

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****REGIONAL COMPETITION AGREEMENTS: BENEFITS AND CHALLENGES****Contribution from Bulgaria****- Session III -****29-30 November 2018**

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More documentation related to this discussion can be found at: oe.cd/rca.

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Regional Competition Agreements: Benefits and Challenges

-- Bulgaria --

1. European Competition Network

1. Bulgaria's full membership in the European Union (EU) requires of the CPC to actively participate in the enforcement of EU competition rules in cooperation with the European Commission (EC) and the national competition authorities (NCAs) of the EU Member States. Cooperation takes place mainly within the framework of the European Competition Network (ECN). The network plays a key role in distributing work between the national competition authorities, the EC and the courts, and ensures the consistent application of competition rules.

1.1. Exchange of information within the ECN

2. Following the accession of Bulgaria to the European Union, the CPC, as a national competition authority, became a member of ECN. CPC's involvement in ECN means a constant exchange of information with other agencies that helps to achieve and protect the effective competition within the EU's Internal Market. Representatives of the CPC participate in ECN's working groups and sectoral subgroups (specialized by sectors of the economy), which gives possibilities for exchanging ideas and experience on various issues of interest to members of the network. These meetings are very useful and contributed to improving of CPC's enforcement practice especially in the first years after the accession to the EU.

3. ECN enables the competition authorities of the EU Member States and EC to constantly exchange information, which is an extremely effective way to investigate EU practices on a particular issue. In this regard, ECN carries out also a specific form of cooperation between members of the network by sending and responding to questionnaires on specific issues or problems in the field of competition law and competition policy. In the context of the EU principle of close cooperation between the members of the network, the CPC maintains high levels of responses to the questionnaires, which further establishes the CPC as a reliable partner in ECN.

1.2. New competition law

4. After Bulgaria's accession to the EU, a new Law on Protection of Competition was adopted in 2008. The new law is in line with the provisions of the European competition legislation. In accordance with Art. 35 of Regulation 1/2003, the law designated the CPC as the national competition authority, responsible for the implementation of the competition rules, laid down in Art. 101 and 102 of the Treaty on the Functioning of the European Union. The law empowered the CPC to cooperate with the European Commission and other EU national competition authorities; to impose interim measures; to approve commitments by undertakings, etc. The new sanctioning policy ensured the effective enforcement of competition rules by imposing adequate and proportionate sanctions to infringers.

1.3. Challenges

5. Unlike the European Commission and some other members of the ECN, the Bulgarian authority cannot refuse to investigate a case on the grounds of priority setting. The CPC is legally bound to investigate and issue a decision on each case that has been submitted by an applicant. Nevertheless, the CPC found an alternative way to set its own priorities in competition law enforcement. The Bulgarian competition law enables the CPC to initiate proceedings *ex officio* on its own initiative. Every year in its annual report the CPC sets its own priorities. This allows to better plan and manage the allocation of resources. In this way the CPC can devote its enforcement capacity and powers to investigate cases in key sectors of the economy suffering from market distortions.

6. Another challenge is that the CPC cannot inspect non-business premises which limits the possibilities for finding documents which may prove an infringement of the competition rules.

7. Both of the abovementioned challenges are expected to be overcome with the future Directive of the EU 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, also called ECN+ Directive. The Directive aims to provide the national competition authorities of the Member States with the necessary powers to detect competition law infringements, to sanction companies in breach of legislation, to act independently when applying European competition rules and to have the necessary resources to carry out their tasks. The Bulgarian Presidency of the Council of the EU coincided with the discussion on the proposal for the Directive in the EU Council G.12. Working Group on Competition which allowed the CPC to actively participate in this process. The ECN+ Directive was also one of the topics of the European Competition Day held in Sofia in May 2018 within the framework of the Bulgarian Presidency.

2. Sofia Competition Forum

2.1. Establishment

8. In July 2012 the Bulgarian Commission on Protection of Competition (CPC) and the United Nations Conference on Trade and Development (UNCTAD) signed a Memorandum of Understanding which had as its purpose to formalize the mutually beneficial relationship between CPC and UNCTAD which is based on the shared objective to assist Balkan countries in adopting and enforcing competition law.

