

## Substantial amendments to competition law on agenda in Bulgaria

A draft law amending the Competition Protection Act (“CPA”) was published at the end of December 2020. The suggested set of amendments introduces significant changes in various aspects, many of them linked to the implementation of Directive (EU) 2019/1 of 11 December 2018 and Directive (EU) 2019/633 of 17 April 2019.

Here is a brief overview of the changes that we deem most important:

### I. Test for merger clearances

Under the current framework, the Commission for Protection of Competition (“CPC”) applies a dominance test, i.e., it clears a notified merger if it does not lead to the creation or strengthening of a dominant position which would impede significantly effective competition on the relevant market.

The draft proposes switching to the SIEC (significant impediment of effective competition) test which would allow the competition authority to object to a notified merger even if it does not necessarily result in the creation or strengthening of a dominant position.

The CPC would thus see its powers in this respect enhanced and aligned to the prevailing approach followed by the European Commission and most EU member states.

### II. Inspections at private homes

At present, the CPC in exercise of its investigative powers is allowed to carry out inspections at premises or in vehicles of undertakings or associations of undertakings.

The draft introduces the possibility for the CPC to enter also private homes of any representative, member of a management body or staff of companies/associations in cases where there is a reasonable suspicion that documents or records related to business activity and the subject matter of the proceedings are kept therein.

In any event, such inspections require prior authorization by a court, and the respective private homes must be listed expressly in the court order allowing the inspection. The CPC officials who carry out the inspections have the same powers as those applicable to inspections at business premises except for the right to seal the respective private home.

### III. Unfair trade practices

Bulgarian competition law currently contains, in addition to the abuse of dominance rules, a prohibition on the abuse of a stronger bargaining position. This kind of regulation applies to all economic sectors and is not really standard for competition law in the EU and worldwide. Furthermore, its application thus far has been controversial.

The draft therefore plans to repeal the whole section of the CPA dealing with abuse of a stronger bargaining position. Instead, a new section will be introduced dealing with unfair trading practices specifically in the agricultural and food supply chain and in this way the provisions of Directive (EU) 2019/633 would be implemented into national law.

The new section would apply to B2B relationships in the agricultural and food supply chain where certain turnover benchmarks are met as follows:

Supplier – annual turnover	Buyer from such supplier – annual turnover
Up to EUR 2 000 000	> EUR 2 000 000
EUR 2 000 001 – EUR 10 000 000	> EUR 10 000 000
EUR 10 000 001 – EUR 50 000 000	> EUR 50 000 000
EUR 50 000 001 – EUR 150 000 000	> EUR 150 000 000
EUR 150 000 001 – EUR 350 000 000	> EUR 350 000 000
Up to EUR 350 000 000	Public authority

The new section would prohibit a number of unfair practices, e.g.: the payment term for the buyer exceeding 30/60 days depending on the type of product (certain conditions/exceptions apply); unilateral change by the buyer of substantial terms of a supply agreement; cancellation of an order with a notice of less than 30 days (14 days for perishable products); requirements for payments from suppliers that are not related to the sale of its products, etc.

In addition to the practices above identified by Directive (EU) 2019/633, the draft would prohibit further unfair practices, e.g.: limitations on suppliers to sell or purchase goods or services to/from third parties; limitations on suppliers to agree on identical or more favourable conditions with third parties; sudden and unjustified termination of agreements, etc.

Certain practices would be prohibited unless they have been previously agreed in clear and unambiguous terms, e.g.: return by the buyer of unsold products to the supplier without paying for those unsold products or without paying for their disposal; charging of payments for stocking, displaying or listing of products; requirements for payment of costs of discounts during promotions, marketing, advertising, transport/logistics costs, etc.

In the event of a violation of any of the prohibitions above, a buyer could be sanctioned by up to 5% of its turnover for the preceding financial year.

It is also worth mentioning that existing agreements should be brought into compliance with the new rules within one year after their entry into force.

#### **IV.Sanctions**

In view of improving the efficiency of the existing sanctions, the draft provides for the possibility of imposition of sanctions on entities other than the one found to be in breach of the law. In particular, the CPC would be entitled to impose sanctions on: a) an entity which controls the company that has committed the violation; b) an entity which acquired assets of the company that committed the violation following a restructuring, and c) an entity that is an economic successor of the activity related to the violation committed.

Another important development would consist in the possibility of the CPC to impose sanctions on associations of undertakings calculated on the basis of the worldwide turnover of its members active on the relevant market affected by the respective violation. The draft would also introduce a mechanism to request payment of such sanctions from the members of the association in the event that the latter would not be able to cover the sanction itself.

#### **V.Costs of proceedings**

The draft also contains an important amendment related to the costs of proceedings before the CPC. Under the existing rules, in the case of proceedings ending with a decision that no violation of the law has been committed, the costs of proceedings are born by the parties as incurred by them. On the contrary, the draft proposes that the costs in such cases are born by the company that initiated the proceedings, which would be a more adequate solution taking into account the outcome of the proceedings.

In conclusion, on one hand the draft amendments would implement numerous requirements of EU law and, on the other hand, they should introduce developments aimed at modernization of the local legal framework or tackle issues which have appeared in the course of application of the existing rules.

*This article was prepared by Mr. Plamen Peev, Partner and Director of the PETERKA & PARTNERS Sofia office. It reflects the status as of 08 January 2021. This article is for informational purposes only and may not be considered a legal opinion or advice.*