

LAW ON PROTECTION OF COMPETITION

Promulgated, State Gazette, Issue 102 of 28.11.2008, amend. SG 42 of 5 June 2009, amend. SG 54 of 16 July 2010, amend. SG 97 of 10 December 2010, amend. SG 73 of 20 September 2011, amend. SG 38 of 18 May 2012, amend. SG 15 of 15 February 2013, amend. and suppl. SG 56 of 24 July 2015, amend. and suppl. SG 2 of 3 January 2018, amend. and suppl. SG 77 of 18 September 2018, amend. SG 17 of 26 February 2019, amend. SG 28 of 5 April 2019

Text in Bulgarian: „ *Закон за защита на конкуренцията* “

Title One GENERAL

Chapter One GENERAL PROVISIONS

Subject Matter

Art. 1. (1) This Law aims at ensuring protection and conditions for promotion of competition and free economic initiative.

(2) (suppl. – SG 56 of 2015) For the purposes referred to in paragraph (1), the Law shall regulate protection against agreements, decisions and concerted practices, abuse of monopolistic and dominant position on the market and any other acts or actions that may result in prevention, restriction or distortion of competition in the country and/or affect the trade between the Member States of the European Union, as well as against unfair competition and abuse of stronger bargaining position. The Law shall also regulate control on concentrations between undertakings.

(3) (amend. – SG 2 of 2018) This Law shall regulate the relations with regard to the application of Art. 81 and Art. 82 of the Treaty establishing the European Community, including co-operation with the European Commission and the national competition authorities of the Member States of the European Union in implementing Regulation (EC) No. 1/2003 of the Council of 16 December 2002 on the implementation of the rules of competition laid down in Article 101 and 102 of the Treaty on the Functioning of the European Union, hereinafter referred to as “Regulation (EC) 1/2003” and Regulation (EC) No. 139/2004 of the Council 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

Art. 2. (1) This Law shall apply to:

1. undertakings and associations of undertakings which carry out their activities within or outside the territory of the Republic of Bulgaria, if they explicitly or tacitly prevent, restrict, distort or may prevent, restrict or distort competition in the country;

2. state authorities, including executive branch and local authorities, if they explicitly or tacitly prevent, restrict, distort or may prevent, restrict or distort competition in the country;

3. undertakings to whom the state or the municipality have assigned services of public interest insofar as the application of the Law does not impede *de facto* or *de jure*

the fulfilment of the tasks assigned to them and competition in the country is not affected to an appreciable extent;

4. natural persons who commit or contribute to committing an infringement under this Law.

(2) This Law shall not apply to actions, the consequences of which restrict or may restrict or distort competition in another state, unless otherwise provided in an international agreement, which has entered into force, to which the Republic of Bulgaria is a party.

Chapter Two

COMMISSION ON PROTECTION OF COMPETITION

Status

Art. 3. (1) (amend. SG 15 of 2013, in force from 01.01.2014) The Commission on Protection of Competition, hereinafter referred to as “the Commission”, shall be an independent specialised state body on budget maintenance and a first-level administrator of budget credits. The Commission shall be a legal entity seated in Sofia.

(2) The Commission is the national authority of the Republic of Bulgaria responsible for the enforcement of Community competition acquis.

Members

Art. 4. (1) (amend. – SG 54 of 2010; amend. – SG 73 of 2011, in force from 20.09.2011, suppl. – SG 56 of 2015) The Commission shall consist of seven members, including a chairperson, a deputy chairperson and five members, elected and dismissed by the National Assembly for a period of 5 years. The Members of the Commission shall be elected upon conducted public procedure and cannot be re-elected directly for another mandate.

(2) The Chairperson of the Commission must be a qualified lawyer having legal work experience of not less than 10 years and meeting the requirements set out in paragraph (3).

(3) The Commission Members shall be Bulgarian nationals who hold university degree in law or economics and have experience in their relevant field of not less than five years, persons of high professional and moral standing, who have not been sentenced to imprisonment for a deliberate indictable crime. They shall not benefit from undertakings in any form whatsoever and occupy another paid position, except when carrying out activity as scientists, lecturers or arbitrators.

(4) (amend. – SG 54 of 2010) The Chairperson, the Deputy Chairperson and the Members of the Commission shall swear an oath before the National Assembly in accordance with Art. 76, paragraph (2) of the Constitution of the Republic of Bulgaria.

(5) (amend. – SG 54 of 2010) The Commission’s Chairperson shall receive a basic monthly remuneration in the amount of 90 percent of the basic remuneration of the Chairperson of the National Assembly. The Deputy Chairpersons shall receive a basic monthly remuneration of 95 percent, and the Members - of 90 percent of the basic monthly remuneration of the Commission’s Chairperson.

Termination of Powers

Art. 5. (1) (amend. – SG 54 of 2010) The powers of the Chairperson, the Deputy Chairperson and the Members of the Commission shall be terminated by the National

Assembly prior to the expiry of their term of office:

1. at their own request;
2. when it is impossible for them to perform their duties for more than six consecutive months;
3. for incompatibility with the requirements of Art. 4, paragraph (3), that has occurred after the election.
4. (new – SG 42 of 2009; amend. – SG 97 of 2010, in force from 10.12.2010) in case an act, by which conflict of interests is established under the Act on Prevention and Findings of Conflict of Interests;
5. (previous item 4 – SG 42 of 2009) in case of decease.
- (2) (amend. – SG 42 of 2009) In the cases under paragraph (1), items 1, 2, 3 and 4 the powers shall be terminated with a decision of the National Assembly.
- (3) If any of the circumstances under paragraph (1) occurs, the Chairperson shall notify the National Assembly. When the circumstance under paragraph (1) refers to the Chairperson, any Commission member may do the notification.
- (4) Within one month as of receipt of the notification under paragraph (3), the National Assembly shall adopt a decision on the pre-term termination of the powers and shall elect a new member for the remainder of the initial term of office.
- (5) (amend. – SG 54 of 2010) Up to two months before the expiry of the term of office of the Chairperson, the Deputy Chairperson and the Members of the Commission, the National Assembly shall elect new Chairperson, Deputy Chairperson and Members.
- (6) (amend. – SG 54 of 2010) In case that upon expiry of the term of office of the Chairperson, Deputy Chairperson and Members of the Commission the election under paragraph (5) is not made, they shall continue to exercise their powers until the inauguration of the new Members.

Organisation and Activity

Art. 6. (1) The Commission's organization and activity shall be regulated by Rules of Organisation, which shall be promulgated in the State Gazette.

(2) The activities of the Commission shall be assisted by an administration.

Administration of the Commission

Art. 7. (1) The composition, organizational structure, rights and obligations of the administration of the Commission shall be set out in the rules adopted pursuant to Art. 6, paragraph (1).

(2) The legal relations with the employees of the administration shall arise from and be governed by the provisions of Civil Servant Act and the Labour Code.

Competence

Art. 8. (1) The Commission for Protection of Competition shall:

1. (amend. – SG 2 of 2018) establish infringements under this Law as well as under Article 101 and 102 of the Treaty on the Functioning of the European Union;
2. impose sanctions as provided for in this Law;
3. (amend. – SG 2 of 2018) establish that no infringement under this Law has been committed or there are no grounds for taking action for committed infringement under Article 101 and 102 of the Treaty on the Functioning of the European Union;
4. cooperate with the European Commission and the other national competition authorities of the Member States of the European Union in accordance with Regulation

(EC) No. 1/2003 and Regulation (EC) No. 139/2004;

5. issue the authorisations as provided for in this Law;
6. propose to the competent state authorities and local government bodies, to revoke or amend administrative acts, issued by them, that have or may lead to the prevention, restriction or distortion of competition;
7. impose interim measures in the cases provided for in this Law;
8. (amend. – SG 2 of 2018) approve the undertaking of commitments by undertakings or impose measures to restore competition in respect of undertakings, whose behaviour is subject to investigation under Art. 15 and Art. 21 of this Law and/or under Article 101 and 102 of the Treaty on the Functioning of the European Union, as well as the remedies for the preservation of competition under Art. 86 of this Law;
9. rule on termination of the infringements, including by imposing the appropriate behavioural and/or structural remedies to restore competition;
10. conduct sector inquiries of the competitive environment;
11. rule on any other requests, related to this Law;
12. interact with other state authorities, including the authorities of the executive branch, as well as with local government authorities, institutions and non-governmental organisations, by participating in drafting legislative acts, expressing opinions on draft and existing legislative and general administrative acts, exchanging information and other forms of cooperation;
13. propose and organize initiatives related to raising awareness of the rules of competition;
14. adopt the Rules of organization, as well as any other acts as provided for in this Law;
15. keep an electronic register of the adopted acts.

Chairperson of the Commission

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

1. represent the Commission or empower persons to represent it;
2. organise and manage the activities of the Commission;
3. schedule and preside the sittings of the Commission;
4. approve the staff table of the Commission's administration;
5. conclude, modify and terminate the employment and civil service contracts with the officials from the administration;
6. organise and enforce the decisions of the Commission which have come into force;
7. approve any internal regulations of the Commission, with the exception of the acts under Art. 8, item 14;
8. execute the budget;
9. provide information to the public about the activities of the Commission through the mass media;
10. perform the international cooperation of the Republic of Bulgaria with international organisations or with the authorities of other states in the field of protection of competition.

(2) (amend. – SG 54 of 2010) When performing his/her functions, the Chairperson shall be assisted by the Deputy Chairperson. In those cases where the Chairperson is abroad or in legal leave, he/she shall delegate his/her powers to the Deputy Chairperson by an order regarding each individual case.

Conflict of interests

Art. 10. (1) A Commission member or an official from the administration may not take part in a proceeding under this Law, in case he/she is interested in the outcome of the proceedings or there are reasonable doubts about his/her impartiality.

(2) The Commission member or the official in question shall be removed on its own initiative or upon a motion of the parties.

Professional secret

Art. 11. (1) The members of the Commission and the officials of the administration shall not have the right to disclose information, which constitutes professional secret.

(2) Information, which constitutes professional secret, may be disclosed by the Commission only in performing its obligations as a national competition authority of a Member State of the European Union under the procedure set forth in Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004.

Pecuniary liability

Art. 12. The Members of the Commission and the officials of the administration shall not bear any pecuniary liability for damages caused in the course of performing their functions and powers under this Law, unless they have intentionally committed indictable crime.

Commission's Budget

Art. 13. (1) (amend. SG 15 of 2013, in force from 01.01.2014) The Commission's budget shall be drawn up, executed and accounted for in compliance with the Public Finance Act.

(2) The Commission shall receive to its budget income from:

1. fees and expenses pursuant to this Law, the Public Procurement Law and the Concessions Act;
 2. pecuniary sanctions and fines imposed with Commission decisions which have come into force;
 3. other sources from activities allowed by a law.
- (3) (revoked – SG 38 of 2012, in force from 01.07.2012)
- (4) (revoked – SG 38 of 2012, in force from 01.07.2012)

Annual Report

Art. 14. (1) By May 30 of the following year the Commission shall prepare and submit to the National Assembly an annual report on its activities.

(2) The Commission shall publish the annual report under the previous paragraph and make it available on its site.

Title Two RESTRICTION OF COMPETITION

Chapter Three PROHIBITED AGREEMENTS, DECISIONS AND CONCERTED PRACTICES

General Prohibition

Art. 15. (1) The following shall be prohibited: all types of agreements between undertakings, decisions by associations of undertakings as well as concerted practices of two or more undertakings having as their object or effect the prevention, restriction or distortion of competition on the relevant market, such as those which:

1. directly or indirectly fix prices or other trading conditions;
2. share markets or sources of supply;
3. limit or control production, trade, technical development or investment;
4. apply to certain partner's dissimilar conditions for equivalent transactions, thereby placing them at a competitive disadvantage;
5. make the conclusion of contracts subject to acceptance by the other party of supplementary obligations or to the conclusion of additional contracts which, by their nature or in accordance with commercial usage, have no connection with the subject of the main contract or to its performance.

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

Agreements of Minor Importance

Art. 16. (1) The prohibition referred to in Art. 15, paragraph (1) shall not apply to agreements, decisions or concerted practices with inappreciable effect on competition.

(2) The effect shall be considered inappreciable where the aggregate share of the participating undertakings on the market of goods or services affected by the agreement, the decision or the concerted practice does not exceed:

1. ten per cent of the relevant market, where the participants are competitors;
2. fifteen percent of any of the relevant markets, where the participants are not competitors;

(3) Paragraph (1) shall not apply where the agreements, decisions or concerted practices have as their object or effect:

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

(4) The Commission shall adopt rules, governing the application of paragraphs (2) and (3) which shall be published in the register under Art. 68, paragraph (1).

Exemption from the Prohibition

Art. 17. (1) Agreements, decisions and concerted practices within the meaning of Art. 15, paragraph (1) shall not be prohibited, if they contribute to the improvement of the production or distribution of goods or provision of services or to the promotion of technological and/or economic progress, while ensuring a fair share of the resulting benefits to the consumers and if they:

1. do not impose on the undertakings concerned restrictions that 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 the circumstances under paragraph (1) shall be upon the undertakings or the associations of undertakings that invoke them.

Block Exemption from the Prohibition

Art. 18. (1) Certain categories of agreements, decisions and concerted practices which comply to the requirements under Art. 17 may be exempted from the prohibition under Art. 15 by a decision of the Commission, which shall not be subject to appeal. It shall be published in the register under Art. 68.

(2) Where the Commission, as a result of an investigation, establishes that an agreement, decision or concerted practice, falling within the scope of a decision under paragraph (1), does not meet the requirements specified in Art. 17, it shall rule that the block exemption decision shall not apply to that particular case, but shall not impose the sanction provided for in the Law for an infringement under Art. 15 and shall specify a period within which the parties shall bring their agreement into compliance with Art. 17 or terminate it.

(3) (amend. – SG 2 of 2018) Where the Commission, as a result of an investigation, establishes that an agreement, decision or concerted practice is incompatible with Article 101, paragraph 3 of the Treaty on the Functioning of the European Union in the territory of the country or part thereof, which has all the characteristics of a distinct geographic market, the Commission shall rule that the provisions of the relevant European Union Regulation on block exemption from the prohibition under Article 101, paragraph 1 of the Treaty on the Functioning of the European Union shall not apply in the particular case, but shall not impose the sanction provided for in the Law for an infringement under Article 101, paragraph 1 of the Treaty on the Functioning of the European Union and shall specify a period within which the parties shall bring their agreement into compliance with Article 101, paragraph 3 of the Treaty on the Functioning of the European Union or terminate it.

