

Protection of Competition Act

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Text in Bulgarian: Закон за защита на конкуренцията

TITLE ONE GENERAL

Chapter One GENERAL PROVISIONS

Subject

Article 1. (1) The purpose of this Act shall be to ensure protection and conditions for expansion of competition and free enterprise in business activities.

(2) (Supplemented, SG No. 56/2015) For the purposes of paragraph (1), this Act shall provide protection against agreements, decisions and concerted practices, abuse of monopolistic and dominant positions on the market, and any other actions and operations which may result in prevention, restriction or distortion of competition in Bulgaria and/or affect trade between Member States of the European Union, as well as against unfair competition or against abuse of dominant position when contracting. This Act shall also provide for control over concentrations between undertakings.

(3) (Amended, SG No. 2/2018) This Act shall regulate the relationships in connection with the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union, including the cooperation with the European Commission and the national competition authorities of European Union Member States, with regard to the application of Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty on the Functioning of the European Union, hereinafter referred to as "Regulation (EC) No. 1/2003", and Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), hereinafter referred to as "Regulation (EC) No. 139/2004".

Scope of Application

Article 2. (1) This Act shall apply to:

1. undertakings and associations of undertakings which operate on the territory of the Republic of Bulgaria, or beyond it, should they explicitly or tacitly prevent, restrict, distort, or may prevent, restrict or distort competition in Bulgaria;
2. government authorities, including bodies of the executive and of local self-government, should they explicitly or tacitly prevent, restrict, distort, or may prevent, restrict or distort competition in Bulgaria;
3. undertakings to which the government or a municipality has assigned to provide services in the public interest, insofar as the implementation of the Act does not impede in actual or legal terms the performance of the tasks assigned to them and does not significantly affect competition in Bulgaria;

4. individuals who commit or contribute to violations of this Act.

(2) This Act shall not apply to actions resulting in actual or possible restriction or distortion of competition in another state, unless otherwise provided for by an international treaty which is in force and to which the Republic of Bulgaria is a party.

Chapter Two

COMMISSION FOR PROTECTION OF COMPETITION

Status

Article 3. (1) (Amended, SG No. 15/2013, effective 1.01.2014) The Commission for Protection of Competition, hereinafter referred to as the Commission, shall be an independent specialised Government body supported by the budget, and shall be a budget authoriser by delegation. The Commission shall be a legal entity having its seat in Sofia.

(2) The Commission shall be the national authority of the Republic of Bulgaria in charge of the application of Community Law in the field of competition.

Membership

Article 4. (1) (Amended, SG No. 54/2010, SG No. 73/2011, effective 20.09.2011, supplemented, SG No. 56/2015) The Commission shall comprise seven Members: a Chairperson, a Deputy Chairperson and five Members, who shall be elected and dismissed by the National Assembly for 5-year terms. The members of the Commission shall be elected after a conducted public procedure and cannot be re-elected immediately for yet another term of office.

(2) The Chairperson of the Commission shall be a qualified lawyer with at least 10 years' experience in the field of law, and must also meet the requirements of paragraph (3).

(3) Eligible for membership of the Commission shall be Bulgarian citizens holding a university degree in law or economics and with at least 5 years' experience in their field, with high professional accomplishments and moral integrity, who have never been convicted of premeditated indictable offences. They may not profit in any way whatsoever from undertakings or gainful employment, except in pursuing scientific, lecturing or arbitration activities.

(4) (Amended, SG No. 54/2010) The Chairperson, the Deputy Chairperson and the Members of the Commission shall take before the National Assembly the oath provided for in Article 76(2) of the Constitution of the Republic of Bulgaria.

(5) (Amended, SG No. 54/2010) The Chairperson of the Commission shall be paid a basic monthly salary amounting to 90 percent of the basic monthly salary of the Speaker of the National Assembly. The Deputy Chairperson shall be paid a basic monthly salary amounting to 95 percent, and the Members - 90 percent of the basic monthly salary of the Chairperson of the Commission.

Termination of Powers

Article 5. (1) (Amended, SG No. 54/2010) The powers of the Chairperson, the Deputy Chairperson and the Members of the Commission may be terminated before their term of office expires:

1. upon their own request;
2. when they are unable to perform their duties for more than 6 consecutive months;
3. in case that after their election, members should cease to satisfy the requirements referred to in Article 4 (3);
4. (new, SG No. 42/2009, amended, SG No. 97/2010, effective 10.12.2010, SG No. 7/2018) in case an act ascertaining

conflict of interest under the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act enters into force;

5. (renumbered from Item 4, SG No. 42/2009) in case of death.

(2) (Amended, SG No. 42/2009) In the cases referred to in paragraph (1), items 1, 2, 3 and 4 the powers shall be terminated by resolution of the National Assembly.

(3) In case any of the circumstances referred to in paragraph (1) apply, the Chairperson of the Commission shall notify the National Assembly thereof. When a circumstance referred to in paragraph (1) concerns the Chairperson, any Member of the Commission may give such notification.

(4) Within one month after receiving the notification referred to in paragraph (3), the National Assembly shall pass a resolution to terminate the powers ahead of term and shall elect a new Member of the Commission to occupy the position until the current term of office expires.

(5) (Amended, SG No. 54/2010) At least two months before the term of office of the Chairperson, the Deputy Chairperson and the Members of the Commission expires, the National Assembly shall elect a new Chairperson, Deputy Chairperson and Members.

(6) (Amended, SG No. 54/2010) In case that no election as per paragraph (5) has taken place by the time the term of office of the Chairperson, the Deputy Chairperson and the Members of the Commission expires, they shall continue exercising their powers until the new Members take up their duties.

Organisation and Operation

Article 6. (1) The Commission's organisation and operation shall be regulated by Rules, which shall be promulgated in the State Gazette.

(2) The Commission's operations shall be supported by an Administration.

Administration of the Commission

Article 7. (1) The composition, structure, rights and duties of the Commission's Administration shall be regulated by the Rules referred to in Article 6 (1).

(2) The legal relations with the Administration's officials shall originate and be regulated in accordance with the provisions of the Civil Servants Act and The Labour Code.

Competence

Article 8. The Commission for Protection of Competition is competent to:

1. (amended, SG No. 2/2018) detect and establish violations hereof, as well as violations of Articles 101 and 102 of the Treaty on the Functioning of the European Union;

2. impose the penalties provided for by law;

3. (amended, SG No. 2/2018) ascertain that no violation hereof has been committed or that there are no reasons to undertake actions with regard to a committed violation of Articles 101 and 102 of the Treaty on the Functioning of the European Union;

4. cooperate with the European Commission and the other national antitrust authorities of the European Union Member States, as per the procedure prescribed by Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004;

5. issue the permits provided for by law;

6. propose to competent government authorities and local self-government bodies to repeal or amend administrative acts issued by them which lead or might lead to prevention, restriction or distortion of competition;

7. impose temporary measures in cases provided for by law;
8. (amended, SG No. 2/2018) approve commitments to be made by undertakings or impose measures to restore competition with regard to undertakings whose actions are being investigated under Articles 15 and 21 hereof and/or under Articles 101 and 102 of the Treaty on the Functioning of the European Union, as well as measures aimed at preserving competition under in Article 86 hereof;
9. administer injunctions against violations, including by imposing appropriate behavioural and/or structural measures to restore competition;
10. make sectoral analyses of the competitive environment;
11. rule on other requests related hereto;
12. interact with government authorities, including with bodies of the executive and local self-government bodies, as well as with institutions and non-governmental organisations by means of participation in the drafting of statutory acts, issuing opinions on drafts, as well as on statutory and general administrative acts in force, information exchange and other forms of cooperation;
13. propose and organise initiatives related to promoting the rules of competition;
14. adopt Rules of Organisation, as well as other acts provided for by law;
15. keep an electronic register of acts issued.

Chairperson of the Commission

Article 9. (1) The Chairperson of the Commission shall:

1. represent the Commission or empower others to represent it;
2. organise and manage the Commission's activities;
3. convene and chair the Commission's sessions;
4. endorse the staff listing of the Commission's Administration;
5. execute, amend and terminate employment contracts with, and official appointments of, the Administration's officials;
6. organise and carry into effect the resolutions of the Commission which have taken effect;
7. endorse acts of the Commission other than the acts referred to in Article 8, item 14;
8. implement the budget;
9. inform the public on the Commission's activities through the mass media;
10. conduct the international cooperation of the Republic of Bulgaria with international organisations or with authorities of other states in the field of protection of competition.

(2) (Amended, SG No. 54/2010) In fulfilling his/her functions, the Chairperson shall be assisted by the Deputy Chairperson. When the Chairperson is absent from the country or is on his/her statutory leave, he/she shall delegate his/her powers to the Deputy Chairman by an order for each concrete case.

Conflict of Interests

Article 10. (1) No Member of the Commission or official from its Administration may participate in proceedings hereunder if he/she has an interest in their outcome or when there are valid doubts as to his/her impartiality.

(2) Such Member of the Commission or official shall be challenged either on his/her own initiative or upon the parties' request.

Professional Secret

Article 11. (1) The Members of the Commission and the Administration's officials shall not disseminate information which constitutes a professional secret.

(2) The Commission may disclose information which constitutes a professional secret only in fulfilling its obligations as a national antitrust authority of a European Union Member State, as per the procedure prescribed by Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004.

Pecuniary Liability

Article 12. The Members of the Commission and the officials of the Commission's Administration shall incur no pecuniary liability for damages they may cause in the course of fulfilling the functions and exercising the powers assigned to them by law, unless they have committed a premeditated indictable offence.

Budget of the Commission

Article 13. (1) (Amended, SG No. 15/2013, effective 1.01.2014) The Commission's budget shall be drafted, implemented and reported as per the procedure prescribed by Public Finance Act.

(2) The Commission's budget shall be funded by revenue from:

1. fees and charges under this Act, the Public Procurement Act and the Concessions Act;
2. pecuniary penalties and fines under resolutions of the Commission which have taken effect;
3. other sources from activities permitted by law.

(3) (Repealed, SG No. 38/2012, effective 1.07.2012).

(4) (Repealed, SG No. 38/2012, effective 1.07.2012).

Annual Report

Article 14. (1) The Commission shall prepare an annual report of its activities and shall submit such report to the National Assembly no later than 30 May of the following year.

(2) The Commission shall issue the annual report referred to in paragraph (1) and publish it on its website.

TITLE TWO

RESTRICTION OF COMPETITION

Chapter Three

PROHIBITED AGREEMENTS, RESOLUTIONS AND CONCERTED PRACTICES

General Prohibition

Article 15. (1) The following shall be prohibited: all kinds of agreements between undertakings, resolutions of associations of undertakings, as well as concerted practices of two or more undertakings which have as their object or effect the prevention, restriction or distortion of competition within the relevant market, such as:

1. direct or indirect fixing of prices or other trade terms;
2. allocation of markets or sources of supply;
3. restriction or control of production, trade, technical development or investment;
4. enforcement of dissimilar conditions to equivalent transactions with certain trading parties, thereby placing them at a competitive disadvantage;
5. making the conclusion of contracts conditional upon acceptance by the other parties of supplementary obligations or conclusion of additional contracts which, by their nature or according to normal commercial usage, have no connection with the subject of the main contract or the execution thereof.

(2) Any agreements and resolutions as referred to in paragraph (1) shall be null and void.

Agreements of Negligible Impact

Article 16. (1) The prohibition referred to in Article 15 (1) shall not apply to agreements, resolutions and concerted practices having a negligible impact on competition.

(2) An impact shall be considered negligible when the total share of the undertakings participating in the market of the goods or services which are the subject of the agreement, resolution or concerted practices, does not exceed:

1. ten percent of the relevant market, if the participants are mutually competitive;
2. fifteen percent of each of the relevant markets, if the participants are not mutually competitive.

(3) The provision of paragraph (1) shall not apply when the agreements, resolutions or concerted practices have as their object or effect:

1. direct or indirect fixing of prices;
2. allocation of markets and/or customers;
3. restriction of production and sales.

(4) For the purposes of the application of paragraphs (2) and (3), the Commission shall adopt rules, which shall be published in the register referred to in Article 68 (1).

Exemption from Prohibition

Article 17. (1) The following shall be exempted from the prohibition: agreements, resolutions and concerted practices within the meaning of Article 15 (1) which contribute to improving the production or distribution of goods or the provision of services or to promoting technical and/or economic progress by allowing consumers a fair share of the resulting benefit, and which:

1. do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, and
2. do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the relevant market.

(2) The burden of proof in respect of circumstances referred to in paragraph (1) shall lie with the undertakings or the associations of undertakings which invoke them.

Group Exemption from Prohibition

Article 18. (1) Certain categories of agreements, resolutions and concerted practices which meet the requirements referred to in Article 17 may be exempted from the prohibition referred to in Article 15 by resolution of the Commission, which shall be non-appealable. It shall be published in the register referred to in Article 68.

(2) When the Commission finds out as a result of an inquiry that a certain agreement, resolution or concerted practice falling within the scope of the resolution referred to in paragraph (1) does not meet the requirements referred to in Article 17, it shall rule that the group exemption resolution shall not apply in that specific case, without imposing the penalty provided for by law for a violation referred to in Article 15, and shall specify a deadline by which the parties shall either rectify their agreement to comply with Article 17 or shall terminate it.

(3) (Amended, SG No. 2/2018) When the Commission finds as a result of an inquiry that a certain agreement, resolution or concerted practice has an effect incompatible with Article 101(3) of the Treaty on the Functioning of the European Union on the territory of Bulgaria or any part thereof which has all characteristic features of a separate geographic market, it shall rule that the provisions of the relevant European Union Regulation on group exemption from the prohibition referred to in Article 101(1) of the Treaty on the Functioning of the European Union shall not apply in that specific case, without imposing the penalty provided for by law for a violation of Article 101(1) of the Treaty on the Functioning of the European Union, and shall specify a deadline by which the parties shall either rectify their agreement to comply with the requirements of Article 101(3) of the Treaty on the Functioning of the European Union or shall terminate it.

Chapter Four

ABUSE OF MONOPOLISTIC OR DOMINANT POSITION

Monopolistic Position

Article 19. (1) An undertaking's position shall be considered monopolistic if such undertaking has by law the exclusive right to pursue a certain type of business activity.

(2) A monopolistic position may only be granted by law in the cases referred to in Article 18 (4) of the Constitution of the Republic of Bulgaria.

(3) Any other granting of a monopolistic position in cases other than the ones referred to in paragraph (2) shall be null and void.

Dominant Position

Article 20. An undertaking's position shall be considered dominant if such undertaking, in view of its market share, financial resources, access to the market, technological level and business relations with other undertakings, may hinder competition within the relevant market due to being independent of its competitors, suppliers or customers.

