



Commission's Decision N.53/2022 regarding the complaint of Mr. P.A. against the Health Insurance Organization

The Commission for the Protection of Competition ('CPC') with its decision no. 53/2022 dated 25/08/2022, unanimously held that the activities, actions and decisions, under investigation, of the Health Insurance Organisation (HIO), regarding the terms of service provided by particular healthcare service providers, i.e. pharmacists, did not constitute «economic activity» within the meaning of competition law, but rather concerned the exercise of public authority aimed at regulating the Healthcare Insurance System (HIS).

The case concerned a complaint submitted to the CPC on 18/01/2021 by P.A., a pharmacist (a natural person) that planned to open of a pharmacy that would among others supply the beneficiaries of the HIS with drugs and other services. The complaint was filed against the HIO, regarding an alleged infringement of section 6 of the Protection of Competition Laws of 2008 and 2014 (hereinafter the 'Law').

The CPC defined the relevant market of the alleged anticompetitive behaviour of the HIO, as:

- a) the management of healthcare services provided within the framework of the Healthcare Insurance System (HIS), and
- b) the sub-market for the provision of pharmaceutical and medical products and sanitary items that are included in the products and services that are granted to GHS beneficiaries.

The complaint concerned the decision of the HIO, issued in August 2019, whereby the HIO had stopped accepting new applications by pharmacies to contract with the HIS in order to provide healthcare services to beneficiaries. Due to the above decision of the HIO, it was alleged that the new pharmacists could not establish and operate their own pharmacies, since the HIS plays a decisive role in the financial sustainability of pharmacies. Therefore, the HIO's decision had allegedly indirectly created barriers of entry to the profession.

P.A. alleged that the HIO had abused its dominant position, as the 'sole administrator of the HIS', contrary to section 6 of the Law, by rejecting P.A.'s application 'without any serious justification'. As a result of this, P.A. claimed that, as a new pharmacist who wished to open up its own pharmacy, it was subjected to discriminatory treatment, when compared to older pharmacists, which was ultimately to P.A.'s detriment.

The CPC examined whether the management of healthcare services, by the HIO, within the framework of operation of the HIS, fell under the concept of "undertaking" (economic activity)

as interpreted on the basis of competition law and the decisions of the Courts of the European Union. In particular, the CPC examined the way in which both the HIS and the HIO both operate, the activities, actions and decisions of the HIO in relation to the provision of the specific healthcare services, as well as the aggregate set of factors that characterize the HIO's activity, before concluding that the HIO did not act as an "undertaking" when entering into contracts with healthcare service providers. The CPC noted that the State had authorized the HIO to implement, manage and ensure the operation of the HIS which was universal, mandatory and characterized by social solidarity and thus fulfills a social purpose. In addition, the legislative power and the state had regulated the powers and competences of the HIO in a strict manner, i.e. they had predetermined the framework within which the HIO operates.

Pharmacists, as independent professionals, contract with the HIO, with the aim of optimally providing services to beneficiaries of the HIS, while at the same time maintaining their autonomy in the provision of services that are not included in the HIS. Their fees are determined by the HIO, whose activities are subject to the control of the HIO Supervisory Commissioner appointed by the Council of Ministers and the Auditor General of the Republic.

Consequently, the Commission unanimously decided that the activities, actions and decisions, under investigation, of the HIO, regarding the terms of service provided by healthcare service providers, i.e. pharmacists, did not constitute «economic activity» within the meaning of competition law, but rather concerned the exercise of public authority aimed at regulating the HIS.

However, it must be pointed out that during the investigation, the CPC found out that following the August 2019 decision, the HIO had internal discussions, as well as discussions with the Cyprus Pharmaceutical Association for the opening up of applications to new pharmacies to the HIS, on the basis of specific geographical, as well as other criteria such as the population and /or the likelihood of transferring HIS license. The CPC examined the proposed criteria and served the HIO and the Ministry of Health with an Opinion, noting that the State and Government bodies when regulating such matters, must be in line with the *acquis communautaire* and ensure the functioning of the internal market.

The Commission's decision can be found in the Greek language on the following link:

<http://www.competition.gov.cy/competition/competition.nsf/All/545B8F3442026841C225890A0047356E?OpenDocument&highlight=53/2022>