9. The Sofia Competition Forum (SCF) was founded in November 2012 following the abovementioned agreement and as a result of the joined efforts of the Bulgarian Commission on Protection of Competition and UNCTAD to establish an active platform for technical assistance, exchange of experience and consultations in the field of competition policy and enforcement. During the first SCF meeting on 12 November 2012 the founding members of the Sofia Competition Forum (UNCTAD and the competition authorities of Bulgaria, Albania, Bosnia and Herzegovina, Croatia, Kosovo¹, Macedonia,

¹ This designation is without prejudice to positions on status and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

Montenegro, Serbia) signed the Sofia statement agreeing to intensify and deepen their cooperation in the framework of the forum.

2.2. Aim

10. The Sofia Competition Forum aims to assist the competition authorities of the SCF beneficiaries in adopting and enforcing competition law and to maximize the benefits for these countries of well-functioning markets.

2.3. Members

11. Although the forum was initially designed as a regional initiative for the Balkan Competition authorities with beneficiaries Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia, it is also open to competition authorities from other countries. Such was the case of the Georgian Competition Authority which joined the Forum in 2014.

2.4. SCF meetings

12. So far there have been ten SCF meetings in which the participants discussed various topics:

1st SCF meeting – 12 November 2012

- Capacity building needs of young competition agencies in the Western Balkans
- Benefits of competition for low-income groups

2nd SCF meeting – 28 May 2013

- Competition advocacy: a tool for developing an effective competition regime

3rd SCF meeting – 7 November 2013

- Publicity and transparency in applying competition rules
- Bid rigging

4th SCF meeting – 16 May 2014

- Competition policy as a driver of economic growth
- Relationship between competition policy and sector regulation
- New forms of control of market power

5th SCF meeting – 13-14 November 2014

- Inspections on spot
- Procedural fairness in inspections on spot

6th SCF meeting – 29 May 2015

- Procedural fairness in competition cases
- Interrelation between public and private enforcement of competition law

7th SCF meeting – 12 November 2015

- Sanctioning in competition cases and leniency policy
- International cooperation in the field of sanctions and leniency in competition cases

8th SCF meeting – 10 June 2016

- Remedies and commitments

9th SCF meeting – 11 November 2016

- Pricing abuses of dominance in energy and telecommunications

10th SCF meeting – 27 October 2017

- Information exchange between competitors

13. During these meetings the participants have had the opportunity to learn from the experience and knowledge of many speakers: representatives of international organizations such as the European Commission, UNCTAD, OECD, the World Bank, the Court of Justice of the European Union, representatives of competition authorities from all over the world: Austria, France, Germany, Greece, Hungary, Italy, Japan, Korea, Lithuania, Poland, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, Turkey, Ukraine, United States (Federal Trade Commission) as well as representatives of the academia, law firms and economic consultancies. The SCF meetings have been attended also by high-level representatives such as the Secretary-General of UNCTAD, Dr. Mukhisa Kituyi who took part in the 4th SCF meeting in May 2014 and the European Commissioner for Competition, Ms Margrethe Vestager who was the keynote speaker at the 8th SCF meeting in June 2016.

2.5. Overviews

14. The Sofia Competition Forum is not only meetings. It is an active platform in which the SCF members work jointly on projects for comparative overviews of the competition legislation of the SCF jurisdictions. This activity started with general overview in 2014. In 2015 the second project of this type was concluded – the one on inspections on spot and in 2016 the report on procedural fairness was endorsed. Now the SCF members are working on the fourth project for comparative overview which focuses on another important issue – sanctions and leniency. These projects have two main goals. On the one hand the work on such comparative overviews prepares the SCF members that are from countries that are candidates for EU Member States to work on such projects which are typical for the European Competition Network. On the other hand it reveals whether a competition authority lacks some powers and it gives it a possibility to use these comparative overviews as a tool to convince the legislators that the authority needs the respective powers to apply the competition rules.

2.6. SCF Newsletter

15. In 2015 the Sofia Competition Forum started one more initiative – the SCF Newsletter. It contains various articles from all SCF members such as news, information about previous SCF meetings, presentation of the competition authorities that are members of the SCF including interviews with their chairpersons. In the newsletter there are also success stories; articles with expert's comments on topical issues in the field of competition as well as the conclusions of the SCF projects for comparative overview. The SCF

Newsletter is a means for exchange of information between the SCF members as the competition authorities in the region face similar challenges and when they read about the experience of other competition authorities it can help them to find common solutions to common problems.

16. The SCF Newsletter is annual. The first issue was published in November 2015, the second issue – in 2016 and the third issue of the SCF Newsletter was published in October 2017.