



ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

Decision CPC: 5/2013

Case Number

11.17.010.06

THE PROTECTION OF COMPETITION LAW, 2008

(Law N. 13(I)/2008)

Complaint and interim measures application by the Pancyprian Association of Rural Buses against the (1) Ministry of Communication and Works, Department of Road Transport, (2) Transportation Organisation of Nicosia District (OSEL) Limited, (3) Passenger Transport Company of Limassol (EMEL) Limited, (4) Paphos Transport Organisation (OSYPA) Limited, (5) Larnaka Buses “Zinonas” Ltd ,(6) M.E. Famagusta Buses Ltd

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Leontios Vryonides	Member
Mrs. Eleni Karaoli	Member
Mr. Demetris Pitsillides	Member
Mr. Costas Melanides	Member

Date of decision: 25 January 2013

SUMMARY OF THE DECISION

The case concerned a complaint submitted by the Pancyprian Association of Rural Buses (hereinafter "*the complainant*") to the Commission for the Protection of Competition (hereinafter "*Commission*") against the (1) Ministry of Communication

and Works, Department of Road Transport (hereinafter “DRT”) (2) Transportation Organisation of Nicosia District (OSEL) Limited (hereinafter “OSEL”), (3) Passenger Transport Company of Limassol (EMEL) Limited (hereinafter “EMEL”), (4) Paphos Transport Organisation (OSYPA) Limited (hereinafter “OSYPA”), (5) Larnaka Buses “Zinonas” Ltd (hereinafter “Larnaka Buses”), (6) M.E. Famagusta Buses Ltd (hereinafter “Famagusta Buses”), regarding, amongst others, allegations of violation of sections 3 and 6 of the Protection of Competition Law 2008 (Law no. 13(I)/2008) (hereinafter the “Law”) and articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

The members of the Pancyprian Association of Rural Buses were existing licensed bus owners who operated in different areas of Cyprus and who, after the changes in the structure of the market resulting from the enforcement of the new legislation, had to either endeavor to participate as shareholders or as employees in the new companies formed for operating in the public bus transportation markets or stop operating in the relevant market, as their licenses were no longer valid.

The subject of the complaint was, amongst others, that DRT had abused its dominant position in the bus public transportation market by assigning to OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses the operation of the said services, on an exclusive basis in specific geographical areas. Also, the complainant alleged that OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses abused their dominant position by imposing terms on other bus owners/drivers for participating in the newly formed companies. Further, the complainant alleged that there was an infringement of section 3 of the Law and article 101 of the TFEU as a result of the collusion between the DRT and OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses and between OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses.

The Commission in its decision noted that the DRT is the competent authority which, on the basis of European Regulation 1370/2007 (“the Regulation 1370/2007”) and on the basis of the Access to the Occupation of Road Transporter Law 101(I)/2001, as amended by the law 101(I)/2009 (hereinafter “the Law 101(I)/2001”), had the authority to enter into agreements for granting of the exclusive right to operate the service of public transport by bus in five geographic areas, as these were determined in the Minister of Communications and Works Decree of 22/09/2009. On the basis of the above, the DRT concluded agreements with OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses. The Commission concluded that the DRT in this case

did not act as an undertaking, as it only acted in the pursuance of completing its obligations as a public authority of the Republic of Cyprus. Therefore, the DRT did not constitute an undertaking within the meaning attributed to it in both the Law and the EU case law.

After the conclusion of the agreements signed between the DRT and OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses, the said companies took over the exclusive operation of the service of public transport by bus in Nicosia, Limassol, Paphos, Larnaka and Famagusta, respectively. The Commission concluded that all five companies were undertakings within the meaning of the Law and the EU case law.

The Commission concluded that the provision of services of public transport by bus constitutes the relevant services market, whilst each of the five areas, namely Nicosia, Limassol, Paphos, Larnaka and Famagusta, constitute five different relevant geographic markets with each of the five companies holding a dominant position in its respective geographic area. Therefore, the relevant markets in relation to the dominant positions were the following:

- (a) services of public transport by bus in Nicosia, with OSEL being the dominant undertaking.
- (b) services of public transport by bus in Limassol, with EMEL being the dominant undertaking.
- (c) services of public transport by bus in Paphos, with OSYPA being the dominant undertaking.
- (d) services of public transport by bus in Larnaka, with Larnaka Buses being the dominant undertaking.
- (e) services of public transport by bus in Famagusta, with Famagusta Buses being the dominant undertaking.

In relation to the complainant's allegations regarding infringement of section 3 of the Law, the Commission decided that, since the DRT does not constitute an undertaking, there can be no collusion between the DRT and OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses. In relation to the allegations of collusion between OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses, the complainant offered no evidence, whilst the Commission concluded that there was no evidence to indicate and prove the complainant's allegations in relation to collusion between them.

In relation to the complainant's allegations regarding section 6 of the Law, the Commission, having examined the terms imposed by OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses to existing bus owners/drivers who wanted to participate in these companies, noted that competition in the market was limited due to the amendment of the law which dictated the abolition of existing licenses of bus owners/drivers. The Republic of Cyprus decided to close the markets by providing exclusive rights to certain persons who met certain criteria. The time given for the integration of most existing bus owners/ drivers was essentially a transitional period during which it would be possible to include more bus owners/drivers as shareholders or as employees, and not as alternative providers of these services. The DRT was responsible for the change and smooth steering of the new regime. However, the fact is that existing bus owners/drivers who sought membership in the new companies would not, at the end of the day, be active as competitors in the market, but they would be incorporated in the newly formed companies. Therefore, the structure of the market in terms of competition was a result of the reform; admission of new members - existing bus owners/drivers, would not affect in any way the structure of the market by introducing new businesses, but the structure of the companies that now hold exclusive rights.

Accordingly, in relation to the admission of existing bus owners/drivers in the new companies and the conditions imposed for admission, the Commission concluded that the actions of OSEL, EMEL, OSYPA, Larnaka Buses and Famagusta Buses cannot have a restrictive effect on the market in terms of competition, if the limitations and changes in the market structure occurred at an earlier stage with the enactment and amendment of the law and the application of the new regime.

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.

Consequently, the Commission concluded that there was no infringement of sections 3 and / or 6 of the Law, and that there was no ground for action in relation to articles 101 and 102 TFEU.

LOUKIA CHRISTODOULOU

Chairperson

Commission for the Protection of Competition