Prohibition of Abuse of Monopolistic or Dominant Position

Article 21. Undertakings with a monopolistic or dominant position, or two or more undertakings which jointly have a dominant position, are prohibited from acting in a manner which might prevent, limit or distort competition and affect consumers' interests, and in particular:

1. directly or indirectly fixing purchase or sale prices or laying down any other unfair trading conditions;

2. limiting or controlling production, trade or technical development to consumers' disadvantage;
3. applying dissimilar conditions to equivalent transactions with certain trading parties, thereby placing them at a competitive disadvantage;
4. making the conclusion of contracts conditional upon acceptance by the other parties of supplementary obligations or conclusion of additional contracts which, by their nature or according to normal commercial usage, have no connection with the subject of the main contract or the execution thereof;
5. refusing without a valid reason to deliver any goods or provide any services to an existing or potential customer, with the purpose of hindering the business operation of such customer.

Chapter Five

CONTROL OVER CONCENTRATIONS BETWEEN UNDERTAKINGS

Definition

Article 22. (1) Concentration between undertakings exists when a permanent change of control occurs:

1. in case of merger or acquisition between two or more independent undertakings, or
2. when one or more persons already controlling at least one undertaking gain, by means of purchasing securities, stakes or property, by means of a contract or in any other manner, direct or indirect control over other undertakings or any parts thereof.

(2) Concentration within the meaning of paragraph (1) shall also mean the establishment of a joint undertaking which permanently performs all functions of an economically independent subject.

(3) Control manifests itself in the acquisition of rights, conclusion of contracts or other courses of action which, independently or jointly, and in view of the existing factual circumstances and applicable law, enable the exerting of decisive influence over a certain undertaking through the acquisition of:

1. the title to, or the right to use, the undertaking's property or any part thereof;
2. rights, including contractual ones, which provide the opportunity for decisive influence over the membership, the voting or the resolutions of the undertaking's bodies.

Exceptions

Article 23. The following cases shall not be considered as concentration:

1. credit and other financial institutions or insurance undertakings whose activities include transactions with securities on their own or on another's account, which temporarily hold securities of a certain undertaking for the purpose of reselling them, but only on condition that they:

- a) do not exercise the voting rights associated with such securities for the purpose of influencing the undertaking's competitive policy, or
- b) exercise their voting rights only for the purpose of preparing the transfer of the securities, provided that such transfer shall take place within one year after the securities were acquired;

2. when control is gained by a person that, according to applicable laws, performs certain functions related to the undertaking's liquidation or declaration of bankruptcy;

3. when the actions referred to in Article 22 (3) are performed by financial holdings, but only provided that the control gained by the holding is exercised solely for the purpose of maintaining the full value of the investment, and not for the purpose of directly or indirectly determining the competitive policy of the undertakings wherein the holding participates.

Prior Notification Obligation

Article 24. (1) The Commission shall always be notified of concentrations in advance if the sum of the total turnovers of all undertakings participating in the concentration on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 25 million, and

1. the turnover of each of at least two of the undertakings participating in the concentration on the territory of The Republic of Bulgaria for the previous financial year exceeds BGN 3 million, or
2. the turnover of the undertaking which is the object of acquisition on the territory of the Republic of Bulgaria for the previous financial year exceeds BGN 3 million.

(2) The undertakings are obliged to notify the Commission of the concentration after the contract is concluded, after the tender bid is publicly announced, or after control is gained, but before any real actions are undertaken to implement the transaction. In certain cases, upon the parties' request, the Commission may make an assessment of the concentrations before the contract is concluded or the tender bid is publicly announced, if the parties present sufficient evidence of their intentions to conclude a contract or have publicly announced their intention to make a tender bid.

Turnover Calculation

Article 25. (1) The total turnover shall include the net sales revenue of an undertaking participating in the concentration for the previous financial year, which equals proceeds from sales of products, goods and services generated by the undertaking's normal business operation, less trade-in allowances, discounts, rebates and value added tax. The turnover shall not include proceeds from sales of products, goods and services between undertakings belonging to the same economic group.

(2) When the concentration amounts to acquisition of a part or parts of one or more undertakings, regardless of whether such parts are autonomous legal entities, only the turnover related to the part (s) which is/are the object of the concentration shall be taken into account.

(3) Within the meaning of this article turnover shall be:

1. in the case of credit or other financial institutions - the sum total of the following revenue items after deduction of the value added tax, and, if necessary, other taxes related to such items:

- a) revenue from interest and other similar revenue;
- b) revenue from securities: revenue from shares and other variable income securities; revenue from participating interest; revenue from stakes in affiliates of the undertakings;
- c) commission receivables;
- d) net profit from financial operations;
- e) other operating revenue;

The turnover of a credit or financial institution in the Republic of Bulgaria shall include the proceeds from branches or affiliates thereof established in the Republic of Bulgaria;

2. in the case of insurance undertakings, the amount of gross premiums, which shall include the funds and receivables collected under insurance contracts issued by or on behalf of the insurance undertakings, including expenses on reinsurance premiums after deduction of taxes and contributions or fees accrued with regard to the amounts of the individual premiums or the total amount of premiums.

(4) The total turnover of the undertaking shall be calculated by adding up the relevant turnovers of:

1. the relevant participating undertaking;
2. the undertakings directly or indirectly controlled by the participating undertaking according to Article 22 (3);
3. the undertakings directly or indirectly controlling the participating undertaking according to Article 22 (3);

4. other undertakings controlled directly or indirectly according to Article 22 (3) by an undertaking exerting control over the relevant participating undertaking;

5. the undertakings which are jointly controlled by the undertakings referred to in items 1 - 4.

(5) When any of the undertakings referred to in paragraph (4), items 1 - 4 exerts joint control over another undertaking, when the total turnover is calculated:

1. the turnover resulting from the sale of products or the provision of services between the joint undertaking and the undertakings referred to in paragraph (4), items 1 - 4 shall be discounted;

2. the turnover resulting from the sale of products and the provision of services between joint undertakings and each third-party undertaking shall be taken into account; such turnover shall be allocated in equal parts among the undertakings exerting joint control.

Concentration Permission

Article 26. (1) The Commission shall permit a concentration provided that it does not lead to the establishment or reinforcement of a dominant position which would significantly impede effective competition in the relevant market.

(2) The Commission may permit a concentration which, even though establishing or reinforcing a dominant position, is aimed at modernising the relevant business activity, improving the market structures and promoting consumers' interests, and as a whole the positive effect outweighs the negative impact on competition in the relevant market.

Chapter Six

SECTORAL ANALYSES AND ADVOCACY OF COMPETITION

Sectoral Analyses of the Competitive Environment

Article 27. (1) The Commission shall perform a sectoral analysis in the cases where competition in a certain sector, field, subfield or region may be prevented, restricted or distorted.

(2) Within the analysis referred to in paragraph (1) the Commission may determine the relevant markets and examine their characteristics and structure, the barriers to entry, the market participants, the degree of market concentration, the sector's dynamics, the regulatory framework and the self-regulation mechanisms, and draw conclusions as to the competitive environment situation.

Advocacy of Competition

Article 28. To protect free enterprise in business and prevent restriction or distortion of competition, the Commission shall assess for compliance with the provisions hereof:

1. drafts of regulatory or regulatory administrative and general administrative acts;

2. regulatory or regulatory administrative and general administrative acts in force;

3. draft acts of associations of undertakings which regulate the activities of their Members.

Chapter Seven

PROHIBITION OF UNFAIR COMPETITION

General Prohibition

Article 29. Any act or omission in the conduct of a business operation which comes in conflict with diligent commercial practices and harms or may harm competitors' interests shall be prohibited.

Damaging Competitors' Reputation

Article 30. Damaging the reputation of, and confidence in, competitors and the goods or services offered by them by means of allegations or dissemination of false information or misrepresentation of facts shall be prohibited.

Deliberate Misleading

Article 31. The provision of deliberately misleading information about essential features of goods or services or about the manner of use of goods or provision of services by means of allegations of false information or distorting facts shall be prohibited.

Prohibition of Misleading and Comparative Advertising

Article 32. (1) Misleading advertising and disallowed comparative advertising shall be prohibited.

(2) The advertiser and the advertising agency which produced the advertisement shall be liable for misleading and disallowed comparative advertising.

Misleading Advertising

Article 33. (1) Any advertisement which in any way, including by the manner of its presentation, misleads or may mislead the persons it targets or reaches and thus possibly influence their economic behaviour, and thereby harms or may harm a competitor, shall be considered misleading.

(2) In classifying advertisements as misleading, the following shall also be taken into consideration:

1. the characteristics of the goods and services such as: availability, type, workmanship, composition, manner and date of production of the goods or performance of the services, fitness for use, manners of use, quantity, geographic and commercial origin, results to be expected from their use, results and essential characteristics established in the testing or sampling the goods or services;
2. the price or the pricing method and the terms and conditions of delivery of the goods and services;
3. data about the advertiser or the advertising agent, such as: name or company, address or seat, registered office, property, industrial and intellectual property rights, prizes or awards received.

Comparative Advertising

Article 34. (1) Any advertisement which directly or indirectly identifies a competitor or goods or services offered thereby shall be considered as comparative.

(2) Comparative advertising shall be allowed when:

1. it is not misleading within the meaning of Article 33 hereof and does not constitute unfair commercial practices within

the meaning of Articles 68e, 68f, 68g of the Consumer Protection Act;

2. it compares goods or services meeting the same needs or intended for the same use;
3. it compares objectively one or more characteristic features of the goods and services which are essential, comparable and representative of such goods and services, including their prices;
4. it does not lead the audience to confuse the advertiser with its competitors, or trademarks, brand names, other distinctive features, goods or services of the advertiser with those of its competitors;
5. it does not lead to discrediting or defaming competitors' trademarks, brand names, other characteristic features, goods, services, activities or positions;
6. it compares goods having the same designation of origin;
7. it does not take unfair advantage of the popularity of competitors' trademarks, trade names or other characteristic features or of the designation of origin of competing goods;
8. it does not present the goods or services as an imitation or copy of goods or services with a registered trademark or brand name.

(3) When it is determined whether a certain comparative advertisement is allowed, besides the circumstances referred to in paragraph (2), the provisions of Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs shall also be taken into consideration.

Imitation

Article 35. (1) The offering of goods or services whose appearance, packaging, labelling, name or other characteristics are or might be misleading as to the origin, producer, seller, manner and place of production, source and manner of acquisition or of use, quantity, quality, nature, usability features and other essential characteristics of the goods or services, shall be forbidden.

(2) Using a company logo, trade mark or geographic designation identical or similar to those of other entities in a manner which might harm competitors' interests shall be forbidden.

(3) Using a domain name or appearance of a website identical or similar to that of other entities in a manner which might be misleading and/or harm competitors' interests shall be forbidden.

Unfair Soliciting of Customers

Article 36. (1) Unfair competition aimed at soliciting customers and resulting in the termination or breach of previously concluded contracts or in the prevention of conclusion thereof with competitors shall be forbidden.

(2) The offering or providing, as an addition to the goods or services being sold, of other goods or services, whether gratuitously or for a fictitious price, shall be forbidden, except for: promotional items of a negligible value, provided that the advertising undertaking is clearly identified; items or services which, according to commercial practices, are an accessory to the goods being sold or the services being provided; goods or services as a discount when larger quantities are sold.

(3) Sales shall be forbidden when they are accompanied by an offer or promise of something the obtaining of which depends on: the solution of problems, rebuses or riddles or the answering of questions; the collection of a series of coupons etc.; the running of lottery games the prizes wherein are cash or objects whose value is significantly larger than the price of the goods or services being sold. On the authority of Article 8, item 14, the Commission shall adopt rules to determine the cases where the value of the prize being promised is significantly larger than the price of the goods or services being sold.

(4) Sales of considerable quantities of goods for a prolonged time in the internal market at prices lower than the cost of their production and marketing for the purpose of unfair soliciting of customers shall be forbidden.

Prohibition of Disclosure of Industrial and Trade Secrets

Article 37. (1) The knowledge, use, or disclosure of industrial or trade secrets that comes in conflict with diligent commercial practices shall be forbidden.

(2) The use or disclosure of industrial or trade secrets shall also be forbidden when such secrets have become known or communicated subject to the condition that they shall not be used or disclosed further.

Chapter Seven "a"

(New, SG No. 56/2015)

ABUSE OF DOMINANT POSITION WHEN CONTRACTING

Article 37a. (New, SG No. 56/2015) (1) Any action or omission to act of an undertaking of dominant position when contracting, which is in contradiction with the conscientious trade practices and impairs or may impair the interests of the weaker party when contracting or the interests of the consumers shall be prohibited. Non-conscientious shall be those actions or omissions to act which have no objective economic ground, such as unjustified refusal to deliver or purchase goods and services, imposing unjustifiably burdensome or discriminatory terms or unjustified termination of the trade relations.

(2) The presence of a dominant position when contracting shall be ascertained in view of the characteristics of the structure of the respective market and the specific legal relationship between the affected undertakings, while taking into account the degree of dependence between them, the nature of their activity and the difference in their scale, the probability of finding an alternative trade partner, including the existence of alternative sources of supply, distribution channels and/or clients.

TITLE THREE PROCEEDINGS

Chapter Eight GENERAL PROVISIONS

Grounds for Instituting Proceedings

Article 38. (1) The Commission may institute proceedings:

1. by resolution of the Commission;
2. upon a prosecutor's request;
3. upon request by entities whose interests are affected or threatened by a violation hereof;
4. upon request for lifting a penalty;
5. upon request by those whose interests are affected by acts issued contrary hereto;
6. based on a notification of permission for concentration of undertakings;

7. upon request by another national antitrust authority of a European Union Member State, or by the European Commission, as provided for in Article 20, paragraph (5) and Article 22 of Regulation (EC) No. 1/2003, as well as Article 12 and Article 13, paragraph (5) of Regulation (EC) No. 139/2004;

8. when a government authority, including bodies of the executive or local self-government bodies, request an opinion.

(2) If any irregularities are established, the request or notification shall be set aside and the petitioner or notifier shall be instructed to eliminate such irregularities within 7 days. Unless they are eliminated in due time, the Chairperson of the Commission shall by a written instruction refuse to institute proceedings.

(3) The request referred to in paragraph (1), item 4 shall be filed in a standard form approved by the resolution of the Commission referred to in Article 101 (5). The petitioner's identity shall be kept in confidence.

Institution of Proceedings

Article 39. (1) The Chairperson of the Commission shall by a written instruction institute proceedings and appoint a Commission Member to monitor the inquiry.

(2) The Chairperson shall issue an order designating a work team of employees of the Administration to conduct the inquiry.

Suspension of Proceedings

Article 40. (1) The Commission may pass a ruling suspending the proceedings when its final resolution depends on the resolution of an issue or dispute which falls within the competence of another authority.

(2) The Commission may also pass a ruling suspending the proceedings in the cases referred to in Article 13 of Regulation (EC) No. 1/2003 and Article 22, paragraph (2) of Regulation (EC) No. 139/2004.

