



**COMMISSION FOR THE PROTECTION
OF COMPETITION**

2013
ANNUAL REPORT



REPUBLIC OF CYPRUS



COMMISSION FOR THE PROTECTION OF COMPETITION

ANNUAL REPORT FOR THE YEAR 2013

The present Annual Report was prepared and submitted to the Minister of Energy, Commerce, Industry and Tourism and the House of Representatives by the Commission for the Protection of Competition, in accordance with Section 48 of the Protection of Competition Law of 2008.



P.I.O. 139/2014
ISSN 1986-1672 (Electronic Edition)
ISSN 1450-2348 (Printed Edition)
Published by the Press and Information Office
www.moi.gov.cy/pio

Design and Layout: Gios Advertising Solutions - www.gios.com.cy
Printed by: Government Printing Office of the Republic of Cyprus

April 2014

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Loukia Christodoulou
Chairperson of the Commission for the Protection of Competition

Greeting from the Chairperson of the Commission for the Protection of Competition

The year under review was one of the most difficult in the history of the Republic of Cyprus. The new situation created by the economic crisis has, also, affected the Commission for the Protection of Competition and brought it against major challenges.

The Commission, which since 24 May was functioning with new composition, in accordance with the relevant decisions of appointment by the Council of Ministers on 16/04/2013 and 24/05/2013, made every effort to carry out in the shortest possible time, a large number of cases that had before it, committed to the goal of ensuring a healthy competitive environment in the Cypriot market.

Despite the problems caused, mainly by the large human resources shortages, the Commission during the year under review carried out unannounced on-the-spot inspections in enterprises and carried out a large number of meetings during which the Commission examined complaints, applications for interim measures, ex officio investigations, notifications of concentrations and issued a total of 86 decisions.

The year 2013 can potentially be characterised as a milestone for the Commission, since the Memorandum of Understanding signed by the Republic of Cyprus and the Troika, includes a clear commitment to enhance the independence and effectiveness of the Commission, through the adoption of a number of commitments in this respect. Within this framework, the Commission forwarded the amendment to the existing national legislation for the Protection of Competition. This effort was launched by the Commission in 2012, due to the increased needs of promoting fair competition conditions in the economy. The aim of the amendment is to ensure a more effective implementation of the competition policy against malfunctions and distortions that are observed in the market.

The new legal framework will undoubtedly enhance further convergence with the European Union rules and will give to the Commission the extent of powers that other Competition Authorities of EU Member States already enjoy.

Therefore, the new Bill will give the Commission the power to conduct investigations into sectors of the economy or into types of agreements. Additionally, the Commission will have the power to set the criteria under which the examination of complaints will be prioritised. These criteria will be set taking into account the public interest, the potential effect on competition and/or consumers. This will enable the Commission to make use of its limited resources and increase its efficiency by focusing on major distortions in the market. The Commission will also have the ability to cooperate with regulators or other authorities exercising control over certain sectors of the economy and request their assistance but also to conclude Protocols of Cooperation with other Competition Authorities. It will still be able to require public bodies to provide information upon request and conduct voluntary oral interviews during investigations in order to expedite the duration of an investigation.

Additionally, the Commission with its so far accumulated experience gained from the examination of notified concentrations of undertakings, complying with the conditions of the Memorandum of Understanding, prepared proposals and suggestions for replacing the Control of Concentrations of Undertakings Laws of 1999 and 2000. Given that the existing legislation, N. 22 (I)/99, is based on the Council Regulation (EEC) No. 4064/89, which has already been abolished and replaced by the Council Regulation (EC) No. 139/2004, while in Cyprus there has not been any revision, it was necessary to promote modernisation of legislation so that there is full harmonisation with European rules. Hence, the Commission proposed changes that concern, inter alia, the requirements for the classification of a concentration as of major importance, the criterion of compatibility, the abolition of the obligation to notify concentrations of major importance within the specified time period of seven days and the submission of notification fees.

