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ABSTRACT

Competition Law in Post-Central Planning Bulgaria*

This paper investigates the activities of the Bulgarian competition office, the Commission for the Protection of Competition, during 1991–5. Descriptive statistics are provided on the industry incidence of investigations, the types of behaviour that were investigated, and the frequency with which violations were found and penalties imposed. Although the Commission has attempted to concentrate its efforts in non-tradable sectors and target both cartel and abuse of dominance cases, the remedies that are imposed appear rather ineffective. Moreover, instead of hard core anti-competitive behaviour, much of the Commission's activities have centred on 'unfair' competition (e.g. false advertising, trademark infringement, and the behaviour of ex-employees of specific enterprises). Recently proposed amendments to the law should go some way towards allowing the Commission to focus more narrowly on anti-competitive practices and to strengthen the deterrent effect of the law.

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information. The views expressed are personal and should not be attributed to the World Bank.

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NON-TECHNICAL SUMMARY

Bulgaria, like many other former centrally-planned economies, adopted competition legislation as part of the reform of legal instruments that were required in the transition to a market economy. The legal competition regimes that were put into place in transition economies have been the subject of a number of studies. A recent and comprehensive empirical study of competition policy in the Czech Republic, Hungary, Poland and Slovakia published by CEPR (Fingleton, *et al.*, 1996) concludes that a preponderance of enforcement cases concern abuse of dominance. Many of these revolve around allegations of unfair trade practices and are basically contract enforcement problems. Only a small percentage of cases concern hard core collusive practices that restrict entry/expansion, such as bid rigging, price-fixing, market allocation etc. The study also concludes that remedies for egregious violations of the law are not sufficiently dire to ensure that firms have a strong enough incentive to abide by the law.

This paper investigates the activities of the Bulgarian competition office, the Commission for the Protection of Competition (CPC), for the years 1991–5, drawing upon its Annual Reports and interviews with CPC staff. Our objective is to analyse the activities of the CPC and determine to what extent the conclusions of Fingleton *et al.* carry over to Bulgaria. In addition to standard provisions relating to abuse of dominance and collusion, Bulgaria's competition law includes wide-ranging prohibitions on 'unfair' competitive practices. This covers activities such as false advertising, trademark infringement, and restrictions on the ability of ex-employees of a firm to be engaged by another firm in the same line of activity.

Bulgaria differs from the Visegrád countries in that there has been much less privatization of industry since 1991; indeed, up to end-1995 most manufacturing enterprises were still state-owned. Although entry into industrial activity was liberalized in 1991, most privately-owned firms that were registered are operating in service sectors. Some 910 petitions were filed with the CPC during 1991–5, more than in any of the Visegrád countries. Of these 521 (or 57%) were accepted for investigation, which is quite substantial. For example, during 1984–93, the ten-year period following adoption of a competition law in Portugal, only 55 investigations were launched. Service industries account for two-thirds of all petitions and represent 70% of cases accepted for investigation.

The caseload and activities of the CPC during 1991–5 suggest that it has to some extent pursued an enforcement strategy consistent with economic theory, e.g. it has tended to concentrate its efforts in non-tradable sectors and pursue both cartel and abuse of dominance cases. The remedies that are imposed appear rather ineffective, however. The courts have often declined to approve the penalties sought by the CPC, and inflation has eroded the magnitude of the fines that can be imposed. Moreover, a majority of the CPC's activity has not been targeted at hard core anti-competitive practices. Most investigations have centred on trademark infringement and similar practices, and on the behaviour of ex-employees of specific enterprises, issues that in most market economies would involve enforcement of private contracts or property rights. Usually this would occur through the judicial system. Alternatively, independent administrative bodies may be allocated the task of enforcing contracts. In either case, the competition or anti-trust authority would generally not get involved in such cases. As the CPC cannot impose penalties (it must go through the court system), it fulfills a buffer or intermediary function, filtering the cases that end up in court. This is not necessarily efficient, as the courts reject about half of the cases submitted by the CPC.

The focus on 'unfair practices' cases has diverted a substantial share of the CPC's resources away from what arguably should be its core activity – combating collusive practices that severely restrict competition. Indeed, to some extent the enforcement of the current law may have been detrimental to competition. An example concerns a provision in the law that restricts the ability of managers to seek employment in competing firms or to start their own operations. The economic rationale for this provision is weak at best, since to the extent that there are trade secrets involved this is again a matter of contract enforcement. By preventing mobility the law reduces the value of the human capital of managers and reduces the incentive for the formation of new firms, including entry by foreign investors (who will generally seek to hire local expertise).

Most of the abuse of monopoly (dominant position) cases result in a finding that the law has not been violated. Moreover, in many cases the penalties that are imposed are minor and take a substantial amount of time to materialize as the court system is overburdened, further reducing their incentive effects. In conjunction with the finding that there have been few collusion-type cases, it seems that firms engaging in anti-competitive practices may have little to fear from the competition authorities. This is perhaps not that important in tradable industries. Import barriers are low in Bulgaria, and import competition is vigorous. But it is also clear that in a number of sectors market power of incumbents remains significant, and that there is substantial scope for

behaviour that restricts entry or expansion. Significant potential therefore appears to exist to strengthen the effectiveness of competition enforcement in Bulgaria by focusing the activities of the CPC more frequently on anti-competitive practices that restrict entry and expansion. Recently proposed amendments to the law should go some way towards allowing the CPC to focus more narrowly on anti-competitive practices and to strengthen the deterrent effect of the law.