Chapter Four ABUSE OF MONOPOLY OR DOMINANT POSITION

Monopoly Position

Art. 19. (1) The position of an undertaking which by law has the exclusive right to carry out a certain type of economic activity shall be monopolistic.

(2) A monopoly position may be granted only by law in the cases provided for in Art. 18, paragraph (4) of the Constitution of the Republic of Bulgaria.

(3) Any other kind of granting of monopoly position apart from the cases under paragraph (2) shall be null and void.

Dominant Position

Art. 20. Dominant shall be the position of an undertaking which, in view of its market share, financial resources, possibilities for market access, level of technology and economic relations with other undertakings may hinder competition on the relevant market, as it is independent of its competitors, suppliers or customers.

Prohibition of Abuse of Monopoly or Dominant Position

Art. 21. The conduct of undertakings enjoying monopoly or dominant position, as well as the conduct of two or more undertakings enjoying a collective dominant position that may prevent, restrict or distort competition and impair consumers' interests, shall be prohibited, such as those which:

1. impose directly or indirectly purchase or sale prices or other unfair trading conditions;
2. limit production, trade and technical development to the prejudice of consumers;
3. apply to certain partner's dissimilar conditions for equivalent transactions, thereby placing them at a competitive disadvantage;
4. make the conclusion of contracts subject to acceptance by the other party of supplementary obligations or to the conclusion of additional contracts which, by their nature or according to common commercial usage, have no connection with the object of the main contract or with its performance;
5. unjustified refusal to supply goods or to provide services to actual or potential customers in order to impede their economic activity.

Chapter Five

CONTROL ON CONCENTRATIONS BETWEEN UNDERTAKINGS

Definition

Art. 22. (1) A concentration of undertakings shall be deemed to arise where there is a change of control on a lasting basis, which results from:

1. the merger or takeover of two or more independent undertakings, or
2. the acquisition, by one or more persons already controlling at least one undertaking, whether by purchase of securities, shares or assets, by contract or by any other means, of direct or indirect control of the whole or parts of other undertakings.

(2) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall also constitute a concentration within the meaning of paragraph (1).

(3) Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by acquiring

1. ownership or the right to use the entirety or part of the assets of the undertaking;
2. rights, including on the basis of a contract, which provide a possibility for decisive influence on the composition, voting or decisions of the organs of the undertaking.

Derogations

Art. 23. A concentration shall not be deemed to arise in cases where:

1. credit institutions and other financial institutions or insurance companies, the normal activities of which include transactions in securities for their own account or for the account of any third party, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, but only provided that:

a) they do not exercise the voting rights attached to those securities in order to influence the competitive behaviour of that undertaking; or

b) they exercise such voting rights only in order to prepare the disposal of those securities and that any such disposal takes place within one year of the date of acquisition;

2. control is acquired by a person, who according to the law in force performs functions related to the winding up or declaring the insolvency of the undertaking;

3. the operations referred to in Art. 22, paragraph (3) are carried out by financial

holding companies, provided that the control acquired by the holding is exercised solely to maintain the full value of the investments and not to determine directly or indirectly the competitive behaviour of the undertakings in which the holding participates.

Prior Notification

Art. 24. (1) Concentrations shall be subject to mandatory prior notification to the Commission where the aggregate combined turnover of all undertakings participating in the concentration in the territory of the Republic of Bulgaria in the preceding year exceeds BGN 25 million, and

1. the turnover of each of at least two of the undertakings participating in the concentration in the territory of the Republic of Bulgaria during the preceding financial year exceeds BGN 3 million, or

2. the turnover of the undertaking – subject to acquisition in the territory of the Republic of Bulgaria during the preceding fiscal year exceeds BGN 3 million.

(2) Undertakings shall be obliged to notify the Commission following the conclusion of the agreement, the public announcement of the bid or the acquisition of control, but before the undertaking of any actual actions to implement the transaction. In certain cases, upon request of the parties, the Commission may assess concentrations prior to conclusion of the agreement or the public announcement of the bid, where the parties provide sufficient evidence of their intentions to conclude an agreement or have publicly announced their intention to make a tender offer.

Calculation of Turnover

Art. 25. (1) The aggregate turnover shall include the net income from sales of an undertaking participating in the concentration during the preceding financial year, being the amounts derived from sale of products, goods and services, generated from the ordinary activities of the undertaking, reduced with commercial discounts, cutbacks, rebates and value added tax. Turnover shall not include income from sale of products, goods and services between undertakings belonging to the same economic group.

(2) Where concentration comprises acquisition of part or parts of one or more undertakings, whether or not constituted as separate legal entities, only the turnover relating to the part or parts which are the subject of the concentration shall be taken into account.

(3) For the purposes of this Art., turnover shall consist of:

1. for credit or other financial institutions – the amount of the following revenue items after deduction of VAT and when necessary – other taxes related to these items:

- a) interest income and other similar income;
- b) income from securities: income from shares and other variable yield securities; income from participating interests; income from shares in affiliated undertakings;
- c) commissions receivable;
- d) net profit on financial operations;
- e) other operating income;

the turnover of a credit or other financial institution in the Republic of Bulgaria includes the income items, as determined above received by their branches or divisions established in the Republic of Bulgaria;

2. for insurance undertakings – the value of the gross premiums written, which shall comprise all amounts received and receivable in respect of insurance contracts,

issued by or on behalf of the insurance undertakings, including outgoing re-insurance premiums after deduction of taxes and instalments or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

(4) The aggregate turnover of the undertaking shall be calculated as a sum of the respective turnovers of:

1. the respective undertaking-participant;
2. the undertakings controlled directly or indirectly pursuant to Art. 22 paragraph (3) by the undertaking-participant;
3. the undertakings controlling directly or indirectly the respective undertaking-participant pursuant to Art. 22, paragraph (3);
4. other undertakings controlled directly or indirectly pursuant to Art. 22, paragraph (3) by an undertaking exercising control over the respective undertaking-participant;
5. the undertakings jointly controlled by the undertakings mentioned in items 1 – 4.

(5) When any of the undertakings under paragraph (4), items 1 - 4 exercises joint control over another undertaking, when calculating the aggregate turnover:

1. no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and the undertakings under paragraph (4) items 1 – 4;
2. account shall be taken of the turnover resulting from the sale of products and the provision of services between joint undertakings and any third undertaking. This turnover shall be apportioned equally amongst the undertakings exercising joint control.

Authorisation for Concentration

Art. 26. (1) The Commission shall authorise a concentration provided that it does not lead to the creation or strengthening of a dominant position, as a result of which effective competition in the relevant market would be significantly impeded.

(2) The Commission may authorise a concentration which, while creating or strengthening a dominant position, aims at modernisation of the relevant economic activity, improvement of market structures, better meeting the interests of consumers and overall the positive effect outweighs the negative impact on competition in the relevant market.

Chapter Six

SECTOR INQUIRIES AND COMPETITION ADVOCACY

Sector Inquiries of the Competition Environment

Art. 27. (1) The Commission shall perform a sector inquiry in cases where the competition in a certain sector, branch, sub-branch or region may be prevented, restricted or distorted.

(2) In the framework of the inquiry under paragraph (1), the Commission may define the relevant markets and investigate their characteristics and structure, barriers to entry, market participants, degree of market concentration, sector dynamics, regulatory framework, self-regulation and draw conclusions on the conditions of the competitive environment.

Competition Advocacy

Art. 28. In order to protect free economic enterprise and prevent restriction or distortion of competition, the Commission shall assess the compatibility with the provisions of this Law of:

1. draft legislative or regulatory administrative or general administrative acts;
2. effective legislative or regulatory administrative or general administrative acts;
3. draft acts of associations of undertakings, which regulate the activities of their members.

Chapter Seven

PROHIBITION OF UNFAIR COMPETITION

General Prohibition

Art. 29. Any action or omission when carrying out economic activity, which is contrary to good faith commercial practices and damages or may damage the interests of competitors shall be prohibited.

Damaging Good Name of Competitors

Art. 30. Damaging good name and trust in competitors, and in the goods or services offered by them, by way of assertion or dissemination of false information, as well as by way of misrepresenting of facts, shall be prohibited.

Misleading

Art. 31. Any misleading in respect of substantive characteristics of goods or services, or in respect of the manner of use of the goods or the provision of the services by asserting false information or misrepresenting facts shall be prohibited.

Prohibition of Misleading and Comparative Advertising

Art. 32. (1) Misleading advertising, as well as illegal comparative advertising shall be prohibited.

(2) The advertiser and the advertising agency, which produced the advertisement, shall bear responsibility for misleading and illegal comparative advertising.

Misleading Advertising

Art. 33. (1) Misleading shall be any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of this, is likely to affect their economic behaviour or, for these reasons, damages or is likely to damage a competitor.

(2) In determining an advertising as misleading, account shall be taken also of:

1. the characteristics of the goods and services, such as: their availability, appearance, execution, composition, method and date of manufacture of the goods or provision of the services, usage expiration date, ways of usage, quantity, geographical and commercial origin, the results to be expected from their use, results and substantial features of tests or checks carried out on the goods or services;

2. the price or the manner of its formation and the conditions on which the goods are supplied and the services provided;

3. data about the advertiser or the advertising agency, such as: name or trade name, address or seat; address of management; property; industrial and intellectual property rights; awards or distinctions.

Comparative Advertising

Art. 34. (1) Comparative advertising means any advertising which directly or indirectly identifies a competitor or goods or services offered by him.

(2) Comparative advertising shall be permitted when:

1. it is not misleading under the meaning of Art. 33 of this Law and is not an unfair commercial practice under the meaning of Art. 68e, 68f, 68g of the Consumer Protection Act;

2. it compares goods or services satisfying the same needs or intended for the same purpose;

3. it objectively compares one or more features of the goods and services which are substantial, comparable and representative for these goods and services, including their prices;

4. it does not lead to confusion between the advertiser and his competitors or between trademarks, trade names, other distinguishing marks, goods or services of the advertiser and those of his competitors;

5. it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or situation of the competitors;

6. it compares goods with the same designation of origin;

7. it does not take unfair advantage of the reputation of the trademark, trade name or other distinguishing marks of the competitors or of the designation of origin of competing goods;

8. it does not present the goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

(3) In order to assess whether comparative advertising is legal, in addition to the circumstances laid down under paragraph (2), account shall be had of the provisions of Regulation (EC) 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

Imitation

Art. 35. (1) The offering of goods or services whose appearance, packaging, marking, name or other features deceive or may lead to deception in respect of their origin, manufacturer, seller, method and place of manufacture, the source and manner of acquisition or purpose, the quantity, quality, nature, consumer properties and other substantial characteristics of the goods or services, shall be prohibited.

(2) The use of trading name, mark or geographical indication identical or similar to those of other persons, in a manner that may lead to injuring the interests of competitors shall be prohibited.

(3) The use of a domain name or web-site design identical or similar to those of other persons in a manner that may mislead and/or injure the interests of competitors shall be prohibited.

Unfair Solicitation of Clients

Art. 36. (1) Carrying out unfair competition, aimed at soliciting clients, as a result of which existing agreements are terminated or breached, or entry into such agreements with competitors is prevented, shall be prohibited.

(2) Offering or granting as a supplement to goods sold or services provided, either free of charge or at an ostensible price, of other goods or services except for: advertising

items of minor value and bearing a clear indication of the advertising undertaking; items or services which according to commercial usage are an attribute to the goods sold or services provided; goods or services as a rebate for sales in higher quantities; shall be prohibited.

(3) Conducting a sale, where an offer or promise is attached, which is conditional upon: solving problems, puzzles, raffles, riddles; collecting a series of coupons and other similar items; organizing games to win money or prizes, the value of which significantly exceeds the price of the goods or services sold, shall be prohibited. The Commission, on the grounds of Art. 8, item 14, shall adopt rules with which it shall determine in which cases the value of the promised prize substantially exceeds the price of the goods or services sold.

(4) The sale to the domestic market of significant quantities of goods over an extended period of time at prices lower than the costs of their production and marketing, with the purpose to unfairly solicit clients, shall be prohibited.

Prohibition of Disclosure of Production or Trade secrets

Art. 37. (1) Discovering, using or disclosing manufacturing or trade secrets that is contrary to good faith commercial practices, shall be prohibited.

(2) Using or disclosing manufacturing or trade secrets shall be prohibited, where they have been discovered or disclosed under the condition that they shall not be further used or disclosed.

Chapter seven “a”

ABUSE OF STRONGER BARGAINING POSITION

Art. 37a. (new – SG 56 of 2015) (1) Every act or omission of an undertaking with a stronger bargaining position shall be prohibited, where it is in conflict with the fair business practice and is damaging or can impair the interests of the weaker part in negotiations or of consumers. Unfair shall be acts or omission which do not have objective economic grounds, such as unjustified refusal to be delivered or purchased goods or services, imposition of unreasonably heavy or discriminatory conditions or ungrounded termination of business relations.

(2) The existence of a stronger bargaining position shall be determined in view of characteristics of the structure of the relevant market and particular legal relationship between the involved undertakings, taking into consideration the level of dependence between them, the nature of their business and the difference in the scale thereof, the probability of finding of an alternative trade partner, including the existence of alternative supply sources, distribution channels and/or customers.

Title Three PROCEEDINGS

Chapter Eight GENERAL PROVISIONS

Grounds for Initiating Proceedings before the Commission

Art. 38. (1) Proceedings before the Commission shall be initiated on:
1. a decision of the Commission;

2. a request from a prosecutor;
3. an application by the persons, whose interests have been affected or threatened by an infringement of this Law;
4. an application for immunity from sanctions;
5. an application by the persons whose interests have been affected by acts which have been issued contrary to this Law.
6. a notification of a concentration between undertakings;
7. a request of a national competition authority of a Member State of the European Union or of the European Commission under Art. 20, paragraph (5) and Art. 22 of Regulation (EC) No. 1/2003 as well as under Art. 12 and Art. 13, paragraph (5) of Regulation (EC) No. 139/2004;
8. a request for opinion of a state authority, including an authority of the executive branch or of local government;

(2) Where deficiencies are established, the application or notification shall be stayed and to the applicant or to the notifying party shall send a request to remedy them within seven days. Where they are not remedied within the deadline set, the Chairperson shall issue an order refusing to initiate proceedings.

