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THE IDEA OF STATE REGULATION OF HOTEL ACCOMMODATION PRICES IN BULGARIA AND THE PRINCIPLE OF FREE ECONOMIC INITIATIVE – VIEWS AND SOLUTIONS

ИДЕЈА ДРЖАВНЕ РЕГУЛАЦИЈЕ ЦЕНА ХОТЕЛСКОГ СМЕШТАЈА У БУГАРСКОЈ И НАЧЕЛО СЛОБОДНЕ ПРИВРЕДНЕ ИНИЦИЈАТИВЕ – СТАВОВИ И РЕШЕЊА

Abstract. After the transition from a centralized to a free market economy in Bulgaria, market mechanisms, competition, private ownership and private entrepreneurship dominate the different sectors of the national economy. In a relatively short period of time in the tourism sector many private business entities emerged and established themselves, developing their activities in the highly competitive and rapidly developing tourism market. The State has now moved away from its dominant position in economic relations, but its presence in the tourism sector remains. It is still the responsibility of the state authorities to formulate and implement the overall tourism policy and the established strategy for the sustainable development of this important sector of the Bulgarian economy. These same state bodies, in the form of the Ministry of Tourism, are also entrusted with the immediate functions of organising and administering individual tourism activities and constantly monitoring their lawful exercise. The question to what extent and with what intensity is state interference in the functioning of the tourism sector permissible and where is the boundary between regulation and subordination of an economic

Анстракт. После преласка са централно планиране на слободну тржишну економију у Бугарској, тржишни механизми, конкуренција, приватна својина и приватно предузетништво постали су доминантни у различитим секторима националне привреде. У релативно кратком периоду у туристичком сектору појавио се велики број приватних привредних субјеката који су се учврстили на тржишту, развијајући своје активности у висококонкурентном и брзорастућем туристичком окружењу. Држава се повукла из своје доминантне позиције у економским односима, али њено присуство у туристичком сектору и даље постоји. И даље је у надлежности државних органа да формулишу и спроводе укупну туристичку политику и утврђену стратегију одрживог развоја овог важног сектора бугарске економије. Тим истим државним органима, у оквиру Министарства туризма, поверене су и непосредне функције организовања и администрирања појединачних туристичких активности, као и сталног надзора над њиховим законитим обављањем. Питање у којој мери и са каквим интензитетом је дозвољено државно мешање у функционисање туристичког сектора и где се налази граница између регулације и подређивања

activity has many facets and is unlikely to receive a clear-cut answer. This article examines the issue at hand through the prism of a specific administrative proceeding before the Commission for Protection of Competition. The Commission has been asked by the relevant ministry to issue an opinion on the compatibility of the draft introduction of minimum room rates in hotels with the competition rules. The observations and arguments of the interested parties are set out below. The author's personal views on the case are set out.

Keywords: *free economic initiative, Competition Protection Act*

једне привредне делатности. Поменуто питање има више аспеката и тешко да можемо добити једнозначан одговор. Чланак разматра предметно питање кроз призму конкретног управног поступка пред Комисијом за заштиту конкуренције. Од Комисије је, на захтев надлежног министарства, затражено мишљење о усклађености нацрта увођења минималних цена соба у хотелима са правилима конкуренције. У наставку су представљена запажања и аргументи заинтересованих страна. Изложени су и ауторови лични ставови о предмету.

Кључне речи: *слободна привредна иницијатива, Закон о заштити конкуренције*

The principle of free economic initiative – nature and interpretation

The economic system in Bulgaria is based on a core of principles proclaimed in the Basic Law and developed and specified in detail in the legislation. One of these principles is the principle of free economic initiative, which aims to ensure a level playing field between legal entities in the conduct of their economic activities by preventing the abuse of monopoly and unfair competition and protecting the interests of consumers – Article 19, paragraph 2 of the Constitution of the Republic of Bulgaria (Konstitutsia na Republika Bulgaria) (Glickman, 2019). As a constitutional principle on which the market economy is built, free economic initiative is the foundation of the country's economic life. It is a consequence of the economic freedom that has been introduced for all business entities (citizens and legal entities) in the conditions of a decentralized national economy.

In view of its importance, this principle is regulated not only in the domestic legislation of a number of countries, but also in European Union law. According to the provision of Article 16 of the EU Charter of Fundamental Rights, freedom of economic initiative

is recognised in accordance with Union law and national laws and practices. As an annex to the Lisbon Treaty of 2009, the Charter has binding legal effect on Member States (Kellerbauer et al., 2024, Mock, 2010).