Competition Law in Post-Central Planning Bulgaria

I. Introduction

Bulgaria, as did many other former centrally-planned economies, adopted competition legislation as part of the reform of legal instruments that were required in the transition to a market economy. Many policy advisors strongly supported the implementation of antitrust mechanisms in these countries, reflecting the highly concentrated nature of industry in their economies. It was also often argued that in the process of privatizing state firms, the need for antitrust was crucial, as many of the enterprises involved were large, if not dominant. Indeed, in some countries competition authorities were given the mandate to impose de-monopolization prior to privatization (e.g., Poland). The legal regimes that were put into place have been the subject of a number of studies.[1] More recently empirical assessments of the enforcement of antitrust legislation have begun to emerge. Much of this literature has centered on the Visegrad countries (the Czech Republic, Hungary, Poland and the Slovak Republic), in part reflecting the availability of information in English and their more advanced status in shifting to a market economy.

A recent and comprehensive empirical study of competition policy in the Visegrad countries by Fingleton et al. (1996) concludes that a preponderance of enforcement cases concern abuse of dominance. Many of these revolve around allegation of unfair trade practices and are basically contract enforcement problems. Only a small percentage of cases were found to concern hardcore collusive practices that restrict entry/expansion, such as bid rigging, price-fixing, market allocation, etc. The study also concludes that remedies for egregious violations of the law are not sufficiently dire to ensure that firms have a strong enough incentive to abide by the law.

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[1] See e.g. Estrin and Cave (1993), Mastalir (1993), Pittman (1992), Saunders (1993), and Willig (1992).

This paper focuses on the activities of the Bulgarian competition office, the Commission for the Protection of Competition (CPC), drawing upon its Annual Reports for 1991-95 and interviews with CPC staff. Our objective is to analyze the activities of the CPC and determine to what extent the conclusions of Fingleton et al. (1996) carry over to Bulgaria. The plan of the paper is as follows. Section II summarizes the main elements of the Bulgarian competition law. Noteworthy is that in addition to standard provisions relating to abuse of dominance and collusion, it also includes wide ranging prohibitions on 'unfair' competitive practices. This covers activities such as false advertising, trademark infringement, and restrictions on the ability of ex-employees of a firm to be engaged by another firm in the same line of activity. Section III briefly describes recent economic developments in Bulgaria and reports data on the evolution of a number of key variables including concentration, import penetration, and foreign investment during 1991-95. Bulgaria differs from the Visegrad countries in that there has been much less privatization of industry since 1991; indeed, up to end-1995 most manufacturing enterprises were still state-owned. Although entry into industrial activity was liberalized in 1991, most privately owned firms that were registered are operating in service sectors.[2] Section IV analyzes the caseload and activities of the CPC during 1991-95 and provides descriptive statistics on the industry incidence of investigations, the types of behavior that were investigated, and the frequency with which violations were found and penalties imposed.

Although in certain respects the statistics suggest that the CPC has pursued an enforcement strategy that economic theory would endorse--e.g. it has tended to concentrate its efforts in nontradable sectors and pursued both cartel and abuse of dominance cases--the remedies that are imposed appear rather ineffective. The courts have often declined to approve the penalties sought by the CPC, and inflation has eroded the magnitude of the fines that can be imposed. Moreover, a majority of the

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[2] See Feinberg and Meurs (1994) on the importance of entry as a source of market discipline in transition economies.

CPC's activity has not been targeted at hardcore anticompetitive practices. Most investigations have centered on trademark infringement and similar practices, and on the behavior of ex-employees of specific enterprises. Recently proposed amendments to the law are discussed in Section V. These should go some way towards allowing the CPC to focus more narrowly on anticompetitive practices and to strengthen the deterrent effect of the law. Section VI concludes.

II. The Legal Framework

The "Law on the Protection of Competition" (published in State Gazette No. 39 of 17 May 1991, Correction State Gazette No. 79/1991) constitutes the legal framework to protect free competition in Bulgaria. The Law deals with 'monopoly positions' (Chapter 2), collusion (Chapter 3) and 'unfair competition' (Chapter 4).

Monopoly positions covers not only monopolies, but also dominant positions and to some extent mergers. According to Article 3, a monopoly position exists if an entity either has the exclusive right to engage in a certain kind of economic activity by virtue of law or has a sales share that exceeds 35% of the national market. All entities are prohibited from adopting decisions that might lead to the creation of 'monopoly positions' if such decisions significantly restrict competition or the free determination of prices (Article 4). If mergers lead to such 'monopoly positions,' they are prohibited as well (Article 5). An exemption, however, may be requested from the competent authority. If no opposition is registered within 30 days of notification, authorization is considered granted (Article 6:2). The law lists a number of abuses of 'monopoly position' including classical cases like price-fixing, restricting output or access to markets, tie-ins, monopoly pricing, and market allocation (Art. 7).

Cartel agreements, as well as decisions of companies, economic groups, associations or persons, which explicitly or implicitly provide for the creation of a monopoly situation in the country, or de facto lead to it, are declared void. Contractual terms restricting one of the parties with respect to

the choice of a market, suppliers, buyers, sellers or consumers, except when the restriction arises from the nature of the contract and is not injurious to the consumers, are prohibited. No single person may conclude a contract for agency, or for acquiring exclusive rights as a commission merchant, buyer or seller of goods or services of competitors, if this leads to a reduction in competition.