(3) The application under paragraph (1), item 4 shall be submitted in accordance with a form, approved with the decision of the Commission under Art. 101, paragraph (5). The identity of the applicant shall be kept secret.

Initiation of Proceedings

Art. 39. (1) By an order, the Chairperson of the Commission shall initiate the proceedings and nominate a member of the Commission who shall supervise the investigation.

(2) By an order the Chairperson shall appoint a case team from the administration, which shall perform the investigation.

Suspension of Proceedings

Art. 40. (1) The Commission may suspend the proceedings with a ruling, in case its final decision is conditional on the resolution of an issue or a dispute, falling within the competence of another authority.

(2) The Commission may suspend the proceedings in the cases provided for in Art. 13 of Regulation (EC) No. 1/2003 and in Art. 22, paragraph (2) of Regulation No. 139/2004.

(3) (amend. – SG 77 of 2018) The rulings under paragraphs (1) and (2) are subject to appeal under the procedure set forth in Art. 64 paragraph (3).

(4) The proceedings shall be renewed with a ruling *ex officio* or upon the request of one of the parties, after all obstacles to the proceedings have been eliminated.

Termination of Proceedings

Art. 41. No proceedings shall be initiated and the proceedings initiated shall be terminated by a decision of the Commission where:

1. the Commission is not the competent authority to resolve on the case;
2. the limitation period as laid down in this Law has expired;
3. in the cases under Art. 11, paragraph (6) and under Art. 13 of Regulation (EC) No. 1/2003 as well as under Art. 22, paragraph (3) of Regulation (EC) No. 139/2004;
4. the notifying party or the respondent are wound up, could not be found or do not

exist.

5. the notifying party withdraws its request for authorization of a concentration;
6. in the cases under Art. 75, paragraph (2).

Limitation period

Art. 42. (1) The limitation period for infringements under this Law shall be:

1. three years – for infringements of the provisions referring to requests for information or making of inspections;

2. five years – for all other infringements.

(2) The limitation period shall run from the day the infringement is committed and in case of continuous infringement - from the date it is discontinued.

(3) The limitation period under paragraph (1) shall be interrupted upon the initiation of proceedings to establish the infringement by the Commission or another national competition authority of a Member State of the European Union or by the European Commission.

(4) No limitation period shall run during the time proceedings are ongoing or until entry of the decision into force.

(5) The Commission shall monitor *ex officio* for the expiration of the limitation period.

Parties to the Proceedings

Art. 43. (1) The parties to the proceedings before the Commission shall be the persons, who have submitted the application or notification, based on which proceedings have been initiated as well as the persons who have been accused of having committed an infringement under this Law.

(2) The Commission may constitute in the proceedings interested third parties upon their substantiated request:

1. at any time during the proceedings under Chapters Nine and Twelve;

2. within 30 days from the date of publication of the decision to open an in-depth investigation of a concentration under Chapter Ten.

Investigation

Art. 44. (1) The investigation shall be carried out by the case team, appointed according to Art. 39, paragraph (2), and shall be supervised by a member of Commission, who shall provide instructions where needed.

(2) The investigation shall be carried out in compliance with the general rules of this chapter and as laid down in Chapters Nine, Ten, Eleven and Twelve.

(3) The investigation and the determining of the position of the undertakings on the relevant market shall be carried out in compliance with the Methodology adopted by the Commission.

Powers to Conduct Investigation

Art. 45. During the investigation the supervising Member of the Commission and the case team, appointed according to Art. 39, paragraph (2), shall have the right to:

1. request information, material, written, digital and electronic evidence, irrespective of the media on which they have been stored;

2. take oral or written statements;

3. conduct inspections;
4. entrust the conducting of expertise by external experts;
5. request information or assistance by other national competition authorities of Member States of the European Union and by the European Commission.

Obligation for Cooperation

Art. 46. All natural persons and legal entities, including undertakings, associations of undertakings, state authorities and local government bodies, non-governmental organizations and the National Statistical Institute, shall be obliged to render assistance to the Commission in exercising its powers laid down in this Law as well as in Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004.

Gathering of Information

Art. 47. (1) Persons, whose assistance has been requested pursuant to this act, as well as pursuant to Regulation(EC) No. 1/2003 and Regulation (EC) No. 139/2004, may not refer to any production, trade or other secret protected by law.

(2) When the information contains data representing classified information, the procedure laid down in the Protection of Classified Information Act shall apply.

(3) (amend. – SG 17 of 2019) When the information contains personal data, the procedure provided for their protection shall apply.

(4) The persons requested to provide information should furnish it within a time limit determined by the Commission.

(5) The information, provided by all parties in the course of the proceedings, must be complete, accurate, true and not misleading.

(6) The Commission may hold that the facts, in respect of which the party or the interested party have hindered the gathering of the information requested from them, have been proven.

Use of Information

Art. 48. Any information, gathered in the course of an investigation, may be used only for the purposes of this Law.

Taking of Oral Statements

Art. 49. (1) Oral statements in the course of proceedings shall be taken and entered in a record by the case team.

(2) The record shall be signed by the person giving the statement as well as by the case team on the proceedings.

(3) When there are sufficient grounds to assume that disclosure of the identity of any person, who has given statements or has provided data for an infringement under this Law may lead to significant adverse effects on his/her activity or on him/her as a person, the Commission shall take measures not to disclose his/her identity in accordance with a procedure set out in the internal rules, adopted by the Commission.

Inspections

Art. 50. (1) The Commission may carry out all kinds of inspections of the undertakings and associations of undertakings after receipt of an authorization under Art. 51.

(2) During the inspections under paragraph (1), the officials, appointed by an order

of the Commission's Chairperson, shall have the power to:

1. enter any premises, means of transport and other locations used by the undertakings or associations of undertakings;
2. examine all documents and records, related to the activity of the undertakings or associations of undertakings, irrespective of the medium on which they are stored;
3. seize or obtain in paper, digital or electronic medium any copies of or extracts from documents and records, irrespective of the media on which they are stored or, where this is impossible, seize the originals, as well as any other material evidence;
4. seize or obtain electronic, digital and forensic evidence, as well as traffic data, from all types of computer data media, computer systems and other information media as well as seize the devices for transmission of information;
5. receive access to all types of information media, including servers, accessible by computer systems or other means, located in the inspected premises;
6. seal for a certain period of time any premises, means of transport and other locations, used by the inspected undertakings or associations of undertakings, as well as commercial or accounting books or other information media;
7. take oral statements of any representative or member of the management or staff of the undertakings or associations of undertakings, on circumstances, related to the subject matter and purpose of the inspection.

(3) During the inspections, the Commission officials shall be assisted by the police, in accordance with the powers conferred upon it by the Ministry of Interior Act. The procedure to organize and conduct the joint actions shall be determined by an Instruction issued by the Minister of Interior and the Chairperson of the Commission.

(4) (amend. – SG 2 of 2018) Any document or evidence found may be seized if they contain data raising well-founded doubts of other infringements under Art. 15, Art. 21 or Art. 24 of this Law or under Article 101 and 102 of the Treaty on the Functioning of the European Union. After conclusion of the inspection they shall be immediately handed over to the Commission for adoption of a decision pursuant to Art. 38, paragraph (1), item 1.

Judicial Authorisation

Art. 51. (1) The inspections shall be conducted following an authorisation by a judge from the Administrative Court – Sofia, which shall be issued upon request of the Chairperson of the Commission.

(2) The request for judicial authorisation shall contain:

1. the purpose of the inspection and the trading name of the undertaking or the association of undertakings for which authorisation is requested to be inspected;
2. the nature of the alleged infringements and in case of proceedings under Chapter Ten – the nature of the concentration and the parties thereto;
3. justification of the reasons, which necessitate conducting the inspection.

(3) In the cases under Art. 93 the request for authorization shall be accompanied by the decision of the Commission related to request of assistance, as well as the request for assistance.

(4) The Administrative Court – Sofia shall, on the day the request is filed, resolve upon it by issuing a ruling. The ruling shall contain the exact name of the undertaking or association of undertakings, which shall be inspected. The authorisation shall apply to the premises, means of transport and other locations, which are used by the inspected undertaking or association of undertakings.

(5) Where it is necessary to conduct simultaneous inspections of several undertakings or associations of undertakings, the Chairperson of the Commission may file one request for all undertakings, and the court shall pass separate rulings for each of the undertakings or associations of undertakings.

(6) The rulings under paragraphs (4) and (5) as well as any refusal to pass such rulings shall be subject to appeal before a three-member panel of the Supreme Administrative Court within three days. The three-day period shall commence as of the day the Commission and respectively, the undertaking or association of undertakings, are notified. The appeal shall not suspend the execution.

Procedure for Collection of Evidence during Inspections

Art. 52. (1) The collection of evidence in the course of inspections shall be conducted by the Commission officials in the presence of representatives of the undertaking or association of undertakings, any of its employees or any other person having the right to be present at the premises or means of transport or found to be there at the time of the inspection.

(2) The copies of the documents seized shall be certified by the Commission officials and by the representatives of the undertakings or associations of undertakings or an official authorised by them. In case the representatives refuse to certify, certification shall be made only by the Commission officials.

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

(4) The original documents, material evidence and information on electronic and digital media shall be seized as found at the time of the inspection and they shall be returned to the undertaking or association of undertakings after the Commission decision has entered into force.

(5) On request by the undertakings or association of undertakings from which original documents are seized, the same can be returned to them also before entry into force of the decision of the Commission. In all cases the Commission shall return the original documents when the exercise of the rights attaching thereto relates to their physical possession.

(6) In the cases under paragraph (5), the Commission shall use copies of the original documents, certified by the representatives of the Commission and of the undertakings or associations of undertakings from which the originals have been seized.

(7) A written protocol, certifying what evidence has been seized under paragraphs (2), (3) and (4), shall be drawn at the inspected premises, with full and precise list of the items seized. The written protocol shall be signed as provided for in paragraph (2) and shall be delivered to the persons from whom the evidences were seized.

External Experts

Art. 53. (1) When in order to clarify any aspects related to the proceedings the Commission needs special expertise, it may, upon request of the parties or on its own initiative, by a ruling appoint the expertise to an external expert. In the ruling the Commission shall indicate the expert, the task of the expertise and the deadline for submission of expert's report.

(2) The expert cannot be a person interested directly or indirectly in the outcome of the proceedings.

(3) The expert shall submit his/her report to the Commission and the Commission

shall approve it with a ruling. Where the report is contested, the Commission may assign the assessment to one or more other experts.

(4) Further examination shall be assigned where the expert's report is not sufficiently complete and clear, and a new one – where it is not grounded and a doubt arises as to its correctness.

(5) The Commission shall not be bound to adopt the report of the expert, but to consider it together with the other evidence collected on file during the proceedings.

Cooperation with the National Competition Authorities and the European Commission in Investigation

Art. 54. (1) The Commission shall cooperate with the European Commission and the other national competition authorities of the Member States, by receiving and rendering assistance and exchanging information under the procedure set forth in Regulation (EC) No. 1/2003 and Art. 11, paragraph (6), Art. 12 and Art. 13, paragraph (5) of Regulation (EC) No. 139/2004.

(2) The authority which shall use the information exchanged shall ensure the same degree of security as the one ensured by the national competition authority of the Member State, which has furnished this information.

Access to File

Art. 55. (1) The parties and constituted interested third parties in the proceedings shall have the right to access any evidence, collected in the course of investigation with the exception of those containing production, trade or other secret, protected by law. No access shall be granted to internal documents of the Commission, including correspondence with the European Commission or with a national competition authority of a Member State of the European Union.

(2) (amend. – SG 77 of 2018) Any person, submitting information to the Commission in the course of proceedings shall identify the materials that are claimed to contain production, trade or other secret, protected by law and which should, therefore, be treated by the Commission as confidential. In such cases the person shall substantiate its claim and shall submit the same materials in a version in which all data considered to be confidential has been erased. Whenever the Commission considers that certain information is not confidential, it shall issue a ruling in this regard and inform the person of it. The ruling shall be subject to appeal under the procedure set forth in Art. 64, paragraph (3).

(3) Any material indicated to contain production, trade or other secret protected by law, may be disclosed and used by the Commission in case it is essential as evidence to the alleged infringement or in order to secure the right of defence of the respondent.

(4) The procedure regulating the access, use and storage of documents constituting production, trade or other secret protected by law, shall be set out in the rules adopted by the Commission.

Interim Measures

Art. 56. (1) If, during an investigation under Chapter Nine, there is sufficient evidence of an infringement, in urgent cases where there is a risk of serious and irreparable damage to competition, the Commission may, at its own initiative or on request of the persons whose interests are affected or threatened by the infringement, order the immediate termination of the practice by the undertaking or the association of

undertakings, or impose other necessary measures, taking into account the objectives of this Law. The Commission may not impose measures which are of the competence of other authorities and are stipulated in other Acts.

(2) (amend. – SG 77 of 2018) The interim measures under paragraph (1) may be ordered at any time during the course of the proceedings. The Commission shall impose the interim measures with a reasoned ruling stating the objectives of the imposed measure and giving the grounds for its urgency. The ruling shall be subject to appeal under the procedure set forth in Art. 64, paragraph (3). Appeal shall not suspend the application of the interim measure.

(3) The term of effect of the interim measures shall be up to 3 months as of the time they are ordered. If necessary, the time limit may be extended under the procedure set forth in paragraph (2). The interim measures may have effect until the adoption of the Commission's decision on the merits.

(4) The Commission may revoke the interim measure also before expiry of the term of its effect where the illegitimate practice is terminated and the damage to competition is prevented.

Closing the Investigation

Art. 57. (1) After closing the investigation, the case team shall present a report to the supervising Member of the Commission, which shall contain the factual and legal analysis of the case as well as a proposal concerning the manner of conclusion of the proceedings.

(2) The supervising member of Commission shall inform the Chairperson of the completion of the investigation. The Chairperson shall issue a resolution scheduling a closed sitting of the Commission, at which the further course of the proceedings shall be decided.

