

DECREE N 154

On the ground on Art. 98, p. 4 of the Constitution of Republic of Bulgaria

l o r d e r:

To be promulgated in the State Gazette the Law on the Protection of Competition, passed on by the XXXVIII General Assembly on 29 April 1998.

Issued in Sofia on 23 November 1998.

President of the Republic of Bulgaria:

Peter STOYANOV

LAW ON THE PROTECTION OF COMPETITION

(Published in State Gazette, issue 52, 1998)

Title One

GENERAL PART

Chapter One

GENERAL PROVISIONS

Subject Matter

Art. 1. (1) This law is aimed at ensuring the protection and conditions for the promotion of competition and of free initiative in the economic activities.

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

Scope of application

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

1. all undertakings which carry on their activities within or without the territory of the Republic of Bulgaria, if they expressly or tacitly prevent, restrict, distort or might prevent, restrict or distort the competition in the country;
2. the authorities of the Executive and of local self-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, to the extent where the observance of the law does not render the fulfilment 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 practising of unfair competition.

(2) This law shall not apply to:

1. the relations governed by the legislation relating to the protection of industrial property, copyright and related rights, to the extent where they are not used to restrict or distort competition;
2. operations, 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 authority financed through the State budget. The Commission shall be a legal person having its seat in Sofia.

Composition

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

(2) The chairman of the Commission must be a qualified lawyer who has had a length of service in the area of his speciality not less than ten years and who meets the requirements under subsection 3.

(3) Members of the Commission shall be elected from among Bulgarian nationals who have higher education in law or economics and a length of service in the area of their speciality not less than five years, with a high professional and moral standing and who have not been sentenced to imprisonment for intentional crimes prosecuted on indictment. They may not take any other paid position, unless they exercise scientific or teaching activities.

(4) Within one month as from the election of the chairman and on a proposal from the latter 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 §76, subsection 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 expiration of their term of office:

1. following their own application;
2. where they have been sentenced to imprisonment for an intentional crime prosecuted on indictment;
3. where 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) Where the conditions under subsection 1, items 2, 3 and 4 exist, the chairman shall submit a reasoned proposal for dismissal to the National Assembly.

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

Organization and activities

Art. 6. (1) The Commission shall adopt Rules for its organization and activities, as well as decisions which shall be published in the State Gazette.

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

Competence

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

1. establish the offences and impose the penalties provided by the law;
2. issue the authorizations provided for in the law;
3. submit proposals to the competent authorities of the Executive and of local self-government, or bring actions before the court for the reversal of individual administrative acts issued in contravention 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. (declared anticonstitutional by the Coordination Council of the Republic of Bulgaria, State Gazette, issue 112 1998)

declare void the agreements and decisions prohibited by this law.

(2) When performing its activities, the Commission shall:

1. conduct studies and determine the position of undertakings in the relevant market according to a methodology adopted by the Commission;
2. interact with other State authorities and institutions, with the bodies of local self-government, and with non-governmental organizations by means of participation in the elaboration of draft legal instruments, exchange of information and other forms of co-operation;
3. give opinions on the projects for transformation and privatization of undertakings or parts thereof which has been requested by the corresponding State and local authorities, 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 for 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 authorize 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, via the media;

(2) While performing 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) Shall be prohibited any type of agreements between undertakings, decisions of connected or associated undertakings, as well as concerted practices of two or more undertakings which have as their object or effect the prevention, restriction or distortion of competition in the relevant market, such as:

1. direct or indirect fixing of prices or other trading conditions;
2. sharing of markets or sources of supply;
3. limitation or control of the production, trade, technical development or investments;
4. application of dissimilar conditions to the same type of contracts in respect of certain parties, thereby placing them at a competitive disadvantage;
5. making 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, are not connected with the subject of the main contract or with its performance.

(2) The agreements and decisions under subsection 1 above shall be void. Their nullity may be invoked by any authority or person concerned even if it is not declared in accordance with §7, item 6.

Agreements with insignificant effect

Art. 10. (1) The prohibition under §9, subsection 1 shall not apply to agreements, decisions or concerted practices which have an insignificant effect on competition.

(2) The effect shall be insignificant where the aggregate share of the undertakings participating in the market for the goods or services, which form 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) The undertakings shall be obliged to notify the Commission of the existence of agreements, decisions or concerted practices under §9, subsection 1 within thirty days after the day on which they are concluded, adopted or applied.