Chapter 4 prohibits "unfair competition" which is defined as "any act or conduct in carrying out economic activity which is contrary to bone fide trade practice and harms or threatens to harm the interests of competitors" (Art. 11). Twelve specific instances of unfair competition are listed in Art. 12:2, including disparaging the good name or trust in competing goods or services, spreading false statements about competitors, or presenting true facts in a distorted way; attributing nonexistent properties to goods or services when comparing them with competing goods or services; suppressing or concealing significant defects or dangerous properties of offered goods or services; offering or advertising goods and services with an outward appearance, packaging, labeling, name or other signs which mislead or could mislead consumers as to the origin or producer of a good or service; using a competitor's business name, trade mark or special designations without permission; advertising goods or services not available for meeting consumer demand or in insufficient quantity; and nonperformance of, or unilaterally terminating, a contract with the aim of concluding a similar contract with other persons, to the detriment of the competitive opportunities of the other party. Article 14 prohibits the divulgence of trade secrets and defines when this constitutes unfair competition. Article 15 deals with unfair competition by natural persons. It states that no person is permitted to join the management of a competing firm operating in the same line of business as the person's original employer for the first three years after leaving an enterprise. This is one of the most noteworthy provisions of the law. As discussed further in Section III it has been invoked frequently by incumbents.[3]

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[3] As discussed in Section V below, the CPC has proposed that these provisions be removed from the competition law.

The Commission for the Protection of Competition is entrusted with the enforcement of the law. The CPC consists of a chairman, two vice-chairmen and eight members. All are appointed by the National Assembly for a period of five years. The CPC can self-initiate a case or respond to complaints brought by natural or legal persons. Self-initiation often occurs in instances where "public goods" are involved, including pricing behavior by utilities. Thus, the CPC may observe practices that are likely to violate the law (e.g., through press reports) but where it is unlikely that private incentives are high enough to induce a complaint. It is also used as an educational device, the objective being to educate the public regarding the reach of the law.[4] Noteworthy is that the Commission cannot impose penalties in instances where it has concluded that the law has been breached by a legal entity. In such cases the Commission must submit a petition before the competent Bulgarian Court of Law (Article 18.2 of the Act). The CPC may levy fines only upon natural persons that have been found in violation. In cases where an abuse of monopoly position is found to occur, the CPC may also suggest the imposition of mandatory maximum or minimum prices to the Council of Ministers or a body authorized by it. Court procedures are very slow, in part because about a third of all cases are in provincial courts where the CPC does not have local offices. As of mid-1996 there was a backlog of 47 cases awaiting decisions in such courts. In cases of abuse of monopoly, the maximum fine that can be imposed by the courts is specified in the competition law to be Leva 250,000 (which was about US $10,000 in 1991).[5] Other violations are subject to potentially stronger penalties, including confiscation of profits.

III. Market Structure, Imports and Foreign Investment Trends

Before turning to the activities of the CPC it is helpful to briefly summarize economic developments in

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[4] Interview with Mr. Stanilov, Vice-Chairman of the CPC, December 22, 1996.

[5] No provisions were made for indexing fines. As a result the real value of fines fell very substantially over time. At the end of 1996 the maximum fine was equivalent to $500.

Bulgaria during 1991-95. Starting in February 1991, Bulgaria underwent a "big bang" stabilization and structural reform program.[6] Most prices were liberalized, subsidies to most enterprises cut, and tight monetary, fiscal and incomes policies adopted. Imports were substantially liberalized: exchange controls, quantitative restrictions and licensing requirements were abolished. Collected tariff revenues as a share of total import value averaged less than 10 percent in 1993-94 (IMF, 1995). Export restrictions, initially maintained for agriculture and reflecting food shortages in the country, were mostly abolished by 1993.

Two distinctive factors characterize Bulgaria in the early transition period. First, although efforts were pursued to de-monopolize the economy, privatization was not pursued with any vigor. Transformation of state-owned enterprises (SOEs) and demonopolization of state monopolies was pursued under auspices of a new Commercial Code introduced in 1991. This led to the creation of over 1,100 limited liability and some 400 joint-stock companies (Bogetic and Hillman, 1995, p. 17). Subsequently, many state firms were broken up into smaller entities, and a number of plants closed. Entry and exit in Bulgaria during 1992-94 mostly involves SOEs and reflects the breaking up of large vertically-integrated conglomerates, which were sometimes very dispersed geographically. The "new" firms are therefore parts of old SOEs and remain public sector entities. "Entering" firms account for roughly the same share of aggregate output as exiting entities, but employ much less labor: on average each exiting entity splits into two new enterprises, each of which employs less than a quarter of the "old" labor force (Djankov and Hoekman, 1996). Only about 10 percent of some 3,800 SOEs were privatized between 1992-95, accounting for just 2.5 percent of total assets (Claessens and Peters, 1996). While the continued existence of a large state sector delayed the creation of new private industrial firms, many small firms were created. As of mid-1994, some 330,000 private firms were

[6] See Bogetic and Hillman (1995) for comprehensive discussions of the Bulgarian economy in transition.

registered, up from 24,000 at the end of 1989. Most of these firms focused on the provision of services--both at the retail level (e.g., distribution, restaurants) and business services.

