

**DOCUMENT PROVIDED BY BULGARIA**

**SUPPLEMENTARY INFORMATION TO  
NEGOTIATING POSITION  
ON CHAPTER 6 – COMPETITION POLICY  
(CONF-BG 29/00)**

Bulgaria wishes to refer to its Negotiating Position on Chapter 6 “Competition Policy” (CONF-BG 29/00) and to the Common Position of the Union ( CONF – BG 8/01) and to provide supplementary information on:

**Anti-trust**

The Commission for the Protection of Competition and the Supreme Administrative Court admit the importance of a full and proper enforcement of the *acquis* even before the date of Bulgaria’s accession to the EU.

**1.Legislation**

To ensure the harmonization of the Bulgarian law with the European secondary legislation, the Commission for the Protection of Competition prepared recently a draft Decision for block exemption of certain categories of vertical agreements and concerted practices in accordance with Regulation 2790/1999/EC. The draft has been consulted by DG “Competition” and its remarks were taken into consideration. On a session of 10 04.2001 the Commission for the Protection of Competition adopted a Decision № 44 for block exemption of vertical agreements. It was promulgated in State Gazette, № 44 of 08.05.2001 and is in force as of 1 of June 2001.

CPC foresees also to adopt in 2002 and 2003 decisions for block exemptions on horizontal restraints: exemptions of certain categories of research and development agreements, specialisation agreements and agreements in the insurance sector, in compliance with Regulations 2659/2000/EC, 2658/2000/EC, 1534/1991/EC and 3932/1992/EC.

Taking into consideration the intention of the European Commission to amend Regulation 240/1996/EC for block exemption of certain categories of technology transfer agreements, CPC will follow the EC policy in this area and will undertake the corresponding legislative measures. This concerns also the EC Regulation 1475/1995/EC for block exemption of certain categories of motor vehicle distribution agreements, which expires on 30.09.2002.

## **2. The practice of the Commission for the Protection of Competition**

From the beginning of 2000 until May 2001 42 decisions for certain agreements, restrictive practices and abuse of dominant position are adopted, as well as 28 decision concerning the merger control.

Indicator for focusing the attention of the CPC in the area of anti-trust is the number of ex-officio cases, that is 16 out of 24 cases (anti-trust and unfair competition. For a period with the same length - mid 1998 – end 1999, the number of these cases was two times lower.

The Commission for the protection of competition examined 12 cases about prohibited agreements, decisions and concerted practices.

An example of its enforcement record is Decision №139/16.11.2000- "Danone - Serdica" Ltd which was sanctioned for a vertical agreement for price fixing.

Another example is the case, where the Commission on the protection of competition sanctioned 14 companies, for price coordination on the market of minibus transport in Sofia /Decision № 93/05.09.2000, imposing a sanction to the amount of 92 000 Bulgarian leva/

Another example is the Decision №144/30.11.2000 against "Overgas Holding" Ltd and "Bulgaria 2002" Ltd Holding. In that case the Commission for the protection of competition prohibited the agreement between the two parties, containing a non-compete obligation and impose respectively fines amounting to BGN 10 000 (equal to EUR 5112.91) and BGN 40 000 (equal to EUR 20451,67).

During the abovementioned period 31 decisions have been adopted on abuse of dominance. A large part of these concerns state enterprises.

Such is the case in which, at request of "WASTEELS-Bulgaria", the National Railway Company "BDG" was sanctioned for illegal termination of the business relations with the applicant /Decision №103/21.09.2000 /.

Another example for the activity of the Commission for the Protection of Competition in that field, is Decision №38/13.04.2000, imposing a significant fine to the National Electricity Company. The case is on the application of different clauses in contracts concerning certain partners and also imposition of unfair conditions to certain partners, thereby placing them at a competitive disadvantage.

In its practice during the said period, the CPC has not adopted decisions on prohibition of concentration of economic activity. There are 9 cases of approval of mergers, including one case of conditional approval. With Decision №91/18.07.2000 the CPC fines BGN 5 000 (equal to EUR 2556,45) "Cable Bulgaria" Ltd as it did not carry out the obligation to notify to the Commission the forthcoming concentration.

When motivating its decisions the Commission for the Protection the Competition complies with the acquis and follows closely the practice on the European Commission and the European Court of Justice.

