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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATOR –
Contribution from Bulgaria**

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This contribution is submitted by Bulgaria under Session III 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/icar.

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Interactions between Competition Authorities and Sector Regulators

– Contribution from Bulgaria –

1. Interaction with sector regulators

1. In accordance with Art. 8 (1), point 12 of the Law on Protection of Competition (LPC) the Commission on Protection of Competition (CPC) shall interact with other state authorities, including the authorities of the executive branch, as well as with local government authorities, institutions and non-governmental organisations, by participating in drafting legislative acts, expressing opinions on draft and existing legislative and general administrative acts, exchanging information and other forms of cooperation.
2. Art. 46 LPC also imposes a general obligation on all natural and legal persons, including public authorities and local self-government authorities, to provide assistance to the CPC in performing its powers.
3. Laws regulating specific sectors also envisage coordination with the Commission on Protection of Competition.

2. Telecommunications

4. In accordance with Art. 44 of the Law on Electronic Communications (LEC) the Communications Regulation Commission (CRC) and the Commission on Protection of Competition carry out interaction and coordination to achieve the goals under the LEC in accordance with the LEC and based on rules adopted by decisions of the two commissions. Art. 45 sets forms of interaction such as consultations, exchange of information, providing of opinions, joint working groups.
5. The Rules for interaction and coordination between the CRC and CPC were adopted in 2008 and in the autumn of 2022 they will be renewed.
6. One of the aims set in Art. 1 (2) of the Rules is to create conditions for effective interaction and coordination between the two authorities in the exercise of their legally defined powers as well as for the uniform and consistent application of national and European law in the field of electronic communications and competition.

2.1. Consultations

7. In accordance with Art. 6 (3) of the Rules for interaction and coordination between the Communications Regulation Commission and the Commission on Protection of Competition consultations can be provided on all work-related matters of one of the two authorities, requiring specific knowledge in the opposite field of activity and more specifically in relation to: studies on specific proceedings under the Law on Protection of Competition or procedures under the Law on Electronic Communications, preparation of drafts of normative acts, preparation of opinions, drafts of positions, strategies and etc.

2.2. Coordination

8. Art. 14 of the Rules between the CRC and the CPC envisage that in the event of initiation of proceedings before the CPC for establishment of an infringement under Art. 15 or Art. 21 of the Law on Protection of Competition or under Art. 101 or Art. 102 of the Treaty on the Functioning of the European Union (TFEU), carried out by an undertaking carrying out activities under the Law on Electronic Communications, the Law on Electronic Communications Networks and Physical Infrastructure, the Law on Radio and Television, the Law on Postal Services and the Law on Electronic Documents and Electronic Authentication Services or for establishment of an infringement, which has the purpose or result of prevention, restriction or distortion of competition on the market of electronic communication networks and services, the CPC notifies the CRC of the initiated proceedings. With regard to a specific proceedings under the LPC, the CPC may request from the CRC an exchange of information, consultation and/or opinions on the circumstances related to the subject of the proceedings. The CPC also notifies the CRC of the adopted decisions in these proceedings.

9. This coordination gives possibility for identification of parallel cases with similar facts as well as for taking into account that the other authority is also dealing with the case.

2.3. Exchange of information

10. The Rules for interaction and coordination between the Communications Regulation Commission and the Commission on Protection of Competition allow the exchange of confidential information. Art. 7 of the Rules envisages that the exchange of information between the two authorities is carried out with regard to specific proceedings under the Law on Protection of Competition or procedures under the Law on Electronic Communications, based on a written request for the provision of information, which states in relation to what the information is necessary. The authority providing the information shall indicate whether it constitutes a secret protected by law. The authority receiving the information undertakes to ensure the same level of protection as the authority providing it.

3. Energy

11. The Law on Energy (LE) also envisages cooperation between the Energy and Water Regulatory Commission (EWRC) and the Commission on Protection of Competition. Art. 21 (6) of the LE envisages that in carrying out its activities, the EWRC cooperates with the Commission on Protection of Competition and the Commission for Protection of Consumers, and, if necessary, it can refer them with a view to initiating proceedings under the Law on Protection of Competition, respectively under the Law on Protection of Consumers.