A second factor is subsidies to large enterprises. Kotzeva and Perotti (1996) report that 70% of firm managers in 1994 expected a government bailout in case of poor performance. Soft loans extended to loss-making enterprises undermined the capital base of the banking system and reduced access to credit for other firms. However, aggregate subsidies (budget transfers and soft bank loans) to the industrial sector declined from 16% of GDP in 1990 to 2% of GDP in 1995. As noted by Claessens and Peters (1996), the hard-core of large loss-makers that continued to be financed through loans from state-owned banks, budget transfers, and arrears (tax, wage, and inter-enterprise) were concentrated in the utilities, mining, and construction sectors. Industrial firms generally confronted hard budget constraints early in the transition.

Both factors have implications for antitrust activity. The absence of privatization may imply that there is less cause for concern regarding the exploitation of market power by privatized dominant entities, as SOEs remain subject to Ministerial control and oversight. At the same time, it may also stifle entry, which in principle was opened up with the introduction of the new Commercial Code in 1991. The prevalence of soft budget constraints and subsidies could result in attempts by consumers to use the CPC to ensure that subsidies are passed through to them; it might also give rise to complaints by potential entrants regarding effective foreclosure of markets. However, as mentioned previously, most manufacturing firms received little in the way of direct subsidies. The fact that subsidies tended to go into non-tradables makes it logical that most of the CPC's attention should be devoted to non-tradable industries.[7]

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[7] In contrast to competition legislation in certain Visegrad countries (e.g., Slovakia), the CPC has no mandate to monitor and challenge to provision of subsidies on the basis of their impact on competition. This may change once the law has been amended (see Section V below).

Table 1: Import Penetration, Foreign Investment and Concentration Ratios, 1991-95

Sector	FDI, 1991-95 (US$ Million)	Industry Share in Total FDI (%)	Import Share in Total Consumption (%)		Concentration 1991 (Top 5 Share in Total Sales)	Concentration 1995 (Top 5 Share in Total Sales)
			1991	1995		
Agribusiness	48.4	8.8	4	13	52.4	22.1
Apparel	21.2	3.9	49	73	28.2	24.1
Chemicals	13.4	2.6	21	26	69.2	63.8
Communications	19.7	3.6	0	1	100.0	98.2
Construction	7.1	1.3	2	13	37.1	22.4
Consumer Appliances	18.3	3.4	34	76	48.2	33.9
Education	4.2	0.8	0	7	53.2	24.6
Entertainment	17.8	3.2	0	0	93.8	40.2
Food Industry	121.2	22.1	41	37	21.1	16.3
Health care	7.2	1.3	0	0	82.1	52.3
Insurance	31.7	8.9	0	1	78.3	61.7
Machinery	14.2	2.6	31	41	36.2	22.4
Foreign Trade	2.1	0.4	0	0	74.2	13.8
Publishing	3.4	0.6	3	18	92.1	86.3
Retail Trade	111.9	19.4	0	1	68.3	45.9
Tourism	37.1	6.8	0	0	64.2	32.7
Transport	43.5	7.8	1	4	80.2	77.2
Utilities	23.8	4.3	0	0	91.2	82.9

Sources: Foreign Direct Investment data from the Agency for Foreign Investment; Import penetration and concentration ratios from Annual Statistical Yearbook, various issues.

Some basic economic indicators of market structure in industries that have been subject to antitrust investigations are provided in Table 1. Virtually all tradable sectors experienced a significant increase in import penetration, suggesting that imports are a major source of market discipline. Apparel and consumer appliances stand out, imports accounting for over 70 percent of consumption in

1995. Concentration ratios for these two industries are also low, the top five firms accounting for one-third or less of total sales in 1995. Import penetration is much lower, and growth in imports much more subdued in chemicals, agro-industry, and food. In general, concentration ratios declined significantly during 1991-95, with the exception of chemicals, communications, publishing, transportation and utilities. Table 1 also provides data on inward foreign direct investment (FDI). In absolute terms, most of the FDI has gone into agro-industry, food production, and retail trade. Although the magnitude of FDI into Bulgaria is much lower than in the Visegrad countries and accounts for only a small share of total output, foreign investors turn out to have played an important role in the enforcement of antitrust.

IV. Competition Law Enforcement: Descriptive Statistics

Some 910 petitions were filed with the CPC during 1991-95 (Table 2), more than in any of the Visegrad countries.[8] Of these 521 or 57 percent were accepted for investigation.[9] This is quite substantial. For example, during 1984-93, the ten-year period following adoption of a competition law in Portugal, only 55 investigations were launched (Barros and Mata, 1996, p. 20). Service industries account for two-thirds of all petitions and represent 70 percent of cases accepted for investigation. Among service (nontradable) industries, retail trade and education account for the highest number of complaints; among tradable sectors the food industry attracts the most complaints. The lowest acceptance rates (investigations launched as a percentage of petitions) are found for complaints relating to apparel, foreign trade, and machinery (only 20 to 30 percent of petitions are investigated); the highest acceptance rates arise in complaints against utilities, insurance, the food industry, tourism, transport and retail trade (70 to 80 percent). To a large extent this pattern is as one would expect. Many services are not tradable so that import competition is not a significant source of market discipline. Moreover, sectors such as utilities and transport are highly concentrated (Table 1). The main "outlier" in terms of complaints and investigations is the food sector, as concentration is low and

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[8] Fingleton et al. (1996, p. 107) note that during 1992-95, 767 petitions were received by the Czech competition office; 275 by the Hungarian competition authorities; 535 in Poland; and 512 in Slovakia.