Commission Sitzings

Art. 58. (1) The Commission sittings shall be open or closed.

(2) The parties may avail themselves of legal defence.

(3) Submission of evidence in an open sitting of the Commission shall not be allowed unless it is newly discovered or newly originated.

(4) The Commission may, at its discretion, call any external experts who have submitted expertise or other persons, state authorities or local government authorities to attend its open sitting.

Quorum

Art. 59. (1) (amend. – SG 54 of 2010; amend. – SG 73 of 2011, in force from 20.09.2011) The sittings shall be considered valid where at least four members of the Commission are present.

(2) (amend. – SG 54 of 2010; amend. – SG 73 of 2011, in force from 20.09.2011) The Commission shall pass decisions and rulings with an open vote and a majority of four votes. In case that the sitting is attended by less than seven members, the decision, the ruling respectively, shall be passed only if for the same at least 4 of the members of the Commission cast their votes.

Commission Decisions

Art. 60. (1) In a closed sitting the Commission shall adopt a decision whereby it

shall:

1. order the initiation of an in-depth investigation;
2. establish the infringement committed and the infringer;
3. impose pecuniary sanctions, periodic sanctions and/or fines;
4. exempt from sanction or reduce the amount of the sanction in compliance with Art. 101.
5. (amend. – SG 2 of 2018) establish that no infringement has been committed under this Law or that there is no ground for taking actions for committed infringement under Article 101 and 102 of the Treaty on the Functioning of the European Union;
6. terminate the proceedings;
7. reopen the proceedings terminated under Art. 75, paragraph (2);
8. approve commitments undertaken and define the period for their implementation;
9. exempt certain categories of agreements, decisions or concerted practices from the prohibition under Art. 15;
10. rule that the respective decision on block exemption shall not apply to the specific case and shall specify a time limit within which the parties must bring their agreement into compliance with Art. 17 or terminate it;
11. (amend. – SG 2 of 2018) withdraw the application of an EU Regulation on block exemption from the prohibition of Article 101, paragraph 1 of the Treaty on the Functioning of the European Union in case that the conditions under Art. 29 of Regulation (EC) 1/2003 are present and specify a time limit within which the parties have to bring their agreement into compliance with Article 101, paragraph 3 of the Treaty on the Functioning of the European Union or terminate it;
12. order the termination of infringements, including by imposing appropriate behavioural and/or structural measures to restore competition;
13. resolve that a transaction does not constitute concentration or does not fall within the scope of the prior notification obligation;
14. authorise a concentration;
15. authorise a concentration with commitments proposed by the parties;
16. authorize a concentration under condition;
17. prohibit a concentration;
18. revoke the decision authorizing a concentration;
19. propose to the relevant competent authorities to amend or repeal the relevant administrative act;
20. adopt opinions on draft legislative and administrative acts;
21. approve the results of a sector inquiry conducted;
22. require rendering of assistance;
23. require termination of proceedings on rendering of assistance;
24. resolve on any other matters within its competence.

(2) The Commission shall prepare and announce its decision with the reasons thereto within 14 days after holding its closed sitting under paragraph (1). The decision shall be reasoned and signed by the members of the Commission who have voted at the closed sitting.

Dissenting Opinion

Art. 61. (1) A member of the Commission who dissents with the decision shall sign it with a dissenting opinion.

(2) The dissenting opinion and its reasons shall be attached to the decision.

Contents of the Decision

Art. 62. (1) The decision of the Commission shall be in written form and shall contain:

1. the name of the authority which has issued it;
2. the grounds of fact and law for its adoption;
3. (amend. – SG 2 of 2018) an order which shall establish the existence or lack of an infringement under this Law; the existence or lack of grounds to take actions for committed infringement under Article 101 and 102 of the Treaty on the Functioning of the European Union; determine the rights and obligations of the parties as well as the type and amount of the pecuniary sanction or fine, if such is imposed;
4. the authority before which and the time limits within which the decision may be appealed.

(2) The decision shall also specify a period for voluntary execution of the imposed pecuniary sanction or fine.

Commission's Ruling

Art. 63. The Commission shall issue a ruling when it rules on issues which are not related to the merits of the dispute, unless otherwise provided for in this Law.

Appeals of Decisions and Rulings

Art. 64. (1) (amend. and suppl. – SG 77 of 2018) The decisions of the Commission, unless otherwise provided for in the Law, may be appealed before Administrative Court – Sofia Region in respect of their conformity with the law by the parties to the proceedings or by any third person that has legal interest. Decisions shall be appealed within a term of 14 days, which shall start as of their notification in accordance with the procedure laid down in the Code of Administrative Procedure, and in respect of third parties – as of the date of their publication in the electronic register of the Commission. The decisions of the Court are subject to cassation appeal before the Supreme Administrative Court.

(2) (new – SG 77 of 2018) The state fees for cassation appeal before the Supreme Administrative Court shall be set at the amount of the fees payable to the proceedings before the Commission on Protection of Competition. The state fees for the annulment of enforceable court acts and private appeals shall be determined in accordance with the Code of Administrative Procedure.

(3) (amend. – SG 77 of 2018) The rulings of the Commission for which this is provided in the Law, may be subject to appeal in respect of their conformity with the law by the parties to the proceedings under the procedure for appealing Commission's decisions. The rulings shall be subject to appeal within 7 days of their notification in accordance with the procedure laid down in the Code of Administrative Procedure before Administrative Court – Sofia Region.

Entry into Force of Decisions and Rulings

Art. 65. The decisions and rulings of the Commission shall enter into force when:

1. they are not subject to appeal;
2. they have not been appealed within the period provided for under Art. 64 or the

appeal was withdrawn;

3. the appeal lodged has been dismissed.

Enforcement of decisions

Art. 66. (1). The decisions of the Commission, which prohibit a concentration among undertakings or order the termination of an infringement, including by imposing behavioural and/or structural measures to restore competition, shall be subject to immediate enforcement.

(2) On the basis of request by the parties to the proceedings, the Commission may order immediate enforcement of the acts under Art. 82, 85 and 88.

Control on the Implementation of Decisions

Art. 67. The parties shall be obliged to duly inform the Commission of the implementation of a decision, in the event it stipulates certain conditions or obligations.

Electronic Register

Art. 68. (1) The Commission shall maintain an electronic register of the acts it has issued.

(2) All decisions of the Commission concluding the proceedings as well as all decisions to open an in-depth investigations of concentrations under Art. 82, paragraph 3, item 4 shall be published in the register.

(3) Announcements of initiated proceeding for authorization of concentrations under Chapter Five and for investigations under Chapter Nine and Twelve shall also be published in the register.

(4) The decisions under paragraph (2) shall be published within 14 days as of their adoption, and the announcements under paragraph (3) – within 7 days as of the initiation of the proceedings or of the inspection under Art. 50.

Fees and Costs

Art. 69. (1) (amend. – SG 77 of 2018) State fees and costs shall be due with regard to the proceedings under this Law. The state fees before the Commission on Protection of Competition for the proceedings under the law shall be approved by the Council of Ministers.

(2) (amend. – SG 77 of 2018) State authorities and local government institutions owe fees and litigation costs.

(3) The amounts for remuneration of external experts and specialists shall be deposited in advance by the requesting party in an amount determined by the Commission.

(4) Where the Commission issues a decision establishing an infringement under this Law, the Commission shall order the infringer to pay the costs of the proceedings, if so requested by the other party. If no infringement is established, the costs shall be borne by the parties who incurred them.

Chapter Nine

PROCEEDINGS TO ESTABLISH INFRINGEMENTS AND IMPOSE SANCTIONS UNDER CHAPTERS THREE AND FOUR OF THIS LAW AND UNDER ART. 81 AND 82 OF THE TREATY ESTABLISHING THE

EUROPEAN COMMUNITY

Initiation of Proceedings

Art. 70. (1). (amend. – SG 2 of 2018) The proceedings to establish infringements and impose sanctions under Chapters Three and Four of this Law and under Article 101 and 102 of the Treaty on the Functioning of the European Union shall be initiated on the grounds of Art. 38, paragraph 1, items 1-4.

(2) The proceedings under paragraph (1) shall be initiated within 7 days as of receipt of the application, respectively the decision of the Commission.

(3) The decision on initiation of proceedings at the own initiative of the Commission on the grounds of Art. 38, paragraph (1) item 1 shall not be subject to appeal.

Contents of the Application

Art. 71. (1) The application under Art. 38, paragraph 1, item 3 shall be submitted in Bulgarian and shall contain:

1. the name/title and particulars of the registration/personal identification number of the applicant and the person against whom the complaint has been brought;

2. the address /registered office and business address of the applicant and of the person against whom the complaint has been brought;

3. description of the circumstances upon which the complaint is based and the alleged infringement;

4. details of the form of protection sought;

5. evidence in support of the application;

6. signature of the person who files the application or of its authorised representative;

7. receipt for the state fees paid.

(2) The application under paragraph 1 shall be submitted in a model form, adopted by the Commission.

Investigation

Art. 72. The Commission shall conduct investigation on the case, exercising the powers vested in it under Art. 45.

Report of the Case team

Art. 73. (1). After having collected sufficient evidence with regard to the further course of the proceedings, the case team, appointed according to Art. 39, paragraph (2), shall prepare a report and submit it to the supervising member of the Commission.

(2) The supervising member of the Commission shall inform the Chairperson of the submitted report. The Chairperson shall issue an order scheduling a closed sitting of the Commission within 14 days as of the completion of the investigation, at which the further course of proceedings shall be decided.

Closed sitting

Art. 74. (1) After having reviewed the report under Art. 73, at a closed sitting the Commission shall:

1. (amend. – SG 2 of 2018) adopt a decision establishing that no infringement has been committed or that there are no grounds to take actions for an infringement

committed under Article 101 and 102 of the Treaty on the Functioning of the European Union;

2. adopt a ruling to referring the case back for additional investigation, giving mandatory instructions to the case team, appointed according to Art. 39, paragraph (2);

3. adopt a ruling to submit the Statement of objections for an alleged infringement of the Law to the defendant.

(2) The ruling under paragraph (1), item 3 shall specify a deadline, not shorter than thirty days, within which the complainant and the defendant shall have the right to submit their written objections on the submitted Statement of objections, and the constituted interested third parties – their observations. The ruling shall state that the parties and the interested third parties shall have the right of access to the file as laid down in Art. 55 as well as the right to be heard in an open sitting of the Commission as laid down in Art. 76.

(3) In the cases under paragraph (1), item 3, the complainant and the defendant shall be provided with a version, which does not include production, commercial or other secret, protected by law, of the parties to the ruling, while the constituted interested third parties shall be informed of the ruling of the Commission issued under paragraph (1), item 3. The period within which objections and observations under paragraph (2) may be presented shall run from the day of receipt or written notice of the ruling.

(4) The parties shall be obliged to accompany their objections with all evidence at their disposal in their support.

(5) In cases under paragraph (1), item 1, the parties shall be notified of the decision of the Commission and of their right of access to the file as laid down in Art. 55.

Undertaking of Commitments by the Party Subject to the Proceedings

Art. 75. (1) The respondent under Art. 74, paragraph (2) may propose to undertake commitments with the aim of terminating the conduct, in respect of which the proceedings were initiated.

(2) The Commission may approve these commitments by a decision. In such cases the Commission shall terminate the proceedings without establishing an infringement, concluding that there are no longer grounds for further proceedings. In its decision the Commission may prescribe the period within which the commitments shall be effective.

(3) The Commission shall not adopt commitment decisions in cases of serious infringements of the Law.

(4) The Commission may, acting upon a request or on its own initiative, reopen the proceedings, terminated pursuant to paragraph (2) where:

1. there has been a change in any of the circumstances on which the decision referred to in paragraph (2) was based;

2. the undertaking concerned fails to comply with the commitments undertaken;

3. it is established that the decision was based on incomplete, inaccurate, untrue or misleading information.

Hearing of the Parties and of the Interested Third Parties in an Open Sitting of the Commission

Art. 76. (1) The parties and any interested third parties shall have the right to be heard in an open sitting of the Commission before it takes a decision on the merits.

(2) The Commission may, at its discretion, decide to hear other persons as well.

(3) After the period for submission of objections and observations set by the ruling

under Art. 74, paragraph (1), item 3 expires, by an order the Chairperson shall schedule an open sitting, at which the Commission shall hear the parties and the interested third parties. The open sitting shall be scheduled for a day which shall not be earlier than 14 days after the deadline for submission of objections and observations on the submitted allegations for infringements. The parties and the interested third parties shall be notified of the scheduled open sitting at which they will be heard in compliance with the procedure laid down in the Code of Administrative Procedure.

(4) The parties and any interested third parties, as well as the persons summoned under paragraph (2) shall be heard by the Commission *in camera*.

(5) The sitting of the Commission shall start with dealing with the preliminary issues related to the procedure.

(6) The parties and the interested third parties may be asked questions in an order, determined by the Chairperson.

(7) When the Chairperson considers that all circumstances on the case have been clarified, he/she shall give the floor to the parties to make their pleas.

(8) After any disputed matters of fact and law have been clarified, the Chairperson shall close the sitting.

Closed Sitting

Art. 77. (1) After hearing the parties, the Chairperson shall schedule a closed sitting. At this sitting the Commission shall take a decision which shall:

1. establish the infringement committed and the infringer;
2. impose pecuniary sanctions, periodic sanctions and fines;
3. (amend. – SG 2 of 2018) establish that no infringement of this Law has been committed, or that there are no grounds for taking actions for a committed infringement under Article 101 and 102 of the Treaty on the Functioning of the European Union;
4. order the termination of infringements, including by imposing the relevant behavioural and/or structural measures to restore competition;
5. withdraw the application of a block exemption decision to the specific case and specify a term to bring it into compliance with Art. 17 or terminate it;
6. (amend. – SG 2 of 2018) withdraw the application of an EU Regulation for block exemption from the prohibition of Article 101, paragraph 1 of the Treaty on the Functioning of the European Union to the specific case and specify a term to bring it into compliance with Article 101, paragraph 3 of the Treaty on the Functioning of the European Union or terminate it.

