



# Bulgaria ❖

A Balkan country, Bulgaria is located in Southeast Europe and borders Romania to the north, Serbia and Macedonia to the west, Greece and Turkey to the south and Black Sea to the East. Bulgaria was part of the Ottoman Empire for around 500 years and northern Bulgaria attained autonomy in 1878 and all of Bulgaria became independent in 1908.

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

In 2004 Bulgaria became a member of NATO, and then the European Union in 2007.

## Economy

Bulgaria, a former Communist country that entered the EU on January 01, 2007 averaged more than 6 per cent annual growth from 2004 to 2008, driven by significant amounts of bank lending, consumption, and foreign direct investment.

Successive governments have demonstrated a commitment to economic reforms and responsible fiscal planning, but the global downturn sharply reduced domestic demand, exports, capital inflows, and industrial production. GDP contracted by 5.5 per cent in 2009, stagnated in 2010, despite a significant recovery in exports, and grew approximately 2.2 percent in 2011.

Despite having a favourable investment regime, including low, flat corporate income taxes, significant challenges remain. Corruption in the public administration, a weak judiciary, and the presence of organised crime continue to hamper the country's investment climate and economic prospects.

A five-year modernisation and development programme was launched by the government in 2007, aimed at strengthening the agricultural sector.

## PROFILE

Population:	7.5 million***
GDP (Current US\$):	52.9 billion***
Per Capita Income: (Current US\$)	6,240 (Atlas method)*** 13,449 (at PPP.)**
Surface Area:	111 thousand sq. km
Life Expectancy:	74 years**
Literacy (%):	98.6 (of ages 15 and above)**
HDI Rank:	55***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2010 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2010 (***) For the year 2011	

## Competition Evolution and Environment

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

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

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

❖ Original paper written (2006-07) & Updated (May 2012) internally by CUTS International.

National Assembly adopted the first Law on Protection of Competition.

Following the efforts to achieve a functioning market economy and with the background of Bulgaria's desire to join the EU, in 1998, a completely new *Law on the Protection of Competition* (LPC) entered into force on April 29, 1998. The new LPC transposed the basic provisions of the Community Competition Law (embodied in the EC Treaty as well as Community regulations and other legislative acts in force at that time), and strengthened the powers of the national competition body – the Commission on Protection of Competition.

The reasons for its adoption may be summarised as follows:

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

### **Competition Law and Institutions**

The new Bulgarian Law on Protection of Competition (LPC) was promulgated in the Bulgarian State Gazette No 102/28.11.2008 and entered into force on 02.12.2008.

The Law was prepared by the Commission on Protection of Competition (CPC) with the assistance of the Italian Competition Authority, a twinning project partner in a PHARE-financed project. The main objective of the Law is to harmonise the Bulgarian legislation with the latest achievements of the EU Law and to guarantee more effective protection of the competition rules.

Along with a number of substantive and procedural amendments to the competition law, the new LPC significantly escalates the level of sanctions, which can be applied by the competition authority – the Commission for the Protection of Competition (the “Commission” or the “CPC”), which are now at par with the levels under European law. The Act extends the application of these substantial sanctions also to cases of unfair competition and misleading and comparative advertising.

This Law aims at ensuring protection and conditions for the promotion of competition and free economic initiative. For this purpose LPC regulates protection against the abuse of monopoly or dominant position on the market that may result in prevention, restriction or distortion of competition in the country and/or have an effect on trade between the Member States of the European Union.

The new LPC explicitly provides for regulation on matters in relation to the application of Articles 101 and 102 of

the Treaty on the Functioning of the European Union (TFEU), including the matter in relation to the application of Council Regulation No 1/2003 of December 16, 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (the Modernisation Regulation) and Council Regulation 139/2004 of January 20, 2004 on the control of concentrations between undertakings (the Merger Regulation).

The new LPC contains the same general prohibition on agreements, decisions and concerted practices as the repealed LPC.