[9] The Commission need not accept a petition if the matter is not under its jurisdiction (this accounts for 28% of rejected petitions), there is no apparent injury under the Law (another 32% of rejections), there has been a previous decision by the CPC on the matter (26%), there is insufficient information (10%), or parties reach an out-of-court agreement (4%).

import competition significant.

Table 2. Commission for the Protection of Competition: Petitions Filed and Accepted*

Sector	1991-92	1993	1994	1995	Total	Acceptance (%, 1991-95)
Agribusiness	7 (4)	9 (5)	9 (3)	8 (7)	33 (19)	57
Apparel	13 (4)	7 (2)	6 (1)	16 (4)	42 (11)	26
Chemicals	7 (4)	10 (7)	10 (3)	17 (7)	44 (21)	50
Communications	8 (2)	7 (4)	4 (2)	5 (2)	24 (10)	41
Construction	22 (13)	11 (4)	7 (3)	9 (5)	49 (25)	50
Consumer Appliances	7 (3)	13 (3)	11 (2)	6 (2)	37 (14)	38
Education	15 (9)	39 (22)	32 (6)	9 (10)	115 (41)	36
Entertainment	14 (10)	7 (4)	14 (9)	6 (3)	41 (26)	63
Food Industry	8 (8)	32 (28)	9 (4)	19 (16)	68 (56)	82
Health care	8 (3)	12 (5)	8 (1)	7 (6)	35 (15)	42
Insurance	5 (2)	4 (4)	4 (4)	3 (3)	16 (13)	82
Machinery	20 (10)	13 (3)	19 (1)	12 (5)	64 (19)	30
Foreign Trade	21 (1)	11 (4)	8 (0)	11 (6)	51 (11)	21
Publishing	17 (8)	5 (5)	10 (6)	11 (10)	43 (29)	67
Retail Trade	29 (26)	62 (50)	33 (25)	33 (30)	154 (131)	73
Tourism	5 (3)	2 (1)	2 (2)	2 (2)	11 (8)	73
Transport	20 (9)	17 (13)	18 (11)	13 (12)	68 (45)	72
Utilities	11 (7)	5 (4)	7 (7)	9 (9)	32 (27)	84
Total	237 (126)	266 (167)	211 (89)	196 (139)	910 (521)	57

Note: The number of accepted petitions by the Commission is in parentheses.

Source: Annual Report of the Commission for the Protection of Competition (in Bulgarian), various issues.

Twelve percent of all petitions eventually led to a finding that the law had been violated (110 out of 910 petitions). Although the law distinguishes three major reasons for intervention--abuse of a dominant position (Chapter 2), cartels (Chapter 3), and unfair competition (Chapter 4)--in practice

virtually all of the cases are based on Chapters 2 and 4 (Table 3). Collusive arrangements such as price fixing and market allocation are rarely the subject of investigation. Only 15 of the 521 investigations launched concerned such practices. However, if "unfair competition" cases are excluded, cartel cases account for 12 percent of investigations, and 28 percent of violation findings. For a new competition regime these are relatively high numbers.[10] By far the largest share of all cases is accounted for by "unfair competition" as defined in Chapter 4 (some 374 or 72 percent of all investigations) followed by abuse of dominance (104 cases or 20 percent of the total). Cases related to price controls and the allocation of export quotas account for only a small share of all activity (about 3 percent). Table 3 reveals that in some 21 percent of investigations the CPC finds a violation. Positive findings are more frequent in cases of "unfair competition" and cartel practices than abuse of dominance: 25 and 33 percent as compared to 13 percent, respectively.[11]

It is helpful to summarize briefly some representative cases that have been brought before the CPC to get a better impression of its workload.

Monopolies and Abuse of Dominant Positions

(1) The state enterprise "Bulgartabak" is a monopolist in the buying, processing, and distribution of tobacco products. In 1990-92 the wholesale price of tobacco (which is dictated by Bulgartabak) increased 3 to 5 times, while the prices of materials and services used in the production of raw tobacco increased 10 to 30 times. The CPC concluded that the opportunity existed for the abuse of monopoly power and recommended that the Council of Ministers adopt a minimum price schedule for raw tobacco produce. Noteworthy is that no account appears to have been taken of foreign competition in the investigation.

(2) The only major foreign player in the local food markets is Danone (dairy products). Following a series of articles in newspapers the CPC started a procedure against Danone under Article 3 (abuse of monopoly position). The argument in the press was that Danone is the sole buyer of raw milk in the Sofia region and that it charges monopoly prices for its products. The CPC found that Danone had a 15% market share in the yoghurt/milk market in Bulgaria and was one of 11 sellers in

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[10] This point was suggested by Joel Davidow.

[11] Given the small number of cartel cases that are investigated, the 33 percent violation rate is not very significant from a statistical viewpoint.

the Sofia region. Although its prices were 10-15% higher than those of the competitors this was found to be due to better quality. The case was rejected.

