

# **LAW ON THE PROTECTION OF COMPETITION**

(Promulgated in State Gazette, No 52 of 8 May 1998)

## **Title One**

### **GENERAL PART**

#### **Chapter One**

##### **GENERAL PROVISIONS**

###### **Subject Matter**

Article 1 (1) This Law aims at ensuring protection and conditions for the promotion of competition and free initiative in the sphere of the economy.

(2) For the purposes stated in paragraph 1 shall provide protection against agreements, decisions and concerted practices, abuse of monopolistic and dominant position on the market, concentration of economic activities, unfair competition and other activities which might result in the prevention, restriction or distortion of competition.

###### **Scope of application**

Article 2 (1) This Law shall apply to:

1. all undertakings which carry on their activities within or out of the territory of the Republic of Bulgaria, if they expressly or tacitly prevent, restrict, distort or might prevent, restrict or distort competition in the country;
2. the authorities of the executive branch and of local government, if they expressly or tacitly prevent, restrict, distort or might prevent, restrict or distort the competition in the country;
3. undertakings to which the State has assigned the provision of services of public interest, in so far as the observance of the law does not render the fulfillment of those tasks impossible and the competition in the country is not affected to a significant extent;
4. natural persons who contribute to the creation of dominant position or to the practicing of unfair competition.

(2) This law shall not apply to:

1. the relations falling within the scope of the legislation relating to the protection of industrial property, copyright and related rights, in so far as they are not used to restrict or distort competition;
2. activities, the consequences of which restrict or might restrict the competition in another State, unless otherwise provided in an international treaty which has entered into force and to which the Republic of Bulgaria is a party.

#### **Chapter Two**

##### **COMMISSION FOR THE PROTECTION OF COMPETITION**

###### **Status**

Art. 3. The Commission for the Protection of Competition, hereinafter referred to as "the Commission," shall be an independent specialized State body financed through the State budget. The Commission shall be a legal person having its seat in Sofia.

###### **Composition**

Art. 4. (1) The Commission shall consist of eleven members -- a chairman, two deputy chairmen and eight members, seven of which should be lawyers and four -- economists, elected and dismissed by the National Assembly for a five years' term of office. They may be re-elected for another five-year period.

(2) The chairman of the Commission must be a qualified lawyer, with practical experience in his speciality not less than ten years and who meets the requirements under paragraph 3.

(3) The members of the Commission shall be Bulgarian nationals who have university degree in law or economics and a practical experience in their speciality not less than five years, with high professional and moral standing not sentenced to imprisonment for intentional indictable crimes. They may not occupy any other paid positions, save for the exercise of scientific or teaching activities.

(4) Within one month following the election of the chairman and on his proposal the National Assembly shall elect the two deputy chairmen and the members of the Commission.

(5) The chairman, the deputy chairmen and the members of the Commission shall give an oath before the National Assembly in accordance with Art.76, paragraph 2 of the Constitution of the Republic of Bulgaria.

#### **Termination of powers**

Art. 5. (1) The powers of the chairman, the deputy chairmen and the members of the Commission shall be terminated by the National Assembly prior to the expiry of their term of office:

1. on their own application;
2. when they have been sentenced to imprisonment for an intentional crime prosecuted on indictment;
3. when it is impossible for them to perform their duties for more than six months;
4. in case of a grave breach of this law and of the oath.

(2) Under the provisions of paragraph 1, items 2, 3 and 4, the chairman shall submit to the National Assembly a motivated proposal for dismissal.

(3) In case of termination of powers under paragraph 1 the chairman shall submit, within one month, a proposal to the National Assembly for the election of a new member of the Commission for the remainder of the initial term of office.

#### **Structure and activities**

Art. 6. (1) The Commission shall adopt Implementing Rules for its structure and activities, which shall be published in the State Gazette.

(2) In the performance of its activities, the Commission shall be assisted by an administration.

#### **Competence**

Art. 7. (1) The Commission on the Protection of Competition shall:

1. establish the offences and impose the penalties provided by the law;
2. issue the authorizations provided by the law;
3. submit proposals to the competent authorities of the executive branch and of local self-government to cancel secondary legislation, issued in violation of this law, or bring actions before the court for the reversal of individual administrative acts contravening to this law;
4. pronounce on other requests relating to this law;
5. order the termination of the offence and restoration of the initial situation;
6. declare void the agreements and decisions prohibited by this law. (*Repealed by Ruling No18/1998 of the Constitutional Court*)

(2) In the performance of its activities, the Commission shall:

1. conduct studies and determine the position of undertakings on the relevant market according to guidelines adopted by the Commission;
2. interact with other State authorities and institutions, with the bodies of local self-government, and with nongovernmental organizations by means of participation in the elaboration of draft legal instruments, exchange of information and other forms of co-operation;
3. give opinions, requested by the corresponding State and local authorities, about the projects for transformation

- and privatization of undertakings or of parts of them, where this law might be violated;
4. carry out and co-ordinate the international co-operation of the Republic of Bulgaria with international organizations or with organizations from other countries in the field of protection of competition;
  5. keep a register of the authorizations given;
  6. publish a periodic information bulletin.

