

# SCF

Sofia Competition Forum

# CPC Annual Report 2012

## Establishment of the Sofia Competition Forum



BULGARIAN COMMISSION  
ON PROTECTION OF COMPETITION



UNITED NATIONS CONFERENCE  
ON TRADE AND DEVELOPMENT

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## **I. Introduction**

### **1. Statute and powers of the Commission on Protection of Competition**

The Commission on Protection on Competition (the Commission, the CPC) is an independent specialised state body whose main goal is to ensure the protection and create conditions for competition and free economic initiative, including by exercising control on the lawful spending of public resources through public procurement and concession awarding procedures. The CPC is empowered to enforce the provisions of the Law on Protection of Competition (LPC), the Public Procurement Act (PPA) and the Concessions Act (CA).

The Commission adopts decisions, with which it can establish the existence of prohibited agreements, decisions by associations of undertakings or concerted practices and of abuse of monopoly or dominant position and unfair competition. The Commission is the national competition authority of Bulgaria, which is responsible for the direct application of Art.101 and Art.102 of the Treaty on the Functioning of the European Union (TFEU). It exercises control on concentrations between undertakings and performs sector inquiries of the competitive environment in the country. As regards the acts and actions of the state authorities, the Commission exercises advocacy powers as to the compatibility of the laws, the normative and the

administrative acts with the competition rules by adopting opinion decisions and proposing to the competent central or local self-government authorities to repeal or amend acts that may prevent, restrict or distort competition in the country.

The CPC is the body, before which all decisions, actions or omissions of the contracting authorities in the process of public procurement or concession-awarding procedures can be appealed. The CPC has the powers to put on hold a public procurement or concession-awarding procedure, to allow for the preliminary execution of decisions to select a contractor, subject to conditions specified in the law, and to impose fines and penalties in cases provided for in the law.

## **2. The CPC priorities in 2012**

The main priority for the CPC in 2012 was **to ensure the achievement of the goals of the national and European antitrust legislation, related to fostering the free economic initiative, to improve the conditions for effective competition with the aim to enhance consumers' welfare.**

With a view to achieving the above the CPC carried out constant monitoring of those sensitive sectors of the economy which are of significant importance to the consumers and the business. During the year the Commission adopted three sector inquiries on the competitive environment on the market of production of and trade with sunflower and sunflower oil, the "wheat – wheat flour – wheat bread" chain and the sector of distribution of new motor vehicles, original spare parts and repair services.

In order to increase its effectiveness in the fight against antitrust violations, the Commission took steps to raise the awareness of the undertakings, their associations and the society as a whole about the nature, the forms and the possible negative effects on competition of information exchange between competitors. With this in mind, the

Commission promoted among business representatives, lawyers and other stakeholders its *Guidelines on information exchange between competitors and the accompanying List of examples of prohibited information exchange*.

In addition, the Commission actively implements the best practices of the *acquis communautaire* of the European Union in the field of competition law related to the standard of proof of antitrust violations, including the use of indirect evidence.

**In exercising its competition advocacy powers in 2012**, the Commission focused its activities on the assessment of the compliance of legal or administrative acts with competition rules. In this respect, it promoted the adopted in 2011 *Guidelines for assessing the compliance of regulatory and general administrative acts with competition rules* among representatives of the central and local executive authorities and the local self-government authorities by distributing leaflets and uploading the document on the CPC's website.

In 2012, the Commission also adopted *Guidelines on corporate programs for compliance with competition rules*. The objective of this document is to help the business understand better the benefits of drafting corporate programs as well as to encourage the companies' management to develop and adopt them. Corporate compliance programs express the will of the management of companies to comply with the competition rules; they are targeted at all organizational levels and all members of staff. As part of the internal company policy and procedures, they impose certain obligations on the managers and employees.

The Commission **also took measures to increase the effectiveness of the control over concentrations between undertakings**. The efforts were aimed at promoting prenotification contacts between the notifying party/ies and the CPC in regards to concentrations not only with a national impact but with multinational impact as well,

through the promotion and implementation of the adopted at the end of last year *Rules on imposing measures for preserving competition in concentrations between undertakings*.

In order to **promote and protect free economic initiative, the Commission increased the preventive function of its enforcement activities in the application of the prohibition of unfair competition** by promoting its practice and publishing specialized information, while at the same time continuing to apply a deterrent sanctioning policy in accordance with its revised *Methodology for setting fines under the Law on Protection of Competition*.

Another major priority of the CPC in 2012 was the **revision of the secondary legal framework regulating its activities**. Its efforts were directed at research of best practices and at drafting an amendment to the Rules on access to the file in accordance with the latest achievements in the application of the LPC and the jurisprudence of the Court of Justice of the European Union, in order to ensure the right of defense of the defendants in the proceedings before the CPC.

In 2012, the Commission promoted the adopted in the previous year new *Programme on immunity from fines in cartel cases (Leniency Program)*, and the new *Decision on block exemption of certain categories of agreements between undertakings*, drafted in accordance with the acquis in this field.

**In 2012 the Commission continued to affirm itself as a reliable partner in the field of cooperation on European matters and international cooperation.** To achieve this, the Commission took part in the activities of the *European Competition Network (ECN)* and the *working groups of the International Competition Network (ICN)*. The Commission actively participates in the activities of the Competition Committee of the *Organization for Economic Cooperation and Development (OECD)*, as well as in training seminars of the *OECD Regional Centre for Competition in Budapest*.

In 2012, a Memorandum of Understanding with the United Nations Conference on Trade and Development (UNCTAD) in the field of competition policy was signed. The main objective of the initiative is to assist the Balkan competition authorities in the process of improving the competition legislation, liberalization of regulated markets, institutional development and the efficient functioning of the competition authorities, the negotiation process for EU membership.

At the initiative of the CPC and UNCTAD, a permanent platform for cooperation between the antitrust authorities in the Balkan region was established – the Sofia Competition Forum (SCF). The forum is designed to respond to the needs of the competition authorities of the Western Balkans, which have the status of candidate countries and potential candidate countries for EU membership – namely Albania, Bosnia and Herzegovina, Kosovo, the Republic of Macedonia, Serbia, Croatia and Montenegro. On 12 November 2012 they signed the *Sofia Statement*, with which they pledged to deepen their cooperation as part of SCF activities.

