Competition Law in Bulgaria: Overview

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A Q&A guide to competition law in Bulgaria.

The Q&A provides a high-level overview of the antitrust and competition law rules for restraints of trade and dominance, merger control and the legal approach to joint ventures.

The section on restraints of trade and dominance covers the regulatory framework applicable to horizontal and vertical restraints, monopolistic behaviour and abuses of dominance; the regulatory authorities; exemptions and exclusions; penalties; third-party claims; and appeals.

The section on merger control covers the relevant rules for acquisitions; notification requirements; the timelines and rules regarding publicity and confidentiality; the substantive test; remedies, penalties; third-party claims; and appeals.

Regulatory Framework

1. What is the competition law framework?

The national regulatory framework in relation to restrictive agreements and practices is established in the *Protection of Competition Act of 28 November 2008* (PCA) (last amended and supplemented on 26 February 2021). The substantive provisions under the PCA are analogous to the EU competition rules set out in the Treaty on the Functioning of the European Union (TFEU). Liability under criminal law is not envisaged under the PCA.

Monopolies and abuses of market power are regulated under the PCA. There are no criminal sanctions for competition violations. The PCA prohibits the abuse of a monopoly or dominant position when it may prevent, restrict or distort competition and impair consumers' interests. Holding a dominant position on the market in itself is not prohibited, as long as it is not used to impair competition.

The PCA, alongside the following laws contain general provisions on the competition rules:

- Commercial Act of 18 June 1991 (last amended 29 March 2022).
- Obligations and Contracts Act of 5 December 1950 (last amended 27 April 2021).

- *EU Merger Regulation (139/2004/EC)* which is directly applicable in Bulgaria.
- Decision No 55 of 20 January 2011 for group exemption from the prohibition under Article 15, paragraph 1 of the PCA of certain categories of agreements, decisions or concerted practices (Decision No 55).

There are sector-specific rules protecting the public interest in relation to the merging of undertakings carrying out activities that are subject to a licensing regime. For example, bank mergers will not be permitted if the Bulgarian National Bank considers that the interests of depositors and other creditors will not be secured or will be harmed. In addition, if a new entity is established as a result of a bank merger, the new entity requires a banking licence, which the Bulgarian National Bank has discretion over. There are similar requirements for mergers of insurance companies.

The *Energy and Water Regulatory Commission* must grant permission for the transformation of a licensee if both of the following applies:

- It is conducted through a:
  - merger;
  - consolidation;
  - division;
  - separation; or
  - separation of a sole-owner trade company through a change of legal form.
- The person who will carry out the licence activity after the transformation meets the requirements for issuance of # licence for the specific activity.

(Article 52, Energy Act.)

For example, permission of the Energy and Water Regulatory Commission permission was required for the reorganisation of the National Electricity Company EAD (Decision No R-205 of 18 December 2013).

Regulatory Authority

2. Which authority or authorities regulate competition?

The Bulgarian Commission for Protection of Competition (CPC) is the Bulgarian national competition authority responsible for the enforcement of the PCA and Article 101 and Article 102 of the TFEU.

The CPC exercises its powers without interference or instruction from bodies of state power or private legal entities. The CPC is responsible for:

- Investigating infringements of the PCA and Articles 101 and 102 of the TFEU.
- Imposing sanctions as provided for under the law.
- Imposing temporary measures as specified by the law.
- Carrying out sector analysis of the competition environment.
- Adopting structural regulations and other instruments as provided for by the law.

Any action carried out in violation of the rules of fair and honest competition is subject to investigation and sanction by the CPC.

The CPC carries out activities similar to that of a court, but it is not a judicial authority, or a court. Therefore, its decisions do not enjoy the enforcement powers of a court and are not enforceable under Article 268 of the Code of Civil Procedure.

The CPC will determine the level of fine and other sanctions to be imposed, within the limits provided by law.

The CPC also carries out concentration assessments and authorises concentrations where they do not result in a significant impediment to effective competition on the relevant market, in particular as a result of the creation or strengthening of a dominant position.

Restrictive Agreements and Practices

3. What is the basic legal framework governing restrictive agreements and practices?

Article 15 (1) of the PCA lays down a general prohibition for all types of agreements between undertakings, decisions of associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition within the relevant market.

Under Article 15(2) of the PCA, any such agreements or practices are void. The provisions of Articles 16 to 18 of the PCA allow for exemptions, provided certain criteria are satisfied (see *Question 7*).

Under Article 16(3) of the PCA, the types of agreement/practice which can be treated per se as automatically restrictive relate to:

- Price-fixing.
- The allocation of markets and/or customers.
- Limiting of production and sales.
- Bid rigging.

- The exchange of competitively sensitive information and other violations as established in the Court of Justice of the European Union (CJEU) case law.

