

Decision no: 26/2017

File no: 11.17.014.05

**THE PROTECTION OF COMPETITION LAW 2008
(Law no. 13(I)/2008)**

**Ex officio investigation against Panicos Theo Hadjigeorgiou & Co Ltd for
alleged infringements of Sections 3 and/or 6 of the Law 13(I)/2008 as amended
and Sections 101 and/or 102 of the TFEU**

Commission for the Protection of Competition:

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|---------------------------|-------------|
| Mrs. Loukia Christodoulou | Chairperson |
| Mrs. Eleni Karaoli | Member |
| Mr. Andreas Karídes | Member |
| Mr. Charis Pastellis | Member |
| Mr. Panagiotis Oustas | Member |

Date of decision: 19 June 2017

SUMMARY DECISION

On the 29th of April 2014, the Commission for the Protection of Competition (hereinafter referred to as “Commission”) initiated an investigation against Panicos Theo Hadjigeorgiou & Co Ltd (hereinafter referred to as “P.T. Hadjigeorgiou”), which won a public procurement (public tender) in relation to the supply of consumable products for the monitoring of glucose (blood sugar), for a period of three years.

The Commission’s ex officio investigation focused on the one hand on the price of the public tender conducted by Pharmaceutical Services of the Ministry of Health

(hereinafter referred to as "Pharmaceutical Services") and on the other hand on the price the strips and the testing devices were sold in the private sector, through pharmacies and other various outlets.

P.T. Hadjigeorgiou is a company duly registered under the laws of the Republic of Cyprus and is active in the Cypriot market in the importation and marketing of pharmaceuticals, to pharmacies and hospitals. Additionally, the company participates in public tenders concerning the procurement of pharmaceutical products. It is also the supplier in Cyprus of the blood glucose monitoring systems with the trade name CAMEO OKMETER and their corresponding strips for which it won a public tender announced by the Pharmaceutical Services.

The Commission, having taken into account all the evidence before it, defined the relevant product markets as: (a) the supply of conventional blood glucose monitoring systems to diabetics benefiting from subsidies provided by the government, and, (b) the supply of conventional blood glucose monitoring systems to diabetics that chose not to benefit from subsidies provided by the government and non-diabetic consumers that purchase the said products. Moreover, the Commission decided the relevant geographic market is the Republic of Cyprus.

The Commission, having evaluated all the evidence before it, concluded that the contract awarded to P.T. Hadjigeorgiou by the Pharmaceutical Services for the exclusive supply of conventional blood glucose monitoring systems for a period of 36 months (during the years 2013 to 2015), gave P.T. Hadjigeorgiou a monopolistic power in Cyprus in the relevant market of the supply of conventional blood glucose monitoring systems to diabetics benefiting from subsidies provided by the government.

Thus, the Commission examined whether P.T. Hadjigeorgiou had abused its dominant position in the said relevant market and specifically, whether it had infringed Section 6(1)(a) of the Protection of Competition Laws 2008 and 2017 (hereinafter "the Law"), through the imposition of excessive prices.

During the investigation, based on the financial data provided by P.T. Hadjigeorgiou, a cost and profitability analysis was carried out, concerning the activities of the said company in relation to the supply of conventional blood glucose monitoring systems. The cost and profitability analysis took into account the whole duration of the contract

of P.T. Hadjigeorgiou with the Pharmaceutical Services, which concerned a period of 36 months.

Regarding the said contract, the Commission noted that the government through the terms of the tender, sets a maximum selling price for the conventional blood glucose monitoring systems and their strips (without specifying whether it is a wholesale or retail price) and without knowing the real cost of these products. As a result, and bearing in mind that the criterion for awarding the contract was the lowest bid, it is reasonable for companies to prepare their offer, taking into account among other things, the pricing policy to be followed throughout the 36 months for the blood glucose monitoring systems and their strips in the private sector, as well.

The Commission then noted that such conditions have been created, that eliminate any competitive pressure, as these products constitute a product bundle, and the importers which have been awarded with the said contract, have no incentive to lower their strips' and the meter's prices in the private sector.

Therefore, the Commission having taken into account the circumstances of the present case, and bearing in mind all the evidence before it, concluded that there was insufficient evidence to suggest that the pricing strategy of P.T. Hadjigeorgiou during the three years, was excessive. Accordingly, the Commission considered that there was no infringement of Section 6(1)(a) of the Law and that P.T. Hadjigeorgiou did not abuse its dominant position.

Furthermore, the Commission examined whether P.T. Hadjigeorgiou had infringed Section 3(1)(a) of the Law, in relation to the retail prices of the glucose monitoring systems and their corresponding strips indicated by P.T. Hadjigeorgiou. The Commission noted that Pharmaceutical Wholesalers/Distributors stated that the price notified by P.T. Hadjigeorgiou was considered as a recommended price and was not mandatory. They also stated that Pharmacists were free to adjust the price and give discounts to their clients. It was also evident that P.T. Hadjigeorgiou did not imposed on its customers any penalties in the event that they did not follow or implement the said price, or that it emplaced any other coercive measures. On the contrary, as clarified by P.T. Hadjigeorgiou, the recommended retail price was calculated on the basis of the usual profit margin of the Pharmacies. From all the above, it was evident that Pharmacists were not obliged to follow the price indicated P.T. Hadjigeorgiou. Therefore, the Commission, after taking into consideration the arguments put forward

by P.T. Hadjigeorgiou, concluded that there has been no infringement of section 3 of the Law.

In relation to the above, the Commission pointed out that suppliers should provide a clear indication of the non-binding nature of these prices and the possibility of price change as well as discounting, when notifying the proposed prices. In general, practices that exacerbate the structural rigidity of prices should be avoided.

The Commission, having assessed all the evidence of the administrative file, unanimously decided that there were no infringements of Sections 3 and 6 of the Law, on behalf of P.T. Hadjigeorgiou. In the light of the above conclusion, the Commission noted that there are no grounds for action in relation to Articles 101 and 102 of the Treaty for the Functioning of the EU.

Loukia Christodoulou
Chairperson
Commission for the Protection of Competition