The Commission considers that these amendments will contribute significantly to the improvement of the legal framework for the control of concentrations of undertakings and the protection of competition, in order to secure a higher level of effective enforcement of competition rules in the domestic market.

The Commission intends to expand its activities and investigations in various sectors of the economy, in the hope that its actions and decisions will secure the effective application of the competition rules, which will benefit consumers, businesses and the country's economy. This will give the Commission the opportunity to make its presence strong in the market and send a direct message to the market players and the economic agents.

With the impartial decisions of the Commission, with full commitment and respect to the Laws and Regulations and with hard and responsible work, I hope that the Commission for the Protection of Competition will win the bet which is none other than ensuring the smooth functioning of the market with the ultimate aim of relieving the suffering of consumers. The Commission is committed to carry out its mission and, despite the limited means available it will spare no effort or time against long lasting difficulties.



1. THE COMMISSION FOR THE PROTECTION OF COMPETITION IN 2013

I.1. Mission

The Commission for the Protection of Competition (hereinafter the “CPC or the Commission”) is the independent Authority vested with the exclusive jurisdiction for ensuring a healthy competitive environment.

In particular, the Protection of Competition Law of 2008, in conjunction with the Control of Concentrations between Enterprises Laws of 1999 and 2000, establish the framework of regulations and principles aiming at securing effective and healthy competition within the Cypriot market. The competition policy secures the effective and productive operation of the market, thereby contributing to the creation of an environment favourable to innovation and technological advancement, to the benefit of consumers, who can enjoy higher quality products and services at competitive prices.

As effective competition is vital in an open economy, the CPC is vested with broad powers and duties, which ensure adherence to the principles and regulations in a free economy.

The main duties of the Commission are:

- To investigate restrictive agreements and concerted practices by undertakings, having as their object or effect, the elimination, restriction or distortion of competition.
- To investigate any probable abuse of dominant position possessed by one or more undertakings.
- To investigate concentrations between undertakings, aiming at preventing distortions in an effective competitive environment and ensuring that the principles of competitive markets are applied.

Additionally the Commission, through its designation as the National Competition Authority, is empowered to apply Articles 101 and 102 of the Treaty on the Functioning of the European Union (ex Articles 81 and 82 of the Treaty of the European Community), Council Regulation (EC) No. 1/2003 of the Council of the European Union of the 16th of December 2002, on the implementation of the rules on competition laid down in articles 101 and 102 of the Treaty on the Functioning of the European Union.

I.2. Main activities during 2013

Among important cases that were handled during the year under review, the Commission highlights the following events:

- On 18/4/2013, Mrs. Loukia Christodoulou was appointed by the Council of Ministers as Chairperson of the Commission.
- In April 2013, the Memorandum of Understanding regarding the macroeconomic adjustment programme of the Republic of Cyprus was signed, which provided for the following pertaining to the Commission for the Protection of Competition: "Chapter 5.3: The Cypriot authorities will: ensure the independence and enhance the effective functioning of the Commission for the Protection of Competition and its ability to enforce effectively the competition rules by Q4-2013".
- On 24/5/2013, the Council of Ministers appointed the four Members of the Commission.
- In July 2013, the revised Memorandum of Understanding was signed, which provided for the following regarding the commitments undertaken pertaining to the Commission for the Protection of Competition: "Chapter 5.3. The Cypriot Authorities will strengthen the independence and effectiveness of the Commission for the Protection of Competition (CPC) by:
 - guaranteeing sufficient and stable financial means and qualified personnel to ensure its effective and sustained operation by Q4-2013;
 - enhancing the effectiveness of competition law enforcement by adopting the necessary amendments to the legislation on mergers and antitrust, including the power to conduct sector enquiries by Q4-2013; and
 - promoting a more active role of the CPC in the area of advocacy, with the objective of safeguarding and promoting competition by Q4-2013;"
- On 9/9/2013, the Commission launched a public consultation on the two Bills entitled, "The Protection of Competition (Amendment) Law 2013" and "The Control of Concentrations between Undertakings Law of 2013".