(3) (Amended, SG No. 77/2018, effective 1.01.2019) The rulings referred to in paragraphs (1) and (2) may be appealed against as per the procedure prescribed by Article 64(3).

(4) The proceedings shall be resumed by a ruling either proprio motu or upon request by one of the parties after the obstacles to their furthering are eliminated.

Termination of Proceedings

Article 41. No proceedings shall be instituted, and already instituted proceedings shall be terminated by a resolution of the Commission:

1. when it is not within the Commission's competence to resolve the issue;

2. when the term of limitation determined by law has expired;

3. in the cases referred to in Article 11, paragraph (6) and Article 13 of Regulation (EC) No. 1/2003 and in Article 22, paragraph (3) of Regulation (EC) No. 139/2004;

4. when the notifier or the respondent are deregistered, cannot be found or do not exist;

5. when the notifier waives the request for concentration permission;

6. in the cases referred to in Article 75 (2).

Statutes of Limitation

Article 42. (1) The term of limitation for violations hereof shall be:

1. three years - for a violation of the provisions related to requests for information or to the conducting of inspections;
2. five years - for all other violations.

(2) The term of limitation shall commence as of the day when the violation is committed, and in case of a continued violation - as of the day when the violation is discontinued.

(3) When the Commission or another national antitrust authority of a European Union Member State or the European Commission institutes proceedings to ascertain a violation, the term of limitation referred to in paragraph (1) shall cease.

(4) During proceedings and until the Commission's resolution takes effect, the term of limitation shall be suspended.

(5) The Commission shall monitor terms of limitation proprio motu.

Participants in Proceedings

Article 43. (1) The parties to proceedings involving the Commission shall be the persons/entities upon whose request or notification the proceedings have been instituted, as well as the persons/entities alleged to have committed a violation hereof.

(2) The Commission may constitute interested parties upon their request, such request being justified:

1. at any point during proceedings under Chapters Nine and Twelve;
2. within 30 days of the day when the resolution to launch a thorough inquiry into a concentration under Chapter Ten is promulgated.

Inquiry

Article 44. (1) The inquiry shall be conducted by the work team designated as provided for in Article 39 (2) and shall be monitored by a Commission Member, who shall give instructions if necessary.

(2) The inquiry shall take place subject to the provisions of this Chapter and as per the procedure prescribed by Chapters Nine, Ten, Eleven and Twelve.

(3) The inquiry and the determination of the undertakings' position in the relevant market shall take place in accordance with a methodology adopted by the Commission.

Powers in the course of Conducting an Inquiry

Article 45. In the course of an inquiry, the monitoring Commission Member and the work team designated as provided for in Article 39 (2) shall be empowered to:

1. request information and material, written, digital and electronic evidence, regardless of the type of storage device whereon it is stored;
2. take down verbal or written explanations;
3. perform on-the-spot inspections;
4. assign the performance of expert examinations to external experts;
5. request information or assistance from other national antitrust authorities of European Union Member States, as well as from the European Commission.

Assistance Obligation

Article 46. All individuals and legal entities, including undertakings, associations of undertakings, government authorities and local self-government bodies, non-governmental organisations and the National Statistical Institute, are obliged to assist the Commission in the course of exercising its powers according to this Act, as well as according to Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004.

Information Gathering

Article 47. (1) The persons/entities from which assistance is requested on the authority of this Act and of Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004 may not invoke industrial, trade or other secrets protected by law.

(2) When the information contains data constituting classified information, the procedure prescribed by the Classified Information Protection Act shall apply.

(3) When the information contains personal data, the procedure prescribed by the Personal Data Protection Act shall apply.

(4) The persons/entities from which information has been requested shall provide such information within the time limit determined by the Commission.

(5) The information provided by the persons/entities in the course of the proceedings shall be complete, accurate, truthful and non-misleading.

(6) The Commission may consider as proven such facts in respect of which the relevant party or interested entity has hindered the information gathering process.

Using the Information

Article 48. Information collected in the course of the proceedings may only be used for the purposes hereof.

Taking Down of Verbal Explanations

Article 49. (1) Verbal explanations in the course of the inquiry shall be taken down and recorded by the work team.

(2) The record shall be signed by the person who gave the explanations, as well as by the work team working on the proceedings.

(3) When there are sufficient grounds to believe that the revealing of the identity of a person that has given explanations or provided details on a violation hereof would lead to serious adverse business or personal consequences for such person, the Commission shall take measures to keep such person's identity secret in accordance with a procedure provided for in internal rules adopted by the Commission.

On-the-Spot Inspections

Article 50. (1) The Commission may perform all kinds of on-the-spot inspections of undertakings and associations of undertakings after obtaining the permission referred to in Article 51.

(2) In the inspections referred to in paragraph (1), the officials appointed by an order of the Chairperson of the Commission shall be empowered to:

1. enter the premises, vehicles and other assets used by the undertakings or the associations of undertakings;
2. review all documents and records related to the activities of the undertakings or the associations of undertakings, regardless of the type of storage device whereon they are stored;

3. seize or obtain, whether in hard copy, or on a digital or electronic storage device, all kinds of copies or transcripts of documents and records, regardless of the type of storage device whereon they are stored, and in case that is impossible, seize the originals as well as other material evidence;
 4. seize or obtain electronic, digital and forensic evidence, as well as data about the traffic from all kinds of data storage devices, computer systems and other media, as well as to seize information transfer facilities;
 5. gain access to all kinds of information storage devices, including servers, which may be accessed through computer systems or other facilities located on the premises being inspected;
 6. seal for a certain time premises, vehicles and other facilities used by the undertakings or associations of undertakings being inspected, commercial papers or books of accounts or other information storage devices;
 7. take down verbal explanations from any representative or Member of the managing bodies or staff of the undertakings or the associations of undertakings about circumstances related to the subject and purpose of the inspection.
- (3) When on-the-spot inspections are performed, the police authorities shall assist the Commission's officials in accordance with their powers provided for in the Ministry of Interior Act. The procedure for organising and conducting joint actions shall be determined by an instruction issued by the Minister of Interior and the Chairperson of the Commission.
- (4) (Amended, SG No. 2/2018) The documents and evidence discovered may be seized if they contain data giving reason for suspicion of other violations of Articles 15, 21 or 24 hereof or of Articles 101 or 102 of the Treaty on the Functioning of the European Union. After the inspection finishes, they shall immediately be provided to the Commission in order for it to pass a resolution as referred to in Article 38(1), item 1.

Court Permission

Article 51. (1) On-the-spot inspections shall be performed with the permission of a judge from the Administrative Court in Sofia, upon the request of the Chairperson of the Commission.

(2) The permission request shall contain:

1. the purpose of the inspection and the name of the undertaking or association of undertakings for whose inspection the permission is requested;
2. the nature of the alleged violations, and in the case of proceedings under Chapter Nine - the essence of the concentration and the participants therein;
3. justification of the reasons for which such inspection is needed.

(3) In the cases referred to in Article 93, the resolution of the Commission to provide assistance and the request for assistance shall be enclosed with the request for permission.

(4) The Administrative Court in Sofia shall rule on the request on the day when it is filed. In the ruling the Court shall indicate the exact name of the undertaking or association of undertakings which is the proposed target of such inspection. The permission shall be valid for all premises, vehicles and other assets used by the undertaking or association of undertakings being inspected.

(5) When a number of undertakings or associations of undertakings are to be inspected concurrently, the Chairperson of the Commission may file one common request, while the Court shall pass separate rulings for each undertaking or association of undertakings.

(6) The rulings referred to in paragraphs (4) and (5) or the refusal to issue such rulings may be appealed against before a three-Member panel of the Supreme Administrative Court within three days. This three-day period commences as of the time when the Commission, or, accordingly, the undertaking or the association of undertakings is notified. The appeal shall not suspend enforcement.

Evidence Gathering Procedure in On-the-Spot Inspections

Article 52. (1) In on-the-spot inspections, evidence shall be gathered by the Commission's officials in the presence of representatives of the undertaking or association of undertakings, employees thereof or another person who is authorized to be present in the premises or vehicles or who was found therein during the inspection.

(2) Copies of the seized documents shall be authenticated by the Commission's officials and by the representatives of the undertakings or associations of undertakings or by an authorised official. If the representatives refuse to perform such authentication, it shall be performed by the Commission's officials only.

(3) The electronic copies of the seized documents, digital, electronic and forensic evidence shall be sealed in an appropriate way.

(4) The original documents, material evidence and information on electronic or digital storage devices shall be seized as found during the inspection, and shall be returned to the undertaking or association of undertakings after the Commission's resolution takes effect.

(5) Upon request by the undertakings or associations of undertakings wherefrom original documents have been seized, those may be returned even before the Commission's resolution takes effect. In any case, the Commission shall return the seized original documents when the exercising of rights arising from them is dependent on the physical possession of such documents.

(6) In the cases referred to in paragraph (5) the Commission shall use copies of the original documents authenticated by the representatives of the Commission and of the undertakings or associations of undertakings wherefrom the originals have been seized.

(7) Regarding the evidence seized as per paragraphs (2), (3) and (4), an on-the-spot record shall be drawn, which shall fully and accurately inventorize what has been seized. The record shall be signed as per the procedure prescribed by paragraph (2) and shall be provided to the persons wherefrom the evidence has been seized.

External Experts

Article 53. (1) When the Commission needs special expertise to clearly establish circumstances of interest to the proceedings, it may, upon request by the parties or on its own initiative, issue a ruling assigning the performance of an expert examination to an external expert. The ruling shall specify the expert, the objective of the expert examination, as well as the deadline by which the expert findings shall be presented.

(2) No person directly or indirectly interested in the outcome of the proceedings may be appointed expert.

(3) The expert shall present his/her findings to the Commission, and the latter shall accept them by a ruling. If the findings are challenged, the Commission may assign the expert examination to one or more other expert witnesses.

(4) An additional expert examination shall be assigned when the findings are not sufficiently comprehensive or clear, and a second expert examination shall be assigned when the findings are not substantiated and their veracity is in doubt.

(5) The Commission is not obliged to accept the expert witness's findings but shall consider them together with the rest of the evidence gathered in the course of the proceedings.

Cooperation with National Antitrust Authorities and the European

Commission in Conducting Inquiries

Article 54. (1) The Commission shall cooperate with the European Commission and the other national antitrust authorities of Member States by receiving and providing assistance and exchanging information as per the procedure prescribed by Regulation (EC) No. 1/2003 and Article 11, paragraph (6), Article 12 and Article 13, paragraph (5) of Regulation (EC) No. 139/2004.

(2) The authority using the shared information shall provide the same level of protection of such information as provided by the national antitrust authority of the Member State providing the information.

Access to Materials in Proceedings

Article 55. (1) The parties and the constituted interested parties in proceedings shall have access to all materials collected in the course of the inquiry, except for materials containing industrial, trade or other secrets protected by law. No access shall be given to internal documents of the Commission, including correspondence with the European Commission and other national antitrust authorities of the European Union Member States.

(2) (Amended, SG No. 77/2018, effective 1.01.2019) Each entity providing information to the Commission in the course of the proceedings shall identify the materials which, according to such entity, contain industrial, trade or other secrets protected by law and should be regarded by the Commission as confidential. In such cases the entity shall support such claims with evidence and shall present such materials in a version wherein the data which such entity regards as confidential has been deleted. If the Commission considers certain information not to be confidential, it shall pass a ruling to that effect and notify the entity thereof. The ruling may be appealed against as per the procedure prescribed by Article 64(3).

(3) Materials identified as containing industrial, trade or other secrets protected by law may be disclosed and used by the Commission in case that they are essential for proving the violation or for exercising the right of protection of the respondent.

(4) The procedure regulating the access to, use and storage of documents which constitute industrial, trade or other secrets protected by law shall be fixed in rules adopted by the Commission.

Temporary Measures

Article 56. (1) If an inquiry under Chapter Ten yields sufficient evidence of a violation, in urgent cases, when there is a risk of serious and irremediable damage to competition, the Commission may, upon its own initiative or upon request by those whose interests are affected or threatened by the violation, order that the undertaking or association of undertakings immediately discontinue the practices, or impose other measures as necessary in view of the purposes hereof. The Commission shall have no right to impose measures falling within the competence of other bodies and provided for by other Acts.

(2) (Amended, SG No. 77/2018, effective 1.01.2019) The temporary measures referred to in paragraph (1) may be ordered at any time in the course of the proceedings. The Commission shall impose the temporary measures by a justified ruling wherein it shall state the purpose of the measure and support with evidence its type and urgency. The ruling may be appealed against as per the procedure prescribed by Article 64(3). The appeal shall not suspend the enforcement of the temporary measure.

(3) Temporary measures shall be effective for up to three months after they are ordered. When necessary, such period may be extended as per the procedure prescribed by paragraph (2). Temporary measures may be effective until the Commission adopts a resolution in essence.

(4) The Commission may cancel the temporary measure even before its effective period expires if the illegal practice has been discontinued and damage to competition is prevented.

Closure of the Inquiry

Article 57. (1) After completion of the inquiry, the work team shall present to the monitoring Commission Member a report containing a factual and legal analysis of the case, as well as a proposed resolution of the proceedings.

(2) The monitoring Commission Member shall notify the Chairperson that the inquiry has been completed. The Chairperson shall issue a resolution scheduling a private session of the Commission, whereby the further course of the proceedings shall be decided.

Sessions of the Commission

Article 58. (1) The Commission's sessions shall be either public or private.

(2) Parties may use legal defence.

(3) No evidence may be presented in public sessions of the Commission, unless such evidence is newly discovered or newly emerged.

(4) If the Commission so decides, external experts who have presented expert findings, as well as other persons, government authorities and local self-government bodies may be summoned to public sessions.

Quorum

Article 59. (1) (Amended, SG No. 54/2010, SG No. 73/2011, effective 20.10.2011) Sessions shall be valid if attended by at least 4 Members of the Commission.

(2) (Amended, SG No. 54/2010, SG No. 73/2011, effective 20.10.2011) The Commission shall pass resolutions and rulings by an open vote, by a majority of 4 votes. In case the session is attended by less than 7 Members, the resolution, or, accordingly, the ruling, shall be passed only provided that at least 4 Members of the Commission have voted for it.

