



Distribution Law Center

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Private enforcement in Bulgaria:

- Private enforcement in Bulgaria has been possible ever since Bulgaria acceded to the European Union back in 2007. However, it has not been quite popular through the years and it is only recently that there has been any real development in that area.
- The most important developments concern:
 - the relation between private and public enforcement; and
 - the nullity under Article 101(2) of TFEU and its corresponding national provision of Article 15(2) of the Bulgarian Protection of Competition Act (PCA);
- Older case prior to the Private Damages Directive maintained that the finding of an infringement by the Bulgarian Commission on Protection of Competition (CPC) and administrative courts in public enforcement was a condition for the admissibility of a civil claim for damages. Inadmissibility means that it is legally impermissible to have private enforcement proceedings prior to the establishment of an infringement in public enforcement proceedings.

Recent case law of the Bulgarian Supreme Court of Cassation (SCC) seems to have turned the page, especially in light of the Private Damages Directive, stating that the fact that the binding effect of the CPC's final decision is attributed only to those decisions which establish an infringement of the PCA means that the provision is relevant only to the proof of the facts specified therein and does not constitute a condition for the admissibility of the private enforcement proceedings. SCC also noted that the legislator has taken into account that it is often difficult for the claimant to prove the fact of the infringement, and that this usually requires a complex factual and economic analysis. Therefore, it facilitates this by attaching irrefutable evidentiary value to the positive decision of CPC, in view of its wide range of powers and instruments for establishing the infringement and the infringer, while at the same time relieving the court and the parties to the proceedings of the burden of proving these facts and prohibiting their review.

With the turning of the page other questions concerning the interrelation between private and public enforcement will inevitably emerge in Bulgaria, eg what effect could the failure to prove infringement in private enforcement proceedings have in future

public private enforcement proceedings concerning the same infringement; and if such a thing is possible to establish in later public proceedings how could this provide a legal ground for seeking damages again in new private enforcement proceedings. At this stage, however, it is encouraging that the door has been opened and the force has been awakened as these developments inevitably require one step at a time.

- In parallel to the above it is noteworthy that in recent years Bulgarian civil courts have been called upon to deal with objections for nullity of contractual provisions because of their contradiction with competition rules.

In 2024 SCC did not admit a cassation appeal in a case where the lower courts had declared a contractual provision for exclusive distribution of patented goods to be invalid due to contradiction with competition rules. The lower courts also ruled that the producer held a 100% market share of the relevant market because the goods in question were patented. Although a lot could be said about the motives of the lower courts SCC correctly identified that question that was never asked in order for the cassation appeal to be admitted, namely: whether the fact that the product is patented is sufficient grounds for determining that it is not interchangeable, or more generally, for the criteria for determining whether a product is interchangeable in the sense referred to.

While it is regrettable that the case was not admitted to a cassation appeal, because according to SCC the cassation appellant had failed to raise the correct cassation question, the greater value at this stage is that the Bulgarian civil courts are being called upon to private enforce of competition law – something that has for a very long time been outside their focus.



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