#### **Chairman of the Commission**

Art. 8. (1) The chairman of the Commission shall:

1. propose to the National Assembly to elect the deputy chairmen and the members of the Commission;
2. represent the Commission or authorise persons who shall represent it;
3. organize and manage the activities of the Commission;
4. schedule and chair the sittings of the Commission;
5. conclude, modify and terminate the employment relations with the employees from the administration;
6. organize and enforce the decisions of the Commission which have come into effect;
7. execute the budget;
8. inform the public about the Commission's activities, through the media.

(2) In the performance of his functions, the chairman shall be assisted by the deputy chairmen. He shall nominate the

deputy chairman of the Commission who shall replace him in his absence.

#### **Title Two**

### **RESTRICTION OF COMPETITION**

#### **Chapter Three**

### **PROHIBITED AGREEMENTS, DECISIONS AND CONCERTED PRACTICES**

#### **General prohibition**

Art. 9 (1) The following shall be prohibited: all agreements between undertakings, decisions of connected or united

undertakings, as well as concerted practices of two or more undertakings that have as their object or effect the

prevention, restriction or distortion of competition within the relevant market, and in particular 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 investments;
4. apply different conditions to equivalent transactions with other trading parties, 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 supplementary contracts which, by their nature or according to commercial usage, have no connection with the subject of the main contract or with its performance.

(2) Any agreements and decisions prohibited pursuant to paragraph 1 of this article shall be void. Their nullity may be invoked by any authority or person concerned even if it is not declared in accordance with Art. 7, item 6.

#### **Agreements with negligible effect**

Art 10. (1) The prohibition under Art. 9, paragraph 1 shall not apply to agreements, decisions or concerted practices

which have a negligible effect on competition.

(2) The effect shall be insignificant when the aggregate share of the undertakings participating on the market for goods or services, forming the subject of the agreement, decision or concerted practice, does not exceed five per cent of the relevant market.

#### **Obligation to notify**

Art. 11. (1) Agreements, decisions or concerted practices of the kind described in Art. 9, paragraph 1 which are in

existence shall be notified to the Commission within thirty days following the day of their conclusion, adoption or application.

(2) The notification under paragraph 1 should contain information about:

1. the participating undertakings;
2. the legal form of the agreement or decision, or the type of concerted practice;
3. the overall share of the participating undertakings on the relevant market.

(3) The notification under paragraph 1 may also contain a request for exemption from the prohibition in accordance with Art. 13.

#### **Appraisal of agreements, decisions or concerted practices**

Art. 12. Within two months after the receipt of the notification, the Commission shall issue a decision whereby it shall declare:

1. that no ground exists for the application of the prohibition under Art. 9;
2. a prohibition of the agreement, decision or concerted practice.

#### **Exemption from prohibition**

Art. 13. (1) The prohibition under Art. 9, p 1. may, however, with the authorization of the Commission, be declared

inapplicable in the case of agreements, decisions or concerted practices, which contribute to increasing or improving

the production of goods and the provision of services, to promoting technical or economic progress or to increasing

the competitiveness on external markets, while allowing consumers a fair share of the resulting benefits, and which

do not:

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

(2) The Commission may exempt from the prohibition under Art. 9 agreements, decisions and concerted practices of

small and medium-size enterprises, when they lead to enhancing their competitiveness.

(3) The authorizations under paragraph 1 shall be issued in two months following the submission of the request

under Art. 11, paragraph 3. The authorizations may contain certain conditions with which the undertakings shall

comply.

(4) The Commission shall exercise control over the observance of the conditions under paragraph 3. It may revoke

or amend its authorization, as well as prohibit the agreement, decision or concerted practice, where:

1. there has been a change in any of the facts which were basic to the giving of the authorization;
2. the parties commit a breach of any obligation attached to the authorization;
3. the authorization is based on incorrect information and facts supplied by the undertaking.

(5) In case that in the process of investigation information indicating that the agreement, decision or concerted

practice for which exemption is requested, seriously affects or might affect the interests of the trading parties or

consumers, was found, the Commission may order by means of a decision an immediate termination or modification

(*Repealed by Ruling No 18/1998 of the Constitutional Court*) of the agreement, decision or concerted practice. That

decision shall not be subject to appeal.

#### **Block exemption from prohibition**

Art. 14. (1) The Commission may adopt a decision that the prohibition under Art. 9, paragraph 1 shall not apply to a certain type of contracts when they satisfy the requirements under Art. 13, paragraph 1.  
(2) The decision under paragraph 1 shall enter into force after its publication in the State Gazette.  
(3) In its decision for block exemption from the prohibition under Art. 9, paragraph 1 the Commission shall determine the clauses which the contracts may contain and those whose application is inadmissible.  
(4) The decision under paragraph 1 above may provide that the prohibition under Art. 9, paragraph 1 shall not apply to contracts concluded prior to its entry into force in case that within 3 months they are brought in conformity with the requirements contained in the Commission's decision and the Commission is immediately notified of the modifications made.

#### **Unification of general conditions**

Art. 15. (1) Undertakings which offer the conclusion of identical contracts, containing general conditions, may unify those general conditions in advance provided that they do not restrict the free negotiation of prices and do not affect the interests of consumers.  
(2) The unification of general conditions is permitted only with an authorization of the Commission, which shall be given within two months following the submission of the request of the undertakings under paragraph 1.

