

# PROTECTION OF COMPETITION ACT

*Prom. SG. 102/28 Nov 2008, amend. SG. 42/5 Jun 2009, amend. SG. 54/16 Jul 2010, amend. SG. 97/10 Dec 2010, amend. SG. 73/20 Sep 2011, amend. SG. 38/18 May 2012, amend. SG. 15/15 Feb 2013, amend. and suppl. SG. 56/24 Jul 2015, amend. and suppl. SG. 2/3 Jan 2018, amend. SG. 7/19 Jan 2018, amend. and suppl. SG. 77/18 Sep 2018, amend. SG. 17/26 Feb 2019, amend. SG. 28/5 Apr 2019, amend. and suppl. SG. 17/26 Feb 2021*

## **Division one. GENERAL DIVISION**

### **Chapter one. GENERAL PROVISIONS**

#### **Subject-matter**

Art. 1. (1) The purpose of this Act is to provide protection and conditions to enhance the competition and the free initiative in business activity.

(2) (Suppl. – SG 56/15, amend. – SG 17/21, in force from 26.02.2021) On order to achieve the purpose of Para 1, the Act shall provide protection against agreements, decisions and concerted practices, abuse of monopolistic and dominant position on the market and all other actions and operations, which could lead to prevention, restriction or distortion of competition in the country and /or to impact the trade between Member States of the European Union, as well as against unfair competition or unfair commercial practices between economic operators in the supply chain of agricultural and food products. This Act shall also regulate the control over concentrations of undertakings.

(3) (amend. - SG 2/18) This Act shall regulate the relations in connection with implementation of Art. 101 and 102 of the Treaty on the Functioning of the European Union, including the co-operation with the European Commission and the national competition authorities in the Member-States of the European Union, on application of the Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in the Art. 101 and 102 of the Treaty on the Functioning of the European Union, referred hereinafter "Regulation (EC) 1/2003" and Council Regulation EC 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), referred hereinafter "Regulation (EC) 139/2004".

(4) (New – SG 17/21, in force from 26.02.2021) This Act shall regulate the powers of the Commission for Protection of Competition as a competent body under Art. 3, item 6 of Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) № 2006/2004 (OJ, L 345/1 of 27 December 2017), hereinafter referred as "Regulation (EU) 2017/2394", in case of misleading advertising and unauthorized comparative advertising under **Art. 32** of the act.

#### **Field of application**

Art. 2. (1) This Act shall apply to:

1. all undertakings and associations of undertakings carrying out activities on the territory of the Republic of Bulgaria or out of it if they explicitly or tacitly prevent, restrict, distort or can prevent, restrict, distort competition in the country;

2. state authorities, including the executive authorities and authorities of the local independent government, if explicitly or tacitly prevent, restrict, distort or can prevent, restrict, distort the competition in the country;

3. undertakings to which the State or the municipality has assigned services of public interest, inasmuch as the implementation of the Act does not obstruct actually or in juridical aspect the fulfilment of the assigned tasks and the competition in the country is not affected to a considerable extent;

4. natural persons who commit or contribute to infringement of this Act;

5. (new – SG 17/21, in force from 26.02.2021) natural and legal persons, groups of natural or legal persons or public bodies which, when purchasing agricultural and foodstuffs, engage in unfair commercial practices in their relations with suppliers in the supply chain of agricultural and food products, where the supplier and/or buyer are established on the territory of the European Union.

(2) This Act shall not apply to actions, resulting in actual or possible restriction or distortion of competition in another country, unless otherwise provided by effective international agreement, to which the Republic of Bulgaria is party.

## **Chapter two.**

### **COMMISSION FOR PROTECTION OF COMPETITION**

#### **Status**

Art. 3. (1) (amend. SG 15/13, in force from 01.01.2014) The Commission on Protection of Competition, referred hereinafter "(the) Commission" is an independent specialised State authority, on budget maintenance and a first-level budget administrator. Commission is a legal person with a seat in Sofia.

(2) (Amend. – SG 17/21, in force from 26.02.2021) The Commission shall be the national authority of the Republic of Bulgaria responsible for the implementation of the Community legislation in the field of competition.

(3) (New – SG 17/21, in force from 26.02.2021) The Commission shall exercise its powers under this act without all bodies of state power, including bodies of the executive, local self-government or private legal entities having any right to interfere and give instructions in its work, whereby this shall not affect the observance of the strategies, programs and plans for development of the respective sectors of the economy, adopted by the National Assembly of the Republic of Bulgaria and by the Council of Ministers.

#### **Body**

Art. 4. (1) (amend. – SG 54/10; amend. – SG 73/11, in force from 20.09.2011; suppl. – SG 56/15, amend. – SG 17/21, in force from 26.02.2021) Commission consists of 7 persons, including a Chairperson, Deputy Chairperson and 5 Members elected and discharged by the National Assembly for a period of 7 years. The members of the Commission shall be elected upon conducted public procedure and cannot be re-elected directly for another mandate.

(2) The Chairperson of the Commission must be qualified lawyer with a time of juridical service not less than 10 years and shall meet the requirements under Para 3.

(3) (Amend. – SG 17/21, in force from 26.02.2021) As Deputy-Chairman and Members of the Commission shall be elected Bulgarian citizens with higher juridical or economic education and a period of service not less than 5 years, with high professional ethical qualities who have not been convicted for premeditated

d crime of general nature. They cannot benefit in any form whatsoever from undertakings or to take other paid occupation, except for the cases they practice scientific, lecturing or arbitrary activity.

(4) (amend. – SG 54/10) The Chairperson, the Deputy Chairperson and the Members of the Commission shall take the oath under **Art. 76, Para 2 of the Constitution of the Republic of Bulgaria**.

(5) (amend. – SG 54/10) The Chairperson of Commission shall receive basic monthly salary amounting to 90 percent of the basic monthly remuneration of the Chairperson of the National Assembly. The Deputy Chairperson shall receive basic monthly salary amounting to 95 percent, and the Members - 90 percent of the basic monthly salary of the Chairperson of Commission.

### **Termination of powers**

Art. 5. (1) (amend. – SG 54/10) Powers of the Chairperson, the Deputy Chairperson and the Members of Commission shall be terminated before expiration of their mandate:

1. upon their request;
2. due to impossibility to exercise their duties for more than six months;
3. due to incompatibility under **Art. 4, Para 3** having occurred after the election;
4. (new – SG 42/09; amend. – SG 97/10, in force from 10.12.2010, amend. - SG 7/18) in case an act, by which conflict of interests is established under the **Act on Counteracting Corruption and on Seizure of Illegally Acquired Property**;
5. (previous item 4 – SG 42/09). in event of death.

(2) (amend. – SG 42/09) In the cases of Para 1, items 1, 2, 3 and 4 the powers shall be terminated by a decision of the National Assembly.

(3) Upon occurrence of a circumstance under Para 1, the Chairperson of the Commission shall inform the National Assembly. When the circumstance under Para 1 regards the Chairperson, notice can be made by any Member of the Commission.

(4) Within one-month period from receiving of notice of Para 3, the National Assembly shall take a decision to terminate the powers before the term of the mandate and shall elect a new Member of the Commission for the rest of the respective mandate period.

(5) (amend. – SG 54/10) Two months before the mandate of the Chairperson, the Deputy Chairperson and the Members of the Commission expires, the National Assembly shall elect new Chairperson, Deputy Chairperson and Members.

(6) (amend. – SG 54/10) In event that the mandate of the Chairperson, the Deputy Chairperson and Members expires and the election under Para 5 is not executed, they shall continue to perform their powers until the new Members take position.

(7) (New – SG 17/21, in force from 26.02.2021) The powers of the members of the commission may not be terminated on grounds related to the exact performance of their duties or the exercise of their powers in the application of Art. 101 and 102 of the Treaty on the Functioning of the European Union.

### **Structure and activity**

Art. 6. (1) The structure and the activity of the Commission shall be settled by Regulations, which shall be promulgated in the State Gazette.

(2) Commission shall be assisted by administration in its activity.

### **Administration of the Commission**

Art. 7. (1) The body, structure, rights and obligations of the administration to the Commission shall

be determined by the Regulations of **Art. 6, Para 1**.

(2) (New – SG 17/21, in force from 26.02.2021) For the effective implementation of its powers, the Commission shall have the necessary qualified staff, technical and technological resources.

(3) (Previous Para. 2 – SG 17/21, in force from 26.02.2021) The legal relationships with the servants of the administration shall arise under and shall be settled by the provisions of the **Civil Servants Act** and of the **Labour Code**.

## Competence

Art. 8. (1) (Previous text of Art. 8 – SG 17/21, in force from 26.02.2021) The Commission for Protection of Competition shall:

1. (amend. - SG 2/18) find infringements of this Act, as well as of Art. 101 and 102 of the Treaty on the Functioning of the European Union;
2. impose the sanctions provided for by the law;
3. (amend. - SG 2/18) find if infringement of this Act is not committed or if there is no ground to undertake actions for committed infringement of Art. 101 and 102 of the Treaty on the Functioning of the European Union;
4. (amend. – SG 17/21, in force from 26.02.2021) co-operate with the European Commission and the other national competition authorities of the Member States of the European Union, following the procedure of Regulation (EC) 1/2003, Regulation (EC) 139/2004, Regulation (EU) 2017/2394 in the case of misleading advertising and unauthorized comparative advertising and with the European Commission and national law enforcement authorities under Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food chain supply (OJ L 111/59 of 25 April 2019), hereinafter referred to as "Directive (EU) 2019/633";
5. issue the decisions provided for by the law;
6. propose to the competent State authorities and to the authorities of local government to repeal or amend issued by them administrative acts, which lead or could lead to prevention, restriction or distortion of competition;
7. impose temporary measures in the cases specified by the law;
8. (amend. - SG 2/18) approve entering into commitments by undertakings or shall impose measures for restoration of competition with regard to the undertakings, which behaviour is subject to investigation under **Art. 15** and 21 of this Act and/or under Art. 101 and 102 of the Treaty on the Functioning of the European Union, as well as measures to preserve the competition under **Art. 86** of this Act.
9. rules discontinuation of the breaches, including by way of imposing appropriate behaviour and/or structural measures for restoration of competition;
10. carry out sector analyses of competition environment
11. pronounce on other requests, connected with this Act;
12. interact with the State authorities, including the authorities of the executive power and the authorities of local government, as well as with institutions and non-governmental organizations by participation in project development and drafting of normative acts, stating opinions on projects and on effective and general administrative acts, information exchange and other forms of co-operation;
13. propose and arrange initiatives, connected with promotion of the competition rules;
14. adopt structural regulations and other instruments, provided for by the law;
15. maintain electronic register of issued acts.

(2) (New – SG 17/21, in force from 26.02.2021) The Commission shall exercise its powers under this act and shall apply Art. 101 and 102 of the Treaty on the Functioning of the European Union in accordance with the European Union law and in compliance with its general principles and those of the Charter of Fundamental Rights of the European Union.

## **Chairperson of the Commission**

Art. 9. (1) The Chairperson of the Commission shall:

1. represent the Commission or authorize persons to represent it;
2. organize and direct the activity of the Commission;
3. appoint and preside the sessions of the Commission;
4. approve the staff list of the administration to the Commission;
5. conclude, amend and terminate the labour and official legal relationships with the servants of administration;
6. organize and execute the Commission decisions which became effective;
7. (amend. – SG 17/21, in force from 26.02.2021) approves the Commission acts beyond the acts under **Art. 8, Para. 1, item 14**;
8. execute the budget;
9. inform the public of the Commission activity through the mass media;
10. perform the international co-operation of the Republic of Bulgaria with international organizations or authorities of other States in the field of protection of competition.

(2) (amend. – SG 54/10) When performing his/her functions, the Chairperson shall be assisted by the Deputy Chairperson. In those cases where the Chairperson is abroad or in legal leave, he/she shall delegate his/her powers to the Deputy Chairperson by an order regarding each individual case.

## **Conflict of interests**

Art. 10. (1) (New – SG 17/21, in force from 26.02.2021) The members of the Commission and the employees in its administration shall exercise their powers, respectively perform their duties, impartially and in the interest of the effective application of this Act and of Art. 101 and 102 of the Treaty on the Functioning of the European Union.

(2) (Previous Para. 1 – SG 17/21, in force from 26.02.2021) A Member of Commission or an officer of its administration may not participate in a procedure under this Act, if he/she is interested in its decision or if there are reasonable doubts in his/her impartiality.

(3) (Previous Para. 2 – SG 17/21, in force from 26.02.2021) The Member of the Commission or the officer shall be struck off from the list upon his/her initiative or upon request of the parties.

(4) (New – SG 17/21, in force from 26.02.2021) Within one year from the date of termination of their powers or their employment, the Members of the Commission and the employees of its administration may not participate in pending proceedings under this Act, instituted during the performance of their powers or duties, in their capacity as authorized representatives of enterprises, nor may they be consultants in pending proceedings under the act, otherwise this will be considered a conflict of interest with the previous functions they have performed.

## **Professional secret**

Art. 11. (1) Members of the Commission and the officers of the administration shall not have the right to disclose information which represents a professional secret.

(2) (Suppl. – SG 17/21, in force from 26.02.2021) Disclosure of information, representing professional secret, may be done by the Commission only in execution of its obligations of national authority on competition to a Member State of the European Union, under the procedure of Regulation (EC) 1/2003 and Regulation (EC) 139/2004 of a law enforcement body under Directive (EU) 2019/633 and of a competent body under Art. 3, item 6 of Regulation (EU) 2017/2394.

## **Pecuniary liability**

Art. 12. Members of the Commission, as well as the officers of the administration to the Commission shall incur pecuniary liability for damages caused in the course of fulfillment of the functions and exercising the powers assigned to them by law, unless they have committed intentional indictable offense.

## **Budget of the Commission**

Art. 13. (1) (amend. SG 15/13, in force from 01.01.2014) The budget of the Commission shall be formed, executed and reported under the procedure of the **Public Finances Act**.

(2) To the budget of the Commission shall come revenues from:

1. fees and expenses under this Act, under the **Public Procurement Act** and the **Concessions Act**;
2. property sanctions and fines under Commission decisions, which became effective;
3. other sources from activities permitted by law.

(3) (revoked – SG 38/12, in force from 01.07.2012)

(4) (revoked – SG 38/12, in force from 01.07.2012)

(5) (New – SG 17/21, in force from 26.02.2021) When developing the budget forecast for the respective year, the Commission shall plan expenses in its budget, which allow it to conduct at any time an investigation for possible violations of Art. 101 and 102 of the Treaty on the Functioning of the European Union, of breaches under Regulation (EU) 2017/2394 in case of misleading advertising and unauthorized comparative advertising and under Chapter Seven "b", as well as to carry out effective cooperation within the European Competition Network in view of the interaction provided for in Chapter Eleven of the Act with the European Commission and the competent national authorities under Regulation (EU) 2017/2394 in case of misleading advertising and unauthorized comparative advertising and with the European Commission and national law enforcement authorities under Directive (EU) 2019/633.

## **Annual report**

Art. 14. (1) Commission shall prepare annual report of its activity, which report it shall provide to the National Assembly not later than 30 May of the following year.

(2) Commission shall issue the annual report of Para 1 and shall publish it on its **Internet** site.

(3) (New – SG 17/21, in force from 26.02.2021) The annual report of the Commission under Para. 1 in the part which contains the number of the received requests, the initiated and completed proceedings under Chapter Seven "b", shall be sent in advance to the European Commission not later than March 15<sup>th</sup> of the following year. For each completed proceedings, the report shall contain a summary description of the case and of the decision of the Commission in compliance with the requirements of **Art. 55** and **Art. 49, Para. 3**.

## **Division two.**

### **RESTRICTION OF COMPETITION**

## **Chapter three.**

### **PROHIBITED AGREEMENTS, DECISIONS AND CONCERTED PRACTICES**

## General Prohibition

Art. 15. (1) Prohibited shall be all kinds of agreements between undertakings, decisions of associations of undertakings, as well as concerted practices of two or more undertakings who aim at prevention, restriction or distortion of competition on the respective market by:

1. direct or indirect price- fixing or any other trading conditions;
2. sharing markets or sources of supply;
3. limitation or control of production, trade, technical development or investments;
4. application of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at competitive disadvantage;
5. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations or conclusion of supplementary contracts, which, by their nature or according to commercial usage, have no connection with the subject of the main contract or to its fulfilment.

(2) Any agreements and decisions under Para 1 shall be void.

## Agreements of minor importance

Art. 16. Prohibition imposed in **Art. 15, Para 1** shall not apply to agreements, decisions and concerted practice of minor importance on the competition.

(2) The importance is considered minor when the total share of the undertakings, participants on the market of commodities and services, subject of the agreement, the decision or the concerted practice do not exceed:

1. ten percent on the respective market if the participants are competitors;
2. fifteen percent of each of the respective markets, if participants are not competitors.

(3) Provision of Para 1 shall not apply when the agreements, decisions or concerted practice have a n aim at or result in:

1. direct or indirect fixing of prices;
2. allocation of markets and/or clients;
3. restriction on production and sales.

(4) For the application of Para. 2 and 3, the Commission shall adopt rules, which shall be published in the register under **Art. 68, Para. 1**.

## Exemption from the prohibition

Art. 17. (1) Agreements, decisions and concerted practices as per **Art. 15, Para 1** shall not be prohibited if they contribute to improvement of production or distribution of goods, providing of services or to promoting the technical and/or economical progress, while allowing consumers a fair share of the resulting benefit and which:

1. do not impose on the participating undertakings restrictions, which are not indispensable to the attainment of these objectives, and
2. do not afford such undertakings the possibility to eliminate competition in a substantial share of the respective market.

(2) Burden to prove the circumstances under Art. 1 is an obligation of the undertakings and associations of undertakings, who refer to them.

## Block exemption from the prohibition

Art. 18. (1) Certain categories of agreements, decisions and concerted practices, which meet the requirements of **Art. 17**, may be exempted from the prohibition of **Art. 15** by a decision of the Commission, which shall not be subject to appeal. It shall be published at the register of **Art. 68**.

(2) If Commission finds in result of investigation that a concrete agreement, decision or concerted practice fall within the scope of the decision under Para 1, do not comply with the requirements of Art. 17, it shall declare the decision for block exemption inapplicable to the concrete case, and shall not impose prescribed by the Law sanction for breach of Art. 15 and shall set a period, within which the parties shall bring the agreement in accordance with Art. 17 or shall terminate it.

(3) (amend. - SG 2/18) If Commission finds in result of investigation that a concrete agreement or concerted practice have incompatible with Art. 101, Para 3 of the Treaty on the Functioning of the European Union effect in the territory of the country or in part of it, and have all indications of a separate geographic market, Commission shall declare provisions for block exemption from the prohibition of Art. 101, Para of the Treaty on the Functioning of the European Union of the respective European Union regulation inapplicable and shall set a period within which parties shall bring their agreement in accordance with the requirements of Art. 101, Para 1 of the Treaty on the Functioning of the European Union or shall terminate it.

#### **Chapter four.**

### **ABUSE OF MONOPOLY OR DOMINANT POSITION**

#### **Monopoly Position**

Art. 19. (1) Monopoly shall be the position of an undertaking, which, provided by law, has the exclusive right to carry out concrete kind of business activity.

(2) Monopoly position may be granted only by a law in the cases of **Art. 18, Para 4 of the Constitution of the Republic of Bulgaria**.

(3) Any other granting of monopoly position beyond the cases of Para 2 shall be void.

#### **Dominant Position**

Art. 20. Dominant is the position of an undertaking which, considering its market share, financial sources, abilities to access the market, technological level and economic relations with other undertakings can impede competition on the respective market, since it is independent from its competitors, suppliers or buyers.

#### **Prohibition of abuse of monopoly or dominant position**

Art. 21. Prohibited shall be behaviour of undertakings which take monopoly or dominant position, as well as of two or more undertakings of joint dominant position, which can lead to prevention, restriction or distortion of competition and impact the interests of consumers, by:

1. direct or indirect price- fixing or any other trading conditions;
2. limitation or control of production, trade and technical development or to detriment of customers

;

3 application of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at competitive disadvantage;

4. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations or conclusion of supplementary contracts, which, by their nature or according to commercial usage, have no connection with the subject of the main contract or to its fulfilment.



5. ungrounded refusal to deliver goods or to provide service to a real or potential client, on order to hinder the performed by them business activity.

## **Chapter five.**

### **CONTROL OF CONCENTRATIONS BETWEEN UNDERTAKINGS**

#### **Definition**

Art. 22. (1) Concentration between undertakings arises in event of change of control on a lasting basis results:

1. from consolidation or merger of two or more previously independent undertakings, or
2. if one or more persons, already controlling at least one undertaking, whether by purchase of securities, shares or assets, by contract or by any other means, acquire direct or indirect control of the whole or parts of one or more other undertakings.