Resolutions of the Commission

Article 60. (1) In private sessions, the Commission shall adopt resolutions to:

1. launch a thorough inquiry;
2. establish the violation committed and identify the perpetrator;
3. impose pecuniary penalties, periodic penalties and/or fines;
4. exempt from penalties or reduce the amount of the penalty in accordance with Article 101;
5. (amended, SG No. 2/2018) establish that no violation hereof has been committed or that there are no grounds to take action with regard to a committed violation of Articles 101 and 102 of the Treaty on the Functioning of the European Union;
6. suspend proceedings;
7. resume proceedings when suspended as per Article 75 (2);
8. approve commitments undertaken and fix deadlines for their fulfilment;
9. exempt certain categories of agreements, resolutions and concerted practices from the prohibition contained in Article 15;
10. rule that the relevant group exemption resolution shall not apply in that specific case, and fix a deadline by which the parties shall either bring their agreement in compliance with Article 17 or terminate it;
11. (amended, SG No. 2/2018) withdraw the right to use the relevant European Union Regulation for group exemption from the prohibition referred to in Article 101(1) of the Treaty on the Functioning of the European Union, in case the conditions referred to in Article 29 of Regulation (EC) No. 1/2003 are present, and fix a deadline by which the parties shall either bring their agreement in compliance with the requirements of Article 101(3) of the Treaty on the Functioning of the European Union or terminate it;
12. rule that the violation shall be discontinued, including by imposing appropriate behavioural and/or structural measures to restore competition;
13. rule that a certain transaction is not a concentration or does not fall within the scope of the prior notification obligation;
14. permit the concentration;
15. permit concentration in case of changes proposed by the parties;

16. permit concentration subject to a clause of conditionality;
17. prohibit the concentration;
18. cancel the resolution whereby concentration has been permitted;
19. propose to the competent authorities to amend or repeal the relevant administrative act;
20. adopt an opinion on a draft for a regulatory or administrative act or on one already in force;
21. endorse a sectoral analysis;
22. order that assistance shall be denied;
23. order that the proceedings related to providing assistance shall be terminated;
24. resolve other issues within its competence.

(2) The Commission shall prepare and announce its resolution together with the motives therefor within 14 days after the private session referred to in paragraph (1). The resolution shall be supported with arguments and signed by the Commission Members who voted in the private session.

Reservation

Article 61. (1) Any Commission Member dissenting from the resolution shall sign it with reservation.

(2) The reservation shall be supported with arguments and enclosed with the resolution.

Contents of the Resolution

Article 62. (1) The Commission's resolutions shall be in writing and shall contain:

1. the name of the authority by which it was issued;
2. the factual and legal grounds for passing the resolution;
3. (amended, SG No. 2/2018) an operative part ascertaining the presence or absence of a violation hereof; the presence of a violation or the lack of reasons to undertake actions with regard to a committed violation of Articles 101 and 102 of the Treaty on the Functioning of the European Union; the parties' rights and obligations shall be specified, as well as the type and amount of the pecuniary penalty or fine, if one is imposed;
4. information regarding the appellate authority and the time limit for appeal.

(2) The resolution shall also specify a time limit for voluntary compliance with the pecuniary penalty or fine imposed.

Rulings by the Commission

Article 63. The Commission shall pass a ruling when it is resolving issues which do not settle a dispute in essence, insofar as is not otherwise provided herein.

Appealing against Resolutions and Rulings

Article 64. (1) (Amended and supplemented, SG No. 77/2018, effective 1.01.2019) The Commission's resolutions, unless otherwise provided for by law, may be appealed against in terms of their legitimacy before the Administrative Court - Sofia Region by the parties and by any third party that is legally interested. Resolutions may be appealed against within 14 days as of the date when they are communicated as per the procedure prescribed by the Code of Administrative

Procedure, and in the case of third parties – as of the time when they are published in the Commission’s electronic register. The judgements of the Court shall not be subject to cassation appellate before the Supreme Administrative Court.

(2) (New, SG No. 77/2018, effective 1.01.2019) The Stamp duties of cassation appeal before the Supreme Administrative Court shall be determined by the amount of fees, payable for the proceedings before the Commission for Protection of Competition. The stamp duties for motions for reversal of effective judicial acts, are determined under the procedure of the Code of Administrative Procedure.

(3) (Renumbered from Paragraph (2), amended, SG No. 77/2018, effective 1.01.2019) The Rulings of the Commission for which an appeals procedure is provided may be appealed against in terms of their legitimacy by the parties of the proceedings according to the appeal procedure for rulings of the Commission. Rulings may be appealed against before the Administrative Court - Sofia Region within seven days of the date when they are communicated as per the procedure prescribed by the Code of Administrative Procedure.

Entry into Force of Resolutions and Rulings

Article 65. The Commission's resolutions and rulings shall take effect when:

1. they are non-appealable;
2. they have not been appealed against within the time limit referred to in Article 64 or the appeal has been withdrawn;
3. the appeal filed has been dismissed.

Enforcement of the Resolutions

Article 66. (1) The Commission's resolutions banning concentration between undertakings or ordering that a violation shall be rectified, including by means of imposing behavioural and/or structural measures to restore competition, shall be immediately enforceable.

(2) Based on a request by the parties to the proceedings the Commission may order immediate enforcement of the acts referred to in Articles 82, 85 and 88.

Control over the Enforcement of Resolutions

Article 67. The parties shall in due course inform the Commission on the enforcement of a resolution, in case such resolution imposes certain conditions or obligations.

Electronic Register

Article 68. (1) The Commission shall keep an electronic register of the acts it issues.

(2) The Commission's resolutions to close proceedings and the resolutions to launch a thorough inquiry into a concentration as per Article 82 (3), item 4 shall be published in the register.

(3) Notifications of instituted proceedings for permitting concentrations under Chapter Five and for inquiries under Chapters Nine and Twelve shall also be published in the register.

(4) The resolutions referred to in paragraph (2) shall be published within 14 days after they are passed, and the notifications referred to in paragraph (3) within 7 days after the proceedings are instituted or after the on-the-spot inspection is performed as referred to in Article 50.

Fees and Costs

Article 69. (1) (Amended, SG No. 77/2018, effective 1.01.2019) Stamp duties and costs shall be payable for the proceedings under the Act. Stamp duties before the Commission for Protection of Competition for the proceedings under the Act shall be endorsed by the Council of Ministers.

(2) (Amended, SG No. 77/2018, effective 1.01.2019) The Government Authorities and the Local Government Authorities shall be pay for fees and costs of the proceeding.

(3) The costs for remuneration of external experts and specialists shall be paid in advance by the party which requested their services and the amount of such costs shall be determined by the Commission.

(4) When the Commission passes a resolution to establish the commission of a violation hereof, it shall charge the costs of the proceedings to the perpetrator if they have been requested by the other party. When the Commission has not found out a violation, the costs shall be borne by the parties as incurred.

Chapter Nine

PROCEEDINGS FOR ESTABLISHING VIOLATIONS AND IMPOSING PENALTIES UNDER CHAPTERS THREE AND FOUR HEREOF AND UNDER ARTICLES 101 AND 102 OF THE TREATY ON THE FUNCTIONIN OF THE EUROPEAN UNION (Title amended, SG No. 2/2018)

Institution of Proceedings

Article 70. (1) (Amended, SG No. 2/2018) Proceedings for establishing violations and imposing penalties under Chapters Three and Four hereof and under Articles 101 and 102 of the Treaty on the Functioning of the European Union shall be instituted on the grounds of Article 38(1), items 1 to 4.

(2) The proceedings referred to in paragraph (1) shall be instituted within 7 days after the request is filed, or, accordingly, after the Commission passes its resolution.

(3) The resolution to institute proceedings on the initiative of the Commission on the authority of Article 38 (1), item 1 may not be appealed against.

Contents of the Request

Article 71. (1) The request referred to in Article 38 (1), item 3 must be in Bulgarian and shall contain:

1. the name/business name and registration details/personal identification number of the petitioner and of the person/entity being complained against;
2. the address/seat and registered office of the petitioner and of the person/entity being complained against;
3. a description of the circumstances in support of the request and the alleged violation;
4. what the request is about;
5. the evidence supporting the request;
6. the signature of the person filing the request, or a representative thereof;
7. a document certifying that the stamp duty has been paid.

(2) The request referred to in paragraph (1) shall be filed in a standard form approved by the Commission.

Inquiry

Article 72. The Commission shall perform an inquiry under the proceedings by exercising its powers referred to in Article 45.

Report by the Work Team

Article 73. (1) After sufficient evidence is gathered to inform the further course of the proceedings, the work team designated as provided for in Article 39 (2) shall prepare a report and present it to the monitoring Commission Member.

(2) The monitoring Commission Member shall notify the Chairperson of the report prepared. The Chairperson shall by a resolution schedule a private session of the Commission within 14 days after the inquiry is completed, whereby the further course of the proceedings shall be decided.

Private Session

Article 74. (1) After the report referred to in Article 73 is reviewed, the Commission shall, in a private session, pass:

1. (amended, SG No. 2/2018) a resolution ascertaining that no violation has been committed or that there are no reasons to undertake actions with regard to a committed violation of Articles 101 and 102 of the Treaty on the Functioning of the European Union;

2. a ruling sending back the case file for additional inquiry, with binding instructions to the work team designated as provided for in Article 39 (2);

3. a ruling stating a violation of the Act committed by the respondent.

(2) The ruling referred to in paragraph (1), item 3 shall set a time limit of at least 30 days within which the petitioner and the respondent shall have the right to file their written objections regarding the allegations and the constituted interested parties shall have the right to present their position. The ruling shall state that the parties and the interested parties have the right to access the materials pertinent to the case file subject to the procedure prescribed by Article 55, as well as the right to be heard by the Commission as per the procedure prescribed by Article 76 in a public session.

(3) In the case referred to in paragraph (1), item 3, the petitioner and the respondent shall be given a version not containing industrial, trade or other secrets protected by law of the parties affected by the ruling, while the constituted interested parties shall be notified of the ruling passed as per paragraph (1), item 3. The period for raising objections and presenting positions as per paragraph (2) shall commence as of the day when the ruling or the written notification thereof is received.

(4) When raising their objections, the parties are obliged to also present all evidence which they have at their disposal and which supports their position.

(5) In the cases referred to in paragraph (1), item 1, the parties shall be notified of the Commission's resolution, as well as of their access to the materials concerning the file subject to the procedure prescribed by Article 55.

Commitments by the Respondent

Article 75. (1) The respondent under Article 74 (2) may offer to make commitments leading to termination of the actions with respect to which the proceedings were instituted.

(2) The Commission may by a resolution approve such commitments. In this case the Commission shall suspend the proceedings without establishing the existence of a violation, and shall rule that no grounds for furthering the proceedings exist any longer. In its resolution the Commission may also determine a period of validity of the commitments undertaken.

(3) The Commission may not pass a resolution allowing for such commitments to be undertaken in case of a serious violation of the law.

(4) The Commission may, upon request or upon its own initiative, resume the proceedings suspended as per paragraph (2), when:

1. a change occurs in any of the circumstances in support of the resolution referred to in paragraph (2);
2. the undertakings fail to observe their commitments;
3. it is established that the resolution is based on incomplete, inaccurate, false or misleading information presented.

Hearing of Parties and Interested Parties in Public Sessions of the Commission

Article 76. (1) Parties and interested parties shall have the right to be heard by the Commission in a public session before a resolution is passed in essence.

(2) The Commission may also hear other persons/entities as it deems necessary.

(3) After the time limit for raising objections and presenting positions on the ruling referred to in Article 74 (1), item 3 expires, the Chairperson shall by a resolution schedule a public session where the Commission shall hear the parties and the interested parties. The public session shall be scheduled for a date at least 14 days after the expiry of the time limit for raising objections or presenting positions on the alleged violations. The parties and the interested parties shall be notified of the scheduled public session where they are to be heard as per the procedure prescribed by the Administrative Procedure Code.

(4) The parties and the interested parties, as well as the persons referred to in paragraph (2), shall be heard by the Commission in camera.

(5) The Commission shall start its session by settling the preliminary points regarding the validity of the procedure.

(6) The parties and the interested parties may be asked questions in accordance with a procedure determined by the Chairperson.

(7) When the Chairperson of the Commission finds that the circumstances regarding the case have been established, he/she shall give the parties the opportunity to present their positions.

(8) After the dispute is settled in factual and in legal terms, the Chairperson of the Commission shall close the session.

Closed Session

Article 77. (1) After the parties are heard, the Chairperson of the Commission shall schedule a closed session. The Commission shall thereby pass a resolution whereby it shall:

1. establish the violation committed and identify the perpetrator;
2. impose pecuniary penalties, periodic penalties and/or fines;
3. (amended, SG No. 2/2018) ascertain that no violation hereof has been committed or that there are no reasons to undertake actions with regard to a committed violation of Articles 101 and 102 of the Treaty on the Functioning of the European Union;
4. administer an injunction against the violations, including by imposing appropriate behavioural and/or structural measures to restore competition;
5. rule that the group exemption resolution shall not apply in that specific case and set a deadline by which it shall either be brought in compliance with Article 17 or be terminated;
6. (amended, SG No. 2/2018) rule that the provisions of the relevant European Union Regulation on group exemption from the prohibition referred to in Article 101(1) of the Treaty on the Functioning of the European Union shall not apply in that specific case, and set a deadline by which it shall either be brought in compliance with Article 101(3) of the Treaty on the Functioning of the European Union or be terminated.

(2) The Commission may by a ruling:

1. accept new allegations of a committed violation of the Act following the procedure prescribed by Article 74 (1), item 3;
2. send back the case file for additional inquiry with binding instructions.

(3) By its resolution referred to in paragraph (1), item 4, the Commission shall impose structural measures only when there is no behavioural measure with an equal effect, or when such a behavioural measure with an equal effect would be a greater burden for the relevant undertaking than the structural measure.

(4) The parties shall be notified of the resolution passed as per paragraph (1) following the procedure prescribed by the Administrative Procedure Code.

Chapter Ten

PROCEEDINGS FOR ISSUING PERMISSIONS FOR CONCENTRATION BETWEEN UNDERTAKINGS

Institution of Proceedings

Article 78. (1) Proceedings to assess concentration shall be instituted on the authority of Article 38 (1), item 6. The concentration notification shall be filed jointly by the undertakings which are involved in a merger or acquisition or have established a joint undertaking, or, accordingly, by the undertaking gaining control within the meaning of Article 22 (1), item 2.

(2) The proceedings referred to in paragraph (1) shall be instituted within three days after the notification is filed, unless the grounds referred to in Article 38 (2) are present.

(3) The Commission may also institute proceedings upon its own initiative on the authority of Article 38 (1), item 1, when the concentration has been effected without permission or under conditions and in a manner deviating from those subject to which it was permitted, as well as when the permission has been cancelled by the Commission. The Commission's resolution for institution of proceedings may not be appealed against.

(4) A concentration notification under this Act shall also be filed in the cases when the Commission's competence ensues from the proceedings referred to in Articles 4 and 9 of Regulation (EC) No. 139/2004.