### **3. General data on the CPC's activities in 2012**

In 2012 the Commission initiated a total of **1292 proceedings** of which 1155 under the Public Procurement Act (PPA), 1 under the Concessions Act (CA) and 136 under the Law on Protection of Competition

For the reporting period the CPC ruled on **1563 decisions or rulings** under the LPC, the CA and the PPA. With its decisions adopted in 2012 the Commission imposed **finances and pecuniary sanctions amounting to 22 764 958 BGN**.

## **II. Prohibited agreements between undertakings**

### **1. Initiated proceedings**

In 2012, the Commission initiated 9 proceedings for possible infringement of Art.15 of the LPC and/or Art.101 of the TFEU.

## 2. On-site inspections

In 2012, the CPC conducted **3 on-site inspections** as a procedural step in the proceedings to investigate alleged antitrust violations. During the inspections the CPC seized evidence on paper and forensic evidence which was further analyzed at the Forensic IT laboratory.

## 3. Adopted decisions

In 2012 the Commission adopted **9 decisions** on the application of Art. 15 of the LPC and /or Art. 101 TFEU. In 4 cases, the Commission established an infringement and determined the type and amount of the sanctions, and in 2 cases the Commission approved proposals by the defendants to undertake commitments.

## 4. Pecuniary sanctions and fines imposed

For established violations of Art.15 of the LPC and/or Art.101 TFEU in 2012, the Commission imposed fines amounting to a total of **20 407 324 BGN**.



*Proceedings and decisions of the CPC in the area of prohibited agreements between undertakings for the period 2008- 2012*



## 5. Case Studies

### a) Cartel on the market of cash registers

By **Decision № 430/10.04.2012**, the Commission established a violation of Art.15(1) of the LPC by “Daisy Technology” EOOD, “Datex” EOOD, “Eltrade” EOOD and “Tremol” EOOD, in the form of concerted pricing of fiscal devices – cash registers (CR) and fiscal printers (FP).

As part of the proceeding, the Commission analyzed the pricing policy of the companies and found that in the period from early 2005 to the first quarter of 2010 the companies under investigation made several changes to their pricing policy. During the analyzed five-year period specific dates stood out, on which or following which the defendants coordinately raised the prices of their CRs and FPs. The Commission found that the defendant companies had participated in meetings in the office of one of the undertakings concerned immediately before the price increases of the products. According to the CPC, the parties had well-established forms of communication through which they discussed important aspects of economic behavior and exchanged information on marketing strategies and the pricing of products.

The Commission imposed a fine of 503 280 BGN on “Datex” EOOD, 155 844 BGN on “Daisy Technology” EOOD, 82 512 BGN on “Tremol” EOOD and 257 928 BGN on “Eltrade” EOOD for infringement of Art.15 LPC and ordered the suspension of the infringement.

### b) Prohibited vertical agreements in the distribution of “Hyundai” vehicles

By **Decision № 1292/06.08.2012**, the Commission established a violation of Art.15 (1) of the LPC and Article 101 (1) TFEU committed by ”Industrial Commerce” EOOD, “Alexiev” EOOD, “Technocar” EOOD, “Karmobil” EOOD, “Kabi Car” EOOD and “Mototehnika Hristov” sole proprietor .

In the course of the ex officio proceeding initiated following a sector inquiry, the CPC found that, as an authorized importer of new vehicles of the “Hyundai” brand in Bulgaria, “Industrial Commerce” Ltd. had signed dealership contracts with authorized dealers of new “Hyundai” vehicles in Bulgaria. During the Commission’s on-site inspection in the premises of “Industrial Commerce” Ltd., a number of paper and electronic documents were seized, namely uniform dealership contracts signed between the defendants, as well as paper and electronic email correspondence containing evidence of vertical restraints of competition applied by the defendants.

The seized copies of uniform dealership contracts, signed in the period from 2008 to 2011, contained clauses constituting prohibited vertical agreements, namely: (1) setting of of minimum resale prices of new vehicles; (2) prohibition for dealers of new “Hyundai” vehicles, operating within the selective distribution system, to sell competing brands of new vehicles, (3) prohibition for dealers to perform cross-supply of new “Hyundai” vehicles in the selective distribution system, (4) a ban on dealers to sell new “Hyundai” vehicles outside the designated area, (5) fixing of resale prices of original spare parts and accessories for “Hyundai: vehicles, (6 ) price fixing of out-of-warranty service of “Hyundai” vehicles, (7) prohibition for dealers within the selective distribution system to sell spare parts of matching quality when performing out-of-warranty service of “Hyundai” vehicles, (8) prohibition for dealers within the selective distribution system to perform cross-supply of original spare parts for “Hyundai” vehicles.

For the established infringements of Art.15 (1) LPC and Article 101 (1) TFEU, the Commission imposed fines amounting to, respectively: 15 988 300 BGN on “Industrial Commerce” EOOD, 83 400 BGN on “Alexiev” EOOD, 291 100 BGN on “Technocar” EOOD, 13 000 BGN of “Karmobil” EOOD, 5 000 BGN on “Kabi Car” EOOD and 32 400 BGN on “Mototehnika Hristov” sole proprietor.

### c) Commitments by retail chains

By **Decision № 833/19.07.2012**, the CPC approved commitments, proposed under Art.75 LPC by “Metro Cash & Carry Bulgaria” EOOD, “Billa Bulgaria” EOOD, “Kaufland Bulgaria” EOOD, “Hit Hypermarket” EOOD, “Maxima Bulgaria” EOOD and “Piccadilly” EAD. During the proceeding, the Commission examined the policy of the above retailers in terms of the conditions for supplying food products and the contractual relations between the retailers and their suppliers. In the abovementioned vertical contracts for delivering food products signed between the retailers and their suppliers, the CPC found the presence of certain clauses, primarily concerning the pricing of the delivered goods, which created obligations and restrictions for suppliers in their vertical relations with each of the retailers. Their simultaneous and parallel presence in the contracts separately signed by the retail chains with the same suppliers led to a justified concern by the CPC that the retail chains could deliberately coordinate their conduct even without an explicit agreement or direct contacts with each other.

Due to the reasonable doubt for the existence of restrictions on competition, the CPC submitted to the retail chains a Statement of Objections for violation of Art.15 (1) LPC consisting in the application of joint mechanisms for coordination of their trade policy on the market of the supply of goods, as well as in coordination of their marketing policy with regard to promotions. Each of the defendants proposed commitments to take specific actions in order to discontinue the conduct in relation to which the CPC’s proceeding had been initiated. The commitments concerned mainly the removal of the ambiguous contract clauses and general conditions between the retail chains and their suppliers. Those commitments were intended to disrupt the possibility of prevention, restriction or distortion of competition in the market by the companies through coordination of their commercial and marketing policy on the market of the supply of goods.