### **Chapter Four**

#### **MONOPOLISTIC AND DOMINANT POSITION**

##### **Monopolistic position**

Art. 16. (1) The position of an undertaking which has, by virtue of law, the exclusive right to carry on a certain type of economic activity shall be monopolistic.  
(2) A monopolistic position may only be granted by law where such a position is given to the State in accordance with Art. 18, paragraph 4 of the Constitution of the Republic of Bulgaria.  
(3) Any other means of conferring of a monopolistic position shall be void.

##### **Dominant position**

Art. 17. (1) The position of an undertaking which, in view of its market share, financial resources, possibilities for access to the market, level of technology and economic relations with other undertakings may hinder competition in the relevant market, since it is independent of its competitors, suppliers or purchasers shall be dominant.  
(2) An undertaking shall be considered to have a dominant position if it has a market share higher than 35 per cent of the relevant market, unless the conditions under paragraph 1 are satisfied.

##### **Prohibition against abuse of monopolistic or dominant position**

Art. 18. The following actions of undertakings, having a monopolistic or dominant position that have as their object or effect the prevention, restriction or distortion of competition shall be prohibited, and in particular those which:

1. impose directly or indirectly inequitable prices for purchase or sale or other unfair trading conditions;
2. limit production, trade and technical development to the prejudice of consumers, along with the creation of goods shortage through their detention, destruction, damaging or unjustified directing to processing;
3. apply different conditions to identical type of contracts with regard to certain partners, thereby placing them at a competitive disadvantage;
4. subject the conclusion of contracts to acceptance by the other party of supplementary obligations or to the

conclusion of supplementary contracts which, by their nature or according to commercial usage, are not connected

with the subject of the main contract or with its performance;

5. use economic constraint, resulting into the transformation, merger, fusion, division, detachment and closure of

other undertakings along with the inequitable termination of long-established business relations.

#### **Chapter Five**

### **STATE INTERVENTION**

#### **Compulsory pricing**

Art. 19. Provided that the prohibition under Art. 18, paragraph 1 is violated by undertakings, having a monopolistic

position, the Council of Ministers may, on a proposal from the Commission, establish minimum, fixed or ceiling

prices for a given time that shall be compulsory on the infringing undertaking.

#### **State aids**

Art. 20. (1) State aid shall be the aid granted by the State either through State resources in any form whatsoever

which distorts or might distort competition by putting in a more favourable position certain undertakings or the

production of certain goods, or the provision of certain services.

(2) State authorities and institutions which grant State aid and thereby affect or might affect the trade relations

between the Republic of Bulgaria and the countries with which it has a State aid regime established by virtue of a

treaty, shall be obliged to notify the Commission of the respective State aid project in advance, on the admissibility

of which the Commission shall pronounce.

(3) The obligation for notification under paragraph 2 shall not apply to aids:

1. being social by their nature and granted to individual consumers regardless of the origin of the goods or services;

2. for the repair of damages caused by natural calamities or other exceptional circumstances.

(4) The Commission may deem admissible the aids:

1. designed to accelerate the economic development of areas with low standard of living or with unemployment rate

exceeding the average level for the country;

2. designed to foster the economic development of certain economic activities or of certain areas, in as much as the

conditions of trade are not changed contrary to the common interest of the parties;

3. which foster the execution of a project, being of a significant economic interest to the parties or the overcoming of

serious difficulties in the economy of the Republic of Bulgaria;

4. which foster the preservation of the cultural and historic heritage, provided that those aids do not affect trading

conditions and competition to an extent that runs contrary to the mutual interests of the parties;

5. determined with the consent of the countries with which the Republic of Bulgaria has established a State aid

monitoring regime.

(5) Where the Commission establishes that the project or the State aid granted are incompatible with the conditions

under paragraphs 2 to 4 above and fall outside the scope of admissible exceptions, it shall propose to the corresponding authority or institution to cancel the project within a prescribed time-limit or demand that the aid be

reimbursed. In that case the Commission may also propose that only the amounts or the conditions for granting the

aid be modified to prevent the restriction and to restore effective competition.

#### **Chapter Six**

## **CONCENTRATION OF ECONOMIC ACTIVITIES**

### **Definition**

Art. 21. (1) There shall be a concentration of economic activities :

1. in case of merger or fusion of two or more independent undertakings, or
2. where one or several persons already controlling one or more undertakings acquire by purchase of securities, stakes or property, by contract or by any other means, direct or indirect control over one or more undertakings or parts of them.

(2) For the purposes of paragraph 1, item 2 **control** stands for any acquisition of rights, conclusion of contracts or

other means which, separately or jointly, and with regard to the existing factual circumstances and the applicable

law, confer a possibility for the exercise of a decisive influence on an undertaking through:

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

### **Joint venture**

Art. 22. The creation of a joint venture that performs on a lasting basis all the functions of an autonomous economic

entity, where this does not lead to co-ordination of the competitive behaviour of the participating undertakings

between themselves or between them and the joint venture, shall also constitute a concentration within the meaning

of Art. 21.

