



A Balkan country with spectacular mountains and a coastline on the Black Sea, *Bulgaria* was part of the Ottoman Empire for around 500 years, although the Orthodox tradition remained strong. Northern Bulgaria attained autonomy in 1878 and all of Bulgaria became independent in 1908.

Following the World War II, the country came under the influence of the USSR and adopted communism. Communist domination ended in 1990, when Bulgaria held its first multiparty election since World War II and began the contentious process of moving toward political democracy and a market economy, whilst combating inflation, unemployment, corruption, and crime.

Today, reforms and democratisation keep Bulgaria on a path toward eventual integration into the EU. It is on the track of possible EU membership by 2007, and large amounts of EU funding are being made available for infrastructure projects (roads, railways and airports), and for agriculture through the Special pre-Accession Programme for Agriculture and Rural Development (SAPARD) scheme. The country joined North Atlantic Treaty Organisation (NATO) in 2004.

### Economy

Bulgaria, a former communist country striving to enter the EU, has experienced macroeconomic stability and strong growth since a major economic downturn in 1996 led to the fall of the then socialist government. As a result, the Government became committed to economic reform and responsible fiscal planning. Minerals, including coal, copper, and zinc play an important role in industry.

In 1997, macroeconomic stability was reinforced by the imposition of a fixed exchange rate of the Lev against the German Deutsche Mark, and the negotiation of an IMF standby agreement. Low inflation and steady progress on structural reforms improved the business environment. Bulgaria has averaged four percent growth since 2000,

PROFILE	
Population:	7.8 million***
GDP (Current US\$):	19.9 billion***
Per Capita Income: (Current US\$)	2,130 (Atlas method)*** 7,130 (at PPP)**
Surface Area:	111 thousand sq. km
Life Expectancy:	70.9 years**
Literacy (%):	98.6 (of ages 15 and above)**
HDI Rank:	56***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

and has begun to attract significant amounts of FDI. Corruption in public administration; a weak judiciary; and the presence of organised crime, remain the largest challenges for Bulgaria.

### Competition Evolution and Environment

Bulgaria, as did many other former centrally planned economies, adopted competition legislation as part of the legislative reform that was required in the transition to a market economy.

The Constitution of Bulgaria, which has been in force from 1991, established the basis for the development of competition. It provides that the Bulgarian economy is based on the free economic principles. Paragraph Two of Article 19 establishes and guarantees all citizens, and legal persons, equal legal conditions as regards economic activity; preventing abuse of monopolistic position; unfair competition; and consumer protection. Thus, the protection of competition was expressly recognised as a pillar of the sound functioning of the market and development of the economy.

\* This paper is done by Anudeepa Nair of CUTS in November 2004. Revised in April 2006

The Constitution recognised the equality of all economic agents, irrespective of their nationality. They have been given the freedom to set up cooperatives and other forms of associations of citizens and corporate entities in pursuit of economic and social prosperity. Finally, the Constitution expressly states that the Law should ensure competition protection. In accordance with this mandate, in 1991, the National Assembly adopted the first Law on Protection of Competition.

Following the efforts to achieve a functioning market economy and with the background of Bulgaria's desire to join the EU, in 1998, a completely new Competition Act replaced the previous one. Its major characteristic, and improvement over the earlier Law, is the new philosophy laid out. It aims at ensuring protection and stimulating conditions to promote competition and free economic activity. Its provisions constitute a completely new approach, meant to guarantee the legitimate interests of the economic actors in the market, and to develop market conditions themselves.

“Moreover, instead of focusing on hard-core anticompetitive behaviour, between 1991 and 1995, Bulgaria's Commission for the Protection of Competition tended to deal with UTPs and contract enforcement problems. Remedies for egregious violations of the Law were not dire enough to pressure firms to abide by the law. Recently proposed amendments to the Law may strengthen the Law's deterrent effect”. (Bernard Hoekman and Simeon Djankov, June 1997)

### Competition Law and Institutions

The current *Law on the Protection of Competition* (LPC) entered into force on April 29, 1998. The reasons for its adoption may be summarised as follows:

- The first Bulgarian legal model adopted in 1991 bore substantial differences when compared to the legal systems of other countries with long practiced and established rules in this field;
- The changes in the Bulgarian economy (privatisation, deregulation, liberalisation) and experience from the enforcement of the previous Competition Law.

The obligatory approximation of Bulgarian legislation with the *acquis* under the European Agreement, establishing an Association between the European Community Member States, and with the Republic of Bulgaria, is an important part of the preparations for EU membership in the context of accession negotiations.

