

BULGARIA – COMPETITION PROTECTION COMMISSION RECOMMENDS AMENDMENTS OF THE ENERGY ACT CONCERNING THE HEATING SECTOR

On 8 February 2018, the Bulgarian Competition Protection Commission ("**CPC**") issued a Decision in a Competition Advocacy proceeding initiated in 2017 for the assessment of conformity with Competition law of the legal framework applicable to heat energy supply legislation. The Competition Advocacy proceeding analyzed the respective sections of the Energy Act ("**EA**"), the Heat Energy Supply Ordinance¹ and the General Terms and Conditions of the heating companies.

This decision continues the series of decisions and inquiries announced by the CPC regarding the Bulgarian energy sector in the recent weeks, after the Sector Inquiry into Bulgarian electricity market announced on 22.01.2018, and the Competition Advocacy proceedings in relation to the recently proposed amendments to the EA. Both of them were addressed in [previous Client Alerts by Wolf Theiss](#).

The important takeaway of this decision is the increased activity of the CPC in the energy sector, which now seems no longer to be limited as a competition law issue, but which also addresses issues rather related to consumer protection and even some technical matters.

BACKGROUND

The Bulgarian heating energy segment has been conceived and developed mainly following the old Soviet design concepts. It is still dominated by the incumbent district heating companies, which are monopolists in their respective geographical areas. Currently a limited competition only exists between the companies providing the measured heat energy costs allocation services. The district heating companies are often sanctioned by the CPC for abuse of dominance (e.g. between 2008 and 2015 the CPC issued 6 decisions sanctioning some of the largest district heating companies – "Toplofikatsiya Sofia" EAD, "Toplofikatsiya Burgas" EAD, "Toplofikatsiya Ruse" EAD, etc.) and the CPC has recently rendered few competition advocacy decisions.

CPC PROPOSALS

The CPC claims that its recommendations aim at strengthening the competition in the relevant market and avoidance of the risk of abuses of dominant positions. However, evident from the recommendations, although relevant and justified, this mostly addresses the protection of households and business consumers' interests rather than the

¹ Ordinance No 16-334 dated 6.04.2007 on the heat energy supply, promulgated in State Gazette No. 34 from 24 April 2007, as amended from time to time

real competition law issues. In particular CPC proposes:

PROMOTING COMPETITION

The CPC has identified, as in its previous Competition Advocacy decisions for the heat energy segment, that some provisions of the current legislation (e.g. the EA and the Heat Energy Supply Ordinance) do not promote competition to the necessary extent and that in some instances the competition is even impossible. The CPC for example deems the existing legislation does not provide any economical incentives for heating supply companies to be established on the market and to compete with the district heating companies, which act as both producers and suppliers. In order to address this issue, the CPC recommends considering liberalization of the energy heating segment. However, the CPC does not suggest specific measures in this respect, nor a model for liberalization to be considered and discussed among stakeholders.

The only specific recommendation in respect of increasing the competition is to amend the provisions of the EA limiting all households or business consumers in a building to use only the services and the installed measurement devices provided by a single company chosen to provide measured heat energy costs allocation services. CPC believes this way the competition between providers of heat energy cost allocation services will be increased, as it would eliminate the practical limitation for end-consumers wishing to change their provider of measured heat energy costs allocation services including to buy new heat energy measurement devices.

CONSUMER PROTECTION

Many of the proposals of the CPC are related to measures for improvement of the protection of the end-consumers of heat energy services. However, consumer protection in the energy sector, including heating, is rather in the competence of the Energy and Water Regulatory Commission and the Consumer Protection Commission. It is somewhat surprising that now the CPC expands the scope of proceedings, explicitly designed to advocate for application of competition law.

The recommendation for improvement of the accuracy of the distribution of the heat supplied to buildings and the individual properties is among the most significant measures related to consumer protection. According to the CPC moving from the current system (based on heat consumption calculation formulas in the Heat Energy Supply Ordinance) to measuring system by means of commercial measurement devices (heat meters) installed in the subscriber's buildings distribution substations will be more fair, more precise and thus – more effective. The CPC recommends the installation of heat meters to be completed within a reasonable time and at the expense of the respective district heating company.

Another recommendation of the CPC worth noting is related to the heat energy distribution to buildings sharing one subscriber's building distribution substation. Currently, the owners of the buildings are considered also owners of the in-building

mounted heat energy distribution installation, which causes significant increase of costs for heat energy outside their own apartments and increased heat energy losses for the apartments' owners. The CPC proposes such in-building mounted installations to be transferred as ownership to the district heating companies which should manage them more efficiently and will bare the energy losses.

The CPC also recommends that the respective authorities reconsider the possibilities of introducing alternative heat energy distribution methods in the condominiums, other than the currently existing share distribution system.

The other proposals of the CPC include:

- the ban for dismantling of the heating devices from the heating installation of the building to be lifted;
- to ban the current practice of the district heating companies to be able to calculate interest on the delayed payments of the preliminary monthly installments;
- to provide the opportunity for the tenants to be separate individual clients of the district heating companies, instead of being joint clients together with the landlord;
- the heat energy cost allocation companies to cease being subcontractors of the district heating companies, but instead to conclude separate direct service agreements with the consumers;
- to reconsider the current penalties for violations and identify the most effective sanctions under the legislation corresponding to the violation at hand.

If adopted, the recommendations of the CPC have the potential to improve competition in the heat energy distribution segment and would potentially result in a better consumer protection.

THE COMPETITION ADVOCACY PROCEEDINGS

The Competition Advocacy proceedings are designed to promote market openness and foster competition by addressing market distortion and anti-competitive developments resulting from legislative acts (primary or secondary legislation). In such proceedings, the CPC conducts an assessment of the conformity to Bulgarian and EU competition law of provisions of legislative acts or secondary legislation and may propose to the competent state authorities' respective modifications or amendments to the draft legislative text. The opinions and recommendations of CPC are not binding, however often they are adhered to. A number of Competition Advocacy proceedings have been conducted in the Bulgarian energy sector, concerning mainly regulation of renewables (in 2016 and 2015), the liberalized market (2014) and hydropower plants (2015).

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The CPC analysis of the legislative amendments, which occurred after the 2013 Competition advocacy proceedings, reveals that some recommendations were taken into consideration by the Parliament and the EWRC. Considering this and the ongoing proceedings for amendment of the EA, we may expect legislative amendments in the heat energy segment reflecting at least some of the recommendations of the CPC.

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