The right to free economic initiative is also discussed by the Court of Justice of the European Union (CJEU). In its consistent case law, the CJEU has stood by the understanding that freedom of economic initiative is a complex right consisting of three components: freedom to engage in commercial and economic activity; freedom to contract and conclude transactions; and free competition between economic operators.

According to the Court of Justice, freedom to conduct a business, like the right to property, forms part of the general principles of EU law. However, these principles should not be absolutized but must be seen in relation to their public function. Consequently, it is permissible to impose restrictions on the right to freedom of economic initiative provided that those restrictions are in conformity with the general objectives of the Union and do not constitute, in relation to the objective pursued, a disproportionate and intolerable interference likely to undermine the very essence of the right in question.

In interpreting the content and scope of the rule in question, the Bulgarian Constitutional Court points out that it is not absolute. Therefore, the freedom of economic initiative does not exclude state regulation and state control over economic activities. In certain cases provided for in the Constitution, that right may be restricted by legislation. Such are the cases of establishing state ownership and state monopoly over individual objects and activities, as well as in view of the protection of other constitutional values – the sovereignty, security and independence of the country and its territorial integrity, the protection of the environment, the maintenance and diversity of the living nature, the reasonable use of the natural wealth and resources of the country, the special protection of the land, the protection of the Bulgarian language and the national and cultural heritage (Decision № 18/1997 on constitutional case № 12/1997 of the Constitutional Court of the Republic of Bulgaria).

Protection of competition – legal framework

The current Competition Protection Act is aimed mainly at enterprises and associations of enterprises - private law entities, which carry out their activities on the territory of Bulgaria or abroad. The Act provides for administrative and criminal liability against them by imposing pecuniary sanctions on legal entities and fines on individuals who commit or facilitate the commission of competition infringements. However, undertakings are not the only entities to which the law applies. State bodies, including executive and local authorities, also fall within its scope if they expressly or impliedly prevent, restrict or distort competition in the country. In this way, public law authorities implement so-called 'public restrictions of competition'. The latter can be both actual acts of the public authorities and acts they have issued - draft or enacted administrative acts.

The public authority responsible for enforcing competition law is the Commission for the Protection of Competition (CPC). It

is charged with monitoring infringements and imposing the penalties provided for in the law.

Facts and circumstances of the case

The Ministry of Tourism (MoT) has prepared a draft which proposes to impose minimum room rates in hotels and other accommodation establishments in the country according to their category. The proposal has been submitted to the CPC. It is asked to rule on whether the application of such an administrative measure would comply with the competition rules. The MoT points out that there is currently no statutory pricing framework for the different categories of accommodation. Thus, it is possible in some cases to equate the price per night in a two-star and a four-star accommodation. In addition, there is 'undercutting' of prices per night, especially by large hotel chains compared to smaller ones. According to the MoT, fixing minimum room rates for each category of accommodation could serve as a basis for minimum taxation. This will help to lighten the so-called grey sector and better regulate the market, greater security for small and medium-sized businesses and higher revenues for the national tax system.

On the basis of the request, the CPC initiated proceedings and carried out a study. In order to reach a decision, the administrative authority requests the assistance of other competent national authorities and representatives of the tourism industry.

Stakeholders' positions on The MoT draft

Position of The MoT

According to the current legal framework, accommodation establishments and the catering and entertainment establishments adjacent to them may offer tourist services to consumers only if they are categorised. The categorisation itself is carried out by the Minister for Tourism and the mayors of municipalities or officials entrusted by them, depending on the different types of establishments and categories. Under the

Tourism Act, accommodation establishments are divided into three classes – ‚A‘, ‚B‘ and ‚C‘ – and accommodation and food and beverage establishments can be awarded from ‚one star‘ to ‚five stars‘ in ascending order of their categorisation. The MoT points out that the category of tourist establishments is determined on the basis of their compliance with minimum mandatory requirements for construction, furnishing, equipment, service and services offered, as well as the education, language qualification and experience of the manager and staff of the establishment.

The MoT shall attach to its project statistics on the occupancy of accommodation establishments with more than 10 beds. These show that most hotels in major seaside resorts are not operational during the winter season and have low occupancy during the wings of the season. The number of tourists outside the winter season is also insufficient in our winter resorts of Bansko, Borovets and Pamporovo. The data for Bansko show significantly higher occupancy in hotels with category „four“ and „five stars“, especially in peak periods such as Christmas, New Year and winter school holidays. Due to the lower prices in the high category hotels, tourists are turning to them at the expense of the lower category hotels. According to the MoT, the lack of sufficient tourists in the lower category hotels leads to an inability to recoup investments and to their eventual closure, as well as to the fact that they do not have the necessary means to improve quality, which makes them even less competitive.