Table 3: Nature of Complaints and Decisions in Investigations Undertaken

	1991-92	1993	1994	1995	Total	% Violation
Abuse of Monopoly Power (Chapter 2: Arts. 3-7)	22 (2)	20 (5)	29 (4)	33 (2)	104 (13)	13
Cartel-like Arrangements (Chapter 3: Arts. 8-10)	1 (0)	8 (2)	5 (2)	1 (1)	15 (5)	33
Unfair Competition (Chapter 4)						
- packaging and advertising (Art. 12)	33 (7)	57 (11)	24(11)	45 (6)	159 (35)	22
- attraction of competitors' clients (Art. 13)	13 (5)	15 (4)	6 (4)	8 (1)	42 (14)	33
- business secrets violations (Art. 14)	5 (1)	8 (2)	4 (1)	7 (1)	24 (5)	20
- by employees (Art. 15)	52 (6)	56 (19)	16 (8)	25 (5)	149 (38)	25
Total Chapter 4	103 (19)	136(36)	50(24)	85(13)	374 (92)	25
Price Controls (Art. 16)	0	0	0	2	2	N.A.
Trade Quotas (Art. 17)	0 (0)	5 (0)	5 (0)	4 (0)	14 (0)	0
Total Number of Decisions	126 (21)	167(43)	89(30)	139(16)	521(110)	21

Note: Number of violations found by the Commission in parentheses.

Source: Annual report of the CPC, various issues.

(3) State enterprise Toploficachia-Sofia is the sole supplier of central heating in Sofia. A group of customers filed a petition arguing that the firm price discriminated against them. Toploficachia has three separate heating tariffs: one for office buildings, one for production units, one for residential housing. Prices vary, with the private residents paying the highest price. The CPC found no violation as prices were set according to the specific costs associated with each type of service. A second claim by customers was that the utility distributed a letter informing customers that different sections of the city will be allocated to separate offices that would be in charge of collecting bills. Customers were required to go through these offices (which involved an extra 5% payment) or have their service cut off (some were). The CPC found this to be in violation of the law as the maximum price of energy

(including heating) was set by the government and additional mark-ups were prohibited.

Although Articles 5 and 6 of the law require the CPC to review all privatization cases involving enterprises that have a monopoly position, the CPC has had only four cases as a result of the limited number of privatizations that occurred up to 1996. The CPC did not oppose any of the privatization proposals. However, in one of these cases the CPC discovered after the fact that a there was a clause in the privatization contract that allowed the firm to maintain a dominant share of the export quotas that were issued for a specific commodity. As a result an investigation was launched in 1996, and the clause was removed. With the decision of the Government to pursue mass privatization, the CPC will be monitoring the behavior of investment funds that end up controlling major parts of individual industries.[12]

Collusive Practices

An important cartel case concerned allegations of collusive pricing by three regional distributors of dairy products brought by consumer groups. The CPC found that collusion did occur, and ruled in favor of the petitioners. The case was appealed by the firms, and is still under review. The firms argued that the decision by the CPC violated the law, as they do not jointly have a national market share exceeding 35%. Partly as a result of this case the CPC has proposed to amend the law to remove the national market share criterion (see below).

Unfair Competition

(1) Eleven cases have been filed by Coca Cola (USA) against local firms, either direct competitors or former subcontractors in regional markets under Art. 12. In each case Coca Cola argued that the local firms used labels and packaging that copied those used by Coke. Violations were found in two of the cases. (2) State enterprise 'Agromachinery-Karlovo' filed a petition against its former vice-president who had registered his own export-import firm and used his position as a contact between 'Agromachinery' and a Belorussian firm producing gas heating systems to channel sales to his firm. The CPC found this to be in violation of Art. 15.

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[12] Interview with Mr. Stanilov of the CPC.

Table 4. Petitions Accepted for Investigation (by sector and type)

Sector	Abuse of Monopoly	"Cartel" cases	Packaging and Advertizing	Client "poaching"	Business secret Violations	Unfair Competition by (Ex-) Employees	Total	% Violation
Agribusiness	3 (1)	--	--	--	2 (0)	14 (2)	19 (3)	16
Apparel	--	--	7 (0)	1 (0)	3 (0)	--	11 (0)	0
Chemicals	1 (0)	1 (0)	8 (2)	11 (2)	--	--	21 (4)	19
Communications	4 (0)	--	--	--	--	6 (3)	10 (3)	30
Construction	--	1 (0)	6 (0)	5 (1)	1 (0)	12 (4)	25 (5)	20
Appliances	--	--	5 (1)	3 (3)	3 (0)	3 (0)	14 (3)	21
Education	3 (2)	--	7 (2)	--	7 (2)	24 (3)	41 (9)	22
Entertainment	--	--	16 (2)	2 (0)	--	8 (1)	26 (3)	11
Food Industry	1 (0)	8 (3)	38 (10)	9 (6)	--	--	56 (19)	36
Health care	--	--	--	2 (0)	--	13 (3)	15 (3)	20
Insurance	6 (2)	--	4	--	--	3 (1)	13 (3)	23
Machinery	--	--	13 (1)	2 (0)	--	4 (0)	19 (1)	5
Foreign Trade	5 (3)	--	--	--	--	4 (0)	9 (3)	30
Publishing	3 (1)	1 (0)	9 (2)	--	8 (3)	8 (2)	29 (8)	27
Retail Trade	24 (2)	3 (1)	56 (15)	1 (0)	1 (0)	34 (17)	119 (35)	29
Tourism	8 (0)	--	--	--	--	--	8 (0)	0
Transport	22 (2)	1 (1)	--	6 (2)	--	17 (2)	45 (6)	13
Utilities	25 (1)	--	--	--	--	--	25 (1)	4
Total	105 (14)	15 (5)	159 (35)	42 (14)	24 (5)	149 (38)	505 (110)	21

Notes: Number of violations found by the Commission in parentheses. Data do not include cases relating to price controls and trade quotas.