(2) The creation of a joint venture, performing on a lasting basis all functions of an economically autonomous entity shall be considered concentration within the meaning of Para 1.

(3) Control shall be constituted by obtaining rights, concluding contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by obtaining:

1. ownership or the right to use all or part of the assets of an undertaking;
2. rights, including on the base of a contracts, which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

#### **Exceptions**

Art. 23. Concentration shall not be deemed to arise, where:

1. credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they:

(a) do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking, or

(b) they exercise such voting rights only with a view to preparing the disposal of those securities and that any such disposal takes place within one year of the date of acquisition;

2. control is acquired by a person, who according to the effective law, executes functions relating to liquidation or insolvency of the undertaking;

3. the operations referred to in **Art. 22, Para 3** are carried out by financial holding companies provided however that the voting rights in respect of the holding are exercised only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings, where the holding participates.

#### **Obligation for prior notice**

Art. 24. (1) Concentrations shall be subject to prior notice to the Commission, if the amount of the aggregate turnover of all of the undertakings-participants in the concentration in the territory of the Republic of Bulgaria for the previous financial year exceeds 25 million BGN, and:

1. (amend. – SG 17/21, in force from 26.02.2021) the aggregate turnover of each or of at least of on

e of the undertakings – participants in the concentration in the territory of the Republic of Bulgaria for the preceding financial year exceeds 3 million BGN, or

2. (amend. – SG 17/21, in force from 26.02.2021) the aggregate turnover of the undertaking – objective of acquisition in the territory of the Republic of Bulgaria exceeds 3 million BGN for the preceding financial year.

(2) The undertakings shall be obliged to notify the Commission of the concentration following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest, but before any real operation executing the transaction. In certain cases, upon request of the parties, Commission may make appraisal of the concentration before conclusion of the agreement or before the public announcement of the bid, if the parties provide Commission with sufficient evidence of good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced an intention to make such a bid

### Calculation of turnover

Art. 25. (1) Aggregate turnover within shall comprise the amounts derived by the undertakings-participants in the preceding financial year from the sale of products and goods and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products and goods or the provision of services between any of the undertakings belonging to one and the same economic group.

(2) Where the concentration consists of the acquisition of a part of parts of one or more undertakings, whether or not constituted as separate legal entities, of one or more undertakings, only the turnover relating to the parts which are the subject of the concentration shall be taken into account.

(3) Turnover within the meaning of this Article is:

1. for credit institutions and other financial institutions, the sum of the following income items, after deduction of value added tax and other taxes directly related to those items, where appropriate:

- a) interest income and similar income;
- b) income from securities: income from shares and other variable yield securities, income from participating interests, income from shares in affiliated undertakings;
- c) commissions receivable;
- d) net profit on financial operations;
- e) other operating income;

the turnover of a credit or financial institution in the Republic of Bulgaria shall comprise the income items which are received by the branch or division of that institution established in the Republic of Bulgaria;

2. for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums;

(4) The aggregate turnover of the participating undertaking shall be calculated by adding together the respective turnovers of the following:

1. the participating undertaking concerned;
2. those undertakings controlled by the participating undertaking directly or indirectly as per **Art. 22, Para 3**;
3. the undertakings, controlling directly or indirectly the participating undertaking as per Art. 22, Para 3;
4. other undertakings, controlled directly or indirectly as per Art. 22, Para 3 by an undertaking, controlling the respective participating undertaking,;

5. the undertakings, which are controlled jointly by the undertakings referred in items 1-4.

(5) Where some of the referred to in Para 4, item 1-4 undertakings exercises control jointly over an other undertaking, when calculating the aggregate turnover of the undertakings concerned:

(a) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings referred to in Para 4, items 1- 4;

(b) account shall be taken of the turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings; this turnover shall be apportioned equally amongst the undertakings exercising joint control.

### **Assessment and permission to concentrate (Title amend. – SG 17/21, in force from 26.02.2021**

Art. 26. (1) (New – SG 17/21, in force from 26.02.2021) Concentration, subject to notification pursuant to **Art. 24, Para. 1**, shall be assessed in order to determine its effect on competition in the respective market.

(2) (New – SG 17/21, in force from 26.02.2021) In assessing the concentration, the Commission shall take into account the need to maintain and develop competition in the relevant market, taking into account circumstances such as structure of the respective markets and of the actual and potential competition between the enterprises located inside and outside the European Union, respectively the Republic of Bulgaria, the position of the enterprises on the respective markets before and after the concentration, the economic and financial strength of the parties to the concentration, of the buyer's strength, possible alternatives for the choice of suppliers and customers, their access to supplies or markets, technical and economic progress providing benefits to consumers as a result of concentration, trends in supply and demand of relevant goods and services, consumer interests, legal, administrative, economic or other barriers to entry in the relevant markets, as well as other circumstances relevant to the particular case.

(3) (New – SG 17/21, in force from 26.02.2021) Upon the establishment of a joint venture within the meaning of **Art. 22, Para. 2**, it shall be assessed whether the concentration has as its object or result the coordination of the competitive behaviour of those enterprises which remain independent.

(4) (Previous Para. 1, amend. – SG 17/21, in force from 26.02.2021) The Commission shall authorize the concentration, if it does not lead to a significant impediment to effective competition on the respective market, especially as a result of the creation or strengthening of a dominant position.

(5) (Previous Para. 2, amend. – SG 17/21, in force from 26.02.2021) The Commission may authorize a concentration which, even if it leads to a significant impediment to the effective competition of the relevant market, especially as a result of establishing or strengthening of a dominant position, aims at modernizing the relevant economic activity, improving market structures, better satisfying the consumer interests and, in general, the positive effect outweighs the negative impact on competition in the relevant market.

## **Chapter six.**

### **SECTOR ANALYSES AND ADVOCACY FOR COMPETITION**

#### **Sector analyses of competition environment**

Art. 27. (1) Commission shall carry out sector analysis in the cases, where the competition in a concrete sector, branch, sub-branch or region could be prevented, restricted or distorted.

(2) Within the scope of the analysis under Para 1, Commission may determine the relevant markets and inspect their characteristics and structure, barriers to entry, the degree of market concentration, the dynamic in the sector, the legal frame, self-regulations and make conclusions on the status of the competition environment.

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### **Advocacy for competition**

Art. 28. In order to protect the initiative in the business activity and to prevent restriction and distortion of competition, Commission shall carry out assessment of the compliance to the provisions of this Act of:

1. drafts of normative or normative administrative and general administrative acts;
2. effective normative or normative administrative and general administrative acts
3. drafts of acts of associations of undertakings, which regulate activity of their members.

## **Chapter seven. PROHIBITION OF UNFAIR COMPETITION**

### **General prohibition**

Art. 29. Prohibited shall be every activity or lack of activity in carrying out economic operations which contradicts the good will trade practices and harms or could harm the interests of the competitors.

### **Harming the good name of the competitors**

Art. 30. Prohibited shall be harming the good name and the trust in the competitors, as well as of the goods and services offered by them by stating or spreading false information, as well as by presentation of facts in distorted manner.

### **Misleading**

Art. 31. (1) Prohibited shall be misleading regarding substantial qualities of the goods and services or regarding the way of using the commodities or providing the services through stating false information or through extortion of facts.

### **Prohibition of misleading and comparative advertising**

Art. 32. (1) Prohibited shall be the misleading advertising, as well as the forbidden comparative advertising.

(2) The advertiser and the advertising agency, who prepared the advertisement, shall bear liability for misleading or forbidden comparative advertisement.

### **Misleading advertising**

Art. 33 (1) Misleading shall be any advertisement, which in any manner, including in the manner of its presentation, misleads, or could mislead persons, to whom it is addressed or who achieves, and due to this it may influence their economical behaviour or for these reasons harms or may harm a competitor.

(2) When considering the advertising misleading, following shall be taken in view:

1. characteristics of goods and services, such as: availability, kind, manufacture, composition, man

er and date of production of goods and provision of services, fitness to use, manners of usage, quantity, geographical or trade origin, expected results and substantial characteristics from testing the goods and services;

2. the price and manner of its formation and conditions of delivery of goods and performance of services;

3. data about the advertiser and the advertising person, such as : name or firm, address or seat, address of management, assets, intangible rights or obtained awards and honours.

### **Comparative advertising**

Art. 34. (1) Comparative advertising shall be any advertising which directly or indirectly identifies the competitor or offered by the competitor goods or services.

(2) Comparative advertising shall be allowed if:

1. is not misleading in the meaning of **Art. 33** of this Act and does not constitute unfair trade practice in the meaning of **Art. 68e, Art. 68f, Art. 68g of the Consumers Protection Act**;

2. compares goods and services, which satisfy one and the same needs or are designed for one and the same purpose;

3. compare impartially one or more typical characteristics of the goods and the services, which are substantial, comparable and representative for these goods and services, including their purposes;

4. does not lead to mistaking of the advertiser to his competitors or trademarks, trade names, other distinctive features, goods or services of the advertiser to these of his competitors;

5. does not lead to libelling or harming trademarks, trade names or other distinctive attributes, goods, services, activities or position of the competitors;

6. compares goods of one and the same name and origin;

7. does not obtain unfair advantage from the popularity of trade mark, trade name or other distinctive attributes of the competitors or from the name of origin of competitive goods;

8. does not promote goods and services as imitation or copy of goods or services of registered trade mark or name.

(3) (Amend. – SG 17/21, in force from 26.02.2021) For assessment if a comparative advertisement is allowed, in addition to the circumstances under Para 2, also the provisions of Regulation (EU) № 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343/1 of 14 December 2012) shall be taken in view.

Art. 34a. (New – SG 17/21, in force from 26.02.2021) Misleading advertising and unauthorized comparative advertising falling within the scope of Regulation (EU) № 2017/2394 shall be infringements within the European Union, widespread infringements or widespread infringements with a Union dimension.

### **Imitation**

Art. 35. (1) Prohibited shall be offering or advertisement of goods or services with appearance, packing, marking, name or other attributes which mislead or could mislead regarding their origin, the producer, the seller, the way and the place of production, the source and the place of acquisition or using, the consumer qualities and other substantial characteristics of the goods or service.

(2) Prohibited shall be usage of firm, mark or geographical indication, identical or similar to those of other persons, in a way which could lead to harming the interests of the competitors.

(3) Prohibited shall be usage of a domain or external design of an Internet page, identical or similar to these of other persons, in a manner, which can lead to misleading and/or harm the interests of competitors

## **Unfair attraction of customers**

Art. 36. (1) Prohibited shall be the unfair competition aimed at attracting customers, as a result of which concluded contracts of competitors are terminated or broken, or conclusion of contracts with competitors is prevented.

(2) Prohibited shall be offering or attachment of extras to the sold commodity or service gratuitously or against fictitious price of other commodity or service with the exception of: advertising objects of insignificant value and with clearly stated statement of the advertising undertaking; subjects or commodities which, according to the trade practice belong to the sold commodity or offered sale; commodities or services as a discount in the sale of bigger quantities.

(3) (Amend. – SG 17/21, in force from 26.02.2021) Prohibited shall be sale, when together with it is offered or promised something obtaining of which depends on: solving puzzles, tasks, answering questions, riddles; collection of series of coupons and other similar; games with cash or material awards, whose value considerably exceeds the price of the sold commodity or service. Commission, on the grounds of **Art. 8, Paragraph 1, item 14** shall adopt rules by which shall determine in which cases the promised award exceeds significantly the price of sold goods or service.

(4) (Amend. – SG 17/21, in force from 26.02.2021) Prohibited shall be to sell goods or offer services on the domestic market in significant quantities for a long period of time at prices lower than the costs of production and sale of goods, respectively the costs of selling the services, with the purpose of unfair attraction of customers.

## **Prohibition for disclosure of manufacture or trade secrets**

Art. 37. (1) Prohibited shall be acquisition, usage and disclosure of manufacturing or trade secrets in contradiction to the fair trade practice.

(2) Prohibited is the using or divulging of manufacturing or trade secrets when is acquired on condition not to be used or disclosed.

### **Chapter seven "a".**

## **ABUSE OF A STRONGER POSITION IN NEGOTIATIONS (NEW - SG 17/21, REPEALED – SG 17/21, IN FORCE FROM 26.02.2021)**

Art. 37a. (new – SG 56/15, repealed – SG 17/21, in force from 26.02.2021)

### **Chapter seven "b".**

## **UNFAIR TRADING PRACTICES IN THE AGRICULTURAL AND FOOD PRODUCTS SUPPLY CHAIN (NEW - SG 17/21, IN FORCE FROM 01.11.2021)**

### **Absolute prohibitions**

Art. 37b. (New – SG 17/21, in force from 01.11.2021) (1) Prohibited shall be unfair trading practices in the relationships between buyers and suppliers in the agricultural and food products supply chain such as:

1. payment from buyer to supplier:

a) later than 30 days after the expiry of the agreed delivery period in which the deliveries were made, or later than 30 days after the date of determination of the amount payable for that delivery period, whichever date comes later - under contracts for regular supply of perishable agricultural and food products and other agricultural and food products;

b) later than 30 days after the date of delivery or later than 30 days after the date of determination of the amount payable, from a later date - under contracts which do not provide for regular delivery of perishable agricultural and food products and of other agricultural and food products;

2. buyer's refusal of orders for perishable agricultural and food products with less than 30 days' notice, so that the supplier cannot reasonably be expected to find another way for commercial sale or use of these products;

3. a one-sided change by the buyer of conditions under the supply contract, related to the frequency, method, place, time or volume of delivery or supply, quality standards, terms of payment or prices, term, as well as with regard to the provision of services, referred to in **Art. 37c**;

4. request of the buyer from the supplier of payments which are not related to the sale of agricultural and food products of the supplier;

5. buyer's request for payment from the supplier in case of deterioration of the quality, scrapping and/or shortages of agricultural and food products, which have occurred on the premises of the buyer or after the ownership has been transferred to the buyer, when this is not due to reasons, for which the supplier is responsible for;

6. refusal by the buyer to confirm in writing the terms of the contract, for which the supplier has requested written confirmation, except in cases where the supply contract relates to the supply of products by a member of a producer's organization, including a cooperative, of a producer's organization of which the supplier is a member, if the memorandum of that producer's organization or the rules and decisions, laid down in or deriving from the memorandum of association, contain provisions with effect similar to those of the terms of the supply contract;

7. illegal acquisition, use or disclosure by the buyer of a trade secret of the supplier within the meaning of the **Trade Secret Protection Act**;

8. warning by the buyer to take retaliatory commercial actions against the supplier or taking such actions, if the supplier exercises his contractual or legal rights, including by filing a complaint or cooperating in an investigation under this Chapter;

9. a request from the buyer to the supplier for compensation for the costs of handling customer complaints related to the sale of the supplier's products, although there is no reason to engage the supplier's liability;

10. prohibition or restriction by the buyer of the supplier under the contract to offer or purchase goods or services to or from third parties;

11. prohibition, restriction or imposition of sanctions by the buyer on the supplier under the contract for providing the same or better commercial conditions to third parties;

12. unilateral and unjustified termination of the contract by the buyer or termination without notice within a reasonable time, sufficient for the supplier to cover its investment costs and in view of the previous trade relations of the parties to the contract.

(2) For the purposes of the terms for payment, the agreed terms for delivery under Para. 1, item 1, letter "a" in any case shall not be longer than one month.

(3) In the cases under Para. 1, item 1, the date of issuance of the invoice or the date of its receipt by the buyer shall be considered the date of determination of the amount payable. When the amount payable is determined by the buyer, the terms for payment, specified in Para. 1, item 1, letter "a", shall start running from the expiration of the agreed term for delivery, in which the deliveries have been made, and the terms for payment under Para. 1, item 1, letter "b" shall start running from the date of delivery.

## Conditional prohibitions

Art. 37c. (New – SG 17/21, in force from 01.11.2021) (1) Except when having been previously agreed between the parties with clear and unambiguous conditions in the contract for supply of agricultural and food products or in a subsequent agreement between the supplier and the buyer, prohibited for application shall be commercial practices such as:

1. return by the buyer of unsold products, without him having paid for them and/or for their disposal;
2. payment by the supplier to the buyer as a condition for the storage, display or inclusion in the product range of his products or the offering of such on the market;
3. request from the buyer for payment by the supplier of all or part of the costs for reduced prices of agricultural and food products, sold by the buyer within the promotion, unless before the promotion, which is made at the initiative of the buyer, the buyer has specified the term of the promotion and the expected quantities of agricultural and food products to be ordered at reduced prices;
4. request from the buyer for payment by the supplier of buyer's advertising activities;
5. request from the buyer for payment by the supplier of buyer's marketing activities;
6. payment by the supplier to the buyer for equipment and/or maintenance of premises used for the sale of the products;
7. request from the buyer for payment by the supplier of transport and/or logistic costs;
8. request from the buyer for reduction of prices of products with retroactive effect directly or by applying unjustified discounts, bonuses and fees, or provided services.

(2) When the buyer requires payment in the cases under Para. 1, items 2, 3, 4, 5, 6 and 7, he shall submit to the supplier at his request an estimate in writing for the payments per unit of goods or the total amount of the payments, as the case may be. In the cases under Para. 1, items 2, 4, 5, 6 and 7, the buyer shall submit in writing an estimate of the supplier's costs, as well as information on what this calculation is based on.

## Scope of prohibitions on unfair commercial practices

Art. 37d. (New – SG 17/21, in force from 01.11.2021) (1) The prohibitions under **Art. 37b** and **37c** shall apply to unfair commercial practices related to the sale of agricultural and food products by:

1. a supplier, who has an annual turnover not exceeding BGN 3,911,000, to a buyer who has an annual turnover exceeding BGN 3,911,000;
2. a supplier, who has an annual turnover greater than BGN 3,911,000 and less than BGN 19,558,000, to a buyer who has an annual turnover greater than BGN 19,558,000;
3. a supplier, who has an annual turnover greater than BGN 19,558,000 and less than BGN 97,791,000, to a buyer who has an annual turnover greater than BGN 97,791,000;
4. a supplier who has an annual turnover greater than BGN 97,791,000 and less than BGN 293,374,000 to a buyer who has an annual turnover greater than BGN 293,374,000;
5. a supplier who has an annual turnover greater than BGN 293,374,000 and less than BGN 684,540,000 to a buyer who has an annual turnover greater than BGN 684,540,000;
6. a supplier, whose annual turnover does not exceed BGN 684,540,000, to a buyer who is a public body.

(2) The annual turnover under Para. 1 shall be determined in accordance with **Art. 4, 4b** and **4d of the Small and Medium Enterprises Act**, including according to the definitions for independent enterprise, for partner enterprises and related enterprises, and other applicable provisions related to the annual turnover of the same act.

(3) The annual turnover of an enterprise-supplier and buyer, shall include the net amount of the revenues from the usual activity of the enterprise during the previous financial year.



## Exceptions

Art. 37e. (New – SG 17/21, in force from 01.11.2021) (1) The prohibition under **Art. 37b, Para. 1, item 1** shall not affect:

1. the consequences of overdue payments and the means for legal protection, provided in **Art. 303a** and **309a of the Commerce Act**;

2. negotiation between a buyer and a supplier of a clause for sharing the value in the sense of Art. 172a of Regulation (EU) № 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Regulations (EEC) № 922/72, (EEC) № 234/79, (EC) № 1037/2001 and (EC) № 1234/2007 (OJ L 347/671 of 20 December 2013), hereinafter referred to as "Regulation (EU) № 1308/2013".

(2) The prohibition under **Art. 37b, Para. 1, item 1** shall not apply to payments:

1. from a buyer to suppliers within the Fruit and Milk School Scheme according to Art. 23 of Regulation (EU) № 1308/2013;

2. from the medical establishments under **Art. 5, Para. 1 of the Medical Establishments Act** and the state medical establishments-commercial companies, in respect of which apply the terms for payment under **Art. 3, Para. 6 of the Medical Establishments Act**;

3. under contracts between suppliers of grapes or grape must for the production of wine, and their direct purchasers, provided that:

a) the specific terms of payment are included in the standard contracts, which are declared mandatory according to Art. 164 of Regulation (EU) № 1308/2013 and that this extension of the scope of standard contracts to other operators is renewed from that date without significant changes to the terms of payment to the detriment of suppliers of grapes or grape must, and

b) the contracts are multi-annual or become multi-annual.

(3) The prohibitions under **Art. 37b** and **37c** shall not apply to contracts between suppliers and consumers.

## Protection under different order

Art. 37f. (New – SG 17/21, in force from 01.11.2021) The initiation of proceedings under this Chapter shall not be an obstacle for each of the parties to the supply contract to protect its rights under another established procedure.

