

Unclassified

English - Or. English

2 June 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

**Assessing and Communicating the Benefits of Competition Interventions – Note by
Bulgaria**

12 June 2023

This document reproduces a written contribution from Bulgaria submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

Federica MAIORANO
Email : Federica.MAIORANO@oecd.org

JT03520527

Bulgaria

1. Introduction

1. The assessment of the compliance of regulatory acts with competition rules, carried out within the framework of competition advocacy, aims to prevent the introduction of regulations that unjustifiably restrict competition, as well as to lead to the removal of existing restrictions on competition. Achieving these goals determines the success of competition advocacy as regards the competition assessment of draft regulations and regulations in force.

2. Methodology for assessment of the effectiveness in the field of competition advocacy

2. The aim of the competition advocacy, set out in Art. 28 of the Law on Protection of Competition is “to protect free initiative in economic activity and to prevent restriction or distortion of competition”. Taking into account that the opinions of the Commission on Protection of Competition (CPC) on competition advocacy are not binding, the fulfillment of this aim depends on persuading the competent state authorities to amend the draft or existing acts in accordance with the recommendations of the CPC. This is the basis of the internal and informal Methodology for assessment of the effectiveness of the CPC in the area of competition advocacy – what part of the recommendations have been taken into account and accordingly have led to the removal of the relevant anticompetitive regulations.

2.1. Competition advocacy opinions subject to assessment

3. Having in mind the stated in the *Evaluation of competition enforcement and advocacy activities: the results of an OECD survey* that “competition and advocacy interventions require some time to produce their effects”¹ the Methodology for assessment of the advocacy takes into account that the legislative process usually requires a long time. In view of this, time is needed in order to become clear whether the recommendations contained in competition advocacy opinions will be taken into account by the competent state authorities. With regard to this, it is necessary to foresee the following periods between the date of adoption of the opinions and the moment of evaluation of their effectiveness:

- for draft acts – 1 year;
- for acts in force – 2 years.

2.2. Categorizing the importance of recommendations

4. The opinions of the CPC are related to different markets, affecting a different range of business entities and consumers and accordingly their public importance is not the same. The opinions make recommendations for amendment of regulations concerning restrictions of competition with different gravity. All these factors lead to different significance of the

¹ Evaluation of competition enforcement and advocacy activities: the results of an OECD survey, DAF/COMP/WP2(2012)7/FINAL, 20 February 2013, paragraph 6.

recommendations of the CPC, as well as different effects of the changes in regulations resulting from these recommendations on the relevant markets, businesses and consumers.

5. For these reasons, each individual recommendation contained in a competition advocacy opinion should be categorized based on the following criteria:

- public importance – which market and what part of consumers it affects;
- size of the affected market;
- gravity of the restriction of competition.

6. As a result of this categorization, the recommendations should be categorized with 3, 2 or 1 points, with 3 points given to the most important recommendations.

2.3. Calculation of the effectiveness of competition advocacy

7. After the recommendations have been recalculated according to their importance with 3, 2 or 1 points, the sum of these recalculated values is made for all the recommendations that were made during the assessed period.

8. In a similar way, the sum of these values is calculated, but only for the recommendations that have been taken into account by the competent state authorities.

9. Then a percentage ratio is calculated between the obtained values for the recommendations taken into account in relation to the total number of recommendations. The resulting indicator expresses in percentages what part of the recommendations of the competition authority have led to the removal of restrictions on competition or prevented the adoption of anticompetitive regulations, taking into account the importance of the recommendations.

$$EA = \frac{\sum (R_{ta} \times Q_i)}{\sum (R \times Q_i)} \times 100$$

where

EA – effectiveness of advocacy

R – recommendations

R_{ta} – recommendations taken into account

Q_i – coefficient of importance

2.4. Quantitative (monetary) effect of competition advocacy on the relevant markets

10. The calculation of the effect of competition advocacy on the relevant market is possible when the recommendation is related to prices. It is based on the difference multiplied by the volume of the market between the price in the presence of the anticompetitive regulation and the price achieved as a result of the competition advocacy recommendation. Even in this case, it should be taken into account that prices are affected also by factors other than the restriction of competition in question and accordingly the recommendation for its removal. The calculation of this effect requires additional price data for each relevant market.