Timely removal of common mechanisms is essential for the normal functioning of competition in the relevant market. The Commission assessed the commitments proposed by the defendants and approved them on the presumption that they would lead to a rapid and effective prevention of the dangers to competition, and on the fact that they contained specific measures to restore competition in the market.

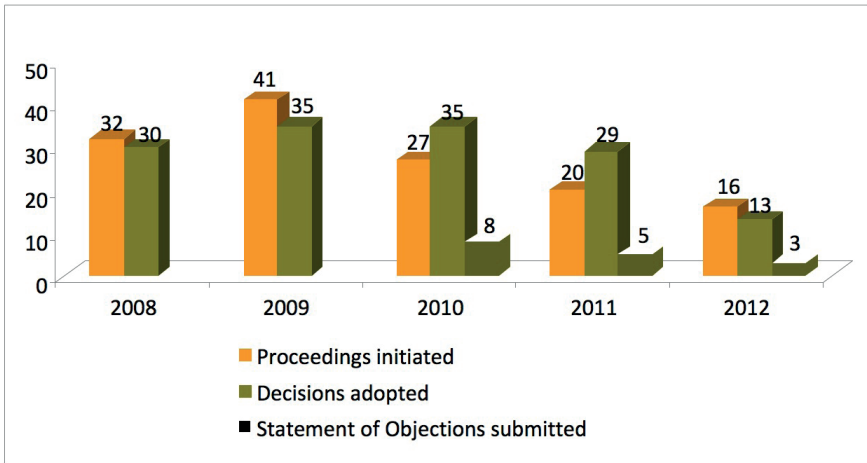
### III. Abuse of dominant position

#### 1. Initiated proceedings

In 2012, the Commission initiated **16 proceedings** for abuse of dominant position under Art. 21 LPC and/or Art.102 TFEU.

#### 2. Adopted decisions

In 2012 the Commission adopted a total of **13 decisions** under Art.21 of the LPC and/or Art.102 TFEU.



*Proceedings and decisions of the CPC in the field of abuse of dominant position for the period 2008-2012*

## **IV. Sector inquiries**

### **1. Sector inquiry on the markets of sunflower and sunflower oil**

By **Decision № 686/22.06.2012**, the Commission adopted a sector inquiry of the competitive environment on the two interconnected markets of production and marketing of sunflower and sunflower oil in the country.

In its analysis the CPC found that the above-mentioned markets are highly fragmented and comprise many manufacturers, which implies the existence of many intermediate traders who mediate the purchase of raw materials. Part of the raw materials is purchased directly from the sunflower oil refineries at more favorable conditions, which influences the price dynamics in the chain. The Commission found discrepancies in the price changes at the level of the agricultural production and processing of sunflower seeds into sunflower oil, since it did not observe the necessary immediate price adjustments along the chain in case of change in the price of raw materials.

Based on the results of the sector inquiry the Commission initiated a proceeding for a possible breach of Art.15 of the LPC by the three main oil producers – “Biser Oliva”, “Zvezda” and “Kaliakra” – in relation to the identified in the inquiry vertical restraints in their contractual relations as to buying and selling sunflower seeds by distributors.

### **2. Sector inquiry on the markets of wheat, flour and bread**

By **Decision № 1125/02.10.2012** the CPC adopted a sector inquiry of the competitive environment on the interconnected downstream markets of wheat, wheat flour and wheat bread for mass consumption in Bulgaria.

The inquiry examined the status of each of the vertically related markets “wheat – flour – wheat bread for mass consumption”, focusing on the study of price dynamics for the years between 2008 and 2010.

As regards the production market and marketing of wheat in the country, it was established that it is highly fragmented, with a large number of farmers with different legal status, which implies the existence of many intermediate traders who mediate the purchase of wheat. The lack of agricultural stock markets and financial derivatives (e.g. futures contracts) on which manufacturers could directly sell their produce also leads to a distortion of price signals between the various participants in the chain.

Along the next level of the chain – the storage of wheat – the number of the participants decreases, due to the existence of a mandatory requirement to have facilities that are licensed and comply with specific regulatory standards. Mills are able to negotiate their supply of raw material for production with a large number of potential suppliers (farmers and/or grain traders with whom they are not vertically integrated), which in turn gives them the advantage to negotiate favorable purchase prices of wheat. The Commission found asymmetry in the price change of flour (type 500, type 700) and wheat, expressed in a significant increase in the wholesale price of flour compared to the price increase of the main raw material – wheat, for the period from July to December 2010.

Following the sector inquiry and its findings, the Commission opened an investigation for a possible infringement of Art.15 LPC by the Union of Bulgarian Millers, which brings together companies with established significant influence on the market of production and trade with wheat flour. The CPC also informed the Ministry of Agriculture and Food of the possible need to take the appropriate measures in its power to achieve a more stable market environment for the development of efficient competition in each link of the chain.

### **3. Sector inquiry on the market of distribution of new motor vehicles, spare parts and repair services**

By **Decision № 1552/20.12.2012** the CPC adopted a sector inquiry on the competitive environment in the sector of the distribution of new motor vehicles, original spare parts and repair services.

The inquiry examined the organization and structure of networks established by vehicle manufacturers and their authorized importers in Bulgaria for the distribution of new motor vehicles (cars and vans), original spare parts and repair services. As part of the inquiry, the market position of the participants in the distribution networks of new motor vehicles, namely the importers and their authorized dealers, as well as the brands of new motor vehicles which they imported, was analyzed. The inquiry also examined the contractual relations between the participants in the different levels of the distribution networks, including between manufacturers and their authorized importers, and between importers and their authorized dealers, in order to ascertain their compliance with the requirements and objectives of existing EU and Bulgarian legislation for block exemption of vertical agreements in the sector.

