

Kluwer Competition Law Blog

Bulgaria: Abuse of dominance investigations against Lukoil

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Background

Starting from 2009, the Bulgarian Commission for Protection of Competition (“**BCPC**”) has conducted several sector inquiries and investigations on the oil market in Bulgaria – a sector giving rise to serious allegations for cartel activities and abuse of dominance.

One of the last investigations was held in 2017. The proceedings were initiated as a result of a prior conducted sector inquiry on the oil market. The BCPC opened an investigation for cartel activities on the wholesale and retail markets of petrol and diesel in Bulgaria, where the alleged breach comprised coordinated behavior on pricing and exchange of sensitive commercial information between market participants on the same level. The proceedings ended with approved commitments by the BCPC although the competition authority did not end the proceedings with a decision finding any specific and direct infringement of Art. 15 of the Bulgarian Competition Protection Act and of Art. 101 of the TFEU.

Lukoil case

On 11.11.2021, BCPC raised Statement of Objections (“**SO**”) in the course of another investigation of oil companies in Bulgaria (“**Lukoil Group**”). This time the SO is for abuse of dominant position on the market of production and import of petroleum products (Art. 21 of the Bulgarian Competition Protection Act, respectively Art. 102 of TFEU).

The reason for the initiation of these proceedings was a signal received from the Supreme Administrative Prosecutor’s Office containing allegations for inconsistency between the significant drop in the price of crude oil worldwide scale (by 47.4%) in March 2020 due to the COVID pandemic and the decrease in retail prices of motor fuels in Bulgaria (by about 11%) for the same period.

The signal was accompanied by an analysis of the fuel market in Bulgaria for the period from 06.03.2020 to 26-27.03.2020 conducted by the Bulgarian Customs Agency. The Customs Agency provided additional analysis for the period between 30.03.-05.04.2020 reflects the dynamics of the average sales prices of petrol and diesel at the sites of the largest petrol station chains in Bulgaria (VM Petroleum, Lukoil, Petrol, Shell, Eco, OMV, Cruise, Rompetrol and Gazprom).

During the investigation, BCPC identified competition issues related to access to custom warehouses (i.e. the place where fuel is stocked under the supervision of customs authorities), which is the reason to focus on the behaviour of Lukoil Neftochim Burgas AD (the owner and operator of the largest refinery in Bulgaria) and Lukoil Bulgaria EOOD (the owner and operator of numerous warehouses and oil stations) as the largest fuels storage and related transport infrastructure holders in Bulgaria, making them dominant in the automotive fuel storage market.

According to the SO, Lukoil Group is allegedly abusing its dominant position on the automotive fuels' storage market by (1) refusing to accept and store motor fuels in their own custom warehouses, (2) restricting the access to the custom warehouses connected to the largest offshore oil terminals in the country and (3) by denying access to its oil pipelines for transportation of imported fuels.

Such dominance combined with restricting the access to Lukoil's custom warehouses and transport infrastructure is of a nature to prevent or limit the import of fuels on the territory of Bulgaria and ultimately to affect the interests of end consumers.

In the view of the BCPC, such abuse restricts competition on two levels – the production and import level, which allows Lukoil Group to maintain the leading position in Bulgaria and on the level of supply including both wholesale and retail. The creation of barriers to the import of fuels in Bulgaria could limit the choice of wholesalers by means of redirecting them to fuels imported only by the Lukoil Group. Such redirection may affect end consumers by limiting their access to fuels different from those imported by Lukoil Group and consequently the lack of such choice may result in higher prices on the retail level. In addition, the BCPC find Lukoil Group's behaviour affecting competition both in Bulgarian and European markets.

Lukoil Group has 60 days to submit a statement to the above allegations.

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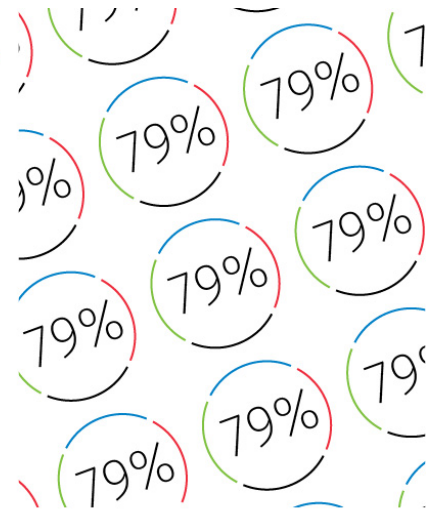
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