Source: Annual Report of the Commission for the Protection of Competition (in Bulgarian), various issues.

Evaluation

A breakdown of investigations across sectors reveals that the highest proportion of violations are found in the food industry (36 percent of all investigations), retail trade and communications (30 percent) (Table 4). As mentioned earlier, food and retail trade are also the sectors where the most complaints are made. Abuse of dominance allegations are concentrated in transport, utilities and retail trade--together these 3 industries account for 70 percent of investigations under Chapter 2. However, a violation was found to have occured in only 5 percent of all investigations in these sectors. Cartel-like practices are heavily concentrated in the food and retail trade sectors. "Unfair competition" investigations affect a large number of industries, but again center mainly on the retail trade and food industries. Most of the cases in this category involve allegations of misleading advertizing/packaging

or claims of unfair competition by (ex-)employees (Art. 15).

Table 5: Origin of Petitions Filed and Accepted

Source	1991-92	1993	1994	1995	Total	Average acceptance rate
Competitor firms	146 (50)	120 (47)	101 (23)	67 (37)	434 (157)	36
State entities	26 (22)	51 (47)	36 (18)	58 (47)	171 (134)	78
Private persons (consumers)	15 (13)	37 (31)	15 (11)	24 (18)	91 (73)	80
Consumer organizations	35 (29)	41 (34)	31 (13)	15 (6)	122 (82)	67
Trade unions	15 (12)	14 (5)	6 (2)	1 (0)	36 (19)	53
Ex Officio CPC	0 (0)	3 (3)	22 (22)	31 (31)	56 (56)	100
Total	237 (126)	266 (167)	211 (89)	196 (139)	910 (521)	57

Note: Number of petitions accepted for investigation by the Commission in parentheses.

Source: Annual Report of the Commission for the Protection of Competition, (in Bulgarian) various issues.

About half of all petitions for investigations are brought by competitors, and much of the remainder by consumers and state entities (e.g. Ministries) (Table 5). The acceptance rate of the CPC with regard to complaints by competitors has been relatively low compared to petitions brought by non-producers (consumers, the State): 36 percent compared to 70-80 percent. These statistics suggest that the CPC gives priority to consumer concerns. Noteworthy is that the absolute number of petitions by competitors has been declining over time, falling from 146 in 1992 to 67 in 1995. Activity by trade unions has also dropped significantly, having virtually disappeared by 1995. Conversely, starting in 1994 the CPC began to self-initiate cases. In 1995 some 22 percent of all investigations were *ex officio*, up from zero in 1991-93. Most of these cases pertained to "unfair competition" rather than abuse of dominance or cartel-like behavior.

Of 110 cases where the CPC concluded a violation of the competition law had occurred, 45 were addressed by the courts, of which 24 led to the imposition of fines and 21 were rejected by the courts (i.e., the court determined that there was no cause for action). The remaining 55 cases are either still pending or in appeal before the Supreme Court. The fines that were levied were generally

minor. In 1992 there was just one case where a fine of Leva 14,000 ($600) was imposed; in 1993 fines in 12 cases totaled Leva 32,000 ($1,500); in 1994 total fines in 3 cases were Leva 45,000 ($800), and in 1995 eight fines totaling Leva 875,000 were imposed ($10,670). Although there appears to be an upward trend in the magnitude of the penalties that are imposed, the sharp rise in 1995 is due to two large fines, one of Leva 600,000 and one for Leva 200,000. The first fine was imposed on a firm that bottled vodka and used the labels/trademark of the traditional producer; the second fine was imposed on a domestic firm that labeled its product as "California Sun," the trademark of a US firm that was also operating on the Bulgarian fruit juice market and that filed the complaint.

Foreign companies have played a prominent role in competition cases. In addition to Danone and Coca Cola mentioned previously, Nestle, Tuborg, California Sun, Smirnoff, Deutsche Grammophon, ABL-List (Austria) and PC World were among the foreign firms that were either a plaintiff or defendant in competition cases. In most cases the foreign companies were plaintiffs, and were seeking to protect their industrial property (trademarks; copyright). Some of these firms invoked Art. 15 in an attempt to hold on to staff (e.g., ABL-List). When a respondent--e.g., Danone--the claims tend to be abuse of dominant position.