As a result of the analysis of the contractual relations between the importers and the dealers of new vehicles, the CPC found that in their relations with the authorized dealers and repair shops, some importers apply certain vertical restraints which are not covered by the block exemption under Art. 15 LPC and Art. 101 TFEU. The vertical restraints on competition, identified by the Commission, imposed by certain importers in regards to their authorized dealers and repair shops, can be summarized as follows:

- a) Direct or indirect restrictions on dealers not to distribute competing brands of new vehicles. In some cases those restrictions continued for 2 years after the termination of the contract;
- b) Quantitative criteria for access by independent companies to networks of authorized repairers or indirect requirements for repair shops to sell new motor vehicles;

c) Restrictions on dealers and repairers to carry out active sales outside the assigned area of operations, including on the territories of other EU member states;

d) Limitations on authorized repairers to sell competing brands of spare parts and accessories, including spare parts of matching quality for out-of-warranty repair services;

e) Requirements for customers to use only the services of authorized service providers for repair services within the warranty period;

f) Obligations for authorized dealers to apply fixed or minimal prices for the sale of new vehicles, which have been set by the importers.

As a measure to improve the competition in the sector of the distribution of new motor vehicles, original spare parts and repair services, the Commission recommended to the importers to remove the established vertical restraints on competition in the contractual relations with their authorized dealers and repairers.

## **V. Concentrations between undertakings**

### **1. Initiated proceedings**

During the reporting period, the Commission initiated a total of **24 proceedings** on concentrations between undertakings.

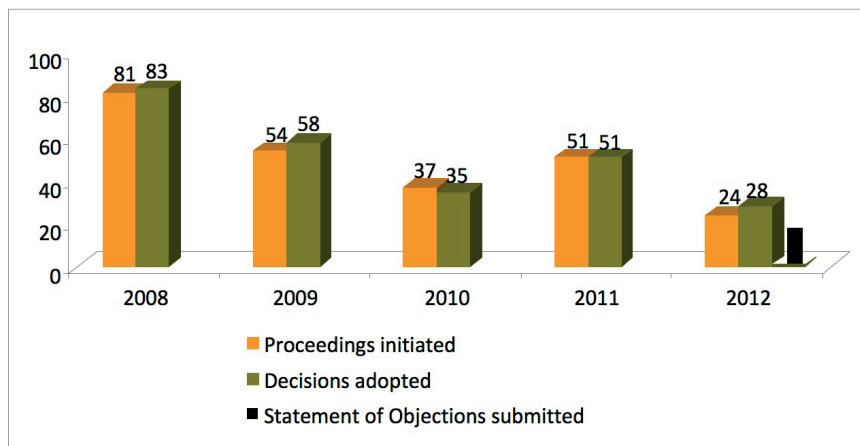
### **2. Adopted decisions**

In 2012, the Commission adopted a total of **28 decisions** authorizing concentrations between undertakings. In one case, the Commission opened an in-depth investigation due to doubts that the notified transaction would significantly impede competition.

### **3. Imposed pecuniary sanctions**



In 2012, CPC imposed pecuniary sanctions to the amount of 45 679 BGN for breach of the obligation for prior notification of a concentration.



*Proceedings and decisions of the CPC in the field of the control on concentrations between undertakings for the period 2008-2012*

## VI. Unfair competition

### 1. Initiated proceedings

In 2012 the Commission initiated a total of **61 proceedings** for unfair competition.

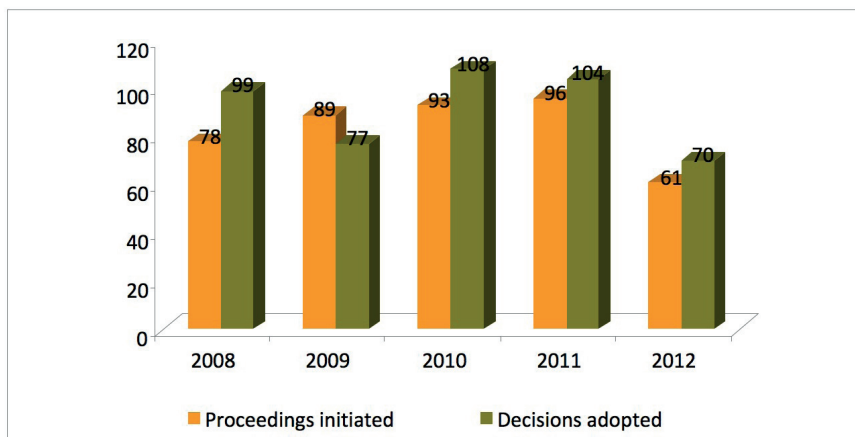
### 2. Adopted decisions

In the above period the Commission adopted a total of **70 decisions** in relation to the application of the prohibition of unfair competition. By 22 of its decisions the Commission established infringements under Chapter Seven of the LPC.

### 3. Imposed pecuniary sanctions and fines

In 2012, the Commission imposed pecuniary sanctions and fines to the total amount of **2,185,070 BGN**.

The largest amount of pecuniary sanctions – **596 970 BGN**, was imposed for violations of the general prohibition of unfair competition under Art.29 LPC, for violations of the prohibition of unfair solicitation of clients under Art.36 LPC – **558 950 BGN**, for violations of the prohibition of misleading advertising under Art.32 in relation to Art.33 LPC – **365 715 BGN**, for violations of the prohibition of imitation under Art.35 LPC – **376 235 BGN**, for violations of the prohibition of damaging the good name of competitors under Art.30 – a total of **276 350 BGN**, for violations of the prohibition of misleading under Art.31 – a total of **10 700 BGN**.



*Proceedings and decisions of the CPC in the field of unfair competition for the period 2008-2012*

## VII. Competition advocacy

### 1. Initiated proceedings

In 2012 a total of **37 proceedings** were initiated under Art. 28 LPC, namely – for the assessment of the compliance with competition rules of draft legislative or regulatory administrative or general administrative acts; 2. effective legislative or regulatory administra-

tive or general administrative acts; 3. draft acts of associations of undertakings, which regulate the activities of their members.