In relation to distribution-related agreements, the CPC follows the European Commission's Notice providing Guidelines on vertical restraints (OJ 2000 C291/01). The CPC has stated so far that a vertical agreement would be likely to receive scrutiny if it contains:

- Non-pricing restraints (such as exclusive distribution, non-compete obligations, selective distribution, tying and so on).
- Price restraints (such as resale price maintenance, minimum advertised prices, most favoured nation (MFN) pricing and so on).

Monopolies and Abuses of Dominance

4. Are there specific rules that apply to monopolistic or dominant companies?

Monopolies and abuses of market power are regulated under the PCA, which prohibits the abuse of a monopoly or dominant position when it may prevent, restrict or distort competition and impair consumers' interests. These provisions mirror Article 102 of the TFEU (excluding the requirement for the effect on the trade between member states). Holding a dominant position on the market in itself is not prohibited, as long as it is not used to impair competition.

5. How is dominance/monopoly power determined?

Article 21 of the PCA prohibits undertakings with a monopoly or dominant position on the market, as well as two or more undertakings with a joint dominant position, from preventing, restricting or distorting competition on the relevant market and thereby affecting the interests of consumers. For this purpose, it must be established that the undertaking has a monopoly position within the meaning of Article 19 of the PCA or a dominant market position within the meaning of Article 20 of the PCA.

Two or more undertakings can have a joint dominant position without the need for each of them to be individually dominant if, in the light of the characteristics of the relevant market, it can be established that each of the undertakings considers it possible and economically rational to adopt common market behaviour.

6. Are there any recognised categories of behavior that may constitute abusive conduct?

Article 21 of the PCA sets out a list of conducts that may constitute abusive behaviour, including:

- Directly or indirectly fixing purchase or selling prices or any other trading conditions.
- Sharing markets or sources of supply.
- Limiting or controlling production, markets, technical development or investment.
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Since the list is non-exhaustive, any other form of conduct that is likely to prevent, restrict or distort competition and affect the interests of consumers will be found to constitute abuse of dominance such as tying, bundling, loyalty discounts, exclusive dealing, refusal to deal, predatory pricing and so on.

Exemptions and Exclusions

7. Are there any exemptions from the competition laws? If so, what are the criteria for individual exemption or block exemptions?

Article 17 of the PCA allows for individual exemptions, provided the parties can prove that the agreement, decision or concerted practice:

- Contributes to improving the production or distribution of goods or services, or to promoting technical or economic progress and allows consumers a fair share of the resulting benefit.
- Does not impose restrictions on the undertakings that are not strictly necessary to achieve these objectives and does not allow the undertakings to eliminate competition in respect of a substantial part of the goods in question.

The CPC has the power to issue block exemptions for certain agreements (Article 18, PCA). In this respect the CPC has adopted Decision No 55, which introduced the current sector-specific exemptions relating to:

- Vertical agreements within the meaning of Regulation (EU) 330/2010 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices.
- Vertical agreements within the meaning of:

  - Regulation (EC) 1400/2002 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices in the motor vehicle sector (Motor Vehicle Block Exemption Regulation); and
  - Regulation (EU) No 461/2010 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices in the motor vehicle sector.

- Agreements within the meaning of Regulation (EC) No 1218/2010 on the application of Article 101(3) of the TFEU to certain categories of specialisation agreements.
- Agreements within the meaning of Regulation (EU) 1217/2010 on the application of Article 101(3) of the TFEU to certain categories of research and development agreements.
- Agreements within the meaning of the Regulation (EC) No 267/2010 on the application of Article 101(3) of the TFEU to certain categories of agreements, decisions and concerted practices in the insurance sector.
- Agreements within the meaning of the Regulation (EC) 772/2004 on the application of Article 101(3) of the TFEU to categories of technology transfer agreements.

If the CPC finds that an agreement, decision or concerted practice does not comply with the requirements of Article 17 of the PCA, it can withdraw the block exemption for the particular case. In this situation, although the CPC cannot impose any sanctions, it will set a period within which the parties must correct the anti-competitive aspects of the agreement or terminate it.

8. Is it possible to obtain guidance from the authority as to whether an agreement or practice is likely to restrict competition?

There is no prior notification procedure for restrictive agreements and practices. The parties themselves must evaluate whether a restrictive agreement or practice raises concerns from a competition law perspective and whether it falls within the exemptions. In case of a legal dispute, the burden of proof will be on the undertaking or association of undertakings to demonstrate that the agreement satisfies the conditions for exemption.

9. Is any conduct excluded from the scope of the competition laws?

Exclusions

Article 16 of the PCA provides for a *de minimis* rule under which the prohibition in Article 15 does not apply to agreements of minor importance. These are where the aggregate market share of the undertakings that are party to the agreement, decision or concerted practice do not exceed either:

- 10% of the respective market, if the participants are competitors.
- 15% of each of their respective markets, if the participants are not competitors.