In Decision №144/30.11.2000 the Commission for the Protection of Competition is referring to Decision №6/72 in 1973 *Continental Can* and Decision №32/65 on 13.07.1966, both from the European Court of Justice, in connection with the restriction of the potential competition. In the view of the above mentioned, Decision №28/14.03.2000, decreed against "Gips" Ltd, refers to the practice of the European Commission and the European Court of Justice in the field of "fidelity rebates" and particularly cases 27/76 *United Brands*; *Irish Sugar* (97/624 EU); *Suilker* and others.

Another example is Decision №139/16.11.2000, in which the Commission on the protection of competition confirms its opinion, concerning the prohibition for price fixing, relying to article 4 "a" of Regulation №2790/1999 of the European Commission on the application of art.81(3) to categories of vertical agreements and concerted practices.

### **3. Institutional capacity for implementation of the acquis**

The Commission for the Protection of Competition (CPC) has the necessary administrative capacity to ensure the effective implementation of the acquis in the area of anti-trust.

The number of the CPC officials is 83. The organisational structure is set up in a way to ensure the fulfillment of the functions of the Commission. The number of the CPC officials, who take part in investigations on anti-trust issues is 50 (in this number are not included the 10 employees of State aid Directorate). These experts are educated in law and economics. They have a good knowledge of the *acquis communautaire* in the area of anti-trust, which they apply in concrete cases. The CPC has the practice to include in the working groups, investigating serious competition infringements, officials of Directorate "European integration and international activity", who keep up with the changes of the European competition law and the practice of the European Commission and the Court of the EU.

Henceforth the CPC will direct its efforts to the:

- enhancement of the theoretical knowledge and the practical training of its officials in conformity with the *acquis*;
- realisation of a project, creating a team of trainers, who will contribute to the maintenance of the high professional qualification of the CPC officials;
- translation of decisions of the European Court of Justice and the European Commission;
- enlargement of the library fund of the CPC (subscription for the European Court Reports, European Competition Law Review, European Law Review, Kluwer Merger Control Reports);
- completion of the establishment of the CPC computer system;
- creation of a database, which will be used by the CPC officials in the analysis of the relevant markets and in the research of the practice of the Commission and the Supreme Administrative Court;
- in long term – increasing the capacity to handle international anti-trust cases and drafting guidelines for handling of EU anti-trust cases.

For these purposes Bulgaria will use its own resources as well as funds granted under PHARE.

#### **4. Measures of deregulation, liberalization and ensuring conditions for free competition in different sectors**

The processes of deregulation, liberalization and ensuring conditions for freedom of competition in the Bulgarian economy, should be examined in a long - term period. During the last years Bulgaria realized the following :

- Reduction of the concentration of economic/business activity;
- division of the economic entities, where this is effectively and technically possible, including allocation before the privatization of the activities that are executed by dominant structures and where the introducing of competition is possible;
- privatization of the state and municipally owned undertakings with monopoly position, including liquidation of failing enterprises;
- restriction of state intervention in the economic activity;
- liberalization of pricing and non-interference in the industrial and trade policy of the entities;
- development of independent regulators (agencies), clear definition of their functions and relations with economic entities, in order legal certainty of economic operators to be guaranteed;
- application of clear market principles, rules and mechanisms for management of state property;
- replacement of various licensing regimes with economic decisions.

The progress so far achieved were realized through essential changes in the legislation and deep structural reforms, which were aimed at restructuring of the economy based on the principles of free market and competition.

#### **5. Information about further measures in the field of deregulation, liberalization and opening for the competition on the relative markets**

Bulgaria will continue henceforth the process of deregulation, liberalization and opening of particular sectors for competition. To this end the following measures are envisaged:

##### **5.1. Transport sector**

###### **Railway transport**

The Law on Railway Transport, entering into force in 2002, will give a possibility for sector's liberalization and for establishment of a railway transport services market, as well as conditions for real competition between the conveyers. According to the provisions of the new law, there will be a requirement for licensing the conveyers as of 2002. The law will have as a result the abolishment of the monopoly in this sector and will stimulate competition.

An independent regulatory authority */The Implementing Agency "Railway Administration"*, in charge of the Law's implementation, will be set up by the end of June 2001. It will start work before the entering into force of the Law, in order to ensure its smooth implementation in practice.