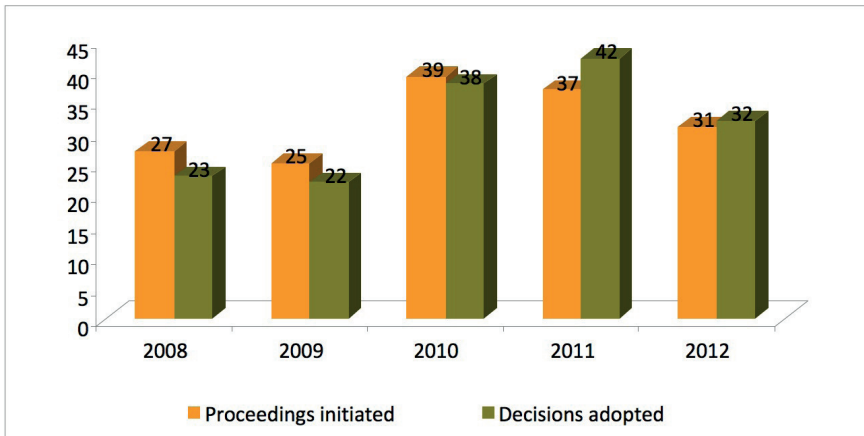
## 2. Decisions

In 2012 the Commission adopted a total of **32 decisions, with which it adopted opinions** on draft or effective legislative or administrative acts on their compliance with competition rules. With its decisions the CPC made proposals to the competent authorities for amendments or supplements to the following draft or acting legislative acts:

- Draft Law on amending the Law on Protection of Competition;
- Draft Law on amending the Public Procurement Act;
- Draft Act on amending the Act on the Activities of Provision of Services;
- Draft Law on amending the Law on the Chamber of Representatives in Industrial Property;
- Draft Methodology of the Communications Regulation Commission on the Conditions and the Rules for Identifying, Analysing and Assessing the Relevant Markets and the Criteria for Determining Undertakings with Significant Market Power.
- Veterinary Practice Act
- Act on the Professional Organization of Veterinarians in Bulgaria and the bylaws governing the conditions for providing veterinary services in the country;
- Ordinance on Regulating and Registering the Prices of Medical Products (Art. 5 (4) of the Ordinance);
- Ordinance № 10 of 24 March 2009 on the Terms and Conditions for Reimbursement of Medical Products under Art. 262 (5), p. 1 of the Law on Medicinal Products in Human Medicine, as well as of

medical devices and dietary foods for special medical purposes;

- Ordinance on the Regulation and Registration of the Prices of the Medicinal Products, the Conditions, Rules and Criteria for Inclusion, Change and/or Exclusion of Medicinal Products from the Positive Drug List (PDL) and the Terms and Conditions of work of the Pricing and Reimbursement Commission (Article 27 (3) of the Ordinance);
- Ordinance № H-18 of 13 December 2006 for the Registration and Reporting of Sales in Commercial Outlets with the Means of Fiscal Devices.



*Initiated proceedings and adopted decisions on competition advocacy for the period 2008-2012*

### 3. Raising the competition culture

In regards to competition advocacy in the broad sense, encompassing all the activities aimed at promoting the competition rules and explaining the importance and benefits of competition, in 2012 the CPC adopted Guidelines on Corporate Programs for Compliance with Competition Rules (Decision № 1553/20.12.2012) and

Guidelines for Implementing Competition Advocacy (Decision № 1554/20.12.2012), taking into account the best practice in this area of the EU Member States, the Organization for Economic Cooperation and Development (OECD) and the International Competition Network (ICN).

#### **4. Case Studies**

##### **a) Veterinary services**

By **Decision № 274/13.03.2012**, the CPC adopted an opinion on the compatibility with the competition rules of the legal framework governing the conditions for carrying out veterinary activities in the country.

The CPC considered that the requirement for being entered in a register as a condition for working as a veterinary doctor is justified. Further to this, the existence of the requirement for compulsory membership in a professional organization depends on whether the State has assigned regulatory and supervisory functions to the organization. Provided that the Bulgarian Veterinary Union (BVU) is assigned certain control functions, the membership is necessary and mandatory for the effective implementation of those functions. In this regard, the CPC supported proposed amendments to the Veterinary Act, providing for the creation of the Federation of Veterinarians in Bulgaria. This would allow veterinarians to select what professional organization to join.

The Commission proposed to eliminate the requirement for three years of professional experience for the position of Director of a veterinary hospital as it unduly limits the number of market participants.

Furthermore, the Commission proposed the existing restriction for the veterinarians to practice only in a certain area to be removed as it restricts competition by creating geographical barriers to the

free movement of goods or services, and also limits the ability of suppliers to compete by limiting the geographical area in which providers of veterinary services can operate.

Next, the CPC proposed the power of the BVU to set minimum prices for veterinary activities be revoked as the fixing of minimum prices is one of the most serious infringements of competition.

The CPC also proposed the abolishment of the power of the BVU to determine annually the number and names of the members of registered veterinarians with whom to enter into a contract for the state paid prevention program as it restricts the free business initiative and distorts competition putting existing members in this market in a privileged position compared to new entrants. Another power of the BVU also placed some veterinary practitioners in a privileged position compared to others – the power of the BVU to decide to which of its members to grant use of state-owned veterinary clinics free of charge.

The CPC proposed also the repeal of the prohibition for a trainee assistant (stagier) or deputy veterinarian to establish professional practice within a radius of 30 km from the office of the clinic where he worked, because this provision creates restrictions for performing veterinary activities in a particular region and prevents competition between market participants.

## **b) Medicinal products**

By **Decision № 1428/04.12.2012** the CPC adopted an opinion on the compliance with competition rules of Art. 5 (4) of the Ordinance for regulation and registration of the prices of the medical products, for the conditions, rules and criteria for inclusion, change and/or exclusion of drugs on the positive drug list of medicines and the terms and conditions of work of the Committee on prices and reimbursement (the Ordinance).

According to the provisions of Art.5 (4) of the Ordinance, in the case of medicines for home treatment of insured individuals, 100% reimbursed by the NHIF, it is set that the pharmacy does not make a surcharge for the retailer but receives only 2 BGN for the administration of each filled prescription form. This amount is not interconnected to the cost of medicines.

According to the CPC, taking into account the fact that in a prescription form there can be up to 3 medicines, incl. those with more than one package, and that almost all medical products with a level of 100% reimbursement are priced over 3 BGN, this means that in most cases, payment of 2 BGN that pharmacies receive is lower than the amount they would receive if they were able to make an overcharge.

Additional obstacle faced by pharmacies is the provision of Art.8 (6) of the Ordinance № 10 that the amount of 2 BGN for each reported prescription form, and the value of the product reimbursed to them by the NHIF are paid within 30 business days from the date of submission of the required documents. Based on the possible dates for reporting and its execution time, it was determined that the average length of time between the sale of the product and the reimbursement of the price of the drug to the pharmacy was 51 days.