However, regardless of whether these conditions are met, the prohibition will apply if the agreements, decisions or concerted practices have as their objective or result:

- The direct or indirect fixing of prices.
- An allocation of markets and/or clients.
- Restrictions on production and sales.

The PCA does not apply to undertakings that perform public services on behalf of the state or a municipality, insofar as the application of the law could obstruct the performance of those services, and competition in the country is not significantly affected (Article 2(3), PCA).

In addition, the prohibition of abuse does not apply, and the undertaking will not be sanctioned, if there are objective external circumstances that prevented the undertaking from adhering to its commitments and led it to violate the prohibition. To show that its conduct was compelled by objective circumstances, and not purposely anti-competitive conduct, the undertaking must prove:

- The presence of an external circumstance exerting the same influence on all participants in the market.
- That the conduct of the undertaking produced a less negative effect on customers compared to the effect that would have been produced if the conduct had not been undertaken.

Statutes of Limitation

The CPC's power to impose sanctions is subject to a five-year limitation period for all competition law infringements. An exception is made for violations of provisions related to information inquiries or the conduct of inspections where the limitation period is three years from the date on which the infringement ended. The limitation period for imposing sanctions is interrupted by any action relating to the infringement taken by the CPC, the European Commission or the competition authority of any EU member state. It is suspended during the procedure and starts running again when the decision of the relevant authority enters into effect.

For private actions for competition damages, the limitation period is five years from the date the infringement of competition law has ceased and the claimant knows, or could reasonably be expected to know:

- Of the behaviour and that it constitutes an infringement of competition law.
- That the infringement of competition law caused harm to the claimant.
- The identity of the infringer.

The limitation period is suspended if the CPC takes investigatory or procedural action in respect of an infringement of competition law to which the action for damages relates. A new limitation period begins to run within one year after that infringement decision has become final or after the proceedings are otherwise terminated.

Penalties

10. What penalties or sanctions are available for breaching the competition laws?

Orders

The CPC can order interim measures for a period of up to three months (which can be extended) in urgent cases where there is a risk of serious and irreparable damage to competition, and the CPC finds that there is sufficient evidence of an infringement (Article 56(3), PCA). The order imposing interim measures can be issued at any time during the proceedings.

If the CPC finds that the investigated conduct is anti-competitive, it will order the parties to terminate the infringement within a given time limit.

Fines and Monetary Remedies

The CPC will impose penalties where it concludes that an agreement violates competition law. The sanction applicable to undertakings or associations of undertakings is up to 10% of their total turnover for the preceding financial year.

In addition, the CPC can impose administrative fines on the undertaking under investigation of 1% of its total turnover for the preceding financial year where there has been:

- A failure to co-operate with the CPC's investigation.
- Opposition in relation to any unannounced inspections.
- A failure to provide information to the CPC in a timely manner, or where information provided is incomplete, inaccurate, unreliable and misleading.
- A breaking of the integrity or destroying seals affixed during an on-site inspection.
- A failure to appear before the CPC when oral or written explanations have been requested.

The CPC will also set out a timeframe for rectifying the breached obligation. If the undertaking under investigation does not perform its obligations within the timeframe given by the CPC, periodic sanctions can be imposed of up to 1% of the undertaking's average daily turnover for the previous financial year for every day until complete performance of the obligation.

The CPC can also impose periodic fines of up to 5% the undertaking's average daily turnover for the previous financial year for each day an undertaking fails to implement the CPC's request for the undertaking to:

- End or terminate the violation.
- Implement the necessary interim measures.

- Seek approval for the violation or offer proposed commitments.

The sanctions and fines imposed on the basis of effective decisions of the CPC are collected according to the procedures set out in the Tax and Insurance Procedural Code.

Personal Liability

Individuals who have assisted in the violation of the PCA are subject to fines of between BGN500 and BGN50,000.

Generally, criminal liability does not arise for competition violations but can arise where an employee has intentionally or negligently provided false information or made fraudulent misrepresentations.

Immunity/Leniency

Under Article 101 of the PCA, a secret cartel member may be released from sanctions if it is the first to submit evidence on its own initiative on the basis of which the CPC can either:

- Request judicial permission for an inspection, where CPC has not already gathered sufficient evidence to do so.
- Prove the alleged infringement. In this case the undertaking will be released only if the CPC has:
    - not granted any other undertaking a conditional relief from sanctions; and
    - not gathered sufficient evidence to issue a decision establishing the violation.

Release from sanctions is not available for an undertaking that has forced other undertakings to enter into or continue being member of the cartel.

If release is not available, an undertaking may benefit from a sanction reduction if it voluntarily, before the completion of the proceedings before the CPC, either:

- Submits "evidence of significant importance" (the qualification of evidence as such is subject to the discretion of the CPC).
- Discloses to the CPC the existence of another cartel.