(2) The Commission by a ruling may:

1. accept new allegations of a committed infringement of the Law under the procedure laid down in Art. 74, paragraph (1), item 3;

2. refer back the case for additional investigation with mandatory instructions;

(3) With its decision under paragraph (1) item 4, the Commission shall impose structural remedies only where there is no behavioural remedy which would have equivalent effect, or when such behavioural remedy which has equivalent effect would be more onerous for the respective undertaking than the structural remedy.

(4) The parties shall be notified of the decision taken under paragraph (1) in accordance with the provisions of the Code of Administrative Procedure.

Chapter Ten PROCEEDINGS FOR ISSUING OF AUTHORISATIONS OF

CONCENTRATIONS AMONG UNDERTAKINGS

Initiation of Proceedings

Art. 78. (1) The proceedings to assess a concentration shall be initiated on the grounds of Art. 38, paragraph (1), item 6. The notification shall be submitted jointly by the undertakings that are parties to the merger or infusion, or have created a joint venture, respectively by the party acquiring control within the meaning of Art. 22, paragraph (1), item 2.

(2) The proceedings under paragraph 1 shall be initiated within 3 days of receipt of the notification except if the grounds under Art. 38, paragraph (2) are present.

(3) The Commission may initiate *ex officio* proceedings under Art. 38, paragraph (1), item 1, where a concentration has been implemented without authorization or in a manner and under conditions, different from those under which it has been authorised, as well as where the authorisation decision has been revoked by the Commission. The decision of the Commission on initiation of proceedings shall not be subject to appeal.

(4) Notification of concentrations under this Law shall also be submitted in the cases when the competence of the Commission derives from proceedings under Art. 4 and Art. 9 of Regulation (EC) No. 139/2004.

Contents of the Notification

Art. 79. (1) The notification of concentration under Art. 78, paragraph 1 shall contain information about:

1. the undertakings participating in the concentration;
2. the undertakings and persons, exercising direct or indirect control over the undertakings participating in the concentration;
3. the undertakings on which control is exercised by the participants in the concentration within the meaning of Art. 22, paragraph 3;
4. the nature, the legal form and the rationale of the concentration;
5. the relevant markets, in which the undertakings participating in the concentration operate;
6. the market shares and the aggregate turnovers of the undertakings participating in the concentration;
7. the barriers to entry in the relevant markets;
8. the main competitors, suppliers and customers;
9. grounding of the circumstances under Art. 26, paragraph 1 and 2.

(2) The notification under paragraph (1) shall also contain a request to the Commission to authorise the concentration.

(3) The notification shall be submitted in a form approved by the Commission.

(4) The form under paragraph (3) and the instructions for its completion shall be approved with a decision of the Commission and shall be published on its web site.

Preliminary Investigation

Art. 80. (1) After the Commission has initiated proceedings under Art. 78, paragraph (1), the Commission shall assess the concentration in a preliminary investigation, exercising the powers conferred to it under Art. 45, items 1, 2, 4 and 5.

(2) Within 7 days of the announcement under Art. 68, paragraph (3) each interested third party may submit information or observations on the competitive effect of the concentration on relevant market.

(3) In assessing the concentration the following shall be taken into consideration: the position of the undertakings in the relevant market before and after the concentration, their economic and financial power, access to supply markets and markets of the relevant goods and services, the legal, administrative or any other barriers to entry.

Time Limits for Assessment of the Concentration in the Preliminary Investigation

Art. 81. (1) The assessment in the preliminary investigation shall be accomplished within 25 working days within which the Commission shall pass a decision under Art. 82, paragraph (3).

(2) This period shall run from the working day following the day of initiation of proceedings.

(3) Where the notification is stayed due to deficiencies under Art. 38, paragraph (2) or if additional information needs to be provided by the notifying undertakings, the time limits set out in paragraph (1) shall be suspended.

(4) Upon a request by the notifying parties, the Commission may extend the time limits set out in paragraph (1) with up to ten working days to allow drafting of proposals for changes to the concentration.

(5) Notwithstanding whether the time limits set out in paragraph (1) have been extended on the grounds of paragraph (4), they shall be extended by another 10 working days from the day on which the notifying party submits to the Commission complete data on the proposed changes in the terms of the concentration.

Conclusion of the Assessment in the Preliminary Investigation

Art. 82. (1) After conclusion of the preliminary investigation, the case team, appointed in application of Art. 39, paragraph 2, shall prepare a report, which shall be submitted to the supervising member of the Commission.

(2) The supervising member of the Commission shall inform the Chairperson that the preliminary investigation has been concluded. The Chairperson shall issue an order scheduling a closed sitting of the Commission, at which the further course of proceedings shall be decided.

(3) The Commission at a closed sitting shall issue a decision, whereby it shall:

1. pronounce that the operation does not constitute a concentration or does not fall within the scope of Art. 24;

2. authorise the concentration pursuant to Art. 26, paragraph (1);

3. authorise the concentration, taking into account the changes, proposed by the participants in the concentration.

4. launch an in-depth investigation as laid out in Art. 83.

(4) The Commission may revoke its decision under paragraph (3), items 1-3 where the decision is based on incomplete, inaccurate, untrue or misleading information.

(5) While the decision of the Commission under paragraph (3) is pending, no actions in fact and in law related to the intended concentration shall be allowed. This prohibition shall not be applied in case of a bid or series of transactions with securities, listed on regulated markets in financial instruments, by which control is acquired under the meaning of Art. 22, paragraph (3) by different sellers provided that the Commission is notified in accordance with Art. 24, paragraph (2) without delay, as well as that the person who acquired the securities does not exercise the voting rights attached thereto, except to the extent necessary to preserve the value of the investment made.

(6) The Commission shall notify the parties under Art. 78, paragraph (1) of its decision under paragraph (3), in the procedure laid down in the Code of Administrative Procedure, thereby giving them the opportunity to access and get acquainted with the materials collected on the case file.

(7) The decision under paragraph 3, item 4 shall not be subject to appeal.

In-depth Investigation

Art. 83. (1) An in-depth investigation of a concentration shall be carried out when, as a result of the assessment during the preliminary investigation, it is established that the concentration raises serious doubts that its implementation may result in the creation or strengthening of a dominant position and the effective competition on the relevant market would be significantly impeded.

(2) Within 30 days of the publication of the decision to launch an in-depth investigation under Art. 68, paragraph (2) any interested third party may submit information or observations as to the effect of the concentration on competition in the relevant market.

(3) The Commission shall carry out in-depth investigations of concentrations exercising the powers conferred to it under Art. 45.

Time Limits for Completion of the In-depth Investigation of a Concentration

Art. 84. (1) The Commission shall complete the in-depth investigation and conclude the proceedings within four months of the publication of the decision in the electronic register under Art. 68, paragraph (2). In cases of factual or legal complexity, the time limits may be extended by no more than twenty-five working days.

(2) In case of proposed remedies under Art. 86, the time limits set out in paragraph (1) shall be further extended by fifteen working days. The extension of the time limits shall run from the day following the day, on which the Commission has received complete information with regard to the proposed remedies.

Closed Sitting

Art. 85. (1) Having collected sufficient evidence with regard to the further course of proceedings, the case team, appointed in application of Art. 39, paragraph 2, shall prepare a report and submit it to the supervising member of the Commission.

(2) The supervising member of the Commission shall inform the Chairperson of the submitted report. The Chairperson shall issue an order thereby scheduling a closed sitting of the Commission, at which it shall:

1. authorize the concentration with a decision pursuant to Art. 26, paragraph (1) or paragraph (2);

2. issue a ruling whereby it shall approve its preliminary conclusions on the effect of the concentration on competition.

(3) The ruling under paragraph (2), item 2 shall specify a period, not shorter than 14 days, within which the notifying party and the interested third parties may submit their observations on the preliminary conclusions of the Commission. The ruling shall state that the parties and the interested third parties shall have the right of access to file as laid down in Art. 55 and the right to be heard by the Commission as laid down in Art. 87.

(4) In the case under paragraph (2), item 2, the persons under Art. 78, paragraph (1) shall be sent the ruling of the Commission, while any interested third parties,

constituted as laid down in Art. 43, paragraph (2), item 2 shall be notified of the issued ruling. The time limits for submission of observations pursuant to paragraph (3) shall run from the day of receipt of a copy of the ruling or a notification thereof.

(5) The parties concerned and the interested third parties shall be obliged to accompany their observations on the preliminary conclusions with all evidence at their disposal in their support.

(6) In the case under paragraph (2), item 1, the parties shall be notified as laid down in the Code of Administrative Procedure of the issued decision and the opportunity to access and get acquainted with the materials collected on the file.

Remedies

Art. 86. (1) The Commission may impose remedies, directly related to the implementation of the concentration, which are necessary to maintain effective competition and mitigate the negative impact of a concentration on the affected market.

(2) The Commission may also adopt remedies under paragraph (1) which have been proposed by the parties under Art. 78, paragraph (1).

Hearing of the Parties and of the Interested Third Parties in an Open Sitting

Art. 87. (1) The parties and any interested third parties have a right to be heard in an open sitting of the Commission before it takes a decision on the merits.

(2) After the period for submission of observations under Art. 85, paragraph (3) expires, by an order the Chairperson shall schedule an open sitting, at which the Commission shall hear the parties and the interested third parties. The open sitting shall be scheduled for a day which shall not be earlier than 14 days after the deadline for submission of observations. The parties and interested third parties shall be notified of the scheduled open sitting at which they will be heard as laid down in the Code of Administrative Procedure.

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

(4) The sitting of the Commission shall start with dealing the preliminary issues related to the procedure.

(5) The parties and the interested third parties may be asked questions in an order, determined by the Chairperson.

(6) When the Chairperson considers that all circumstances on the case have been clarified, he/she shall give the floor to the parties to make their pleas.

(7) After any disputed matters of fact and law have been clarified, the Chairperson shall close the sitting.

Conclusion of the In-depth Investigation

Art. 88. (1) After hearing the parties, the Chairperson shall schedule a closed sitting. At this sitting the Commission shall take a decision which shall:

1. authorize the concentration;
2. authorize the concentration under the condition that remedies, directly related to the concentration and necessary to maintain effective competition and mitigate any negative effects of the concentration on the relevant market, are implemented;
3. prohibit the concentration.

(2) While the decision of the Commission under paragraph (1) is pending, any

actions in fact and in law related to the intended concentration shall be prohibited. This prohibition shall not be applied in case of a bid or series of transactions with securities listed on regulated markets in financial instruments by which control is acquired under the meaning of Art. 22, paragraph (3) by different sellers provided that the Commission is notified in accordance with Art. 24, paragraph (2) without delay, as well as that the person who acquired the securities does not exercise the voting rights attached thereto, except to the extent necessary to preserve the value of the investment made.

(3) The Commission may revoke its decision under paragraph (1), items 1 and 2 where the decision is based on incomplete, inaccurate, untrue or misleading information as well as when the parties fail to implement the remedies specified in the decision of the Commission under paragraph 1, item 2.

(4) The parties shall be notified of the decision taken by the Commission as laid down in the Code of Administrative Procedure.

Conclusion of Proceedings Initiated on Initiative of the Commission

Art. 89. (1) When the Commission has initiated proceeding on its own initiative, in the cases under Art. 78, paragraph (3), it may:

1. decide that there is no infringement of the obligations under Art. 24;
2. impose pecuniary sanction for non-compliance with the obligation under Art. 24 or impose relevant remedies under Art. 90.

(2) The investigation under paragraph (1) shall be carried out as laid down in Chapter Eight and as set out in Art. 74 and Art. 76.

Measures to Restore Effective Competition

Art. 90. The Commission may, irrespective of the pecuniary sanctions under Art. 89, paragraph (1), item 2, impose to the participants in the operation other behavioural and/or structural remedies, required to restore effective competition, including by ordering the divestiture of merged capital, shares or assets and/or termination of the joint control, where it has established that:

1. an implemented concentration breaches a decision adopted pursuant to Art. 88, paragraph (1), item 3, or
2. a concentration, which should be prohibited or authorized subject to conditions, has been implemented:

a) in violation of Art. 24 or when the concentration has taken place in a manner and under conditions, which differ from the ones which were taken into consideration in issuing the decision pursuant to Art. 82, paragraph (3), item 2 and item 3, Art. 85, paragraph (2), item 1 and Art. 88, paragraph (1), item 1;

b) in violation of the decision pursuant to Art. 88, paragraph (1), item 2;

c) in case of authorization which has been revoked by a decision pursuant to Art. 82, paragraph (4) or under Art. 88, paragraph (3).

Chapter Eleven OTHER PROCEEDINGS

Proceedings on Conducting a Sector Inquiry

Art. 91. (1) The proceedings on conducting a sector inquiry of the competitive environment shall be initiated on the grounds of Art. 38, paragraph (1), item 1.

(2) The Chairperson shall issue an order assigning the supervision of proceedings

to a member of the Commission. The investigation shall be carried out by the case team, appointed in application of Art. 39, paragraph (2),

(3) In performing the investigation the case team shall exercise the powers conferred by Art. 45, items 1, 2, 4 and 5.

(4) After completing the investigation the case team shall submit the report on the sector inquiry to the member of the Commission assigned to supervise the proceedings. The Chairperson shall schedule the review of the report in a closed sitting of the Commission.

(5) The Commission shall adopt the report on the sector inquiry with a decision. In its decision the Commission may:

1. (amend. – SG 2 of 2018) order the initiation of proceedings to establish an infringement under Art. 15, Art. 21 and Art. 24 of this Law and/or under Article 101 and 102 of the Treaty on the Functioning of the European Union;

2. advise the competent state authorities, including the bodies of the executive branch and local government authorities of the need to adopt measures for improving the competitive environment in the relevant sector;

3. provide the report to the National Assembly and/or to the Council of Ministers to be used in preparing strategies, programmes, development plans for the relevant sectors of economy, etc.

(6) The decision of the Commission under paragraph (1), as well as the decision under paragraph (5) shall not be subject to appeal.

Proceedings Related to Competition Advocacy

Art. 92. (1) The proceedings related to competition advocacy shall be initiated on the grounds of Art. 38, paragraph (1), item 1, item 5 and item 8.

(2) The Chairperson shall issue an order assigning the supervision of the proceedings to a member of the Commission. The investigation shall be carried out by the case team, appointed in application of Art. 39, paragraph (2).