2. STRUCTURE OF THE COMMISSION FOR THE PROTECTION OF COMPETITION



2.1. The Commission for the Protection of Competition

According to the Law for the Protection of Competition of 2008, the Commission consists of the Chairperson and four Members, serving on a full time basis and on terms defined by virtue of a decision by the Council of Ministers. The Law also provides for the appointment of four substitute members, one for each member of the Commission. The Chairperson of the Commission is of high standing and probity, possessing specialised knowledge and experience in law and well placed to contribute towards the effective implementation of the Law. The four Members of the Commission are persons with specialised knowledge and experience in law or economics or competition or accounting or trade or industry, well placed to contribute towards the effective implementation of the Law. The Law prohibits the Chairperson and the Members of the Commission from having any financial or other interest likely to affect the impartiality of their judgment in the exercise of their functions, powers and duties. The term of office of the Chairperson and the Members is for a period of five years and may only be renewed once.

A. Chairperson

Chairperson of the Commission for 2013 was Mrs. Loukia Christodoulou, who was appointed by virtue of a decision of the Council of Ministers for a period of five years, from 18/4/2013 to 17/4/2018. Mrs. Loukia Christodoulou, also served as Chairperson from 21/12/2011 to 17/4/2013 having been appointed for the remaining term of office of the former Chairperson.

B. Members and Substitute Members

By virtue of a decision of the Council of Ministers dated 24/5/2013, Mrs. Eleni Karaoli, Mr. Andreas Karydes, Mr. Charis Pastellis and Mr. Christos Tsingis were appointed as Members of the Commission for a period of five years. At the same time, Ms. Eleni Christodoulidou, Mr. Nikos Damianos, Mr. Anthimos Christodoulides and Mr. Stavros Violaris were acting as Substitute Members. The Members of the Commission for the period up to 23/5/2013 were Mrs. Eleni Karaoli, Mr. Leontios Vryonides, Mr. Costas Melanides and Mr. Dimitris Pitsillides.

2.2. Service of the Commission for the Protection of Competition

The Commission is supported by the Service of the Commission. The Service, following authorisation by the Commission, has the responsibility to duly conduct preliminary investigations to determine whether there have been infringements of the Protection of Competition Law and to assess concentrations between undertakings, pursuant to the provisions of the Control of Concentrations between Undertakings Law. The Service grants the Commission every possible assistance in order for the Commission to fulfill its functions, powers and duties.

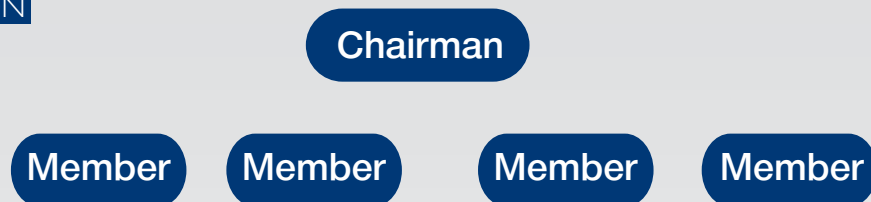
The Service, comprises the Director, two Senior Officers, three Officers A', five permanent Officers and two Officers on a temporary basis. Consequently, by the end of 2013, the staff of the Service of the Commission amounted to thirteen people.

In addition to the above staff, the Service is assisted by a Chartered Accountant who has been seconded by the Accountant's General Office of the Republic of Cyprus, as well as by secretarial and auxiliary staff that at the end of 2013 numbered eleven people, of whom: 1 chief clerk, 4 clerks, 1 personal assistant to Chairperson, 1 personal assistant to Director, 2 messengers and 2 maids.