Like in the EU, Competition Law in Bulgaria focuses on four main areas of action:

- prohibition of agreements, decisions and concerted practices that have as their object, or effect, the prevention, restriction or distortion of competition; and of abuses of dominant position;
- control of mergers between undertakings, whenever, as a result of a transaction, dominance occurs in the market;

- regulation of monopolistic sectors; and
- monitoring of State aid.

The LPC declares, in Article one, that it aims to ensure the ‘protection and conditions for the promotion of competition and free initiative in the sphere of the economy’.

The Law does not mention the protection of consumers' interests among the legislative objectives, as was the case in the previous Competition Act. This is due to the fact that a special Law on Consumer Protection and Trade Rules was adopted. This Law, implemented on July 31, 1999, empowers the Commission on Trade and Consumer Protection and the National Consumer Council, whose members are representatives of the line Ministries related to consumer protection, as well as consumer groups.

Nevertheless, with its provisions concerning the control of dominant position and other practices related to unfair competition, the LPC takes into consideration consumer's interests.

The LPC or *Competition Act (CA)* sets up a specialised institution to implement its provisions; the Commission on Protection of Competition (CPC) is the authority enforcing the Competition Act (CA) and the *State Aid Act*. It is entrusted with the investigation of all competition infringements and decision-making regarding imposition of penalties, under the CA. The CA also plays an important role as regards its enforcement activities as well as in the field of competition advocacy.

The CPC is an independent, specialised State authority funded by the State budget. The CPC is guided in its work by its main aim to protect free economic enterprise and normal market relations. The Commission performs its functions from a central office in Sofia.

In the last few years, the privatisation process in Bulgaria has been extremely intensive. The CPC has taken a very active part in the process; in as far as the approval of the Commission was a condition for enforcing the deals. The efforts have been directed towards the liberalisation of the prices of goods and services; opening the markets for new entrants and promoting competition.

The process of liberalisation of the Bulgarian economy continued in 2003. The CPC made efforts to focus its work on the investigation of serious distortions of competition, like restrictive agreements, abuse of dominant position, and merger control.

With this policy, the CPC aims to prevent future distortion of the anti-trust rules; to encourage players to be more disciplined, by respecting the LPC; and to guarantee effective competition in different markets in Bulgaria.

### Anticompetitive Business Practices

The 1998 Competition Law is intended to establish and maintain a competitive market. The Law forbids monopolies, restraining agreements, trade restrictive practices, abuse of a dominant market position, and unfair competition; and seeks to promote consumer protection. A company is deemed to have a dominant position if it controls 35 percent or more of the relevant market. A company with a dominant market position is prohibited from: certain pricing practices; limiting manufacturing development to the detriment of consumers; discriminatory treatment of competing customers; tying contracts to additional and unrelated obligations; and the use of economic coercion to cause mergers.

The Law prohibits five specific forms of unfair competition:

- damaging competitors' goodwill;
- misrepresentation with respect to goods or services;
- misrepresentation with respect to the origin, manufacturer, or other features of goods or services;
- use or disclosure of someone else's trade secrets in violation of good faith commercial practices; and
- 'unfair solicitation of customers' (promotion through gifts and lotteries), which may create difficulties for some foreign enterprises.

The Competition Law was overhauled in 2003, introducing important provisions that expand the competency of the CPC, define the prohibition on misuse of an oligopoly, and impose a single criterion for assessing the significance

of planned concentration: the aggregate turnover of the enterprises affected by the concentration.

### Sectoral Regulation

Bulgaria faces a challenge in building up a competitive and well-regulated market. Future membership in the EU requires the market regulatory framework to be in compliance with EU standards. The major objective of structural reforms is to make the Bulgarian economy, i.e. its enterprises, institutions etc, a viable and competitive actor in the internal market of the EU, as well as in the global economy.

### Telecommunications Sector

Bulgaria has one of the highest penetrations of telephone services in Eastern Europe, with around 38 subscribers per 100 inhabitants. The Bulgarian Telecommunications Company (BTC) owns and operates Bulgaria's fixed-wire national public telephone network and enjoyed exclusive rights in this sector until the end of 2002. Over the past 10 years, the Bulgarian Government has undertaken major projects to upgrade the existing telecom network and to increase the quality of services provided.

The Bulgarian Telecommunications Act was passed on July 27, 1998. A new bill with certain amendments was produced in the parliament with a view to increase institutional and regulatory liberalisation of the Bulgarian telecommunications sector.

#### Box 65.1: Action Against Collusive Price Setting of Phone Cards

The CPC initiated a *suo moto* investigation into the abuse of dominance, and concerted practice on collusive price setting of phone cards on sale, by BULPHONE Bulgarian Corporation for Telecommunications and Informatics (BCTI), J.-St. Co, and Radio and Telecommunications Ltd.