According to the Commission the long duration of the period between dispensing of the product and payment of its value from the NHIS creates a necessity for pharmacies to block their own or loaned funds or to negotiate postponement of their payment with wholesalers, i.e. sale of 100% reimbursed medicines creates additional difficulties for retailers by reducing the amount of working capital required for the normal operation of the pharmacy.

Furthermore, the retailer of medicinal products is obligated to pay VAT on the sold product within an average of 29 days after its sale. This period is 22 days shorter than the calculated above average duration of 51 days between dispensing and recovery of the value

of the product to the pharmacy. According to the CPC the lack of correlation between the two regulatory regimes – the tax and the reimbursement regimes in this case, unduly hinders the business of pharmacies that participate in the reimbursement market, thereby reducing their natural market incentives to be present and to operate in this market. In turn, this status strongly encourages pharmacies to leave the market or restrict the supply of medicines, which is likely to result in significant harm to the interests of consumers of 100% reimbursed medicines that are actually the ultimate target of the reimbursement policy of the state.

The Commission considered that the reduced incentives to retailers to enter the market of medical products reimbursed 100% by the NHIF could lead to restriction of competition by reducing the number of market participants. On one hand, this could increase the market concentration, and on the other hand, limit the consumers' choice. The reduced number of retailers on the market of medical products paid 100% by the NHIF can reduce participants on other markets in which the pharmacies operate: the market of medical products, partially paid by NHIF as well as the market of medical products for free sale, as it is reasonable to expect that consumers who use 100% reimbursed medicines, purchase other drugs that they need from the same pharmacy.

### **c) Services of industrial property representatives**

By **Decision № 1180/10.10.2012**, the Commission adopted an opinion on the provisions of the Draft Law on the Chamber of Representatives of Industrial Property.

According to Art.4 of the Bill, an industrial property representative can be any person who meets the requirements specified in the provisions, one of which is work experience. Under §1 of the additional provisions of the draft, experience within the meaning of Art.4, p. 3 is “the time during which one has worked in the position of expert in the



expert departments, the Department of Disputes or the Legal Services Department in the Patent Office, as a trainee to an industrial property representative or as an industrial property specialist or as a lecturer on industrial property in a university”.

In the Commission’s view, the requirement of 3 years minimum experience in the field of industrial property, acquired in the last 10 years, is objectively likely to function as an additional and unjustified barrier to entering the market. Considering the above it should be noted that the presence of an officially recognized diploma within the meaning of Art. 4 (2) of the draft law and passed examination by the applicants to practice as an industrial property representative can be regarded as sufficient indicators for the presence of knowledge and expertise in the area needed to practice this regulated profession. The cumulative requirement for three years of service, combined with the definition of work experience (§1 of the additional provisions of the draft law), containing a list of the practices that are recognized as such, could limit or delay the market entry of some companies providing services in the field of industrial property, which even with the sufficient knowledge and expertise cannot meet the experience requirements.

Therefore, the CPC considered that the recognition of the minimum required experience for the period during which the applicant has been in the exhaustively listed in §1 of the additional provisions types of employment relationships or their equivalent, sets unreasonable barrier to certain potential candidates on the market and restricts competition in the provision of the above professional services.

#### **d) Cash registers**

By **Decision № 853/24.07.2012**, the Commission adopted an opinion on the compliance with competition rules of the provisions of Ordinance № H-18 of 13 December 2006, concerning the registra-

tion and reporting of sales by commercial outlets with fiscal devices whereby remote connection between fiscal devices and the National Revenue Administration (NRA) is done through a mobile operator transmission network by GSM/UMTS standard.

The Commission took the general view that the parallel use of various technologies to implement remote connection between the fiscal cash registers and the NRA would promote competition in the telecommunications market and increase the choice by taxable users as consumers of this service.

Along with the above, however, the CPC was of the opinion that if for technical reasons the parallel use of different technologies is not possible and requires specific fiscal policy objectives set out in Ordinance № H-18 to be carried out by only one technology, it is justified that the remote connection should be done through mobile operators' transmission network of GSM/UMTS standard, as at the moment it is the technology that, to the fullest extent, meets all the requirements.

As for the classification codes of telecommunication operators providing remote connection with NRA set out in Annex № 17 to the Ordinance, the CPC held the view that these codes represent technical information for employees of the NRA, and therefore it would be more appropriate that they be identified in the internal guidelines of the NRA.

## **VIII. Public procurement and concessions**

### **1. Initiated proceedings**

For the year 2012 a total of **1469 appeals** under Article 120 of the Public Procurement Act (PPA) were lodged before the CPC. The total number of the initiated proceedings under the PPA was **1155**.

## **2. Decisions**

In 2012 the CPC adopted a total of **822 decisions** on the merits of the case and issued **rulings on 147 requests** for interim measure and **201 rulings on requests** for authorization of preliminary execution.

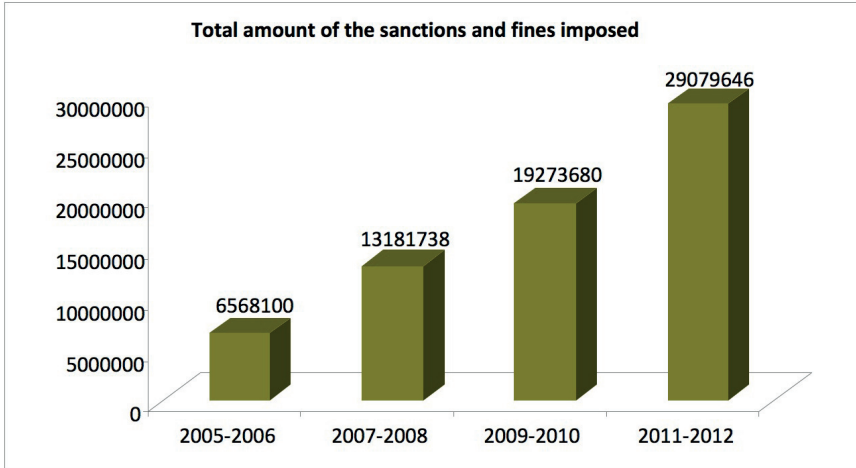
## **3. Imposed fines and pecuniary sanctions**

For the reporting period, in accordance with its powers under the PPA, the CPC imposed pecuniary sanctions to a **total of 126 884,60 BGN**.