The secondary legislation is in process of active preparation and will be adopted until the autumn of 2001. It will help to all participants in the transport sector to get prepared for the Law enforcement.

## **5.2. Telecommunications**

In this sector the following measures are envisaged:

- Opening of the market of fixed public telephone service - on 01.01. 2003.
- Bringing into accordance with Art. 7 of Directive 97/13/EC the regime for licensing of the different services.
- Preparation of the legislative basis, in compliance with Directive 97/33/ EC and Directive 98/10/EC in 2002, for the regulation of the activity of the operators with Significant Market Power (SMP). Putting into practice this legislative basis - in 2003 and 2004.
- Bringing into accordance with Directive 98/10/EC and Directive 97/33/EC the requirements related to the Universal Service Obligations (USO), including the mechanism for entrusting the implementation of these obligations to other operators, and also the schemes for compensation in case of losses - end of 2002.
- Implementation of the requirements of Directive 90/388/EEC, Directive 92/44/EEC and Directive 97/33/EC for accounting separation and cost orientation of tariffs - end of 2003.
- Definition of the license fees in accordance with Art.6 and Art. 11 of the Directive 97/13/EC- from the beginning of 2004.

## **5.3. Postal Services**

A further liberalization of the postal market is subject to a review of the consequences of the reserved area on the financial viability of the incumbent postal operator by end September 2002. Providing services in the frame of the universal service outside the reserved area by alternative operators is permitted under individual license. Non-universal services outside the reserved area are granted after registration.

## **5.4. Energy sector**

Liberalization of the electricity market is envisaged by adoption of the following measures:

-Detailed provisions, concerning granting gradual access to electricity networks to eligible consumers, who have made contracts with independent producers in the country, will be set in the amendments to Law on Energy and Energy Efficiency, expected to be adopted by Dec. 2001. An Ordinance will define the terms for gradual access and the conditions the eligible consumers should meet.

Liberalization of the natural gas market is envisaged also, by adoption of the following measures:

- Giving local producing enterprises the right to export natural gas;
- Creating a possibility for the big consumers to import natural gas from external sources and giving them access to the gas transmission network for the realization of the import.

/The two measures in question are incorporated in the Draft Law for amending and complementing the Law on Energy and Energy Efficiency/

- Creating regional distribution enterprises between Bulgarian and foreign investors in accordance with a Programme for development of the market of natural gas distribution.

The accelerated privatization of the coal industry sector includes the following measures:

-Restructuring of the enterprise from centralized heating system in accordance with the approved "Updated plan for actions towards restructuring of commercial enterprises in the centralized heating system " .

## **6. Information about the Commission for the Protection of Competition's practice and the implementation of legislation in that field**

The efficient competition policy is a sine qua non condition in order to attain the full effect of deregulation. Therefore, the Bulgarian competition authority will continue to play a significant role in this process.

The Commission for the Protection of Competition has intervened several times in order to ensure the effective competition on the liberalized markets and to prevent the spill over of statutory monopolies on neighboring markets.

In one of the most high profile cases this year the Commission imposed a significant fine to the Bulgarian Telecommunication Company for abuse of dominant position through unilateral imposition of unfair trading conditions, affecting the interests of the consumers of telephone services (Decision 21/22.02.2000).

The National Electricity Company has also been subject to investigations for abuse of dominance (Decision 64/22.06.1999). Several times the Commission has examined the behavior of "Water supply and Sewage" SOJSC because of imposition of unfair trading conditions, limitation of the technical development to the detriment of the consumers, as well as direct or indirect imposition of unfair purchase or selling prices (Decisions 58/25.05.2000 and 96/05.09.2000).

During the present year the Commission has delivered opinions on some draft acts and regulations related to the competitive environment or regulating the behavior of undertakings with special and exclusive rights on the relevant market. Of a particular importance in this respect are the opinions of the Commission on the draft amendments of the Energy Act and the Telecommunications Act. In these opinions the Commission relies and quotes inter alia Articles 64 and 66 of the Europe Agreement, which provide for a free competition in the commercial relations between Bulgaria and the Community. Relevant EC acts are also taken into consideration.