The available reductions are as follows:

- The first undertaking to provide evidence can be granted a reduction of between 30% to 50% of the sanction.
- The second undertaking to provide evidence can be granted a reduction of between 20% to 30% of the sanction.
- Any subsequent undertakings can be granted a reduction of between 10% to 20% of the sanction.

Leniency applicants must also terminate their infringing conduct, unless continuing their involvement would assist the CPC in its investigation. Leniency applicants must co-operate voluntarily, continuously and fully with the CPC until the end of the proceedings. In addition, applicants must not:

- Destroy, falsify or conceal any evidence of the alleged secret cartel.
- Disclose their intention to apply for a waiver or reduction of the applicable sanction.

Impact on Agreements

Prohibited agreements, decisions of associations of undertakings, as well as concerted practices within the meaning of Article 15(1) of the PCA are void (Article 15(2), PCA).

Third Party Damages Claims

11. Can third parties claim damages for losses suffered as a result of a prohibited restrictive agreement or abuse of dominance? Are collective/class actions possible?

Follow-on/Standalone Actions

Claimants can seek compensation for both actual loss suffered and loss of profit as a result of a violation of Articles 101 and 102 of the TFEU, as well as violations of provisions of national competition law, whether or not the CPC has issued a decision on the matter.

Participants in an infringement of the relevant provisions of competition law will be jointly liable for the damages caused to third parties. The law provides an exception for small or medium-sized companies, who are liable only for the damage done to their direct and indirect purchasers. The exception applies where the company has a market share of less than 5% and the application of the rules of joint liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value. Ringleaders, repeat offenders or firms that have coerced others into participating in the illegal conduct cannot benefit from this exception.

Procedures or Rules

Both follow-on and stand-alone damages actions can be brought before the Bulgarian civil courts under a procedure governed by the Civil Procedure Act and Chapter 15 of the PCA. Article 113(2) of the PCA provides for a rebuttable presumption that cartel infringements, unlike abuses of a dominant position, always cause harm. Judges may seek the assistance of the CPC for assessment of damages caused.

In establishing an infringement and the identity of the infringer, the court is bound by:

- CPC decisions that have not been appealed (or where any appeal has been withdrawn).
- Supreme Administrative Court decisions that have entered into force and that confirm a decision of the CPC.

For limitation periods, see *Question 9, Statutes of Limitation.*

Class/Collective Actions

Class actions are provided for in the Civil Procedure Code. In consumer cases, consumer associations have legal standing to bring class actions for damages and to defend collective consumer interests.

Appeals

12. Is there a right of appeal against any decision of the authority? Are rights of appeal available to third parties, or only to the parties to the agreement or practice?

Rights of Appeal and Procedure

Under Article 64(1) of the PCA, the decision of the CPC can be appealed before the Sofia district Administrative Court by a party to the proceedings within 14 days of receipt of notice. Cassation appeal before the Supreme Administrative Court is available within 14 days from the date of receipt of the first instance court decision.

Third Party Rights of Appeal

Any third party with a legitimate interest can appeal the decision of the CPC within 14 days of the publication of the decision in the public electronic registry of the CPC.

Merger Control

13. What merger control rules apply to mergers and acquisitions in your jurisdiction?

The following laws contain general provisions on M&A transactions:

- Commercial Act of 18 June 1991 (last amended 29 March 2022).

- Obligations and Contracts Act of 5 December 1950 (last amended 27 April 2021).
- PCA.
- Merger Regulation.

In addition, several secondary legislative acts apply to specific aspects of M&A, such as:

- The CPC.
- Ordinance No 1 of 14 February 2007 on the keeping, storage and access to the Registry agency and the Register of the non-profit legal entities (last amended 14 March 2020). This contains provisions on the entries on the commercial register for M&A deals.
- The methodology for determination of sanctions under the PCA (adopted on 18 June 2021).
- The methodology for conducting research and determining the market position of enterprises in the respective market (adopted with CPC Decision No 393 of 21 April 2009).
- The rules for imposing measures to maintain competition in concentrations between undertakings (adopted on 20 July 2021).
- The tariff for fees charged by the Commission for protection of competition under the PCA, the Public Procurement Act and the Concessions Act (last amended SG issue 70 from 24 August 2018).
- A new concentration notification form and instructions for its completion (adopted by CPC Decision No 1384 of 19 December 2019, amended and supplemented by Decision No 603 of 10 June 2021).
- Rules for access, use and storage of documents representing production, trade or other secret protected by law, adopted by CPC Decision No 161 of 19 February 2009.
- Other sector-specific legislation on insurance and investment companies, financial institutions, and so on.

14. What are the relevant jurisdictional triggering events?

Under Article 22 of the PCA, the triggering event for notification to the CPC is a concentration where there is a lasting change of control over one or more undertakings resulting from either:

- The consolidation or merger of two or more previously independent undertakings.
- One or more persons who already have control over at least one undertaking acquiring direct or indirect control of other one or more other undertakings.
- The creation of a joint venture performing on a lasting basis all the functions of an economically autonomous entity.