The CPC found that there was no abuse, in the sense of Art. 18 of the LPC, since the aggregate share of the two companies was below 35 percent of the relevant market; and no other factors provided indications that the enterprises could behave independently from their competitors.

On the absence of direct evidence for unfair co-ordination of activities, the basic criterion to establish collusive price co-ordination is the availability of perfect price parallelism.

In the course of the proceedings, the CPC found out that after a period of fierce price competition, the prices of the two companies became equal. The

process could not be time-bound with a change in the specific market conditions, which is the increase in costs for connecting and hiring phone lines from the Bulgarian Telecommunications Company PLC (BTC). At the same time, similar price dynamics could not be justified with the market structure, as it has not changed substantially for the period under consideration.

BULPHONE, J.-St.Co, and Radio and Telecommunications Ltd. have one majority shareholder, the BTC. Taking into consideration the share participation, the CPC assumes that BTC cannot exercise a direct influence on the market conduct of the two companies. However, the participation of BTC representatives on the Executive Boards of the two companies allows for the assumption that BTC has played an intermediary role in price policy co-ordination.

In light of the above arguments, the CPC held, in its decision, that there is a violation of Art. 9(1)(1)/LPC.

Source: OECD, September 2001

The Government's role in the telecommunications sector in Bulgaria is mainly executed through the Committee on Communications Regulation (CRC) and the Ministry of Transport and Communications (MTC). The MTC sets state policy in telecommunications and oversees the activity of BTC, which is still state owned enterprise

The Commission for Communications Regulation (CRC) is the independent sectoral regulator, which came into existence in January 2002. The CRC is responsible for granting and revoking licences, type approval and the settling of interconnection disputes. It is also responsible for bringing the country into line with EU standards whilst eliminating State interference in awarding contracts.

A Telecommunications Sector Policy is prepared every two years in order to draw an action plan for the full harmonisation of the Bulgarian legislation with the European one.

A new Telecommunications Law adopted late 2003 regulates the licensing of alternative telecommunications service providers and their inter-relations with the BTC. This new framework guarantees competition in each segment of the telecommunications market, which will lead to lower prices and higher quality of the services offered.

During the last 12 months, progress has been made in the liberalisation of the telecommunications market through the issuing of an Order, which brings Internet Service Provision under a free regime. There has also been progress in planning for the Information Society, through the approval of a strategy and the establishment of Coordination Council.

### **Energy Sector**

The Bulgarian Parliament recently passed a new *Energy Act*, which came into effect on December 13, 2003. The Act was issued to further the implementation of Bulgaria's National Energy Strategy. The Act sets forth the legal framework for the deregulation of the country's energy sector and for the promotion of competition in this market. It establishes all prerequisites for the introduction of a market model in the electricity and gas sector of the country, and creates conditions for their full liberalisation.

The Energy Act has introduced a new market model to replace the previous single-buyer model. It paves the way for the entry of a number of new market players – such as transmission operators, distribution operators, public providers, public suppliers and traders – which will participate in the generation, transmission, distribution, trading and supply of electricity. The Act has thus laid the groundwork for the privatisation of the energy sector.

An Energy Efficiency Act has also been adopted very recently, in July 1999, aiming to enhance energy efficiency and render energy efficient services.

The State Energy Regulatory Commission (SERC) was established under the Energy Efficiency Act, as a joint regulatory body. It is authorised to exercise regulation in electricity, natural gas and district heating. The general aim of the SERC is to serve consumer interests by improving the quality and effectiveness of regulation in the public energy utility sector.

### **Box 65.2: Bulgarian Bank Fined over Credit Card Campaign**

Bulgaria's anti-trust body, 'The Commission for the Protection of Competition (CPC)' imposed a BGN 100,000 (approx EUR 50,000) fine on the United Bulgarian Bank (UBB) for a campaign advertising its Bulgaria's competition authority, CPC imposed a BGN100,000 (approx EUR 50,000) fine on the United Bulgarian Bank (UBB) for a campaign advertising its credit cards, which was found to constitute a breach of the Competition Law.

During the campaign in June, the bank offered free trips to Athens, as well as cameras and MP3-CD players, to those who would use the UBB Visa to make purchases of BGN 2,000 or more. This promotional campaign displayed the motto 'Visit Athens with a UBB Visa Credit Card', advertising the UBB Visa and Visa Electron cards. In 2003, the UBB had a 53 percent share in Bulgaria's credit card issuing.

