

**FULL EX ANTE IMPACT ASSESSMENT ON THE DRAFT FOR AMENDMENTS
AND SUPPLEMENTS TO THE COMPETITION PROTECTION ACT**

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PROBLEM DEFINITION:

Currently, in Bulgaria, in the relations within the chain manufacturer of raw materials - processor - distributor - retailer and particularly in the retailing of fast-moving consumer goods there are trade practices are observed in which economic operators - large retailers, because of their market positions try to unilaterally impose profitable conditions for them to other economic operators - manufacturers/suppliers who have significantly weaker positions at the same market, which demonstrates a behaviour that is defined as:

“Abuse of significant market power”

“Abuse of economic dependence”

“Abuse of market power”

“Self and collective dominance”

“Resale Below Cost”

“Economic position of power in negotiations”

“Unilateral conduct of business” and others.

OBJECTIVES:

GENERAL OBJECTIVE

Proposing changes to the national regulatory framework implemented with or without governmental intervention aimed at ensuring fair competition between all participants in the chain: primary producers - processors - distributors - traders. The change should lead to elimination or reduction of the opportunity of economic operators with significantly stronger market position to impose terms and conditions that are predominantly or exclusively favourable to their partners - market participants with significantly weaker position.

SPECIFIC AND OPERATIONAL OBJECTIVES

Specific objectives

Identifying an option for regulation (legislative or non-legislative) by which to be eliminated the possibility of appearance of unfair trade practices the causes for which are

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rooted in the fundamental differences in market power of the economic operators within chain: primary producers - processors - distributors – traders where there is the risk of negative effects on competition and jeopardy to the proper functioning of the entire chain, to the detriment of all operators, including the consumers.

Operational objectives

The chosen option for regulation should contribute to eliminating or limiting the features *Short Duration, Unilateralism, Unpredictability, Imperativeness, Inequality, Lack of Regulation and Compulsion* that are currently inherent in the contracting, pricing, discounting, extra discounting and the general trade conditions in the relations between participants in the chain: primary producers - processors - distributors - traders and as such function as the main engine for the problem.

IDENTIFICATION OF THE OPTIONS FOR RESOLVING THE PROBLEM:

The facts researched from Bulgaria, compared to the studied international legal approaches and solutions, generally accepted concepts and definitions lead to the conclusion that in our country within the chain: raw materials producer - processor - distributor - retailer there are practices that constitute abuse of significant market power by large retailers, which are contrary to the competitive process and have long-term negative impact on consumers. All of this leads to the conclusion about the existence of a need for change in the way of regulation for the relations within the chain, in respect of which the following options of regulatory intervention that differ in the approach and intensity of intervention are identified:

OPTION 0 – DO NOTHING

OPTION 1 – LEGISLATIVE MEASURES

OPTION 2 – ALTERNATIVES TO LEGISLATION

RESULTS FROM THE IMPACT ANALYSIS OF THE OPTIONS:

The maturity of the market, the socio-economic environment, the level of legal awareness and the presence of other factors affecting the competitive process give grounds for the conclusion that it is still too early to expect that the introduction of alternative non-legislative measures to regulate the relations within the chain: manufacturer of raw materials - processor - distributor - retailer in Bulgaria will lead to effective solution of the problems identified.

There is no data from our market to date that the option of non-intervention due to expected self solution of the problems or a self-regulatory approach have been functioning successfully and gave positive results in any of the national industries.

RECOMMENDATION FOR CHOOSING OPTION 1 – LEGISLATIVE MEASURES:

The introduction of legal definition for an enterprise with a significant market power and providing for a prohibition for abuse with such by amending the existing Law on Protection of Competition would be the most appropriate approach of regulatory intervention to resolve the explored problems. On the one hand, this would mean meeting the criteria for effective pro-competitive regulation and on the other would be an adequate response to the actual intensity of the established business practices and anti-competitive behaviour in the examined relations.

The problems identified within the chain: manufacturer of raw materials - processor - distributor - retailer and particularly those in the retail sector with fast-moving consumer goods in Bulgaria would find its best solution by placing the analysis and evaluation of the practices of companies with significant market power behaviours and their abuse in the field of competence of the Commission for Protection of Competition related to detection of infringements of the Law on Protection of Competition, provision of temporary measures, sanctions, etc.

RECOMMENDATION ABOUT MONITORING AND EVALUATION:

We recommend carrying out ongoing monitoring for achievement of the identified objectives which must begin right after the entry of the proposed legislative changes into the force. We recommend an ex post evaluation of the effects from the application of the legislative changes not later than 24 months after their entry into force.

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