Under Article 22(3) of the PCA, "control" is defined to include the obtaining of rights, concluding of contracts or any other means which, either separately or in combination and with due regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking. In particular, this may involve:

- Obtaining ownership, or the right to use all or part of the assets, of an undertaking.
- Obtaining rights, including rights based on contracts, which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Article 23 of the PCA sets out exceptions to the notification requirement where:

- Credit institutions, other financial institutions or insurance companies whose activities include dealing in securities on their own account or for others hold securities in another undertaking on a temporary basis that they have acquired with a view to reselling them, provided that they:
    - do not exercise voting rights in respect of the securities with a view to determining the competitive behaviour of the undertaking; and
    - exercise such voting rights only with a view to preparing the disposal of the securities within one year of acquisition.
- Control of an undertaking is acquired by a person who executes functions relating to the undertaking's liquidation or insolvency according to the effective law of the member state.
- Actions of control are carried out by financial holding companies, provided that the voting rights are exercised only to maintain the full value of those investments and not to directly or indirectly determine the competitive conduct of those undertakings.

Under Article 78 of the PCA, the procedure for initiating a merger control review by the CPC can be triggered by either:

- The undertakings themselves, by filing a joint notice of the concentration, merger or joint venture or by the undertaking that is acquiring the control).
- The CPC, on its own initiative, when either:
    - the concentration was executed without the CPC's permission, or executed under conditions different to those which were previously permitted; or
    - permission had previously been cancelled by the CPC.

According to the Bulgarian law, there is no limitation period for the CPC to take action in relation to mergers.

For more information see, *Merger Control Quick Compare Chart: Bulgaria*.

Notification

15. What are the notification requirements for mergers? Are they mandatory or voluntary?

Notice of a concentration must be submitted to the CPC jointly by the undertakings that either:

- Participate in the consolidation or merger.
- Incorporate the joint venture.
- Acquire the control over another undertaking.

The CPC may begin assessment proceedings on its own initiative where:

- The concentration was executed without the CPC's permission, or executed under conditions different to those which were previously permitted.
- Permission had previously been cancelled by the CPC.

The decision of the CPC to initiate proceedings is not subject to appeal.

The CPC has authority to investigate and assess the proposed concentration. A concentration will only be permitted if there is no danger of it leading to the creation or strengthening of dominant position that would significantly impede the effective competition on the relevant market.

The CPC's assessment of a concentration is initiated under Article 38 of the PCA. Notice of the concentration must be submitted jointly by the concerned undertakings by filing an application in writing to the CPC.

The notice must be filed in a form approved by the CPC. The CPC published specific instructions for undertakings in relation to how to complete the notification in its Decision No 1384 of 19 December 2019, as amended and supplemented by Decision No 603 of 10 of June 2021 (Instructions). These are available on the CPC's website, see CPC: *Instructions*. The purpose of the new notification form and the Instructions is to standardise the process for undertakings when submitting their notifications assessment by the CPC. The Instructions outline:

- The documents that should be submitted, including the form that should be provided (for example, whether an original or a copy, and whether in paper or electronic form).
- How to provide a brief description of the notified concentration. For instance, by specifying:
    - the participants to the concentration;
    - legal form of the concentration (under Article 22 of the PCA);
    - the activity of the undertakings;
    - the markets in which the undertakings operate; and

    - the relevant markets over which the concentration is expected to have an impact (that is, which markets will be affected by the concentration).

- How to provide details of which entities are the participants of the concentration (including instructions and definitions of "direct participants" and any "indirect participants").
- How to specify the aggregate turnover of the participants in the concentration (when completing this section, undertakings can use the CPC's adopted Methodology on Investigation and Definition of the Market Position of Undertakings in the Relevant Market and the European Commission's Consolidated Jurisdictional Notice set out in the Merger Regulation).
- How to establish the relevant markets in which the participants in the concentration are active (including the details of the products/services offered by the participants in the concentration).
- The requirement to provide information on the relevant markets significantly affected by the concentration.
- When completing the notification form, a non-confidential version of the notification must also be submitted (Instructions).
- In addition to the information listed in the notification form, prior to initiating the procedure and during its review, the CPC may also request the notifying party to present additional information it considers necessary for the assessment of the concentration.

Notification requirements for mergers are mandatory only where a concentration meets the triggering thresholds.

Procedure and Timetable

16. What are the procedures and timetable?

The applicable procedures and timetable are set out in Chapter 10 of the PCA ("Procedure of issuance of authorisation for concentration of undertakings").

Assessment of the concentration under Article 78 of the PCA must be initiated within five business days from the receipt of notice. If there are admitted irregularities, there are no further proceedings and a ruling to remove irregularities within a seven-day period must be served on the applicant or on the notifying person. If the irregularities are not removed within the seven-day term, the CPC chairperson will refuse initiation of the assessment procedure.

