

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Commission on Protection of Competition, Bulgaria

The following template is submitted by **Commission on Protection of Competition, Bulgaria** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Commission on Protection of Competition (CPC) is empowered to enforce the Law on Protection of Competition, the Public Procurement Law and the Concessions Law. The competences of the CPC cover founding of infringements concerning prohibited agreements, abuse of monopoly and dominant position, unfair competition, abuse of superior bargaining position, control on concentrations, conducting sector analyses and competition advocacy. Under the rules and procedures, envisaged by the Public Procurement Law and the Concessions Law, the CPC examines the appeals on lawfulness of a decision, actions or lack of actions/omissions of the contracting authorities or concessioners in the public procurement or concession awarding procedures.

<http://www.cpc.bg/Default.aspx>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

Pursuant to Art. 2, paragraph 1, point 1 of the Law on Protection of Competition (LPC) the law applies to undertakings and associations of undertakings which carry out their activities within or outside the territory of the Republic of Bulgaria, if they explicitly or tacitly prevent, restrict, distort or may prevent, restrict or distort competition in the country.

There are not any provisions envisaging different treatment of Bulgarian and foreign undertakings.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

The Law on Protection of Competition as well as all secondary legislation such as Methodology for definition of relevant market. Methodology for setting fines, Leniency programme, Rules for access to file, etc. are published on the CPC's website. In addition the CPC has adopted the following guidelines which are also publicly available on the website of the CPC: Guidelines against bid rigging in public procurement procedures; Guidelines on information exchange between competitors; Guidelines on the corporate competition compliance programs; Guidelines on advocacy; Guidelines for the assessment of compliance of legislative and general administrative acts with competition rules.

The secondary legislation and the guidelines ensure transparency and predictability of the applicable procedure as well as on the way the CPC reviews different issues.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

Article 26, paragraph 1 of the Administrative Procedure Code provides that the known individuals and organizations concerned, other than the applicant, shall be notified of the initiation of the proceedings.

The CPC sends requests for information that are focused on what is necessary for the analysis. The deadline is set in accordance with the volume of the requested information as well as with the deadlines of the proceedings.

The parties and the third interested parties have opportunities to present their view, information and evidence during the investigation. In addition the defendants have the possibility to reply to the statement of objections.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The limit for assessment of a concentration in the preliminary investigation in Phase One is 25 working days. If after that, the CPC starts in-depth investigation in Phase Two the deadline for it is 4 months which may be extended by no more than 25 working days in cases of factual or legal complexity.

There are not statutory deadlines as regards the completion of the antitrust proceedings but the CPC aims to conclude its investigation within a reasonable time frame taking into account the complexity of the case.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

In Bulgaria the issues concerning the protection of confidential information are regulated in the Law on Protection of Competition, mainly in Art. 55, while the detailed procedure is described in Rules on the access, use and storage of documents constituting production, trade or other secret, protected by law. The Rules are adopted by the CPC in February 2009 in fulfilment of its obligation under Art. 55 (4) of the LPC to adopt such rules and are publicly available on the website of the CPC.

Pursuant to Article 55 (2) of the LPC any person, submitting information to the CPC in the course of proceedings shall identify the materials that are claimed to contain production, trade or other secret, protected by law and which should, therefore, be treated by the Commission as confidential. In such cases the person shall substantiate its claim and shall submit the same materials in a version in which all data considered to be confidential have been erased.

The LPC defines “production or trade secret” in paragraph 1, point 9 of its Supplementary provisions as facts, information, decisions and data related to the economic activities, the preservation of confidentiality of which is in the interest of the rightful holders thereof, and for which the latter have undertaken appropriate measures. The Rules give examples of information that may qualify as production or trade secret: technical and/or financial information relating to an undertaking’s know-how, methods of assessing costs, production

processes, supply sources, quantities produced and sold, market shares, customer and distributor lists, marketing plans, cost and price structure, sales strategies, etc.

The balance between a party's right to review and respond to evidence that will be used against it and the need to protect confidential information is ensured with the detailed procedure envisaged in the above mentioned Rules on the access, use and storage of documents constituting production, trade or other secret, protected by law which ensure transparency aimed at protecting the rights of the persons providing information during the Commission's proceedings and the proper exercise of the parties' right of defence. The Supreme Administrative Court, in its practice, has recognized that the Rules are well-known and generally applicable and thus guarantee compliance with the principles of predictability, good administration and equality of legal entities.