The MoT is convinced that the regulatory introduction of minimum prices based on the cost of hotel services will have a positive impact on the market by protecting it from dumping practices. The latter are usually linked to a reduction in the number or quality of services. In this way, lower-end hotels will not be forced to offer prices below their real cost and will be able to reinvest profits in more qualified staff, more varied and high-quality services. Minimum pricing will discourage the sale of services at below cost, leading to an increase in quality and hence in

domestic and international tourism revenues. The aim of the proposal is to preserve the different segments of the market according to the category held, thus creating a favourable and vibrant environment for the development of small and medium-sized businesses in the tourism sector.

Position of the Bulgarian hotel and restaurant association (BHRA)

BHRA has doubts about the way minimum prices will be imposed, their impact on the services provided and the criteria by which the individual characteristics of hotel services by region will be taken into account. It is pointed out that the pricing of services is influenced by numerous and diverse factors, such as costs, the period of occupancy in different seasons and days of the week, the provision of package services, whether accommodation is individual or group.

Position of the Bulgarian association of travel agencies (BATA)

BATA stresses that the price of accommodation in hotels is formed on the basis of many different factors, which are not limited to their category, in particular: bed capacity, number of employees, number of nights, free or paid additional services, location, year-round or seasonal occupancy, competing establishments. Regarding the criteria by which consumers choose a hotel, BATA stresses that these factors again cannot be reduced to accommodation category and price. In this sense, business travellers have different requirements and preferences compared to those visitors whose purpose is leisure.

In general, BATA does not support the intention to introduce minimum room rates in hotels, as such a measure is contrary to the principles of market economics and cannot guarantee the quality of service. In addition, the association points out that places of accommodation with the same category but with different bedding will end up in an unequal situation, which will not lead to a positive effect for either hoteliers or consumers.

Position of The Association of Bulgarian tour operators and travel agents (ABTTA)

ABTTA is fundamentally opposed to the establishment of the measure under discussion as it does not comply with normal economic logic and the concept of free market and would be a precedent in European law. The real problem, according to ABTTA, is not the prices at which accommodation is offered, but the fact that no account is taken of nights spent. The latter makes the argument that the measure will lead to a lightening of the market untenable. Moreover, the current economic relations in the hotel sector are characterised by extremely flexible competition and a strong division between: reception rates, several types of rates for tour operators, online sales rates, rates during major events, seasonal rates. In this sense, it is logical to ask which of these groups of prices will be subject to state regulation.

According to the association, the consumer's choice is determined by several factors in their totality: category, price, quality, location, amenities, the individual factors having different weight depending on the purpose of the trip. ABTTA mentions that in every sector of the economy there are known cases of unfair commercial practices, but the conclusion of unfair commercial behaviour by „large hotel chains“ towards small hotels is wrong. The real reason for these practices is oversupply as a result of an imbalance between the available bed base and actual demand, as is the case with the Bulgarian Black Sea coast, Bansko and other resorts.

Position of The Bulgarian national association of active consumers (BNAAC)

The Association assesses the issue at stake primarily through the prism of consumer interests and points out that the price and quality of hotel accommodation are the two main criteria by which consumers make an informed decision on whether to use a ser-

vice. In parallel, it points out that high quality hotel accommodation is not always a condition for high price and, conversely, low price does not always equate to low quality hotel service. Furthermore, an increase in price does not necessarily lead to an increase in the quality of accommodation. The best balance between quality and price of accommodation and, above all, offering high quality services at more affordable prices would be in line with the rights and interests of consumers.

The BNAAC considers that the introduction of minimum prices for accommodation will adversely affect the development of a competitive environment between hoteliers and increase the number of non-competitive traders.

The Association stresses that *the Tourism Act* and the *Ordinance on the requirements for categorised accommodation, catering and entertainment establishments, the procedure for determining the category, and the conditions and procedure for registering guest rooms and guest apartments* contain provisions that have a direct bearing on the problem of undercutting hotel prices. According to the BNAAC, it is not the creation of new rules but the strict application of the existing categorisation requirements that will ensure the achievement and maintenance of an optimal price/quality ratio and the normal functioning of the hotel accommodation market.