### **Exceptions**

Art. 23. The cases where:

1. credit institutions or other financial institutions or insurance companies, whose activities include transactions in securities for their own account or for the account of others, hold on a temporary basis securities of a given undertaking with the view to reselling them, but only provided that:
  - a) they do not exercise the voting rights in respect of those securities in order to influence the competitive behaviour of the undertaking, or
  - b) they exercise their voting rights only in order to prepare the disposal of the securities, which should be done in one year's term following their acquisition;
2. control is acquired by a person which, according to the legislation in force, performs certain functions related to the liquidation of the undertaking or to its bankruptcy procedure;
3. the operations under Art. 21, paragraph 2 are carried out by financial holding companies provided however that the control in respect of the holding, is exercised solely to maintain the full value of the invested capital and not to determine directly or indirectly the competitive behaviour of the undertakings in which they have holdings, shall not be considered for concentrations.

### **Obligation for prior notification**

Art. 24. (1) The undertakings shall notify the Commission prior to their intention to carry out the concentration

under Art. 21, when:

1. the aggregate market share of the goods or services, to which the concentration relates, exceeds 20 per cent;
2. the aggregate turnover of the participants in the concentration for the previous year exceeds 15 billion Levs.

(2) When the concentration leads to the acquisition of control over parts of one or more undertakings, irrespectively whether those parts form autonomous legal entities, the turnover, related to the part that is the subject of control shall be considered.

(3) In case of concentration of credit institutions and other financial institutions the assets on their balance sheet shall be taken into consideration, and for insurance undertakings - the value of gross premiums written.

#### **Obligation of State or local authorities to notify**

Art. 25. Provided that the authorities of the central executive power or of the local self- government consolidate their undertakings, in the cases under Art. 24, paragraph 1, those authorities shall submit a notification before the Commission before the issuance of the respective act.

#### **Contents of the notification**

Art. 26. (1) The notification under Art. 24 shall contain information about

1. the undertakings participating in the concentration;
2. the nature and the legal form of the concentration;
3. the type of goods and services covered by the notification;
4. the undertakings over which the participants in the concentration exercise control with respect to Art. 21, paragraph 2;
5. the aggregate market share and the aggregate turnover of the undertakings participating in the concentration;
6. the main competitors, suppliers and purchasers.

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

#### **Appraisal of concentration**

Art. 27. (1) Within one month after the receipt of the notification the Commission shall make an appraisal of the concentration, taking into consideration contingencies such as: the position of the undertakings on the relevant market before and after the concentration, their economic and financial power, access to supply of and markets for the respective goods and services, the legal or other barriers to entry to the markets.

(2) On the basis of the assessment the Commission shall render a decision whereby it:

1. declares that the concentration does not fall within the scope of Art. 24;
2. authorises the concentration;
3. starts an investigation under Art. 29.

(3) Where, during the investigation, facts, revealing that the concentration for which authorization is sought seriously affects or might affect the interests of trading parties or consumers, are established, the Commission may

order by a decision the immediate termination or modification (*Repealed by Ruling No 18/1998 of the Constitutional Court*) of the actions relating to the concentration. The decision shall not be subject to appeal.

#### **Authorization for concentration**

Art. 28. (1) The Commission shall authorise the concentration provided that the latter does not result in the creation or strengthening of a dominant position that would significantly impede effective competition on the relevant market. Authorisation may also be given under the condition that certain requirements should be met.

(2) The Commission may authorise a concentration which, besides creating or strengthening a dominant position, aims at modernisation of production or of the economy as a whole, improvement of the market structures, attraction of investments, increasing the competitiveness on external markets, creation of new jobs, better satisfying of the

interests of the consumers, and on the whole outweighs the negative impact on competition on the relevant market.

(3) In the authorisation under paragraphs 1 and 2 the Commission may also impose additional requirements which

guarantee the preservation of effective competition or the overall positive impact on the market.

#### **Decision for investigation**

Art. 29. (1) The Commission decides to initiate an investigation provided that the concentration falls within the

scope of Art. 21 and rises serious doubts that its carrying out would result in the creation or strengthening of an

existing dominant position, and that effective competition in the relevant market would be prevented, restricted or

distorted.

(2) The decision under paragraph 1 shall be published in the State Gazette.

(3) Within three months after the publication the Commission shall complete the investigation and issue a decision.

(4) Until the issuing of the Commission's decision under Art. 54 all operations relating to the envisaged concentration shall be prohibited.

### **Chapter Seven**

#### **UNFAIR COMPETITION**

##### **Definition**

Art. 30.(1) Unfair competition shall be any action or inaction in the course of the performance of economic activities

which contravenes to good-faith commercial usage and impairs or might impair the interests of competitors in their

mutual relations or in their relations with consumers.

(2) Unfair competition shall be prohibited.

##### **Damaging the reputation of competitors**

Art. 31. (1) The damaging of the reputation of and confidence in competitors, and of the goods and services offered

by them by stating or disseminating untrue information, or by misrepresenting facts shall be prohibited.

(2) It shall be prohibited to ascribe, by means of advertising or in any other manner, non-existing qualities to goods

or services in comparison to the goods or services of competitors, and to ascribe non-existing defects to the goods or

services of competitors.

##### **Misleading**

Art. 32. (1) It shall be prohibited to conceal or disguise material defects or dangerous characteristics of the goods or

services offered.

