

# Kluwer Competition Law Blog

## Main Developments in Competition Law and Policy 2023 – Cyprus

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Although 2023 was not a year of significant changes to the competition legislative landscape in Cyprus, it witnessed the implementation of competition law developments from 2022, in both substantive and ancillary legislation.

### Regulatory background

In Cyprus, competition law is governed by the Protection of Competition Law of 2022 (*Law No. 13(I)/2022*). Law 13(I)/2022, in conjunction with the Control of Concentrations of Undertakings Law of 2014 (Law No. 83(I)/2014), establishes the rules and principles that have as an objective the maintenance of effective competition within the Cyprus market.

In addition to Law No. 13(I)/2022, which serves as the primary legislation governing competition in Cyprus, there are other ancillary regulations in place:

- the Law on Actions for Damages for Infringements of Competition Law of 2017 (*Law No. 113(I)/2017*), which deals specifically with the right of a person/entity who has suffered harm due to an infringement of competition law to claim full compensation against the relevant undertaking or association; and
- the Leniency Programme (Immunity from and Reduction of Administrative Fines in cases of Restrictive Collusions Infringing Section 3 of the Law and/or Article 101 of the Treaty on the Functioning of the European Union (TFEU) Regulations of 2022 (P.I. 442/2022)), which, in essence, offers undertakings involved in a cartel that self-reports and hands over evidence either total immunity from fines or a reduction of the fines that the Cyprus Commission for the Protection of Competition (CPC) would have otherwise imposed.

The competent body for the enforcement of competition law in Cyprus is the CPC which is endowed with the powers to investigate, enforce competition rules, decide on the infringement of competition law, and impose administrative fines and sanctions upon findings of violations of competition law. The CPC is assisted by the Service of the CPC, which is responsible for collecting and verifying all the necessary information so as for the CPC to be in a position to exercise its powers, this includes keeping records, conducting inspections (dawn raids) in the

premises of undertakings under investigation, conducting interviews and file proposals to the CPC.

### *Protection of Competition Law of 2022 (Law No. 13(I)/2022)*

Law No. 13(I)/2022 was adopted on 23 February 2022 and transposed Directive (EU) No. 2019/1 into Cyprus's legal system. Law No. 13(I)/2022 effectively repeals and replaces the previous legal framework governing competition law (the Protection of Competition Law of 2008 (Law No. 13(I)/2008, as amended by Law No. 4(I)/2014)). Law No. 13(I)/2022 reinforces the powers of the CPC, gives guidance and clarity on several procedural issues, and provides for mutual cooperation between the national competition authorities of the Member States through the establishment of new clauses for the provision of assistance in respect of conducting investigations, disclosing documents, and enforcing sanctions and administrative fines in cases with cross-border elements, in order to guarantee the effective implementation of the competition law framework.

Law No. 13(I)/2022 has been amended through the Amendment Law on the Protection of Competition (Law No. 169(I)/2022) (***Amendment Law***). The Amendment Law provides for significant alterations to the criteria of persons who can be appointed as Chairperson and Members of the CPC and also amends the level of the fine that a Regulation of the Council of Ministers can determine for criminal offences.

Key changes to the competition law framework in Cyprus include provisions for imposing administrative fines and deadlines for payment, strengthening measures against collusion and abuse of dominance, and enhancing procedural guarantees related to CPC investigations. Additionally, the law expands the CPC's powers to issue announcements, recommendations, and guidelines, and promotes cooperation with other national competition authorities for cross-border investigations.

### *Overview of investigative powers in Cyprus*

The CPC has wide powers in terms of investigation. An investigation procedure can be initiated either by the CPC on its own (*ex officio*) or following the submission of a complaint by a third party who has a "legitimate interest". A person has a "legitimate interest" when he is able to prove that he suffered or is at risk of imminent danger to suffer economic harm or was placed in a disadvantageous position as a direct result of the alleged concerted practice.