During its proceedings the Commission for the Protection of Competition does not take into consideration specific regulatory issues and sticks to antitrust reasoning only. While in the past this position was not always sound from an economic point of view, now, after the creation of special regulatory bodies it seems the only one logical way of behavior of the CPC. The delimitation of jurisdiction between the Commission and the regulatory bodies has not, for the time being, gave rise to any significant problems. Moreover, in some areas such as telecommunications we witness examples of very good cooperation.

## STATE AID

### Activities in respect of the harmonisation of state aid legislation with the *acquis*

With a view of strengthening the legislative framework in the area of state aid in order to ensure full and proper enforcement of the Community *acquis* a State Aid Act is being developed. It will replace Article 20 of the existing Law for the Protection of Competition. The new law will implement the aspects of the Community *acquis* which are not subject to frequent change. These are the relevant provisions of the EC Treaty, Articles 86(2), 87 and 88, and the relevant provisions of the Procedure Regulation (Regulation 659/99).

The preliminary draft encompasses seven parts: prohibition of State aid, procedural provisions for obtaining permission of the CPC, powers of the CPC, existing aid, complaints and references of the CPC, enforcement, monitoring and reporting, final provisions.

The State Aid Act will be adopted by the end of 2001.

The adoption of secondary legislation will be carried out in two ways:

- Review and analysis of the level of compatibility of the existing sector legislation in respect of the relevant EC *acquis*
- Adoption of regulations of the Council of Ministers, incorporating the provisions of following EC acts:

*Short-term (within three months from the adoption of the State Aid Act, at the latest)*

- Council Regulation (EC) 1540/98 of 29.06.1998 on shipbuilding
- Commission Decision 2696/96/ECSC of 18.12.1996 establishing Community rules for State aid to the steel industry

*Medium-term (within six months from the adoption of the State Aid Act, at the latest)*

- Commission Decision 341/94/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry
- Council Regulation (EC) No 543/97 of 17 March 1997 amending Council Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway
- Council Regulation (EC) No 2255/96 of 19 November 1996 amending Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway
- Council Regulation (EEC) n° 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway,
- Council Regulation (EEC) n° 1192/69 of 26 June 1969 on common rules for the normalization of the accounts of railway undertakings + Annex
- Council Regulation (EEC) n° 1107/70 of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway
- Council Regulation (EEC) n° 1473/75 of 20 May 1975 amending Regulation (EEC) n° 1107/70
- Council Regulation (EEC) n° 1658/82 of 10 June 1982 supplementing, by provisions on combined transport, Regulation (EEC) n° 1107/70
- Council Regulation (EEC) n° 1101/89 of 27 April 1989 on structural improvements in inland waterway transport

- Commission Regulation (EEC) n° 1102/89 of 27 April 1989 laying down certain measures for implementing Council Regulation (EEC)
- Council Regulation (EEC) n° 3572/90 of 4 December 1990 amending, as a result of German unification, certain Directives, Decisions and Regulations relating to transport by road, rail and inland waterway
- Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways
- Council Regulation (EEC) n° 1893/91 of 20 June 1991 amending Regulation (EEC) n° 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway,
- Council Regulation (EEC) n° 3578/92 of 7 December 1992 amending Regulation (EEC) n° 1107/70 on the granting of aid for transport by rail, road and inland waterway

The remaining *acquis* will be either incorporated in the State Aid Act (Provisions of the Treaties, Procedural Regulation, Enabling and Block Exemption Regulations) or the Act will state explicitly that State aid enforcement shall be conducted in accordance with the principles and rules set out in the relevant EC notices, guidelines and frameworks. In this respect, the enforcement authority will be empowered to rely on and apply directly the mentioned documents of the State Aid *acquis*.

The Implementing Rules for the application of the provisions on State aid referred to in Article 64 (1) (iii) and (2) pursuant to Article 64 (3) of the Europe Agreement (adopted on 23.05.2001) will be used as the main guidance in the activity of State aid monitoring.

### **Bringing the existing aid in compliance with the *acquis***

Existing aid, granted or implemented after the enactment of the Europe Agreement and before the entry into force of the Law for the Protection of Competition (1998) were aimed at the restructuring and the privatisation of the beneficiary undertakings. With the exhaustion of the validity of the Financial Rescuing Law at the end of 2000 the implementation of the schemes was discontinued and the beneficiaries were either privatised or declared insolvent and terminated.