Contents of the Notification

Article 79. (1) The notification referred to in Article 78 (1) shall contain information about:

1. the undertakings participating in the concentration;
2. the undertakings and the persons/entities directly or indirectly controlling the undertakings participating in the concentration;
3. the undertakings controlled by the participants in the concentration within the meaning of Article 22 (3);
4. the nature, the legal form and the purpose of the concentration;
5. the relevant markets wherein the participants in the concentration operate;
6. the market shares and the sum of the total turnovers of the undertakings participating in the concentration;
7. the barriers to entry into the relevant markets;
8. the major competitors, suppliers and customers;

9. supporting evidence of the circumstances referred to in Article 26 (1) or 2.

(2) The notification referred to in paragraph (1) shall also contain a request for the Commission to permit the concentration.

(3) The notification shall be filled in according to a standard form approved by the Commission.

(4) The standard form referred to in paragraph (3) and the instructions for filling it in shall be endorsed by a resolution of the Commission and shall be published on its website.

Fast-track inquiry

Article 80. (1) After the institution of proceedings referred to in Article 78 (1), the Commission shall assess the concentration by means of a fast-track inquiry by exercising the powers referred to in Article 45, items 1, 2, 4 and 5.

(2) Within 7 days after the publication referred to in Article 68 (3), each interested third party may present information or a position about the effect of the concentration on competition in the relevant market.

(3) When the concentration is being assessed, the following circumstances, inter alia, shall be taken into account: the position of the undertakings in the relevant markets before and after the concentration, their economic and financial power, access to the supply markets and the ones wherein the relevant goods and services are marketed, the legal, administrative or other barriers to entry.

Time Limits for Concentration Assessment in a Fast-track Inquiry

Article 81. (1) In a fast-track inquiry, assessment shall be performed within 25 business days, and within this period the Commission shall pass a resolution as per Article 82 (3).

(2) This period shall commence as of the first business day following the date when proceedings were instituted.

(3) In case that the notification has been set aside due to irregularities as referred to in Article 38 (2), or additional information needs to be provided by the notifying undertakings, the periods referred to in paragraph (1) shall be suspended.

(4) Upon request by the notifying undertakings the Commission may extend the period referred to in paragraph (1) by up to 10 business days in order for suggestions for changing the concentration to be prepared.

(5) Regardless of whether the period referred to in paragraph (1) is extended on the authority of paragraph (4), it shall be extended by another 10 business days as of the date on which the notifier provides the Commission with full information regarding the proposed changes of the concentration conditions.

Completion of the Assessment in a Fast-track Inquiry

Article 82. (1) Following completion of the fast-track inquiry, the work team designated as provided for in Article 39 (2) shall prepare a report and present it to the monitoring Commission Member.

(2) The monitoring Commission Member shall notify the Chairperson that the fast-track inquiry has been completed. The Chairperson shall issue a resolution scheduling a private session of the Commission, whereby the further course of the proceedings shall be decided.

(3) The Commission shall, in a closed session, pass a resolution whereby it shall:

1. rule that the transaction is not a concentration or does not fall within the scope of Article 24;
2. permit the concentration referred to in Article 26 (1);
3. permit the concentration in keeping with the changes proposed by the participants in the concentration;

4. launch a thorough inquiry as per the procedure prescribed by Article 83.

(4) The Commission may cancel its resolution referred to in paragraph (3), items 1 - 3, when it is based on incomplete, inaccurate, false or misleading information.

(5) Until the Commission passes a resolution as per paragraph (3), all kinds of factual or legal actions related to the intended concentration shall be prohibited. This prohibition shall not apply in case of a tender bid or a series of transactions with securities allowed for trading in regulated markets of financial instruments whereby control is gained within the meaning of Article 22 (3) from different sellers, provided that the Commission has been notified without delay in accordance with Article 24 (2), and that the person/entity acquiring the securities does not exercise the voting rights associated therewith, except for the purpose of preserving the value of the investment.

(6) The Commission shall, as per the procedure prescribed by the Administrative Procedure Code, notify the persons referred to in Article 78 (1) of the resolution passed as per paragraph (3) and of the possibility for them to review the materials concerning the case file.

(7) The resolution referred to in paragraph (3), item 4, may not be appealed against.

Thorough Inquiry

Article 83. (1) A thorough inquiry of a concentration shall be performed when, as a result of the assessment performed during the fast-track inquiry, the Commission finds that the concentration gives serious reason for suspicion that such concentration would result in the establishment or reinforcement of an existing dominant position and effective competition in the relevant market would be significantly impeded.

(2) Within 30 days after the resolution to launch a thorough inquiry as per Article 68 (2) is published in the electronic register, each interested party may present information or a position about the effect of the concentration on competition in the relevant market.

(3) The Commission shall perform the thorough inquiry of the concentration by exercising the powers referred to in Article 45.

Time Limits for a Thorough Inquiry of a Concentration

Article 84. (1) The Commission shall perform the thorough inquiry and close the proceedings within 4 months after the publication in the electronic register as per Article 68 (2). In factually and legally complicated cases, such time limit may be extended by up to 25 business days.

(2) In case of measures proposed as per Article 86, the time limits provided for in paragraph (1) shall be extended by 15 business days. The extension period shall commence as of the day following the day when the Commission receives the full information regarding the measures proposed.

Closed Session

Article 85. (1) After sufficient evidence regarding the further development of the proceedings is collected, the work team designated as provided for in Article 39 (2) shall prepare a report and present it to the monitoring Commission Member.

(2) The monitoring Commission Member shall notify the Chairperson of the report prepared. The Chairperson shall by a resolution schedule a closed session of the Commission, whereby the following shall be passed:

1. a resolution permitting the concentration referred to in Article 26 (1) or (2);
2. a ruling adopting its preliminary findings about the effect of the concentration on competition.

(3) The ruling referred to in paragraph (2), item 2, shall set a time limit of at least 14 days wherein the notifier and the interested parties may present their position on the Commission's preliminary findings. The ruling shall state that the parties and the interested parties shall have access to the materials concerning the file subject to the procedure prescribed

by Article 55, as well as the right to be heard by the Commission as per the procedure prescribed by Article 87.

(4) In the case of paragraph (2), item 2, the Commission's ruling shall be sent to the persons referred to in Article 78 (1), and the interested parties constituted as per the procedure prescribed by Article 43 (2), item 2, shall be notified of said ruling. The time limit for presenting positions as per paragraph (3) shall commence as of the day when the copy of the ruling or the written notification of the ruling is received.

(5) When presenting their position on the preliminary findings, the parties and the interested parties are obliged to also present all evidence which they have at their disposal and which supports their position.

(6) In the case of paragraph (2), item 1, the parties shall be notified as per the procedure prescribed by the Administrative Procedure Code of the resolution passed and of the possibility for them to review the materials concerning the case file.

Measures to Preserve Competition

Article 86. (1) The Commission may impose measures directly related to the implementation of the concentration which are needed in order to preserve effective competition and restrict the negative impact of the concentration on the market affected.

(2) The Commission may also endorse measures as per paragraph (1) proposed by the persons referred to in Article 78 (1).

Hearing of Parties and Interested Parties in a Public Session

Article 87. (1) Parties and interested parties shall have the right to be heard by the Commission in a public session before a resolution is passed in essence.

(2) After the time limit for presenting positions as per Article 85 (3) expires, the Chairperson shall by a resolution schedule a public session whereby the Commission shall hear the parties and the interested parties. The public session shall be scheduled for a date at least 14 days after the expiry of the time limit for presenting positions on the objections raised. The parties and the interested parties shall be notified of the scheduled public session whereby they are to be heard as per the procedure prescribed by the Administrative Procedure Code.

(3) The parties and the interested parties shall be heard by the Commission in camera.

(4) The Commission shall start its session by settling the preliminary points regarding the validity of the procedure.

(5) The parties and the interested parties may be asked questions following a procedure determined by the Chairperson.

(6) When the Chairperson finds that the circumstances of the case have been clarified, he/she shall give the parties the opportunity to present their positions.

(7) After the dispute is factually and legally settled, the Chairperson shall close the session.

Closure of the Thorough Inquiry

Article 88. (1) After the parties are heard, the Chairperson shall schedule a closed session. The Commission shall pass a resolution whereby it shall:

1. permit the concentration;

2. permit the concentration subject to measures directly related to the implementation of the concentration and needed in order to preserve effective competition and restrict the negative impact of the concentration on the market affected;

3. prohibit the concentration.

(2) Until the Commission passes a resolution as per paragraph (1), all kinds of factual or legal actions related to the intended concentration shall be prohibited. This prohibition shall not apply in case of a tender bid or a series of

transactions involving securities allowed for trading in regulated markets of financial instruments whereby control is gained within the meaning of Article 22 (3) from different sellers, provided that the Commission has been notified according to Article 24 (2) without delay, and that the person/entity acquiring the securities does not exercise the voting rights associated therewith, except for the purpose of preserving the value of the investment.

(3) The Commission may cancel its resolution referred to in paragraph (1), items 1 and 2, when it is based on incomplete, inaccurate, false or misleading information, or when the participants fail to implement the measures ruled in the Commission's resolution as per paragraph (1), item 2.

(4) The parties shall be notified of the Commission's resolution as per the procedure prescribed by the Administrative Procedure Code.

Closure of Proceedings Instituted on the Commission's Initiative

Article 89. (1) When the Commission has instituted proceedings upon its own initiative in the cases referred to in Article 78 (3), it may resolve:

1. that there is no breach of the obligation referred to in Article 24;
2. to impose a pecuniary penalty for failure to comply with the obligation referred to in Article 24, as well as the relevant measures referred to in Article 90.

(2) The inquiry referred to in paragraph (1) shall be conducted as per the procedure prescribed by Chapter Eight, and as per Articles 74 and 76.

Measures to Restore Effective Competition

Article 90. The Commission may, notwithstanding the pecuniary penalties referred to in Article 89 (1), item 2, impose on the parties to the transaction other behavioural and/or structural measures needed to restore effective competition, including by ordering that their amalgamated capital, stakes or assets should be separated and/or that joint control should be terminated, if it is found that:

1. a concentration has been effected in violation of a resolution passed as per Article 88 (1), item 3, or
2. a concentration which should have been prohibited or permitted subject to a conditional clause has been effected:
 - a) in violation of Article 24, or under conditions and in a manner deviating from those which the Commission took into account when issuing the resolution referred to in Article 82 (3), items 2 and 3, Article 85 (2), item 1 and Article 88 (1), item 1;
 - b) in violation of the resolution referred to in Article 88 (1), item 2;
 - c) under a permission cancelled by a resolution as per Article 82 (4) or Article 88 (3).

Chapter Eleven OTHER PROCEEDINGS

Sectoral Analysis Proceedings

Article 91. (1) Proceedings for performance of a sectoral analysis of the competitive environment shall be instituted by a resolution of the Commission on the authority of Article 38 (1), item 1.

(2) The Chairperson shall by a written instruction assign the monitoring of the proceedings to a Member of the Commission. The inquiry shall be performed by the work team designated as provided for in Article 39 (2).

- (3) In conducting the inquiry, the work team shall exercise the powers referred to in Article 45, items 1, 2, 4 and 5.
- (4) After completing the inquiry, the work team shall present the analysis to the Commission Member monitoring the proceedings. The Chairperson shall schedule a closed session of the Commission to review analysis.
- (5) The Commission shall adopt the sectoral analysis by a resolution, whereby it may:
 1. (amended, SG No. 2/2018) order institution of proceedings to establish a violation as per Articles 15, 21 and 24 hereof and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union;
 2. inform the competent government authorities, including the bodies of the executive, as well as local self-government bodies, of the need for measures to improve the competitive environment in the sector;
 3. place the analysis at the disposal of the National Assembly and/or the Council of Ministers for use in the drafting of strategies, programs, plans to develop the relevant business sectors, etc.
- (6) The Commission's resolution referred to in paragraph (1), as well as the resolution referred to in paragraph (5), shall be non-appealable.

Competition Advocating Proceedings

- Article 92.** (1) Competition advocating proceedings shall be instituted on the authority of Article 38 (1), items 1, 5 and 8.
- (2) The Chairperson shall by a written instruction assign the monitoring of the proceedings to a Member of the Commission. The inquiry shall be performed by the work team designated as provided for in Article 39 (2).
 - (3) In conducting the inquiry, the work team shall exercise the powers referred to in Article 45, items 1, 2, 4 and 5.
 - (4) After completing the inquiry, the work team shall prepare a report, which shall be presented to the Commission Member monitoring the proceedings. The Chairperson shall schedule a private session of the Commission to review the report.
 - (5) The Commission shall adopt a position by a resolution, whereby it shall:
 1. assess the compliance of draft acts or of acts already in effect, within the meaning of Article 28, with the provisions hereof;
 2. propose to the competent authorities or to associations of undertakings to amend or repeal the relevant act.
 - (6) The Commission's resolution referred to in Article 38 (1), item 1, as well as the resolution referred to in paragraph (5), shall be non-appealable.

Proceedings related to the Commission's Compliance with the Assistance Obligations in Accordance with Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004.

- Article 93.** (1) The proceedings related to the Commission's compliance with the assistance obligations in accordance with Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004 shall be instituted on the authority of Article 38 (1), item 7, in relation to Article 54, upon request by a national antitrust authority of a Member State or by the European Commission on the authority of Regulation (EC) No. 1/2003 or Regulation (EC) No. 139/2004.
- (2) Based on the request referred to in paragraph (1), a report to the Chairperson of the Commission shall be prepared, which shall contain a proposal for undertaking actions needed to satisfy the request for assistance.
 - (3) The Chairperson of the Commission shall by a written instruction rule on the proposed actions. In case that The Chairperson of the Commission rules that assistance shall be granted, his/her written instruction shall specify the subject of the proceedings in accordance with the request referred to in paragraph (1).
 - (4) The Chairperson of the Commission shall by an order appoint the officials who shall exercise the powers referred to in Article 45 hereof, or, accordingly, in Article 20, paragraph (2) of Regulation (EC) No. 1/2003 or Article 13, paragraph (2) of Regulation (EC) No. 139/2004.

(5) After the written order referred to in paragraph (3) is executed, a report to the Chairperson of the Commission on the actions performed shall be prepared.

(6) The Chairperson of the Commission shall table the report referred to in paragraph (5) in a closed session, whereby the Commission shall pass a resolution to close the assistance proceedings.

(7) The resolution referred to in paragraph (6) may not be appealed against.

Chapter Twelve

PROCEEDINGS RELATED TO ESTABLISHING VIOLATIONS AND IMPOSING PENALTIES UNDER CHAPTER SEVEN AND CHAPTER SEVEN "A"

(Title amended, SG No. 56/2015)

Institution of Proceedings, Inquiry and Closure of Proceedings

Article 94. (1) (Supplemented, SG No. 56/2015) Proceedings for establishing a violation of Chapter Seven or Chapter Seven "a" and imposing penalties shall be instituted on the authority of Article 38 (1), items 1 and 3.

(2) The request referred to in Article 38 (1), item 3 shall meet the requirements of Article 71 (1).