(2) It shall be prohibited to mislead in relation to essential characteristics or to the way of utilisation of the goods by

means of making untrue statements or by the misrepresentation of facts.

(3) The advertisement of goods or services which are not available to satisfy consumers' demand or which are of

insufficient quantity shall be prohibited.

(4) The use of misleading announcements of prices, price reductions or other trading conditions shall be prohibited

when offering goods or services.

##### **Imitation**

Art. 33. (1) The offering or advertisement of goods or services with an appearance, packaging, marking, name or

other characteristics which mislead or might mislead as to the origin, producer, seller, the way and place of production, the source and way of acquisition or utilisation, the quantity, quality, nature, consumer characteristics

and other essential features of the good or service shall be prohibited.

(2) The use of a firm, a mark or an emblem identical or similar to those of other persons in a way which might result in impairing the interests of competitors and/or consumers shall be prohibited .

#### **Unfair attracting of clients**

Art. 34. (1) The carrying out of unfair competition aimed at attracting clients as a result of which contracts concluded with competitors are terminated or violated shall be prohibited .

(2) The use of duress or other unlawful means to exert influence over the sellers, so that they would not sell goods or would refuse services to certain persons shall be prohibited.

(3) The use of duress or other illegal means to influence the clients with the intent to make them purchase, refrain from purchasing or use a particular type of product or service shall be prohibited.

(4) The announcement of sales in instalments or similar legal transactions where the seller fails to clearly declare his firm, or to give accurate information about the number and amount of the separate instalments, the interest rate due on the arrears and the total selling price shall be prohibited.

(5) The offering or giving of supplements to the product or service sold free of charge or against a fictitious price for another good or service, with the exception of: advertising objects of insignificant value and bearing a clear indication of the advertiser; objects or services which, according to commercial usage, constitute accessories to the sold product or the service provided; goods or services as a rebate for the sale of bigger quantities, as well as printed matter in case of sale of or subscription to periodicals shall be prohibited.

(6) The making of a sale where, together with it, something is offered or promised depending on: resolving problems, puzzles, questions, riddles; collection of series of coupons, etc.; gambling in games of fortune with cash or object prizes the value of which considerably exceeds the value of the product or of the service sold shall be prohibited .

(7) The sales of significant quantities of goods on the domestic market for long periods of time at prices lower than the production and marketing costs for the purpose to attract clients unfairly shall be prohibited .

#### **Prohibition to disclose industrial or trade secrets**

Art. 35. (1) The learning, the use or disclosure of an industrial or trade secret in contravention to good-faith commercial usage shall be prohibited .

(2) The learning of a industrial or trade secret runs contrary to good-faith commercial usage where it has been effected through tapping, penetration into a premise, opening of correspondence, photographing without the consent of the holder of documents or chattels safe-guarded in a way which restricts the access to them, and also by means of deceit or offering a benefit to persons who have access to the secret as a result of their official or contractual relations.

(3) The use or disclosure of a industrial or trade secret where it has been learned or made known on condition that it should not to be used or disclosed shall also be prohibited.

### **Title Three**

## **PROCEEDINGS**

### **Chapter Eight**

#### **GENERAL PROVISIONS**

##### **Grounds to initiate proceedings**

Art. 36. (1) Proceedings before the Commission shall be initiated following:

1. a written application from the persons whose interests are affected or threatened by a violation of this law;
2. written requests to issue authorisations or allow harmonized general conditions or State aids;
3. a decision of the Commission;
4. a request from the public prosecutor.

(2) Actions to compensate the persons affected by violations under this law shall be brought in accordance with the

Code of Civil Procedure. The decision of the Commission, whereby the violation is established, shall be binding on

the civil court. (*Repealed by Ruling No 18/1998 of the Constitutional Court*)

#### **Sittings of the Commission**

Art. 37. (1) The sittings of the Commission shall be open or held *in camera*.

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

#### **Quorum and majority**

Art. 38. (1) The sittings shall be regular where at least seven members of the Commission are present.

(2) The Commission shall take its decisions by open vote and a majority of six votes.

#### **Grounds for self-challenging**

Art. 39. (1) A member of the Commission shall be obliged to challenge himself on one of the following grounds:

1. in case that he/she has been a representative of one of the parties;
2. in case that he has had an employment or civil law relationship with one of the parties;
3. in case that, due to other circumstances, that member might be considered biased or directly or indirectly interested in the outcome of the proceedings.

(2) In cases under paragraph 1 the parties may challenge a member of the Commission.

#### **Securing of evidence**

Art. 40. (1) In case of a threat for a proof to be lost or for its collection to be rendered difficult, the chairman of the

Commission shall order its collection prior to the initiation of the proceedings.

(2) The provisions of the Code of Civil Procedure shall apply accordingly to the securing of evidence.

#### **Obligation for assistance**

Art. 41. (1) The officials shall be obliged to assist the Commission in the fulfilment of the duties assigned thereto by

the law, by providing access to premises, oral and written explanations, along with provision of documents and other

information supports.

(2) In case of refusal to access or failure to provide information the Commission shall seek the assistance of the

bodies of public prosecution and of the Ministry of the Interior.