(2) The notification under subsection 1 should contain data about:

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

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

Appraisal of agreements, decisions or concerted practices

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

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

Exemption from prohibition

Art. 13. (1) With the authorization of the Commission may be exempted from the prohibition under §9, subsection 1 agreements, decisions or concerted practices, which contribute to increasing or improving the production of goods and the provision of services, to the technical or economic development or to increasing the competitiveness on external markets, while allowing consumers a fair share of the resulting benefits, and provided that:

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

(2) The Commission may exempt from the prohibition under § 9 agreements, decisions and concerted practices of small and medium-sized enterprises, where they lead to enhancing their competitiveness.

(3) The authorizations under subsection 1 shall be issued within two months after the submission of the request under §11, subsection 3. The authorizations may contain certain conditions with which the undertakings shall be bound to comply.

(4) The Commission shall exercise control for the observance of the conditions under subsection 3. It may reverse or modify the authorization given, as well as prohibit the agreement, decision or concerted practice, where:

1. a change occurs in a fact which has been of material importance when the authorization was given;
2. the participating undertakings infringe a condition contained in the authorization;
3. it is established that the authorization is based on untrue data and facts provided by the undertaking.

(5) Where during the study data are established which indicate that the agreement, decision or concerted practice, for which an exemption is sought, seriously affects or might affect the interests of the trading parties or consumers, the Commission may order by a decision an immediate termination or modification of the agreement, decision or concerted practice. That decision shall not be subject to appeal.

Group exemption from prohibition

Art. 14. (1) The Commission may adopt a decision that the prohibition under §9, subsection 1 shall not apply to a certain type of contracts where they satisfy the requirements under §13, subsection 1.

(2) The decision under subsection 1 shall come into effect after it is published in the State Gazette.

(3) In its decision for a group exemption from the prohibition under §9, subsection 1 the Commission shall determine the conditions which the contracts may contain and those conditions the application of which is inadmissible.

(4) The decision under subsection 1 above may provide that the prohibition under §9, subsection 1 shall not apply to contracts concluded prior to its entry into force, where within 3 months they are brought in conformity with the requirements of the Commission and where the latter is forthwith notified of the modifications made.

Unification of general conditions

Art. 15. (1) Undertakings which offer the conclusion of the same type of contracts in accordance with general conditions, may unify those general conditions in advance where they do not restrict the free negotiation of prices and do not affect the interests of consumers.

(2) The unification of general conditions shall only be allowed with the authorization of the Commission, which shall be given within two months after the request is filed by the undertakings under subsection 1 above.

Chapter Four

MONOPOLISTIC AND DOMINANT POSITION

Monopolistic position

Art. 16. (1) Shall be monopolistic the position of an undertaking which has, by operation of law, the exclusive right to carry on a certain type of economic activity.

(2) A monopolistic position may only be conferred by a law in the cases where such a position is given to the State in accordance with §18, subsection 4 of the Constitution of the Republic of Bulgaria.

(3) Any other conferral of a monopolistic position shall be void.

Dominant position

Art. 17. (1) Shall be dominant 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.

(2) An undertaking shall be considered to have a dominant position where it has a market share higher than 35 per cent in the relevant market, unless the conditions under subsection 1 are not satisfied.

Prohibition to abuse monopolistic or dominant position

Art. 18. Shall be prohibited the actions of undertakings having a monopolistic or dominant position which have as their object or effect the prevention, restriction or distortion of competition, such as:

1. direct or indirect imposition of unjustified purchase or selling prices or other unfair trading conditions;
2. limiting the production, trade and technical development to the prejudice of consumers, including through the creation of a shortage of goods via their keeping, destruction, damaging or unjustified directing to processing;
3. application of dissimilar conditions to the same type of contracts in respect of certain partners, thereby placing them at a competitive disadvantage;
4. making 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, are not connected with the subject of the main contract or with its performance;
5. use of economic coercion resulting into the transformation, merger, fusion, division, detaching and winding up of other undertakings, or in view of the unjustified termination of long-established business relations.