### **Strengthening the administrative capacity of the monitoring and control authorities.**

The new Law on State Aids will broaden the investigative powers of the CPC in this field. For the time being, the Commission successfully uses the general procedural framework of the Law on Protection of Competition (1998). On December 1<sup>st</sup>, 2000 a State Aid Directorate within the CPC was established with 10 officials. Currently, all of them are filled with economic or law graduates. One of the junior experts participated in the annual JTS of TAIEX/European Commission on State Aids. A significant part of the PHARE project is aimed at the reinforcement of the administrative capacity of the CPC is devoted to the development of the qualification and the professional skills of the officials of the Directorate.



The Ministry of Finance increased the staff of the State Aid Department and now 6 experts are directly engaged in monitoring state aid. In addition, concrete experts from the different Ministry of Finance agencies and directorates are appointed to participate in the process of work as consultants on particular issues from their activities. The State Aid Department is co-operating with other ministries and state organizations units, regional and municipal administrations. Within the PHARE Twinning Project the professional training of the officials of the MoF, the CPC and the other state bodies, dealing with the matter, will be raised by a series of seminars and other training events. In that respect the following measures are foreseen:

- delivery of training both on general and sector EU state aid *acquis* and practice, incl. on ex-ante assessment of planned new aid;
- provision of advice on state aid cases in sensitive and other priority sectors;
- training on the preparation of regional maps with the assistance of MS experts;
- preparation of information materials on the new state aid regime for distribution around government and other concerned bodies.

### **Establishment of a comprehensive and compulsory notification system**

Art. 20 (2) of the Competition Act provides already for compulsory notification of every aid with actual or potential effect on trade between the Communities and Bulgaria. Nevertheless, because of the general lack of awareness of the administration in this respect and the non-existence of a swift and reliable enforcement mechanism in the case of non-compliance, the number of the ex ante assessments is low. In order to solve this problem the CPC has led a campaign of popularisation of the obligation to notify, including direct mailing to all the potential aid donors. As a result, the line ministries and administrations have undertaken the obligation to abide strictly by the notification rules as set in the current Competition Act.

In the new State Aid Act we plan to guarantee the compulsory notification via the establishment of a quasi-automatic, contempt-type mechanism of sanctions for non-notification, as well as to subject to notifications all the aids (and not only the ones affecting the trade between the EC and Bulgaria, as this criterion appears to be blurred and arbitrary).

At the moment there is an information on planned state aid is being gathered in the Ministry of Finance. This is based on the State Budget Law and is part of the system and procedures for drawing up the draft state budget. Every year when the budget is being drawn up information regarding the proposals of different ministries, institutions and municipalities for inclusion into the budget is submitted to the Ministry of Finance (incl. state aid, subsidies, etc.). In addition information about state aid is gathered also on the basis of the requirements arising from the National Accounting Standards.

## **Implementation of the Memorandum of Understanding between the Ministry of Finance and the Commission for Protection of Competition**

The Memorandum of Understanding between the Ministry of Finance and the Commission for Protection of Competition of 1999 is being observed by both parties. A Schedule is prepared for their joint activities in 2001. In pursuance of the Memorandum and Art. 20 of the Law for Protection of Competition the Ministry of Finance has given to the Commission for Protection of Competition the annual report for state aid granted in 1999 in view of helping the Commission in performing its control functions. A meeting was held between the Ministry of Finance long-term advisor on the Phare Twinning Project Mr. Ayerst and experts from the Commission for Protection of Competition in view of coordinating the work on the implementation of the two institutions' Phare Projects and in connection with the practical monitoring and control of state aid in Bulgaria. Besides, the two institutions have regular meetings within the Competition working group. The possibility for exchange of experts is being considered, when more complicated state aid cases are discussed, both in the process of their monitoring and control. Thus, practically a double check regarding the compatibility of the aid with the European Association Agreement will be done. A direct link between the Ministry of Finance and the Commission for Protection of Competition is projected to be established through the computerized system for state aid monitoring and notification.

