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**Global Forum on Competition**

**REMEDIES AND COMMITMENTS IN ABUSE CASES – Contribution from Bulgaria**

**- Session IV -**

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This contribution is submitted by Bulgaria under Session IV of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: [oe.cd/sctr](https://oe.cd/sctr).

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## *Remedies and Commitments in Abuse Cases*

### **- Contribution from Bulgaria -**

#### **Commitments**

1. In accordance with Art. 75 of the Law on Protection of Competition (LPC) the Bulgarian Commission on Protection of Competition (CPC) has the power to approve the undertaking of commitments by the defendant party under initiated proceedings for establishment of prohibited agreements or abuse of dominant position. The criteria and the procedure on considering proposals for undertaking of commitments under the Law on Protection of Competition are regulated in detail in Rules.

#### **1. Requirements**

2. Undertaking commitments is not, however, made possible for all types of infringements. The law forbids the CPC to approve commitments where the alleged in the SO infringement has been qualified as grave. The adopted by the CPC Rules on Commitments further substantiate the cases where the commission cannot approve the proposed commitments. As regards the abuses of dominant position these are the exclusionary abuses, where the competition on an appreciable part of the market is affected.

3. In certain cases the CPC can even refuse to review a proposal for undertaking commitments: where the undertaking did not comply with a previous decision of the CPC that has entered into force; where there is a repeated infringement or existence of similar activities in the past although they have not been established by a preceding decision of the CPC; where the alleged infringement is continuing; where the infringement covers a considerable period of time or where the infringement has caused significant damages to a large number of persons who would have legal interest to claim indemnity for damages. In this respect, when commitments have been proposed by an undertaking, the CPC is due first to assess their admissibility in a closed sitting. If the commission decides that the proposal is admissible for further review, it issues a ruling in that sense; in the opposite case, the commission simply resumes the proceedings, adds the proposal to the case file and informs the party thereof.

#### **2. Deadline**

4. The defendant parties may submit the proposal for undertaking of commitments within the deadline for submission of reply to the statement of objections (SO) for a committed infringement.

#### **3. Criteria**

5. The LPC leaves the appraisal of the proposed commitments against the circumstances of the case at the full discretion of the CPC. The Rules on Commitments

provide further guidelines to the commission on the principles against which the commitments need to be assessed. Those principles require, inter alia, that the commitments, in order to be approved by the Commission, be proportionate to the gravity and duration of the infringement, lead to the immediate recovery of the competition and not only to the termination of the unlawful conduct, be relevant to the essence of the infringement, be unconditional, adequate and sufficient in order to guarantee the effective resolution of the competitive problems as well as to allow the CPC to control their fulfillment. Thus, the CPC may only partially approve the proposed commitments if it considers that some aspects are not satisfying the above criteria.

6. The proposed commitments of behavioural or structural nature as well as of positive nature where they stipulate that certain behaviour should be effected or negative nature where they require that some specific behaviour should be discontinued or refrained from.

#### 4. Procedure

7. The Rules on Commitments provide for the possibility to the undertaking to continue defending itself or acknowledge the allegations of the CPC by proposing, on its own accord, corrective actions. The law actually does not prevent the undertaking from doing both simultaneously, that is, to propose to undertake commitments and, in the same time, build its defense in a response to the SO in case the Commission does not approve the proposed commitments. The undertaking may also decide on withdrawing the commitments it has proposed at any time until the CPC has made its decision on the commitments. In the latter case, the proceedings continue their normal course. If the SO has been formulated against more than one undertaking, it is possible for those undertakings or part of them to propose to jointly undertake commitments. In any event, the undertaking needs to decide upon its course of action within the deadline for responding to the SO.

#### 5. Market testing

8. As part of the procedure, the CPC, once it has ruled further review of the commitments, informs all the parties to the proceedings inviting them to present their comments and/or objections within a deadline of no more than 30 days.

9. The CPC publishes a summary of the proposal for commitments in its register and a press release on its website containing the information regarding the consultation with the market participants. Within the term determined by the Commission which may not be longer than 30 days, all participants in the market and/or their associations (including competitors of the participants in the proceedings and participants in other affected markets, associations, industry-wide organizations and others) may present information and opinions in relation to the proposed commitments. Within this term the CPC may demand from the respective sector regulator an opinion in relation to the proposed commitments by submitting to the latter a public version of the proposal for undertaking of commitments. The CPC may also demand an opinion from third parties that might be affected by the proposed commitments.

10. In case that the initial proposal has been substantially modified, the CPC informs the parties and starts second consultation which shall be final. It is necessary to be outlined, however, that the Commission is not bound by any of the formulated objections and may approve the commitments even where all parties have objected to the proposal. The only exception in the latter case is when the fulfillment of the commitments is conditional to the acceptance or the cooperation of a party that objected to the proposal.