Chapter Five

STATE INTERVENTION

Determination of prices

Art. 19. Where the prohibition under §18, subsection 1 is violated by undertakings having a monopolistic position, the Council of Ministers may, on a proposal from the Commission, establish minimum, fixed or threshold prices for a given period of time which shall be binding on the defaulting undertaking.

State aids

Art. 20. (1) Shall be a State aid the aid granted by the State or 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 aids and thereby affect or might affect the trade relations between the Republic of Bulgaria and the countries with which it has a State aids regime established by virtue of a treaty, shall be obliged to notify the Commission in advance of the corresponding project for State aids, on the admissibility of which the Commission shall pronounce.

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

1. having a social character and granted to individual consumers regardless of the origin of the goods or services;
2. for making good the damage caused by natural disasters or other exceptional circumstances.

(4) The Commission may consider admissible the aids:

1. designed to accelerate the economic development of areas where the standard of living is low or the rate of unemployment exceeds the average level for the country;
2. designed to assist the economic development of certain economic activities or certain areas, where the conditions of commercial turnover are not changed contrary to the common interest of the parties;
3. which assist the execution of a project having a significant economic interest to the parties or the overcoming of serious difficulties in the economy of the Republic of Bulgaria;
4. which assist the conservation of cultural and historical heritage, where those aids do not affect trading conditions and competition to an extent that is 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 regime for monitoring of State aids.

(5) Where the Commission establishes that the project or the State aid granted are incompatible with the conditions under subsections 2 to 4 above and fall outside the scope of admissible exceptions, it shall propose to the corresponding authority or institution to reverse the project within a prescribed time-limit or shall request that the aid be reimbursed. In such a case the

Commission may also propose that only the amounts or the conditions for granting the aid be modified, where this is sufficient 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 of activities:

1. in case of merger or fusion of two or more autonomous 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 of one or more undertakings or parts there of.

(2) Control for the purposes of subsection 1, item 2 shall be constituted by the acquisition of rights, conclusion of contracts or other means which, separately or jointly, and having regard to the existing factual circumstances and the applicable law, confer a possibility of exercising a decisive influence on a given undertaking through:

1. the acquisition of ownership or right to use in respect of all or part of the property of the undertaking;

2. the acquisition of rights, including on the grounds of a contract, which confer a possibility for a decisive influence on the composition, voting or decisions of the bodies of the undertaking.

Joint venture

Art. 22. Shall also be considered a concentration within the meaning of §21 the creation of a joint venture which performs on a lasting basis all functions of an autonomous economic entity, where this does not give rise to co-ordination of the competitive behaviour of the participating undertakings amongst themselves or between them and the joint venture.

Exceptions

Art. 23. Shall not be considered to be concentrations the cases where:

1. banks and non-banking financial institutions or insurance companies, the activities of which include transactions in securities for their account or for the account of others, hold on a temporary basis securities of a given undertaking with the purpose to resell 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 transfer of the securities, which should be effected within one year as from their acquisition;

2. Control is acquired by a person which, according to the legislation in force, performs certain functions relating to the liquidation of the undertaking or to its adjudication in insolvency;

3. the operations under §21, subsection 2 are carried out by financial holding companies but only where the control acquired by the holding company is exercised only to maintain the full value of the capital invested and not to determine directly or indirectly the competitive behaviour of the undertakings in which the holding company participates.

Obligation for prior notification

Art. 24. (1) The undertakings shall be obliged to notify in advance the Commission of their intention to carry out a concentration under §21, where:

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) Where the concentration consists in the acquisition of control of parts of one or more undertakings, whether or not those parts are autonomous legal entities, shall only be taken into consideration the turnover of that part which is the subject of control.

(3) In case of concentration of banks and non-banking financial institutions the assets on their balance sheet shall be taken into consideration, and for insurance undertakings - the total sum of insurance premiums (contributions).

Obligation of State or local authorities to notify

Art. 25. Where the authorities of the central executive power or of local self- government merge their undertakings, in the cases under §24, subsection 1, those authorities shall be obliged to submit a notification to the Commission prior to the issuance of the relevant act.

Contents of notification

Art. 26. (1) The notification under §24 shall contain data relating to:

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 concentration;
4. the undertakings in respect of which the participants in the concentration exercise control within the meaning of §21, subsection 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 from the undertakings under subsection 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 while taking into account circumstances such as: the position of the undertakings in the relevant market prior to the concentration and after it, their economic and financial power, the access to supplies of and markets for the relevant goods and services, the legal or other barriers to enter the markets.