V. Proposed Amendments to the Law

In a review of the literature on competition policy and reforming economies, Boner (1996) notes that enforcers of embryonic competition laws will make mistakes, but that this is a natural and unavoidable feature of competition law. He emphasizes that the important question is not whether mistakes will be made, but whether lessons are learned and mistakes corrected. Recent efforts to change the competition law in Bulgaria suggest this is the case. A number of amendments to the current law have been proposed by the CPC, to the Council of Ministers. The objective of the proposed changes is to improve enforcement and align the law more closely to the provisions of the European Community Treaty. The Council of Ministers has sent a set of proposed amendments to Parliament, which is expected to adopt them in the course of 1997.[13]

Major proposed changes include the following. Chapter 4 on unfair practices would be removed from the competition law. The practices that are addressed would be left for the courts to consider on the basis of the Commercial Code and the Labor Law. Fines would become indexed by

[13] What follows draws upon interviews with CPC staff in January 1997.

defining them in the law as multiples of the legislated minimum wage (which is adjusted to inflation on a monthly basis). The definition of dominance would also be changed. Currently a necessary condition is a 35 percent share of national sales of a product. This has led to instances where a firm that abuses a dominant position on a regional or municipal market cannot be found in violation of the law. The CPC has therefore suggested that the 35 percent criterion be applied to the relevant, rather than the national market. Another proposed change concerns the role of the courts. Currently, the courts review CPC decisions when determining whether to impose sanctions. As mentioned previously, this has led to lengthy backlogs and delays in the process. In order to speed up enforcement, the CPC has suggested that it be permitted to raid the premises of firms without obtaining a prior permission by a court (which may take two to four weeks and remove any element of surprise) and be able to issue decisions and impose fines against both natural and legal persons (presently it may only do so if natural persons are involved). All such decisions would remain subject to appeal before the courts, and any raids would need to be approved ex post by the court.

At the time of writing the precise nature of the amendments that will emerge depend on Parliament.[14] In principle, shifting enforcement of the commercial code and contracts to the courts would be beneficial as it would free up resources to focus on anticompetitive practices that are of greater importance to the functioning of the economy. The broad thrust of the proposed amendments should improve the situation.

VI. Conclusions

As is the case in other Central and Eastern European countries, the competition authorities in Bulgaria have been very active, investigating over 500 cases in the 1992-95 period. Little of this enforcement activity has been directed at hard-core anticompetitive behavior. Instead, much of the case load concerns issues that in most market economies would involve enforcement of private contracts or property rights. Usually this would occur through the judicial system. Alternatively, independent administrative bodies may be allocated the task of enforcing contracts. In either case, the competition

[14] It is worth mentioning that the proposed amendments that have been submitted to Parliament are reportedly less far-reaching than what was originally proposed to the Cabinet by the CPC. For example, the CPC had also proposed that monitoring the conduct of natural monopolies (utilities) become the responsibility of a separate regulatory body. The Council of Ministers rejected this on the basis of scarce resources.

or antitrust authority would generally not get involved in such cases. In Bulgaria, the Commission for the Protection of Competition cannot impose penalties in any event; it must go through the court system. The CPC therefore fulfills a buffer or intermediary function, filtering the cases that end up in court. This is not necessarily efficient, as the courts reject about half of the cases submitted by the CPC. The focus on such cases has diverted a substantial share of the CPC's resources away from what arguably should be its core activity--combating collusive practices that severely restrict competition.

To some extent the enforcement of the current law may have restricted competition, in particular as regards the provision in the law restricting the mobility of managers. The economic rationale for this provision is weak at best, as this is again a matter of contract enforcement. By preventing mobility the law reduces the value of the human capital of managers and reduces the incentive for the formation of new firms, including entry by foreign investors (who will generally seek to hire local expertise). This is recognized by the CPC, as is reflected in the proposed amendments to the competition law discussed earlier.

Most of the abuse of monopoly (dominant position) cases result in a finding that the law has not been violated. Moreover, in many cases the penalties that are imposed are minor and take a substantial amount of time to materialize as the court system is overburdened, further reducing their incentive effects. In conjunction with the finding that there have been few collusion-type cases, it seems therefore that firms engaging in anticompetitive practices may have little to fear from the competition authorities. This is perhaps not that important in tradable industries. Import barriers are low in Bulgaria, and import competition is vigorous.[15] But it is also clear that in a number of sectors market power of incumbents remains significant, and that there is substantial scope for behavior that restricts entry or expansion. Significant potential therefore appears to exist to strengthen the effectiveness of competition enforcement in Bulgaria by focusing the activities of the CPC more frequently on anticompetitive practices that restrict entry and expansion.

At the same time it must be noted that the CPC was confronted with a situation where relatively little privatization occurred, thereby perhaps reducing the perceived need for scrutiny of the behavior of state-owned enterprises. As a start-up entity, the CPC (and the courts) were also required to take into account the lack of experience of firms and consumers with the concepts and principles underlying a competition law. In this context it is by no means exceptional that fines imposed were often low. As

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[15] Djankov and Hoekman (1996) conclude that import competition has had a significant impact on the average price-cost margins of firms in tradable industries in Bulgaria.

noted by Boner (1996, p. 52), national courts rarely impose high fines for violations of new competition laws. It takes time for participants to become aware of and take into account the new rules of the game.

The Bulgarian experience with competition law appears to be similar to other economies in transition in that the legislative framework and enforcement practices evolve as experience is obtained. For example, both the Czech and Slovak Republics adopted new competition legislation only a few years after adopting a competition law in 1991 (when they still formed Czechoslovakia). The Polish competition statute was amended twice after 1990 (Fingleton et al. 1996). It takes time for a competition statute to be enforced and for firms to internalize competition legislation. In this transition economies such as Bulgaria are no different from other countries that adopt competition legislation for the first time.[16] The proposed amendments to the law, if adopted, should help strengthen the pro-competition dimensions of the law and its enforcement.

[16] See for example Fingleton (1996) and Barros and Mata (1996) on the experience of Ireland and Portugal.

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