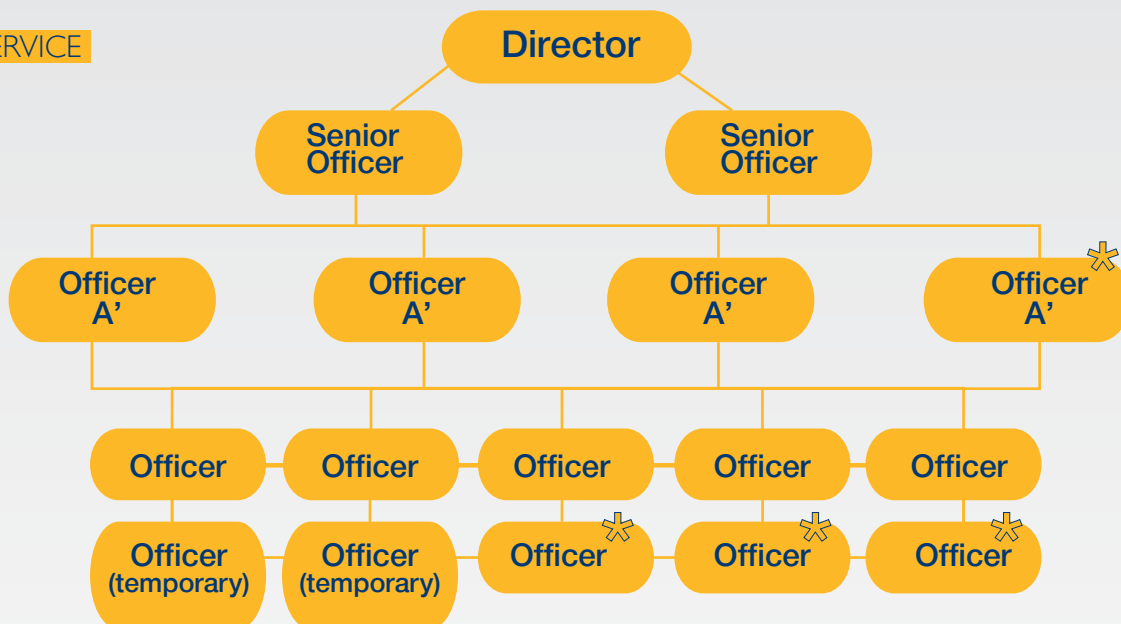
During 2013, through the process of public tenders, the Commission contracted for a limited period of time the services of four lawyers specializing in the fields of competition law and two economists specialised in the fields of industrial organisation and econometrics.

Organisational Chart of the Commission for the Protection of Competition 2013

COMMISSION



SERVICE



* 4 Vacancies

The Republic of Cyprus has undertaken a commitment in the Memorandum of Understanding to strengthen the Commission and to ensure it has at its disposal sufficient resources and qualified personnel. To this effect, the Public Administration and Personnel Department conducted a thorough investigation regarding the organisational structure and staffing of the Commission and at the same time it comprised proposals in order to strengthen the efficient functioning of the Commission.

The results of the study of the Public Administration and Personnel Department pointed out the need to strengthen the Commission in terms of staffing, so the Department made recommendations to increase the personnel number of the Service of the Commission.

2.3. Staff Training

- **Educational Visit of the Officers of Competition Authorities to the offices of EFTA SURVEILLANCE AUTHORITY, in Brussels**

Two Officers of the Service of the Commission participated in an educational programme organised by the Italian Competition Authority in Brussels from the 20th January to the 25th of January 2013 and from the 4th February to the 8th of February 2013, respectively. The programme, primarily financed by the European Union, is related to forensic information technology and forms part of the more general European programme for the “Control and Repression of Crime”.

- **Training Programme for Strategic, Management and Leadership Development of the Public Service**

During 2013, the Director, the two Senior Officers and three Officers A' of the Service, participated in various educational seminars that were organised by the Cyprus Academy of Public Administration in partnership with the Cyprus International Institute of Management. The Seminars were organised within the context of the “Training Program for Strategic, Leadership and Managerial Development of the Cypriot Public Service” and focused in the areas of strategy, leadership and management through current training methodologies. Within 2014, the work-based projects aiming to apply knowledge and knowhow at the work place will be completed and improvements will be achieved through changes in the above areas.