12. Under Art. 19 (3) LE, the EWRC publishes once a year recommendations concerning conformity of the prices for sale by a public provider, end suppliers, and providers of last resort with the obligations for services of public interest, including for protection of energy service consumers and for environmental protection, and sends the recommendations to the Commission on Protection of Competition, if needed.

13. With regard to the control on the implementation of EU Regulation 1227/2011 (REMIT Regulation), Art. 74p of the LE envisages cooperation by EWRC with several state authorities, including with the CPC. The interaction and cooperation with the CPC is carried out on the basis of joint rules adopted by the two commissions. Currently the two authorities are drafting the rules for cooperation.

4. Banking

14. Bulgarian National Bank (BNB) is the banking sector, financial and payment services regulator in Bulgaria. Under Art. 29 (2) and 109 (1) of the Law on Credit Institutions, the BNB should authorize on mandatory basis specific deals (transformation of bank licensee, opening of bank branches in a third country, conduct bank transactions beyond the scope of the license granted, establish or acquire control over a bank with a seat abroad), as well as bank restructuring by a takeover or merger with another bank, only subject to prior authorization by the Commission on Protection of Competition under the LPC, provided that the deal falls under the LPC merger rules.

5. Enforcement cooperation with sector regulators

15. Effective cooperation between the competition authorities and sector regulators is essential for fostering competition in specific markets. As a general rule, sector regulation is necessary in markets where the competition is not well developed or effective due to the market structure or other system characteristics (e.g. in network markets that are monopolistic or oligopolistic, in markets that are not yet open or fully open to price competition) or, like in the banking sector, where regulation is needed to preserve the stability, the integrity and the functioning of this sector.

16. Sector regulation in network industries is applying ex-ante sector specific rules, aimed at opening specific markets, imposing ex-ante rules for access to network facilities and services and preventing abuse of dominant position by some of the companies in these sectors. Sector regulation sometimes involve different methods of price regulation.

17. On the other hand, the competition authorities enforce competition rules on ex-post basis. In cases of suspected antitrust infringements, the competition authorities possess different tools to influence and restore effective competition – by imposing prohibition on certain behavior and the corresponding sanctions aimed at general and specific prevention of future infringement of competition rules, as well as by accepting commitments or imposing remedies on the companies aimed to remove existing barriers to competition. In merger review cases the analyses and the decisions of the competition authority aim to take into account both the current state of competition on the relevant markets as well as their development in the future. Both in antitrust cases and in merger cases in regulated sectors, the analyses of the competition authorities rely very much on the completeness and accuracy of the data for markets concerned. Due to the fact that as a general rule the companies in regulated markets operate under licenses issued by the sector regulators and the fact that the sector regulators have as a rule control powers, the market data provided by the sector regulators to competition authorities is of essential importance.

18. In its enforcement practice under antitrust rules and under merger review rules in sectors where sector regulator is present, the Bulgarian Commission on Protection of Competition sends on a mandatory basis requests for information and asks the opinion of the respective regulator. The market data provided by the sector regulator is analyzed in conjunction with the data submitted by the parties to the case as well as by other market participants as well as obtained from other available sources. The opinion of the sector regulator is also analyzed by the CPC as it gives the sector specific input as regards the general normative and administrative framework within which the undertakings concerned operate and will be operating.