## Division three. PROCEDURE

## Chapter eight. GENERAL PROVISIONS

### Grounds for initiation of procedure

Art. 38. (1) The procedure before Commission shall be initiated upon:

1. decision of the Commission;
2. request of a prosecutor;

3. request of the persons, whose interests are impacted or endangered by infringement of this Act;
  4. request for exemption from sanction;
  5. request of the persons, whose interests are impacted by acts, issued in contradiction to this Act;
  6. notice of permitted concentration of undertakings;
  7. request of another national authority on competition of a Member State of the European Union or of the European Commission under Art. 20, paragraph 5 and Art. 22 of Regulation (EC) 1/2003, as well as under Art. 12 and Art. 13, paragraph 5 of Regulation (EC) 139/2004;
  8. request for opinion of a State authority, including an executive authority or authority of local government;
  9. (new – SG 17/21, in force from 26.02.2021) request from suppliers of agricultural and food products, from organizations of agricultural producers, from suppliers' organizations or associations of such organizations at the request of one or more of their members or one or more of the members of their member organizations, including from other organizations with a legal interest to represent suppliers at the request of and in the interest of a supplier, provided that such organizations are non-profit legal entities.
- (2) In case that admitted irregularities are found, further proceedings on the request or the notice shall not be carried out and a writ to remove irregularities within a 7-days period shall be served on the applicant or on the notifying person. If they are not removed within the term, the Chairperson of Commission shall refuse initiation of a procedure by a resolution.
- (3) (Amend. – SG 17/21, in force from 26.02.2021) The request under Para 1, item 4 shall be submitted in a form, approved by the decision of the Commission under **Art. 101, Para 6**. Identity of the applicant shall be kept in secret.
- (4) (New – SG 17/21, in force from 26.02.2021) When the Commission has been alerted with a request under Para. 1, items 2, 3, 4 and 9, the chairman, with a motivated order, may refuse to initiate proceedings, if the case does not fall within the scope of the priorities for law enforcement, determined by rules adopted by the Commission and published on its website.
- (5) (New – SG 17/21, in force from 26.02.2021) The order under Para. 4 shall be subject to appeal by the order of **Art. 64, Para. 3**.

### **Preliminary investigation**

Art. 38a. (New – SG 17/21, in force from 26.02.2021) (1) The Commission may carry out a preliminary investigation into received requests under **Art. 38, Para. 1, items 2 - 4 and item 9**, on received signals and on other issues within its competence.

(2) In the preliminary investigation, the Commission shall have the powers under **Art. 45, items 1, 2 and items 5 - 7**.

### **Initiation of procedure**

Art. 39. (1) The Chairperson of the Commission shall initiate procedure by a resolution and shall determine a Member of the Commission, who shall monitor the investigation.

(2) The Chairperson, by an order, shall determine working team from the body of administration, who shall carry out the investigation

### **Suspension of the procedure**

Art. 40. (1) Commission, by a ruling, may suspend the procedure, if its final decision depends on a decision on a matter or a dispute within the competence of another authority.

(2) Commission, by a ruling, may also suspend the procedure in the cases under Art. 13 of Regulation (EC) 1/2003 and under Art. 22, paragraph 2 of Regulation (EC) 139/2004.

(3) (Amend. - SG 77/18, in force from 01.01.2019, amend. – SG 17/21, in force from 26.02.2021) Rulings referred hereto in Para 1 and Para. 2, proposal one shall be subject to appeal under the procedure of **Art. 64, Para 3**.

(4) Procedure concerned shall be renewed by a ruling ex officio or upon a request of one of the parties, after the bars for further proceedings are removed.

### **Termination of procedure**

Art. 41. Procedure shall not be initiated, and a procedure if initiated shall be terminated by a decision of the Commission:

1. if Commission is not competent to pronounce on the matter;
2. if the limitation period fixed by law has expired;
3. in the cases of Art. 11, paragraph 6 and Art. 13 of Regulation (EC) 1/2002 and of Art. 22, paragraph 3 of Regulation (EC) 139/2004;
4. if the notifying person or the defendant party are deleted, cannot be found or do not exist;
5. if the notifying person withdraws the request to permit concentration;
6. in the cases of **Art. 75, Para 2**.

### **Limitation period**

Art. 42. (1) Limitation period for infringements under this Act is:

1. three years – for infringement of provisions, related to inquiries of information or connected with them inspections;

2. five years – for the all other infringements;

(2) The limitation period shall start run from the day of commitment of the infringement, and in case of durable infringement – from the day, on which the commitment is discontinued.

(3) (Amend. – SG 17/21, in force from 26.02.2021) With the initiation of procedure of findings of infringement by the Commission, the limitation period as per Para 1 shall be interrupted.

(4) During the procedure and till decision of the Commission enters into effect, limitation period shall not run.

(5) (New – SG 17/21, in force from 26.02.2021) The statute of limitations for the Commission to establish a violation and impose sanctions for violation under Art. 101 or 102 of the Treaty on the Functioning of the European Union shall be suspended during enforcement proceedings before a national competition authority of another Member State of the European Union, or the European Commission in connection with a violation affecting the same agreement, a decision of an association of undertakings or concerted practice or other conduct prohibited by Art. 101 and 102 of the Treaty on the Functioning of the European Union.

(6) (New – SG 17/21, in force from 26.02.2021) The suspension of the limitation period under Para. 5 shall be carried out by notifying at least one undertaking, against which the proceedings have been instituted under this act, for the first official action of the investigation. The suspension of the limitation period shall apply to all undertakings or associations of undertakings which have participated in the violation.

(7) (New – SG 17/21, in force from 26.02.2021) In the cases under Para. 5, the new limitation period shall begin to run from the day on which the decision of the relevant national competition authority or of the European Commission enters into force, establishing a violation, imposing a sanction or approving commitments taken, or declaring that there are no grounds for taking any action.

(8) (New – SG 17/21, in force from 26.02.2021) The notification of the first formal investigation action, received by a national competition authority pursuant to Art. 11, paragraph 3 of Regulation (EC) № 1/

2003, shall be made available to the other national competition authorities within the European Competition Network.

(9) (Prev. Para 5 - SG 17/21, in force from 26.02.2021) The Commission shall monitor the limitation period ex officio.

### **Participants of procedure**

Art. 43. (1) Parties to the procedure before Commission shall be the persons, upon whose request or notice the procedure is initiated, as well as the persons, about whom is stated that have committed infringement of this Act.

(2) Commission may constitute interested persons upon their reasoned request:

1. in any moment of the procedure under Chapter Nine and Chapter Twelve;
2. within a period of 30 days from the day of publication of the decision to start the detailed investigation of concentration under Chapter 10.

### **Investigation**

Art. 44. (1) Investigation shall be carried out by the working team determined as per **Art. 39, Para 2**, and shall be monitored by a Member of Commission, who, if necessary, gives instructions.

(2) Investigation shall be carried out observing provisions of this Chapter and of Chapters Ten, Eleven and Twelve.

(3) Investigation and assessment of the undertakings on the relevant market shall be done in compliance to an adopted by the Commission methodology.

### **Investigation Powers**

Art. 45. During investigation, the monitoring Member of Commission and the working team determined under **Art. 39, Para 2** shall have the power to:

1. inquire information and material, written, digital and electronic evidence, irrespective if the carrier on which they are saved;
2. take oral or written explanations;
3. carry out inspections on spot;
4. assign expertise to external experts;
5. require information or co-operation from other national competition authorities of the Member States of the European Union, as well as from the European Commission;
6. (new – SG 17/21, in force from 26.02.2021) require information and assistance from law enforcement authorities of the Member States of the European Union and the European Commission in the exercise of powers in cross-border investigations in the field of unfair commercial practices;
7. (new – SG 17/21, in force from 26.02.2021) require information and assistance from other competent national authorities, from the competent authorities of the Member States of the European Union, and from the European Commission in the order of Regulation (EU) 2017/2394.

### **Obligation to assist**

Art. 46. (Amend. – SG 17/21, in force from 26.02.2021) All natural and legal entities, including undertakings, associations of undertakings, State authorities or authorities of the local government, non-governmental organizations and the National Statistical Institute shall be obliged to assist the Commission for exec

ution of its powers under this Act, as well as under Regulation (EC) 1/2003, Regulation (EC) 139/2004 and Regulation (EU) 2017/2394.

### **Collection of information**

Art. 47. (1) (Amend. – SG 17/21, in force from 26.02.2021) Persons, from which assistance under this Act, as well as under Regulation (EC) 1/2003, Regulation (EC) 139/2004 and Regulation (EU) 2017/2394, is required, may not refer to production, trade or any other secrets protected by law.

(2) If information contains data, which is classified information, procedure provided in the Protection of Classified Information Act shall be applied;

(3) (amend. - SG 17/19) If the information contains personal data, procedure provided in the protection of personal data shall be applied.

(4) Persons, from whom information is required, shall submit it within a determined by the Commission period.

(5) (New – SG 17/21, in force from 26.02.2021) Persons who have been requested to give verbal or written explanations shall appear before the Commission within the specified time limit.

(6) (Previous Para. 5 – SG 17/21, in force from 26.02.2021) Information which is provided by the persons in the course of proceedings, shall be complete, true and not misleading.

(7) (Previous Para. 6 – SG 17/21, in force from 26.02.2021) Commission may assume facts, regarding which the party or the interested person obstructed collection of information, proved.

(8) (New – SG 17/21, in force from 26.02.2021) The obligation to provide information in the proceedings under Art. Articles 101 and 102 of the Treaty on the Functioning of the European Union shall refer to information that is normally available to persons.

### **Usage of the information**

Art. 48. (1) (Previous text of Art. 48 – SG 17/21, in force from 26.02.2021) Any information, collected in the course of procedure, may be used for the purposes of this Act only.

(2) (New – SG 17/21, in force from 26.02.2021) The parties may use the information contained in the materials collected in connection with the immunity from and reduction of a sanction under **Art. 101**, only when this is necessary in order to exercise their right to defense in proceedings for judicial control of a decision by which the Commission has established a violation under Art. 15 or 21 of this act and/or under Art. 101 or 102 of the Treaty on the Functioning of the European Union.

(3) (New – SG 17/21, in force from 26.02.2021) Information, prepared by persons who are not parties to the proceedings under Chapter Nine and provided specifically for its purposes, as well as information, prepared and sent to the parties by the Commission in the course of the proceedings, may not be used by them in court proceedings before the Commission has concluded the proceedings with a decision in respect of all parties.

### **Taking of oral explanations**

Art. 49. (1) Oral explanations shall be taken in the course of investigation and shall be recorded into a protocol by the working team.

(2) The protocol shall be signed by the person who gave explanations, as well as by the proceedings working team.

(3) In case infringement under this Act is committed to a person who has given explanations or provided data, and sufficient grounds to presume that revealing his identity could lead to serious negative conse

quences for the exercised by him activity or to his person, Commission shall take measures to keep in secret his identity, following procedure provided in internal rules, adopted by the Commission.

### **Inspections on spot**

Art. 50. (1) (Amend. and suppl. – SG 17/21, in force from 26.02.2021) The Commission may carry out all kinds of unannounced on-the-spot checks of undertakings, associations of undertakings or buyers of agricultural and food products after permission under **Art. 51** is obtained.

(2) For the inspections of Para 1, the servants determined by an order of the Chairperson of the Commission, shall have the power to:

1. (amend. – SG 17/21, in force from 26.02.2021) enter the premises, vehicles and other sites used by the undertakings, associations of undertakings or buyers of agricultural and food products;

2. (amend. – SG 17/21, in force from 26.02.2021) inspect all documents and records, connected with the activity of the undertakings, associations of undertakings or buyers of agricultural and food products, regardless of the carrier on which they are saved;

3. seize or receive on paper, digital or electronic carrier all types of copies or excerpts of documents or records, not depending on the carrier on which they are saved, and if this is impossible, they may seize the originals, as well as other material evidence;

4. seize or obtain electronic, digital and forensic evidence, as well as data about the traffic from all kind of computer data, computer systems and other carriers, as well as to seize means of data transfer;

5. obtain access to each kind of data carriers, including servers, access to which can be executed through computer systems or other means, located in the checked premises;

6. (amend. – SG 17/21, in force from 26.02.2021) seal for certain period premises, vehicles or other sites, used by the inspected undertakings, associations of undertakings or buyers of agricultural and food products, trade or account books or other data carriers;

7. (amend. – SG 17/21, in force from 26.02.2021) take oral explanations from each representative or member of the management bodies or from the staff of the undertakings, associations of undertakings or buyers of agricultural and food products regarding circumstances, connected with the subject-matter or the purposes of the inspection.

(3) (New – SG 17/21, in force from 26.02.2021) The Commission may carry out inspections under Para. 1 in premises, vehicles and in other sites, different from the ones indicated in Para. 2, item 1, including in the homes of any representative or member of the management bodies, or of the staff of undertakings or associations of undertakings, in case of reasonable doubts that documents or other records related to the economic activity and the subject of inspection, are stored there. During the inspections, the employees, designated by an order of the chairman of the Commission, shall have the powers under Para. 2, items 2, 3, 4, 5 and 7.

(4) (Previous Para. 3 – SG 17/21, in force from 26.02.2021) During the inspections, the police authorities shall give support to the servants of the Commission within their powers under the **Ministry of Interior Act**. Procedure for organizing and carrying out joint actions shall be determined by an instruction, issued by the Minister of Interior and the Chairperson of the Commission.

(5) (Amend. - SG 2/18, previous Para. 4, amend. – SG 17/21, in force from 26.02.2021) The found documents and evidence can be seized if they contain data, generating grounded suspicions for other infringements under **Art. 15, 21, 24, 34a, 37b** and **37c** of this Act or under Art. 101 and 102 of the Treaty on the Functioning of the European Union. After inspection is finalized, they shall be submitted immediately to the Commission for taking decision under **Art. 38, Para 1, item 1**.

(6) (New – SG 17/21, in force from 26.02.2021) Paragraph 3 shall not apply in proceedings initiated in order to establish violations under **Art. 34a, 37b** and **37c**.

## Court Permission

Art. 51. (1) (Amend. – SG 17/21, in force from 26.02.2021) Inspections on spot shall be carried out with the permission of a judge from the Administrative Court – Sofia district, upon a request of the Chairperson of the Commission.

(2) Request shall contain:

1. (amend. – SG 17/21, in force from 26.02.2021) purpose of the inspection and the name of the undertaking, the association of undertakings or the buyer of agricultural and food products, for which permission is required to be inspected, and in the cases of a request for carrying out an inspection under **Art. 50, Para. 3** - indicating the sites;

2. nature of the claimed infringements, and in case of procedure under Chapter Ten – the nature of the concentration and the participants in it;

3. grounding of the reasons, which make inspection necessary.

(3) In the case under **Art. 93**, to the request for permission the decision of the Commission to give support shall be attached, as well as the request for support.

(4) (Amend. – SG 17/21, in force from 26.02.2021) An Administrative Court – Sofia District shall pronounce on the request by a ruling, on the day of its submission. In the ruling, the court shall state the exact name of the undertaking, the association of undertakings or of the buyer of agricultural and food products, which or who are subject to inspection. Permission shall be applicable to all premises, vehicles, and other sites, used by the inspected undertaking, association of undertakings or by the buyer of agricultural and food products. In the ruling allowing the inspection under **Art. 50, Para. 3**, the court shall name the specific sites.

(5) (Amend. – SG 17/21, in force from 26.02.2021) Where is needed to carry out simultaneous inspections in several undertakings, associations of undertakings, buyers of agricultural and food products or sites under Art. 50, Para. 3, the Chairperson of the Commission may submit one joint request, and the court shall pronounce by separate ruling for each of the undertakings or associations of undertakings.

(6) (Amend. – SG 17/21, in force from 26.02.2021) Rulings under Para 4 and 5 or the refusal to issue the rulings considered, shall be subject to appeal before a three- members body of the Supreme Administrative Court within three days term. The term shall start to run from the notice of the Commission, respectively – of the undertaking, the association of undertakings or of the buyer of agricultural and food products. Appeal shall not suspend the execution.

## Procedure of collection of evidence during inspections on spot

Art. 52. (1) (Amend. – SG 17/21, in force from 26.02.2021) Collection of evidence during the inspections on spot shall be carried out by the servants of the Commission in the presence of representatives of the undertaking, the association of undertakings or the buyer of agricultural and food products, his employees or other persons, who have been authorized and have the right to be present in the premises or in the vehicles, or have been found already present during the inspection therein.

(2) (Amend. – SG 17/21, in force from 26.02.2021) Copies of the seized documents shall be certified by the servants of the Commission and of the representatives of the undertakings, the associations of undertakings or the buyers of agricultural and food products or by an authorised officer. In event of refusal of the representatives to make the certification, it shall be done only by the officials of the Commission.

(3) Electronic copies of the seized documents, the digital, electronic and forensic evidence shall be sealed in an appropriate manner.

(4) (Amend. – SG 17/21, in force from 26.02.2021) Original documents, material evidence and data on electronic or digital carriers shall be seized in the status as they have been found during the inspection, and shall be returned to the undertakings, the associations of undertakings or the buyer of agricultural and food products after the decision of the Commission enters into force.

(5) (Amend. – SG 17/21, in force from 26.02.2021) Upon request of the undertakings, the associations of undertakings or the buyers of agricultural and food products, from which the original documents are seized, they can also be returned before the decision of the Commission enters into force. In all cases, Commission shall return the seized original documents, if exercising the incorporated in them rights is connected with their factual holding.

(6) (Amend. – SG 17/21, in force from 26.02.2021) In the cases of Para 5, Commission shall use copies of the original documents, certified by the representatives of the Commission and of the undertakings, the associations of undertakings or the buyers of agricultural and food products, from which the documents are seized.

(7) The seized evidence under Para 2, 3 and 4 shall be recorded into a protocol on spot, by a complete and detailed list of the seized items. The protocol shall be signed following the procedure of Para 2 and shall be provided to the persons, from which the evidence are taken.

### **External experts**

Art. 53. (1) If for clarification of the circumstances regarding the procedure, Commission needs special knowledge, it may, upon a request of the parties or upon its own initiative, by a ruling, to assign carrying out of an expertise by an external expert. In the ruling the expert, the objective of the expertise, as well as the term for submission of the expert opinion shall be stated there in.

(2) An interested directly or indirectly from the decision on the procedure person may not be an expert.

(3) The expert shall submit his opinion to the Commission, which shall accept it through a ruling. In case of objection against the opinion, Commission may assign the expertise to another or to more experts.

(4) Additional expertise shall be assigned, if the opinion is not enough complete or clear, and second expertise – if opinion is not grounded or doubt regarding its correctness arises.

(5) Commission is not obliged to follow the opinion of the expert, but shall consider it together with the other evidence, collected in the course of the procedure.

### **Co-operation in research with the national competition authorities, with the European Commission and with other bodies of the European Union (Title amend. - SG 17/21, in force from 26.02.2021)**

Art. 54. (1) The Commission shall co-operate with the European Commission and with the other national competition authorities of the Member States, by way of receiving and rendering support and exchanging information under the procedure of Regulation (EC) 1/2003 and Art. 11, Paragraph 6, Art. 12 and Art. 13, Paragraph 5 of Regulation (EC) 139/2004.

(2) (New – SG 17/21, in force from 26.02.2021) The Commission shall cooperate with the European Commission and with the national law enforcement authorities under Directive (EU) 2019/633, shall receive and provide assistance, exchanges information, participate in meetings and provide mutual assistance in the exercise of its powers in cross-border investigations of violations under Chapter Seven "b".

(3) (New – SG 17/21, in force from 26.02.2021) The Commission shall co-operate by receiving and rendering assistance, exchanging information and rendering mutual assistance with the competent authorities of the Member States of the European Union and with the European Commission pursuant to Regulation (EU) 2017/2394.

(4) (Previous Para. 2, amend. – SG 17/21, in force from 26.02.2021) The authority and the national law enforcement body under Directive (EU) 2019/633 which use the exchanged information, shall provide the same level of protection regarding the information considered as that provided by the national competition authority of the Member State providing it.



## Assistance about notification

Art. 54a. (New – SG 17/21, in force from 26.02.2021) (1) The Commission shall cooperate with the other national competition authorities of the Member States of the European Union by receiving and rendering assistance in connection with sending notifications on request and on behalf of the requesting authority for:

1. allegations for committed violation of Art. 101 and 102 of the Treaty on the Functioning of the European Union and decisions on the application of these Articles;
2. any procedural acts which are subject to notification in accordance with the national law of the Member State of the requesting authority;
3. documents related to the application of Art. 101 and 102 of the Treaty on the Functioning of the European Union, including those relating to the enforcement of decisions imposing sanctions or periodic proprietary sanctions.

(2) The legality of the acts under Para. 1 shall be appealed before the competent authorities of the Member State of the requesting authority in accordance with the law of that Member State.

(3) The validity of the notifications under Para. 1 shall be appealed before the competent authorities of the Member State of the requested authority in accordance with the law of that Member State.

