

REPUBLIC OF BULGARIA
GRAND NATIONAL ASSEMBLY

PROTECTION OF COMPETITION ACT

Promulgated State Gazette No 39/17.05.1991

Amended SG No. 53/30.06.1992

Chapter One

GENERAL PROVISIONS

Objects

Article 1

(1) The objects of this Act are to create conditions for free enterprise in manufacture, distribution, and services; free pricing; and the protection of consumers' interests.

(2) To ensure the achievement of the above objects, this Act provides protection against the misuse of monopoly market position, as well as against unfair competition and other actions such as may have a restrictive effect on domestic competition.

Commission for the Protection of Competition

Article 2

(1) A Commission for the Protection of Competition shall be established as an autonomous Budget_f financed institution.

(2) The Commission for the Protection of Competition shall comprise a Chairperson, two Vice_Chairpersons and eight Members to be appointed and relieved of office by the National Assembly.

(3) The Commission's Chairperson shall have a university degree in law or economics with ten years professional experience. Half of the Commission Members shall be qualified lawyers who have a minimum of five years professional experience.

Chapter Two

POSITION OF MONOPOLY

Definition

Article 3

Such a person is in a position of monopoly as, in the national market:

1. holds, under this Act, the exclusive right to carry on a particular business (of manufacturer of goods and/or services, distributor, agent, purchaser, creditor, insurer, etc);
2. independently or jointly with other dependent persons, holds a larger than 35 per cent share in the market of any particular business under Item 1 above.

Ban on the Establishment of Monopoly

Article 4

Central and local government authorities shall not adopt decisions whereby, explicitly or implicitly, a monopoly is established, or such decisions as effectively result in the establishment thereof, if free competition and/or pricing is thereby severely restricted.

Ban on Grouping and Merger

Article 5

- (1) If leading to such consequences as those under Article 4 above, grouping, subordination, and merger of firms shall be banned.
- (2) A firm is subordinated wherein another firm is the holder of equities or shares in a proportion such as ensures the majority voting power of that other firm to adopt or prevent the adoption of decisions by the firm.
- (3) Equities or shares may not be acquired by transfer between dependent persons.

Notification and Consent

Article 6

- (1) Persons in a position of monopoly, as well as persons who, by acquisition of equities or shares, become such persons, shall submit to the Commission for the Protection of Competition prior notice of the acquisition of equities or shares in a competitor firm of subsidiary status and, also, of any decision to contain or limit the growth of production, sales, investment or technological development.
- (2) Actions or transactions under Paragraph (1) above shall be subject to consent by the Commission for the Protection of Competition or the Commission's acquiescence, that shall be deemed granted where the Commission does not make an objection within 30 days of notification.

Ban on the Misuse of Monopoly

Article 7

Monopoly shall be deemed misused where a person such as under Article 3 hereinbefore acts in a manner that restricts competition or prejudices consumers' interests by:

1. hindering other persons from carrying on a business in that it restricts the growth of a market or access thereto;
2. applying distinctly inequitable standards in dealings with various counterparts, or inequitable contract terms, including unjustifiable imposition of limited or expanded liability, or by imposing goods and services on a market that are below common quality standards;
3. creating a shortage of goods and services by withholding, destroying or damaging such goods and services, or by the unjustifiable recycling thereof, buying up competitors' goods, and such like;
4. making conclusion or implementation of a contract conditional upon a counterpart's acceptance of additional terms, such as are unrelated to the subject or the implementation of the contract;
5. resorting to economic constraint to cause other firms to dissolve, split up, merge or transform;
6. imposing monopoly prices that, over a period of some considerable duration, are considerably above costs related to the production and distribution of particular goods and services.

Chapter Three

BAN ON THE RESTRICTION OF COMPETITION

Banned Agreements and Decisions

Article 8

(1) Agreements (cartels) shall be null and void, as well as decisions made by companies, groups, alliances or persons, such as explicitly or implicitly propose the establishment of a domestic monopoly or would effectively result in such.

(2) Contract terms shall be banned such as restrict a counterpart's choice of market, sources of purchasing, buyer, seller or user, unless such a restriction is warranted by the specific nature of contract and where it does not prejudice consumers' interests.

Control of Marketing Agreements

Article 9

Subject to consent by the Commission for the Protection of Competition, agreements can be made to adopt unified contract terms of sale, manufacture, service, shipment, credit, settlements, etc, where such agreements do not affect free price bargaining, do not restrict competition and do not prejudices consumers' interests.