## **IX. Imposed fines and pecuniary sanctions under LPC and PPA**

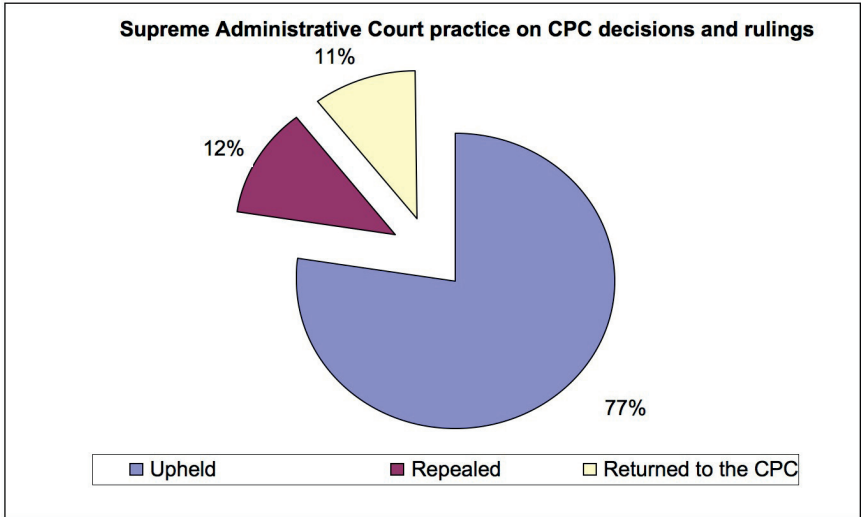
In 2012 with its decisions the CPC imposed pecuniary sanctions for infringements under the LPC and PPA as well as for failure to provide information or complete information, and fines to natural persons for their supportive role in committing an infringement under the LPC to the total amount of **22 764 958 BGN**.

In the recent years there was a clear trend of increasing the total amount of the sanctions imposed for committed infringements under the LPC. This increase is to a large extent due to the changes in the sanctioning policy of the CPC resulting from the provisions of the new LPC which entered into force on 2 December 2008. According to the new legislative framework the size of the sanctions is determined as a percentage of the turnover of the infringer for the previous financial year. Such an approach provides an opportunity for the sanctions imposed on undertakings to adequately punish the infringer, eliminate all advantages they have gained and have a deterrent effect.



## X. Judicial review over CPC decisions

In 2012 of all adopted decisions and issued rulings by the Commission under the LPC 67 were appealed before the Supreme Administrative Court (SAC). In 2012 the SAC issued **165 decisions** on appeals against CPC decisions. By all **76 final decisions and rulings** adopted by the Five-Member Chamber of the SAC in 2012 **49** decisions of the Commission were upheld; **10** decisions were partially repealed by the SAC; **9** decisions of the Commission were repealed; **5** decisions of the Commission were reverted to the CPC for re-examination and **3** decisions of the Commission were partially repealed and reverted to the CPC for re-examination.



## **XI. European affairs**

Bulgaria’s full-fledged membership in the EU requires the active participation of the CPC in the enforcement of the Community competition rules in cooperation with the European Commission and the national competition authorities of the other EU member states. This cooperation takes place mainly in the framework of the European Competition Network (ECN). The Network plays a key role in the allocation of work among the national competition authorities, the EC and the courts, and ensures the coherent application of the EU legislation. The ECN membership is related to constant exchange of information with counterparts, which facilitates the achievement and maintenance of efficient competition throughout the EU.

### **1. Participation in the ECN**

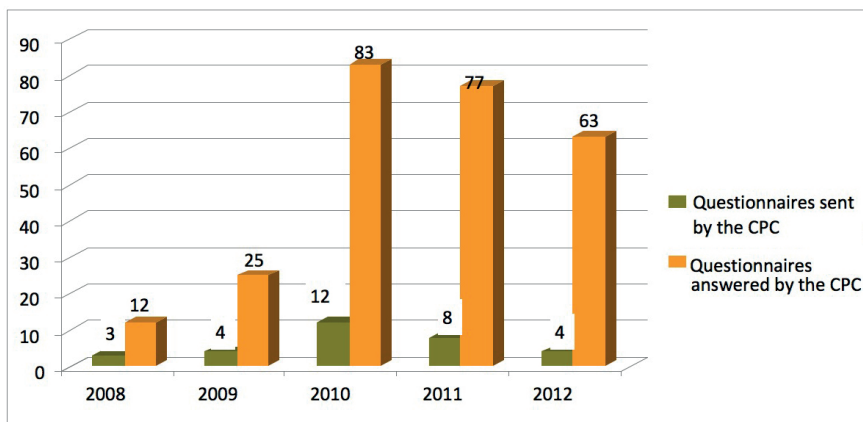
After Bulgaria joined the EU, the CPC, in its capacity as a national competition authority, became a member of the ECN. Representatives

of the Commission take active participation in ECN working groups as well as in hearings and meetings of the Advisory Committee on Restrictive Practices and Dominant Position and the Advisory Committee on Concentrations. The objective of the hearings is to provide undertakings with the opportunity to table arguments of relevance to their cases. The Advisory Committees also have advisory function in that they provide opinions and position documents on draft decisions and other acts sent by the European Commission.

In 2012 the CPC representatives took part in 23 meetings of ECN horizontal working groups and sector subgroups (by economic sectors) at which the delegates had the opportunity to exchange views and experience of mutual interest. Furthermore, CPC representatives took part in 2 plenary sessions at which they discussed issues related to the policy and practice of the enforcement of competition rules, provided opinions on issues raised by ECN working groups and adopted documents prepared by the respective working groups. The CPC also took part in 1 meeting of the Advisory Committee on Restrictive Practices and Dominant Position in the position of rapporteur.

## **2. Exchange of information within the ECN**

In 2012 the CPC responded to **63 questionnaires** received from the EC, working groups and sector subgroups of the ECN, and the other national competition authorities within the ECN. For the last year it also used this form of cooperation and sent **4 requests for information** to other national competition authorities within the ECN.



### 3. Participation in the European Competition Authorities Association (ECA)

In 2012 CPC representatives took part in the annual meeting of the other main cooperation forum on European matters – the ECA. At the meeting in June 2012 in Tallinn, Estonia, the novelties in competition law and policy of all competition authorities were presented.

## XII. International cooperation

### 1. Participation in the International Competition Network (ICN)

As a member of the International Competition Network (ICN), in 2012 the CPC continued its active participation in the working groups of the organization. The ICN deals with matters of antitrust law and competition policy. The aim is to deepen the interaction between competition authorities and to achieve the approximation of legislation and law enforcement.