## Access to the materials of the procedure

Art. 55. (1) (Suppl. – SG 17/21, in force from 26.02.2021) Parties and the constituted into the proceedings interested persons shall have right of access to all materials, collected in the course of investigation, except for the materials, containing industrial, trade or other secret protected by law. Access shall not be provided to internal documents of the Commission, including correspondence with the European Commission and other national competition authorities of the Member States of the European Union with the European Commission and the national law enforcement authorities under Directive (EU) 2019/633 and with the European Commission and the competent national authorities under Regulation (EU) 2017/2394, and to the constituted interested parties – also to the materials collected in connection with the immunity from and reduction of a sanction by the order of **Art. 101**.

(2) (amend. - SG 77/18, in force from 01.01.2019) Any person, who provides Commission with information in the course of proceedings, shall specify those of the materials of which he claims that they contain industrial, trade or other secret protected by law and shall be considered confidential by the Commission. In these cases person shall ground his claims and shall also provide the materials in version where data, considered confidential, is deleted. If Commission assesses that this information is not confidential, shall pronounce by a ruling and shall notify the person of this. Ruling shall be subject to appeal under the procedure of **Art. 64, Para 3**.

(3) (New – SG 17/21, in force from 26.02.2021) The Commission shall refuse to provide access to the parties and the constituted interested parties to information submitted by the persons under **Art. 38, Para. 1, item 9**, which they consider that, if disclosed, would harm their interests. In such cases, the person shall explicitly indicate the information and materials that he claims to contain information that affects his interests, substantiating his claims and presenting the same materials in a version with deleted data.

(4) (Previous Para. 3, suppl. – SG 17/21, in force from 26.02.2021) Materials, specified as containing industrial, trade or other secret protected by law, may be disclosed and used by the Commission, in case that they are of significant importance to prove the infringement or to exercise the right of defence of the defendant. The Commission may disclose information necessary for proving or for cessation of violations according to Art. 33, paragraph 3 of Regulation (EU) 2017/2394.

(5) (Previous Para. 4 – SG 17/21, in force from 26.02.2021) Procedure, which regulates the access,

usage and keeping the documents being industrial, trade or other secret, shall be set forth by rules, adopted by the Commission.

### **Temporary measures**

Art. 56. (1) (Amend. – SG 17/21, in force from 26.02.2021) In case that, during investigation under Chapter Nine, data about presence of infringement is available, in the event of pressing needs, by reason of risk of significant or unrecoverable damages for the competition, Commission – upon its own initiative or upon request of the persons, whose interests are harmed or endangered by the infringement, may order immediate stoppage of the practice by the undertaking or association of undertakings or to impose other measures, needed in view the purposes of this Act. Commission may not impose measures which are of the competence of other authorities and are provided in other Acts.

(2) (Amend. - SG 77/18, in force from 01.01.2019, amend. and suppl. – SG 17/21, in force from 26.02.2021) Temporary measures of Para 1 may be imposed in every one moment of the course of proceedings. Commission shall impose the temporary measures by a reasoned ruling, where the purpose and measure are stated, and shall ground its kind and necessity. Ruling shall be subject to appealation under the procedure of **Art. 64, Para 3**. Appealation shall not suspend execution of the temporary measure, whereby the court shall rule in the shortest possible term.

(3) Period of effectiveness of the temporary measures is up to three months from imposing. In event of necessity this period may be prolonged following the procedure of Para 2. Temporary measures may stay in force till decision on the merits is taken by the Commission.

(4) Commission may cancel the temporary measure before expiration of the period of its effectiveness, in case that the unlawful practice is stopped and distortion of the competition is prevented.

(5) (New – SG 17/21, in force from 26.02.2021) The Commission shall notify the European Commission and the national competition authorities of the Member States of the European Union about the temporary measures imposed by it in infringement proceedings of Art. 101 and 102 of the Treaty on the Functioning of the European Union.

### **Closure of investigation**

Art. 57. (1) After the end of investigation, the working team shall present before the monitoring member of the Commission a report, containing the factual and legal analysis of the case, as well as a proposal on the finalization of the procedure.

(2) Monitoring member shall notify the Chairperson of the finalization of investigation. Chairperson, by a resolution, shall appoint a closed session of the Commission, where the next step of the proceedings shall be decided.

### **Sessions of Commission**

Art. 58. (1) Sessions of Commission are open and closed.

(2) Parties may have legal defence.

(3) In open session Commission is not allowed to present evidence, except they are newly found or newly aroused.

(4) In open session, upon assessment of the Commission, external experts, who have presented expert opinion, as well as other persons, State authorities and authorities of local government may be summoned.

(5) (New – SG 17/21, in force from 26.02.2021) With a motivated order of the Chairman of the Co

mmission, the meetings may be held remotely in compliance with the requirements of **Art. 59** about quorum, ensuring direct and virtual participation of the parties and participants in the proceedings. The Commission shall notify the parties when the meeting is to be held remotely.

## Quorum

Art. 59. (1) (amend. – SG 54/10; amend. – SG 73/11, in force from 20.09.2011) Sessions shall be regular, if at least 4 of the members of Commission attend.

(2) (amend. – SG 54/10; amend. – SG 73/11, in force from 20.09.2011) Commission shall pronounce decisions and rulings by open voting and with majority of 4 votes. In event that the session is attended by less than 7 members, decision, respectively ruling, shall be pronounced only if at least 4 members of the Commission have voted for it.

## Decisions of Commission

Art. 60. (1) Commission shall adopt in a closed session a decision which:

1. enacts start of profound investigation;
2. finds the committed infringement and the infringer;
3. imposes property sanctions, periodical sanctions and/or fines;
4. exempts from sanction or reduces the amount of the sanction in accordance with **Art. 101**;
5. (amend. - SG 2/18) finds that law is not been violated or that grounds to undertake actions for committed infringement under Art. 101 and 102 of the Treaty on the Functioning of the European Union do not exist ;
6. terminated procedure;
7. renews procedure, if it is terminated under **Art. 75, Para 2**;
8. approves undertaken obligations and determines the term for their fulfillment;
9. exempts certain categories of agreements, decisions and coordinated practices from the prohibition of Art. **15**;
10. decrees that the respective decision for group exemption shall not be applied in the concrete case, states term within which the parties shall bring their agreement in accordance with **Art. 17** or terminate it;
11. (amend. - SG 2/18) withdraws right to use the respective regulation of the European Union for block exemption from the prohibition under Art. 101, Para 1 of the Treaty on the Functioning of the European Union, if the terms of Art. 29 of Regulation (EC) 1/2003 exist and appoint a period within which the parties shall bring their agreement in accordance with the requirements of Art. 101, Para 3 of the Treaty on the Functioning of the European Union or to terminate it;
12. decrees stoppage of the infringement, including by imposing appropriate behaviour and/or other structural measures to restore competition;
13. decrees that a concrete transaction does not represent concentration or does not enter into the range of obligatory preliminary notice;
14. permits the concentration;
15. permits concentration under proposed amendments by the parties;
16. permits concentration under condition;
17. prohibits the concentration;
18. cancels the permitting concentration decision;
19. proposes to the competent authorities to amend or revoke the relevant administrative act;
20. adopts opinion on a draft or on an effective normative or administrative act;
21. adopts sector analysis;
22. pronounces on rendering support;

23., pronounces on closing the procedure of rendering support;

24. decided on other matters within its competence.

(2) Commission shall prepare and announce its decision and the reasons to it within 14- days term after the closed session under Para 1 is held. Decision shall be reasoned and signed by the members of the Commission, who have voted at the closed session.

### **Reservation**

Art. 61. (1) Member of Commission, who does not support the decision, shall sign it with reservation.

(2) Reservation shall be reasoned and attached to the decision.

### **Contents of the decision**

Art. 62. (1) Decision of the Commission shall be in written and shall contain:

1. name of the authority, which has issued it;

2. factual and legal grounds of pronouncement;

3. (amend. - SG 2/18) dispositional part, where the existence or lack of an infringement of this Act shall be found; existence or lack of ground to undertake actions for committed infringement under Art. 101 and 102 of the Treaty on the Functioning of the European Union; rights and obligations of the parties are settled, the type and amount of the property sanction, if such is imposed are determined;

4. data about the term and the body before which it can be appealed;

(2) In the decision a term for voluntary execution of the imposed property sanction and fine shall be stated too.

### **Ruling of the Commission**

Art. 63. Commission shall pronounce by a ruling, where it pronounces on matters beyond the merits of the dispute, as far as otherwise provided by this Act.

### **Appellation of decisions and rulings**

Art. 64. (1) (amend. and suppl. - SG 77/18, in force from 01.01.2019) Decisions of the Commission, if not otherwise provided by the law, may be appealed regarding their lawfulness before the Sofia Administrative Court by the parties and by any third person who has legal interest in it. Decisions shall be appealed within 14-days term, which starts to run from their announcement under the procedure of the **Administrative Procedure Code**, and for the third persons – from their publishing in the Electronic Register of the Commission. Court decisions are subject to cassation appeal before the Supreme Administrative Court.

(2) (new - SG 77/18, in force from 01.01.2019) State fees for cassation appeal before the Supreme Administrative Court are set at the amount of the fees due for proceedings before the Commission for the Protection of Competition. State fees for the revocation of enforced judicial acts and for private appeals shall be determined by the order of the Administrative Procedure Code.

(3) (prev. para. 2, amend. - SG 77/18, in force from 01.01.2019) Rulings of the Commission, about which is provided that may be appealed regarding their lawfulness by the parties in the proceedings under the order of appeal the Commission's decisions. Rulings shall be appealed within 7-days period from their announcement, following the procedure of the Administrative Procedure Code before the Administrative Court - Sofia Province.

## **Entry into force of decisions and rulings**

Art. 65. Decisions and rulings of the Commission shall enter into force, if they:

1. are not subject to appeal;
2. are not appealed within the term under **Art. 64** or the appeal is withdrawn;
3. filed appeal is dismissed.

## **Execution of the decisions**

Art. 66. (1) (Suppl. – SG 17/21, in force from 26.02.2021) Decisions of the Commission forbidding concentration of undertakings or ordering cessation of infringement, including by imposing behavioural and/or structural measures to restore competition, or ordering the cessation of applying unfair trade practices under Chapter Seven "b", shall be subject to immediate execution.

(2) Commission may, on the base of request of the parties to the proceedings to pronounce immediate execution of the acts under **Art. 82, 85** and **88**.

## **Control over execution of the decisions**

Art. 67. Parties shall be obliged to inform timely the Commission of the execution of a decision, in case that in it certain conditions and obligations are set forth.

## **Electronic Register**

Art. 68. (1) Commission shall maintain an electronic register of the issued by it acts.

(2) (Amend. – SG 17/21, in force from 26.02.2021) All decisions of the Commission shall be published in the register.

(3) (Suppl. – SG 17/21, in force from 26.02.2021) In the register shall also be published announcements of initiated proceedings for permission of concentrations under Chapter Five, and about investigations under Chapters Nine and Twelve, other messages and definitions, for which this is provided in the acts under **Art. 8, Para. 1, item 14**, as well as notices and notifications to parties in proceedings, which cannot be found at the address indicated by them.

(4) Decisions under Para 2 shall be published within 14-days period from pronouncement, and the announcements under Para 3 – within 7-days period from initiation of the proceedings or carrying out the inspection on spot under **Art. 50**.

## **Fees and expenses**

Art. 69. (1) (amend. - SG 77/18, in force from 01.01.2019, amend. – SG 17/21, in force from 26.02.2021) For proceedings under this Act, state fees and expenses shall be due. The size of state fees shall be determined by a tariff approved by the Council of Ministers on a proposal of the Commission.

(2) (amend. - SG 77/18, in force from 01.01.2019) State authorities and authorities of the local government shall pay fees and expenses for the proceedings.

(3) Amounts for remuneration of external experts and specialists shall be deposited in advance by the party, who requested them, in amount as determined by the Commission.

(4) (Amend. – SG 17/21, in force from 26.02.2021) Where the Commission pronounces a decision

for finding committed infringement of the Law, Commission shall assign the expenses made for the proceedings to the violator, if required by the defendant party.

(5) (New – SG 17/21, in force from 26.02.2021) When the Commission issues a decision establishing that no violation has been committed, or when the proceedings has been terminated due to the withdrawal of the claim, the Commission shall award the costs incurred to the person at whose request the proceedings were instituted, if requested by the other party. In all other cases, the costs shall remain with the parties as incurred.

## **Chapter nine.**

### **PROCEDURE OF FINDING INFRINGEMENTS AND IMPOSURE OF SANCTION UNDER CHAPTERS THREE AND FOUR OF THIS ACT AND UNDER ART. 101 AND 102 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (AMEND. - SG 2/18)**

#### **Initiation of procedure**

Art. 70. (1) (amend. - SG 2/18) Procedure for finding infringements and imposing sanctions under Chapters Three and Four of this Act and under Art. 101 and 102 of the Treaty on the Functioning of the European Union shall be initiated on the grounds of **Art. 38, Para 1, items 1-4**.

(2) (Amend. – SG 17/21, in force from 26.02.2021) Procedure under Para 1 shall be initiated within 30-day period from the receipt of the request, from the decision of the Commission respectively.

(3) Decision for initiation of procedure upon initiative of the Commission on the ground of Art. 38, Para 1, item 1 shall not be subject to appeal.

#### **Contents of the request**

Art. 71. (1) Request under **Art. 38, Para 1, item 3** shall be in Bulgarian language and shall contain:

1. the name and registration data/unified civil number of the applicant and of the person against whom the complaint is directed;
2. the address, seat and address of management of the applicant and the person against whom complaint is directed;
3. description of the circumstances on which it is grounded, the request and claimed infringement;
4. merits of the request;
5. evidence supporting the request;
6. signature of the person who submits the requests, or of his representative;
7. document of paid State fee.

(2) The request under Para 1 shall be submitted in a form, approved by the Commission.

#### **Investigation**

Art. 72. Commission shall carry out an investigation within the procedure, by exercising its powers under **Art. 45**.

#### **Report of the working team**

Art. 73. (1) After sufficient evidence is collected regarding the forthcoming stage of the procedure, the working team, as defined under **Art. 39, Para 2**, shall prepare a report and submit it to the monitoring M

ember of the Commission.

(2) The monitoring member of the Commission shall notify the Chairperson of the prepared report. The Chairperson, by a resolution shall appoint closed session of the Commission within 14-days period from finalization of investigation, at which session further development of proceedings.

### **Closed session**

Art. 74. (1) After consideration of the report of **Art. 73**, Commission shall pronounce at a closed session:

1. (amend. - SG 2/18) decision by which finds that infringement has not been committed or that ground to undertake actions for committed infringement of Art. 101 and 102 of the Treaty on the Functioning of the European Union does not exist;

2. ruling by which the case is referred back for additional investigation with obligatory directions to the working team, as defined in **Art. 39, Para 2**;

3. ruling by which submits the claimed committed infringement of the law to the respective party.

(2) (Suppl. – SG 17/21, in force from 26.02.2021) In the ruling of Para 3, item 3, period not shorter than 30 days shall be set forth, within which period the applicant and the defendant party shall have the right to submit their written objections against the submitted claims, and the constituted interested persons – their opinion. In the ruling shall be stated that the parties and the interested persons shall have the right of access to the materials of the case under the procedure of **Art. 55** within the period for submission of objections or opinions, as well as right to be heard by the Commission under the procedure of **Art. 76** at an open session.

(3) (Amend. – SG 17/21, in force from 26.02.2021) In the case under Para 1, item 3, each party shall be provided with a version, not containing production, trade or other secret protected by law to the other parties in the proceedings, and the constituted interested persons shall be notified of the pronounced ruling under Para 1, item 3. Period for submission of objections and opinions under Para 2 shall start run from the day on which the ruling or the written notice of it are received.

(4) Simultaneously with the submission of objections, the parties shall be obliged also to submit all evidence at their disposal in their support.

(5) In the cases of Para 1, item 1, the parties shall be notified of the decision of the Commission, as well as that they shall have access to the materials of the case following the procedure under **Art. 55**.

### **Assumption of obligations by the defendant party**

Art. 75. (1) The defendant party under **Art. 74, Para 2** may propose to assume obligations, by which to achieve cessation of the behaviour, regarding which the proceeding are initiated.

(2) Commission may approve by a decision these obligations. In this case, Commission shall terminate proceedings without findings of infringement and shall pronounce that grounds for further proceedings does not exist anymore. By this decision Commission may also determine a period of effect of the assumed obligations.

(3) (New – SG 17/21, in force from 26.02.2021) Before adopting the decision under Para. 2, the Commission shall publish a notice in the register referred to in Art. 68 which contains a summary of the subject of the proceedings and of the proposed obligations. The notice shall specify a period not exceeding 30 days from the publication within which each market participant and/or their associations may submit information and opinion on the proposed obligations.

(4) (Previous Para. 3 – SG 17/21, in force from 26.02.2021) The Commission cannot accept a decision for assumption of obligations in case of grave infringement of the Law.

(5) (New – SG 17/21, in force from 26.02.2021) The Commission shall exercise control over the fulfillment of the undertaken obligations, and may exercise the powers under **Art. 45**.

(6) (Previous Para. 4 – SG 17/21, in force from 26.02.2021) The Commission may, upon request or upon its own initiative to renew the proceedings terminated under Para 2, if:

1. a change with regard to some of the circumstances grounding the decision under Para 2 occurs;
2. the undertakings do not execute the assumed obligations;
3. is found that the decision is based on provided incomplete, incorrect, untruthful or misleading information.

### **Hearing of the parties and the interested persons at an open session of the Commission**

Art. 76. (1) The parties and the interested persons shall be entitled to be heard by the Commission at an open session before pronouncement of the decision on the merits.

(2) Commission, upon its assessment, may also hear other persons.

(3) (Amend. – SG 17/21, in force from 26.02.2021) The Chairperson by a resolution shall schedule an open session, where the Commission shall hear the parties and the interested persons who have requested this, within the term under **Art. 74, Para. 2**, as well as the persons under Para. 2. The open session shall be scheduled onto a day, determined not earlier than 14 days after the elapse of the period for submission of objections or the opinions on the presented claims of committed infringements. The parties and the interested persons shall be notified of the appointed open session for their hearing under the procedure of the **Administrative Procedure Code**.

(4) The parties and the interested persons, as well as the persons envisaged in Para 2 shall be heard at a closed session.

(5) The session of the Commission shall start with deciding on the preliminary matters regarding the regularity of the proceedings.

(6) Parties and the interested persons may be asked observing the order determined by the Chairperson.

(7) Where the Chairperson assesses that the circumstances of the case are clarified, the Chairperson shall provide the parties with opportunity to state opinions

(8) After the dispute is clarified in factual and legal aspect, the Chairperson of the Commission shall close down the session.

### **Closed session**

Art. 77. (1) (Suppl. – SG 17/21, in force from 26.02.2021) After hearing the parties, the Chairperson of the Commission shall schedule within 6 months a closed session. At the session Commission shall pronounce a decision, which:

1. finds the committed infringement and the violator;
2. imposes property sanctions, periodical sanctions and/or fines;
3. (amend. - SG 2/18) finds that no infringement has been committed and grounds to undertake actions for committed infringement under Art. 101 and 102 of the Treaty on the Functioning of the European Union do not exist;
4. decrees to stop the infringements, including by way of imposing appropriate behaviour and/or structural measures for restoration of competition;
5. decrees that the decision for block exemption shall not be applicable in the concrete case and determines a period to adjust it in compliance with Art. 17 or termination;
6. (amend. - SG 2/18) decrees that provisions of the relevant regulation of the European Union for block exemption from the prohibition of Art. 101, Para. 1 of the Treaty on the Functioning of the European Union shall not be applicable to the concrete case, and determines a period to adjust it in compliance with Art. 101, Para. 3 of the Treaty on the Functioning of the European Union, or to terminate.



(2) (New – SG 17/21, in force from 26.02.2021) In case of factual and/or legal complexity, the Chairperson may extend the term under Para. 1 with two months.

(3) (Previous Para. 2 – SG 17/21, in force from 26.02.2021) The Commission, by a ruling, may:

1. accept new claims of committed infringement of the Law, following the procedure of **Art. 74, Para 1, item 3**.

2. to refer back for additional inspection the case, accompanied with obligatory directions;

(4) (Previous Para. 3 – SG 17/21, in force from 26.02.2021) With the decision under Para 1, item 4, Commission shall impose structural measures only if a behaviour measure of equivalent effect does not exist, or where such behaviour measure of equivalent effect should generate bigger burden for the undertaking, than the structural measure.

(5) (Previous Para. 4 – SG 17/21, in force from 26.02.2021) The parties shall be notified of the pronounced decision under Para 1, following the procedure of the **Administrative Procedure Code**.

## Chapter ten.

### PROCEDURE OF ISSUANCE OF PERMITIONS FOR CONCENTRATION OF UNDERTAKINGS

#### Initiation of proceedings

Art. 78. (1) Proceedings of assessment of the concentration shall be initiated on the grounds of **Art 38, Para 1, item 6**. Notice of concentration shall be submitted jointly by the undertakings, which participate in the consolidation or in the merger, or incorporate joint venture, respectively by the undertaking, acquiring the control within the meaning of **Art. 22, Para 1, item 2**.

