

MEMORANDUM OF COOPERATION

**IN THE FIELD OF PROTECTION OF
COMPETITION ON THE MARKET OF
ELECTRONIC COMMUNICATIONS**

Skopje, January 2007

The Commission for Protection of Competition (Dame Gruev 1, 1000 Skopje, represented by Cedomir Kraljevski, President)

and

The Agency for Electronic Communications (Dimitrie Cupovski 13, Skopje, represented by Kosta Trpkovski, Director)

having in regard

that close cooperation between the Commission for Protection of Competition (hereinafter: CPC) and the Agency for Electronic Communications (hereinafter: AEC) will increase the efficiency of the fulfilment of the tasks assigned to both authorities and thereby contribute to the promotion of competition in the electronic communications sector in the Republic of Macedonia

that Article 26 paragraph (7) of the Law on Protection of Competition, as well as Article 9 paragraph (6) item c), Article 21 paragraph (3), Article 41 paragraphs (2) and (3), Article 42 and Article 53 of the Law on Electronic Communications set the general legislative framework for cooperation in which both authorities will mutually help one another to ensure efficient fulfilment of their tasks in the promotion of competition and

that the 2002 European Regulatory Framework for Electronic Communications or more specifically, Article 3, paragraph (4) of the Framework Directive 2002/21/EC¹ also requires the National Regulatory Agencies and the National Competition Agencies to consult and cooperate with each other

have signed the following

**MEMORANDUM OF COOPERATION
IN THE FIELD OF PROTECTION OF COMPETITION ON THE MARKET
OF ELECTRONIC COMMUNICATIONS**

Article 1

Introductory provisions

1. This Memorandum attains close cooperation between CPC and AEC (hereinafter: parties of the Memorandum) in the protection of competition on the market of electronic communications in the Republic of Macedonia, for the purpose of more efficient fulfilment of the competition rules.
2. With the signing of this Memorandum, the parties of the Memorandum express their readiness for cooperation in the field of protection of competition, by virtue of

¹ Directive 2002/21/EC of the European Parliament and the Council from March 7th 2002 for general regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108/33, 07.03.2002

mutual trust and understanding, and have agreed to base their cooperation on the principles and procedures provided for in this Memorandum.

Article 2

Field of cooperation

1. The parties of the Memorandum have agreed to cooperate in the field of protection of competition, with the purpose of promoting and helping the development of the competition on the market of electronic communications in the Republic of Macedonia, starting from the significance of this market for the economy in the country, especially from the benefits that result from the competition for the end users.
2. The parties of the Memorandum are also agreed to cooperate in other fields which are directly or indirectly related to the protection of competition.

Article 3

Forms of cooperation

1. The cooperation of the parties of the Memorandum shall be realized especially through:
 - 1.1. continuous exchange of data and information
 - 1.2. mutual informing of initiating procedures
 - 1.3. preparation of expert opinion upon request and for the needs of the other party of the Memorandum
 - 1.4. constant direct contacts between the parties of the Memorandum
 - 1.5. constant expert training of the parties of the Memorandum in the field of protection of competition and related fields through exchange of notifications for seminars, conferences etc., by mutual invitation to seminars and other forms of educational programs organized by one of the parties of the Memorandum, as well as participation in educational programs organized by third party or organization (EU, OECD) for the benefit of one of the parties.
 - 1.6. coordination of activities related to amendments of the existing legal provisions of mutual interest.

Article 4

Board of cooperation

1. For the realization of this Memorandum the parties shall form mutual board of cooperation.
2. The task of the board of cooperation shall be coordination of all forms of cooperation between the parties of the Memorandum as set out in Article 3 of this Memorandum, especially realizing and maintaining direct contacts between the parties of the Memorandum, with the purpose of promoting competition and assistance in decision making in certain cases within the competence of the CPC and AEC respectively.

3. The board of cooperation shall consist of four members and two co-chairman, whereas each of the parties of the Memorandum shall appoint two members and one co-chairman.
4. The two co-chairmen shall be in charge of contacting the parties of the Memorandum, i.e. for assembling and organizing sessions for the board of cooperation.
5. The board of cooperation shall meet when necessary, but at least once every six months. One regular meeting a year is also held.
6. The meetings from item 5) of this Article shall take place alternatively at the premises of the CPC and AEC respectively.
7. The meetings of the board of cooperation that shall be held on initiative of one of the parties of the Memorandum shall take place at the premises of that party of the Memorandum, unless the co-chairmen in the concrete case do not agree differently.
8. The meetings of the board of cooperation from items 5) and 7) of this Article are chaired by the co-chairman from item 3) of this Article, who is appointed by the party of the Memorandum in which premises the meeting shall be taking place.
9. At the meetings of the board of cooperation from items 5) and 7) of this Article, besides the co-chairmen and the members of the Board, experts from the CPC and AEC respectively can participate as well as other experts in certain fields, if the parties of the Memorandum consider their presence in the concrete case necessary and useful.
10. The invitation for the regular annual meeting from item 5) of this Article i.e. the initiative for holding a meeting from item 7) of this Article must contain draft agenda of the meeting.
11. The party of the Memorandum in which premises the meeting took place, is obliged to make minutes for the course and the conclusions of the meeting and to provide a copy of those minutes to the other party of the Memorandum within 15 days from the day the meeting was held. The other party of the Memorandum should provide the remarks about the minutes, within 8 days from receiving the copy of the minutes and those remarks shall be part of the minutes.
12. The parties of the Memorandum are obliged to appoint the members of the board of cooperation within 15 days from the day of signing this Memorandum.