The Association emphasizes that when a consumer chooses a place of accommodation, it is of particular importance for him to have clear and sufficient information on price, category, quality and location, and that the available data on the establishment are not confusing and misleading. Recently, there has been an increasing influence of reviews given by other travellers in forming a consumer's decision on accommodation, but it is possible that these reviews are modified or created by the hotelier. BNAAC statistics show that the largest number of complaints from consumers concern the quality of hotel services, in particular: poor and unprofessional attitude of staff, heating and hygiene problems, non-working services (gym, sau-

na, swimming pool, etc.). Some of the complaints received are related to false or outdated information given by phone or on the website, for example outdated photos of the hotel, untrue positive recommendations about the state of the hotel. BNAAC believes that a reliable mechanism should be put in place to prevent traders from publishing false reviews and recommendations on their websites.

Position of The CPC

The Competition Protection Act regulates the administrative procedure for competition advocacy and outlines its scope. In the present case, the procedure is designed to assess a proposal to establish minimum prices for accommodation according to its category. The latter can be done by means of an amendment to an existing regulation. Therefore, the proposal, although not presented as a draft regulatory act, can be regarded as a preliminary draft of such an act, and therefore falls within the scope of Article 28(1) of the Competition Protection Act.

In each individual proceeding, the CPC must determine the competitive environment in which the undertakings operate. For this purpose, the Commission establishes the boundaries of competition by specifying the relevant market. In turn, this market comprises two components: product and geographic. In the present case, the relevant market affected by the proposal to establish minimum room rates is identified as the market for hotel accommodation throughout Bulgaria.

In its Competition Advocacy Guidelines (adopted by Decision No 1554/20.12.2012), the CPC considers that *provisions which regulate or significantly affect prices belong to the category of restrictions of competition which reduce the ability of suppliers to compete*. This would narrow the ability of hotels to use one of the most important tools of competition, namely price, by applying different pricing strategies to attract customers.

The position advocated by the CPC is that minimum prices alone cannot guarantee quality nor compliance with the requirements for the relevant hotel category. The imposition

of minimum prices to ensure a higher cost/revenue differential and therefore a higher profit cannot prevent some hoteliers from offering lower quality services in order to lower their costs and, with guaranteed minimum prices, increase their profits. Nor is it certain that owners will invest this additional profit in improving staff skills, in more varied and higher quality services. On the contrary, with an assured break-even point, hoteliers would not be motivated to improve the quality of the accommodation offered.

The hotel occupancy statistics provided by the MoT show a persistent and significant under-occupation of accommodation capacity and are a sign of oversupply. True competition does not mean keeping inefficient players in the market. The aim of competition is to stimulate efficiency by offering better services at lower prices in order to attract more customers.

Inherent in the tourism market, and in particular the hotel accommodation market, are significant differences between individual tourist establishments and between regions, making it difficult, if not impossible, to fix minimum prices by category. Prices are not determined solely by the category of accommodation, but by a host of other conditions - location, time of year, whether it is high season - summer for seaside resorts and winter for mountain resorts, day of the week - whether it is a weekday or a weekend, location - whether it is in the centre of the location or on the outskirts, the length of time between the date of booking and the date of check-in, the occupancy of the hotel at the time. These factors, taken together, directly influence supply and demand. It is natural, for example, that an accommodation in a seaside resort is offered at a higher price in summer compared to winter, or that a hotel which is close to attractions or a beach has a higher accommodation price compared to outlying hotels. Therefore, there is no reliable criterion for setting a single minimum price for each category of accommodation that is appropriate and consistent in all cases. The most optimal means of price formation is to follow natural market mechanisms that reflect the intersection between supply and demand.

Table 1. The table below summarizes the opinions of all participants on the issue under discussion.

Stakeholders	Position on the proposal for state regulation of hotel accommodation prices	Motives
MOT	Support	Limiting the “gray economy”; Higher tax revenues; Improving the quality of accommodation services
BHRA	Do not support	The specific characteristics of hotel services in individual regions are ignored; Not all factors influencing price formation are taken into account.
BATA	Do not support	Contradiction with the principle of market economy; Unequal treatment of hotels with the same category but different bed capacity
ABTTA	Do not support	The measure cannot lead to market transparency; State regulation of all types of accommodation prices is not possible.
BNAAC	Do not support	Price is not the only criterion for the quality of accommodation; Negative impact on competition between traders
CPC	Do not support	Restriction of competition in the tourism sector; Inability to set a uniform price; Final result – cartel between hotels