Exclusive Distribution Rights

Article 10

Contracts shall be banned whereby a particular same person may become agent for or be conferred exclusive rights of factor, buyer or seller of goods and/or services such as:

1. are supplied by competitors where this would lead to restriction of domestic competition or to a monopoly market position;
2. fall under the contractor's monopoly in production, consumption or distribution.

Chapter Four

UNFAIR COMPETITION

Ban

Article 11

Unfair competition is hereby banned.

Acts of Unfair Competition

Article 12

(1) An action or behavior in business shall be deemed to constitute an act of unfair competition such as contravenes *bona fide* commercial practices and prejudices, or might prejudice competitors' interests vis_a_vis one another or vis_a_vis consumers.

(2) The following, in particular, shall constitute acts of unfair competition:

1. damage to the good reputation and credibility of competitors and those of the goods and services supplied by them, or to competitors' credit worthiness, by claiming or by circulating false facts, as well as by distortion of facts;
2. by commercial advertising, or in any other way, attribution of non_existing features to goods and services in comparison with competitors' goods and services, or attribution of non-existing deficiencies to competitors' goods and services;

3. non_ avowal or concealment of essential deficiencies of, or hazards arising from, goods and services offered;
4. misleading consumers about essential features or the usage of goods by claiming false facts or by interpreting facts in a misleading manner;
5. supply or commercial advertising of goods and services whose appearance, packaging, labeling, name, or other distinctive features mislead, or might serve to mislead, consumers about the origin, manufacturer, seller, way and location of manufacture, source and manner of acquisition, quantity, quality, nature, user benefits, and other essential characteristics of such goods and services;
6. use of others' corporate identity, trademark, brand name, special legend, and symbols in a manner such as might serve to mislead the consumer;
7. use of legends such as might create wrong ideas of non-existing features of goods and services;
8. commercial advertising of goods and services such as are not available on demand, or such as are available only in short supply by overall quantity and by variety range;
9. misleading quotation of prices, discounts and other special offers of goods and services;
10. non_ compliance with, or unilateral termination of, a contract, aimed concluding a similar contract with third parties, that deteriorates the competition capability of the original counterpart;
11. resort to constraint, or any other unlawful method of influencing customers, in order to make them buy or use a particular good or service;
12. provision of incomplete or false information on essential elements of a credit or hire_ purchase contract.

Ban on Soliciting Termination or Breach of Contract

Article 13

Actions, such as under Article 12 above, are hereby banned, as intended to attract customers, where such actions result in termination or breach of contract with competitors.

Ban on the Disclosure of Production or Commercial Secrets

Article 14

(1) Also deemed as acts of unfair competition shall be the possession, use or disclosure, in contravention of *bona fide* commercial practices, of others' production or commercial secrets.

(2) Production and commercial secret shall mean business related decisions and data such as might, if possessed, used or disclosed by others, prejudice the business interests of the rightful owner.

(3) Possession of others' production or commercial secrets contravenes *bona fide* commercial practices, also, where gained by eavesdropping, breaking into premises, unauthorised access to correspondence, filming or studying documents or other materials kept so as to limit access to them, and by fraud or by corruption of persons whose access to such secrets is authorised under official status or contract.

(4) Use and disclosure of others' production or commercial secrets is hereby banned, also, where possession thereof has been gained or granted under the express condition that such secrets may not be used or disclosed.

(5) Employees in all enterprises and organisations, and government departments, shall not, even after the relevant contract has expired, disclose such production or commercial secrets, as they come in the knowledge off through official authority, for a period of five years, unless a longer period has been provided by an employment or another relevant contract.

Unfair Competition by Employees

Article 15

(1) A person may not, simultaneously and for a period of three years after having been relieved of office, be on the governing or controlling bodies of competing firms.

(2) A person of employee status may not, without his employer's consent, on his own or on a third party's behalf, carry on such a business as is part of the activities carried on by his employer. Consent shall be deemed granted where, at signing of the relevant employment contract, the employer was in the knowledge of such a business being carried on by the person concerned, but where an explicit provision to terminate the same was not made. In the event of a breach of this ban, the employer can terminate the employment contract without prior notice.

(3) Persons under paragraph (2) above may not engage in competing business activities with their employer for a period of three years after termination of the labour contract, unless otherwise provided by the same.

(4) An executive officer may not participate in a firm or be member of a governing or a controlling body if that might interfere with the fulfillment of his official duties in good faith.

Chapter Five

GOVERNMENT ACTION TO PREVENT ESTABLISHMENT AND MISUSE OF MONOPOLY AND UNFAIR COMPETITION

Mandatory Prices

Article 16

In the event where a position of monopoly is misused, the Council of Ministers, or an organ authorised by the Council of Ministers, can, subject to advice by the Commission for the Protection of Competition, enforce maximum and/or minimum prices on the person in a position of monopoly.

