

Decision no: 53/2017

File no: 11.17.016.12

THE PROTECTION OF COMPETITION LAWS OF 2008 and 2014

**Complaint filed by AGS AGROTRADING LTD against Cyprus Government
through Minister of Transport, Communications and Works and DP World
Limassol Limited (Reg. No. HE353625)**

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: 10 November 2017

SUMMARY DECISION

The case concerned the complaint submitted to the Commission for the Protection of Competition by AGS AGROTRADING LTD against the Cyprus Government through the Minister of Transport, Communications and Works and DP World Limassol Limited (hereinafter referred to as “DP Limassol”), for an alleged infringement of section 3 and/or 6 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”).

AGS AGROTRADING LTD is a limited liability company that is active in the field of bulk cargo support and, deals with the storage, distribution and marketing of cereals and feed materials. It’s professional activities are extended all over the world and its clients are feed mills and stock farmers.

AGS provides cargo discharge services through its own absorbing machine at Larnaca Port. In particular, Megamaster Ltd ("Licensor") an AGS-related company concluded an agreement with the Cyprus Port Authority on the use of an absorber at Larnaca Port, which was renewed.

DP Limassol is a limited liability company duly registered under the laws of the Republic of Cyprus. This company is a special purpose vehicle established by G.A.P. Vassilopoulos Multipurpose Port Services Limited and DP World FZE under an agreement to establish the DP Limassol joint venture, to acquire the exclusive rights of management of the multi-purpose terminal (LOT 3) of the Limassol Port.

The Ministry of Transport, Communications and Works (hereinafter referred to as "MTCW") is the Ministry in charge for the proper and orderly functioning of the ports of the Republic of Cyprus and oversees the Cyprus Port Authority. Pursuant to Articles 10A and 16A of the Cyprus Ports Authority Act of 1973 (38/1973) as amended, the Council of Ministers has the power to conclude a Concession Agreement for the leasing Larnaca port and Limassol port and / or to assign to any person the construction, management, development, extension, modification, management or operation of the Larnaca Port or all or part of the Limassol Port Area.

The complaint referred to an alleged infringement of section 3 of the Law and article 101 of the TFEU through the conclusion of a Concession Agreement for part of Limassol port activities with DP Limassol, stipulating that the agreement (see 7.2 of the Concession Agreement) imposed a ceiling of 900.000 tons on the commercial movement of goods from Larnaca Port.

The Commission in its decision has noted that on the 16/12/2016 and having examined the *"Notification of concentration regarding the acquisition of the management of the Multi-Purpose Terminal of Limassol Port (LOT3) by DP World Limassol"* acting pursuant to article 28(1)(a) of the Law, decided unanimously to declare the concentration compatible with the competitive market subject to a number of conditions and commitments that the parties undertook. One of the commitments that the companies have undertaken was the following:

«F. Commitment that, regardless of the terms of the Concession Agreement between DP World Limassol and the Republic of Cyprus related to the constraint of 900.000 tons in Larnaca Port, the Cyprus Ports Authority will continue to provide services to the existing users for their commercial activities at Larnaca Port (without applying the

constraint of 900,000 tons) according to the policy of the Government in relation to the use of the Larnaca port, as decided from time to time.»

In its decision, 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, since with the Commission's Decision dated 16/12/2016 and the commitments given by the undertakings concerned, the ceiling of 900.000 tons of general cargo is no longer valid for existing users of the port, and thus there is no restriction on their activities.

The Commission sent its preliminary assessment to AGS, and the latter had the opportunity to state its views before the Commission issued its final decision. The Commission examined the views stated in the letter sent by AGS dated 31/03/2017 and noted that the commitment of the Cyprus Government for the compensation mechanism does not differentiate or affect in any way the decision, terms and commitments which the companies have undertaken and any infringement of them will bring the appropriate consequences according to the Control of Concentrations between Undertakings Law 83(I)/2014.

The Commission notes that the purpose of the Control of Concentrations between Undertakings Law 83(I)/ 2014 is to ensure effective competition within the Cyprus market. The Commission, with the above-mentioned commitment which is an integral part of its decision to approve the merger, i.e. that the 900.000-tons general cargo ceiling is not valid for the existing users of the port, ensures that there will be no restrictions on their activities. Consequently, the acceptance or non-acceptance by the Republic of Cyprus of the compensation mechanism as well as the mode and means are beyond the scope of the Commission's examination and/ or investigation.

Therefore, the Commission, unanimously concluded that there is no infringement of section 3 of the Law and therefore rejected AGS' 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, concluded that there were no grounds for action on its part.

Loukia Christodoulou
Chairperson
Commission for the Protection of Competition