Further it also envisages stronger guarantees for protecting the rights of interested third parties in the proceedings. The appeal can be lodged by the persons, whose interests have been affected or threatened by an infringement of the Competition Act, which means that for a formal application to be lodged a legitimate interest is necessary to be shown.

The CPC is an independent, specialised State authority (funded by the State budget), which is empowered to implement the Law on Protection of Competition (LPC), the Public Procurement Act (PPA) and the Concessions Act (CA). The CPC is guided in its work by its main aim to protect free economic enterprise and normal market relations. The Commission performs its functions from a central office in Sofia.

The Commission on Protection of Competition is entrusted to implement the provisions laid down in the new LPC, the Public Procurement Act and the Concessions Act. The CPC is responsible for investigating all competition infringements and decision-making and has the power to impose sanctions under the LPC. The Law also plays an important role as regards the enforcement activities as well as in the field of competition advocacy.

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

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

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

### Box 1: Bulgaria Breaks EU Competition Law in Sofia Airport

The European Commission has initiated an infringement procedure against Bulgaria over violations of EU anti-monopoly laws with respect to the regulations of service providers at Sofia Airport. Bulgaria has been requested to ensure fair access to ground handling market at its major international airport.

Bulgaria was required to comply with the request, which takes the form of a reasoned opinion under EU infringement procedures, within two months, or else the case could be referred to the EU's Court of Justice.

The purpose was to ensure benefit from the most competitive ground handling services such as baggage handling, catering services, fuel and oil handling, and passenger transport, with knock-on benefits for

passengers. In Bulgaria, only Sofia airport deals with more than two million passengers or 50,000 tons of freight a year.

The Commission considered that Bulgaria failed to meet its obligations under Directive 96/67/EC by imposing excessive conditions on approving service providers, thus maintaining a monopoly position at Sofia airport.

The incorrect transposition of the EU rules lead to unfair competition, resulting in airlines and passengers possibly having to pay more than they should.

The Bulgarian authorities were asked to adopt within two months all necessary measures to ensure compliance with the requirements of Directive 96/67/EC.

*Source: [http://www.novinite.com/view\\_news.php?id=120651](http://www.novinite.com/view_news.php?id=120651) September 30, 2010*

### Anticompetitive Business Practices

The new Competition Law (LPC) is intended to establish and maintain a competitive market. The relevant legislation regulating anticompetitive practices is introduced in the LPC under a separate chapter named Prohibited agreements, decisions and concerted practices. Articles 15 to 18 of the LPC include the applicable rules in this regard.

The Law forbids the abuse of monopoly or dominant position, restrictive agreements, trade restrictive practices, and unfair competition; and seeks to promote consumer protection. A company is deemed to have a dominant position if, in view of its market share, financial resources, possibilities for market access, level of technology and economic relations with other undertakings, it may hinder competition on the relevant market, as it is independent of its competitors, suppliers or customers. A company with a dominant market position is prohibited from: certain pricing practices; limiting manufacturing development to the detriment of consumers; discriminatory treatment of competing customers; tying contracts to additional and unrelated obligations; and unjustified refusal to supply goods or to provide services to actual or potential customers in order to impede their economic activity.

Bulgaria's Supreme Administrative Court (SAC) has recently upheld the decisions of the Bulgarian Commission on Protection of Competition (CPC) against Bulgarian cosmetics manufacturer TSH Cosmetics, which produced and sold children's shampoo similar to the shampoo produced by Bulgaria's oldest cosmetics company Alen Mak.

The CPC issued the decision against THS Cosmetics in June 2010 on the grounds of Article 35, Paragraph 2 of the Law on Protection of Competition. This provision

### Box 2: Bulgarian Cosmetics Manufacturer Fined For Unfair Competition

Bulgaria's Supreme Administrative Court (SAC) has recently upheld the decisions of the Bulgarian Commission on Protection of Competition (CPC) against Bulgarian cosmetics manufacturer TSH Cosmetics, which produced and sold children's shampoo similar to the shampoo produced by Bulgaria's oldest cosmetics company Alen Mak.