(3) The Chairperson of the Commission shall by a written instruction institute proceedings and appoint a Member of the Commission to monitor the inquiry. It shall be performed by the work team designated as provided for in Article 39 (2).

(4) In conducting the inquiry, the Commission Member and the work team shall have the rights referred to in Article 45, items 1, 2 and 4.

(5) After completion of the inquiry, the work team shall prepare a report, which shall be presented to the Commission Member monitoring the proceedings. The parties shall be notified as per the procedure prescribed by the Administrative Procedure Code of the possibility to review the materials concerning the case file subject to the terms of Article 55.

(6) The Chairperson of the Commission shall by a resolution schedule a public session of the Commission to review the report, whereby the parties to the proceedings shall be heard. The Commission may also decide to hear other persons.

Burden of Proof

Article 95. In the cases referred to in Article 32 it lies with the advertiser to prove that an advertisement does not have characteristics that constitute grounds for its prohibition.

Time Limits

Article 96. (1) The inquiry under this Chapter shall be completed within two months after the proceedings are instituted.

(2) In factually and legally complicated cases, the time limit referred to in paragraph (1) may be extended by 30 days.

Interim Measures

Article 97. (1) When there is a risk of serious damage to consumers' or competitors' interests, the Commission may, upon request by the parties or upon its own initiative, at any time during the proceedings, apply an interim measure:

1. prohibiting the circulation of an advertisement before it is made public when such advertisement has not yet been

circulated but its circulation is imminent and unavoidable;

2. suspending the circulation of an advertisement.

(2) (Amended, SG No. 77/2018, effective 1.01.2019) An interim measure as per paragraph (1) shall be applied by a ruling, which shall be immediately enforceable. The interim measure shall apply until the Commission adopts a resolution in essence. The ruling shall be appealable according to the procedure established by Article 64(3). The appeal shall not suspend the enforcement of the ruling, unless otherwise ordered by the Court.

Resolution of the Commission

Article 98. (1) (Supplemented, SG No. 56/2015) With regard to the proceedings under Chapter Seven or Chapter Seven "a", the Commission shall adopt a resolution whereby it shall:

1. establish the violation committed and the perpetrator and impose a pecuniary penalty or fine;
2. administer an injunction against the violation;
3. establish that no violation hereof has been committed;
4. suspend proceedings subject to the conditions of Article 41, items 1, 2 and 4, or when the request has been withdrawn.

(2) Notwithstanding the pecuniary penalties for a violation of Article 32, the Commission may rule that the advertiser and/or advertising agency shall publicly announce at their own expense and in an appropriate manner the resolution referred to in paragraph (1), item 1 or a part thereof, as well as the duly corrected advertisement.

(3) When the proceedings have been instituted in response to a tip-off, the person by whom the tip-off was given shall be notified of the resolution passed by the Commission.

(4) The resolution referred to in paragraph (1) shall not prejudice the lodging of a claim before the Court as per the procedure prescribed by Chapter Thirty-Three, "Proceedings on Collective Claims", of the Code of Civil Procedure.

TITLE FOUR LIABILITY AND PENALTIES

Chapter Thirteen LIABILITY

Administrative Penal Liability

Article 99. (1) Anyone violating the provisions hereof, unless the such a violation constitutes a criminal offense, shall be liable to administrative penal proceedings.

(2) (Amended, SG No. 77/2018, effective 1.01.2019) Pecuniary Penalties, Periodic Penalties and fines of the Act shall be imposed by decision of the Commission, which may be appealed against, as per the procedure prescribed by Article 64(1).

Chapter Fourteen PENALTIES

Pecuniary Penalties

Article 100. (1) The Commission shall impose a pecuniary penalty amounting to up to 10 percent of an undertaking's or association of undertakings' total turnover for the previous financial year for:

1. (amended, SG No. 2/2018) a violation of Article 15 or 21 hereof or of Articles 101 and 102 of the Treaty on the Functioning of the European Union;
2. implementation of a concentration contrary to the obligation referred to in Article 24;
3. concentration under conditions and in a manner deviating from those in view of which the Commission passed the resolution referred to in Article 82 (3), items 2 and 3, Article 85 (2), item 1 and Article 88 (1), items 1 and 2;
4. concentration which has been prohibited by the Commission by a resolution as per Article 88 (1), item 3;
5. concentration which is subject to mandatory prior notification as per Article 24, before the Commission has passed a resolution as per Article 82 (3), Article 85 (2), item 1 and Article 88 (1), unless the circumstances referred to in Article 82 (5), sentence two, and Article 88 (2), sentence two, are present;
6. a violation of a provision of Chapter Seven;
7. failure to enforce resolutions or rulings of the Commission.

(2) (New, SG No. 56/2015) For violations of the prohibition under Article 37a, Paragraph 1, the Commission shall impose a pecuniary penalty in the amount of up to 10 percent of the turnover accomplished by the enterprise from the sale of the product, subject of the violation, for the previous year, but not less than BGN 10,000. When there is no turnover accomplished, the Commission shall impose a pecuniary penalty in the amount from BGN 10,000 to BGN 50,000.

(3) (Renumbered from Paragraph 2, SG No. 56/2015) The Commission shall impose a pecuniary penalty amounting to up to one percent of an undertaking's or association of undertakings' total turnover for the previous financial year for:

1. failure to comply with the assistance obligation referred to in Article 46;
2. damaging the integrity of, or destroying the seals affixed in an on-the-spot inspection referred to in Article 50;
3. failure to provide in due course, or provision of incomplete, inaccurate, false or misleading information in violation of the obligations referred to in Article 47 (4) and 5;
4. failure to comply with the obligations referred to in Article 67.

(4) (Renumbered from Paragraph 3, amended, SG No. 56/2015) The resolution imposing a pecuniary penalty as per paragraph (3), items 1 and 3, shall specify a deadline by which the party is to fulfil its assistance obligation or provide complete, accurate, true and non-misleading information.

(5) (Renumbered from Paragraph 4, SG No. 56/2015) In determining the amount of the pecuniary penalty, the seriousness and duration of the violation shall be taken into account, as well as the mitigating and aggravating circumstances. The specific amount of the penalty shall be determined by the Commission in accordance with a methodology adopted by it and published on its website.

(6) (Renumbered from Paragraph 5, SG No. 56/2015) The Commission shall impose periodic pecuniary penalties on an undertaking or association of undertakings amounting to up to 5 percent of the total average daily turnover for the previous financial year for each day of failure to comply with:

1. a resolution by the Commission containing an injunction against the violations, including by means of appropriate behavioural and/or structural measures to restore competition as per the procedure prescribed by Article 77 (1), item 4 or Article 90;
2. a ruling of the Commission imposing temporary measures as per Article 56;
3. a resolution of the Commission approving commitments made as per Article 75 (2) and Article 88 (1), item 2.

(7) (Renumbered from Paragraph 6, SG No. 56/2015) The Commission shall impose periodic pecuniary penalties on an undertaking or association of undertakings amounting to up to one percent of the total average daily turnover for the previous financial year for each day of:

1. (amended, SG No. 56/2015) failure to comply with the assistance obligation referred to in Article 46 after the deadline specified in the resolution referred to in paragraph (4) expires;
 2. (amended, SG No. 56/2015) failure to provide complete, accurate, true or non-misleading information as per Article 47 (5) after the deadline specified in the resolution referred to in paragraph (4) expires;
 3. failure to allow an inspection as per the procedure prescribed by Article 50.
- (8) (Renumbered from Paragraph 7, amended, SG No. 56/2015) The periodic penalties referred to in paragraphs (6) and (7) shall be imposed for each day until the offending act or omission is terminated.

Exemption from, or Reduction of, a Penalty

Article 101. (1) (Amended, SG No. 2/2018) The Commission may, upon request by an undertaking as per Article 38(1), item 4, exempt such undertaking of a pecuniary penalty for a violation referred to in Article 15 hereof and/or Article 101 of the Treaty on the Functioning of the European Union, amounting to participation in a secret cartel, provided that such undertaking provides, before the rest of the participants in the cartel do, evidence based on which the Commission can:

1. perform an on-the-spot inspection, subject to the condition that by that time the Commission has not possessed sufficient data and evidence allowing it to file a request for a court permission as per the procedure prescribed by Article 51;
2. prove the alleged violation, subject to the condition that by that time the Commission has not had granted a conditional exemption from penalties to another undertaking before an on-the-spot inspection or before it possessed sufficient evidence allowing it to file a request for court permission as per the procedure prescribed by Article 51, and that it has not had sufficient evidence to pass a resolution ascertaining a violation.

(2) The conditions referred to in paragraph (1) notwithstanding, for an undertaking to be exempted from a pecuniary penalty, it must not have undertaken actions forcing the rest of the undertakings to participate in the cartel, and must have complied with all conditions specified in the program referred to in paragraph (5).

(3) (Amended, SG No. 2/2018) The Commission may reduce the pecuniary penalty of an undertaking for a violation referred to in Article 15 hereof and/or Article 101 of the Treaty on the Functioning of the European Union, amounting to participation in a secret cartel, provided that such undertaking voluntarily, by the closure of proceedings, has presented material evidence of in proving the violation and has complied with all conditions specified in the program referred to in paragraph (5).

(4) (Amended, SG No. 2/2018) Exemption from a penalty or the reduction of a penalty for a violation referred to in Article 15 hereof and/or Article 101 of the Treaty on the Functioning of the European Union shall be allowed provided that the undertaking has terminated its participation in the prohibited agreement, unless the Commission has decided that its continuing participation therein is requisite for the investigation.

(5) The terms and procedure for exemption from a penalty or reduction of a penalty shall be specified in the Penalty Exemption or Reduction Program and the rules for its implementation, as adopted by a resolution of the Commission.

Fines

Article 102. (1) Natural persons who have contributed to violations of the Act, unless their act constitutes a criminal offense, shall be penalised by a fine amounting to BGN 500 or more, but not exceeding BGN 50 000.

(2) Persons/entities failing to provide in due time the requested evidence or complete, accurate, true and non-misleading information as per Article 47 (5), shall be penalised by a fine amounting to BGN 500 or more, but not exceeding BGN 25 000.

(3) The resolution imposing the fine referred to in paragraph (2) shall also specify a deadline by which the evidence and information requested shall be presented. If the person/entity fails to meet the deadline, a periodic fine amounting to BGN 500 per day but no more than BGN 20 000 may be imposed on such person/entity.

(4) (Amended, SG No. 56/2015) When the amount of the fine is determined, the seriousness and duration of the violation

and the capacity in which the person/entity acted, shall be taken into account, as well as the mitigating and aggravating circumstances. The specific amount of the fine shall be determined by the Commission in accordance with the methodology referred to in Article 100 (5).

Enforcement

Article 103. Pecuniary penalties and fines imposed based on resolutions of the Commission which have taken effect shall be collected as per the procedure prescribed by the Tax and Social Insurance Procedure Code.

Article 104. (Repealed, SG No. 2/2018).

Chapter Fifteen

(New, SG No. 2/2018)

LIABILITY FOR TORT OR DELICT

Section I

(New, SG No. 2/2018)

General Rules

Claims for Compensation

Article 105. (New, SG No. 2/2018) (1) The perpetrator of violations hereof shall be liable to pay a compensation for damages caused by such violation.

(2) All individuals and legal entities that have incurred damages shall be entitled to full compensation, even if the violation was not aimed against them directly.

(3) The actions for compensation shall be brought as per the procedure prescribed by the Code of Civil Procedure.

(4) The Supreme Administrative Court's resolution which has taken effect and upholds the Commission's resolution establishing the commission of a violation hereof shall be binding on the civil court in terms of the fact of the infringement and the infringer. A resolution of the Commission which has not been appealed against or the appeal against which has been withdrawn shall also be binding on the civil court with regard to the fact of the infringement and the infringer.

Full compensation

Article 106. (New, SG No. 2/2018) (1) Full compensation shall place the injured party in the position in which that party would have been had the infringement of competition law not been committed.

(2) The full compensation shall cover the right to compensation for actual loss and for loss of profit, plus the payment of interest.

(3) Full compensation may not be excessive in relation to the damage suffered.

Section II

(New, SG No. 2/2018)

Liability for Tort or Delict Resulting from Infringements of Chapters Three and Four and Article 101 and 102 of the Treaty on the Functioning of the European Union

Passing-on of overcharges

Article 107. (New, SG No. 2/2018) (1) Compensation of harm can be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers.

(2) Compensation of harm can be claimed also when the infringement of competition law relates to a supply for the undertaking which committed the infringement.

(3) Compensation for actual loss at any level of the supply chain shall not exceed the overcharge harm suffered at that level.

(4) The injured person shall be entitled to claim and obtain compensation for loss of profits, including in case of full or partial passing-on of the overcharge in the supply chain.

(5) The court shall estimate the share of any overcharge that was passed on to another level of the supply chain.

Passing-on defence

Article 108. (New, SG No. 2/2018) The defendant in an action for damages can invoke as a defence the fact that the claimant passed on the whole or part of the overcharge along the supply chain. The burden of proving the facts on which the objection is based shall be on the defendant.

Indirect purchasers

Article 109. (New, SG No. 2/2018) (1) In deciding on the plausibility of an action for damages or the amount of compensation to be awarded the court shall take into account whether, or to what degree, an overcharge was passed on to the claimant. The burden of proving the existence and amount of such a passing-on shall rest with the claimant.

(2) In the absence of proof to the contrary it shall be deemed that a passing-on of overcharges occurred where the indirect purchaser has shown that:

1. the defendant has committed an infringement of competition law;

2. the infringement of competition law has resulted in an overcharge for the direct purchaser, and

3. the indirect buyer has bought goods or services subject to the infringement, or goods or services purchased, obtained, or containing such goods and services.

Actions for damages by claimants from different levels in the supply chain

Article 110. (New, SG No. 2/2018) (1) When determining the liability of the infringer in actions for damages brought by claimants from different levels in the supply chain, due account shall be taken of the following:

1. actions for damages that are related to the same infringement of competition law, but that are brought by claimants from other levels in the supply chain;
2. judgments resulting from actions for damages as referred to in point 1;
3. information in the public domain regarding the implementation of competition law by the competent authorities.

(2) Paragraph 1 shall be without prejudice to the powers of the national courts under Article 30 of Council Regulation (EC) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351/1, 20 December 2012).

Limitation periods

Article 111. (New, SG No. 2/2018) (1) Limitation periods shall begin to run on the day when the infringement of competition law has ceased, provided that the claimant knows, or can reasonably be expected to know:

1. of the behaviour that constitutes an infringement of competition law;
2. of the harm caused to the claimant; and
3. the identity of the infringer.

(2) The limitation period shall be interrupted if a competition authority takes action to ascertain an infringement of competition law. The limitation period shall be suspended during the proceedings before the commission, and the suspension shall end one year after the infringement decision has become final or after the proceedings are otherwise terminated by the authority.