### **SCHEDULE**

for the joint activities of the CPC and the MoF in 2001

1. Holding of periodic meetings of representatives of State aid Directorate of the CPC and the State aid Department of the MoF for discussing current problems of their activities on the controlling and monitoring of state aid.
2. Data exchange regarding new planned and already granted state aid on the basis of the inventory and the collected data for the annual report.
3. Presenting to the MoF the information of the CPC about the state aid cases for which it has opened a procedure or has pronounced final decision.
4. Presenting to the CPC the final version of the annual report for state aid in 2000, elaborated by the MoF.
5. Participation of experts from both authorities when significant and complicated state aid cases are considered, with a view to prepare a well-founded position.
6. Participation of representatives of the CPC and the MoF in the training seminars on state aid issues to be held within the implementation of their Phare projects.
7. Exchange of current information about the visits of short-term advisors and lecturers during the implementation of the two Phare projects, in order to coordinate their training activities.

## **Ensuring of complete transparency through improvement of the inventory and the annual reports for state aid**

The existing data-base (inventory) for state aid was improved by enhancing its abilities to accumulate data not only on a national level (from central ministries and institutions) but also on a regional level – from the different regions of the country.

The database is being filled up continuously during the year, and any new case of state aid not included in the annual report and the budget is described additionally there at the moment of its occurrence. The final data for the actually granted state aid are filled in after the publication of the official statistical information, after 31 March every year. The data-base is provided with hardware and software and is able to accumulate in future the greater stream of regular information for state aid, after the establishment of the state aid monitoring system on national and regional levels in 2002.

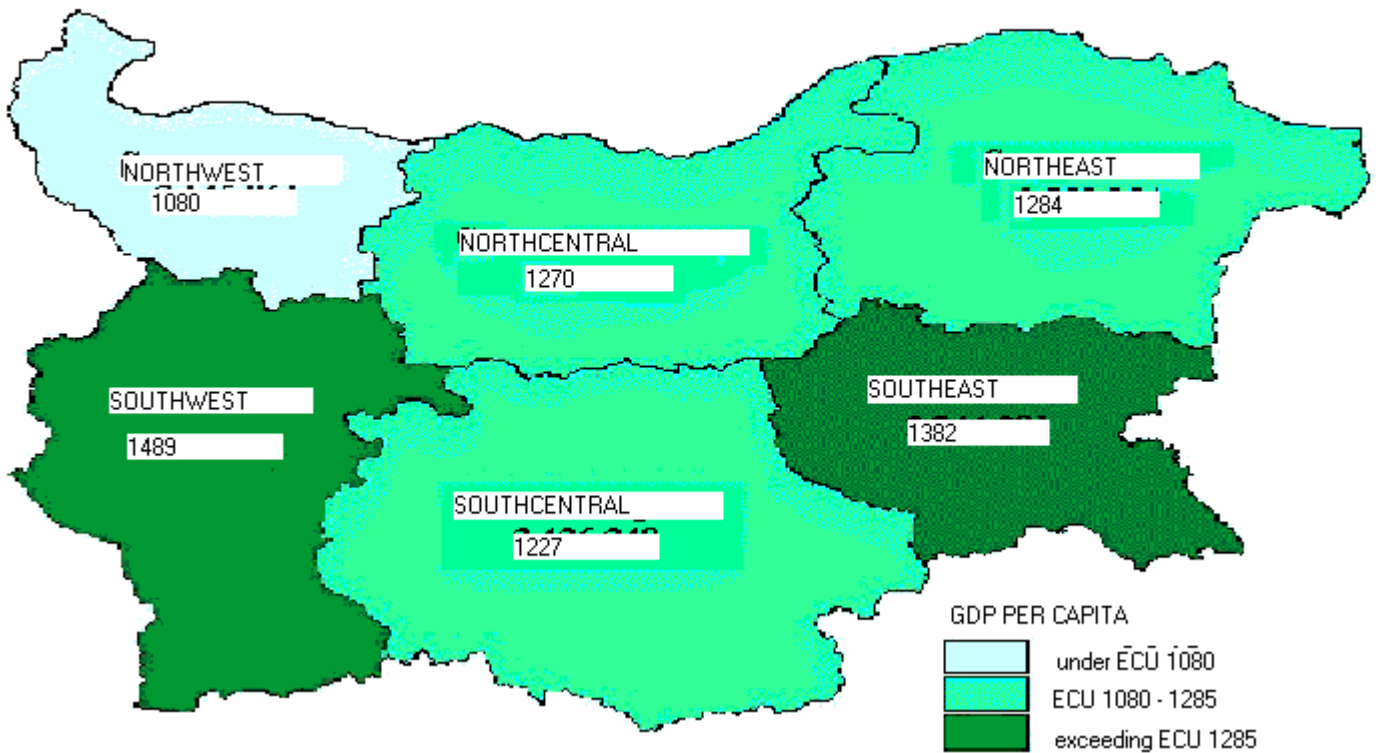
Since 1999 the state aid annual report has been done in compliance with the methodology of the European Commission for preparation of the EU member-states' state aid inventories, which allows direct comparison of information. For the first time in the 1999 report data for the regions were included, incl. GDP for the regions (for 1998). Of course, the report will continue to be improved, in view of getting more comprehensive and to cover all forms of state aid, incl. the indirect one.