The CPC issued the decision against THS Cosmetics in June 2010 on the grounds of Article 35, Paragraph 2 of the Law on Protection of Competition. This provision prohibits the use of a trade name, mark or geographical indication identical or similar to those of other persons, in a manner that may injure the interests of competitors.

The investigation ascertained that the defendant produced and distributed in Bulgaria and Russia shampoo Adventure, which resembled the mark and the overall appearance of shampoo Pa-Pa produced by Alen Mak. The CPC ruled that the similarity was sufficient to mislead consumers and undermine brand distinctiveness.

In its final decision the SAC entirely upheld the CPC's arguments and upheld the CPC's decision fining the defendant USD 96,174 for the infringement.

*Source: <http://www.petosevic.com/resources/news/bulgaria>, March 26, 2012*

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The Law prohibits five specific forms of unfair competition:

- damaging the good name of competitors;
- misleading or comparative advertising;
- imitation;
- use or disclosure of production or trade secrets in violation of good faith commercial practices; and
- 'unfair solicitation of clients (promotion through gifts and lotteries), which may create difficulties for some foreign enterprises.

### Sectoral Regulation

Bulgaria strives to build up competitive and well-regulated markets. The major objective of structural reforms is to make the Bulgarian economy, i.e. its enterprises, institutions etc., a viable and competitive actor in the internal market of the EU, as well as in the global economy.

### Telecommunications Sector

In the telecommunications sector, Bulgaria adopted a law in 1998 (which was then amended in 2001) which provided for the introduction of a liberalised regime for all activities in this sector, except those related to the provision of regular telephone services and the renting-out of telephone lines.

This was the most important step towards the adaptation of the Bulgarian normative basis in the field of telecommunications to the requirements of the EU.

The amendment of the Telecommunications Act in December 2001 led to the establishment of the Communications Regulation Commission which differs substantially from the closed-down State Telecommunications Commission (STC) in terms of its independence, composition and mandate.

This act ensures conditions for:

- creation of a free market and fair competition;
- equality of telecommunications operators;
- universal service provision across the territory of the whole country at affordable prices;
- safeguarding the interests of the national security.

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

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

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

The regulatory authority still needs to be accredited and commercial differences must still be resolved as required under the *acquis*. Legislation must also be adopted to ensure the supply of universal services. The national regulatory authorities should also be provided with the appropriate resources for them to perform the new tasks arising from implementing the recently adopted legislation.

### Energy Sector

The development of the Bulgarian renewable energy sector was placed on the political agenda in Bulgaria with the energy strategy of 2002.

The Bulgarian Parliament had passed a new *Energy Act*, which came into effect on December 13, 2003. The modern Energy Act (2003), which is still in force after several amendments, further contributed to the

#### Box 3: CPC Sanctions 3 Undertakings for Bid Rigging

The Commission on Protection of Competition established that Hornit OOD, Bulgarian VIP Travel and Astral Holidays AD had breached Art. 15, para 1 of the LPC by rigging a tender procedure for the provision of air tickets for public officials. The 3 undertakings were fined a total BGN 2 914 560.

The proceedings were initiated following a request by the Minister of Finance, who was the contracting authority. The CPC established that the defendants had negotiated their tender bids and had coordinated their pricing policy, which undoubtedly had influenced ranking of tenders.

Source: <http://www.cpc.bg>, 2012

development of the Bulgarian renewable energy sector. The Energy Act was issued to further the implementation of Bulgaria's National Energy Strategy. The Act sets forth the legal framework for the deregulation of the country's energy sector and for the promotion of competition in this market. It establishes all prerequisites for the introduction of a market model in the electricity and gas sector of the country, and creates conditions for their full liberalisation.

In May 2011, the Bulgarian government published its new Renewable Energy Act, with considerably less favourable conditions for investors in wind farm and photovoltaic projects. However, it removed some hurdles for installing solar collector systems on residential housing by eliminating construction permits for solar water heater installations. The act aims at meeting the mandatory targets set by EU's Directive on the Promotion of the use of energy from renewable sources.