(2) On the basis of the appraisal the Commission shall issue a decision whereby it shall:

1. declare that the concentration falls outside the scope of §24;
2. authorize the concentration;
3. start a study under §29.

(3) Where, during the study, data are established which reveal that the concentration for which authorization is sought seriously affects or might affect the interests of trading parties or consumers, the Commission may order by a decision the immediate cessation or modification of the operations relating to the concentration. The decision shall not be subject to appeal.

Authorization for concentration

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

(2) The Commission may authorize a concentration which, though creating or strengthening a dominant position, is aimed at modernising the production or 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 the interests of consumers, and on the whole overrides the negative impact on competition in the relevant market.

(3) In its authorizations under subsections 1 and 2 the Commission may also put additional conditions which guarantee the preservation of effective competition or the general positive impact on the market.

Decision for study

Art. 29. (1) The Commission shall decide to launch a study where the concentration falls within the scope of §21 and gives rise to 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 subsection 1 shall be published in the State Gazette.

(3) Within 3 months after the publication the Commission shall complete the study and pronounce a decision.

(4) Until the Commission pronounces its decision under §54 all operations relating to the envisaged concentration shall be prohibited.

Chapter Seven

UNFAIR COMPETITION

Definition

Art. 30. (1) Shall constitute unfair competition any act or inaction in the course of carrying on economic activities which contravenes good-faith commercial usage and impairs or might impair the interests of competitors in their relations amongst themselves or in their relations with consumers.

(2) Unfair competition shall be prohibited.

Damaging the reputes of competitors

Art. 31. (1) It shall be prohibited to damage the reputes of and confidence in competitors, and of the goods and services offered by them by stating or disseminating untrue data, or by misrepresenting facts.

(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 material characteristics or the way of utilization of the goods by means of stating untrue data or misrepresenting facts.

(3) It shall be prohibited to advertise goods or services which are not available to satisfy consumer demand or which are of insufficient quantity.

(4) When offering goods or services, it shall be prohibited to use misleading announcements of prices, price reductions or other trading conditions.

Imitation

Art. 33. (1) It shall be prohibited to offer or advertise 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 utilization, the quantity, quality, nature, consumer characteristics and other essential features of the good or service.

(2) It shall be prohibited to use a firm, a trademark 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.

Unfair attracting of clients

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

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

(3) It shall be prohibited to use 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 good or service.

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

(5) It shall be prohibited to offer or give supplements to the good 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 good sold or 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.

(6) It shall be prohibited to effect a sale where, together with it, something is offered or promised depending on: resolving tasks, puzzles, questions, conundrums; collecting series of coupons, etc.; gambling in games of fortune with cash or object - prizes the value of which considerably exceeds the value of the good or service sold.

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

Prohibition to disclose production or business secrets

Art. 35. (1) It shall be prohibited to learn, use or disclose a production or trade secret in contravention to good-faith commercial usage.

(2) The learning of a production or business secret shall also contravene 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 safeguarded 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.

Title Three

PROCEEDINGS

CHAPTER EIGHT

GENERAL PROVISIONS

Grounds to institute proceedings

Art. 36. (1) Proceedings before the Commission shall be instituted on the grounds of:

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

(2) (second sentence declared unconstitutional by the Coordination Council of the Republic of Bulgaria, State Gazette, issue 112, 1998)

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.

Sittings of 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 pass 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. where the member has been a representative of one of the parties;
2. where he has had an employment or civil law relationship with one of the parties;
3. where, 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 subsection 1 the parties may challenge a member of the Commission.

Securing of evidence

Art. 40. (1) Where a threat exists that a proof might be lost or its collection might be rendered difficult, the chairman of the Commission shall order that it be collected prior to instituting 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 provide assistance to the Commission in the fulfilment of the duties assigned thereto by the law, by providing access to premises, oral or written explanations, as well as documents and other information media.

(2) In case of refusal of 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, production or business secrets.

(4) The National Statistical 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 a study may only be used thereby for the purposes of that study.

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 §13, subsection 5 and §27, subsections 2 and 3.