Once the assessment is initiated, the CPC assesses the concentration through two main procedures:

- **Accelerated investigation.** The assessment in an accelerated investigation must be carried out within 25 business days, within which the CPC must adopt a decision. The period starts from the first business day following the initiation of proceedings. If it is necessary for the notifying undertakings to present additional information, the 25-day term will be suspended. In addition, following a request from the notifying undertakings, the CPC can prolong the envisaged period

for up to ten business days. Regardless as to whether the 25-business-day period has already been extended, the CPC can extend the period for an additional ten days from the date it receives complete on proposed changes to the terms of concentration.

After the accelerated investigation is finished, the working team prepares and submits a report to the member of the CPC assigned to monitor the procedure. The monitoring member of the CPC informs the chairperson of the completion of the accelerated investigation. The chairperson then holds a closed session of the CPC, at which the CPC will adopt a decision that either:

- establishes that the transaction is not a concentration or that the undertakings were otherwise not obliged to give prior notice to the CPC;
- authorises the concentration if it does not lead to a significant impediment to effective competition on the respective market, especially as a result of the establishment or strengthening of a dominant position;
- authorises the concentration in accordance with the amendments proposed by the participants to the concentration; or
- initiates a detailed investigation.

The CPC may revoke its decision (if it adopts any of the first three points above) when the information on which it is based is incomplete, inaccurate, unreliable or misleading). The decision for initiating a detailed investigation cannot be subject to appeal.

- **Detailed investigation.** A detailed investigation is carried out, if, as a result of the accelerated investigation, the CPC finds that concentration generates serious doubt that as a consequence of it, effective competition in the relevant market could be significantly impeded, especially as a result of the creation or strengthening of a dominant position.

  The CPC carries out the detailed investigation and must close the proceedings within 90 business days of the publication of the decision for initiation of the detailed investigation in the CPC's public electronic register. If measures are proposed to protect competition, the term can be prolonged by a further 15 business days. Such an extension begins the day following the day on which the CPC receives complete information in connection with the measures proposed. In cases representing factual and legal complexity, the 90-business-days term may be extended by no more than 25 working days.

  Once sufficient evidence has been collected, the working team prepares a report and presents it to the monitoring member of the CPC. The monitoring member of the CPC notifies the chairperson of the prepared report. The chairperson then holds a closed session of the CPC, at which the CPC adopts one of the following decisions:

  - authorise the concentration, as it does not lead to a significant impediment to effective competition on the respective market;
  - authorise the concentration that leads to a significant impediment to the effective competition on the relevant market, especially as a result of establishing or strengthening a dominant position, but has the effect of modernising the relevant economic activity, improving market structures, better satisfying the consumer interests and, in general, the positive effect outweighs the negative impact on competition in the relevant market; or
  - ruling accepting the preliminary conclusions on the negative effect of the concentration on competition.

Under Article 85(3) of the PCA, the notifying person or the stakeholders can present an opinion on the preliminary conclusions of the CPC within the period specified in the ruling, which may not be less than 14 days. The 14-day period begins on the date

of receiving a copy of the ruling or of receiving written notice of it. Along with the presentation of an opinion on the preliminary conclusions, parties and interested persons can present any supporting evidence which they have at their disposal.

The CPC has also adopted Rules for prior contacts regarding the control of concentrations between undertakings, which came into force from 1 January 2021 (adopted by CPC Decision No 1005 of 10 December 2020).

For an overview of the notification process, see *Bulgaria Merger Notifications Flowchart.*

Publicity and Confidentiality

17. How much information is made publicly available concerning merger inquiries? Is any information made automatically confidential and is confidentiality available on request?

Publicity

Announcements for forthcoming concentrations are subject to publication in the CPC's public electronic register. These announcements contain:

- The names of the parties.
- Brief information on their business activity.
- Whether the parties are expecting the relevant market to be impacted by the concentration.

All decisions of the CPC are also subject to publication in the register. Announcements of initiated proceedings for permission of concentrations, investigations, other messages and definitions in the cases provided by law, as well as notices and notifications to parties in proceedings, which cannot be found at the address that they provided, must also be published in the register.

The information is released upon initiation of the proceedings. The public register publishes the following information:

- Date, type, subject and current status of the proceedings.
- Legal basis of the proceedings.
- Details of the initiator(s) and defendant.
- Brief information on the merger.

Acquisition, usage and disclosure of manufacturing or trade secrets in contravention of fair trade practice is prohibited. In general, public information is limited in scope and does not contain sensitive information.

Automatic Confidentiality

Automatic confidentially applies to information that is defined and protected as secret by the law. Classified information under the Classified Information Act and personal data under the Personal Data Protection Act are used as examples of secret information under Article 8.3. of the Rules for Access, Use and Storage of Documents Constituting Industrial, Trade or Other Secrets Protected by Law (adopted by CPC Decision No 161 of 19 February 2009).