Source: Author's research

Conclusion

The views of the stakeholders in the hospitality industry discussed above are supported by sound and logical arguments and should, in our view, be upheld. Along with the points made so far, a few more considerations need to be added against the unilateral imposition of uniform prices for hotel services by the public authority:

Considering the substantial supply and lower demand for accommodation services, it should be concluded that each hotel should determine its own pricing policy. Regarding the information put forward by the MoT that tourists are moving to higher category hotels as a result of reduced promotional rates, it should be taken into account that it is in all likelihood the least profitable for hotels to keep rooms vacant. In order to avoid this, hoteliers incur additional costs in providing the room, such as the salaries of the extra staff needed to maintain a higher number of occupied rooms, cleaning products and toi-

letries. Moreover, not all users have the same preferences. For some of them the category of the hotel is not a determining factor and is not the most important factor in their choice. Lower category accommodation (one and two stars) can try to attract these customers by offering them other advantages (a personal approach to the customer, easier satisfaction of special customer requirements and needs, provision of personalized experiences – attractions, trips, etc.).

Participants in any market must compete with their competitors to be able to successfully sell their products or services to consumers. Start-ups should carry out market research by measuring the demand for the product or service concerned, demand trends, actual and potential competition, on the basis of which they can assess how they will be able to successfully enter that market. Alongside this, every business carries a corresponding risk which must be taken into account by enterprises. The accommodation market should be no exception. The signif-

icant oversupply in the hotel accommodation market shows that the players in this market have not properly taken into account its subsequent development. However, this does not mean that this misjudgement can be compensated for by regulating accommodation prices.

The introduction of minimum room rates would have the same effect as a cartel agreement between all hotels in Bulgaria. A cartel between undertakings whereby they impose prices is considered one of the most serious competition infringements. However, in this case, the negative consequences of such an agreement would result from regulatory intervention by the State.

The imposition of minimum prices cannot be ruled out as leading to higher accommodation prices. This is because the value of each night would have to be equal to or higher than the minimum threshold set by the State. The MoT's aim of supporting small and medium-sized businesses is understandable, but maintaining inefficient hotels should not be at the expense of consumers who will pay increased prices due to the setting of minimum prices. In this sense, it is very likely that the imposition of minimum prices will not achieve the desired result, i.e. more revenue for hotels, as economic theory suggests that there is less demand for higher prices. At the same time, Bulgarian consumers, and even more so those from abroad, have the alternative of choosing tourist destinations in other countries. For this reason, the introduction of minimum prices for accommodation may lead to an outflow of tourists and achieve the opposite effect - a reduction in the revenues of hotels, which should have been protected by the change in the law.

In terms of countering the informal economy in the hotel accommodation market, the existing Unified System of Tourist Information is an important measure. Its purpose is to link hotel registers in real time with the Ministry of Tourism, the Ministry of Interior, the National Revenue Agency and municipalities. The functioning of the information system creates conditions for „lightening“ the grey economy in the tourism business

and for increasing tax revenues from hotel activities.

In addition, it should be noted that various mechanisms exist in the legal framework to counter revenue evasion and ensure tax collection in all sectors of the economy. The Tax and Social Security Procedural Code, as well as the provisions of the Value Added Tax Act and the Personal Income Tax Act, have introduced and regulated fiscal control mechanisms over the activities of traders and accommodation service providers. The Corporate Income Tax Act regulates the procedure for the imposition of profit tax on domestic and foreign persons, including those who are not traders under commercial law.

With regard to the Ministry of Tourism's claim that offering accommodation at reduced prices is linked to a reduction in some services or a reduction in the quality of services, it should be clarified that the Tourism Act provides for mechanisms to control compliance with the requirements for the designated category of accommodation, with the possibility of downgrading in the event of non-compliance. I believe that the current mechanisms for controlling accommodation establishments, provided for by the special law, the Tourism Act, should ensure the provision of quality service, depending on the conditions required by the category. Therefore, the regulatory objectives could also be achieved without creating unnecessary restrictions on competition and barriers to the ability of market participants to compete freely and independently. Therefore, in view of the potential harm it would cause to the tourism business and the apparent contradiction with established market mechanisms, the introduction of minimum prices in accommodation cannot be supported.

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Naredba za iziskvaniyata kam kategoriziranite mesta za nastanyavane i zavedenia za hranene i razvlechenia, za reda za opredelyane na kategoria, kakto i za usloviyata i reda za registrirane na stai za gosti i apar-

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