(2) (Amend. and suppl. – SG 17/21, in force from 26.02.2021) Proceedings under Para 1 shall be initiated within 5 working days from the receipt of notice, unless grounds under **Art. 38, Para 2** exist.

(3) Commission may also initiate proceedings upon its own initiative on the grounds of Art. 38, Para 1, item 1, if concentration has been executed without permission, or under conditions and in a manner, different that these, under which it has been permitted, as well as in event that the permission has been cancelled by the Commission. The decision of the Commission to initiate proceedings shall not be subject to appeal.

(4) Notice of concentration under this Act shall also be submitted in the cases, where the competence of the Commission ensue from proceedings under Art. 4 and 9 of Regulation (EC) 139/2004.

#### Contents of the notice

Art. 79. (1) Notice under **Art. 78, Para 1** shall contain information regarding:

1. the undertakings – participants in the concentration;
2. the undertakings and the persons, controlling directly or indirectly the participating in the concentration undertakings;
3. the undertakings, over which the participants in the concentration exercise control within the meaning of **Art. 22, Para 3**;
4. the nature, legal form and the purposes of concentration;
5. the relevant markets on which the participants in the concentration operate;
6. market shares and the aggregate turnovers of the undertakings who participate in the concentration;
7. barriers to entry into the relevant markets;
8. main competitors, suppliers and customers;
9. (amend. – SG 17/21, in force from 26.02.2021) grounding of the circumstances under **Art. 26, Para 4 or 5**.

(2) In the notice under Para 1 shall also be stated an inquiry to the Commission to permit the concentration.

(3) The notice shall be filled in a form as approved by the Commission.

(4) The form under Para 3 and the directions for filling in the form shall be approved by a decision of the Commission and shall be published in its [website](#) on the Internet.

### **Accelerated Investigation**

Art. 80. (1) After the proceedings under **Art. 78, Para 1** are initiated, Commission shall carry out a assessment of the concentration through accelerated investigation by exercising its powers under **Art. 45, items 1, 2, 4 and 5**.

(2) Within 7-days period of publication under **Art. 68, Para 3**, any third interested person may present information or opinion regarding the effect of the concentration on the competition on the relevant market.

(3) (Repealed – SG 17/21, in force from 26.02.2021)

(4) (New – SG 17/21, in force from 26.02.2021) In the presence of data on significant obstruction of effective competition, the Commission shall indicate to the persons under **Art. 78, Para. 1** to propose changes in the conditions of the concentration in order to eliminate the anti-competitive effects, in case no such proposals have been given upon submission of the notification.

### **Periods for assessment of concentration in accelerated investigation**

Art. 81. (1) The assessment in accelerated investigation shall be carried out within 25 business days period, within which period Commission shall pronounce by a decision under **Art. 82, Para 3**.

(2) The period shall start run from the business day, following the day of initiation of proceedings.

(3) (Amend. – SG 17/21, in force from 26.02.2021) In the event of necessity to present additional information by the notifying undertakings, periods under Para 1 shall stop running.

(4) (Amend. – SG 17/21, in force from 26.02.2021) Upon request of the notifying undertakings, Commission may prolong the period envisaged in Para 1 up to 10 business days for preparation of changes in the conditions of concentration concerned.

(5) Not depending on if the period under Para 1 has been prolonged on the grounds of Para 4, it shall be extended with additional 10 business days from the day of presenting by the notifying person complete information related to proposed changes of the terms of concentration.

### **Finalization of assessment in accelerated investigation**

Art. 82. (1) After the accelerated investigation is finished, the working team, as determined under **Art. 39, Para 2** shall prepare a report, which shall be submitted to the monitoring member of the Commission.

(2) The monitoring member of the Commission shall inform the Chairperson of the finished accelerated investigation. The Chairperson, by a resolution, shall appoint a closed session of the Commission, at which further development of the proceedings shall be decided.

(3) At closed session Commission shall pronounce a decision, by which:

1. pronounces the transaction does not appear to be a concentration or does not enter the scope of **Art. 24**;

2. (amend. – SG 17/21, in force from 26.02.2021) authorizes the concentration under **Art. 26, Para 4**;

3. authorises the concentration in accordance with the amendments as proposed by the participants in the concentration;

4. initiates profound research under the procedure of **Art. 83**.

(4) Commission may cancel its decision under Para 3, items 103, if it is based on incomplete, incorrect, untrue or misleading information.

(5) Till decision of the Commission under Para 3 is not pronounced, factual or legal actions of every kind connected with the planned concentration shall be forbidden. This prohibition shall not be applied in event of bid offer or of a consequence of transactions of securities, admitted to the tender and the regulated markets of financial instruments, through which control in the meaning of **Art. 22, Para 3** is acquired by several buyers, under the condition that Commission is notified as per **Art. 24, Para 2** without delay, as well as the person who acquired securities considered does not exercise connected with them voting right, except for the cases to retain the value of the made investment.

(6) Commission shall notify following the procedure of the **Administrative Procedure Code** the persons envisaged in **Art. 78, Para 1** of the pronounced decision under Para 3 and of the opportunity to access the materials of the case.

(7) Decision under Para 3, item 4 shall not be subject to appeal.

### **Profound investigation**

Art. 83. (1) (Amend. – SG 17/21, in force from 26.02.2021) Profound investigation of the concentration shall be carried out, if, as a result of the assessment, done within the accelerated investigation, Commission finds that concentration considered generates serious doubt that as a consequence of it effective competition in the relevant market shall be significantly impeded, especially as a result of the creation or strengthening of a dominant position.

(2) Within 30-days period from the publication in the electronic register of the decision to start profound investigation under **Art. 68, Para 2**, every interested person may present information about or opinion on the effect of concentration considered to the competition on the relevant market.

(3) When carrying out the profound investigation, Commission shall exercise its powers as per **Art. 45**.

### **Period of profound investigation of the concentration**

Art. 84. (1) (Amend. – SG 17/21, in force from 26.02.2021) Commission shall carry out the profound investigation and shall close the proceedings within 90 working days after the publication under **Art. 68, Para 2** in the electronic register.

(2) In case of proposed measures under **Art. 86**, terms envisaged in Para 1 shall be prolonged with 15 business days. Prolongation of the term shall start running from the day, following the day on which Commission receives complete information in connection with the measures proposed.

(3) (New – SG 17/21, in force from 26.02.2021) In cases of factual and/or legal complexity, the term under Para. 1 may be extended with maximum 25 working days.

### **Closed session**

Art. 85. (1) After sufficient evidence is collected with regard to the forthcoming development of the proceedings, the working team as determined under **Art. 39, Para 2** shall prepare a report and shall present it to the monitoring member of the Commission.

(2) The monitoring member of the Commission shall notify the Chairperson of the prepared report.

The Chairperson shall, by a resolution, appoint a closed session of the Commission, which shall pronounce:

1. (amend. – SG 17/21, in force from 26.02.2021) a decision by which concentration under **Art. 26, Para 4 or 5** is authorized;

2. a ruling, by which accepts its preliminary conclusions about the effect of the concentration to the competition.

(3) (Suppl. – SG 17/21, in force from 26.02.2021) In the ruling under Para 2, item 2, a term not shorter than 14 days shall be stated, in which term the notifying person and the interested persons may present opinion on the preliminary conclusions of the Commission. In the ruling shall be stated, that the parties and the interested persons shall have the right to access the materials of the case, observing the procedure of **Art. 5 5** within the period for submission of opinion, as well as to be given a hearing under **Art. 87** by the Commission.

(4) In the case of Para 2, item 2, the ruling shall be sent to the persons envisaged in **Art. 78, Para 1**, and the interested persons, constituted under **Art. 43, Para 2, item 2** shall be notified of it. The term to present opinions under Para 3 shall start running from the date of the receipt of the copy of the ruling or of the written notice of it.

(5) Simultaneously with the presentation of an opinion on the preliminary conclusions, parties and interested persons shall be obliged also to present all supporting them evidence which they have at their disposal.

(6) In the case of Para 2, item 2, parties shall be notified of the pronounced decision and of the opportunity to access the materials of the case, observing the procedure of the **Administrative Procedure Code**.

### **Measures for protection of competition**

Art. 86. (1) (Amend. – SG 17/21, in force from 26.02.2021) The Commission may approve measures proposed by the persons under **Art. 78, Para. 1**, directly related to the implementation of the concentration, which are necessary for maintaining effective competition and limiting the negative impact of concentration on the affected market.

(2) (Amend. – SG 17/21, in force from 26.02.2021) The Commission may appoint a special representative.

(3) (New – SG 17/21, in force from 26.02.2021) The special representative under Para. 2 shall be an independent controlling manager, who monitors the implementation of the measures approved by the Commission and serves as a guarantee that the concentration will be carried out with the necessary degree of certainty.

(4) (New – SG 17/21, in force from 26.02.2021) The procedure for approval of measures and appointment of a special representative shall be regulated by rules adopted by the Commission.

### **Hearing of the parties and the interested persons at an open session**

Art. 87. (1) The parties and the interested persons shall be entitled to be given a hearing by the Commission at an open session before decision on the merits of the case is pronounced.

(2) After the elapse of the period to present opinions under **Art. 85, Para 3**, the Chairperson by a resolution, shall appoint an open session at which the Commission shall hear the parties and the interested persons. The open session shall be scheduled for a day, not earlier than the elapse of the term to present opinions on the submitted objections. The parties and the interested persons shall be notified of the appointed open session for their hearing following the procedure of the **Administrative Procedure Code**.

(3) The parties and the interested persons shall be heard by the Commission at a closed session.

(4) The session of the Commission shall start with deciding on the preliminary matters regarding re

gularity of the procedure.

(5) Parties and the interested persons may be questioned under a procedure as defined by the Chairperson.

(6) Where Chairperson assesses that the circumstances of the case are clarified, he/she shall provide opportunity to the parties to state opinions.

(7) After the dispute is clarified in factual and legal aspects, the Chairperson shall close down the session.

### **Closure of the profound investigation**

Art. 88. (1) After the hearing of the parties, the Chairperson shall appoint a closed session. Commission shall pronounce a decision, by which:

1. authorizes concentration in question;

2. authorizes concentration in question, under a condition that measures, directly related to the execution of the concentration and needed to preserve the effective competition and limit the negative impact on the concerned market, shall be performed;

3. prohibits concentration in question.

(2) Till decision of the Commission under Para 1 is pronounced, any kind of factual and legal actions related to the planned concentration are forbidden. This prohibition shall not be applied in case of bid offer or of a consequence of transactions of securities, admitted to trade on regulated markets of financial instruments, through which control as per **Art. 22, Para 3** is obtained by different vendors, if Commission is notified as per **Art. 24, Para 2** without delay, as well as that the person who acquired the securities does not exercise voting right, except for preservation of the value of the made investment.

(3) Commission may cancel its decision under Para 1, items 1 and 2, where it is based on a incomplete, incorrect, doubtful or misleading information, as well as where the participants do not execute the measures as stated in the decision of the Commission under Para 1, item 2.

(4) Parties shall be notified of the decision of the Commission following the procedure of the **Administrative Procedure Code**.

### **Closure of procedure, started upon initiative of the Commission**

Art. 89 (1) Where Commission has started a procedure upon its own initiative in the cases of **Art. 78, Para 3**, it may decide:

1. that breach of the obligation under **Art. 24** does not exist;

2. to impose a property sanction for failure to perform the obligation under **Art. 24**, as well as the respective measures under **Art. 90**.

(2) Investigation under Para 1 shall be performed under the procedure of Chapter Eight, as well as under **Art. 74** and **Art. 76**.

### **Measures for restoration of the effective competition**

Art. 90. Commission may, not depending on the property sanctions under **Art. 89, Para 1, item 2**, to impose to the participants in the transaction other behaviour and/or structural measure, needed for the restoration of effective competition, including by way of pronouncing split of the joint capitals, shares or assets and/or termination of the joint control, if finds that:

1. a concentration has been executed contrary to the pronounced decision under **Art. 88, Para 1, item 3**, or

2. a concentration, which shall be forbidden or authorized under a condition, has been executed:
- a) offending **Art. 24**, or where concentration in question has been executed under condition and in a manner, different than these which Commission took in account when issuing a decision under **Art. 82, Para 3 and 3, Art, 85, Para 2, item 1** and **Art. 88, para 1, item 1**;
  - b) offending the decision under Art. 88, Para 1, item 2;
  - b) in case of authorization, cancelled by a decision under Art. 82, Para 4 or under Art. 88, Para 3.

## **Chapter eleven. MISCELLANEOUS PROCEDURES**

### **Sector Analysis Procedure**

Art. 91. (1) Sector Analysis Procedure of the competition environment shall be initiated by a decision of the Commission on the grounds of **Art. 38, Para 1, item 1**.

(2) The Chairperson, by a resolution, shall assign monitoring of the procedure to a member of the Commission. Research shall be assigned to the working team, determined under **Art. 39, Para 2**.

(3) When carrying out research, the working team shall exercise its powers as per **Art. 45, items 1, 2, 4 and 5**.

(4) After finalization of the research, the working team shall present the analysis to the member of the Commission, who monitors the research. The Chairperson shall appoint consideration of the analysis at a closed session of the Commission.

(5) Commission shall adopt the sector analysis by a decision, by which may:

1. (amend. - SG 2/18) pronounce to initiate procedure of finding offence under **Art. 15, 21 and 24** of this Act and/or under Art. 101 and 102 of the Treaty on the Functioning of the European Union;

2. inform the competent State authorities, including the bodies of the executive power, as well as the bodies of local government of the necessity to undertake measures for improvement of the competition environment in the sector;

3. provide the analysis for usage by the National Assembly and/or the Council of Ministers when preparing strategies, programmes and plans of development of the respective sectors of the economy, etc.

(6) The decision of the Commission under Para 1, as well as the decision under Para 5 shall not be subject to appeal.

### **Competition Advocacy Procedure**

Art. 92. (1) Competition advocacy procedure shall be initiated on the grounds of **Art. 38, Para 1, items 1, 5 and 8**.

(2) The Chairperson, by a resolution, shall assign the monitoring over the procedure to a member of the Commission. Research shall be carried out by the working team, determined under **Art. 39, Para 2**.

(3) When carrying out the research, the working team shall exercise the powers under **Art. 45, items 1, 2, 4 and 5**.

(4) After research is finalized, the working team shall prepare a report, which shall be presented to the monitoring member of the Commission. The Chairperson shall appoint consideration of the report at a closed session of the Commission.

(5) Commission shall adopt, by a decision, an opinion, by which:

1. gives assessment of the compliance of projects or effective acts in the meaning of **Art. 28** to the provisions of this Act;

2. proposes to the competent authorities or associations of undertakings to amend or cancel the resp

ective act.

(6) The decision of the Commission under **Art. 38, Para. 1, item 1**, as well as the decision under Para 5 shall not be subject to appeal.

### **Procedure of execution of obligations of the Commission to co-operate as per Regulation (EC) No. 1 /2003 and Regulation (EC) No. 139/2004**

Art. 93. (1) Procedure of execution of obligations of the Commission to co-operate as per Regulation (EC) No. 1/2003 and Regulation (EC) 139/2004 shall be initiated on the grounds of **Art. 38, Para 1, item 7** in connection with **Art. 54**, upon a request of a national competition authority of a Member- State or of the European Commission on the grounds of Regulation (EC) No. 1/2003 or of Regulation (EC) No. 139/2004.

(2) On the grounds of the request of Para 1, a report to the Chairperson shall be prepared, in which report a proposal to undertake the needed actions for satisfaction of the request shall be contained.

(3) The Chairperson of the Commission, by a resolution, shall pronounce on the proposal to undertake the needed actions. In case, that the Chairperson of the Commission resolves to provide assistance, in the resolution shall determine the objectives of the procedure in compliance with the request under Para 1.

(4) The Chairperson of the Commission, by an order, shall determine the officers, who shall carry out the powers under **Art. 45** of this Act, respectively under Art. 20, Paragraph 2 of the Regulation (EC) No 1 /2003 or under Art. 13, Paragraph 2 of Regulation (EC) No. 139/2004.

(5) (New – SG 17/21, in force from 26.02.2021) The staff and other accompanying persons, authorized or appointed by the requesting national competition authority, may be present and actively assist in on-the-spot checks and the taking of oral explanations under the supervision of the Commission staff.

(6) (Previous Para. 5 – SG 17/21, in force from 26.02.2021) After resolution under Para 3 is executed, a report to the Chairperson of the Commission on the performed actions shall be prepared.

(7) (Previous Para. 6, amend. – SG 17/21, in force from 26.02.2021) The Chairperson of the Commission shall table the report of Para. 6 at a closed session, where Commission shall pronounce a decision to finalize the procedure on rendering assistance.

(8) (Previous Para. 7, amend. – SG 17/21, in force from 26.02.2021) Decision under Para. 7 shall not be subject to appeal.

### **Procedure when assisting in notifying and in enforcement of decisions imposing sanctions or periodic proprietary sanctions**

Art. 93a. (New – SG 17/21, in force from 26.02.2021) (1) Requests referred to in **Art. 54a** and **103a** shall be executed without undue delay by means of a uniform instrument which shall be accompanied by a copy of the act to be notified or enforced.

(2) The uniform instrument shall contain:

1. the name, known address of the addressee of the act and any other relevant information for the identification of the addressee;
2. a summary of the relevant facts and circumstances;
3. a summary of the attached copy of the act to be notified or executed;
4. the name, address and other contact details of the requested authority;
5. the period within which notification or enforcement should take place, such as statutory deadlines or limitation periods.

(3) For requests referred to in Art. 103a, in addition to the requirements under Para. 1, the uniform instrument shall also contain:

1. information about the decision permitting enforcement in the Member State of the applicant authority;

2. the date, on which the decision has entered into force;
3. the amount of the sanction or of periodic proprietary sanction;
4. information showing the reasonable efforts made by the requesting body to enforce the decision in its own territory.

(4) The uniform instrument shall constitute the sole basis for the notification or enforcement actions taken by the requested authority, in observance of the requirements under Para. 1. It shall not be subject to any act of recognition, supplementing or replacement in the Member State of the requested authority. The requested authority shall take all necessary measures for the execution of this request, unless the requested authority invokes Para. 5.

(5) The uniform instrument shall be sent by the requesting authority to the requested authority in the official language or in one of the official languages of the Member State of the requested authority, unless the requested authority and the requesting authority have agreed bilaterally on a case-by-case basis that the uniform instrument may be sent in another language. Where required under the national law of the Member State of the requested authority, the applicant authority shall provide a translation of the act to be notified or the decision permitting enforcement of the sanction or proprietary sanction, into the official language or into one of the official languages in the official languages of the Member State of the requested authority. This shall be without prejudice to the right of the requested authority and the applicant authority to bilaterally agree, on a case-by-case basis, that such translation may be provided in a different language.

(6) The requested authority shall not be obliged to execute a request referred to in Art. 54a or 103a if:

1. the request does not meet the requirements of this Article, or
2. the requested authority is able to demonstrate reasonable grounds showing how the execution of the request would be manifestly contrary to public policy in the Member State in which enforcement is sought.

(7) The requested authority shall notify the requesting authority in case it intends to refuse a request for assistance under Art. 54a or 103a or needs additional information.

(8) At the request of the requested authority, the requesting authority shall fully bear all reasonable additional costs, including translation, labour and administrative costs, in connection with actions taken as referred to in Art. 54a or 103a.

(9) The requested authority may recover the full costs incurred in relation to actions taken as referred to in Art. 103a from the amounts of sanctions or periodic proprietary sanctions collected on behalf of the requesting authority, including translation, labour and administrative costs. If the requested authority is unable to collect the amounts of the sanctions and the periodic proprietary sanctions, it may request the requesting authority to bear the costs incurred.

(10) The requested authority may recover the costs incurred in connection with the enforcement of such decisions from the undertaking against which the sanction or the periodic proprietary sanction is enforceable.

(11) The requested authority shall recover the amounts due in the currency of its Member State, in accordance with the laws, regulations and administrative procedures in that Member State. If necessary, the requested authority shall, in accordance with its national law and practice, convert sanctions or periodic proprietary sanctions into the currency of the Member State of the requested authority at the exchange rate applicable on the date on which the sanctions or periodic proprietary sanctions were imposed.

(12) The proprietary sanctions imposed by the act under Para. 2, item 3, issued by another competition authority of a Member State of the European Union, for which cross-border enforcement has been requested by the Commission, shall be collected by the order of the **Tax-Insurance Procedure Code**.

(13) All enforced amounts shall be transferred to the account of the Commission, which shall deduct the costs incurred by it, and then convert the balance into the currency of the Member State of the requested authority at the exchange rate applicable on the date on which the sanctions or periodic proprietary sanctions were imposed.