Confidentiality on Request

Persons who provide information in proceedings before the CPC must indicate the information that they claim contains industrial, trade or other secrets protected by law. Members of the CPC and employees of its administration, as well as external experts, who have in any way gained access to information constituting industrial, commercial or other legally protected secrets are not allowed to disseminate it in any way.

The notifying party may request specific information in the notification and/or in the attached documents and/or in certain parts thereof to be considered as confidential and the access to it to be restricted.

On the grounds of #rticle 55 of the PCA and Paragraphs 9, 10, 11, 12 and 13 of the Rules on the access, use and storage of documents constituting production, trade or other secret, protected by law, adopted by CPC Decision No 161 of 19 February 2009, as amendended and supplemented by CPC Decision No 46 of 13 March 2013 (*www.cpc.bg/General/Legislation.aspx*), identify which documents or parts thereof contain a production, trade or other secret, protected by law in line with PCA and should be classified as confidential. In this respect, the notifying party should state the confidential nature of information and of each document, which is part of the submitted materials, justifying its confidentiality and explain how the disclosure of the information concerned could seriously harm the undertaking(s) or their employee(s). All materials provided in the course of the proceedings, must be submitted also in a non-confidential version where all data, claimed by the person to be confidential is deleted. The deleted information should be replaced by (...)* and its contents should be described shortly. If the provided information in a given document is considered confidential, a short summary of its contents should be presented.

Substantive Test

18. What is the substantive test?

The CPC's substantive test is whether the concentration or transaction could lead to the establishment or strengthening of a dominant position that would significantly impede effective competition in the relevant market. The CPC takes into account, among other things, the:

- Undertakings' position on the relevant market before and after the concentration.
- Undertakings' economic and financial potential.
- Undertakings' access to the relevant markets.
- Legal, administrative and other barriers to entry to the relevant markets.

The CPC may grant authorisation to a concentration that could lead to the establishment or the strengthening of a dominant position if both:

- The concentration has the positive effects of modernising the relevant economic activity, improving market structures and better satisfying the interests of consumers.
- The positive effects outweigh the negative impact on competition in the relevant market.

Therefore, the CPC will also examine these aspects.

Merger Remedies

19. What are the types of remedies that can be required as conditions of merger clearance?

All factual and legal actions related to the concentration are prohibited until the CPC has adopted a decision. The CPC may impose measures directly related to the implementation of the concentration that are necessary to maintain effective competition and to limit the negative effects of the concentration on the relevant market.

The PCA explicitly provides for interim measures and the power of the CPC to impose remedies to address competition concerns when establishing violations and imposing sanctions.

Penalties

20. What are the penalties for failing to comply with the merger control rules?

Failure to Notify Correctly

The CPC can impose fines of up to 10% of the aggregate turnover an undertaking or association of undertakings for the previous financial year for execution of a concentration:

- Without prior notice.
- Under conditions or in a manner other than as approved by the CPC.
- That has been prohibited by the CPC.

In addition, the CPC can impose fines of up to 1% of the aggregate turnover for the previous financial year of an undertaking or an association of undertakings for:

- Failure to provide assistance.
- Opposition to an unannounced inspections of undertakings and associations of undertakings.
- Failure to provide timely information or for provision of incomplete, inaccurate, unreliable and misleading information within a period determined by the CPC.
- Failure to appear before the commission when oral or written explanations are requested.

Implementation Before Approval or After Prohibition (Gun-Jumping)

Undertakings that execute a concentration before the CPC has granted approval, or executed a concentration that has been prohibited by the CPC, are subject to a fine up to 10% of their aggregate turnover for the previous financial year.

Failure to Observe

Undertakings that have failed to observe decisions or rulings of the CPC, or that have executed a concentration under conditions and in a manner different than as approved by the CPC, are subject to a fine of up to 10% of their aggregate turnover in the previous financial year.

In addition, under Article 100 of the PCA, the CPC can impose periodic fines on undertakings or associations of undertakings of up to 5% of their average daily turnover for the previous financial year for every day of failure to observe a decision or ruling of the CPC until the unlawful act or omission ceases.

Appeals

21. Is there a right of appeal against the regulator's decision and what is the applicable procedure? Are rights of appeal available to third parties or only the parties to the decision?

Rights of Appeal

A decision or ruling made by the CPC can be appealed to the Sofia district Administrative Court, the only statutory exception being the CPC decision to begin an in-depth investigation, which cannot be appealed. In practice, no party would have a legal interest to appeal a decision that a planned transaction does not fall within the definition of a concentration, or a decision granting clearance of a concentration where no interested parties have been adjoined to the proceedings.

Procedure

Any appeal to the Sofia district Administrative Court by the parties to the proceedings should be filed within 14 days of notification (announcement) of the CPC's decision.

