

AMENDMENTS AND SUPPLEMENTS TO THE BULGARIAN PROTECTION OF COMPETITION ACT AND THE FOODS ACT
(effective as of 29.07.2015)

The Act for Amendment and Supplement to the Bulgarian Protection of Competition Act was promulgated in State Gazette No 56 of 24.07.2015. Its Transitional and Final Provisions introduce amendments and supplements also to the Bulgarian Foods Act.

I. GENERAL STANDINGS

The main amendments to the Protection of Competition Act concern the introduction of a new Chapter Seven “a” – “Abuse of a stronger bargaining position”.

Two amendments are also introduced to the Foods Act. The first amendment concerns the establishment of a new Article 19 that sets certain restrictions regarding agreements for purchase of foods for the purposes of further resale. The second amendment establishes a new Chapter Six “a” – “National Council for Better Functioning of the Chain of Offering Foods. Conciliation Commission.”.

II. “ABUSE OF A STRONGER BARGAINING POSITION”

The amendments and supplements to the Protection of Competition Act introduce a new Chapter Seven “a” – “Abuse of a stronger bargaining position”. A new Article 37a provides for a prohibition against any action or inaction of an undertaking with a stronger bargaining position that:

- is in contradiction with good faith commercial practices;
- harms or is liable to harm the interests of the weaker bargaining party or the interests of consumers.

As unfair are deemed those actions and inactions which have no objective economic grounds. The following actions or inactions are listed as examples:

- ungrounded refusal of delivery and/or purchase of goods and services;
- imposing unfairly burdensome or discriminatory conditions;
- ungrounded termination of commercial relations.

Art. 37a, par. 2 explains the criteria for assessment of whether an undertaking possesses a stronger bargaining position:

- characteristics of the market structure;
- the particular relation between the affected undertakings;
- the level of dependency between the undertakings;

*This **Legal Alert** has been prepared by DELCHEV & PARTNERS for information purposes only and does not constitute legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this without seeking professional counsel.*

- the character of each undertakings' activity and the difference in its scale;
- the possibility of finding an alternative trading partner, including the existence of alternative sources of supply, distribution channels and/or clients.

The sanctions which the Commission on Protection of Competition may impose in case of infringement of Art. 37a may amount up to 10% of the undertaking's turnover of sales of the product, subject of the infringement, for the preceding year but no less than BGN 10,000. When no turnover for the preceding year exists, the sanction may vary between BGN 10,000 and BGN 50,000.

III. AMENDMENTS AND SUPPLEMENTS OT THE FOODS ACT

Restrictions regarding the resale of foods

The amendments and supplements to the Foods Act introduce a new Art. 19 which sets certain restrictions to an agreement for purchase of foods for the purposes of further resale. Such an agreement shall not:

1. contain a prohibition or a restriction for a party to the agreement to offer or purchase goods and services to or from third parties;
2. contain a prohibition or a restriction for a party to the agreement to offer to third parties the same or better terms and conditions;
3. stipulate sanctions for offering to third parties the same or better terms and conditions;
4. be unilaterally amended unless such a right is explicitly agreed in the contract;
5. specify remunerations for services that are not actually provided;
6. transfer unjustified and disproportionate commercial risk to one of the parties;
7. specify a payment term longer than 30 days as of the date of receipt of the invoice for delivery or another payment notification; when the invoice or the payment notification has been received prior to the delivery of the goods, the term begins to run on the day following the day of delivery the goods, notwithstanding the fact that the invoice or the payment notification precedes that moment;
8. contain a prohibition or restriction for a party to the agreement to transfer receivables to third parties.

Arrangements that contradict the aforementioned regulations shall be null and void by law.

Establishment of a National Council for Better Functioning of the Chain of Offering Foods and Conciliation Commission

A new Chapter Six "b" is introduced including Art. 37e – 37l.

Art. 37e provides for the establishment of a National Council for Better Functioning of the Chain of Offering Foods with the Minister of Agriculture and Food. The National Council will aim to promote the conclusion of agreements between associations of producers and of food traders; give statements, opinions and instructions in regard to problems in the chain of offering foods as well as projects of normative acts. The National Council shall include members from the Ministry of Agriculture and Foods, the Ministry of Economics, the Executive Agency for Promoting Small and Medium Enterprises, the professional organizations of food producers and the branch organizations of food traders. Chairman of the Council is the Minister of Agriculture and Foods.

Art. 37g also provides for the establishment of a Conciliation Commission with the Minister of Agriculture and Foods. The Commission will cooperate for the out of court resolution of disputes between food producers and traders. The proceedings before that Commission shall be free of charge.

DELCHEV AND PARTNERS