The New Competition Protection Act

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The new Competition Protection Act (CPA) entered into force at the end of 2008. Its main objective was to harmonize the Bulgarian legislation with the latest developments in the *acquis communautaire* and to ensure more effective protection of competition rules. In accordance with Council Regulation (EC) No. 1/2003, the law defines the status of the Competition Protection Commission as the national authority entrusted with the application of both the national legislation and the Community law in the field of competition. Besides, the law lays down detailed provisions on the powers and forms of cooperation of the Competition Protection Commission with the European Commission and the other national competition authorities of the EU Member States with a view to ensuring the uniform and consistent application of the competition law.

The new law, just like the old one, contains a general ban on agreements, decisions and concerted practices of two or more undertakings which have as their object or effect the prevention, restriction or distortion of competition. It reproduces the definition of the agreements of insignificant effect to which the ban will not apply, whereby the new wording specifies the market shares at which it is considered that the agreement, decision or concerted practice of insignificant effect comply with the EU law (those in which the participants have less than 10 percent of the respective market if they are competitors and 15 percent of each of the markets if the participants are not competitors).

In accordance with Council Regulation (EC) No. 1/2003, the law specifies also the circumstances under which agreements, decisions or concerted practices are automatically exempted without any need for the undertakings to notify the Commission for the purpose of obtaining individual exemption. The effective application of competition rules and the remedies available to the parties are guaranteed in the new CPA by shifting the burden of proof to the undertakings or associations of undertakings seeking exemption.

As far as the regulation of the abuse of dominant position is concerned, the new law has eliminated the refutable presumption of dominant position (a market share exceeding 35 percent) as the lawmaker has accepted that the high market share *per se* does not prove dominant position.

The law has changed also the threshold above which the participants in concentrations are required to notify the Competition Protection Commission. Previously it was BGN 15 million, whereas the new law has increased it to BGN 25 million. A new criterion has been added: the turnover of each of the two or more undertakings participating in the concentration or the turnover of the acquired undertaking within the territory of the Republic of Bulgaria has to exceed BGN 3 million for the preceding financial year. This implies that subject to notification will be only concentrations which are related to the Bulgarian market and may affect it.

The new CPA deals also with unfair competition issues. It has retained almost all provisions of the earlier law, adding some entirely new provisions on the imitation of a domain or a website. Another novelty is the regulation of misleading and comparative advertising in full compliance with the requirements of Directive 2006/114/EC of the European Parliament and of the Council.
The efficiency and lawfulness of proceedings at the Competition Protection Commission are guaranteed in the new law through the extensive powers of its representatives in the investigation. They are in full conformity with the powers of the other competition authorities of the EU Member States and of the European Commission. The law ensures the efficiency of the decentralized system of application of the Community law. There are detailed provisions on the powers to perform on-the-spot checks of undertakings and associations of undertakings, which are important tools for detecting and proving violations of competition rules.

Another substantial change is the new method to establish the amount of the sanctions imposed for violations of the law. It is calculated as a percentage of the turnover of the undertakings in the preceding financial year rather than as a maximum amount which was the approach of the old law. It is also possible to impose periodic sanctions so that to ensure the timely enforcement of the decisions or the rulings of the Competition Protection Commission and to discontinue the unlawful actions or omissions observed by the Commission.

There are some new whistleblower provisions which make it possible for the Competition Protection Commission to offer reduction or removal of the sanction to undertakings which collaborate with it on a voluntary basis to detect and prove the existence of cartels.

The other new powers of the Commission are related to the right to undertake provisional measures and to approve the takeover of debt proposed by the undertakings. The provisional measures are intended to work in urgent cases to avoid the risk of serious and irreparable damage to competition.

The Competition Protection Act envisages the possibility of filing claims for damages as a result of distortions of competition. All natural persons and legal entities are entitled to compensation even when the violation has not been committed directly against them.