

Commission's Decision N. 68/2021 regarding the complaint of SOYA MILLS (CYPRUS) LTD, AGS Agrot trading Ltd, AREZITA GRAIN COMPANY LTD, Cooperative Organisation of Animal Feed Production (SOPAZ) Ltd and M.D. Cyprus Soya Ltd against the Cyprus Shipping Association, U.S.C. UNITED STEVEDORING COMPANY LIMITED, Cyprus Grain Commission and Cyprus Seaports Operators Ltd

The Commission for the Protection of Competition (hereinafter the 'CPC') with its decision no. 68/2021 dated 15/11/2021, unanimously decided that based on the evidence before it, it had not been proven that the Cyprus Shipping Association (hereinafter 'Association'), U.S.C. UNITED STEVEDORING COMPANY LIMITED (hereinafter 'USC'), Cyprus Grain Commission (hereinafter 'CGC') and Cyprus Seaports Operators Ltd (hereinafter 'CSO') had infringed section 3(1)(d) of the Protection of Competition Laws of 2008 and 2014 (hereinafter the 'Law').

The case concerned a complaint submitted to the CPC on 26/1/2018 by SOYA MILLS (CYPRUS) LTD (hereinafter 'SOYA MILLS'), AGS AGROTRADING LTD (hereinafter 'AGS'), AREZITA GRAIN COMPANY LTD (hereinafter 'AREZITA'), M.D. CYPRUS SOYA LTD (hereinafter 'CYPRUS SOYA') and Cooperative Organisation of Animal Feed Production (SOPAZ) Ltd (hereinafter 'SOPAZ') against the Association, USC, CGC and CSO, regarding an alleged infringement of section 3(1)(d) of the Law. The complaint concerned the alleged anticompetitive behaviour of the aforementioned undertakings and association of undertakings, against whom the complaint had been lodged, in relation to the markets of:

- (a) the provision of shipping agency services,
- (b) the provision of loading and unloading services, at the free Ports of the Republic of Cyprus
- (c) the import of grains for animal feed and the import of grains for human consumption.

The Association is comprised of the shipping agents of Cyprus who are active in the provision of shipping agency services. USC is a company founded and operated by shipping agents that are members of the Association. It provides stevedores, markers, foremen and chief foremen for loading and unloading of shipments in the free ports of Cyprus. CSO is also a company founded and operated by shipping agents that are members of the Association and is legally responsible for the paying of a loan taken under the Special Charge on the Stevedores' Fees Law (L. 58(1)/2008) which concerned the retirement of old stevedores, markers, foremen and chief foremen.

The complainants operate in the market of grains. They import grains for animal feed and CGC also operates in the same market.

The complaint concerned an alleged concerted collusion between the Association, USC, CSO and CGC, that had resulted in the passing on of a contribution agreed upon by the members of the association, to the complainants as an additional charge, whilst CGC was not asked to pay said contribution. The additional contribution agreed upon by the members of the association, was not covered by any legislation and concerned the repayment of the loan taken under the Special Charge on the Stevedores' Fees Law (L. 58(1)/2008).

The complainants alleged that they had been subjected to discrimination by the Association, USC and CSO when compared to CGC to whom the disputed additional charge was not applicable.

The CPC, based on the evidence before it, decided that the non-passing on of the disputed charge to CGC could not be substantiated as being the result of any concerted collusion by the persons against whom the disputed complaint had been lodged. In this regard the CPC noted that the invoices concerning CGC and its cargos had been issued by USC without the intervention of a shipping agent and that the additional contribution was charged on a different invoice to the invoice issued in regards to cargo and addressed to the shipping agents. The CPC also considered the Association's actions and notifications to its members as well as that the disputed charge was not being passed on by all shipping agents that were members of the Association. Furthermore, the CPC decided that there was no evidence establishing that the Association and USC had been aware of the passing on of the contribution or that the contribution had been considered by them as being a form of stevedoring fee that would be passed on to the shipping agents' customers. Moreover, in its decision, the CPC concluded that it was not apparent, that any passing on of the disputed charge, even if this had been implemented by the complainants' shipping agents, had been the result of a collusion of the Association, USC, CSO and CGC, as opposed to a decision taken, individually, by shipping agents, and also noted that said contribution had stopped in 2017. Hence, the CPC decided that it could not be established that any passing on of the contribution to the complainants and not CGC had been the result of the alleged concerted collusion.

Hence, the CPC, on the basis of the preliminary investigation which had been carried out and the evidence that had been collected and evaluated, unanimously decided that it had not been demonstrated and/or evidenced that the passing on of the additional charge which the complainants had been asked to pay had been the result of concerted behaviour or collusion by the Association, USC and CGC. Therefore, the CPC concluded that any different treatment of the complainants that had come about could not be considered to be the result of collusion between the persons against whom the disputed complaint had been lodged. As a result, the alleged infringement of Section 3(1)(d) of the Law was deemed to be unsubstantiated.

The Commission's decision can be found in the Greek language on the following link:
<http://www.competition.gov.cy/competition/competition.nsf/All/E5FF04B6F95435D0C22588B000305927?OpenDocument>