3. OVERVIEW OF THE COMMISSION'S ACTIVITIES

3.1. Overview of the Decisions of the Commission

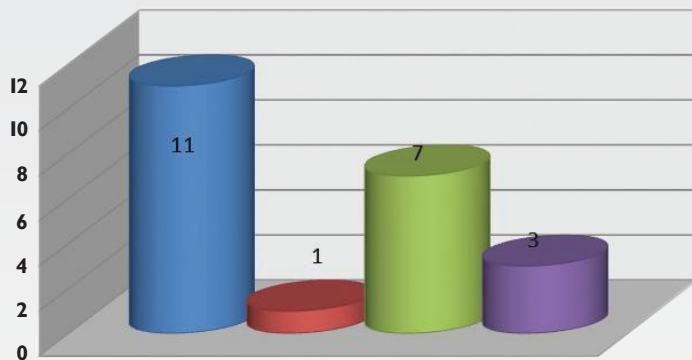
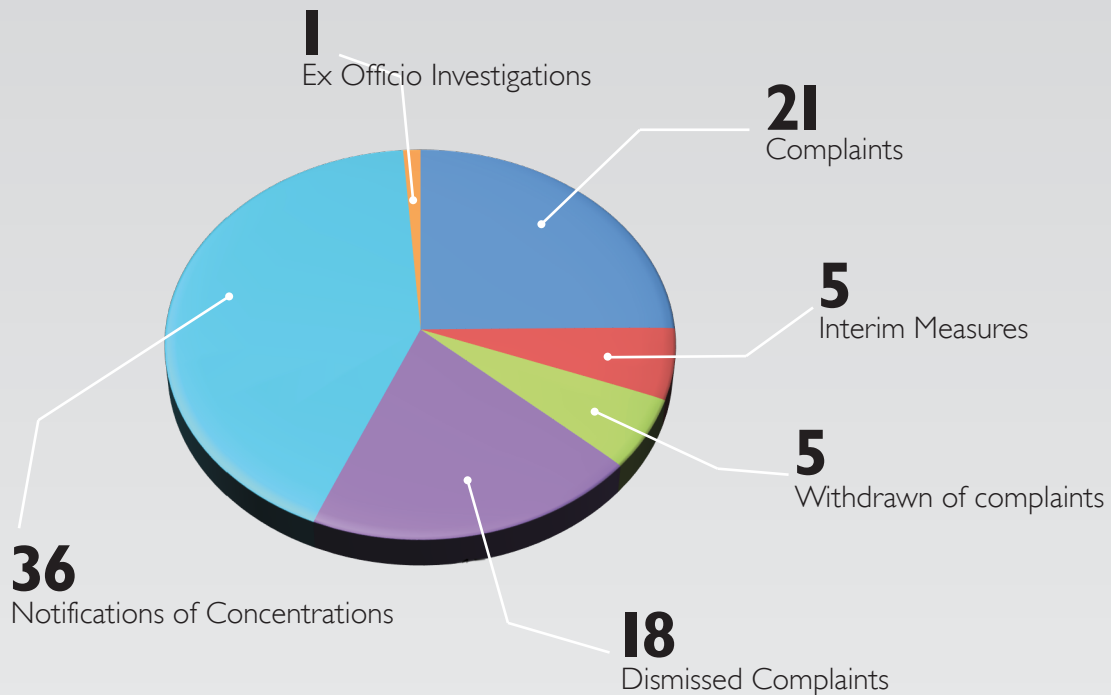
During the year under review, the Commission held seventy-seven regular meetings and dealt with a vast range of issues that were submitted before it, which related mainly to complaints, applications for interim measures, ex officio investigations and notifications of concentrations. In total, the Commission issued eighty-six decisions.

