

---

## **The impact of the Corona virus crisis on competition rules**

The widespread of COVID-19 continues to increasingly affect individuals and companies around the world. The pandemic and self-isolation and restricted right of movement implemented in relation thereto and concerning a substantial part of the population not only in Bulgaria, represent an exceptionally serious challenge for established business models, including in the context of disturbed supply channels, along with the over-consumption of certain essential goods and significantly reduced demand of goods and services that do not have this characteristic. Enterprises from a number of economic sectors (including tourism and hotel business, organization of mass events, leisure services) are facing a huge decline in revenue, which can lead to discussions among competitors on possible measures to cope with the upcoming and deepening crisis.

Here namely it is worth considering that despite the state of emergency declared in our country, the current situation does not provide the business with immunity from the legal competition rules. In this respect, the emergency legislation adopted in our country does not regulate any competition law aspects pertaining to the new reality.

In the light of the above, it may be expected that the Protection of Competition Commission shall continue to closely monitor for any potentially harmful anti-competitive behavior by those market participants which may seem likely to try to benefit from the consumers and/or the business during these emergency circumstances.

In view of this, it should be considered that contacts, cooperation or communication with competitors may violate competition law, and in particular:

- the exchange or disclosure of competitively sensitive information, such as business strategy and price intentions, is prohibited;
- pricing or sharing of markets, customers and/or territories between competitors is prohibited;
- agreements stipulating restrictions to conclude contracts with third parties or stipulating the conclusion of contracts only under certain conditions may be considered unlawful;
- delivery refusals may constitute unlawful abuse of a dominant position, even if that dominant position is for a short period due to shortages.

In a state of emergency, market participants should be particularly cautious not only for avoiding any breaches of antitrust legislation, such as prohibited agreements and practices and abuse of a dominant position, but also for adhering to the rules for fair competition which may adversely affect the relationships among competitors on the relevant market.

In this regard and in the context of the wide-spreading corona virus pandemic, particularly relevant are the prohibitions on misleading consumers and misleading marketing practices such as false or misleading statements on the ability of certain products to protect from or cure the virus. Further, while making efforts to cope with the reduced consumption of their

---

goods and services, probably quite a few traders will be tempted to implement techniques to stimulate consumer interest through various forms of marketing activities related to discounted pricing, prize games and other similar types.

Once again, we should point out that the use of various promotional activities itself, including the introduction of competitive (reduced) prices or better conditions, pursuant to the practice of the regulatory authorities in the field of consumer protection and effective competition, cannot be deemed unfair behavior of a competitor. On the contrary, the offering of better and more favorable conditions in a dynamic market is in the best interest of consumers and is a manifestation of effective competition in which companies compete with each other in order to maintain or expand their market positions. However, the offering of more attractive prices should comply with the applicable rules governing the options for and the parameters of price campaigns, as well as with the rules establishing the limits beyond which the applied commercial practice cannot be regarded as bona fide with regard to competitors. In view of this, bona fide, especially in a state of emergency, requires that commercial and advertising techniques which mislead the consumer should not be used, and that the accuracy of the statements contained in the advertisements be guaranteed.

Despite the fact that with the latest amendments to the Consumer Protection Act (for which a presidential veto was exercised), control over trade in light of speculative prices has been placed under the responsibility of the Consumer Protection Commission, the risk that such practice may also be considered as a breach of the competition rules should not be underestimated.

*With respect to other current topics, in relation to the legislation, stipulating the relationships at the state of emergency, you may find information on our website – [www.penkov-markov.eu](http://www.penkov-markov.eu). Of course, you may address us for any additional information and assistance at [lawyers@penkov-markov.eu](mailto:lawyers@penkov-markov.eu).*

*The above provides general information related to the adoption of the Emergency Measures and Actions during the State of Emergency Act and it is not exhaustive, whereas it serves only as a guide for interpreting the news as of March 26, 2020.*