chairperson is fixed at 95% (90% for the other members) of the monthly salary of the Chairperson of the competition authority.

7. The LPC provides for several safeguards for the impartiality of the competition board members. They cannot receive benefits from undertakings in any form nor be employed elsewhere, except as scientists, lecturers or arbitrators. In addition, members or staff from the administration of the competition authority cannot take part in case proceedings, if there are independence concerns. Another measure would be the fact that during the decision making process, the members act as a collegiate body. For the validity of the sessions of the competition authority, the Law on Protection of Competition requires there be quorum of at least three members. If less than five members provide quorum, then a decision is adopted only if at least three members have voted in favor. A member of the CPC, who disagrees with the decision of the majority, has the option to give a dissenting opinion, which is annexed to the final decision.

5. Accountability and judicial review

8. Independence does not mean that a competition authority should not be accountable for the manner in which it performs its duties or that its decisions and rulings are exempted from judicial review. By 30 May of each year, the CPC shall draft and submit to the National Assembly an annual report on its activities. This obligation does not put the competition authority under supervision, but it rather contributes for the transparency and accountability of the CPC. In addition, the decisions and rulings issued by the Authority are subject to judicial review before the Supreme Administrative Court.

6. Instead of a conclusion

9. The measures and requirements described above provide important guarantees for the independence of a competition authority. Nevertheless, as it is often stated, independence also depends on the political, social and cultural context in which the authority operates. The formal independence, as provided for in the law, needs to be further enhanced by the integrity, professionalism and expertise of the competition board members and administrative staff. The transparency of the process of selection of the competition board members is of great importance as it allows the civil society to monitor the process and to react accordingly. The day-to-day work of the authority should also be transparent. The powers vested in the CPC should be exercised in a responsible and consistent manner. The latter would help build better reputation of the institution. Investment in the staff's expertise is also a crucial element for achieving the overall goal of independence. Well-trained competition law professionals are not only able to resist political interference, but are also prepared to elaborate appropriate and pro-competitive policy options to be adopted by the policymakers.

10. In conclusion, a competition authority cannot achieve independence once and for all. The process is rather ongoing and continuous and requires constant efforts to protect the authority's integrity and reputation by preventing or rejecting any forms of pressure or unlawful influences.