## **Regional statistical data for the purposes of establishing regional state aid maps**

In accordance with the methods of EUROSTAT Bulgaria was divided into six NUTS II regions. The quoted map shows that the GDP of all the six of them falls below the 25 % of the Community average. An exception is the Sofia district, where the GDP is in the 37,5 - 50 % brake. However, on a NUTS II level this difference cannot be shown.

| <b>GDP/capita</b> | <b>USD</b>  |             |             |
|-------------------|-------------|-------------|-------------|
| <b>Regions</b>    | <b>1995</b> | <b>1997</b> | <b>1998</b> |
| Southwest         | 1 537       | 1 238       | 1 677       |
| Northwest         | 1 390       | 1 224       | 1 216       |
| Northcentral      | 1 614       | 1 213       | 1 430       |
| Northeast         | 1 520       | 1 211       | 1 477       |
| Southeast         | 1 914       | 1 339       | 1 556       |
| Southcentral      | 1 481       | 1 179       | 1 382       |

#### GDP PER CAPITA FOR 1998



The establishment of regional maps for the purposes of state aid control is also included in the PHARE administrative capacity reinforcement project.

#### Information for the aid to the “sensitive” sectors

Information for the state aid in Bulgaria and in particular the aid granted to the “sensitive” sectors has been given to the European Commission with the state aid annual reports for 1997, 1998 and 1999. For 2001 no state aid is foreseen for car building, shipbuilding and steel industry. The aid for "Kremikovtsi" steel plant has been discontinued after its privatisation.

#### Aid granted in the financial sector

According to the obtained national bank information at this stage such aid has not been granted to institutions operating on the Bulgarian market. The CPC and the MoF are still working on the specifying and verifying of this information.

## **PUBLIC ENTERPRISES WITH SPECIAL AND EXCLUSIVE RIGHTS**

The Bulgarian Law on protection of competition applies to all enterprises, which activity restricts or might restrict the competition in the country. Its provisions are applicable to the behavior of the “undertakings to which the State has assigned the provision of services of public interest, in so far as the observance of the law does not render the fulfillment of those tasks impossible and the competition in the country is not affected to a significant extent” /Art. 2 (1) p.3 of LPC/.

Regarding the activities of those enterprises, the application of Art. 86 EEC is also ensured in practice through the provisions of the specific sector legislation.

In the different sectors, the application measures are as follows:

### **1. Transport sector**

#### **• Railway transport**

The railway transport is in a process of overall reform. A new Law on the Railway Transport /in force as of 1 January 2002/ was adopted in 2000. It introduces the requirements of the European legislation and separates the railway infrastructure from the exploitation of operation activities. According to the law the allocation of infrastructure capacity will be performed by separate and independent entity, which will be state property and will not provide transportation by itself – National Company “Railway Infrastructure”.

The *Executive Agency “Railway Administration”* will control the equal access to railway infrastructure and the fulfillment of public service obligations. It will also elaborate regulatory acts in the field of rail transport and propose them to the Minister of transport and Communications.

#### **• Road transport**

The legislative frame in this sector is in place. In 1999 and 2000 three new laws, harmonized with EU legislation, were adopted and that didn't provide for creation of monopolistic structures in the area of road transport. A number of application regulations were also adopted. The state has withdrawn from performing economic activities. The sector is fully privatized- the road carriages are done by private companies. Specialized structures were created to supervise and control the application of legislative provisions. These structures have enough administrative capacity to ensure the application of these provisions.