The Bulgarian law explicitly bans offering clients any prizes, whose value exceeds that of the marketed product or service.

*Source: Bulgarian News Agency, November 22, 2004*

### **Consumer Protection**

Consumer protection and free competition are enshrined in the Bulgarian Constitution as fundamental economic principles. The Bulgarian authorities also intend to incorporate the consumer protection directives into the national statute book.

Considerable efforts will be required to transpose and apply the European Community *acquis* concerning consumer protection, and also to improve the functioning of the market surveillance mechanism.

Existing EU rules cover the protection of consumers' economic interests, in particular:

- the monitoring of trade descriptions;
- the indication of prices;
- consumer credit;
- unfair terms;
- distance selling;
- package holidays;

- sales away from business premises;
- time share property;
- product safety in general;
- cosmetics; and
- designation of textile products and toys.

The Association Agreement with Bulgaria provides for the harmonisation of Bulgarian Law with EU Law; and cooperation to achieve full compatibility between EU and Bulgarian consumer protection systems.

As part of its efforts to transpose the *acquis*, Bulgaria adopted the Law on Consumer Protection and Trade Rules in March 1999. In accordance with this new Law, a National Council for Consumer Policy was set up in 2000; its role should be further strengthened and its activities stepped up, so that it can formulate the main principles and objectives of consumer policy.

### Box 65.3: Complaint Against the Central Heating Supplier

State enterprise Toploficachia-Sofia is the sole supplier of central heating in Sofia. A group of consumers filed a petition arguing that the firm price-discriminated against them.

Toploficachia has three separate heating tariffs: one for office buildings, one for production units, and another for residential housing. Prices vary, with the private residents paying the highest price. The CPC found no violation, as prices were set according to the specific costs associated with each type of service.

A second claim by consumers was that the utility sent a circulatory letter informing customers that different sections of the city will be allocated to separate offices that would be in charge of collecting bills. Customers were required to go through these offices (which involved an extra five percent payment) or have their service cut off (some were cut off). The CPC found this to be in violation of the Law, as the maximum price of energy (including heating) was set by the Government and additional mark-ups were prohibited.

*Source: Paper on 'Competition Law in Post-Central Planning Bulgaria' by Bernard Hoekman & Simeon Djankov*

### Suggested Readings

1. Contribution to OECD Global forum on Competition, *October 2001*
2. Contribution to OECD Global Forum on Competition, *February 2003*
3. Contribution to OECD Global Forum on Competition, *February 2004*
4. Website of *Commission on Protection of Competition (CPC)*
5. Website of *European Commission*
6. Website of the *Ministry of Transport and Communications of Republic of Bulgaria*
7. International Law Office website
8. Paper on "*Competition Law in Post-Central Planning Bulgaria*" co-authored by Bernard Hoekman, The World Bank and Centre for Economic Policy Research & Simeon Djankov, The World Bank and University of Michigan

This Law has also given impetus to the creation of new consumer associations, 11 of which had been created by 2003. Most (seven) of these associations joined forces to create a new federation in 2003, the National Union of Consumer Associations, testifying to the strengthening of their role.

The Bulgarian Government's aim should be to enable consumer associations to play an active role in adopting and applying consumer legislation.

### Concluding Observations and Future Scenario

The present framework for the protection of competition imposes a major challenge before the legislature, and this is where the CPC fits in, between the executive and the legal power. The framework should be adapted with a view to the overall design of the Bulgarian legal system and the principles that form its basis and stated by the Constitution.

An important issue to consider is the inter-institutional cooperation between the CPC and the other State bodies. Until now, in the process of its work, the CPC has often found itself deprived of, or lacking, information it has needed to intervene effectively.

The CPC is only made aware of decisions made by players, contravening the Competition Act, after such decisions have been adopted and actions taken. This poses a major problem regarding the consultative character of the CPC, adopted on such occasions. The *ex post* intervention in certain cases is hardly effective where, for example, a legislative amendment is needed to repair the violation. Such deadlock situations might be avoided if the Chairman of the CPC would be permitted to assist the meetings of the Council of Ministers with consultative power. Thus, a double objective would be achieved – the adoption of secondary legislation; or of individual, administrative acts, contrary to the Competition Act, will be avoided, and the advocacy of competition law and policy would be at the highest possible level.

Further efforts of the CPC should also focus on the restrictive activity of the private economic players, which aim at establishing barriers for the other competitors in order to ensure their own position in the relevant market. This direction of competition policy could guarantee good conditions for further economic development. The enforcement by the CPC of such Laws disciplines private economic agents and encourages them to do business in conformity with competition rules.