## Chapter twelve.

### PROCEDURE OF FINDINGS OF INFRINGEMENT AND IMPOSITION OF SANCTIONS UNDER CHAPTERS SEVEN AND SEVEN "B" (TITLE SUPPL. – SG 56/15, AMEND. – SG 17/21, IN FORCE FROM 26.02.2021)

#### Initiation of the procedure, investigation and finalization of the procedure.

Art. 94. (1) (Suppl. – SG 56/15, amend. – SG 17/21, in force from 26.02.2021) The proceedings for establishing a violation and imposing a sanction under Chapter Seven shall be instituted on the grounds of **Art. 38, Para. 1, items 1 and 3**. The proceedings for establishing a violation and imposing a sanction under Chapter Seven "b" shall be instituted on the grounds of Art. 38, Para. 1, items 1 and 9. The decision for initiating proceedings upon initiative of the Commission on the grounds of Art. 38, Para. 1, item 1 shall not be subject to appeal.

(2) (Amend. – SG 17/21, in force from 26.02.2021) The request under Art. 38, Para. 1, items 3 and 9 shall be submitted according to a sample, approved by the Commission, and must meet the requirements of **Art. 71, Para. 1**. In the cases under Art. 38, Para. 1, item 9, to the request must also be attached an annual financial report of the supplier for the previous financial year.

(3) (New – SG 17/21, in force from 26.02.2021) Upon finding of irregularities in the request under Art. 38, Para. 1, item 9, within 30 days from its receipt, the Commission shall send to the sender of the request a notice for their removal within 7 days. In case the irregularities have not been eliminated within the given term, the Chairman of the Commission by order shall refuse to initiate proceedings.

(4) (New – SG 17/21, in force from 26.02.2021) The sender of the request under Art. 38, Para. 1, item 9 shall be notified within 7 days from the issuance of the order by which the Chairman of the Commission refuses to initiate proceedings by the order of Para. 3 and of Art. 38, Para. 4. The notification shall state the reasons for the refusal.

(5) (Previous Para. 3, suppl. – SG 17/21, in force from 26.02.2021) The Chairperson of the Commission, by a resolution, shall initiate the proceedings, for which he notifies the claimant, and shall appoint a member of the Commission, who shall monitor the investigation. It shall be carried out by the working team, as determined under **Art. 39, Para 2**.

(6) (New – SG 17/21, in force from 26.02.2021) The Commission may constitute interested parties at their reasoned request or on its own initiative.

(7) (Previous Para. 4, amend. – SG 17/21, in force from 26.02.2021) In the investigation under Chapter Seven, the Commission shall exercise the powers under **Art. 45, items 1, 2 and 4**, and in the cases under **Art. 34a** - the powers under Art. 45, items 3 and 7 as well.

(8) (New – SG 17/21, in force from 26.02.2021) In the investigation under Chapter Seven "b", the Commission shall exercise the powers under Art. 45, items 1, 2, 3, 4 and 6.

(9) (New – SG 17/21, in force from 26.02.2021) While investigating, in the cases of misleading and unauthorized comparative advertising under Art. 34a, the Commission as a competent body shall directly exercise the powers provided in Art. 9, Para. 3 of Regulation (EU) 2017/2394.

(10) (New – SG 17/21, in force from 26.02.2021) The Commission shall take measures for appropriate protection when the persons under **Art. 38, Para. 1, item 9**, who have submitted the request, indicate that the disclosure of the identity of the claimant or of members of producer organizations, of suppliers or their associations or members of member organizations or of suppliers on whose behalf a request has been submitted by other organizations with a legal interest, as well as of any other information which they consider to be detrimental to their interests, if disclosed.

(11) (New – SG 17/21, in force from 26.02.2021) The persons who have submitted a request under **Art. 38, Para. 1, item 9**, shall indicate any information for which they require protection, as the conditions a

and the order for protection of this information shall be settled by rules by the order of **Art. 55, Para. 5**, adopted by the Commission.

(12) (New – SG 17/21, in force from 26.02.2021) The conditions and the procedure for protection of the identity of the persons under **Art. 38, Para. 1, item 9** shall be settled by the order provided for in internal rules under **Art. 49, Para. 3**, adopted by the Commission.

(13) (New – SG 17/21, in force from 26.02.2021) Before concluding the investigation, the Commission shall notify in accordance with the **Administrative-Procedure Code** the parties and the constituted interested parties of the option within 14 days from the notification to get acquainted with the materials in the file under the conditions of **Art. 55**. Within 7 days from the acquaintance, the parties and the interested persons may submit an opinion.

(14) (Previous Para. 5, amend. – SG 17/21, in force from 26.02.2021) After concluding the investigation, the work team shall prepare a report, which shall be submitted to the member of the Commission supervising the proceedings.

(15) (Previous Para. 6, amend. – SG 17/21, in force from 26.02.2021) The Chairman of the Commission shall, by a resolution, schedule the consideration of the report in an open session of the Commission. The parties shall be notified by the order of the Administrative-Procedure Code of the option to get acquainted with the materials of the file under the conditions of Art. 55 within 7 days, as well as about the date of the session. The parties to the proceedings and the interested parties shall be heard at the hearing. The Commission may, at its discretion, hear other persons.

### **Alternative dispute resolution**

Art. 94a. (New – SG 17/21, in force from 26.02.2021) In view of resolving the dispute on the initiated proceedings under Chapter Seven "b" and before the final ruling, the Commission may propose to the parties to use mediation or another alternative way of settling the dispute voluntarily.

### **Burden of proof**

Art. 95. In the cases of **Art. 32**, the advertiser shall be the one, who must prove that the advertisement does not contain aspects, which make it prohibited.

### **Periods**

Art. 96. (1) (Amend. – SG 17/21, in force from 26.02.2021) The investigation under Chapter Seven shall be completed within two months from the initiation of the proceedings.

(2) (New – SG 17/21, in force from 26.02.2021) The investigation into proceedings instituted under Chapter Seven "b" shall be completed within 6 months from the initiation of the proceedings.

(3) (Previous Para. 2, suppl. – SG 17/21, in force from 26.02.2021) In cases, representing factual and legal complexity, the term under Para. 1 and 2 may be extended by 30 days.

### **Temporary Measures**

Art. 97. (1) (Amend. and suppl. – SG 17/21, in force from 26.02.2021) The Commission, at the request of the parties, constituted interested parties or on its own initiative, where there is a risk of serious harm to the interests of consumers, competitors or suppliers of agricultural and food products, may, at any moment of the procedure impose a temporary measure:

1. prohibition to disseminate the advertisement, before it becomes available to the publicity, in case

s where the advertisement till has not been spread, but its dissemination is forthcoming and unavoidable;

2. suspension of the advertisement dissemination;

3. (new – SG 17/21, in force from 26.02.2021) suspension of the application of unfair commercial practice under Chapter Seven "b".

(2) (Amend. - SG 77/18, in force from 01.01.2019) The temporary measure under Para 1 shall be applied by a ruling, which shall be subject to immediate execution. The temporary measure shall be applied till the decision of the Commission on the merits of the case is taken. The ruling may be appealed under the order of the **Art. 64, para. 3**. Complaint shall not suspend execution of the ruling, except for the court orders otherwise.

### **Decision of the Commission**

Art. 98. (1) (Suppl. – SG 56/15, amend. – SG 17/21, in force from 26.02.2021) In connection with the procedure under Chapter Seven or Seven "b", the Commission shall adopt a decision, by which:

1. it finds the committed infringement and the infringer, and imposes property sanction or a fine;

2. it decrees to stop the infringement;

3. it finds that no infringement has been committed against the law;

4. (amend. – SG 17/21, in force from 26.02.2021) terminates the procedure.

(2) (New – SG 17/21, in force from 26.02.2021) Proceedings shall be terminated:

1. under the conditions of **Art. 41, item 1, 2 and 4**;

2. in case of withdrawal of the claim in proceedings under Chapter Seven and under Chapter Seven 'b';

3. when the realized turnover of the supplier and the buyer does not meet the criteria under Art. 37g, Para. 1 in the proceedings under Chapter Seven "b";

4. at the discretion of the commission, in the cases in which there is a danger of revealing the identity of the persons, who have submitted a request under **Art. 38, Para. 1, item 9**, or of other information, the disclosure of which according to the petitioner would harm his interests and provided that the petitioner has explicitly indicated this information in accordance with **Art. 94, Para. 10, 11 and 12**;

5. in the absence of legal interest.

(3) (Previous Para. 2 – SG 17/21, in force from 26.02.2021) The Commission may, regardless of the property sanctions for infringement under **Art. 32**, order to the advertiser and/or to the advertising agency to announce at their expense and in an appropriate manner the decision under Para 1, item 1 or part thereof, as well as the corrected advertisement in question.

(4) (Previous Para. 3 – SG 17/21, in force from 26.02.2021) Where the proceedings has been initiated upon a signal, the person who filed the signal shall be notified of the decision taken by the Commission.

(5) (Amend. - SG 28/19, previous Para. 4 – SG 17/21, in force from 26.02.2021) The decision under Para. 1, which establishes a violation of **Art. 37**, shall not be an obstacle for bringing a claim before the court under the **Trade Secrets Protection Act**.

## **Division four. LIABILITY AND SANCTIONS**

### **Chapter thirteen. LIABILITY**

#### **Administrative-punitive liability**

Art. 99. (1) For infringement of provisions of this Act, save for the deed constitutes a crime, administrative-punitive liability shall be borne.

(2) (amend. - SG 77/18, in force from 01.01.2019) Property sanctions, periodical sanctions and fees under the Act shall be imposed by a decision of the Commission, which shall be subject to appeal under the order of the **Art. 64, para. 3**.

## Chapter fourteen. SANCTIONS

### Property sanctions

Art. 100. (1) Commission shall impose property sanction in amount up to 10 per cent of the aggregate turnover of the previous financial year of an undertaking or association of undertakings, for:

1. (amend. - SG 2/18) infringement of **Art. 15** or 21 of this Act or of Art. 101 and 102 of the Treaty on the Functioning of the European Union;

2. execution of a concentration without performing the obligation of **Art. 24**;

3. execution of a concentration under conditions and in a manner, different than these, on which Commission has pronounced decision under **Art. 82, Para 3, item 2 and 3, Art. 85, Para 2, item 1 and Art. 88, Para 1, items 1 and 2**;

4. execution of a concentration, which has been prohibited by the Commission by a decision as per Art, Para 1, item 3;

5. execution of a concentration, which is subject to obligatory preliminary notice as per Art. 24, before Commission has pronounced by a decision on Art. 82, Para 3, Art. 85, Para 2, item 1 and Art. 88, Para 1, except for hypotheses of Art 82, Para 5, Sentence Two, and Art. 88, Para 2, Sentence Two

6. infringement under Chapter Seven;

7. failure to fulfil decisions or rulings of the Commission.

(2) (New – SG 56/15, amend. – SG 17/21, in force from 26.02.2021) For violation of the prohibitions under **Art. 37b** and **37c**, the Commission shall impose on a buyer of agricultural and food products a proprietary sanction in the amount from BGN 5 000 to 300 000.

(3) (New – SG 17/21, in force from 26.02.2021) For violation under **Art. 15** of this act and/or Art. 101 of the Treaty on the Functioning of the European Union by an association of undertakings, related to the activities of its members, the Commission shall impose a proprietary sanction on the association of up to 10 percent of the total turnover of each member of the association operating on the market affected by the violation, for the previous financial year.

(4) (New – SG 17/21, in force from 26.02.2021) When a sanction under Para 3 is imposed not only on an association, but also on its members, the turnover of its members, on whom a sanction has been imposed, shall not be taken into account when calculating the sanction of the association.

(5) (Prev. Para. 2 - SG 56/15, prev. Para. 3 - SG 17/21, in force from 26.02.2021) The Commission shall impose a proprietary sanction in the amount of up to one percent of the total turnover for the preceding financial year on an undertaking or association of undertakings for:

1. non-fulfillment of the obligation to assist as referred in **Art. 46**;

2. (new – SG 17/21, in force from 26.02.2021) opposition to an inspection under the order of **Art. 50**;

3. (prev. Para. 2 - SG 17/21, in force from 26.02.2021) breach of the integrity or destruction of the seals affixed during an on-site inspection under Art. 50;

4. (prev. item 3, amend. - SG 17/21, in force from 26.02.2021) untimely provision or provision of incomplete, inaccurate, unreliable or misleading information in violation of the obligations under **Art. 47, Para. 4 and 6**;

5. (new – SG 17/21, in force from 26.02.2021) failure to fulfill the obligation under Art. 47, Para. 5

;

6. (prev. item 4 - SG 17/21, in force from 26.02.2021) non-fulfillment of the obligations under **Art. 67**.

(6) (New - SG 17/21, in force from 26.02.2021) For violations under Para. 5 in the proceedings under Chapter Seven "b", the Commission shall impose a proprietary sanction in the amount of BGN 1 000 to 10 000.

(7) (Prev. Para. 3, amend. - SG 56/15, prev. Para. 4, amend. and suppl. - SG 17/21, in force from 26.02.2021) In the decision imposing a proprietary sanction under Para. 5, items 1, 4 and 5, shall be indicated a term in which the party must fulfill its obligation to assist or to provide complete, accurate, reliable and non-misleading information, or to appear and give explanations.

(8) (Prev. Para. 4 - SG 56/15, prev. Para. 5, amend. - SG 17/21, in force from 26.02.2021) When determining the amount of the proprietary sanction, taken into account shall be the gravity and duration of the infringement, as well as the mitigating and aggravating circumstances in the obligation. The specific amount of the sanction shall be determined by the Commission in accordance with a methodology adopted by it and published on its [website](#).

(9) (Prev. par. 5 – SG 56/15, prev. Para. 6 - SG 17/21, in force from 26.02.2021) Commission shall impose periodical property sanctions to an undertaking or to association of undertakings in amount of 5 per cent of the average daily turnover for the previous financial year for every one day of failure to perform:

1. a decision of the Commission to terminate the infringements, including by way of imposing appropriate measures for restoration of competition under the procedure of **Art. 77, Para 1, item 4** or of **Art. 90**;

2. (suppl. - SG 17/21, in force from 26.02.2021) ruling of the Commission to impose temporary measures under **Art. 56** and **97**;

3. decision of the Commission to approve undertaken obligations under **Art. 75, Para 2** and under **Art. 88, Para 1, item 2**.

(10) (New - SG 17/21, in force from 26.02.2021) For non-fulfillment under Para. 9, items 1 and 2 in the proceedings under Chapter Seven "b", the Commission shall impose a proprietary sanction in the amount from BGN 5 000 to 50 000.

(11) (Prev. par. 6 – SG 56/15, prev. Para. 7 - SG 17/21, in force from 26.02.2021) Commission shall impose periodical property sanctions to an undertaking or association of undertakings in amount up to one per cent of the average daily turnover for the previous financial year for every one day of :

1. (amend. – SG 56/15, amend. - SG 17/21, in force from 26.02.2021) failure to perform the obligation to assist under **Art. 46** after the elapse of the term, as set forth in the decision under Para. 7;

2. (amend. – SG 56/15, amend. - SG 17/21, in force from 26.02.2021) not providing complete, precise, true or not misleading information under **Art 47, Para 6** after the elapse of the term, stated in the decision under Para. 7;

3. opposing an inspection under the procedure of **Art. 50**.

(12) (New - SG 17/21, in force from 26.02.2021) For violations under Para. 11 in the proceedings under Chapter Seven "b", the Commission shall impose a proprietary sanction in the amount from BGN 5 000 to 50 000.

(13) (Prev. Para. 7, amend. – SG 56/15, prev. Para. 8, amend. - SG 17/21, in force from 26.02.2021) Periodical sanctions under Para. 9 and 11 shall be imposed for every one day till the unlawful action or inaction is stopped.

(14) (New - SG 17/21, in force from 26.02.2021) Proprietary sanctions for violation under Para. 1, item 1 may also be imposed on a person who:

1. exercises control over the infringing undertaking, or

2. has acquired its assets as a result of a transformation in which the infringing undertaking has ceased to exist as a legal entity, or

3. is an economic legal successor of the activity, through which the violation has been committed.

## **Immunity from sanction and reduction of sanctions**

Art. 101. (1) (Amend. - SG 2/18, amend. and suppl.- SG 17/21, in force from 26.02.2021) The Commission may, upon a request of an undertaking as per **Art. 38, Para 1, item 4**, grant immunity from property sanction for committed infringement under **Art. 15** of this Act and/or Art. 101 of the Treaty on the Functioning of the European Union, which infringement representing participation in a secret cartel, under the condition that it discloses its participation in the cartel and submits before the other participants in it an evidence on the base of which the Commission can:

1. (amend. and suppl.- SG 17/21, in force from 26.02.2021) execute inspection on the spot and it is necessary at that moment that Commission had not at its disposal sufficient data and evidence in order to require a court decision under the procedure of **Art. 51**, or;

2. (amend. and suppl.- SG 17/21, in force from 26.02.2021) prove the maintained infringement and it is necessary that up to this moment the Commission had not granted to another undertaking a conditional immunity from sanctions, as well as it had not at disposal sufficient evidence, to pronounce a decision on finding of infringement.

(2) (Amend. - SG 17/21, in force from 26.02.2021) Each enterprise may receive an exemption from a proprietary sanction when it meets the conditions under Para. 1, has fulfilled the requirements provided in the program under Para. 6 and has not taken actions to compel the other undertakings to participate in the cartel.

(3) (Amend. - SG 2/18, amend. - SG 17/21, in force from 26.02.2021) Commission may reduce the property sanction imposed to an undertaking for committed infringement of **Art. 15** of this Act and/or of Art. 101 of the Treaty on the Functioning of the European Union, expressed in participation in a secret cartel, under the condition that it voluntarily discloses its participation in the secret cartel, presents evidence of significant importance to prove the infringement, and observes all conditions, as determined in the programme under Para. 6.

(4) (New - SG 17/21, in force from 26.02.2021) If the undertaking under Para. 3 presents sufficient evidence, which the Commission to use to prove additional facts, related to the violation, leading to an increase of proprietary sanctions of the undertakings participating in the secret cartel, in comparison with the sanctions which would have been imposed without the presence of such evidence, the Commission shall not take into account these additional facts in determining the sanction of the undertaking under Para. 3.

(5) (Amend. - SG 2/18, prev. Para. 4, amend. - SG 17/21, in force from 26.02.2021) Immunity from sanction and reduction of sanction for infringement of **Art. 15** of this Act or of Art. 101 of the Treaty on the Functioning of the European Union shall be admissible under the following conditions:

1. the undertaking has ceased to participate in the secret cartel at the latest as soon as it has submitted its request for immunity from or reduction of sanctions, unless the Commission has considered that the continuation of such participation is necessary for the investigation;

2. the undertaking cooperates voluntarily, continuously and fully with the Commission from the moment of submitting the request until the end of the proceedings;

3. the undertaking has not destroyed, falsified or concealed evidence of the alleged secret cartel, and has not disclosed its intention to submit a request for immunity from a sanction or reduction of the sanction.

(6) (Prev. Para. 5 - SG 17/21, in force from 26.02.2021) Terms and procedure for immunity from sanction or reduction of the sanction shall be determined in the Leniency Programme and its Rules of Implementation, adopted by a decision of the Commission.

## **Fines**

Art. 102. (1) Natural persons, who contributed to commitment of infringements under the Law, if the deed does not constitute a crime, shall be punished with a fine in amount of from 500 up to 50 000 BGN.

(2) (Amend. - SG 17/21, in force from 26.02.2021) To persons, who do not provide within the set forth period evidence or complete, correct, true and not misleading information under **Art. 47, Para 6**, a fine in amount from 500 to 25 000 BGN shall be imposed.

(3) In the decision, by which the fine under Para 2 is imposed, a period shall be set forth, within which period the required evidence and information shall be provided. In event of failure to perform within that period, to the person periodical fine in amount 500, but not more than 20 000 BGN per day may be imposed.

(4) (Amend. – SG 56/15, amend.- SG 17/21, in force from 26.02.2021) When determining the amount of the fine, the significance and duration of the infringement, the capacity in which the person acted, as well as the mitigating and the aggravating circumstances shall be taken in view. The concrete amount of the fine shall be determined following the methodology as per **Art. 100, Para 8**.

(5) (New - SG 17/21, in force from 26.02.2021) No fine shall be imposed on the members of the management and control bodies and on other employees of the undertaking, which has submitted a request under **Art. 101, Para. 1**, as well as on persons who at the time of committing the violation were in such capacity, provided that:

1. the request of the undertaking meets the conditions under Art. 101, Para. 1;
2. the persons actively cooperate with the Commission in the proceedings, and
3. the request under Art. 101, Para. 1 has been submitted before the notification of the persons about the initiated proceedings.