(3) Where the Commission conducts an investigation or study the officials may not rely on official, industrial or trade secrets.

(4) The National Statistics Institute shall collect, process and provide upon request information to the Commission

on issues within the scope of its competence.

#### **Use of documentation**

Art. 42. Any documentation and information, received by the Commission in the course of an investigation may be

used solely for the purposes of that investigation.

#### **Appeals**

Art. 43. The decisions of the Commission shall be subject to appeal before the Supreme Administrative Court within

fourteen days of their notification in accordance with the Code of Civil Procedure, except for those under Art. 13,

paragraph 5 and Art. 27, paragraph 2 and 3.

#### **Entry of decisions into force**

Art. 44. The decisions of the Commission shall enter into force, when:

1. they are not subject to appeal;
2. they have not been appealed against within the time limit under Art. 43;
3. the appeal lodged has not been granted.

#### **Enforcement**

Art. 45. The pecuniary sanctions and fines imposed by decisions of the Commission which have come into force shall be subject to collection in accordance with the Law on the Collection of State Claims.

#### **Statutory limitation**

Art. 46. No proceedings shall be initiated or the proceedings initiated shall be discontinued after the expiry of five years after the offence has been committed.

#### **Fees and costs**

Art. 47. (1) For the proceedings under this law State fees and costs shall be due. The State fees shall be approved by the Council of Ministers.

(2) The State institutions shall be exempt from fees but not from costs for the proceedings.

### **Chapter Nine**

## **PROCEEDINGS FOR INVESTIGATION OF OFFENCES AND ISSUING OF AUTHORIZATIONS**

#### **Initiation of proceedings**

Art. 48. (1) Proceedings before the Commission shall be initiated on an application from the parties concerned, on a request to issue an authorisation or to allow harmonisation of general conditions or of State aids or *ex officio*.

(2) No proceedings shall be initiated and the proceedings initiated shall be discontinued, following a decision of the Commission, when:

1. the applicant - natural person - has deceased or the legal person has been wound-up;
2. the time limits prescribed for the lapse of liability under this law have expired;
3. the Commission is not competent to pronounce.

#### **Contents of application**

Art. 49. (1) The application under Art. 36, paragraph 1, item 1 must be written in Bulgarian and must contain:

1. the name, unified civic number and information about the court registration of the applicant and of the person against which the complaint is brought;
2. address (residence and address of management) of the applicant;
3. justification of the request and a presentation of the circumstances on which the application is grounded;
4. evidence in support of the application;
5. signature of the person who submits the application, or of his or her representative;
6. the State fees paid, if due.

(2) The requests under Art. 36, paragraph 1, item 2 shall contain accordingly the data listed in Art. 11, paragraph 2 and in Art. 26, paragraph 1.

(3) The requests for State aids to be allowed shall be accompanied by enclosed evidence about the existence of the circumstances under Art. 20, paragraph 4.

(4) The Commission shall not examine applications which are not signed or which are anonymous.

(5) Provided that the application fails to satisfy the requirements under paragraphs 1 to 3, a notice to remove the irregularities within seven days shall be sent to the applicant

(6) Provided that the applicant fails to remove the irregularities within the time limit under paragraph 5, the application shall not be examined by the Commission.

Art. 50. The chairman shall open a file for the application received, the request for an authorisation or decision of

the Commission under Art. 36, paragraph 1, item 3, and shall assign it to a member of the Commission - rapporteur.

#### **Investigation and study**

Art. 51. (1) The rapporteur shall conduct an investigation or study of the circumstances concerning the file, by:

1. requesting written or oral explanations from the applicant; from the person against which the complaint for

violation of the law is brought from undertakings, and from State and local authorities. The written explanations

shall be recorded and signed by the person who has given the explanations;

2. requesting copies of private and official documents;

3. requesting written opinions from State and local authorities.

(2) During the conduct of the investigation or study, the rapporteur shall be assisted by the administration, as well as

by external experts and specialists.

(3) All facts and circumstances collected during the investigation or study shall be confidential, if they constitute a

business or other protected secret of the parties.

(4) The investigation shall be conducted within 60 days. In cases which raise complex points of fact and law the

above time limit may be extended to no more than thirty days, by an order of the chairman of the Commission.

(5) After the completion of the investigation or study the parties shall be given an opportunity to get acquainted with

the materials collected in the file.

#### **Drafting of conclusion**

Art. 52. (1) The rapporteur shall draft a conclusion and present the file to the chairman.

(2) Within two weeks the chairman shall schedule an open sitting.

(3) The summoning of the parties and the notification of the persons concerned for the sitting shall be made in

accordance with the Code of Civil Procedure.

(4) The person against whom the complaint is brought or his or her representative, the person who suffered damages

as a result of the offence or his or her representative, the applicant, representatives of State or local authorities, as

well as other persons concerned shall be summoned for the sitting.

#### **Evidence**

Art. 53. (1) Written evidence shall be admitted and the explanations of the parties shall be heard at the sittings of the Commission

Commission

(2) The chairman may order that a party appear in person in order to give explanations.

#### **Proceedings for conducting the sitting**

Art. 54. (1) The sitting of the Commission shall start with deciding on the preliminary issues of the file concerning

the regularity of the proceedings.