Article 5

Exchange of data and information

1. The parties of the Memorandum, in line with their legal obligations, shall exchange data and information necessary in exercising their competences.

2. The scope of exchange of data and information shall be limited to data and information that is relevant and proportionate to the purpose for which they are exchanged.

Article 6

CPC's proceeding in the area of electronic communications

1. If the CPC initiates proceedings in the area of electronic communications, the AEC shall be informed about it in written and shall have the opportunity to give an opinion within 15 days from the day of the receipt of the request for opinion.
2. If the CPC, in the course of the proceedings from item 1), requests clarification on certain points, the AEC shall provide a written opinion within 10 days upon the receipt of the request.
3. The CPC shall submit its final draft decision to the AEC. The AEC can comment on the draft decision within 15 days from the receipt of the draft decision.
4. The AEC's opinion shall be attached to the files.
5. The CPC shall be obliged to take into consideration the AEC's opinion from item 3) in its final decision.

Article 7

AEC's decisions concerning market definition in the sector of electronic communications and designation of operators with significant market power (SMP)

1. The AEC shall carry out its market definitions and market analyses in the sector of electronic communications in close cooperation with the CPC.
2. The AEC shall consult the CPC in the course of the proceedings upon defining relevant markets in the sector of electronic communications and designating operators with SMP.
3. The AEC shall submit the draft decision related to defining the relevant market in the sector of electronic communications i.e. designating operators with SMP to the CPC, together with all relevant information used in the drafting of the decision.
4. The CPC shall give its written opinion on the draft decision from item 3) within 30 days of the receipt of the draft, providing detailed reasoning where it disagrees with the proposed draft decision.
5. If the CPC fails to give its written opinion within the specified time frame as set out in item 4), it is presumed that it agrees with the proposed decision.
6. The CPC's written opinion shall be attached to the files.

7. In case of a dissenting opinion from item 4), further consultations shall be held between the parties of the Memorandum within 5 days in order to reach an agreement.

8. In case an agreement from item 7) cannot be reached, the AEC is obliged to take the CPC's opinion into consideration in its final decision.

Article 8

Imposing obligations on operators with SMP

1. When imposing obligations on operators with SMP, the AEC shall closely cooperate and consult with the CPC.

2. The AEC shall submit the draft decision for imposing obligations on operators with SMP to the CPC together with all additional relevant information used in the drafting of the decision.

3. The CPC shall give its written opinion on the draft decision from item 2) of this Article within 30 days from the receipt of the draft providing detailed reasoning where it disagrees with the proposed written opinion.

4. If the CPC fails to give its written opinion within the specified time frame from item 3), it is presumed that it agrees with the proposed decision.

5. CPC's written opinion shall be attached to the file.

6. In case of a dissenting opinion from item 3), further consultations shall be held between the parties of the Memorandum within 5 days in order to reach an agreement.

7. In case the agreement from item 6) cannot be reached, the AEC is obliged to take the CPC's opinion into consideration in its final decision.

Article 9

Confidentiality of data and information

1. The party of the Memorandum receiving confidential data and information from the other party of the Memorandum shall provide the same level of confidentiality of the disclosed data and information as the originating party of the Memorandum.

2. The party of the Memorandum, when disclosing confidential data and information to the other party of the Memorandum, at the same time shall inform the data and information supplier/suppliers on the transfer.

Article 10
Disputes regarding competence

1. Each party of the Memorandum is obliged to transfer all cases which clearly fall within the competence of the other party of the Memorandum, to the originating party of the Memorandum, provided for in Article 27 of the Law on General Administrative Procedure.

2. The Law on General Administrative Procedure shall be applicable whenever disputes regarding the competences of the parties of the Memorandum occur.

Skopje, January 2007

Commission
for Protection of Competition,

Cedomir Kraljevski, President

Agency for
Electronic Communications,

Kosta Trpkovski, Director