$$EAp = (Pr - Pc) \times Vs$$

where

EAp – effectiveness of advocacy as regards price regulations

Pr – price in regulation

Pc – price in competition

Vs – volume of the affected sales

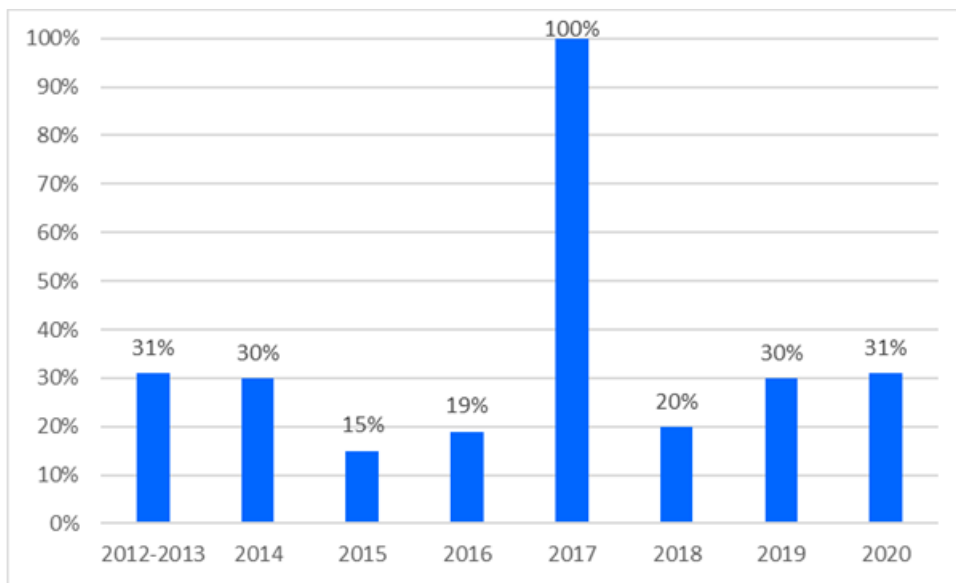
11. When competition advocacy recommendations are not related to regulations of prices, the calculation of their quantitative (monetary) effect on the market is related to the necessity of even more additional data which makes the process more difficult. Moreover, such an assessment would be based on many assumptions, which does not allow to guarantee the reliability of the data obtained.

3. Competition advocacy effectiveness

12. On the basis on the Methodology in the recent years the effectiveness of competition advocacy of the CPC is calculated internally and informally.

13. The calculated data about the effectiveness of competition advocacy interventions for the period 2012-2020 is presented in the chart below.

Figure 1. Competition advocacy effectiveness



14. In the period 2012-2014 the indicator for competition advocacy effectiveness is 30-31%. In the next years there is a slight decline in the calculated effectiveness to 15-20%. The indicator of 100% in 2017 cannot be regarded as representative due to fewer opinions with recommendations. However in 2019-2020 the competition advocacy effectiveness returned to its usual levels of 30-31%.

15. Due to the necessary time between the adoption of the competition advocacy opinion and the moment to see whether the recommendation will be taken into account, which according to the Methodology is 1 year for draft acts and 2 years for acts in force, the effectiveness of competition advocacy for the next years will be calculated after the necessary period.

16. The calculation of competition advocacy effectiveness can help to get a general view of an activity the results of which cannot be seen immediately. This in turn can contribute to improving of the competition advocacy opinions.

4. Competition enforcement effectiveness

17. Another indicator about the effectiveness, which encompasses the decisions enforcing the competition law is the information published in the annual report of the CPC about the imposed sanctions as well as about the collected sanctions after the decisions of the CPC are upheld by the court. This indicates what part of the sanctions imposed by the CPC actually become final and hence the effectiveness of its competition enforcement, which in turn contributes to the credibility of its overall activity. Expressed in figures, this represents an annual full confirmation of more than 70% of the appealed acts by the court and an additional approximately 10% of partially confirmed decisions. The collectability of claims exceeds 95% of all sanctions entered into force in recent years. It is much more important to prevent infringements quickly and reliably, which is why the Commission is making efforts to collect the sanctions immediately.

18. At the beginning of April 2023, the Supreme administrative court (SAC) confirmed a final decision of the CPC, which established an infringement expressed in abuse of a stronger bargaining position by “Kaufland Bulgaria EOOD & CO” KD (Kaufland) and imposed a pecuniary sanction.

19. In this case, Kaufland has suspended the sale through its retail stores of a significant part of the assortment of a supplier in order to impose on it certain commercial conditions that are disadvantageous to the supplier. Thus, for the undertaking in a weaker bargaining position, negative pecuniary consequences have occurred as a result of Kaufland’s conduct.

20. The CPC concluded in the case that the possibility of damage to the interests of consumers is directly related to the unfair practices of Kaufland in relation to its supplier. With the achieved reduction in delivery prices, only Kaufland’s profit is ensured, without this leading to a reduction in the final selling price of the goods, which is not in the interest of consumers and damages them.