Appeals are heard by three judges. A decision made by the Sofia district Administrative Court at first instance can in turn be appealed to a five-member chamber of the Supreme administrative court, whose decisions are final.

Third Party Rights of Appeal

Any interested third party can appeal a decision made by the CPC to the Sofia district Administrative Court within 14 days of the decision's publication in the CPC's electronic register. When filing its appeal, the third party should specify whether and to what extent the relevant decision affects its rights.

22. Has the regulatory authority issued guidelines or policy on its approach in analysing mergers in a specific industry?

Merger control pits two competing interests against each other, the freedom to do business and ensuring effective competition. Under the merger control regime, the CPC can assess large mergers and, if they are likely to lead to a significant impediment to effective competition, prohibit them. Clearly, this is contrary to full freedom of contract, and the law provides that banning a deal should be the absolute last step if nothing else can save competition. It is the task of the authorities, in conjunction with the undertakings, to find a way of implementing the transaction that satisfies the wishes of the economic operators to the greatest extent possible and, at the same time, is as competition-friendly as possible.

Joint Ventures

23. How are joint ventures analysed under competition law?

The creation of a joint venture is considered to be a concentration under Article 22 of the PCA. Under the PCA, joint ventures are undertakings on which control is exercised and that perform all functions of an economically autonomous entity on a lasting basis.

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Areas of practice. Private international law; corporate law; dispute resolution and arbitration; intellectual property; employment law; healthcare and pharmaceutical law.

Recent transactions

- Took part in Kornikom's investment arbitration against the Republic of Serbia before the International Centre for Settlement of Investment Disputes in relation to a bilateral investment agreement between Serbia and Bulgaria and a claim for illegal termination of a privatisation contract.
- Represented Thales, Austria in a public procurement procedure for EUR32 million for the design and construction of signalling and telecommunications systems, and a European train control system.
- Advises the Ministry of Agriculture, Food and Forestry in determining the ownership of real estate properties worth EUR4 million and EUR5 million.
- Consulted the China Development Bank in relation to special pledges in Bulgaria and securing loans for EUR95 million and EUR48 million.
- Assisted Resalta Bulgaria was with the drafting a long-term contract ensuring reduced electricity consumption for the amount of EUR7.5 million.
- Advised BM Bank of Moscow was in relation to enforcement of special pledges and mortgages.
- Provided legal advice on the mergers and acquisitions of nine clinics in Bulgaria, Romania, Poland, and so on.

Professional associations/memberships. Sofia Bar Association; Board of Young ICCA (International Council for Commercial Arbitration); Institute of Private International Law, Bulgaria

Languages. Bulgarian, English, German

Publications

- *Co-author with Associate Professor Boryana Museva of a comment of the decision of the Court of Justice of the European Union in the case C-519/19 Ryanair DAC against DelayFix in the article "Airlines cannot impose on passengers exact location for trials".*
- *The Bulgarian Chapter of "International comparative legal guide to International Arbitration 2020#, 17th Edition: A practical cross-border insight into international arbitration work, August 2020.*
- *"Investment disputes in the energy sector: recent developments", published by Thomson Reuters, Practical Law, co-author with Alexander Katzarsky, editor Anne Scatena, March 2018.*

- *Contribution to the report of World Bank Group – "Doing Business 2018: Reforming to Create Jobs".*
- *"Establishment of transitional provisions in bilateral investment agreements between Member States and third countries and a new framework for the settlement of financial liability related to investor-state arbitration tribunals established under international agreements to which the European Union is a party", Chapter of the collective monograph: "Regulations on Private International Law of the European Union 2009-2016. Legal trends and developments"; authors: with Nikolay Natov, Boryana Museva, Vasil Pandov, Dafina Sarbinova, Teodora Tsenova, Mihail Stankov, Emil Tsanev, Tsvetelina Dimitrova, Sofia, Ciela, 2017, p.181-210.*
- *"Concept of an "investment" within the meaning of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States", 2017, published in "Papers of the National Conference of Doctoral Students in Law" (ISSN 2603-3011, p.288-295).*
- *Contribution to the "Bulgarian Legislative Assessment Report on Cross-Border Insolvency Proceedings: Detecting Best Practices" in the co-production "European and national perspectives on the application of the European insolvency regulation", Edited by Stefano Dominelli, Ilaria Queirolo, co-author with Nikolay Natov, Boryana Museva, Vasil Pandov, Dafina Sarbinova, Teodora Tsenova, Emil Tsanev, publishing house: Scritti di diritto private europeo ed internatzionale, 2017, ISBN 978-88-255-0906-9.*
- *"Employment Contract with Internship Conditions", article in Current Issues of Labor and Insurance Law. Challenges to Bulgarian Labor Law, Volume VII, Sofia, St. Kliment Ohridski University Publishing House, 2015, p.111-126; ISBN 978-954-07-3947-2.*

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