Import and Export Quotas

Article 17

Where import or export quotas exist for certain goods and services, the authority assigned to control compliance therewith shall announce such quotas and provide persons concerned with equal opportunities to participate in a competitive tender for the allocation of subquotas.

Terms of Reference of the Commission for the Protection of Competition

Article 18

The Commission for the Protection of Competition shall:

1. following the relevant procedure, make submissions to the effect that administrative enactments of government organs be repealed where found to contravene this Act;
2. take legal proceedings to impose sanctions where a position of monopoly is unlawfully established or misused, or where unfair competition is practised, or competition is restricted.

Appeal

Article 19

A ruling by the Commission for the Protection of Competition, issued pursuant to Articles 6(2) and 9 hereinbefore, shall be subject to appeal before the Sofia City Court within a month of announcement. Where the Commission has not granted permission within a month of request pursuant to Article 9 hereinbefore, such permission shall be deemed refused.

Mandatory Co_operation

Article 20

Executive officers of firms and administrative authorities shall, as required by the Commission for the Protection of Competition, provide information and documentation, and submit written statements on matters within the Commission's terms of reference.

Chapter Six

RESPONSIBILITY

Claims

Article 21

(1) Where the bans or restrictions, provided by this Act, have been violated, and depending on the nature of the offence, claims may be lodged with Courts by:

1. persons whose interests have been prejudiced or endangered by the offence;
2. the Commission for the Protection of Competition and District Attorneys.

(2) A Court can:

1. establish whether offence is the case;
2. rule the termination of activity until non_compliance is overcome;
3. declare transactions and decisions in contravention of this Act null and void;
4. sentence the offender to cease non_compliance.

(3) A Court can rule the confiscation as State revenue of profit made in contravention of this Act.

(4) A State Revenue Fee shall not be required for claims under Paragraph (1) above. Such fee shall be assigned at closure of case pursuant to Civil Procedure.

Jurisdiction

Article 22

Claims under Article 21 above shall fall under District Court jurisdiction.

Penalties

Article 23

(1) Offending firms and enterprises under Articles 4, 5, 7/1, 2 & 5/, and Articles 10 and 13 hereinbefore, as well as such firms and enterprises as act without due permission pursuant to Article 9 hereinbefore, shall be liable to penalties from levs 5,000 to 250,000.

(2) Penalties shall range from levs 20,000 to 1,000,000 where:

1. offences under Paragraph (1) above are repeated within a period of three years;
2. offences under Paragraph (1) above are exceptionally grave and lead to significant adverse consequences in the market and for consumers or the national economy;
3. offences fall under Article 6 Paragraph (1) Items 4, 6 and 7; and Articles 8, 12 and 14(1_4);
4. implementation of agreements or decisions such as were declared null and void, or actions have been taken as were banned by court ruling.

(3) In minor cases under Paragraphs (1) and (2) Items 1, 3 and 4 above, penalties shall range from levs 500 to 5,000.

Administrative responsibility

Article 24

Persons who have committed or were allowed the commitment of offences under this Act, where the offence does not constitute a crime, shall be liable to a fine of levs 10,000

Enforcement of penalties

Article 25

(1) Where offences are committed for which offenders are liable to penalties under Article 23 hereinbefore, the organ of the Commission for the Protection of Competition shall draw up a Statement, pursuant to the Administrative Offences and Sanctions Act, which shall then be referred to the local District Court concerned. Where an offence has been committed over the areas of jurisdiction of two or more District Courts, said Statement shall be referred to the Sofia City Court.

(2) Court hearings, Rulings, and Appeals thereof shall be subject to Civil Procedure.

(3) Establishment of offences under Article 24 above, issuance, appeal, and execution of the relevant Penal Statement shall be subject to Administrative Offences and Sanctions Act.

TRANSITIONAL AND CONCLUDING PROVISIONS

§ 1. Pursuant to Article 3 (1) hereinbefore, the Council of Ministers shall within three months submit a Bill on businesses that may be carried on a monopoly bases in the National Market.

§ 2. Within a month of the date this Act comes into force, the Chairperson of the Commission for the Protection of Competition shall approve Rules of Organization and Procedure for the same.

§ 3. This Act is hereby referred for enforcement to the Commission for the Protection of Competition and the Courts.

This Act was submitted to a vote and duly adopted by the Grand National Assembly of 2 May 1991 and the State Seal was affixed hereto.

Chairman of the Grand National Assembly: Nikolai Todorov