In April 2012, the CPC participated at the ICN Annual Conference in Rio de Janeiro, Brazil. This annual conference is attended by representatives of the competition authorities around the world and

the latest and controversial topics in the field of competition law and policy are discussed.

Within the ICN, a seminar of the Competition Advocacy Working Group within the ICN was organized for a first time, taking place in October 2012 in Paris, France. The CPC took part in the seminar with a lecturer.

## **2. Cooperation with the Organization for Economic Cooperation and Development (OECD)**

In 2012, the CPC continued its active participation in the Competition Committee and its Working Parties within the Organization for Economic Cooperation and Development (OECD). The Commission received observer status in the OECD in 2009, which was renewed in 2011 for another two-year period.

The CPC representatives participated in all 3 annual sessions of the Competition Committee, as well as in the annual Global Forum on Competition. For these meetings, the Commission prepared and submitted four reports on issues related to competition law and policy. The Commission has been active through answering questionnaires and participation in the discussions in several ongoing long-term projects of the OECD aimed at improving the policies of the organization in the field of merger control, international cooperation on law enforcement in the field of competition and evaluating the effectiveness of competition policy targeted at achieving sustainable economic growth.

CPC experts were actively involved in the workshops of the Regional Centre for Competition of the OECD in Hungary, presenting the CPC's law enforcement practice. In 2012, meetings were held in Budapest and Kiev.

## **3. Partnership with the United Nations Conference on Trade and Development (UNCTAD)**



The CPC attended the 12th session of the Intergovernmental Group of Experts on Competition Law and Policy organized by UNCTAD in Genève, Switzerland.

During the forum, the CPC Chairman signed a Memorandum of Understanding with the Deputy Secretary-General of UNCTAD – Mr. Petko Draganov. The purpose of this document is to outline the main areas of cooperation between the two institutions within the inaugurated in 2012 Sofia Competition Forum.



*Signing of the MoU between CPC and UNCTAD*

#### **4. Establishment of the Sofia Competition Forum (SCF)**

In 2012, at the initiative of the CPC and the United Nations Conference on Trade and Development (UNCTAD) the Sofia Competition Forum (SCF) was founded.

The SCF is aimed to strengthen cooperation and relations in the Western Balkans region, thereby achieving coherent application of

competition rules. The two institutions have joined efforts to create an active informal platform for technical assistance, exchange of experience and advice in the field of competition law and policy in the Western Balkans. Target audience of the project are the competition authorities of the countries that are EU candidate member states and potential candidate member states for the EU. Depending on the identified problems, beneficiaries can be representatives of regulatory authorities, ministries, agencies and courts of the Western Balkans.

The inaugural conference of the Sofia Competition Forum was held on 12 November 2012 in Sofia and was attended by participants from the beneficiary authorities as well as representatives of the competition authorities of the EU, DG Competition, UNCTAD, OECD and many others. At the end of the conference, the competition authorities of the Balkan countries signed the Sofia Statement which expressed their willingness and determination to continue their cooperation within the SCF.



*Establishment of the SCF*



*Signing of the Sofia Statement*



*Mr. Hassan Qaqaya - Head, Competition and Consumer Policies Branch, UNCTAD*



*Mr. Nikolov and Mr. Qaqaya - cofounders of the SCF*

## **5. Bilateral cooperation of the CPC**

In its bilateral relations with other competition authorities, in 2012 representatives of the CPC participated in a number of international events that took place in Ukraine, the Russian Federation, Serbia, Romania, Azerbaijan, Moldova, Hungary, Poland, Italy and Turkey.

The CPC experts also took part in the meetings of the Oil Working Group – a joint initiative of the Austrian Competition Authority and the Federal Antimonopoly Service of Russia. In 2012, meetings of this working group were held in Moscow and Vienna.

The chairman of the CPC participated in a roundtable on competition and public procurement organized by the Croatian Competition Agency within an EU Twinning Project. At the meeting, Mr. Nikolov presented the guidelines adopted by the CPC aimed at coun-

tering bid rigging and the practices of the Commission in the area of this particularly difficult to detect form of cartel.

In 2012, the CPC experts were invited as lecturers in TAIEX projects in the Republic of Macedonia and Albania, which is evidence of the highly qualified and excellent expertise of the Commission's staff.

Like every year, in 2012 representatives of the Commission carried out a visit to the FAS Russia under the cooperation program signed between the two institutions. In 2012, the first meeting was held in the newly established Regional Centre for Competition in Kazan.

### **XIII. Public relations**

The CPC aims to provide the highest possible level of awareness of its daily activities and in relation to its long-term projects.

In 2012, for a large part of the adopted acts of the Commission (under the Law on Protection of Competition and the Public Procurement Act) press releases were prepared and sent to all national media and published on the official website of the Commission. From the 275 press releases approximately 85% were covered in national and regional daily and weekly newspapers and magazines, TV, radio and news agencies.

Throughout the year, CPC representatives participated in discussions, talk shows and interviews in the following electronic media - Bulgarian National Television, bTV, Europe TV, TV 7, "Bulgaria on Air" TV, Horizon Radio, Hristo Botev Radio, Darik Radio, Capital Weekly, Capital Daily, etc. CPC experts published legal analyses related to the application of the LPC, the PPA and the CA in specialized law or economic editions ("Trade Law").

The CPC press centre makes daily media-monitoring, which aims to provide information on key economic issues in the country,

to supplement the information collected and analyzed during ongoing proceedings as well as provide monitoring of the behaviour of market participants that could give rise to a suspicion of potential infringements of the LPC. On the direct telephone line, dozens of signals are received from citizens who are directed to act by the established procedures.

The Commission for Protection of Competition uses its official website as one of the main channels of information to the public and specialized audiences. The page has detailed information on the work of the Commission and is updated daily with news on the implementation of the LPC and PPA. All CPC decisions and rulings are published in the electronic public register immediately after their adoption. Timely notices are published on pending concentrations in connection with which any person can express their observations, reports for filed allegations of legal violations under the LPC and others.

The Commission's website offers easy access to the public record of the CPC without required registration, as well as to the module for electronic filing of documents and has an option for subscription. In separate sections information is provided about the ongoing projects of the institution, as well as guides for the implementation of antitrust regulations, regulations on the control of concentrations, as well as best practices in different areas of the Public Procurement Act.

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# SCF

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