(3) In performing the investigation the case team shall exercise the powers conferred by Art. 45, items 1, 2, 4 and 5.

(4) After completing the investigation the case team shall prepare a report, which shall be submitted to the member of the Commission assigned to supervise the proceedings. The Chairperson shall schedule the review of the report in a closed sitting of the Commission.

(5) The Commission shall adopt an opinion with a decision whereby:

1. it shall assess the compliance of drafts or existing acts within the meaning of Art. 28 with the provisions of this Law;

2. it shall propose to the competent authorities or to associations of undertakings to amend or repeal the relevant act;

(6) The decision of the Commission under Art. 38, paragraph (1) item 1, as well as the decision under paragraph (5) shall not be subject to appeal.

Proceedings Related to the Implementation of the Commission's Obligations for Assistance under Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004

Art. 93. (1) The proceedings to complete the obligations for assistance under Regulation (EC) No. 1/2003 and Regulation (EC) No. 139/2004 shall be initiated on the grounds of Art. 38, paragraph (1), item 7, in connection with Art. 54, upon a request for

assistance by a national competition authority of a Member State of the European Union or of the European Commission under Regulation (EC) No. 1/2003 as well as pursuant to Art. 12 and Art. 13, paragraph (5) of Regulation (EC) No. 139/2004.

(2) Based on the request the director of the relevant directorate shall submit to the Chairperson a report, proposing the actions that need be undertaken to comply with the assistance request.

(3) The Chairperson of the Commission, by an order, shall decide on the proposal for taking the necessary actions. In case the Chairperson orders assistance to be provided, in his/her order he/she shall determine the scope of the proceedings, in compliance with the request under paragraph (1).

(4) By virtue of an order the Chairperson shall nominate the officials, who shall exercise the powers under Art. 45 of this Law and respectively under Art. 20, paragraph 2 of Regulation (EC) No. 1/2003 and Art. 13, paragraph 2 of Regulation (EC) No. 139/2004.

(5) After execution of the decision under paragraph (3), the director of the relevant directorate shall submit to the Chairman a report on the actions taken.

(6) The Chairperson shall present the report under paragraph (5) at a closed sitting, at which the Commission shall adopt a decision whereby it shall terminate the proceedings for assistance.

(7) The decision under paragraph (6) shall not be subject to appeal.

Chapter Twelve

PROCEEDINGS ON ESTABLISHMENT OF INFRINGEMENTS AND IMPOSITION OF SANCTIONS UNDER CHAPTER SEVEN AND SEVEN “A” (TITLE SUPPL. – SG 56 of 2015)

Initiation of Proceedings, Investigation and Completion of the Proceedings

Art. 94. (1) (suppl. – SG 56 of 2015) The proceedings for establishment of infringement under Chapter Seven or Seven “a” and imposition of sanctions shall be initiated on the grounds of Art. 38, paragraph (1) items 1 and 3.

(2) The request under Art. 38, paragraph (1) item 3 must meet the requirements under Art. 71, paragraph (1).

(3) The Chairperson of the Commission by an order shall decide on initiation of the proceedings and shall determine a member of the Commission to supervise the investigation. It shall be conducted by the case team, appointed in application of Art. 39, paragraph (2).

(4) During the investigation the member of the Commission and the case team shall have the rights conferred under Art. 45, items 1, 2 and 4.

(5) After completion of the investigation, the case team shall prepare a report to be submitted to the supervising member of the Commission. The parties shall be notified under the procedure set forth in the Code of Administrative Procedure of the opportunity to access and get acquainted with the materials on file under the conditions of Art. 55.

(6) The Chairperson, by an order, shall schedule the examination of the report at an open sitting of the Commission at which the parties to the proceedings shall be heard. The Commission, at its discretion, may hear also third parties.

Burden of Proof

Art. 95. In the cases under Art. 32 it shall be upon the advertiser to prove that the

advertisement does not contain any features which make it prohibited.

Terms

Art. 96. (1) The investigation under this Chapter shall end within two months as of initiation of the proceedings.

(2) In cases presenting factual and legal complexity, the time limit under paragraph (1) may be extended by 30 days.

Interim Measures

Art. 97. (1) On application by the parties or on its own initiative, when there is a risk of serious injury to the interests of consumers or of competitors, the Commission may, at any time during the proceeding, impose an interim measure, by:

1. prohibiting the distribution of an advertisement before it becomes known to the public when the advertisement is not yet distributed, but its distribution is forthcoming and inevitable;

2. stopping the distribution of the advertisement.

(2) (amend. – SG 77 of 2018) The interim measure under paragraph (1) shall be imposed with a ruling subject to immediate enforcement. The interim measure shall be applied until the taking of the decision of the Commission on the merits. The ruling can be appealed in accordance with art.64, para.3. The appeal shall not suspend the enforcement of the ruling except if the court rules otherwise.

Decision of the Commission

Art. 98. (1) (suppl. – SG 56 of 2015) In connection with the proceedings under Chapter Seven or Seven “a”, the Commission shall adopt a decision by which:

1. it establishes the committed infringement and the infringer and imposes a pecuniary sanction or a fine;

2. it orders the termination of the infringement;

3. it establishes that there is no infringement of the Law;

4. it terminates the proceedings under the conditions of Art. 41, items 1, 2 and 4, as well as on withdrawal of the application.

(2) The Commission may, notwithstanding the pecuniary sanctions for infringement under Art. 32, rule the advertiser and/or the advertising agency to publicize at its expense and in a suitable manner, the decision under paragraph (1) item 1 or part thereof, as well as the respective corrected advertisement.

(3) When the proceeding is initiated on information submitted by a third party, the person who submitted the information shall be notified of the decision taken by the Commission.

(4) (amend. – SG 28 of 2019) The decision under paragraph (1), which establishes a violation of Art. 37, shall not be an obstacle for lodging a claim before the court under the Law on Protection of Trade Secret.

Title Four LIABILITY AND SANCTIONS

Chapter Thirteen LIABILITY

Administrative Penal Liability

Art. 99. (1) In case of infringement of the provisions of this Law, where the act does not constitute a crime, administrative penal liability shall be borne.

(2) (amend. – SG 77 of 2018) The pecuniary sanctions and fines under this Law shall be imposed by a decision of the Commission which shall be subject to appeal in accordance with art.64, para.1.

Chapter Fourteen SANCTIONS

Pecuniary Sanctions

Art. 100. (1) The Commission shall impose a pecuniary sanction in an amount not exceeding 10% of the total turnover in the preceding financial year on an undertaking or an association of undertakings for:

1. (amend. – SG 2 of 2018) infringement under Art. 15 or 21 of this Law or of Article 101 and 102 of the Treaty on the Functioning of the European Union;

2. a concentration, implemented following failure of the parties to comply with the obligation under Art. 24;

3. a concentration, implemented under conditions and in a manner, which differ from the ones which were taken into consideration in issuing the decision, pursuant to Art. 82, paragraph (3), items 2 and 3; Art. 85, paragraph (2), item 1 and Art. 88, paragraph (1), item 1 and item 2;

4. a concentration implemented, despite its prohibition by the Commission under Art. 88, paragraph (1), item 3.

5. a concentration, which being subject to mandatory prior notification under Art. 24, was implemented prior to the decision of the Commission under Art. 82, paragraph (3), Art. 85, paragraph (2) item 1 and Art. 88, paragraph (1), unless the hypotheses under Art. 82, paragraph (5), second sentence and Art. 88, paragraph (2), second sentence were present;

6. infringement under Chapter Seven of this Law;

7. failure to comply with decisions or rulings of the Commission.

(2) (new – SG 56 of 2015) For violating the prohibition provided in Art. 37a, paragraph 1 the Commission shall impose proprietary sanction of up to 10 percent of the achieved by the undertaking turnover from sales of the product subject to violation for the previous year, however not less than BGN 10 000. Where there is no turnover achieved, the Commission shall impose a pecuniary sanction from BGN 10 000 to 50 000.

(3) (Previous paragraph 2 – SG 56 of 2015) The Commission shall impose a pecuniary sanction in the amount of 1% of the total turnover in the preceding financial year on an undertaking or associations of undertakings for:

1. failure to comply with the obligations to provide assistance under Art. 46;

2. damaging the integrity or destroying the seals which have been placed during the inspections under Art. 50.

3. delayed submission of information or furnishing of information which is

incomplete, inaccurate, untrue or misleading breaching the obligations under Art. 47, paragraphs (4) and (5);

4. failure to comply with the obligations under Art. 67.

(4) (Previous paragraph 3 – SG 56 of 2015) The decision by which the pecuniary sanction under paragraph (2), items 1 and 3 is imposed, shall specify the period within which the relevant party shall fulfil its assistance obligation or furnish complete, accurate, true and not misleading information.

(5) (Previous paragraph 4 – SG 56 of 2015) In determining the amount of the pecuniary sanction the gravity and duration of the infringement shall be taken into account as well as the circumstances mitigating or aggravating the liability. The exact amount of the sanction shall be determined in compliance with a methodology adopted by the Commission published in the web-page of the Commission.

(6) (Previous paragraph 5 – SG 56 of 2015) The Commission shall impose periodic pecuniary sanctions on an undertaking or association of undertakings to the amount of up to 5 percent of the average daily turnover in the preceding financial year for each of failure to comply with:

1. a decision of the Commission ordering the termination of an infringement, including by imposing the appropriate behavioural or structural remedies as laid down in Art. 77, paragraph (1), item 4 or Art. 90;

2. a ruling of the Commission, imposing interim measures under Art. 56;

3. a decision of the Commission to approve commitments undertaken pursuant to Art. 75, paragraph (2) or under Art. 88, paragraph (1), item 2.

(7) (Previous paragraph 6 – SG 56 of 2015) The Commission shall impose periodic pecuniary sanctions on an undertaking or association of undertakings to the amount of up to one percent of the average daily turnover for the preceding financial year for each day of:

1. failure to comply with the obligation for assistance under Art. 46 after expiry of the period specified in the decision under paragraph (3);

2. failure to furnish complete, accurate, true and not misleading information under Art. 47, paragraph (5), after the expiry of the period specified in the decision under paragraph (3).

3. impeding an inspection under Art. 50.

(8) (Previous paragraph 7 – SG 56 of 2015) The periodic sanctions under Art. 5 and 6 shall be imposed for each day until the unlawful action or omission is terminated.

Immunity from Sanction and Reduction of Sanctions

Art. 101. (1) (amend. – SG 2 of 2018) The Commission may, upon an application of an undertaking under Art. 38, paragraph (1), item 4, grant immunity to it from the pecuniary sanction for an infringement under Art. 15 of this Law and/or Article 101 of the Treaty on the Functioning of the European Union, consisting of its participation in secret cartel, on condition that such undertaking provides prior to any other participant in the cartel, evidence on the basis of which the Commission may:

1. carry out an inspection; it is necessary that up to that moment the Commission did not already have sufficient data and evidence in order to file an application for issuance of court authorization under the procedure set forth in Art. 51;

2. prove the alleged infringement; it is necessary that as up to that moment the Commission did not already have granted to another undertaking a conditional immunity from sanctions prior to making the inspection or prior to having sufficient data in order

to file an application for issuance of court authorization under the procedure set forth in Art. 51, as well as did not already have sufficient evidence in order to adopt a decision for finding of an infringement.

(2) In addition to the conditions under paragraph (1), in order to receive immunity from pecuniary sanction, the undertaking should not have taken steps to coerce other undertakings to join the cartel and must have fulfilled all conditions laid down in the programme under paragraph (5)

(3) (amend. – SG 2 of 2018) The Commission may reduce the amount of the pecuniary sanctions, imposed on an undertaking for an infringement under Art. 15 of this Law and/or Article 101 of the Treaty on the Functioning of the European Union, consisting of participation in secret cartel, if such undertaking voluntarily provides before the conclusion of the proceedings, evidence, which has significant added value for proving the infringement and fulfils all conditions set out in the leniency programme under paragraph (5).

(4) (amend. – SG 2 of 2018) The granting of immunity from sanction or reduction of the sanction for infringement under Art. 15 of this Law and/or Article 101 of the Treaty on the Functioning of the European Union may be granted provided that the undertaking has terminated its participation in the prohibited agreement except where the Commission has decided that the continuation of this participation is necessary for the investigation.

(5) The terms and procedure for the granting of immunity or reduction of the sanctions shall be set out in a Leniency Programme and the Rules on its application, adopted by a decision of the Commission.

Fines

Art. 102. (1) Natural persons who have assisted in the commitment of infringements of the provisions of this Law, where the act does not constitute a crime, shall be liable to a fine of BGN 500 to BGN 50 000.

(2) Persons who fail to submit in time the evidence requested or fail to supply complete, accurate, trustworthy and not misleading information under Art. 47, paragraph (5) shall be liable to a fine of BGN 500 to BGN 25 000.

(3) The decision, whereby the fine referred to in paragraph (2) is imposed, shall state the time limits, within which the requested evidence and information should be presented. In case of failure to comply with the time limits to the person may be imposed a periodic fine to the amount of BGN 500 per day but not exceeding BGN 20 000.

(4) (amend. – SG 56 of 2015) When determining the amount of the fine the gravity and the duration of the infringement, the capacity in which the person has acted, as well as the mitigating and aggravating circumstances shall be taken into consideration. The precise amount of the fine shall be determined by the Commission in accordance with the Methodology under Art. 100, paragraph 5.

Enforcement

Art. 103. The pecuniary sanctions and fines imposed based on decisions of the Commission which have come into force shall be collected in accordance with the procedure laid down in the Tax and Social Security Procedure Code.

Claims for Damages

Art. 104. (repealed – SG 2 of 2018).

Chapter Fifteen
(new – SG 2 of 2018)
LIABILITY FOR TORT

Section I
General Provisions

Actions for damages

Article 105. (1) For any harm caused as a result of infringements of this Law, the responsible person shall be liable for the payment of compensation.

(2) Any natural and legal entities having suffered any harm shall be entitled to full compensation even if the infringement has not been directly targeted against them.

(3) Actions for damages shall be brought pursuant to the Civil Procedure Code.