19. Another path for inter-institutional cooperation between the Bulgarian Commission on Protection of Competition is the application of the new power given to the CPC with

the latest amendments of the Law on Protection of Competition in 2021: the power to prioritize its enforcement activities, i.e. the power to close cases that do not fall within the scope of commission's enforcement priorities (Art. 38 (4) LPC). The CPC adopted Rules for prioritizing requests for initiation of proceedings that apply to all formal requests by affected persons, leniency applicants and to request by prosecutor's office. Under p. 8 of the Rules, the CPC should analyze the requests received if they would lead to effective end of the alleged infringement, including if the CPC is in better position than sector regulators applying their specific powers. As EU Member State the Bulgarian Commission on Protection of Competition is not prevented from applying competition rules in parallel to proceedings by sector regulator under the respective sector specific regulation, provided that the competition rules and the sector regulation pursue different objectives. On the other hand, in different occasions either the sector regulator with their ex-ante tools or the competition authority with its ex-post instruments might be better placed to effectively remedy the competition concerns.

20. In merger review procedures, under Bulgarian sectoral legislation in the energy and banking sectors, as already pointed out, the CPC should authorize the planned merger as a pre-condition for the deal to be reviewed by the respective sector regulator under the sector specific rules.

5.1. Decision No 158/2019 – Toplofikacia Sofia commitment case

21. Complaint for unilateral conduct under Art. 21 LPC (abuse of dominant position) against the biggest heat power plant in Bulgaria – Toplofikacia Sofia, was launched by two residential building construction investors. Under Bulgarian legislation, having signed contract for connection of the future building with the local heating power company is a prerequisite to have building permit (for buildings that are envisaged to be heated by central heating). The two companies claimed that the heating power company offers to construction companies sample contracts for connection to the heating distribution network that contradict both the provisions of the Law on Energy and the Law on Protection of Competition. The claimants pointed out that the unilateral clauses in the sample contracts offered by Toplofikacia Sofia include:

- investors should build themselves the part of the network needed to connect to the existing heating power network and the heating power substation in the respective buildings;
- investors should permit Toplofikacia Sofia to use for free the part of the network and the building substations;
- investors to agree to be paid by Toplofikacia Sofia the price of the above-mentioned facilities in “heating power”.

22. The companies claimed that these clauses for free use of the heating power installations in the sample contracts of Toplofikacia Sofia were introduced in 2015 after the courts consistently adjudicated against the heating power company to pay for the installations, paid and constructed by investors.

23. Toplofikacia Sofia is vertically integrated undertaking that is producer of electricity and heating power (owner of the power plant), owner and operator of the distribution network system and supplier of heating power to final clients and consumers with no other undertakings operating on either of the three levels in Sofia. Under the Law on Energy, the heating power distribution system and the buildings' substations are property of the heating power undertakings. The LE provides that the connection lines and the heating power substations should be constructed and paid by the heating power undertaking, but it is also

possible the clients to construct them themselves. In the latter case the ownership of the installations should be transferred to the heating power undertaking in 3 years period in market prices. Toplofikacia Sofia had adopted Methodology for calculating the market prices of the installations. The energy regulator had adopted Methodology to calculate the market prices for the use of the heating installations by the heating power undertaking until they are bought by this undertaking. The LE provides for free use only of the room (owned by the inhabitants in the building) where the building heating power substation is installed.

24. As a part of the investigation the CPC asked and collected data and opinions from the energy regulator, Toplofikacia Sofia, big construction companies in Sofia. After legal and economic analyses the CPC adopted Statement of Objections to Toplofikacia Sofia for alleged exploitative abuse of dominant position (Art. 21 LPC). The CPC established that in the period 2015-2017, Toplofikacia Sofia had concluded 165 contracts with investors, in 133 of which (81%) the investor agreed to build on its own account all the installations needed and to give these installations for use for free to the heating power undertaking. In 2017 all the contracts (100%) envisage such clauses.

25. After the adoption of the Statement of Objections Toplofikacia Sofia proposed commitments to the CPC, namely to amend all of its internal documents, contracts, orders, etc. in order to address the CPC competition concerns and to give the contractual partners of Toplofikacia Sofia different options.

26. In this case the Bulgarian Commission on Protection of Competition was better placed to address competition concerns, which could not be efficiently addressed by the sector regulator. The input of the energy regulator as data and opinion on the subject were used by the CPC in its proceedings.