(2) The parties to the file may be asked questions following a procedure determined by the chairman.

(3) Where he considers that the circumstances of the file are clarified, the chairman shall give the parties an opportunity for opinions.

(4) After the dispute is clarified from the factual and legal point of view, the chairman shall close the sitting and

announce the day on which the Commission shall pronounce, and the parties present shall be considered notified.

#### **Decision of the Commission**

Art. 55. (1) The Commission shall pronounce, in a sitting *in camera*, a decision whereby it shall:

1. establish the offence committed and the offender, and define the type and amount of the penalty provided in the

law;

2. establish that the offence committed under the law has served as a ground to issue a vicious court judgement, and empower the chairman to bring an action under the Code of Civil Procedure for its reversal; (*Repealed by Ruling No*

*18/1998 of the Constitutional Court*)

3. establish that no offence has been committed under the law or that the time limit under Art. 45 has expired, and dismiss the application;

4. declare that no grounds exist to impose the prohibition under Art. 9;

5. exempt certain agreements, decisions or concerted practices from the prohibition under Art.9;

6. prohibit a given agreement, decision or concerted practice;

7. allow or prohibit the unification of general conditions;

8. allow or propose to the corresponding body or institution to cancel or modify the project for granting of State aid;

9. authorise or prohibit a concentration.

(2) The decision shall be motivated and signed by the members of the Commission who have voted during the sitting *in camera*.

#### **Dissenting opinion**

Art. 56. (1) A member of the Commission who dissents with the decision shall sign it with a dissenting opinion.

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

#### **Contents of decision**

Art. 57. The decision of the Commission shall be written and shall indicate:

1. the name of the authority which has issued it;

2. the grounds of fact and law for its issuance;

3. a disposition where the rights and obligations shall be determined, as well as the type and amount of the penalty

where such is imposed;

4. the body before which and the time limit in which the decision may be appealed against.

#### **Title Four**

### **LIABILITY AND PENALTIES**

#### **Chapter Ten**

#### **LIABILITY**

##### **Administrative liability**

Art. 58. (1) In case of violation of the prohibitions and restrictions under this law, where the act does not constitute a

crime, administrative liability shall be borne.

(2) No acts for establishing the offences shall be drafted and the pecuniary sanctions and fines under the law shall be

imposed by a decision of the Commission which shall be subject to appeal before the Supreme Administrative

Court.

#### **Chapter Eleven**

#### **PENALTIES**

##### **Pecuniary Sanctions**

Art. 59. (1) For offences under Art. 9, Art. 18, Art. 30 to Art. 35, as well as for carrying on operations under Art. 11, paragraph 1, Art. 15, paragraph 2, Art. 20, paragraph 2 and Art. 24, paragraph

1 without authorisation, the Commission shall impose a pecuniary sanction on the undertaking, in favour of the

State, to the amount of 5 000 000 to 300 000 000 Levs.

(2) In case of a repeated offence the Commission may impose a pecuniary sanction on the undertaking to the amount

of 100 000 000 to 500 000 000 Levs.

(3) In case of failure to perform a decision of the Commission the latter may impose a pecuniary sanction on the undertaking, to the amount of 100 000 000 to 500 000 000 Levs.

#### **Fines**

Art. 60. (1) The natural persons who have committed or admitted the committing of offences under this law, where the act does not constitute a crime, shall be liable to a fine of 1 000 000 to 10 000 000 Levs.

(2) Persons who fail to submit on time the evidence requested or accurate information, or fail to appear in person to give explanations before the Commission, shall be liable to a fine of 500 000 to 2 500 000 Levs.

(3) In case of a repeated offence under paragraphs 1 and 2 the guilty person shall be liable to a fine of 2 000 000 to 20 000 000 Levs.

(4) In case of minor offences the Commission may impose a fine below the established minimum threshold.

#### **ADDITIONAL PROVISION**

§ 1. For the purposes of this law:

1. "Undertaking" means any natural or legal person, or association under civil law thereof which carry on economic activities in the relevant market, regardless of its legal and organisational form.

2. "Connected undertakings" are those undertakings one of which has such a participation in the other which enables it to exercise effective control on its management or activities.

3. "Associated undertakings" are those which carry on joint economic activities on the grounds of a contract or on the basis of associations of commercial companies, in accordance with the Commercial Code.

4. "Concerted practices" consists in the co-ordinated acts or inaction of two or more undertakings.

5. "Relevant market" consists of:

a) Product market including all goods or services which could be accepted by consumers as substitutable in respect

of their characteristics, intended use and price;

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

6. "Good-faith commercial usage" are the rules defining the market behaviour, which stem from the laws and normal trading relations, and which do not violate good morale.

7. "Industrial or trade secret" are facts, information, decisions and data relating to the economic activities whose keeping in secret is in the interest of the right-holders and for which they have taken the necessary measures.

8. "Repeated offence" is the offence committed within one year after the entry into force of the decision whereby the offender has been punished for the same type of offence.

9. "Economic activities" are the activities of undertakings the results of which are designed for exchange on the market.

#### **TRANSITIONAL AND FINAL PROVISIONS**

§ 2. The chairman, the deputy chairmen and the members of the Commission elected by the National Assembly shall preserve their rights until the expiry of their term of office under this law.

