

Decision no: 32/2017

File no: 11.17.014.07

THE PROTECTION OF COMPETITION LAWS OF 2008 and 2014

Complaint filed by Barracuda Intertrade Ltd against Iektor S.A. - Ellaktor S.A. - Cybarco Limited J/V and the Ministry of Agriculture, Rural Development and Environment

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mrs. Eleni Karaoli	Member
Mr. Andreas Karidis	Member
Mr. Charis Pastellis	Member
Mr. Panayiotis Oustas	Member

Date of decision: 18 July 2017

SUMMARY DECISION

The case concerned the complaint submitted to the Commission for the Protection of Competition by Barracuda Intertrade Ltd (“Barracuda”) against ILEKTOR S.A. - ELLAKTOR S.A. - CYBARCO LIMITED J/V (“Ilektor - Ellaktor – Cybarco JV”) and the Ministry of Agriculture, Rural Development and Environment (“Ministry of Agriculture”), for an alleged infringement of the Protection of Competition Law 2008 and 2014 - (“Law”) and of Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”).

Barracuda is a limited liability company that deals with a wide spectrum of commercial activities, with specialization in the collection, management and marketing of materials of recycling.

ILEKTOR - ELLAKTOR - CYBARCO is a joint venture (JV) responsible for the management of the Integrated Waste Management Facility at Koshi for the districts of Larnaca and Famagusta for the period from 23/11/2012 to 15/11/2017. The Waste Management Facility is capable to process four different types of waste, namely mixed, bulky, green and pre-sorted waste/ sorted at the source waste.

The Ministry of Agriculture is the competent authority, through the Department of Environment, for the issuance of waste management permits, other than those listed in Annex VI in the Waste Law of 2011 (N. 185(I)/2011). All the responsibilities of the Ministry of Interior's regarding waste management have been transferred to the Ministry of Agriculture since 25/7/2015, and it was agreed that all ongoing infrastructure projects for waste management and current contracts will continue to be implemented and will remain under the responsibility of the Ministry of Interior until their completion.

The complaint referred to an alleged infringement of section 3 (1) (a),(c) and (d) of the Law and article 101 of the TFEU through an indirect form of collusion between the Republic of Cyprus (through the Ministry of Agriculture- acting as Fiscus) and ILEKTOR - ELLAKTOR – CYBARCO JV, in relation to the issuance of a waste management permit to the later. Barracuda claimed that the issuance of such a permit, i.e. allowing ILEKTOR - ELLAKTOR - CYBARCO JV to enter into the market of waste management, would strengthen its position in the market, since it already holds a dominant position as the operator of the Integrated Waste Management Facility in the Larnaca and Famagusta districts.

Barracuda, also alleged that the pricing policy to be followed and enforced by ILEKTOR - ELLAKTOR – CYBARCO JV, would infringe section 6 (a) and (c) of the Law and article 102 of the TFEU, since it would lead to profit margin squeezing, foreclosing thus the market, due to the provisions of a Supplementary Agreement signed between the Ministry and the ILEKTOR - ELLAKTOR – CYBARCO JV that concerned the pricing of waste management.

In its decision, the Commission for the Protection of Competition (“the Commission”), having taken into account all the evidence before it, concluded unanimously that a key element for the application of section 3 (1) of the Law was not established, namely the existence of a restrictive agreement between undertakings, since the Ministry of Agriculture is not considered to have acted as an undertaking in carrying out this activity, but only as a public body performing an act of public authority. Therefore, the Commission rejected Barracuda's allegations regarding the conclusion

of a restrictive agreement between the State and ILEKTOR - ELLAKTOR - CYBARCO JV in violation of section 3 (1) of the Law.

Furthermore, the Commission noted that although ILEKTOR - ELLAKTOR – CYBARCO JV has signed a Supplementary Agreement for the operation of the waste plant on 15/10/2012, this Agreement has not been implemented yet, since for the commencement of the operation of the Contractor on the market, it is necessary to obtain all the permits required by the Republic of Cyprus and the JV has not yet such a permit. The Commission, having evaluated all the evidence before it, unanimously concluded that there is no violation of section 6 of the Law.

Therefore, the Commission, unanimously concluded that section 3 and section 6 of the Law were not infringed and therefore rejected Barracuda's complaint.

In relation to articles 101 and 102 of the TFEU, the Commission, taking into account the fact that there was no infringement of sections 3 and 6 of the Law, concluded that there were no grounds for action on its part.

Loukia Christodoulou
Chairperson
Commission for the Protection of Competition