(4) An enforced decision of the Supreme Administrative Court acknowledging a decision of the Commission for an established infringement of the law shall have a binding effect for the civil court with regard to the fact of the infringement and the infringer. As far as the fact of the infringement and the infringer are concerned, the civil court shall be also bound by a decision of the commission which has not been appealed or the appeal against it has been withdrawn.

Full compensation

Article 106. (1) Full compensation shall place the injured party in the position it would be if there was no infringement of competition law.

(2) Full compensation shall extend to the right to damages for the suffered loss and lost profits together with the due statutory interest.

(3) Full compensation shall not lead to overcompensation vis-à-vis the suffered harm.

Section II

Liability for tort resulting of a breach under Chapters Three and Four and under
Article 101 and 102 of Treaty on the Functioning of the European Union

Passing-on of overcharges

Article 107. (1) Compensation of harm may be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers.

(2) Compensation may be also claimed if the infringement of competition law is related to a delivery for the undertaking that has committed the infringement.

(3) The compensation for incurred losses on every level of the supply chain may not exceed the overcharge at that level.

(4) The injured party shall have right to compensation for loss of profits, including in the case of full or partial passing-on the overcharge across the supply

chain.

(5) The court shall estimate the amount of the overcharge which has been passed on to another level of the supply chain.

Objection for passed-on overcharge

Article 108. A defendant under an action for damages may object that the claimant has passed on fully or partially the overcharge across the supply chain. The burden of proving the facts on which such objection is based shall rest with the defendant.

Indirect purchasers

Article 109. (1) To assess the plausibility of the action for damages and estimate the amount of the compensation, the court shall also take into account whether and to what extent an overcharge has been passed on to the claimant. The existence and amount of such passing-on shall be proved by the claimant.

(2) Subject to proof of the contrary, it shall be assumed that a passing-on of overcharge exists where the indirect purchaser has proved that:

1. the defendant has made an infringement of competition law;
2. the infringement of competition law has resulted in an overcharge for the direct purchaser and
3. the indirect purchaser has purchased the goods or services object of the infringement or has purchased goods or services derived from or containing them.

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

Article 110. (1) When assessing the liability of the infringer in actions for damages brought by claimants from different levels in the supply chain the following circumstances shall be of relevance:

1. the existence of actions for damages which are related to the same infringement but are brought by claimants from different levels in the supply chain;
2. the judgments on the actions for damages referred to in paragraph 1;
3. publicly available information regarding the applicability of competition law on behalf of the competent authorities.

(2) Paragraph 1 shall be without prejudice to the powers of the national courts pursuant to Article 30 of Regulation (EU) 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 of 20 December 2012).

Limitation period

Article 111. (1) The limitation period shall start to run as of the time when the infringement ceases, provided that the claimant knows or could be reasonably expected to know about:

1. the behavior constituting an infringement of competition law;

2. the harm it has suffered; and
3. the infringer.

(2) Limitation shall be interrupted by initiation of proceedings for establishing an act of infringement by a competition authority. For the duration of the proceedings before the commission the limitation period shall be suspended, and a new limitation period shall commence after the expiry of one year of the effective date of the decision establishing the act of infringement or of the closing of the proceedings before the authority.

(3) In the case of an action for damages against an immunity recipient the limitation period shall commence as of the time of establishing that full compensation may not be received by the remaining infringers who are jointly liable for causing the harm.

(4) In the case of an out-of-court settlement of a dispute concerning a claim for damages no limitation period shall run until resolution of the dispute and only with respect to the parties involved in it.

Out- of-court resolution of a dispute concerning a claim for damages

Article 112. (1) The court approached with an action for damages may suspend for a period of up to two years the proceedings brought up before it should the parties participate in an out-of-court settlement of the dispute which is object of the case.

(2) In the event that an out-of-court settlement of the dispute is reached, the claim of the respective injured party concerning the harm suffered as a result of the infringement shall be reduced by the share of the settling the co-infringer. The remaining part of the claim of the injured party may be brought up only against non-settling co-infringers.

(3) Where non-settling co-infringers are unable to pay a compensation for the damages corresponding to the remaining part of the claim of the settling injured party, the latter may bring the remaining part of its claim against the settling co-infringer. The application of this provision may be expressly excluded by the parties in the settlement of the dispute.

Estimating the amount of harm

Article 113. (1) On demand by the court the commission within the limits of its competence may provide assistance with respect to estimating the amount of harm, where necessary for the defense of the interests of the injured party.

(2) Subject to proof of the contrary, it is presumed that cartels cause harm.

(3) If established that the claimant suffered harm, the court shall award damages according to the provision of Article 162 of the Civil Procedure Code, even where based on available evidence it is impossible to accurately estimate the amount of caused harm.

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

Article 114. (1) An enforced decision of a competition authority or a court of another EU Member State establishing an infringement of competition law may be presented as evidence in proceedings for compensation of damages. Subject to proof of the contrary the court shall have to accept as established the fact of the infringement and the infringer.

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

Joint and several liability

Article 115. (1) Where the infringement of competition law has been made by two or more undertakings or associations of undertakings, they shall bear joint and several liabilities for any damages caused by the infringement.

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

1. (a) 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 normal rules of joint and several liabilities would irretrievably jeopardize 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 SME has led the infringement of competition law or has coerced other undertakings to participate therein; or

2. the SME has previously been found to have infringed competition law.

(4) An immunity recipient shall bear joint and several liabilities, as follows:

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

2. to other injured parties only where a full compensation cannot be received from the other undertakings involved in the same infringement.

Recourse action

Article 116. (1) A co-infringer who has contributed in excess to its share shall have the right to recourse action against each of the other co-infringers for the difference proportionately to their relevant liability for the harm caused by the infringement of competition law. The amount due by a co-infringer who/which is an immunity recipient may not exceed the amount of damages it caused to its direct or indirect purchasers or providers.

(2) In the cases of harm caused to persons other than the direct or indirect purchasers or providers of the infringers, the amount of any contribution from an immunity recipient to other infringers shall be determined in the light of its relative responsibility for that harm.

(3) A co-infringer in an infringement of competition law not participating in an out-of-court settlement of a dispute for harm caused by the infringement shall not be

entitled to recourse action against a settling co-infringer.

(4) In the estimation of the amount to be awarded to a settling co-infringer under its recourse action against any other co-infringer the court shall consider both the relative liability of the infringers for the harm caused by the infringement and the amount of all compensations paid in the out-of-court resolution of the dispute.

Disclosure of evidence

Article 117. (1) Upon on a reasoned request of the claimant based on reasonably available facts and evidence the court shall be able to order the defendant or a third party to disclose relevant evidence which lies in their control. The right to demand disclosure of case-relevant evidence may also be exercised by the defendant. This paragraph shall be without prejudice to the powers of the court pursuant to Regulation (EC) No 1206/2001 of the Council 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 of 27 June 2001).

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

(3) The court shall assess the proportionality of the request for evidence, accounting for the legal interests of all affected parties and third parties taking into consideration:

1. the extent to which the claim of the claimant or the defense of the defendant are supported by the facts and evidence justifying the request for disclosure of 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 have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. The court shall take effective measures for protection of the evidence containing production, business or other secret protected by the law.

(5) The court shall apply the governing law of the European Union and the national legislation of the Republic of Bulgaria for protection of the professional secret.

(6) Prior to ordering the disclosure of evidence, the court may allow for hearing of the persons required to make such disclosure.

(7) A refusal to comply with the disclosure of evidence because of the possibility that they are used against the person from whom they are requested in actions for damages for infringement of the competition law shall be inadmissible.

Disclosure of evidence included in the file of a competition authority

Article 118. (1) When ordering the disclosure of evidence collected on a file of a competition authority, the court shall assess the proportionality of the request for disclosure in compliance with Article 117, paragraph 3, also taking into consideration the following circumstances:

1. whether the request has been formulated specifically with regard to the nature, subject matter or contents of documents submitted to a competition authority or held in the file thereof, rather than by a non-specific application concerning documents submitted to a competition authority;

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

3. the need to safeguard the effectiveness of the public enforcement of competition law pursuant to paragraph 2 and 4 or upon request of a competition authority pursuant to paragraph 9.

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

(3) Collection of evidence comprising of internal documents of the authority for protection of competition, including its correspondence with other competition protection bodies shall not be allowed.

(4) The court may order the disclosure of the following evidence only after competition authority has closed the proceedings brought before it by awarding a judgment or on other grounds:

1. National courts 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;

2. information that the competition authority has drawn up and sent to the parties in the course of its proceedings; and;

3. settlement submissions that have been withdrawn.

(5) The collection of the following evidence may not at any time be allowed:

1. leniency statements; and

2. settlement submissions.

(6) On request of the claimant the court may verify whether the content of the evidence referred to in paragraph 5 complies with the definitions under § 1, p. 34 and 36 of the additional provisions. In no case shall other parties or third parties be granted access to such evidence. In that assessment, national courts may request assistance only from the competent competition authority. The authors of the evidence referred to in paragraph 5 may also have the possibility to be heard in court.

(7) If paragraph 5 applies only to a part of the requested evidence, the court shall assess them as to their remaining part pursuant to paragraphs 1-6.

(8) A competition authority may, at its own discretion, file written objections regarding the proportionality of the request for disclosure of evidence before the court.

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

competition authority

Article 119. (1) The evidence listed in Article 118, paragraph 5 which is obtained by a natural or legal person solely through access to the file of a competition authority shall be deemed to be inadmissible in actions for damages.

(2) The evidence listed in Article 118, paragraph 4 which is obtained by a natural or legal person solely through access to the file of a competition authority shall be deemed to be inadmissible in actions for damages until the competition authority closes the proceedings conducted thereby by rendering a judgment or on another grounds.

(3) Any evidence obtained by a natural or legal entity only through access to the file of a competition authority and which fall outside the scope of paragraph 1 or 2 may be used only with an action for damages brought by that entity or by a natural or legal entity subrogated to its right to a claim.

Penalties and fines

Article 120. (1) Natural persons which are parties, third parties or their legal representatives shall be sanctioned by the court with a fine to the amount of BGN 500 to BGN 50 000 in the event of any of the following:

1. failure or refusal to comply with a disclosure order of any court;
2. destruction of case-relevant evidence;
3. failure or refusal to comply with the obligations imposed by the court for protection of confidential information;
4. breach of the limits on the use of evidence provided for in Article 118 and 119.

(2) Legal persons which are parties, third parties or their legal representatives shall be sanctioned by the court with a fine to the amount of BGN 500 to BGN 50 000 in the event of any of the following:

1. failure or refusal to comply with a disclosure order of any court;
2. destruction of case-relevant evidence;
3. failure or refusal to comply with the obligations imposed by the court for protection of confidential information;
4. breach of the limits on the use of evidence provided for in Article 118 and 119.

(3) The court may accept as proven the facts with respect to which the party has obstructed the collection of evidence, as well as encumber the defaulting party with the payment of the legal costs.

Supplementary provisions

§ 1. For the purposes of this Law:

1. “Internal documents” shall be the documents created by the Commission and/or by its administration in the course of proceedings under this Law (drafts, opinions, reports of the case teams, memoranda, etc.); documents representing correspondence of the Commission with the European Commission, with the national competition authorities of the Member States of the European Unions as well as other documents of the Commission and/or its administration relating to its operational activity.

2. “Good faith commercial practice” shall mean the rules determining the market

behaviour resulting from the laws and the ordinary commercial relations and not infringing the good morals.

3. “Electronic evidence” shall mean evidence collected from an undertaking or an association of undertakings in performing an inspection in electronic form through copying electronic documents and electronic statements.

4. “Interested party” shall mean any person, undertaking or association whose interests may be affected by an infringement of this Law.

5. (amend. – SG 2 of 2018) “Cartel” means an agreement 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, but not limited to, 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 bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors.

6. “Periodic pecuniary sanction” shall be a pecuniary sanction determined as a particular amount imposed for each day to an undertaking in order to be forced to suspend an infringement of the law or to perform a particular action, imposed by the Commission on grounds of its competence under this Law.

7. “Undertaking” shall mean any natural person, legal entity, or unincorporated entity which carries out economic activities, regardless of its legal and organisational form.

8. “Continuous infringement” shall be any infringement where two or more acts (actions or omissions) are realized during short periods of time in the same factual situation in which the subsequent ones appear a continuation of the preceding ones.

9. “Production or trade secret” shall mean facts, information, decisions and data related to the economic activities, the preservation of confidentiality of which is in the interest of the rightful holders thereof, and for which the latter have undertaken appropriate measures.

10. “Professional secret” shall mean:

a) any information, which the Commission creates or acquires for the purposes of the investigations under this Law or in relation thereto, and the disclosure of which may jeopardize the business interest or the reputation of the parties or that of a third party; the professional secret shall not be official secret within the meaning of the Protection of Classified Information Act;

b) the information, exchanged between the Commission and the national competition authorities of the member-states of the European Union and the European Commission in relation to the exercise of their powers and the co-operation between them;

The information subject to public announcement pursuant to this or any other act shall not be professional secret.

11. “Advertising” shall mean any notice in connection with trade, art or profession aiming to promote the sale of goods or services, including real estates, rights and obligations.

12. “Association of undertakings” shall mean professional associations and other forms of associations of independent undertakings, which do not carry out autonomous economic activities separately and hence do not distribute profits.

13. “Economic activities” shall mean the activities of undertakings the results of

which are designed for exchange on the market.

14. “Concerted practice” shall mean the coordinated action or inaction of two or more undertakings.

15. “Relevant market” shall consist of:

(a) “Product market” including all goods or services which could be accepted by consumers as interchangeable in respect of their characteristics, intended use and price;

(b) “Geographic market” including a specific territory on which the corresponding interchangeable goods or services are offered and on which the conditions of competition are the same, while differing from those in neighbouring areas.

16. “Severe infringement” means the infringement under Art. 15 and Art. 21 of this Law, and/or Art. 81 and Art. 82 of the Treaty establishing the European Community, which may affect considerably and on a lasting basis the competitive environment in respect of a significant part of the national market.

17. “Forensic evidence” shall mean evidence, collected in performing an inspection through the usage of special equipment (forensic laboratory) for recovery, certifying the authenticity and analysis of digital information, being an authentic image (forensic image) of the specific medium of this information.

18. “Digital evidence” shall mean information which can be used as proof and which is stored or transferred in digital form.