## **Execution**

Art. 103. (1) (Previous text of Art. 103 - SG 17/21, in force from 26.02.2021) Proprietary sanctions and fines, imposed on the basis of entered into force decisions of the Commission, shall be collected by the order of the **Tax-insurance Procedural Code**.

(2) (New – SG 17/21, in force from 26.02.2021) In the event that a sanction has been imposed on an association of undertakings on the basis of the amount of the total turnover of its members and it is not in a position to make the payment, the association shall require its members to make contributions to cover the amount of the sanction within the period specified by the Commission.

(3) (New – SG 17/21, in force from 26.02.2021) When the installments under Para. 2 have not been made in full within the specified period, the Commission may demand payment from any of the undertakings, whose representatives were members of the management or control bodies of the association.

(4) (New – SG 17/21, in force from 26.02.2021) In case the option referred to in Para. 3 has been exhausted, but there is an outstanding part of the sanction, the Commission may demand payment from any of the members of the association, carrying out activity on the market on which the violation has been committed.

(5) (New – SG 17/21, in force from 26.02.2021) The proprietary liability of each member of the association may not exceed 10 percent of its total turnover for the previous financial year.

(6) (New – SG 17/21, in force from 26.02.2021) Payment under Para. 4 shall not be required from undertakings, which prove that they did not implement the decision of the association and had actively separated from it before the proceedings in front of the Commission started.

## **Assistance in the implementation of decisions imposing sanctions or periodic proprietary sanctions**

Art. 103a. (New – SG 17/21, in force from 26.02.2021) (1) The Commission shall cooperate with t

he other national competition authorities in connection with the collection of sanctions or periodic proprietary sanctions on decisions that have entered into force, whereby upon request, it:

1. shall receive and render assistance when the requesting authority has established that the undertaking or association of undertakings, to which the sanction has been imposed, does not have sufficient assets in the Member State of the requesting authority;

2. may receive and render assistance in the cases which do not fall within the scope of item 1, including when the undertaking or the association of undertakings, on which the sanction has been imposed, is not established in the Member State of the requesting body; in such cases, it shall not be necessary for the requesting authority to provide information showing its efforts to ensure implementation of the decision in its territory.

(2) The legality of a decision to be enforced and of the uniform instrument allowing enforcement in the Member State of the requested authority shall be appealed before the competent authorities of the Member State of the requesting authority in accordance with the legislation of that Member State.

(3) Implementing measures taken in the Member State of the requested authority shall be appealed before the competent authorities of the Member State of the requested authority in accordance with the law of that Member State.

(4) The national law of the Member State of the requesting authority shall apply with respect to the limitation periods for the execution of decisions imposing sanctions or periodic proprietary sanctions.

### **Claims for compensation**

Art. 104. (revoked - SG 2/18)

## **Chapter fifteen.**

### **LIABILITY FOR DAMAGES IN TORT (NEW - SG 2/18)**

#### **Section I.**

#### **General rules (new - SG 2/18)**

### **Actions for damages**

Art. 105. (new - SG 2/18) (1) For damages caused as a result of infringements committed under this Act, the guilty party shall pay compensation.

(2) All natural and legal persons, to which damages were caused, have the right to full compensation, even if the infringement was not directed against them directly.

(3) Actions for damages are brought in accordance with the Civil Procedure Code.

(4) The decision of the Supreme Administrative Court in force, which confirms a decision of the Commission to establish an infringement of the law, has a binding force for the civil court on the fact of the offense and the infringer. The binding force for the civil court on the fact of the offense and the infringer also has a decision of the commission, which has not been appealed or the appeal against it has been withdrawn.

### **Compensation in full**

Art. 106. (new - SG 2/18) (1) Compensation in full places the injured person in the situation in which it would have been if the breach of competition law has not been committed.

(2) Compensation in full covers the right to compensation for the loss suffered and for the lost benefits together with the due legal interest.

(3) Compensation in full can not be excessive in relation to the damage suffered.



## **Section II.**

### **Liability for Damages in Tort following an infringement under chapters three and four and under Art . 101 and 102 of the Treaty on the Functioning of the European Union (new - SG 2/18)**

#### **Transfer of overcharges**

Art. 107. (new - SG 2/18) (1) Anyone who has suffered damage, whether direct or indirect purchaser, is entitled to compensation.

(2) Compensation may also be sought where the infringement of competition law is linked to a supply for the undertaking, which committed the infringement.

(3) Compensation for the losses incurred at each level of the supply chain can not exceed the overcharge at this level.

(4) The injured party is entitled to compensation for lost profits, including full or partial transfer of the overcharge over the supply chain.

(5) The court determines the amount of the overcharge that has been transferred to another level of the supply chain.

#### **An objection to a transferred overcharge**

Art. 108. (new - SG 2/18) Defendant in a actions for damages may object, that the plaintiff has transferred all or part of the overcharge in the supply chain. The defendant must prove the facts on which he bases his objection.

#### **Indirect purchasers**

Art. 109. (new - SG 2/18) (1) In assessing the merits of the action for damages and determining the amount of compensation the court shall ascertain whether and to what extent an overcharge has been transferred to the plaintiff. The existence and extent of this transfer are proved by the plaintiff.

(2) Unless proved otherwise, it shall be assumed that there is a transfer of overcharge value when the indirect purchaser has proven that:

1. the defendant committed an infringement of competition law;
2. the infringement of competition law has led to an overcharge for the direct purchaser, and
3. the indirect purchaser has purchased the goods or services which are the subject of the infringement or has purchased goods or services obtained or containing such goods and services.

#### **Actions for damages from plaintiffs at different levels of the supply chain**

Art. 110. (new - SG 2/18) (1) In assessing the liability of the infringer in actions for damages, brought by plaintiffs at different levels of the supply chain, the following circumstances are relevant:

1. the existence of actions for damages which are linked to the same infringement but are brought by plaintiffs from other levels of the supply chain;
2. judgments on actions for damages referred to in item 1;
3. publicly available information on the enforcement of competition law by the competent authorities.

(2) Para. 1 shall not affect the powers of national courts according to Art. 30 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OB, L 351/1 of 20 December 2012).

#### **Limitation**

Art. 111. (new - SG 2/18) (1) The limitation period begins to run from the day of the cessation of the infringement provided that the plaintiff knows or can be expected to know of:

1. the conduct which constitutes an infringement of competition law;
2. the damage caused to him, and
3. the infringer.

(2) The limitation period is interrupted by initiating a procedure by an authority for protection of competition for establishing a committed infringement. During the proceedings before the Commission, limitation does not run as a new limitation period begins to run one year after the entry into force of the decision, establishing an infringement or the closure of the proceedings before the authority.

(3) In the case of an action for damages against an immunity recipient the limitation period begins to run as soon as it is established, that full compensation can not be obtained from the other infringers, who are jointly liable for the damages caused.

(4) In the case of out-of-court settlement of an action for damages limitation period does not run until the settlement of the dispute lasts, and only in respect of the parties involved.

### **Out-of-court settlement of an actions for damages**

Art. 112. (new - SG 2/18) (1) When the court is approached with action for damages, may suspend the proceedings brought before it for a period of up to two years, where the parties are involved in an out-of-court settlement of the dispute which is the subject of the case.

(2) When reaching an out-of-court settlement of the dispute the claim of the injured party concerned on the damages caused to him by the infringement is reduced by the share of the co-infringer of the infringement agreed with him. The remainder of the injured party's claim may be brought only against co-infringers not involved in the settlement.

(3) When not involved in the settlement of the dispute co-infringers can not pay damages, corresponding to the remainder of the injured party's claim, involved in the settlement of the dispute, the latter may bring the remainder of his claim against the co-infringer involved in the dispute settlement. The application of this provision may be expressly excluded by the parties in the settlement of the dispute.

### **Assessing the amount of damage**

Art. 113. (new - SG 2/18) (1) At the request of the court, the Commission, within the scope of its competence, assists it in assessing the amount of the damage where this is necessary to protect the interests of the injured person.

(2) Until proven otherwise, it is assumed that the cartel is causing damage.

(3) If it is found that the plaintiff has suffered damage, the court shall award compensation in accordance with [Art. 162 of the Civil Procedure Code](#), even where, on the basis of the evidence available, it is impossible to assess with precision the amount of damage caused.

### **Effect of the decisions of the competition authorities or of the courts of the Member States of the European Union**

Art. 114. (new - SG 2/18) (1) Decision in force of a competition authority or a court of another Member State of the European Union which establishes an infringement of competition law may be submitted as evidence in damages proceedings. Until the contrary is proved, the court must accept the fact of the offense and the infringer as a matter of fact.

(2) Regarding the effect of decisions of the European Commission shall apply Article 16 of Regulation (EC) No 1/2003.

## **Joint and several liability**

Art. 115. (new - SG 2/18) (1) Where the infringement of competition law has been committed by two or more undertakings or associations of undertakings they are jointly and severally liable for the damage caused by the breach.

(2) Without prejudice to the right to compensation in full where the co-infringer is a small or medium enterprise within the meaning of the [Act on the Small- and Medium-Size Enterprises](#) it is liable only to its direct and indirect purchasers or suppliers when:

1. its market share in the relevant market was below 5% throughout the infringement period, and
2. the application of the rules on joint and several liability would irreparably threaten its economic viability and would cause his assets to lose their full value.

(3) The exception under para. 2 shall not apply where:

1. the small or medium-sized enterprise had a leading role in committing the infringement or had compelled other enterprises to participate, or
2. it is established that a small or medium-sized enterprise has already committed an infringement of competition law.

(4) An immunity recipient is jointly and severally liable, as follows:

1. to their direct and indirect purchasers or suppliers, and
2. to other injured parties only when full compensation can not be obtained from the other undertakings which participated in the same infringement.

## **Regressive claim**

Art. 116. (new - SG 2/18) (1) A co-infringer, who has paid more than his share shall be entitled to a regressive claim against any other co-infringer for the difference according to their relative liability for damages caused by the infringement of competition law. The amount owed by a co-infringer who is an immunity recipient can not exceed the amount of the damage he has caused to his direct or indirect purchasers or suppliers.

(2) In the case of damage caused to persons other than direct or indirect purchasers or suppliers of infringers the sum due to the other co-infringers of an immunity recipient shall be determined by reference to his relative liability for such damage.

(3) A co-infringer of an infringement of competition law, not involved in an out-of-court settlement of the damage, caused by the infringement, has no right of regressive claim against a co-infringer involved in the settlement of the dispute.

(4) When determining the amount that the court may award to a co-infringer involved in out-of-court settlement of the dispute in his regressive claim against another co-infringer shall be taken into account both the relative liability of infringers for the damages caused by the infringement and the amount of all compensations paid out of the out-of-court settlement of the dispute.

## **Provision of evidence**

Art. 117. (new - SG 2/18) (1) Upon a reasoned request by the plaintiff, based on reasonably available facts and evidence the court may order the defendant or third party to provide the evidences relevant to the case, which are under their control. The defendant also has the right to request the provision of evidence relevant to the case. This paragraph shall be without prejudice to the powers of the court under the Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OB, L 174/1 of 27 June 2001).

(2) The court shall order the provision of evidences which are set out as specifically and precisely as possible in the evidentiary request.

(3) The court assesses the proportionality of the evidentiary claim taking into account the legitimate interests of all concerned parties and third parties, assessing:

1. the extent to which the plaintiff's claim or defense of the defendant is supported by the facts and evidence which justify the request for provision of evidences;
2. scope and cost of providing evidence, especially for third parties by not allowing unspecified requests for provision of evidences, which are not relevant to the parties;
3. whether the evidences which presentation is required contain confidential information, particularly that relating to third parties and the existing regime for the protection of such confidential information.

(4) The court shall order the provision of evidences containing confidential information, in cases where it considers them to be relevant to the action for damages. The court shall take effective measures to protect the evidences, containing a business, trade or other secret protected by law.

(5) The court shall apply the applicable European Union law and the national legislation of the Republic of Bulgaria on the protection of professional secrecy.

(6) Before ordering the provision of evidence, the court may allow the persons required to submit their evidences to be heard.

(7) It is inadmissible to refuse to provide evidence because of the possibility of using them against the person from whom they are requested in claims for damages as a result of an infringement of competition law.

### **Presentation of evidence collected on the correspondence of a competition authority**

Art. 118. (new - SG 2/18) (1) When ordering the presentation of evidence collected on the correspondence of a competition authority, court assesses the proportionality of the evidentiary claim in accordance with **Art. 117, para. 3**, taking into account also the following circumstances:

1. whether the request is formulated specifically with regard to the nature, subject matter and content of the documents or is formulated as a request of general nature;
2. whether the party requesting provision of them has made it in connection with an action for damages before a national court, and
3. the need to ensure the effective application of competition law by public authorities in accordance with para. 2 and 4 or at the request of a competition authority in accordance with par. 9.

(2) The court orders the competition authority to provide evidences contained in its correspondence when a party or third party is unable to provide that evidence.

(3) It is not permissible to collect evidence constituting internal documents of the competition authority, including its correspondence with other competition authorities.

(4) The Court may order the production of the following evidence only after the competition authority has concluded the proceedings before itself by way of a decision or on any other grounds:

1. information which has been prepared by a natural or legal person specifically for proceedings before a competition authority;
2. information which has been prepared by a competition authority and has been sent to the parties in the course of its proceedings;
3. applications for an agreement having been withdrawn.

(5) It is not allowed to collect the following evidences:

1. a request for immunity from sanctions or a reduction of sanctions, and
2. request reaching an agreement.

(6) At the request of the plaintiff, the court may verify whether the content of the evidences referred to in para. 5 corresponds to the definitions in **§ 1, items 34 and 36 of the additional provisions**. No other party or third party shall be given access to such evidences. When conducting the verification, the court may seek assistance from the competent competition authority only. The request senders under para. 5 have the right to be heard before the court.

(7) In the event that para. 5 applies only to parts of the requested evidences, the court shall assess th

em for the remainder according to para. 1 - 6.

(8) The competition authority may, at its discretion, submit written objections regarding the proportionality of the request for evidence before the court.

### **Restrictions on the use of evidence obtained only through access to the correspondence of a competition authority**

Art. 119. (new - SG 2/18) (1) The evidences listed in **Art. 118, para. 5** which are received by a natural or legal person only by exercising its right of access to the correspondence of a competition authority are inadmissible on actions for damages.

(2) The evidences listed in Art. 118, para. 4 which are received by a natural or legal person only by exercising its right of access to the correspondence of a competition authority are inadmissible on actions for damages, before the competition authority has concluded the proceedings before itself by way of a decision or on any other grounds.

(3) The evidences, received by a natural or legal person only by exercising its right of access to the correspondence of a competition authority and which do not fall within the scope of para. 1 or 2, can only be used for actions for damages, brought by that person or by a natural or legal person, who has assumed his rights, including a person who has acquired his right to a claim.

### **Property sanctions and fines**

Art. 120. (new - SG 2/18) (1) The natural persons who are parties, third parties or their representatives shall be punished by the court with a fine in the amount of BGN 500 to BGN 50 000 in case of:

1. non-fulfilment of the court order to provide evidence;
2. destruction of evidence relevant to the case;
3. non-fulfilment of the obligations imposed by the court order to protect confidential information;
4. infringement of the restrictions on the use of evidences, provided in **Art. 118 and 119**.

(2) Legal persons, which are parties, third parties or their representatives shall be punished by the court with a property sanction in the amount of BGN 5000 to BGN 500 000 in case of:

1. non-fulfilment of the court order to provide evidence;
2. destruction of evidence relevant to the case;
3. non-fulfilment of the obligations imposed by the court order to protect confidential information;
4. infringement of the restrictions on the use of evidences, provided in Art. 118 and 119.

(3) The court may also accept as proven the facts about which the party has created obstacles as well as to adjudicate the costs of the case in burden of the party at fault.

### **Additional provisions**

§ 1. In the meaning of this Act:

1. (suppl. – SG 17/21, in force from 26.02.2021) "Internal documents" are: documents created by the Commission and/or by the administration within the course of the proceedings under this Act (drafts, opinions, reports of working teams, memorandums, etc.); documents presenting correspondence of the Commission with the European Commission, with the competition authorities of the Member-States of the European Union, with law enforcement authorities under Directive (EU) 2019/633, with the competent national authorities under Regulation (EU) 2017/2394; other documents of the Commission and/or the administration, connected with its operative activity.

3. "Fair trade practice" shall be the rules, determining the market behaviour, which arise from the laws and the custom trade relations and do not harm the good moralities.

3. "Electronic evidence" is evidence, collected by an undertaking or association of undertakings dur

ing an inspection is carried out, in electronic format, by way of copying electronic documents or statements in electronic format.

4. "Interested person" is a person, undertaking or association of undertakings, whose interests may be impacted by an infringement of the Law.

5. (amend. - SG 2/18) "Cartel" is an agreement and/or coordinated practice between two or more undertakings in order to coordinate their competitive behavior on the relevant market or influencing relevant competition parameters through practices, such as setting or coordinating purchase or sales prices or other trading conditions, including with regard to intellectual property rights, setting quotas for production and sales, market and customer sharing, including manipulation of public auctions or procurements, restrictions on imports or exports or anti-competitive actions against other competitors.

6. "Periodical property sanction" is a pecuniary sanction, determined as a concrete amount, which is imposed per day to an undertaking in order to force it to stop infringement of the law or to execute a concrete action, as decreed by the Commission on the grounds of its powers assigned by this Act.

7. "Undertaking" is every natural, legal person or a non-personified entity, which carries out business activity, not depending on its organizational form.

8. "Continued infringement" is this infringement, where two or more deeds – actions or inactions, are performed during not long periods from time to time in one and the same factual circumstances, whereas the forthcoming ones appear as an extension to the previous.

9. "Production or trade secret" are facts, information, decisions and data connected with the business activity, and keeping in secret of which is in the interest of the entitled persons, for which they have taken appropriate measures.

10. "Professional secret"

a) any information, which Commission creates or acquires for the purposes of the investigation under this Act or in connection with it or dissemination of which may endanger the business interests or the prestige of the parties to the correspondence or of a third person; professional secret does not present service secret in the meaning of the Protection of the Classified Information Act;

b) (suppl. – SG 17/21, in force from 26.02.2021) information, exchanged between the Commission, the national competition authorities of the Member-States, and the European Commission, as well as the information exchanged between the Commission and the national law enforcement authorities under Directive (EU) 2019/633 and the European Commission and between the Commission and the competent national authorities under Regulation (EU) 2017/2394 and the European Commission in connection with execution of their powers and the co-operation between them.

Information, available to the public or is subject to public announcement according this Act or under another Act shall not be considered "Professional secret".

11. "Advertisement" is any message in connection with trade, craft or a profession, which aims to encourage the realization of goods and services, including real property, rights and obligations.

12. "Association of undertakings" is an association on professional basis and other forms of association of independent undertakings, which does not perform separately self-dependent business activity and respectively does not share profit.

13. "Business activity" is the activity of undertakings, results of which are purposed for market exchange.

14. "Concerted practice" shall be coordinated actions or inactions of two or more undertakings.

15. "Relevant market" consists of:

a) "product market", where all goods and services which can be accepted as interchangeable with regard to their characteristic, purposes and prices are included;

b) "geographic market", includes a definite territory, where the respective interchangeable goods or services are offered and where the competition terms are equal and differ from these in neighbouring regions.

16. (amend. - SG 2/18, suppl. – SG 17/21, in force from 26.02.2021) "Grave infringement" is an infringement under Art. 15 and 21 of this Act and/or under Art. 101 and 102 of the Treaty on the Functioning of

f the European Union, which impacts or could impact significantly and durably within the time the competition environment on a substantial part of the national market, as well as all cases of cartel.

17. "Forensic evidence" is evidence, collected upon inspection on spot by specialized technical devices (forensic laboratory) for restoration, certification the authenticity and analysis of digital information, presenting an exact copy (forensic image) of the concrete carrier of that information.

18. "Digital evidence" is information of evidential quality, which is being kept or transferred in digital format.

19. (new - SG 2/18) "Infringement of competition law" is an infringement of Art. 101 or 102 of the Treaty on the Functioning of the European Union or of Art. 15 or 21 of this Act.

20. (new - SG 2/18) "Infringer" means the undertaking or association of undertakings which has committed an infringement of competition law.

21. (new - SG 2/18) "National competition law" are the provisions of national law which in principle regulate the same social relations as those under Art. 101 and 102 of the Treaty on the Functioning of the European Union and which are applied in the same case, along with competition law of the Union under Article 3 paragraph 1 of Regulation (EC) № 1/2003, excluding the provisions of national law which provide for the imposition of a fine on natural persons, except in so far as fines are a punitive measure ensuring the application of the competition rules applicable to undertakings.

22. (new - SG 2/18) "Co-infringer" is a participant in an infringement of competition law committed by more than one infringer.