Entry of decisions into force

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

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

Enforcement

Art. 45. The property penalties 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 instituted or the proceedings instituted 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 AUTHORIZATIONS

Instituting of proceedings

Art. 48. (1) Proceedings before the Commission shall be instituted on an application from the parties concerned, following a request for an authorization to be issued or for unified general conditions or State aids to be allowed, or ex officio.

(2) No proceedings shall be instituted and the proceedings instituted shall be discontinued by a decision of the Commission, where:

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 §36, subsection 1, item 1 must be written in Bulgarian and must reveal:

1. the name, unified civil number and data about the court registration of the applicant and of the person against which the complaint is directed;
2. address (registered office and address of management) of the applicant;
3. what the request consists in 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 files the application, or of his or her representative;
6. the State fees paid, if due.

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

(3) To the requests to State aids to be allowed evidence shall be enclosed concerning the existence of circumstances under §20, subsection 4.

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

(5) Where the application fails to satisfy the requirements under subsections 1 to 3, the applicant shall be served with a notice to remove the irregularities within seven days.

(6) Where the applicant fails to remove the irregularities within the time limit under subsection 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 authorization or decision of the Commission under §36, subsection 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 of 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 directed; 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 from 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 by no more than thirty days, by an order of the chairman of the Commission.

(5) Upon completion of the investigation or study the parties shall be given an opportunity to familiarize themselves 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) Shall be summoned for the sitting the person against whom the complaint is directed 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.

Evidence

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

(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. (declared anticonstitutional by the Coordination Council of the Republic of Bulgaria, State Gazette, issue 112 1998)

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;

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

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

5. exempt certain agreements, decisions or concerted practices from the prohibition under §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 reverse or modify the project for grant of State aid;

9. authorize or prohibit a concentration.

(2) The decision shall be reasoned 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 enclosed 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 declamatory part 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 property penalties 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

Property penalties

Art. 59. (1) For offences under §9, §18, §30 to §35, as well as for carrying on operations under §11, subsection 1, §15, subsection 2, §20, subsection 2 and §24, subsection 1 without authorization, the Commission shall impose a property penalty 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 property penalty 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 property penalty 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 subsections 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" is 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 organizational form.

2. "Connected undertakings" are those undertakings one of which has such a participation in the other which enables it to exercise effective control of 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 mutually substitutable in respect of their characteristics, intended use and price;
 - b) "Geographical market" including a specific territory in which the corresponding mutually substitutable goods or services are offered and in 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. "Production or business 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 expiration of their term of office under this law.
- § 3. The agreements, decisions and concerted practices under §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, instituted 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 instituting.

§ 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), a section 262a is inserted: "Issuance of authorization

Art. 262a. The issuance of an authorization 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 authorization granted is submitted to the court, where the grant of such authorization 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 §19, subsection 5, a second sentence is inserted:

"In cases under subsection 2, item 3 the Central Bank shall examine the request if an authorization has been granted for the merger or fusion by the Commission for the Protection of Competition, where the grant of such authorization is compulsory".

2. In section 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 authorization of the Commission on the Protection of Competition, where the grant of such authorization is compulsory".

3. In §75, subsection 1, after the words "the Central Bank", the following words are added: "after submission of an authorization from the Commission for the Protection of Competition, where the grant of such authorization is compulsory" .

4. In section 78, a new subsection 6 is inserted:

"(6) An authorization for fusion under subsection 5 shall be granted upon submission of an authorization from the Commission for the Protection of Competition, where the grant of such authorization 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 §17c, subsection 1, item 2 in fine, the following words are added: "upon submission of an authorization for merger or fusion by the Commission for the Protection of Competition, where the grant of such authorization is compulsory",

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

§ 8. S.35 of the Law on Privatization 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 subsection 2 is inserted:

"(2) The Commission may issue an authorization for the acquisition of shares issued by another privatization fund, for merger and fusion of privatization funds only upon submission of authorization from the Commission for the Protection of Competition, where the grant of such authorization is compulsory".

2. The now existing subsection 2 becomes subsection 3.

§ 9. In §2 of the Law on Co-operatives (published, State Gazette 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 subsection 2 is inserted:

"(2) In case of merger of co-operatives the court shall register the new co-operative or the changes under s. 40, subsection 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 section 97, a subsection 8 is inserted:

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

2. Section 98 is amended as follows:

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

b) Subsection 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.

For the President of the National Assembly:

Ivan Kurtev