Pursuant to Law No. 13(I)/2022, the CPC has exclusive competence to:

1. collect information from undertakings, associations of undertakings, other physical or legal persons, or public or private entities;
2. summon physical or legal persons for interviews for the purpose of receiving statements and information concerning the subject of the investigation, with an additional power to issue administrative fines in cases of failure to comply;
3. enter premises, land and means of transport of undertakings or associations of undertakings (with the exception of residences) for the purpose of conducting an inspection (dawn raid);

4. examine and take copies or extracts of records, books, accounts and other documents related to the business;
5. seal any business premises and records, books, accounts and other documents to inspect them; and
6. ask representatives or employees questions and record their answers.

### **Competition decisions issued in 2023**

#### *Dismissal of the “CYTA” challenge*

On 6 September 2023, the Cyprus Supreme Constitutional Court upheld a decision against the Cyprus Telecommunications Authority (CYTA) for anti-competitive behaviour. The court dismissed CYTA’s challenge, affirming a ruling by the Administrative Court in 2016 and supporting the CPC Decision No. 47/2012. The case centred around the CPC’s authority to impose a fine after a 5-year hiatus, with the court determining that ongoing judicial processes halted the statute of limitations, consistent with legal precedents.

In response to CYTA’s arguments of insufficient investigation, the court affirmed that the CPC had conducted a thorough review of the case, adhering to legal requirements and the presented evidence. The court also validated the €130,000 fine imposed on CYTA, considering it justified and within the CPC’s authority to levy fines up to 10% of a company’s annual revenue. This case originated from a complaint in 2004 by THUNDERWORX (now PRIMETEL PLC), alleging that CYTA abused its dominant market position to impede independent telecommunications providers from offering premium SMS services. The CPC found CYTA in violation of competition laws for denying access to its Short Message Service Centre (SMSC) and related services, affecting both sending and receiving premium SMS messages, with the infringement lasting until June 2005.

#### *CPC Decision 15/2023 regarding alleged collusion against the Cyprus Association of Automotive Engineer Assessors*

The CPC examined a complaint against the Cyprus Association of Automotive Engineer Assessors (CAAEA) for alleged competition law violations, including the indirect imposition of minimum prices during damage assessments. Taking into account the transitional provisions of Article 72(4) of the Law, the Commission unanimously decided to proceed under the Competition Protection Laws of 2008 and 2014, as applicable. Based on the evidence, the Commission unanimously found the CAAEA in breach of competition laws, leading to disciplinary action and an administrative fine against the CAAEA.

#### *CPC Decision 3/2023 regarding alleged breach of dominance against Vassiliko Cement Works Public Company Ltd.*

After conducting a preliminary investigation, the CPC found Vassiliko Cement Works Public Company Ltd in violation of section 6(1) Protection of Competition Laws of 2008 and 2014 and Article 102 of the Treaty on the Functioning of the European Union (TFEU) due to its actions in the cement sector. The CPC, after reviewing all information and conducting hearings with the company, unanimously concluded that Vassiliko Cement Works abused its dominant position by

setting excessively high prices for grey cement in the domestic market, imposing an administrative fine and requiring the company to cease such practices.

*CPC Decision 31/2023 regarding complaints of economic dependency against Ygia Polyclinic Public Company Limited and Ygia Polyclinic Private Hospital Limited*

In 2023, two groups of doctors filed complaints with the CPC against Ygia Polyclinic Public Company Limited and Ygia Polyclinic Private Hospital Limited (collectively referred to as the **Polyclinic**) for alleged violations of Competition Protection Laws. The complaints alleged that the Polyclinic abused its dominant position in the market for medical services and had an economic dependency relationship with the complainants. The doctors requested interim measures to address these alleged violations.

The Committee reviewed the evidence presented during oral proceedings and in written submissions. It unanimously concluded that the conditions required by Article 34 of the Competition Law for issuing interim measures were not met. The Committee emphasised that this decision does not represent a final finding but indicates that a strong prima facie case was not established based on the evidence presented, thereby dismissing the request for interim measures.

