

[BG] Competition authority finds that proposals for amendment to the Radio and Television Act would restrict competition

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On 1 October, a competition advocacy decision of *Комисия за защита на конкуренцията* (the Commission for Protection of Competition - CPC), namely Decision No. AKT-788-01.10.2020 of the CPC on bills for amendment and supplement to the *Закон за радио телевизията* (the Radio and Television Act - RTA), found that two bills would restrict competition on the media market.

To issue its decision, the CPC relied on Article 28, paragraph 1 of *Закон за защита на конкуренцията* (the Competition Protection Act - CPA), which provides that the CPC shall assess the conformity of bills (and/or other acts) with the provisions of the CPA to protect free economic initiative and to prevent the restriction or distortion of competition.

The CPC's decision concerns two bills submitted to *Народното събрание на Република България* (the National Assembly of the Republic of Bulgaria - the Parliament) in December 2019 and February 2020, both of which proposed the introduction of quotas for Bulgarian music in radio and television programmes using different approaches aimed at achieving the same legal effect.

The first bill (Bill for amendment and supplement to the Radio and Television Act No. 954-01-85 of 5 December 2019) proposes to encourage radio broadcasters who allocate at least 30% of their monthly time for Bulgarian musical works by financing them through the national *Фонд „Радио и телевизия“* (the Radio and Television Fund within the *Съвета за електронни медии* (the Council for Electronic Media - CEM)). The bill stipulates that a musical work should not be broadcast more than 5 times a day in the 7 a.m. - 9 p.m. slot. It also proposes a quota of at least 10% of musical works created within the last 5 years. Bulgarian musical works are defined as: 1) a musical work created by at least one author who is a Bulgarian citizen or 2) a work whose text is in Bulgarian.

The second bill (Bill for amendment and supplement to the Radio and Televisions Act No. 054-01-17 of 21 February 2020) envisions that at least one third of the daily music content of radio and television channels (except for news, sports programmes, ads, and movies) must be allocated for Bulgarian music created by at least one author who is a Bulgarian citizen. Monetary sanctions of up to

approximately EUR 10 000 are considered in the case of non-compliance.

Some of the most prominent and significant stakeholders in the media market, including the CEM, *Министерство на културата* (the Ministry of Culture - TM) , *Асоциация на българските радио- и телевизионни оператори* (the Association of Bulgarian Radio and Television Operators - ABBRO), *Българското национално радио* (the Bulgarian National Radio - BNR) and *Музикаутор* (Musicautor - the local organisation of composers, authors and music publishers for the collective management of copyright), took part in the proceedings by presenting legal statements. Most of the stakeholders argued against the introduction of such quotas, except for Musicautor. The latter stated that the introduction of quotas for Bulgarian music in television and radio programmes would have a positive impact on the motivation of Bulgarian authors and performers, on the quality and diversity of their music, as well as on the dialogue between the state and the cultural sector.

The thorough analysis of both the two legislative proposals and the statements of all interested parties led the CPC to the decision that, in terms of competition, such quotas would restrict competition on the market. The reasoning behind the CPC's decision is that the introduction of quotas would limit the ability of radio and television operators to freely select their music content, as well as their strategy for reaching a wider audience. At the same time, privately-owned broadcasters rely mainly on advertising revenues, which would be higher only if there is a wider audience. Thus, the CPC concluded that the market creates sufficient stimulus for radio and television broadcasters to broadcast music according to audience preferences. The presence of a quota for Bulgarian music would only result in radio stations and music TVs losing their identity and distinctiveness. Moreover, those who are obliged to change their concept and broadcast more Bulgarian music would risk losing their current audience.

In addition, the proposed financial incentives for broadcasting Bulgarian music would put Bulgarian radio stations in a privileged position. The competition authority also considered that the introduction of quotas for Bulgarian music would restrict competition by placing Bulgarian performers in a privileged position with respect to their foreign counterparts by creating geographical barriers to the free movement of goods and services.

Finally, the CPC stated that the introduction of quotas would not incentivise the creation and promotion of Bulgarian music. This is due to the presence of multiple foreign music channels, online platforms and foreign radio stations that can be listed online (for example, Spotify, YouTube, Apple Music, etc.) which would most probably not fall within the scope of the proposals. Furthermore, the restriction of competition and the guaranteed market could even lessen Bulgarian performers' motivation to improve the quality of their music. The CPC concluded that the

creation and promotion of Bulgarian music could be boosted in various other ways without restricting competition, and for these reasons, it is considered that both bills may have the effect of restricting competition in the media market.

These advocacy decisions do not have a binding effect on Parliament and it remains to be seen whether, and to what extent the National Assembly will take the detailed arguments of the competition authority into consideration .

Законопроект за изменение и допълнение на Закона за радиото и телевизията, съгнатура № 954-01-85 от 5 декември 2019

<https://www.parliament.bg/bg/bills/ID/157269>

Bill for amendment and supplement to the Radio and Televisions Act, No. 954-01-85 of 5 December 2019

Законопроект за изменение и допълнение на Закона за радиото и телевизията, съгнатура № 054-01-17, 21 февруари 2020

<https://www.parliament.bg/bg/bills/ID/157355>

Bill for amendment and supplement to the Radio and Televisions Act, No. 054-01-17 of 21 February 2020

Решение № AKT-788-01.10.2020 на КЗК относно проекти на закони за изменение и допълнение на Закона за радиододоти

<http://reg.cpc.bg/Decision.aspx?DecID=300058464>

Decision No. AKT-788-01.10.2020 of the CPC on bills for amendment and supplement to the Radio and Televisions Act