Bulgaria's renewable energy legislation is fully in harmonisation with EU laws in order to attract major foreign investors.

The National Renewable Energy Action Plan ('NREAP') has also been drawn up in accordance with the requirements of Directive 2009/28/EC and, more specifically, with the template adopted by Commission's Decision of June 30, 2009.

The next major legislative development was the enactment of the Law on Energy Efficiency in March 2004, which was amended several times in order to comply with EC requirements, and the New Energy Efficiency Act, which was adopted in 2008. It introduced mandatory energy audits and the certification of all new buildings, as well as minimum efficiency standards for new constructions and electrical appliances.

The State Energy Regulatory Commission (SERC) was established under the Energy Efficiency Act, as a joint regulatory body in 1999. As of February 2005 it became the State Energy and Water Regulatory Commission (SEWRC) It is authorised to exercise regulation in electricity, natural gas and district heating. SEWRC is also responsible for licensing of enterprises in the gas, electric and district heating sectors and issues permits for construction of transit gas or oil pipelines.

#### **Postal Services**

In August 2000, a new law came into force, establishing the Ministry of Transport and Communications as the body responsible for regulating the postal service. This law also introduced a public monopoly until the end of 2002 in the universal services reserved sector for items weighing not more than 350gm.

#### **Box 4: Bulgarian Bank Fined over Credit Card Campaign**

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

During the campaign in June, the bank offered free trips to Athens, as well as cameras and MP3-CD players, to those who would use the UBB Visa to make purchases of BGN 2,000 or more. This promotional campaign displayed the motto 'Visit Athens with a UBB Visa Credit Card', advertising the UBB Visa and Visa Electron cards. In 2003, the UBB had a 53 percent share in Bulgaria's credit card issuing. The Bulgarian law explicitly bans offering clients any prizes, whose value exceeds that of the marketed product or service.

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

Amendments to the Postal Services Act were adopted at the end of 2001 and entered into force in 2002. As a result, the regulatory functions in this field were transferred from the Ministry of Transport to the Communications Regulation Commission.

In 2004 Bulgaria adopted methodology determining a reasonable price for the universal postal service and demonstrating the failure of universal service provision in the absence of profitability.

Further, Bulgaria's Parliament amended the Postal Services Act in 2011 to remove the monopoly of the state-owned company "Bulgarian Posts EAD". The amendments provide for loyal competition and opportunities for other businesses wishing to provide letter mailing services without legal obstacles.

The amendments were prompted by an EU directive, providing for the full liberalisation of postal markets in Member States by the end of 2012.

#### **Consumer Protection**

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

As part of its efforts to transpose the *acquis*, Bulgaria adopted the Law on Consumer Protection and Trade Rules in March 1999. In accordance with this new Law, a National Council for Consumer Policy was set up in 2000.

## EU crackdown on websites selling consumer electronic goods

EU-wide investigation involving 26 Member States, were carried out into misleading advertising and unfair practices on websites selling consumer electronic goods.

The clampdown covered 369 websites selling six of the most popular electronic goods to consumers in the EU, such as digital cameras, mobile phones, personal music players, DVD players, computer equipment and game consoles. It covered 200 of the biggest websites selling electronic equipment in the EU as well as more than 100 websites which were targeted on the basis of consumer complaints.

The results of the checks carried out in May 2009 had shown that 55 percent of the websites investigated established irregularities, in particular relating to:

- misleading information about consumer rights;
- misleading information about the total cost of the product; and
- incomplete contact details for the trader.

The initial checks by national authorities will now be followed by an enforcement phase when companies are contacted by national authorities and required to correct their websites or clarify their position. Failure to bring the website in line with the law may result in legal action leading to fines or websites being closed.

By September 2010, the sites were corrected and penalties been imposed where necessary.