**Investigation into the acquisition of share capital of Hellenic Bank by EuroBank S.A.**

The CPC initiated a comprehensive investigation into the acquisition of share capital of Hellenic Bank Public Company Limited by Eurobank S.A., following a meeting on 30 October 2023. This decision was made based on concerns raised by the CPC about potential adverse effects on competition in the markets for deposit and lending services. The Commission's examination highlighted potential non-coordinated and coordinated competitive effects due to the horizontal relationship of the involved undertakings, including high market shares, market concentration, and concerns about competition dynamics in the banking sector. The investigation, mandated under Law No. 83(I)/2014, aimed to thoroughly assess the impact of this transaction on market competition within specified timelines, allowing affected parties to provide input as part of the process. Since then, the CPC at its meeting held in February 2024, approved by majority voting the proposed concentration regarding the acquisition of part of the share capital of Hellenic Bank Public Company Limited by Eurobank S.A.

**Leniency Programme**

Following the Competition Law coming into force in 2022, the CPC's Leniency Programme was published, aimed at uncovering and addressing anticompetitive agreements or cartels. The Cyprus Leniency Programme allows companies to receive full or partial immunity from potential fines imposed by the CPC if they provide substantial information about their involvement in such practices. Governed by the Leniency Programme Regulations of 2022, this framework outlines the process, conditions, and criteria for granting exemption or reduction of fines to cooperating undertakings or associations of undertakings. The programme, designed to enhance legal certainty and ensure consistent treatment of disclosures of anticompetitive behaviour, aligns with EU

Directive (EU) 2019/1, promoting effective competition enforcement and the proper functioning of the internal market.

The development of the Leniency Programme enhances the current competition law landscape, playing a role in the overarching development and modernisation of the competition law framework in Cyprus.

### **New guidelines on designing sustainability agreements in agriculture**

Recently, the European Commission issued guidelines on designing sustainability agreements in agriculture, leveraging a new exemption from EU competition rules introduced by the revised common agricultural policy (CAP). Normally, Article 101 of the TFEU prohibits agreements that restrict competition, but Article 210a of Regulation 1308/2013 allows certain restrictive agreements in agriculture if they are necessary to achieve sustainability standards beyond mandatory EU or national rules. These guidelines provide clarity on how economic operators in the agri-food sector can structure joint sustainability initiatives in line with Article 210a. They will come into effect upon publication in the Official Journal of the European Union. Economic operators with existing sustainability agreements are encouraged to align them with these guidelines, and as of 8 December 2023, operators can seek the European Commission's opinion on their compliance with EU competition rules.

### **Memorandum of Understanding with the national Competition Authority of Egypt**

On 6 September 2023, the CPC entered into a Memorandum of Understanding (MoU) with the National Competition Authority of Egypt. This MoU signifies a commitment to enhancing the effectiveness of competition law enforcement efforts by avoiding duplication of actions and promoting cooperation in areas of mutual interest. Both authorities expressed confidence that this collaboration will lead to increased consistency in competition law enforcement, addressing common challenges faced by both jurisdictions.

### **Appointment of the new CPC by the Council of Ministers**

As of 15 June 2023, the Council of Ministers appointed Ms. Eva Pantzari as Chairperson, and Mr. Aristos Aristidou Palouza, Mr. Neofytos Mavronikolas, Ms. Manto Papageorgiou Matsi and Ms. Ioanna Sapidou as Members of the CPC for a period of 5 years, following the statutory notification of the competent Parliamentary Committee by the Minister of Energy, Commerce and Industry. As of 15 April 2023, The Director of the Service of the CPC is Ms. Olga Droussioti Papachrysanthou.

### **Final remarks**

The competition landscape in Cyprus has significantly developed in recent years. This will undoubtedly give rise to massive competition disputes as well as private enforcement of

competition law through follow-on civil claims for damages.

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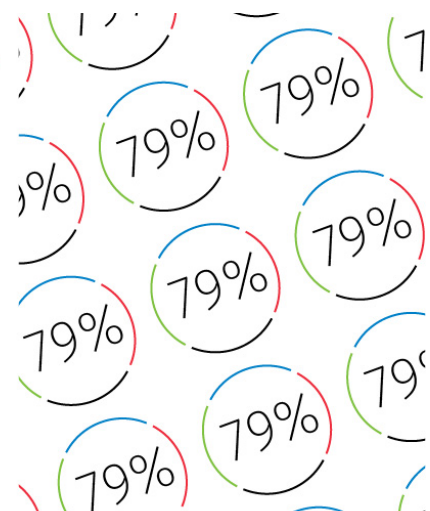
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