23. (new - SG 2/18) "Action for damages" is an action in which a claim is made before a court for damages, suffered by a person claiming to be injured, or acting on behalf of one or several persons claiming to be injured, or by a natural or legal person, who is the legal successor of a person, claiming to be injured, including the person who has acquired the right to claim.

24. (new - SG 2/18) "Claim for damages" is a claim for compensation for damages caused by an infringement of competition law.

25. (new - SG 2/18) "Injured Person" is a natural or legal person who has suffered damage as a result of an infringement of competition law.

26. (new - SG 2/18) "National Authority for the Protection of Competition" is a Authority designated by a Member State under Article 35 of Regulation (EC) No 1/2003 as being responsible for the implementation of Art. 101 and 102 of the Treaty on the Functioning of the European Union.

27. (new - SG 2/18) "Authority for the Protection of Competition" is the European Commission or a Authority designated by a Member State pursuant to Article 35 of Regulation (EC) No 1/2003 as responsible for the application of Art. 101 and 102 of the Treaty on the Functioning of the European Union on its territory, or both, depending on the context.

28. (new - SG 2/18) "National court" is a court or a jurisdiction of a Member State within the meaning of Article 267 of the Treaty on the Functioning of the European Union;

29. (new - SG 2/18) "Court, exercising judicial control" is a national court which, in the ordinary course of appeal, has the power to exercise judicial control on the acts of a national competition authority or on court acts, issued on acts of a national competition authority irrespective of whether that court has the power to ascertain infringements of competition law.

30. (new - SG 2/18) "Decision to ascertain an infringement" is a decision of a competition authority or a court exercising judicial control which ascertains an infringement of competition law.

31. (new - SG 2/18) "Final decision to ascertain an infringement" is a decision to ascertain an infringement which can not be appealed or can no longer be appealed under the general procedure.

32. (new - SG 2/18) "Evidences" are all types of evidences regardless of their source admissible before the national court and in particular documents and all other items containing information, regardless of the medium on which it is stored.

33. (new - SG 2/18) "Leniency program" is a program related to the implementation of Article 101 of the Treaty on the Functioning of the European Union or of the Art. 15, on the basis of which a participant

in a secret cartel, regardless of the other undertakings involved in the cartel, cooperates in an investigation conducted by a competition authority, as he voluntarily provides the data available to him about the cartel and the role of the participant in return for which, by decision or by termination of proceedings, the participant is an immunity recipient for his participation in the cartel or the amount of his sanction is reduced.

34. (new - SG 2/18) "Leniency statement" is an oral or written voluntary statement made before a competition authority by an undertaking or natural person or on their behalf describing their knowledge of a particular cartel and the role of the undertaking or the natural person in it as the statement being made for participation in a leniency program and it does not including already existing information.

35. (new - SG 2/18) "Already existing information" is data which exist independently of proceedings before a competition authority regardless of whether such information is contained in the correspondence of competition authority.

36. (new - SG 2/18) "Request for reaching an agreement" is a voluntary statement made by an undertaking or on its behalf before a competition authority, which contains confirmation from the undertaking or refusal to contest its participation in an infringement of competition law, as well as its liability for this infringement of competition law as the statement was made for the purpose of implementing a simplified or accelerated procedure.

37. (new - SG 2/18) "Immunity recipient" undertaking which, or a natural person who, has been granted immunity from fines by a competition authority under a leniency program.

38. (new - SG 2/18) "Overcharge" is the difference between the price actually paid and the price which would have been determined in the absence of an infringement of competition law.

39. (new - SG 2/18) "Out-of-court dispute settlement" is any method that allows the parties to resolve the dispute concerning the claim for damages out of court.

40. (new - SG 2/18) "Consensual settlement" is an agreement reached through consensual dispute resolution.

41. (new - SG 2/18) "Direct Purchaser" is a natural or legal person who has acquired directly from the infringer products or services, which are subject to an infringement of competition law.

42. (new - SG 2/18) "Indirect purchaser" is a natural or legal person who has acquired indirectly from the infringer, but from a direct purchaser or a subsequent purchaser products or services, which are subject to an infringement of competition law, or products or services containing or derived from such products or services.

43. (new - SG 2/18) "Supply Chain" The supply chain exists when goods or services are transferred successively to different levels of trade in original or processed form, until the final product is made available on the market.

44. (new – SG 17/21, in force from 26.02.2021) "Enforcement proceedings" shall mean proceedings before a competition authority for the application of Art. 101 or 102 of the Treaty on the Functioning of the European Union, until that competition authority has closed such proceedings by taking a decision establishing violations under this law, as well as under Art. 101 and 102 of the Treaty on the Functioning of the European Union; the sanctions provided by law shall be imposed; ordered shall be the cessation of violations, including by imposing appropriate behavioural and/or structural measures to restore competition; it shall be established that there are no grounds for taking action for a committed violation under Art. 101 and 102 of the Treaty on the Functioning of the European Union; imposed shall be temporary measures in the cases provided by law; approved shall be the undertaking of obligations by undertakings, in case it is taken by a national competition body, or by a decision referred to in Art. 7, 9 or 10 of Regulation (EC) № 1/2003, in the case of the Commission, or as long as the competition authority has not concluded that there are no grounds for further action on its part.

45. (new – SG 17/21, in force from 26.02.2021) "Secret cartel" shall mean a cartel whose existence is partially or completely concealed.

46. (new – SG 17/21, in force from 26.02.2021) "Immunity from sanctions" shall mean an exemption from sanctions which would otherwise be imposed on an undertaking for its participation in a secret cartel



l, in order to reward it for its cooperation with a competition authority in the framework of a Leniency Programme.

47. (new – SG 17/21, in force from 26.02.2021) "Reduction of sanctions" shall mean a reduction in the size of the sanction that would otherwise be imposed on an undertaking for its participation in a secret cartel, in order to reward it for its cooperation with a competition authority in the framework of a Leniency Programme.

48. (new – SG 17/21, in force from 26.02.2021) "Immunity from sanctions or reduction of their size" shall mean both immunity from sanctions and reduction of their size.

49. (new – SG 17/21, in force from 26.02.2021) "Applicant" shall mean an undertaking that applies for immunity from sanctions or reduction of their size within the framework of a Leniency Programme.

50. (new – SG 17/21, in force from 26.02.2021) "Requesting authority" shall be a national competition authority, which submits a request for rendering mutual assistance under **Art. 54, 54a, 93, 93a** and **103a**.

51. (new - SG 17/20, in force from 26.02.2021) "Requested authority" shall be a national competition body, which receives a request for rendering mutual assistance, and in case of a request for assistance under **Art. 54, 54a, 93, 93a** and **103a**, it is the competent public authority which has the main responsibility for the implementation of such decisions under national laws, regulations and administrative practice.

52. (new – SG 17/21, in force from 26.02.2021) "Economic succession" shall exist when, regardless of whether the infringing undertaking exists or has been deleted before the issuance of a final decision for imposing proprietary sanctions, the activity with which the infringement was committed has been transferred or is carried out by another operator, in circumstances which fall outside normal market conditions and which can only be explained by an attempt to avoid liability for the infringements committed. In all cases, there is economic succession when an undertaking, with which the offender is under common control, takes over the activity with which the infringement was committed.

53. (new – SG 17/21, in force from 26.02.2021) "Agricultural and food products" shall mean the products listed in Annex I to the Treaty on the Functioning of the European Union, and products not listed in this Annex, but obtained from the processing of the products listed in the Annex for use as food.

54. (new – SG 17/21, in force from 26.02.2021) "Perishable agricultural and food products" shall mean agricultural and food products which, due to their nature or due to the stage of processing at which they are found, are likely to become unfit for sale within 30 days of harvest, production or processing.

55. (new – SG 17/21, in force from 26.02.2021) "Buyer of agricultural and food products" shall mean any natural or legal person, regardless of its place of establishment, or any public body, who buy agricultural and food products, including a group of such individuals and legal entities.

56. (new – SG 17/21, in force from 26.02.2021) "Supplier of agricultural and food products" shall mean any agricultural producer or any natural or legal person, regardless of their place of establishment, who sell agricultural and food products. The term "supplier" may include a group of such farmers or a group of such natural and legal persons such as producer organizations, supplier organizations and associations of such organizations.

57. (new – SG 17/21, in force from 26.02.2021) "Public body" shall mean the national, regional or local bodies, public-legal organizations or associations of one or several such bodies or of one or several such public-legal organizations.

58. (new – SG 17/21, in force from 26.02.2021) "Infringements which fall within the scope of Regulation 2017/2394" shall mean:

a) an infringement within the European Union is any action or inaction constituting misleading or unlawful comparative advertising which has harmed, is harming or is likely to harm the collective interests of consumers residing in a Member State other than that in which:

aa) the action or inaction has begun or has been committed;

bb) the trader responsible for the action or inaction is established, or in which

cc) there is evidence or assets of the trader that are related to the action or inaction;

b) widespread infringement is any action or inaction constituting misleading advertising or unlawful

l comparative advertising which has harmed, is harming or is likely to harm the collective interests of consumers residing in at least two Member States other than the Member State in which:

aa) the action or inaction has begun or has been committed;

bb) the trader responsible for the action or inaction is established, or in which

cc) there is evidence or assets of the trader which are related to the action or inaction constituting misleading advertising or unlawful comparative advertising, or any action or inaction constituting misleading advertising or unlawful comparative advertising which has harmed, is harming or is likely to harm the collective interests of consumers, and has common characteristics, including the same illegal practices, infringement of the same interests, and which is committed simultaneously by the same trader in at least three Member States;

c) a widespread infringement with a Union dimension is a widespread infringement which has harmed, is harming or is likely to harm the collective interests of consumers in at least two thirds of the Member States, which together represent at least two thirds of the population of the European Union.

59. (new – SG 17/21, in force from 26.02.2021) "European Competition Network" shall mean a network of public bodies formed by the national competition authorities and the European Commission for the purpose of providing a forum for discussion and cooperation regarding the application and implementation of Art. 101 and 102 of the Treaty on the Functioning of the European Union.

§ 2. (Suppl. - SG 2/18, amend. – SG 17/21, in force from 26.02.2021) This Act introduces provisions of:

1. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

2. Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OB, L 349/1 of 5 December 2014).

3. Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ L 11/3 of 14 January 2019).

4. Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111/59 of 25 April 2019).

§ 3. If a position in the Commission` administration is being occupied by civil servant graduated in law, his/her time of service shall be recognized as legal practice as per the Judiciary System Act and the Attorney Act.

§ 4. (New – SG 17/21, in force from 26.02.2021) This Act provides for measures for the implementation of Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345/1 of 27 December 2017).

### **Transitional and concluding provisions**

§ 4. The Law on Protection of Competition (prom. SG 52/1998; Decision No. 22 of the Constitutional Court of 1998 – SG 112/98; amend SG 81/1999; 28/2002; 9 and 109/2003; 105/2005; 37, 59 and 86/2006; and 64/2007) is repealed.

§ 5. (1) With the purpose to observe the principle of succession in the work of the Commission where  
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n carrying out the first election of Members of the Commission on Protection of Competition under Art. 4, Para 3, three of the four members of Commission shall be elected for a period of 3 years.

(2) Members of Commission on Protection of Competition, including the Chairperson and the Deputy – Chairpersons, up to the date on which this Act becomes effective, shall continue to execute their functions until the newly elected members of the Commission take their position.

§ 6. (1) Pending cases to the moment of this Act becomes effective correspondences before the Commission for Protection of Competition shall be finalized under the existing procedure.

(2) Applications, filed under the repealed Protection of Competition Act, on which proceedings by the Commission have not been started, shall be processed following the procedure of this Act.

§ 7. (1) Pending at the moment of this Act becomes effective proceedings before the Commission on Protection of the Consumers shall be finalized under the procedure set forth in the Law on Protection of Consumers.

(2) Indications, complaints and applications filed to the Commission on Protection of Consumers with relation to Chapter Three "Misleading and Comparative Advertising" of the Consumer Protection Act, proceedings on which still has not been initiated, shall be considered following the procedure under this Act.

§ 8. Pending cases shall be finalized under the procedure being effective at the moment of their initiation.

.....

§. 12. Within 3 months term after this Act enters into force, Commission shall adopt the Structural Regulations envisaged in Art. 6, Para 1, and within 6 months period – the acts provided in this Act.

§ 13. Execution of the Act shall be assigned to the Commission on Protection of Competition.

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This Act was adopted by the 40th National Assembly on 14th of November 2008 and was sealed with the official stamp of the National Assembly.

### **Transitional and concluding provisions**

## **TO THE ACT AMENDING AND SUPPLEMENTING THE PROTECTION OF COMPETITION ACT**

(PROM. - SG 54/10)

§ 5. (1) Within a month from the entry into force of this Act the National Assembly shall elect the members of the Commission on Protection of Competition.

(2) Till inauguration of new members of the Commission on Protection of Competition the previous members shall continue to perform their functions.

§ 6. Within two months from the entry into force of this Act the Commission on Protection of Competition shall adopt amendments and supplementations of the Structural Regulations of the Commission on Protection of Competition.

### **Transitional and concluding provisions**

## **TO THE ACT AMENDING AND SUPPLEMENTING THE PROTECTION OF COMPETITION ACT**

(PROM. - SG 73 20/11, IN FORCE FROM 20.09.2011)

§ 3. (1) Within one month from the entry into force of the present Act the National Assembly shall elect the two new members of the Commission on Protection of Competition.

(2) The new members of the Commission on Protection of Competition under para 1 shall be elected by the National Assembly for the time remaining until the term of office of incumbent members expires.

§ 4. Within two months from the entry into force of the present Act the Commission on Protection of Competition shall adopt amendments and supplements to the Rules of Organisation of the Commission on Protection of Competition.

.....

§ 7. The Act shall enter into force from the date of its promulgation in the State Gazette except for § 2, 5 and 6, which shall enter into force within one month as of the date on which the Act is promulgated in the State Gazette.

**Transitional and concluding provisions**  
**TO THE LAW ON AMENDMENT AND SUPPLEMENTATION OF THE LAW ON THE CIVIL SERVANTS**

(PROM. - SG 38/12, IN FORCE FROM 01.07.2012)

§ 84. (In force from 18.05.2012) Within one month from the promulgation of this Law in the State Gazette:

1. the Council of Ministers shall make the Classification of Offices in the Administration compliant with this Law;
2. the competent authorities shall make the structural acts of the respective administration compliant with this Law.

§ 85. (1) The legal relationships with the persons of the administrations under the Law on the Radio and Television, the Law on the Independent Financial Audit, the Law on the Electronic Communications, the Law on the Financial Supervision Commission, the Law on the Access and Disclosure of Documents and Announcing Affiliation of Bulgarian Nationals to the State Security and Intelligence Services of the Bulgarian People's Army, the Law for Forfeiture of Property Acquired through Criminal Activity, the Law on Prevention and Discontinuance of Conflict of Interests, the Code of Social Insurance, the Law on the Health Insurance, the Law on the Support of Farmers and the Law on the Roads shall be settled under terms and conditions of § 36 of the Transitional and Concluding Provisions of the Law on the Amendment and Supplementation of the Law on the Civil Servants (SG 24/06).

(2) The act of appointment of the civil servant shall:

1. determine the lowest rank for the position specified in the Classification of Offices in the Administration, unless the officer holds a higher rank;
2. determine an individual basic monthly salary.

(3) The additional funds for insurance installments for the persons referred to in Para 2 shall be made available within the limits for expenses for salaries, remunerations and insurance installments in the budgets of the budget credit administrators.

(4) The Council of Ministers shall amend as required by this Law the non-budget account of State Fund "Agriculture".

(5) The governing bodies of the National Insurance Institute and the National Health Insurance Fund shall amend as required by this Law the respective budget credits.

(6) Any non-used days of leave under employment relations shall be preserved and shall not be subject to

ect to pecuniary compensation.

§ 86. (1) Within one month from entry into force of this Law the individual basic monthly salary of the officer shall be so calculated that the said salary, reduced by the due taxes and the mandatory insurance installments due by the insured person, if available, shall not be lower than gross monthly salary received before, reduced by the mandatory insurance installments due by the insured person, if available, and the due taxes.

(2) The gross salary referred to in Para 1 shall include:

1. the basic monthly salary or the basic monthly remuneration;
2. the additional remunerations paid on permanent basis together with the due basic monthly salary or the basic monthly remuneration and dependent only on the working time.

§ 87. This Law shall enter into force from 1 July 2012 except for § 84, which shall enter into force from the day of the promulgation of the Law in the State Gazette.

### **Transitional and concluding provisions TO THE PUBLIC FINANCE ACT**

(PROM. SG 15/13, IN FORCE FROM 01.01.2014)

§ 123. This Act shall enter into force on 1 January 2014 with the exception of § 115, which enters into force on January 1, 2013, and § 18, § 114, § 120, § 121 and § 122, which came into force on 1 February in 2013.

### **Transitional and concluding provisions TO THE ACT AMENDING AND SUPPLEMENTING THE PROTECTION OF COMPETITION ACT**

(PROM. SG 56/15)

§ 9. Within three months after entering of this act into force the Commission for protection of competition shall bring the Structural Regulations for Commission for Protection of Competition into compliance therewith and with the other acts provided therein.

### **Additional provisions TO THE ACT AMENDING AND SUPPLEMENTING THE PROTECTION OF COMPETITION ACT**

(PROM. - SG 2/18)

§ 4. Everywhere in the Act the words: "Art. 81 and 82 of the Treaty establishing the European Community" shall be replaced with words: "Art. 101 and 102 of the Treaty on the Functioning of the European Union", the words: "Art. 81 of the Treaty establishing the European Community" shall be replaced with words: "Art. 101 of the Treaty on the Functioning of the European Union", the words: "Art. 81, para. 1 of the Treaty establishing the European Community" shall be replaced with words: "Art. 101, para. 1 of the Treaty on the Functioning of the European Union", and the words: "Art. 81, para. 3 of the Treaty establishing the European Community" shall be replaced with words: "Art. 101, para. 3 of the Treaty on the Functioning of the European Union".

**Transitional provisions**  
**TO THE ACT AMENDING AND SUPPLEMENTING THE PROTECTION OF COMPETITION A**  
**CT**

(PROM. - SG 2/18)

§ 5. Pending up to 26 December 2014 proceedings for damages actions before national courts shall be completed in the order in which they were instituted.

**Transitional and concluding provisions**  
**TO THE ACT AMENDING AND SUPPLEMENTING THE ADMINISTRATIVE PROCEDURE CO**  
**DE**

(PROM. - SG 77/18, IN FORCE FROM 01.01.2019)

§ 156. The Act shall enter into force on 1 January 2019, with the exception of:

1. paragraphs 4, 11, 14, 16, 20, 30, 31, 74 and § 105 item 1 on the first sentence, and item 2 which shall enter into force on 10 October 2019;

2. paragraphs 38 and 77, which shall enter into force two months after the promulgation of this Act in the State Gazette;

3. paragraph 79, items 1, 2, 3, 5, 6 and 7, § 150 and 153, which shall enter into force on the day of the promulgation of this Act in the State Gazette.

**Transitional and concluding provisions**  
**TO THE ACT AMENDING AND SUPPLEMENTING THE PROTECTION OF COMPETITION A**  
**CT**

(PROM. – SG 17/21, IN FORCE FROM 26.02.2021)

§ 67. After the entry into force of this Act, the acting Chairman, Deputy Chairman and members of the Commission for Protection of Competition shall complete their mandate within the term under **Art. 4, Paragraph 1**.

§ 68. Supply contracts concluded before November 1<sup>st</sup>, 2021, shall be brought into compliance with Chapter Seven "b" within 12 months of the entry into force of the Act.

§ 69. (1) Proceedings under Chapter Seven "a", initiated and unfinished before the entry into force of this Act, shall be completed according to the existing order.

(2) Claims and requests, received under the repealed **Art. 37a**, on which no proceedings have been instituted before the Commission for Protection of Competition, shall be considered according to the existing order.

§ 70. Within three months from the entry into force of the Act, the Commission shall adopt amendments and supplements to the acts provided for therein.

§ 71. (1) Within three months from the entry into force of this Act, upon proposal of the Commission for Protection of Competition, the Council of Ministers shall approve a tariff for fees, which are collected for proceedings before the Commission under **Art. 69** of the act. Until the approval of the tariff under sentence one, shall apply the Tariff for fees collected by the Commission for Protection of Competition under the Protection of Competition Act, approved by Decree № 180 of the Council of Ministers of 1998 (prom. SG 95/98, amend, SG 93/04, SG 54/06, SG 58/14, Decision № 7842 of the Supreme Administrative Court of 2015 - SG 21/16, amend. SG 70/18).

(2) Until the approval of the tariff under Para. 1 for proceedings under Chapter Seven "b" before the Commission for Protection of Competition fees shall be collected in the size for proceedings under Chapter Seven.

§ 72. This Act shall enter into force on the day of its promulgation in the State Gazette, with the exception of § 19, which shall enter into force on November 1, 2021.