Source: [http://ec.europa.eu/ireland/press\\_office/newsletter/issue231\\_en.htm#10](http://ec.europa.eu/ireland/press_office/newsletter/issue231_en.htm#10)

Pursuant to the Treaty of Accession of Bulgaria to the European Union, *acquis communautaire* and all acts based on it are in force for Bulgaria as of the date of accession on January 01, 2007. Accordingly, Bulgaria is obliged to take all necessary measures to ensure the correct and legal applying of the acts of the Community.

- general supervision on the observance of the consumer protection legislation;
- issuing instructions for the elimination of violations of the consumer protection legislation;
- co-ordinating the activities of the other bodies having competencies on enforcement of consumer legislation.

In performance of that obligation in the field of consumer protection, on December 09, 2005, a new Consumer Protection Act (CPA) was approved by Parliament and promulgated in the State Gazette. The CPA as entered into force on June 10, 2006 last amended, SG N°18/5.03.2010, effective 05.03.2010, reflects the requirements of:

Besides, the Law on Consumer Credit promulgated State Gazette N°18/05.03.2010, effective 12.05.2010, last amended and supplemented SG N°58/30.07.2010 in force 31.08.2010.

- Council Directive 92/59/EEC of June 29, 1992 on general product safety;
- Council Directive 93/13/EEC of April 05, 1993 on unfair terms in consumer contracts;
- Directive 1999/44/EC of the European Parliament and of the Council of May 25, 1999 on certain aspects of the sale of consumer goods and associated guarantees;
- Council Directive 85/374/EEC of July 25, 1985 on the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products; 3
- Directive 2001/95/EC on general product safety;

Bulgarian Competition Protection Act promulgated State Gazette 102, dated 28.11.2008, also provides for a mechanism to enforce the UCP Directive with respect to competitors. In such case the competent regulatory authority is the Consumers Protection Commission.

The competent coordination and implementation authority in the field of consumer protection is the Minister of Economy, Energy and Tourism, where the controlling authority is the Commission on Consumer Protection with the Minister of Economy, Energy and Tourism.

Federation of Consumers in Bulgaria (FCB) is the biggest not-for-profit consumer association in Bulgaria, set up in May 1990. From July 1991, the FCB has been a member of Consumer International (CI). The representatives of the Federation of Consumers in Bulgaria are members of the National Council for Consumer (a consultative body to the MEET, set up in May 2000) Protection. The Law on Consumer protection establishes the criteria for 'representative consumer association'. The representative consumers' associations may participate in the National Council for Consumer Protection, in collective and advisory bodies on consumer protection in Bulgaria.

The Commission on Consumer Protection (CPC) is responsible for the enforcement of consumer legislation, including general product safety and the protection of the economic interests of consumers. It has the following competencies:

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

### **Concluding Observations and Future Scenario**

As of January 2007, Bulgaria became a member state of the European Union therefore the current applicable legislation in force includes article 101 and 102 TFEU and all Regulations thereto.

The Bulgarian Competition Law is designed to protect and foster competition and free enterprise in the economic activity. Over the years the law was repeatedly changed by the legislature to meet the requirements of economic life.

The Bulgarian Competition law provides protection against agreements, decisions and concerted practices, abuse of monopoly and dominant and all other acts and actions that can lead to the prevention, restriction or distortion of competition in the country and / or affect trade between Member States the European Union, as well as unfair competition. The Act regulates the control of concentrations between undertakings. This law regulates relations concerning the application of Art. 101 and 102 TFEU including cooperation with the European Commission and national competition authorities of the Member States of the European Union.

LPC also provides an array of new tools to the competition authority, including the possibility in impose interim

measures on undertakings in infringement proceedings, and regulates the application of Articles 101 and 102 TFEU by the Commission on Protection of Competition.

Although unfair competition practices or actions are not allowed under the LPC, a peculiar fact about the Law is that there are no criminal provisions for violations of competition law rules.

Further, until the date of accession to the EU, the CPC evaluated the compatibility of State Aid provided by Bulgaria with the State Aids Act and its implementing rules, both of which were harmonised with the *acquis*. However, after accession the EC is the only body competent to examine notifications and assess the compatibility of State Aid provided in Bulgaria.

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

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### **Suggested Readings**

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