

COMPETITION

IX.

IX.1. Legal Framework

The Protection of Competition Act (1998, being subsequently amended as of then to reflect the EU competition rules) is the main legislative instrument, which regulates the issues pertaining to the competition. It prohibits any act or conduct which results in limitation or exclusion of the competition on the Bulgarian market, including but not limited to contractual and other arrangements, concerted commercial practices of the parties, misuse of monopolistic and dominant position, concentration (merger, acquisition, establishment of control).

IX.2. General Review

The authority responsible for the observation and compliance of the competition rules is the Commission for Protection of Competition (the "Commission"). The Commission is fully independent from the executive and court authorities and reports only to the National Assembly.

There are four types of relationships that may be subject to an examination by the Commission:

- (1) certain types of agreements, decisions and concerted practices;
- (2) misuse of monopolistic and dominant position;
- (3) mergers and acquisitions (concentrations)
- (4) unfair competition.

IX.3. Agreements and concerted practices, generally prohibited by law

The law imposes general prohibition towards agreements and concerted practices, which are concluded with purposes or result in direct or indirect determination of the prices, division of markets or of sources of supplies; agreements, which aim to limit or control the production, commerce, the technical development or the investments; agreements which impose different conditions towards the respective parties to the agreements whereby the different parties are put into non-equal position; agreements, whose conclusion is subject to the assumption by the other party to the agreement of additional obligations or undertaking to conclude another agreement, which in its scope and with a view of the commercial practice are not related to the subject of the agreement or with the performance of the rights and obligations arising out of it. Such agreements are null and void by virtue of law. An exception from this rule, i.e. such agreements and concerted practices will be valid provided that the total market share of the parties to the respective agreement is less than 5% of the respective market but only if the parties are not competitive; or is less than 10% of the respective market if the parties are competitive.

The Commission treats as concerted practices the case when two or more companies coordinate among

them their market conduct so that practically they are jointly doing business on the market and exclude the competition among themselves.

All agreements, decisions or concerted practices meeting the above characteristics are subject to notification with the Commission.

There is an exception provided by the law whereas agreements, although limiting the competition, but are being concluded with purposes to improve the production of certain goods or contribute to the economic and technological growth, are permitted in principle. Still, such agreements shall not be permissible when they impose or result in creation of limitations which are not required for the purposes of the agreement or provide for a possibility to eliminate the competition on the respective market.

It is advisable for the investor to report an agreement with restrictive clauses to the Commission. The obligation to notify the Commission arises within a 3-day period as of conclusion of the particular agreement. The commission makes a decision on the notification within a 2-month period whereas it may decide that there are not any grounds for applying the general prohibition or if there are such, the Commission prohibits the agreement.

IX.4. Monopolistic and dominant position

A monopolistic enterprise shall be the one, which by virtue of law, is entitled to carry out exclusively certain business activities.

Further, a competitor shall be considered having a dominant position if it has such a market share, financial resources, access to other markets, technological level and economic relations with other companies, which would allow it to infringe the competition. There is the legal assumption that an enterprise is dominant if it has a market share exceeding 35% of the respective market unless the requirements as per the preceding sentence are not available.

A dominant position itself is not prohibited while it is rather the misuse of a monopolistic and dominant position which is prohibited.

A monopolistic or dominant position shall be misused if the activities of the monopolistic and the dominant company are directed or result in infringement of the competition or the interests of the consumers, such activities being for instance: imposing sales prices and other unfair conditions; limitation of the markets, commerce and the technological development which adversely affect the consumers; imposition of unusual conditions with regard to different parties while only some parties are favored by these conditions, etc.

One of the typical examples of misuse of monopolistic and dominant position, which serves as a pattern of misuse in both the Bulgarian and EU competition practices, is when the consumers have to pay a high price for goods or services, which is not based on the expenses required for the production, i.e. the expense when compared with the final price, is very small. Another typical example of misuse of monopolistic and dominant position is when a

company imposes fixed sales prices for the goods and services distributed by other companies, as it is deemed that this does not improve the quality of the goods and services produced which finally results in infringement of the interests of the consumers.

IX.5. Concentrations

Concentrations (mergers and acquisitions) or the establishment of control by a company, (which already exercises control over another company) over a company is subject to the prior written notification to the Commission provided the total turnover of the participants for the preceding year exceeds BGL, 15,000,000, i.e. such intended concentrations must be reported to the Commission before their completion. It should be noted that the Protection of Competition Act applies to any and all enterprises operating on the territory of Bulgaria or outside the territory of the state if these enterprises infringe or may infringe the competition in the state. This is to say that even though a transaction is carried out abroad, if it leads to the described consequences, it will still fall under the provisions of the law.

Within one month as of the submittal of the notification, the Commission evaluates the concentration and may issue a decision with which it prohibits the concentration or decides that the concentration does not fall under the prohibitions established by the law. It is also possible for the Commission to decide that even there is a concentration, then it is permissible as it does not lead to creation or increase of the monopolistic or dominant position of the participants involved in the market.

IX.6. Unfair competition

Unfair competition is deemed to be each action or failure to perform an action which contradicts the standard commercial practice and infringes or may infringe on the other side, the interests and relations among the competitors and on the other side, the interests and the relations between the competitors and the consumers. Such an unfair competition is generally prohibited. The Commission has ruled on numerous cases pertaining to unfair competition and practically has established certain criteria and requirements, which if being kept or avoided, will prevent the investor from unfair competition.

IX.7. Incentives (scope, requirements, procedure)

Depending on the infringement of the law, and in particular its prohibitions, the Commission, among other measures, is entitled to impose fines. In case of non-permitted concentrations which have already taken place, the Commission is entitled to prescribe other measures appropriate for restoration of the situation that existed before the concentration, for example: to order the control to be stopped, or the company's property to be split, etc.

IX.8. Foreign investors related measures

With the exception of the agreements, decisions and concerted practices reviewed first above which are null and void once being concluded or made, the remaining infringements of the competition rules does not result in their considering as being null and void. Even if the Commission has imposed fines having decided that there is, for instance, concentration of economic activity in breach of the provisions of the law (the breach being failure of the parties concerned to notify the Commission in advance about the concentration), any measures (fines) imposed by the Commission shall not affect the validity of the transaction.

Nevertheless, it is recommendable that a foreign investor always notifies the Commission about its business intentions in case of doubt whether the Commission should be involved in terms of the contemplated transaction. This will protect the investor from paying fines for infringement of the provisions of the law.

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