Pursuant to Article 55 (3) of the LPC, confidential information may be disclosed if it is of substantive importance for proving the infringement or to ensure the effectiveness of the right of defence. The CPC is empowered to disclose confidential information either on its own initiative or upon request of a party to the proceedings.

In the process of assessing whether to adopt a ruling for disclosure, the CPC takes into consideration:

- whether the information can be used to prove the infringement and what is its probative force;
- to what extent the disclosure of the information would harm the interests of the information provider or the undertaking.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Art. 4 (3) of the LPC sets a requirement for the Members of the CPC that they shall not benefit from undertakings in any form whatsoever and occupy another paid position, except when carrying out activity as scientists, lecturers or arbitrators.

In accordance with Art. 10 of the LPC a Member of the CPC or an official from the administration may not take part in proceedings under the Law, in case he/she is interested in the outcome of the proceedings or there are reasonable doubts about his/her impartiality. The Member of the CPC or the official in question shall be removed on its own initiative or upon a motion of the parties.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be*

informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.

- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

If the CPC reckons that there is an infringement in accordance with Art. 74 (1), p. 3 of the LPC it adopts a ruling to send Statement of objections for an alleged infringement of the Law to the defendant. Pursuant to Art. 74 (2) of the LPC the ruling shall specify a deadline, not shorter than 30 days, within which the complainant and the defendant shall have the right to submit their written objections on the submitted Statement of objections, and the constituted interested third parties – their observations. The ruling shall state that the parties and the interested third parties shall have the right of access to the file as laid down in Art. 55 as well as the right to be heard in an open sitting of the Commission as laid down in Art. 76.

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

According to Art. 76 of the LPC the parties and any interested third parties shall have the right to be heard in an open sitting of the Commission before it takes a decision on the merits. After the expiration of the period for reply to the Statement of objections, by an order the Chairperson shall schedule an open sitting, at which the Commission shall hear the parties and the interested third parties. The open sitting shall be scheduled for a day which shall not be earlier than 14 days after the deadline for submission of objections and observations on the submitted allegations for infringements. The parties and the interested third parties shall be notified of the scheduled open sitting at which they will be heard in compliance with the procedure laid down in the Administrative Procedure Code. The parties and any interested third parties, as well as the persons summoned shall be heard by the Commission in camera. The sitting of the Commission shall start with dealing with the preliminary issues related to the procedure. The parties and the interested third parties may be asked questions in an order, determined by the Chairperson. When the Chairperson considers that all circumstances on the case have been clarified, he/she shall give the floor to the parties to make their pleas. After any disputed matters of fact and law have been clarified, the Chairperson shall close the sitting.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

There are not any legislative provisions which limit the parties to the proceedings to be represented by qualified legal counsel or to present their views via counsel.

The Attorneys Law provides for the secrecy of communications exchanged between an attorney and his client. Nevertheless, in the CPC's decisional practice the rule is applicable only when it concerns the communications exchanged for ensuring the undertaking's defence in the proceedings before the competition authority. Therefore, any other communication exchanged between an attorney and his client is not covered by the legal professional privilege, as their purpose is not to ensure the right of defence in the antitrust proceedings.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Art. 68 of the LPC envisages that the CPC shall maintain an electronic register of the acts it has issued. All decisions of the CPC concluding the proceedings as well as all decisions to open an in-depth investigation of concentrations shall be published in the register within 14 days as of their adoption.

In accordance with Art. 75 (2) of the LPC the CPC may approve commitments by a decision. So this decision is also published in the electronic register pursuant to the obligation envisaged in Art. 68. Pursuant to the Rules on commitment decisions adopted by the CPC In the event the CPC decides on approving the undertaking of commitments, it outlines in its decision the facts of the case as well the competition concerns, the proposal and the objections formulated by other parties and its own analysis for compliance of the

proposed commitments. The decision sets also the deadline for the fulfilment of each commitment and last, but not least, it states that they are no further grounds for the continuation of the initiated proceedings. At the CPC's discretion, the decision may also set the duration of the commitments and/or oblige the undertaking/s to periodically inform and present evidence on the fulfilment of the commitments.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

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