§ 3. The agreements, decisions and concerted practices under Art. 9 of this law which exist as at the date of its entry

into force shall be brought in conformity with the requirements of this law within three months. Failing this, they shall be void.

§ 4. (1) The proceedings pending at the moment of entry into force of this law, initiated under files of the Commission which have not been completed, shall be completed in accordance with the rules laid down in this law.

(2) The pending court cases brought in accordance with this law shall be completed in accordance with the rules in

force at the moment of their initiation.

§ 5. In the Commercial Code (published, State Gazette, issue 48 of 1991, amended, issue 25 of 1992, amended and

supplemented, issues 61 and 103 of 1993, issue 63 of 1994, amended, issue 63 of 1995, amended and supplemented,

issue 42, amended, issue 59 of 1996, amended and supplemented, issue 83 of 1996, amended, issue 86 and 104 of

1996, issue 58 of 1997, amended and supplemented, issues 100 and 124 of 1997), an article 262a is inserted:

"S. 262a. The issuance of an authorisation for merger or fusion of companies shall be made in accordance with

conditions and proceedings laid down in a separate law. The court shall enter the merger or fusion in the commercial

register after the authorisation granted is submitted to the court, where the grant of such authorisation is compulsory.

§ 6. The Law on Banks (published, State Gazette, issue 52 of 1997, amended, issue 15 of 1998, amended, issue 21

of 1998) is amended and supplemented as follows:

1. In Art. 19, paragraph 5, a second sentence is inserted:

"In cases under paragraph 2, item 3 the Central Bank shall examine the request if an authorisation for the merger or

fusion has been granted by the Commission for the Protection of Competition, where the grant of such authorisation

is compulsory".

2. In Art. 20, after the words "the Central Bank", a comma is inserted and the following words are added:

"and in

cases under item 3 - also the authorisation of the Commission for the Protection of Competition, where the grant of

such authorisation is compulsory".

3. In Art. 75, paragraph 1, after the words "the Central Bank", the following words are added: "after submission of

an authorisation from the Commission for the Protection of Competition, where the grant of such authorisation is

compulsory".

4. In Art. 78, a new paragraph 6 is inserted:

"(6) An authorisation for fusion under paragraph 5 shall be granted upon submission of an authorisation from the

Commission for the Protection of Competition, where the grant of such authorisation is compulsory".

§ 7. The Law on Insurance (published, State Gazette, issue 86 of 1996, supplemented, issue 1 of 1997, amended,

issue 21 of 1997 - Judgement of the Constitutional Court of the Republic of Bulgaria, amended and supplemented,

issue 58 of 1997, issue 21 of 1998) is supplemented as follows:

1. In Art. 17c, paragraph 1, item 2 in fine, the following words are added: "upon submission of an authorisation for

merger or fusion by the Commission for the Protection of Competition, where the grant of such authorisation is

compulsory",

2. In Art. 22, item 1, after the words "between insurers" the following words are added: "after receipt of an authorisation for merger or fusion by the Commission for the Protection of Competition, where the grant of such

such

authorisation is compulsory".

§ 8. Art.35 of the Law on Privatisation Funds (published, State Gazette, issue 1 of 1996, amended and supplemented, issues 68 and 85 of 1996, issue 39 of 1998) is amended and supplemented as follows:

1. A new paragraph 2 is inserted:

"(2) The Commission may issue an authorisation for the acquisition of shares issued by another privatisation fund, for merger and fusion of privatisation funds only upon submission of authorisation from the Commission for the

Protection of Competition, where the grant of such authorisation is compulsory".

2. The now existing paragraph 2 becomes paragraph 3.

§ 9. In Art. 2 of the Law on Co-operatives (published, issue 63 of 1991, amended, issues 34 and 55 of 1992, issue 63

of 1994, issue 59 of 1996, supplemented, issues 59 and 103 of 1996, amended, issue 52 of 1997) a paragraph 2 is

inserted:

"(2) In case of merger of co-operatives the court shall register the new co- operative or the changes under Art. 40, paragraph 1, after it has been provided with the corresponding authorization, issued by the Commission for the

Protection of Competition, where the grant of such authorization is compulsory" .

§ 10. The Law on Securities, Stock Exchanges and Investment Companies (published, State Gazette, issue 63 of 1995, amended and supplemented, issues 68 and 85 of 1996, issues 52 and 94 of 1997, issue 42 of 1998) is amended

and supplemented as follows:

1. In Art. 97, a paragraph 8 is inserted:

"(8) The offeror shall mandatory enclose to the draft bidding proposal an authorisation from the Commission for the Protection of Competition".

2. Article 98 is amended as follows:

a) In paragraph 1, the words "Commission for the Protection of Competition" are deleted;

b) paragraph 2 is repealed.

§ 11. The implementation of this law is entrusted to the Commission for the Protection of Competition.

§ 12. This law repeals the Law on the Protection of Competition (published, State Gazette, issue 39 of 1991,

corrigendum, issue 79 of 1991, amended and supplemented, issue 53 of 1992).

The law was passed by the XXXVIII-th National Assembly on 29 April 1998 and the State seal has been affixed

hereto.

President of the National Assembly:

(pp) Ivan Kurtev