(3) In case of an action for damages against an immunity recipient the limitation period shall begin to run from the moment when it is established that full compensation may not be obtained from the other infringers who are jointly and severally liable for the damage caused.

(4) The limitation period shall be suspended for the duration of the out-of-court settlement of a dispute concerning a claim for damages, and only with regard to those parties that are involved in the process.

Out-of-court settlement of disputes concerning claims for damages

Article 112. (New, SG No. 2/2018) (1) The court seized of an action for damages may suspend its proceedings for up to two years where the parties thereto are involved in out-of-court dispute resolution concerning the claim covered by that action for damages.

(2) Following an out-of-court settlement of the dispute, the claim of the settling injured party shall be reduced by the settling co-infringer's share of the harm that the infringement of competition law inflicted upon the injured party. Any remaining claim of the settling injured party shall be exercised only against non-settling co-infringers.

(3) Where the non-settling co-infringers cannot pay the damages that correspond to the remaining claim of the settling injured party, the settling injured party may exercise the remaining claim against the settling co-infringer. The application of this provision may be expressly excluded by the parties to the dispute settlement.

Quantification of harm

Article 113. (New, SG No. 2/2018) (1) The commission may, within its powers and upon request of the court, assist that court with respect to the determination of the quantum of damages where such assistance is appropriate for protecting the interests of the injured party.

(2) In the absence of proof to the contrary it shall be presumed that cartel infringements cause harm.

(3) Where it is established that the claimant suffered damages, the court shall award compensation pursuant to Article 162 of the Code of Civil Procedure, even when it is impossible to quantify precisely the harm suffered on the basis of the evidence available.

Effect of decisions of competition authorities or courts of the European Union Member States

Article 114. (New, SG No. 2/2018) (1) A final decision of a national competition authority or a court of another European Union Member State establishing an infringement of competition law may be presented as evidence in claim for damages proceedings. In the absence of proof to the contrary the fact of the infringement and the infringer shall be deemed to be irrefutably established.

(2) With regard to the effect of European Commission decisions the provisions of Article 16 of Regulation (EC) No. 1/2003 shall apply.

Joint and several liability

Article 115. (New, SG No. 2/2018) (1) Where two or more undertakings or associations of undertakings have infringed competition law through joint behavior, they shall be jointly and severally liable for the harm caused by the infringement.

(2) Without prejudice to the right of full compensation, where the infringer is a small or medium-sized enterprise as defined in the Small and Medium-Sized Enterprises Act, the infringer shall be liable only to its own direct and indirect purchasers or providers where:

1. its market share in the relevant market was below 5 % at any time during the infringement of competition law; and

2. the application of the rules of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value.

(3) The derogation laid down in paragraph 2 shall not apply where:

1. the small or medium-sized enterprise has led the infringement of competition law or has coerced other undertakings to participate therein; or

2. the small or medium-sized enterprise has previously been found to have infringed competition law.

(4) An immunity recipient shall be jointly and severally liable as follows:

1. to its direct or indirect purchasers or providers; and

2. to other injured parties only where full compensation cannot be obtained from the other undertakings that were involved in the same infringement.

Recourse

Article 116. (New, SG No. 2/2018) (1) If a co-infringer has paid more compensation than its share, it shall have the right to institute recourse proceedings against all other co-infringers for the difference, relative to their responsibility for the damages caused by the infringement of competition law. The contribution due by a co-infringer that is also an immunity recipient may not exceed the amount of the harm caused to its own direct or indirect purchasers or providers.

(2) In case harm has been caused to other than the direct or indirect purchasers or providers of the infringers, the contribution of the immunity recipient to the other co-infringers should correspond to its relative responsibility for the harm caused.

(3) Non-settling co-infringers of competition law shall not have the right to institute recourse proceedings against a settling co-infringer with regard to an action for damages.

(4) In determining what amount to award to a settling co-infringer in recourse proceedings it initiated against another co-infringer the court shall take into account the relative responsibility of the infringers for the harm caused by the infringement, as well as the amount of all compensations paid in the out-of-court dispute settlement.

Disclosure of evidence

Article 117. (New, SG No. 2/2018) (1) Upon request of a claimant who has presented a reasoned justification containing reasonably available facts and evidence, the court may order the defendant or a third party to disclose evidence which lies in their control and which is relevant to the case. The defendant shall also be entitled to request the disclosure of relevant evidence. This paragraph is without prejudice to the rights of the court under Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174/1, 27 June 2001).

(2) The court shall order the disclosure of evidence circumscribed as precisely and as narrowly as possible in the reasoned justification.

(3) The court shall determine whether the disclosure requested by a party is proportionate, considering the legitimate interests of all parties and third parties concerned, and:

1. the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence;

2. the scope and cost of disclosure, especially for any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure;

3. whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.

(4) The court shall order the disclosure of evidence containing confidential information where it considers it relevant to the action for damages. The court shall take effective measures to protect evidence containing manufacturing or trade secrets, or other confidential information protected by law.

(5) With a view to protecting professional secrecy the court shall apply the relevant law of the European Union and national legislation of the Republic of Bulgaria.

(6) Before the court orders the disclosure of evidence it may provide those from whom disclosure is sought with an opportunity to be heard.

(7) Refusal to disclose evidence due to the possibility that such evidence may be used against those from whom disclosure is sought shall be inadmissible in actions for damages resulting from infringements of competition law.

Disclosure of evidence included in the file of a competition authority

Article 118. (New, SG No. 2/2018) (1) Where the court orders the disclosure of evidence included in the file of a competition authority, the court shall determine whether the disclosure requested is proportionate in accordance with Article 117(3), considering also the following:

1. whether the request has been formulated specifically with regard to the nature, subject matter or contents of documents submitted, rather than by a non-specific application.

2. whether the party requesting disclosure is doing so in relation to an action for damages before a national court; and

3. in relation to paragraphs 2 and 4, or upon request of a competition authority pursuant to paragraph 9, the need to safeguard the effectiveness of the enforcement of competition law by the public authorities.

(2) The court shall order the competition authority to disclose evidence included in a file of the competition authority where a party or a third party is unable to disclose such evidence.

(3) The disclosure of evidence constituting internal documents of the competition authority, including this authority's correspondence with other competition authorities, shall be inadmissible.

(4) The court may order the disclosure of the following categories of evidence only after a competition authority, by adopting a decision or otherwise, has closed its proceedings:

1. information that was prepared by a natural or legal person specifically for the proceedings of a competition authority;
2. information that the competition authority has drawn up and sent to the parties in the course of its proceedings;
3. settlement submissions that have been withdrawn.

(5) The following types of evidence shall not be collected:

1. leniency statements; and
2. settlement submissions.

(6) Upon request by the claimant, the court may assess whether the contents of the evidence referred to in paragraph 5 correspond to the definitions laid down in § 1, items 34 and 36 of the additional provisions. In no case shall other parties or third parties be permitted access to that evidence. In that assessment, the court may request assistance only from the competent competition authority. The authors of the evidence referred to in paragraph 5 shall have the possibility to be heard.

(7) If only parts of the evidence requested are covered by paragraph 5, the remaining parts thereof shall be assessed by the court in accordance with paragraphs 1 – 6.

(8) A competition authority may, acting on its own initiative, submit to the court written observations on the proportionality of the disclosure request.

Limits on the use of evidence obtained solely through access to the file of a competition authority

Article 119. (New, SG No. 2/2018) (1) Evidence in the categories listed in Article 118(5) which is obtained by a natural or legal person solely through access to the file of a competition authority shall be inadmissible in actions for damages.

(2) Evidence in the categories listed in Article 118(4) which is obtained by a natural or legal person solely through access to the file of a competition authority shall be inadmissible in actions for damages until the competition authority has closed its proceedings by adopting a decision or otherwise.

(3) Evidence which is obtained by a natural or legal person solely through access to the file of a competition authority and which does not fall under paragraph 1 or 2, can be used in an action for damages only by that person or by a natural or legal person that succeeded to that person's rights, including a person that acquired that person's claim.

Pecuniary penalties and fines

Article 120. (New, SG No. 2/2018) (1) Natural persons who are parties, third parties or their representatives shall be punished by the court with a fine from BGN 500 to BGN 50 000 in the event of:

1. their failure to comply with the disclosure order of the court;
2. their destruction of relevant evidence;
3. their failure to comply with the obligations imposed by a court order protecting confidential information;
4. their breach of the limits on the use of evidence provided for in Articles 118 and 119.

(2) Legal persons are parties, third parties or their representatives shall be punished by the court with a proprietary sanction from BGN 5000 up to BGN 500 000 in the event of:

1. their failure to comply with the disclosure order of the court;
2. their destruction of relevant evidence;
3. their failure to comply with the obligations imposed by a court order protecting confidential information;
4. their breach of the limits on the use of evidence provided for in Articles 118 and 119.

(3) The court may accept as proven the facts with regard to which the party impeded the disclosure of evidence and may award the litigation costs to the defaulting party.

ADDITIONAL PROVISIONS

§ 1. Within the meaning of this Act:

1. "Internal documents" shall mean: documents generated by the Commission and/or the Administration in the course of the proceedings hereunder (drafts, opinions, reports by work teams, memoranda, etc.); documents comprising the Commission's communication with the European Commission, with the competition authorities of the European Union Member States; other documents of the Commission and/or the Administration related to its operating activities.
2. "Diligent commercial practices" shall mean the rules regulating market behaviour which originate from laws and normal commercial relations and do not breach good ethics.

3. "Electronic evidence" shall mean evidence collected from an undertaking or association of undertakings during an electronic inspection by copying electronic documents and electronic statements.

4. "Interested party" shall mean a person, entity, undertaking or association of undertakings whose interests may be affected by a violation of the Act.

5. (Amended, SG No. 2/2018) "Cartel" shall mean an agreement and/or concerted practice between two or more undertakings aimed at coordinating their competitive behaviour on the relevant market or influencing the relevant parameters of competition through practices such as the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including public procurement tender or bid rigging, restrictions of imports or exports or anti-competitive actions against other competitors.

6. "Periodic pecuniary penalty" shall mean a financial penalty fixed as a specific amount and imposed on a daily basis on an undertaking in order to force such undertaking to stop violating the Act or to perform a specific action ordered by the Commission based on its powers under this Act.

7. "Undertaking" shall mean any natural person, legal entity or unregistered establishment engaged in business activity, regardless of its legal and organisational form.

8. "Continued violation" shall mean a violation whereby two or more acts or omissions are performed at short intervals in the same factual circumstances, whereby the subsequent ones are a continuation of the previous ones.

9. "Industrial or trade secret" shall mean facts, information, resolutions and data related to business activities, the confidentiality of which is in the interest of their rightful owners, in view of which the latter have taken appropriate measures.

10. "Professional secret" shall mean:

a) any information which the Commission generates or obtains for the purposes of conducting an inquiry under this Act or in relation hereto, the disclosure of which may threaten the economic interest or reputation of the parties to the case or of a third party; a professional secret is not an official secret within the meaning of the Classified Information Protection Act;

b) the information exchanged between the Commission, the national antitrust authorities of the European Union Member States and the European Commission with regard to the exercising of their powers and the cooperation between them.

Information which is publicly available or is subject to public announcement under this or another Act shall not constitute a "professional secret".

11. "Advertisement" shall mean any communication related to commerce, a trade or profession, aimed at promoting the marketing of goods or services, including real estate, rights and obligations.

12. "Association of undertakings" shall mean an association on a professional basis and other forms of association of independent undertakings which does not independently do business and, accordingly, does not distribute profit.

13. "Business activities" shall mean undertakings' activities the products of which are intended for exchange in the market.

14. "Concerted practices" shall mean concerted acts or omissions of two or more undertakings.

15. "Relevant market" shall consist of:

a) "product market", which includes all goods or services which may be viewed as interchangeable with regard to their characteristics, intended use and prices;

b) "geographic market", which includes a certain territory wherein the relevant interchangeable goods or services, with uniform competitive conditions, are offered, which, however, differ from those in neighbouring regions.

16. (Amended, SG No. 2/2018) "Serious violation" shall mean a violation of Articles 15 and 21 hereof and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union, which has or might have a significant and lasting impact on the competitive environment in a major part of the national market.

17. "Forensic evidence" shall mean evidence collected in an on-the-spot inspection by means of special equipment (forensic laboratory) for purposes of retrieval, authentication and analysis of digital information, such evidence being an exact copy (forensic image) of the specific storage device whereon such information is stored.

18. "Digital evidence" shall mean information of evidential value which is stored or transferred in a digital format.
19. (New, SG No. 2/2018) "Infringement of competition law" shall mean an infringement of Articles 101 or 102 of the Treaty on the Functioning of the European Union or of Articles 15 or 21 hereof.
20. (New, SG No. 2/2018) "Infringer" shall mean an undertaking or association of undertakings which has committed an infringement of competition law.
21. (New, SG No. 2/2018) "National competition law" shall mean provisions of national law that in principle regulate the same social relationships as Articles 101 and 102 of the Treaty on the Functioning of the European Union and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of Regulation (EC) No. 1/2003, excluding provisions of national law which impose fines as a sanction on natural persons, except to the extent that such fines are a criminal penalty as a means whereby competition rules applying to undertakings are enforced.
22. (New, SG No. 2/2018) "Co-infringer" shall mean a participant in an infringement of competition law in which several infringers are involved.
23. (New, SG No. 2/2018) "Action for damages" shall mean an action by which a claim for damages is brought before a court by an alleged injured party, or by someone acting on behalf of one or more alleged injured parties, or by a natural or legal person that succeeded in the right of the alleged injured party, including the person that acquired the claim.
24. (New, SG No. 2/2018) "Claim for damages" shall mean a claim for compensation for harm caused by an infringement of competition law.
25. (New, SG No. 2/2018) "Injured party" shall mean a natural or legal person that has suffered harm caused by an infringement of competition law.
26. (New, SG No. 2/2018) "National competition authority" shall mean an authority designated by a Member State pursuant to Article 35 of Regulation (EC) No. 1/2003, as being responsible for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union.
27. (New, SG No. 2/2018) "Competition authority" shall mean the European Commission or an authority designated by a Member State pursuant to Article 35 of Regulation (EC) No. 1/2003, as being responsible for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union on its territory, or both, as the context may require.
28. (New, SG No. 2/2018) "National court" shall mean a court or tribunal of a Member State within the meaning of Article 267 of the Treaty on the Functioning of the European Union.
29. (New, SG No. 2/2018) "Review court" shall mean a national court that is empowered by ordinary means of appeal to review decisions of a national competition authority or to review judgments pronouncing on those decisions of a national competition authority, irrespective of whether that court itself has the power to find an infringement of competition law.
30. (New, SG No. 2/2018) "Infringement decision" shall mean a decision of a competition authority or review court that finds an infringement of competition law.