#### **• Maritime transport**

The administrative build-up of the structures, responsible for the legislation application, was carried out through creation of several Executive agencies, possessing enough administrative capacity to fulfil the functions they were empowered with. Specialized state structures were empowered with the control over adherence to the rules of naval security and environmental protection.

- **Air transport**

The judicial frame is set by the Civil Aviation Act and by more than 25 regulations adopted in 1999 and 2000. They introduce European legislation provisions to the Bulgarian legislation. There are no structures with exclusive rights in this sector. The sector is liberalized, the implementation of Art.86 EEC in practice is accomplished through measures of legislative and administrative nature for carrying out the sector's activities and is achieved through ensuring of favorable conditions and proper competition environment. As a result of the active steps taken by the *Civil Aviation Administration* /which is a specialized structure empowered with legislation application / 83 licenses to airport service operators were issued as of the current moment. 16 airline companies were certified for carrying out of passenger and cargo air-flights, as well as 23 aviation companies for agricultural flights. Regular international air destinations are operated by 2 airline companies and the possibility for establishing a monopoly position of one air operator should be ruled out. A number of aviation training centers were issued license, as well as a number of companies for technical maintenance of the aviation machines.

Regarding the airport taxes collected for the use of public airports, a unified regime is applied both for Bulgarian and foreign operators.

The assignment of the aviation tariffs for passenger and cargo flights is liberalized and is no more subject to approval by the State.

## **2. Telecommunication sector and postal services sector**

A proper sector policy and a legislative frame, in conformity with the EU legislation, have already been developed in the area of telecommunications.

The main judicial tools and sector policies are the following:

Sector Policy in the Telecommunications of Republic of Bulgaria (actualization, promulgated in State Gazette, issue 3/2001); Law on Telecommunications (SG, issue 93/1998); Strategy for the Development of Information Society in Republic of Bulgaria; Law on the Postal Services (SG, issue 64/2000); Postal Sector Policy of Republic of Bulgaria.

Sector policies are subject to annual review and actualization. The Law on Telecommunications will be basically reviewed and will be accordingly amended in 2002 before the full liberalization.

Bulgaria has elaborated detailed information on the respective negotiation chapter (№ 19) in view of the current and planned harmonization of its legal and regulatory frame with the EC legislation in the field of telecommunications and posts as of 1999. Most of the measures will be implemented by the end of 2002, only some of them-by the end of 2003, and for three of them it is previewed to be implemented by the end of 2005.

The independent regulatory authority */The State Telecommunications Commission/* works for ensuring transparent and non-discriminatory conditions for economic operators in the telecommunication sector.

### **3. Energy sector**

The Law on Energy and Energy Efficiency, adopted on 02.07.1999, is the legal framework regulating the relations between the economic operators in the different sub sectors of the energy sector.

The most proper structural model for the Bulgarian electricity subsector in the transitional period is considered to be the model, based on legal and accountancy separation of the activities, tendering procedure for energy sites construction and single buyer model. Conditions for gradual transition to an electricity market open to competition have been created. A separation of the National Electricity Company into independent commercial entities dealing with the main activities of generation, transmission and distribution has been done.

The draft Law for amending and complementing the Law on Energy and Energy Efficiency provides for the possibility for creation and gradual development of a market, parallel with the existing single buyer model market. The Draft contains provisions concerning the introducing of a direct access to the electricity grids for eligible consumers.

In the natural gas subsector the separation of the activities of import, transmission, storage and distribution has been also accomplished. These are provided by independent commercial companies.

In the draft Law for amending and complimenting the LEEE, an opportunity is provided for eligible natural gas consumers meeting the conditions defined by an Ordinance, to effect natural gas import transactions. Local gas producers shall also have the opportunity to make natural gas export transactions.

An independent regulatory authority */The State Commission for Energy Regulation/* guarantees transparent and non-discriminatory conditions for economic operators in the energy sector.

The draft Law for amending and complimenting the LEEE provides for the strengthening of the financial independence of this institution.

### **STATE MONOPOLIES OF A COMMERCIAL CHARACTER**

The Bulgarian Constitution includes an exhaustive list of the activities for which monopoly rights could be granted to the state by virtue of a law.

Presently there are no monopolies of a commercial character in the Republic of Bulgaria.