19. (new – SG 2 of 2018) „ Infringement of competition law “means an infringement of Article 101 or 102 TFEU or of Article 15 or 21 of this Law.

20. (new – SG 2 of 2018) „ Infringer “means an undertaking or association of undertakings which has committed an infringement of competition law.

21. (new – SG 2 of 2018) „National competition law“ means provisions of national law that predominantly pursue the same objective as Articles 101 and 102 TFEU 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 criminal penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced.

22. (new – SG 2 of 2018) „ Co-infringer “means a participant in an infringement of competition law committed by more than one infringer.

23. (new – SG 2 of 2018) „ Action for damages “means 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 2 of 2018) „ Claim for damages “means a claim for compensation for harm caused by an infringement of competition law;

25. (new – SG 2 of 2018) „ Injured party “means a person that has suffered harm caused by an infringement of competition law.

26. (new – SG 2 of 2018) „National competition authority“ means 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 TFEU.

27. (new – SG 2 of 2018) „Competition authority“ means the European Commission or an authority designated by a Member State pursuant to Article 35 of Regulation (EC) No. 1/2003 as responsible for the implementation of Article 101 and 102 TFEU in the territory of that state, or both depending on context.

28. (new – SG 2 of 2018) „National court“ means a court or tribunal of a Member State within the meaning of Article 267 TFEU;

29. (new – SG 2 of 2018) „Review court“ means 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, irrespective of whether that court itself has the power to find an infringement of competition law;

30. (new – SG 2 of 2018) „Infringement decision“ means a decision of a competition authority or review court that finds an infringement of competition law;

31. (new – SG 2 of 2018) „Final infringement decision“ means an infringement decision that cannot be, or that can no longer be, appealed by ordinary means;

32. (new – SG 2 of 2018) ‘Evidence’ means all types of means of proof admissible before the national court seized, in particular documents and all other objects containing information, irrespective of the medium on which the information is store.

33. (new – SG 2 of 2018) „Leniency programme“ means a programme concerning the application of Article 101 TFEU or Article 15 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 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, fines for its involvement in the cartel;

34. (new – SG 2 of 2018) „Leniency statement“ means 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 fines under a leniency programme, not including pre-existing information.

35. (new – SG 2 of 2018) „Pre-existing information“ means 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 2 of 2018) „Settlement submission“ means 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 2 of 2018) „Immunity recipient“ means 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 2 of 2018) „Overcharge“ means 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 2 of 2018) „Consensual dispute resolution“ means any mechanism enabling parties to reach the out-of-court resolution of a dispute concerning a claim for damages.

40. (new – SG 2 of 2018) „Consensual settlement“ means an agreement reached through consensual dispute resolution.

41. (new – SG 2 of 2018) „Direct purchaser“ means 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 2 of 2018) „Indirect purchaser“ means 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 2 of 2018) „Supply chain“ exists in the event of subsequently transferring goods or services on different levels of trade, in their original or processed form, until placement of the end product on the market.

§ 2. (amend. – SG 2 of 2018) This Law implements the provisions of Directive 2006/114/EC of the European Parliament and of the Council 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 of 5 December 2014).

§ 3. In case an administrative position at the Commission is occupied by a civil servant holding a law degree, his/her professional experience shall be recognised as professional legal experience within the meaning of the Judicial System Act and the Attorneys Act.

Transitional and Concluding provisions

§ 4. The Law on Protection of Competition (Prom., SG, No. 52 of 1998; Judgement No. 22 of the Constitutional Court of 1998 - No. 112 of 1998; and., No. 81 of 1999, No. 28 of 2002, No. 9 and 107 of 2003, No. 105 of 2005, No. 37, 59 and 86 of 2006 and No. 64 of 2007) is hereby repealed.

§5. (1) In order the principle of succession in the work of the Commission to be preserved when conducting the first election of members of the Commission on Protection of Competition under Art. 4, paragraph (1), three of the four members of the Commission shall be elected for a term of office of 3 years.

(2) The Members of the Commission on Protection of Competition, including the Chairperson and the Deputy Chairpersons shall, as of the date of coming into force of this Law, continue to perform their duties until inauguration of their successors.

§ 6. (1) The proceedings before the Commission on Protection of Competition pending at the time of entry into force of this Law shall be completed in accordance with the existing procedure.

(2) Applications which have been submitted under the repealed Law on Protection of Competition and on which no proceedings have been initiated by the Commission shall be examined under the procedure set forth in this Law.

§ 7. (1) The proceedings before the Consumers Protection Commission pending at the time of entry into force of this Law shall be completed in accordance with the procedure set forth in the Consumer Protection Act.

(2) Submissions of information, claims and requests filed with the Consumer

Protection Commission in connection with infringements under Chapter Three “Misleading and Comparative Advertising” of the Consumer Protection Act, on which no proceedings have been initiated, shall be examined under the procedure set forth in this Law.

§ 8. Any pending proceedings on cases shall be concluded in compliance with the procedure which was in force at the time of their initiation.

§ 9. In the Public Procurement Law (promulgated, SG, issue 28 of 2004, amended and supplemented, issue 53 of 2004, issues 31, 34 and 105 of 2005, issues 18, 33, 37 and 79 of 2006 and issue 59 of 2007), in Art. 122c the following amendments shall be made:

1.: in paragraph 1 the word “five” shall be replaced by the word “four”

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

“(2) The Commission for Protection of Competition shall take decisions and pass rulings with an open vote and a majority of 4 votes. In case that the sitting is attended by less than 7 members, the decision shall be taken only if for the same have voted at least 4 members of the Commission.

(3) A member of Commission may not take part in the investigation proceedings under this Law when she/he is interested in their outcome or there are reasonable doubts about his/her impartiality. The member of Commission shall be removed on his/her initiative or upon request of the parties.”.

3. paragraph 5 is repealed.

§ 10. In the Concessions Act (promulgated, SG, issue 36 of 2006, amended and supplemented, issues 53, 65 and 105 of 2006, issues 41 and 59 of 2007, and issues 50 and 67 of 2008), the following amendments and supplements shall be made in Art. 90:

1. in paragraph 1 the word “five” shall be replaced by the word “four”.

b) Paragraphs 2 and 3 shall be amended as follows:

“(2) The Commission for Protection of Competition shall take decisions and pass rulings with an open vote and a majority of 4 votes. In case that the sitting is attended by less than 7 members, the decision shall be taken only if for the same have voted at least 4 members of the Commission.

(3) A member of Commission may not take part in the investigation proceedings under this Law when she/he is interested in their outcome or there are reasonable doubts about his/her impartiality. The member of Commission shall be removed on his/her initiative or upon request of the parties”.

3. paragraph 5 is repealed.

§ 11. In the Consumer Protection Act (promulgated, SG, issue 99 of 2005; amended and supplemented issues 30, 51, 53, 59, 105 and 108 of 2006, issues 31, 41, 59 and 64 of 2007 and issue 36 of 2008 r.) the following amendments and supplements shall be made:

1. In Art. 1, paragraph 2, item 3 the words “misleading and illegal comparative advertising” shall be deleted.

2. Chapter Three “Misleading and Comparative Advertising” is repealed.

3. In Art. 68d, paragraph 4 the words “Art. 68f” shall be replaced by “Art. 68e”:

4. In Art. 68e, paragraph 2, item 6 the words “unified civic number” shall be replaced by “the number of the identity document”.

5. In Art. 68f, paragraph 4, item 2 the words “unified civic number” shall be replaced by “the number of the identity document”.

6. In Section IV “Unfair Commercial Practices” a new Art. 68l is inserted:

“Art. 68l (1) When the Consumers Protection Commission ascertains that the commercial practice is unfair, the chairman of the commission shall issue an order prohibiting the application of the commercial practice.

(2) The Chairman of the Consumers Protection Commission may oblige the merchant to prove within a short period of time determined by him/her that the applied commercial practice is not unfair.

(3) In the cases under Art. 68d, paragraph 4 and where the unfair practice relates to activities, relating to advertising, irrespective of the pecuniary sanction, the Chairman of the Consumers Protection Commission may order the advertiser or the advertising agency to announce at their expense and in a suitable manner the act with which the infringement is established, as well as the respective corrected advertisement.

(4) The Chairman of the Consumers Protection Commission may take the actions under paragraphs 1-3 *ex officio* or on occasion of a request made on part of a consumer.”

7. In Art. 152, paragraph 2, item 2 the words “unified civic number” shall be replaced by “the number of the identity document”.

8. In Art. 165, paragraph 3, item 2 the words „misleading and illegal comparative advertising, as well as on” shall be deleted.

6. In Art. 186:

a) in paragraph 2,

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

bb) in item 9 letters „a” to „e” shall be repealed

b) in paragraph 3 the words “with the exceptions of the actions under chapter three, section II “Misleading Advertising” shall be deleted

10. Art. 202 and 203 are hereby repealed.

11. In Art. 210a:

a) after the words “infringement of” “Art. 68c” shall be added”, and the words “paragraphs 1 and 2” shall be replaced.

12 A new Art. 210c is created:

“Art. 210c. Whoever fails to fulfil an order under Art. 68l, paragraph 1 or an order under Art. 68l, paragraph 3 shall be punished by a fine, and to sole proprietors and legal entities shall be imposed pecuniary sanction to the amount of BGN 1000 to BGN 10,000”.

13. In §13a of the supplementary provisions item 2 is hereby repealed.

§ 12. Within three months as of coming into force of this Law, the Commission shall adopt the Rules for its organization under Art. 6, paragraph (1), and within a six-month term – the acts provided in the Law.

§13. The implementation of this Law shall be assigned to the Commission for Protection of Competition.

This Law has been adopted by the National Assembly on 14 November 2008 and

has been sealed with the Official Seal of the National Assembly.

Transitional and concluding provisions
TO THE ACT AMENDING AND SUPPLEMENTING THE LAW ON
PROTECTION OF COMPETITION
(PROM. - SG 54 OF 2010)

§ 5. (1) Within a month from the entry into force of this Act the National Assembly shall elect the members of the Commission on Protection of Competition.

(2) Till inauguration of new members of the Commission on Protection of Competition the previous members shall continue to perform their functions.

§ 6. Within two months from the entry into force of this Act the Commission on Protection of Competition shall adopt amendments and supplementations of the Structural Regulations of the Commission on Protection of Competition.

Transitional and concluding provisions
TO THE ACT AMENDING AND SUPPLEMENTING THE LAW ON
PROTECTION OF COMPETITION
(PROM. - SG 73 OF 2011, IN FORCE FROM 20.09.2011)

§ 3. (1) Within one month from the entry into force of the present Act the National Assembly shall elect the two new members of the Commission on Protection of Competition.

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

§ 4. Within two months from the entry into force of the present Act the Commission on Protection of Competition shall adopt amendments and supplements to the Rules of Organisation of the Commission on Protection of Competition.

.....

§ 7. The Act shall enter into force from the date of its promulgation in the State Gazette except for § 2, 5 and 6, which shall enter into force within one month as of the date on which the Act is promulgated in the State Gazette.

Transitional and concluding provisions
TO THE LAW ON AMENDMENT AND SUPPLEMENTATION OF THE LAW
ON THE CIVIL SERVANT
(PROM. - SG 38 OF 2012, IN FORCE FROM 01.07.2012)

§ 84. (In force from 18.05.2012) Within one month from the promulgation of this Law in the State Gazette:

1. the Council of Ministers shall make the Classification of Offices in the Administration compliant with this Law;
2. the competent authorities shall make the structural acts of the respective administration compliant with this Law.

§ 85. (1) The legal relationships with the persons of the administrations under the Law on the Radio and Television, the Law on the Independent Financial Audit, the Law on the Electronic Communications, the Law on the Financial Supervision Commission, the Law on the Access and Disclosure of Documents and Announcing Affiliation of Bulgarian Nationals to the State Security and Intelligence Services of the Bulgarian People's Army, the Law for Forfeiture of Property Acquired through Criminal Activity, the Law on Prevention and Discontinuance of Conflict of Interests, the Code of Social Insurance, the Law on the Health Insurance, the Law on the Support of Farmers and the Law on the Roads shall be settled under terms and conditions of § 36 of the Transitional and Concluding Provisions of the Law on the Amendment and Supplementation of the Law on the Civil Servants (SG 24/06).

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

1. determine the lowest rank for the position specified in the Classification of Offices in the Administration, unless the officer holds a higher rank;

2. determine an individual basic monthly salary.

(3) The additional funds for insurance instalments for the persons referred to in paragraph 2 shall be made available within the limits for expenses for salaries, remunerations and insurance instalments in the budgets of the budget credit administrators.

(4) The Council of Ministers shall amend as required by this Law the non-budget account of State Fund "Agriculture".

(5) The governing bodies of the National Insurance Institute and the National Health Insurance Fund shall amend as required by this Law the respective budget credits.

(6) Any non-used days of leave under employment relations shall be preserved and shall not be subject to pecuniary compensation.

§ 86. (1) Within one month from entry into force of this Law the individual basic monthly salary of the officer shall be so calculated that the said salary, reduced by the due taxes and the mandatory insurance instalments due by the insured person, if available, shall not be lower than gross monthly salary received before, reduced by the mandatory insurance instalments due by the insured person, if available, and the due taxes.

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

1. the basic monthly salary or the basic monthly remuneration;

2. the additional remunerations paid on permanent basis together with the due basic monthly salary or the basic monthly remuneration and dependent only on the working time.

§ 87. This Law shall enter into force from 1 July 2012 except for § 84, which shall enter into force from the day of the promulgation of the Law in the State Gazette.

Transitional and concluding provisions
TO THE PUBLIC FINANCE ACT
(PROM. SG 15 OF 2013, IN FORCE FROM 01.01.2014)

§ 123. This Act shall enter into force on 1 January 2014 with the exception of §

115, which enters into force on January 1, 2013, and § 18, § 114, § 120, § 121 and § 122, which came into force on 1 February in 2013.

Transitional and concluding provisions
TO THE ACT AMENDING AND SUPPLEMENTING THE LAW ON
PROTECTION OF COMPETITION
(PROM. SG 56 OF 2015)

§ 9. Within three months after entering of this act into force the Commission for protection of competition shall bring the Structural Regulations for Commission for Protection of Competition into compliance therewith and with the other acts provided therein.