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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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ROUNDTABLE ON COMPETITIVE NEUTRALITY IN COMPETITION ENFORCEMENT

-- Note by Bulgaria --

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This document reproduces a written contribution from Bulgaria submitted for Item 9 of the 123rd meeting of the OECD Competition Committee on 16-18 June 2015.

More documents related to this discussion can be found at www.oecd.org/daf/competition/competitive-neutrality-in-competition-enforcement.htm.

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BULGARIA

1. The state authorities in pursuance of their powers may restrict the effective competition on the markets by issuing acts, which provide competitive advantages to the state-owned undertakings. The advantages, which the state-owned undertakings enjoy, may take different forms, as for example – they may be excluded by the requirement to pay tax, to comply with certain regulations, may enjoy lower cost of capital, etc. On the other hand, the effective competition may be destroyed by the state-owned undertakings themselves. As any other undertaking they may commit an infringement of the competition law. Taking into account the negative impact of some interventions of the state authorities on the competition, the CPC believes that the principle of competitive neutrality should be observed by the governments in drafting new regulations. The adoption of provisions, which establish identical conditions for economic activity for the state-owned and private undertakings, will have positive impact on the competition and will favor the consumers. Deviations from the application of the principle of competitive neutrality may be allowed, only when certain policy pursues important social goals. However, an assessment in any particular case must be performed.

1. Legal framework

2. According to Art. 2 of the Law on Protection of Competition (LPC) the law applies to two categories of subjects, whose activities explicitly or tacitly prevent, restrict, destroy or may prevent, restrict, destroy the effective competition on a certain market:

- undertakings and associations of undertakings.
- state authorities, including the executive branch and local authorities.

3. According to the legal definition, provided by the LPC, “undertaking” means any natural person, legal entity, or unincorporated entity, which carry out economic activities, regardless of its legal and organizational form. The activities of the state-owned enterprises, controlled by the government or the local authorities may as well be addressed by the legal prohibitions of the competition law. State-owned enterprises operate in a wide range of markets in Bulgaria, as for example postal services, port services, rail-way transport, ground-handling airport services. The state-owned undertakings are not excluded by the field of application of the LPC. The undertakings from this category as any other undertaking may be sanctioned, if they commit an infringement under Art. 15 of the LPC /prohibited agreements, decisions and concerted practices/ and Art. 21 of the law /abuse of monopoly or dominant position/.

4. The state authorities by issuing acts in pursuance of their powers may restrict the effective competition on a certain market. With regard to this, the legislator has empowered the CPC to carry out competition impact assessment. Art. 28 of the LPC establishes that in order to protect the free economic enterprise and prevent restriction or distortion of the competition, the CPC is empowered to assess the compatibility with the provisions of the LPC: draft legislative, regulatory administrative and general administrative acts as well as legislative, regulatory administrative and general administrative acts which are in force. In 2009, in its efforts to assist state authorities in the preparation of draft acts, the CPC elaborated and adopted Guidelines for assessment of compliance of legislative and general administrative acts with competition rules. The Guidelines are based on the approach taken in this filed by the European Commission, OECD and by other competition authorities in the EU Member States.

2. CPC case law

2.1 *Provision of compensations for the transportation of certain categories of passengers at preferential prices*

5. In 2013, with a Decision 542/15.05.2013 the CPC adopted an opinion regarding the provisions of the Ordinance for the transportation of passengers and the conditions for travelling by trolley bus transport on the territory of the town of Vratsa. The ordinance obliges the undertaking, performing trolley bus transportation of passengers, to offer additional discounts on the season tickets for certain categories of passengers (children under 7 years, university students, persons above 75 years, etc.). In return for the imposed obligation, the undertaking received compensations by the municipal budget, calculated on the basis of the issued tickets.

6. In its decision the CPC upheld that, if the granting of privileges to a certain undertaking is aiming to compensate it for reciprocal obligations, there is no deviation from the principle of competitive neutrality, provided that there is no overcompensation. In that particular case the undertaking received compensation in pursuance of its obligation to carry out transportation of certain categories of passengers at preferential prices. According to the CPC the provided compensation constituted payment by the municipality of part of the price for the transportation of these categories of passengers. With regard to this the CPC upheld that these resources are addressed to the consumers, not to the transport company.

7. The CPC as well analyzed whether these preferential prices may be a motive for the passengers to prefer travelling by the trolley bus transport instead of the bus transport. Taking into account that the transportation by trolley buses is the cheapest transport in the city, the CPC determined that it is very like that the passengers would prefer this means of transport, even without the granting of additional discounts.

2.2 *Requirements regarding the advertisement on the public radio and television*

8. In 2015, with a Decision 280/24.03.2015, the CPC adopted an opinion regarding the provisions of the Radio and Television Act /RTA/. One of the issues, analyzed by the CPC was, whether the financing of the Bulgarian National Television /BNT/ and the Bulgarian National Radio /BNR/ both by subsidies from the state budget and commercials contradicts the principle of competitive neutrality and may negatively affect the audiovisual market.

9. In its analysis the CPC considered that BNR and BNT are designated by the law as the public radio and television, entrusted with certain obligations. BNT and BNR are obliged by RTA to work out their programme policy in compliance with the requirements for national public operators for radio and television activity. The two operators have the obligation to create national and regional programmes; programmes for abroad, including for the Bulgarians abroad; programmes for those for whom the Bulgarian language is not mother tongue, including in their language; immediately and free of charge to provide programme time for official announcements of representatives of the state bodies in cases of calamities or direct threat for the life, the security and the health of the population or individual persons; immediately and free of charge to provide programme time for direct broadcasting of plenary sessions of the National Assembly; to assist the creation and the performance of national audio and audio-visual production allocating for new production.

10. In return for the performed public functions BNR and BNT receive subsidies from the state budget and financing by fund "Radio and Television". In addition, the two operators realize their own income from commercials and sponsorship; revenue from additional activities related to the radio and television activity; donations and inheritance; interest and other income related to the radio and television activity.

11. In Decision 280/2015 the CPC concluded that due to the factual failure of the fund “Radio and Television”, foreseen in the RTA, and provided that the state subsidy is insufficient for the effective performance of the public functions of the BNT and the BNR, an additional financing, e. g. by advertising, may be necessary. However, it considers that the allowed advertising time in public radio and television shall be restricted in comparison to commercial radio and television in order to avoid overcompensation of public service media, which could constitute a breach of the principle of competitive neutrality and a prohibited state aid.

12. The CPC proposes to the competent state bodies to introduce a mechanism for objective control over the funding, the ratio between state subsidy and allowed advertising time in public radio and television as well as over the effective spending of the state subsidy for performing the public media services. The CPC believes that the control shall be carried out by a competent state body and not by BNT and BNR.