31. (New, SG No. 2/2018) "Final infringement decision" shall mean an infringement decision that cannot be, or that can no longer be, appealed by ordinary means.
32. (New, SG No. 2/2018) "Evidence" shall mean all types of means of proof, whatever their source, admissible before the national court seized, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored.
33. (New, SG No. 2/2018) "Leniency programme" shall mean a programme concerning the application of Article 101 of the Treaty on the Functioning of the European Union or of Article 15 hereunder on the basis of which a participant in a secret cartel, independently of the other undertakings involved in the cartel, cooperates with an investigation of the competition authority, by voluntarily providing the available presentations regarding that participant's knowledge of, and role in, the cartel in return for which that participant receives, by decision or by a discontinuation of proceedings, immunity from, or a reduction in, sanctions for its involvement in the cartel.
34. (New, SG No. 2/2018) "Leniency statement" shall mean an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a natural person to a competition authority, describing the knowledge of that undertaking or natural person of a cartel and describing its role therein, which presentation was drawn up specifically for submission to the competition authority with a view to obtaining immunity or a reduction of sanctions under a leniency programme, not including pre-existing information.
35. (New, SG No. 2/2018) "Pre-existing information" shall mean evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority.
36. (New, SG No. 2/2018) "Settlement submission" shall mean a voluntary presentation by, or on behalf of, an undertaking to a competition authority describing the undertaking's acknowledgement of, or its renunciation to dispute, its participation in an infringement of competition law and its responsibility for that infringement of competition law, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure.
37. (New, SG No. 2/2018) "Immunity recipient" shall mean an undertaking which, or a natural person who, has been granted immunity from fines by a competition authority under a leniency programme.
38. (New, SG No. 2/2018) "Overcharge" shall mean the difference between the price actually paid and the price that would otherwise have prevailed in the absence of an infringement of competition law.
39. (New, SG No. 2/2018) "Out-of-court dispute settlement" shall mean any mechanism enabling the parties to reach the out-of-court resolution of a dispute concerning a claim for damages.
40. (New, SG No. 2/2018) "Consensual settlement" shall mean an agreement reached through consensual dispute resolution.
41. (New, SG No. 2/2018) "Direct purchaser" shall mean a natural or legal person who acquired, directly from an infringer, products or services that were the object of an infringement of competition law.
42. (New, SG No. 2/2018) "Indirect purchaser" shall mean a natural or legal person who acquired, not directly from an

infringer, but from a direct purchaser or a subsequent purchaser, products or services that were the object of an infringement of competition law, or products or services containing them or derived therefrom.

43. (New, SG No. 2/2018) "Supply chain" shall mean a situation where goods or services are transferred sequentially at different levels of trade in their original or processed form until sold on the market as a final product.

§ 2. (Supplemented, SG No. 2/2018) This Act transposes the provisions of Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising and of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349/1, 5 December 2014).

§ 3. When a position in the Commission's Administration is occupied by an employee who has a university degree in law, such person's length of service shall be recognised as length of service in the field of law within the meaning of the Judiciary System Act and the Bar Act.

TRANSITIONAL AND FINAL PROVISIONS

§ 4. The Protection of Competition Act (promulgated, SG No. 52/1998, Judgment No. 22/1998 of the Constitutional Court - SG No. 112/1998; amended, SG No. 81/1999; No. 28/2002, No. 9 and 107/2003, No. 105/2005, No. 37, 59 and 86/2006 and No. 64/2007) shall be repealed.

§ 5. (1) In order for the principle of continuity to be preserved in the Commission's operations, in the first election of Members of the Commission for Protection of Competition as per Article 4 (1), three of the four Members of the Commission shall be elected for a term of three years.

(2) The Members of the Commission for Protection of Competition, including the Chairperson and the Deputy Chairpersons, as at the date of this Act's entry into force, shall continue performing their functions until the newly elected Members of the Commission take up their duties.

§ 6. (1) Any pending proceedings on case files involving the Commission for Protection of Competition which have not been closed at the time of entry into force of this Act shall be closed in accordance with the procedure applicable hitherto.

(2) Any motions filed under the repealed Protection of Competition Act with regard to which no proceedings have been instituted in the Commission shall be treated as per the procedure prescribed hereby.

§ 7. (1) Any pending proceedings on case files involving the Commission for Consumer Protection shall be closed as per the procedure provided for in the Consumer Protection Act.

(2) Any tip-offs, complaints and motions filed with the Commission for Consumer Protection with regard to violations of Chapter Three, "Misleading and Comparative Advertising" of the Consumer Protection Act with regard to which no proceedings have been instituted, shall be treated as per the procedure prescribed hereby.

§ 8. Any pending cases shall be closed as per the procedure which was applicable at the time when they were instituted.

§ 9. In the Public Procurement Act (promulgated, SG No. 28/2004; amended, SG No. 53/2004, No. 31, 34 and 105/2005, No. 18, 33, 37 and 79/2006, No. 59/2007, No. 94 and 98/2008), Article 122c shall be amended as follows:

1. In paragraph (1) the word "five" shall be replaced by "four".

2. Paragraphs (2) and (3) shall be amended as follows:

"(2) The Commission for Protection of Competition shall pass resolutions and rulings by an open vote, by a majority of 4 votes. In case the session is attended by less than 7 Members, the resolution shall be passed only provided that at least 4 Members of the Commission have voted for it.

(3) No Member of the Commission may not participate in proceedings hereunder if he/she has an interest in their outcome or when there are justified doubts as to his/her impartiality. Such Member of the Commission shall be challenged either on his/her own initiative or upon the parties' request."

3. Paragraph (5) shall be repealed.

§ 10. In The Concessions Act (promulgated, SG No. 36/2006; amended, SG No. 53, 65 and 105/2006, No. 41, 59 and 109/2007 and No. 50 and 67/2008) Article 90 shall be amended as follows:

1. In paragraph (1) the word "five" shall be replaced by "four".

2. Paragraphs (2) and (3) shall be amended as follows:

"(2) The Commission for Protection of Competition shall pass resolutions and rulings by an open vote, with 4 votes forming a majority. In case the session is attended by less than 7 Members, the resolution shall be passed only provided that at least 4 Members of the Commission have voted for it.

(3) No Member of the Commission may participate in proceedings hereunder if he/she has an interest in their outcome or when there are justified doubts as to his/her impartiality. Such Member of the Commission shall be challenged either on his/her own initiative or upon the parties' request."

3. Paragraph (5) shall be repealed.

§ 11. The Consumer Protection Act (promulgated, SG No. 99/2005; amended, No. 30, 51, 53, 59, 105 and 108/2006, No. 31, 41, 59 and 64/2007 and No. 36/2008) shall be amended and supplemented as follows:

1. In Article 1 (2), item 3, the words "misleading and unpermitted comparative advertising" shall be deleted.

2. Chapter Three, "Misleading and Comparative Advertising", consisting of Article 32 - 42, shall be repealed.

3. In Article 68d (4), the words "Article 68f" shall be replaced by "Article 68e".

4. In Article 68e (2), item 6, the words "Standard Public Registry Personal Number" shall be replaced by "identity document number".

5. In Article 68f (4), item 2, the words "Standard Public Registry Personal Number" shall be replaced by "identity document number".

6. In Chapter Four, Section IV "Unfair Commercial Practices", a new Article 68l shall be created:

"Article 68l. (1) When the Commission for Consumer Protection finds that the commercial practices are unfair, the Chairperson of the Commission shall issue an order prohibiting the application of such commercial practices.

(2) The Chairperson of the Commission for Consumer Protection may, in a short period of time determined by him/her, oblige the trader to prove that the commercial practices being applied are not unfair.

(3) In the cases referred to in Article 68d (4) and when the unfair practices originate from activities related to advertising, notwithstanding the pecuniary penalty, the Chairperson of the Commission for Consumer Protection may order that the advertiser and/or advertising agency shall publicly announce at their own expense and in an appropriate manner the act ascertaining the violation, as well as the duly corrected advertisement.

(4) The Chairperson of the Commission for Consumer Protection shall take the measures referred to in paragraphs (1) - (3) proprio motu or based on a request submitted by a consumer."

7. In Article 152 (2), item 2, the words "Standard Public Registry Personal Number" shall be replaced by "identity document number".

8. In Article 165 (3), item 2 the words "misleading and unpermitted comparative advertising and over" shall be deleted.

9. In Article 186:

a) in paragraph (2):

aa) in item 1, the words "Chapter Three, Section II, "Misleading Advertising" shall be deleted;

bb) in item 9, Litterae "a" and "f" shall be repealed;

b) in paragraph (3), the words "with the exception of actions under Section II "Misleading Advertising" of Chapter Three herein" shall be deleted.

10. Articles 202 and 203 shall be repealed.

11. In Article 210a, after the words "who violates", "Article 68c" shall be added, and the words "paragraphs (1) and (2)" shall be deleted.

12. A new Article 210c shall be created:

"Article 210c. Whoever fails to comply with an order as per Article 68l (1) or an order as per Article 68l (3) shall be liable to a fine, and sole traders and legal persons shall be liable to a pecuniary penalty of BGN 1 000 or more, but not exceeding BGN 10 000."

13. In § 13a of the Additional Provisions, Item 2 shall be repealed.

§ 12. Within three months after this Act takes effect, the Commission shall adopt the Organisational Rules referred to in Article 6 (1), and within 6 months - the acts provided for by law.

§ 13. Enforcement hereof shall be assigned to the Commission for Protection of Competition.

This Act was adopted by the 40th National Assembly on 14 November 2008, with the National Assembly's official seal affixed hereon.

TRANSITIONAL AND FINAL PROVISIONS

to the Act to Amend and Supplement the Protection of Competition Act

(SG No. 54/2010)

§ 5. (1) Within one month after this Act takes effect the National Assembly elects the members of the Commission for Protection of Competition.

(2) Until the new members of the Commission for Protection of Competition enter on their duties the current members shall continue to exercise their powers.

§ 6. Within two months after this Act takes effect the Commission for Protection of Competition shall adopt amendments and supplements to the Rules of Organisation of the Commission for Protection of Competition.

TRANSITIONAL AND FINAL PROVISIONS

to the Act to Amend and Supplement the Protection of Competition Act

(SG No. 73/2011, effective 20.09.2011)

§ 3. (1) Within one month after this Act takes effect the National Assembly shall elect the two new members of the Commission for Protection of Competition.

(2) The new members of the Commission for Protection of Competition under Paragraph (1) shall be elected by the National Assembly for the time remaining until the incumbent members' term of office expires.

§ 4. Within two months after this Act takes effect the Commission for Protection of Competition shall adopt amendments and supplements to the Rules of Organisation of the Commission for Protection of Competition.

.....

§ 7. This Act shall take effect as of the day of its promulgation in the State Gazette, except for § 2, 5 and 6, which shall take effect in one month after the Act is promulgated in the State Gazette.

TRANSITIONAL AND FINAL PROVISIONS

to the Act to Amend and Supplement the Civil Servants Act

(SG No. 38/2012, effective 1.07.2012)

.....

§ 84. (Effective 18.05.2012 - SG No. 38/2012) Within one month after the promulgation of this Act in the State Gazette:

1. the Council of Ministers shall bring the Classifier of Positions in the Administration into conformity with this Act;
2. the competent authorities shall bring the organic acts of the respective administration into conformity with this Act.

§ 85. (1) The legal relationships with the persons of the administrations under the Radio and Television Act, the Independent Financial Audit Act, the Electronic Communications Act, the Financial Supervision Commission Act, the Access to and Disclosure of the Documents and Announcing the Affiliation of Bulgarian Citizens with the State Security Service and the Intelligence Services of the Bulgarian Popular Army Act, the Criminal Assets Forfeiture Act, the Conflict of Interest Prevention and Ascertainment Act, the Social Insurance Code, the Health Insurance Act, the Agricultural Producers Support Act and the Roads Act shall be settled under the terms established by § 36 of the Transitional and Final Provisions of the Act to Amend and Supplement the Civil Servants Act (State Gazette No. 24 of 2006).

(2) The act on appointment of the civil servant shall:

1. award the lowest rank designated in the Classifier of Positions in the Administration for occupation of the position, unless the servant holds a higher rank;

2. fix an individual monthly basic salary.

(3) The additional resources required for social and health insurance contributions of the persons referred to in Paragraph (2) shall be provided within the limits of the expenditures on salaries, remunerations and compulsory social and health insurance contributions under the budgets of the spending units concerned.

(4) The Council of Ministers shall effect the requisite modifications under the off-budget account of State Fund Agriculture arising from this Act.

(5) The governing bodies of the National Social Security Institute and of the National Health Insurance Fund shall effect the requisite modifications under the respective budgets arising from this Act.

(6) Any unused leaves under the employment relationships shall be retained and shall not be compensated by cash compensations.

§ 86. (1) Within one month after the entry into force of this Act, the individual monthly basic salary of the servant shall be fixed in such a way that the said salary, net of the tax due and the compulsory social and health insurance contributions for the account of the insured person, if they were due, would not be lower than the gross monthly salary received theretofore, net of the compulsory social and health insurance contributions for the account of the insured person, if they were due, and the tax due.

(2) The gross salary referred to in Paragraph (1) shall include:

- 1. the monthly basic salary or the monthly basic remuneration;
- 2. supplementary remunerations which are paid constantly together with the monthly basic salary or monthly basic remuneration due and which are contingent solely on the time worked.

§ 87. This Act shall enter into force as from the 1st day of July 2012 with the exception of § 84 herein, which shall enter into force as from the day of promulgation of the Act in the State Gazette.

TRANSITIONAL AND FINAL PROVISIONS

to the Act to Amend and Supplement the Protection of Competition Act

(SG No. 56/2015)

§ 9. Within a 3-month time limit from the entry into force of this act, the Commission for Protection of Competition shall bring the Rules of Organization of the Commission for Protection of Competition and the other acts envisaged by the law in conformity herewith.

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ACT to Amend and Supplement
the Protection of Competition Act

(SG No. 2/2018)

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Supplementary Provision

§ 4. Throughout this Act the words "Article 81 and 82 of the Treaty establishing the European Community" shall be replaced by "Article 101 and 102 of the Treaty on the Functioning of the European Union", the words "Article 81 of the Treaty establishing the European Community" shall be replaced by "Article 101 of the Treaty on the Functioning of the European Union", the words "Article 81, paragraph 1 of the Treaty establishing the European Community" shall be replaced by "Article 101, paragraph 1 of the Treaty on the Functioning of the European Union", and the words "Article 81, paragraph 3 of the Treaty establishing the European Community" shall be replaced by "Article 101, paragraph 3 of the Treaty on the Functioning of the European Union".

Transitional Provision

§ 5. Any proceedings for actions for damages pending before national courts by 26 December 2014 shall be closed pursuant to the procedure applicable at the time when they were initiated.