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## **Bulgarian Commission for Protection of Competition Imposed a Second Sanction for Abuse of Superior Bargaining Position**

Zoya Todorova, Radina Tomanova (Dimitrov, Petrov & Co.) · Monday, January 16th, 2017

After the Bulgarian Commission for Protection of Competition (CPC) imposed a sanction on Siemens EOOD for abuse of superior bargaining position in May 2016, at the end of the year the regulating authority imposed a second sanction under the controversial provision introduced in 2015.

The sanctioned undertaking is Kaufland Bulgaria EOOD & CO KD (Kaufland) and the proceedings were initiated by Keti-94 OOD (Keti-94) – a licensed manufacturer of alcoholic beverages, whose production is targeted mainly at the domestic market. The imposed sanction amounts to 7% of the net revenues of Kaufland from the sale of the products subject to the violation during 2015, equivalent to BGN 157,981 (approx. EUR 80,000).

In its analysis, the CPC concludes that abuse of superior bargaining position may occur both in the negotiation process and within already existing contractual relationships. This term relates to the notion of “economic dependency” as well as to the possibility that one of the parties makes the other party behave in a certain manner or agree to certain conditions, that are inconsistent with good faith commercial practices. Each particular case however needs to be examined as to whether such behaviour constitutes an abuse in view of the position of the undertaking in relation to its business partner, i.e. the superior position is to be examined within the context of the specific relationship.

In its decision, the CPC finds that Kaufland can influence the course of negotiations with Keti-94 regarding the terms of supply; the supply costs by negotiating bonus and rebate systems; the sales volumes reached by the supplier for certain quantities of orders; as well as other terms of supply. Kaufland is therefore independent and is in a superior position in its relations with the initiator. The CPC finds that these factors create prerequisites for exerting pressure on Keti-94 on part of the chain. Keti-94 is thus placed in conditions where it is forced to sell its products to Kaufland below cost price for a certain period of time.

Furthermore, the CPC finds that there are real restrictions before the initiator in finding adequate alternatives of its business partnership with Kaufland given the considerable amount of the initial and ongoing costs on maintaining commercial relations with retail chains. These conclusions have led the CPC to establishing a situation of dependency of Keti-94 on Kaufland.

It is worth noting that the CPC has included in its analysis the period before the entry into force of

the provision of Art. 37a of the Protection of Competition Act (PCA). The Commission's argument is that although the relations in that period developed without a legal provision regarding abuse of superior bargaining position, the terms agreed back then affect the commercial relations between the two undertakings after July 2015 as well.

The decision is subject to appeal before the Supreme Administrative Court.

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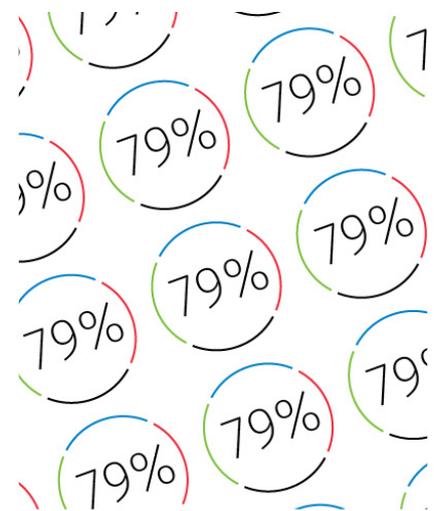
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