## 6. Decision on commitments

11. The procedure ends with either a closed sitting decision of the CPC that approves the commitments or the resumption of the proceedings in case the CPC has not approved the proposed commitments.

12. In the event the CPC decides on approving the undertaking of commitments, it outlines in its decision the facts of the case as well the infringement, the proposal and the opinions formulated by other parties and its own analysis for compliance of the proposed commitments. The decision sets also the deadline for the fulfillment of each commitment and last, but not least, it states that they are no further grounds for the continuation of the initiated proceedings. At the Commission's discretion, the decision may also set the duration of the commitments and/or oblige the undertaking/s to periodically inform and present evidence on the fulfillment of the commitments.

13. Should there be more than one undertaking subject to an SO and some of the offending undertakings did not present or withdrew a proposal for undertaking commitments, the CPC will continue the normal course of the proceedings against those undertakings, while dismissing the case regarding the undertaking or undertakings whose commitments have been approved.

## 7. Appeal

14. The commitment decisions of the CPC may be appealed before Administrative Court – Sofia District by the parties to the proceedings or by any third person that has legal interest within a term of 14 days.

## 8. Control of the fulfilment of the undertaken commitments

15. The CPC exercises control of the full, exact and timely fulfilment of the undertaken commitments as it may, in its own opinion, at any time after the delivery of the decision for undertaking of commitments exercise all its investigative powers. While exercising control of the fulfilment of the undertaken commitments the CPC may accept reports and information from all natural persons and legal entities.

16. The CPC has the power to impose periodic pecuniary sanctions on an undertaking or an association of undertakings in the amount of up to 5% of the average daily total turnover for the preceding financial year for each day of its failure to fulfil a decision of the CPC approving commitments.

## 9. Case law

### 9.1. Decision No 1629/2010 – Central Depository

17. The proceedings before the CPC were launched after a complaint by a management company Zlaten Lev Capital JSC, claiming that Central Depository JSC abuses its position, imposing on companies that are not issuers under the Securities, Stock Exchanges and Investment Intermediaries Law (SSEIIL) the obligation to contracts for registration and

maintenance of securities emissions and to make payments for this. In addition it was also stated that the Board of Directors of Central Depository JSC adopted a decision, by virtue of which penalty in the form of provisional suspension of the membership of the companies-irregular payers will be imposed. Imposing this penalty would have amounted to provisional discontinuation of the commercial activities of the management companies and would negatively affect the interests of the investors.

18. Central Depository JSC was established as a joint-stock company in 1997, under the terms of Art. 91 of the SSEIL. Depository shareholders are the major Bulgarian commercial banks that play an active role in the securities market. The Financial Supervision Commission (FSC), Bulgarian National Bank (BNB) and Ministry of Finance (MF) directly control its operations. The services offered by the Central Depository, the manner of reporting and the form of control of the above-mentioned institutions are set in an Ordinance. According to Bulgarian legislation, the Central Depository must organize and maintain reliable systems for: dematerialized shares book-entry registration; maintaining shareholders' registry of the companies traded; maintaining a registry of the securities traded; immobilizing share certificates that are a matter of public trading. It organizes its activities, based on the abovementioned functions, in four main directions:

- National registry of the public companies' shareholders
- Securities Settlement System for trades between depository members
- System for organizing the payments for trades in corporate securities on delivery versus payment (DvP) basis
- “Back-office” maintaining system.

19. After analysis of the relevant facts, the CPC established that the Central Depository JSC is enjoying 100% dominant position on the market of service for maintaining a national registration system for dematerialized securities.

20. The CPC adopted Statement of Objections to the Central Depository JSC for alleged abuse of dominant position under the Law on Protection of Competition for imposing prices on management companies for the services of: maintaining of up-to-date register of dematerialized shares, keeping of book-entry of the shareholders, provision of data from the book-entry of the shareholders, as well as servicing vindicated shares. The CPC established that the prices for the services, included in the Central Depository Tariff of Fees, is adopted by the Board of Directors autonomously, without being restricted by sector regulator or by its contractual counterparts. Thus, the Central Depository showed unilateral behavior. The CPC analyzed if these unilaterally imposed prices were justified and proportionate and established that some of the fees are due even if the respective service was not provided and that some of the fees are not proportionate to the volume of services actually provided.

21. After the adoption of the Statement of Objections by the CPC, the Central Depository JSC offered commitments, consisting of proposal to amend significantly its Tariff of Fees, substantiating the fees due per services provided. The CPC analyzed the commitments offered and made a conclusion that they are proportionate, specific, relevant, adequate, sufficient, that they are unconditional and could be verified. Therefore the Bulgarian Commission on Protection of Competition adopted a decision, approving the proposed commitments and closed the proceedings.