

CERHA HEMPEL CEE NEWSLETTER *Bulgaria*

Forthcoming amendments to the Bulgarian Protection of Competition Act

The Bulgarian Commission on the Protection of Competition (“CPC”) recently proposed draft legislation to amend the Protection of Competition Act. The planned changes are primarily aimed at transposing *Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market* (the “**ECN+ Directive**”) and *Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*. The draft further introduces certain best practices established at the EU level and modifies the existing rules on the abuse of a superior bargaining position. The key elements of the proposal are summarized below.

A new standard for merger control

The draft proposes the adoption of the SIEC (significant impediment of effective competition) test for merger control. Currently, the CPC applies the so-called dominance test, thus assessing whether the merger would lead to the creation or strengthening of a dominant position which would significantly impede effective competition on the respective market. The shift towards the SIEC approach is in line with the practice of the European Commission and most Member State competition authorities. It would extend the powers of the CPC to refuse authorization for a merger when a significant negative effect to the competition is likely to occur, without necessarily establishing dominance of the entity on the respective market.

Extended powers of the Bulgarian Competition Authority

If the proposed draft is adopted, the CPC will have the power to carry out dawn raids in non-business premises and vehicles, including in the homes of company directors, managers and employees, if there is reasonable suspicion that relevant business documents of the undertaking being inspected are stored there. In addition to investigating cartels, abuse of dominance and merger control cases, dawn raids can also be carried out in relation to unfair trade practices in the agricultural and food supply chain.

Parental and successor liability

The proposed amendments extend the personal scope of liability for competition law infringements to prevent liability avoidance by way of mergers and corporate restructuring. In particular, the CPC would be able to impose sanctions on the infringer’s controlling entity and on any legal or economic successor of the infringing undertaking.

New rules on unfair trade practices in the agricultural and food supply chain

The proposed rules largely transpose Directive (EU) 2019/633, which aims to prevent buyers in the agricultural and food supply chain from exploiting suppliers because of suppliers’ typically weaker market position. Subject to certain exceptions, and depending on buyers and suppliers turnover thresholds indicated in the directive, a prohibition is introduced to the unfair trading practices listed in the directive, such as payments later than 30 days for agricultural and food products, short-notice cancellations of perishable agricultural and food products, unilateral changes to the terms of the supply agreement, etc. The pro-



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posed amendments however go beyond the minimum requirements of the directive, e.g. by prohibiting most-favoured-customer clauses, unjustified termination without reasonable notice, and exclusive supply agreements.

Any breach of the new rules may be sanctioned with a fine of up to 5% of the company's annual turnover. Merchants would have one year to bring their current agreements into line with the new rules.

Repeal of the rules on the abuse of a stronger bargaining position

The draft proposes a repeal of the existing broader rule on the abuse of economic dependence. The rule was introduced in 2015. It currently applies to all industries and prohibits undertakings with a stronger bargaining position from

abusing their power to the detriment of their contractual partners or of consumers. Due to the broad and unclear scope of the prohibition, the CPC acknowledges that the rule failed to achieve the desired result and instead caused legal uncertainty for supply chain stakeholders.

Further, the draft amendments aim to ensure efficient cooperation in cross-border enforcement matters and harmonization of leniency rules at the EU level.

For more information

Boyko Gerginov
Managing Partner Bulgaria
boyko.gerginov@cerhahempel.com
Tel: +359 2 401 09 99