Illustrated below is a cumulative table of decisions issued by the Commission for the year under review:

CUMULATIVE TABLE OF DECISIONS ISSUED

Complaints for infringements of Law No. 13(I)/2008	21
Interim Measures	5
Withdrawn Complaints	5
Dismissed Complaints based on Section 35 of Law No. 13(I)/2008	18
Notifications of Concentrations	36
Ex Officio Investigations	1
Total	86

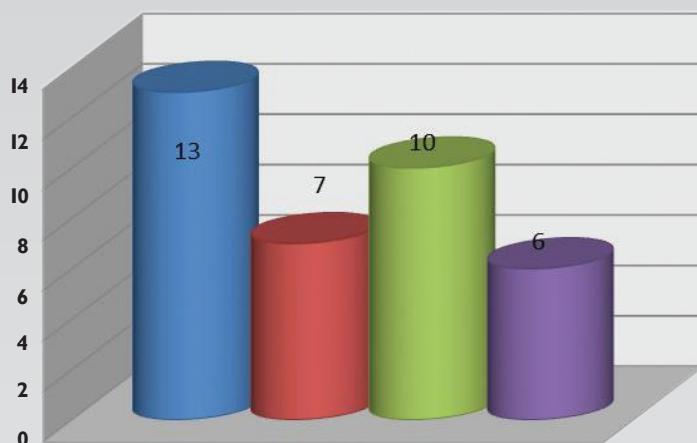
Decisions of the Commission



- Total of infringements
- Infringement of Interim Order
- Infringements of Section 6 of Law 13(I)/2008
- Infringements of Sections 9 and 13 of Law 22(I)/99

By the end of 2013, the Commission issued eleven infringement decisions and imposed administrative fines. Seven out of the eleven decisions concerned abuse of dominant position in violation of Section 6 of the Protection of Competition Law of 2008, three concerned infringements of Sections 9 and 13 of the Control of Concentrations between Undertakings Laws of 1999 and 2000 and one concerned non-compliance with the Interim Measures ordered by the Commission. Total administrative fines imposed during the year under review amounted to €2,044,257.

The Commission, during 2013, issued thirteen decisions whereby it concluded that no infringements of the Protection of Competition Law were found. The said decisions were related to the existence of anti-competitive agreements or concerted practices (Section 3) to abuse of dominance position (Section 6(1)) and to abuse of a relationship of economic dependence (Section 6(2)).



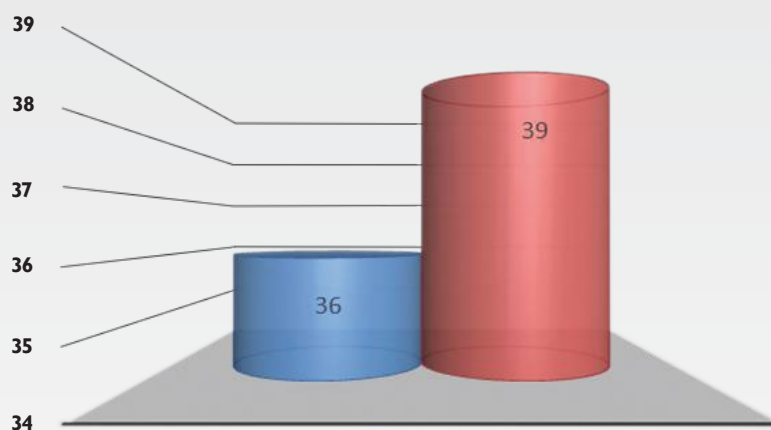
- Total of non-infringements
- Non-infringements of Section 6(1) of Law 13(I)/2008
- Non-infringements of Section 3 of Law 13(I)/2008
- Non-infringement of Section 6(2) of Law 13(I)/2008

3.2. Overview of new Complaints and Notifications of Concentrations

In 2013, thirty-six new complaints were submitted to the Commission, alleging infringement of the Protection of Competition Law 2008. The Commission examined thirty-one of the aforementioned and decided to instruct the Service to conduct the appropriate preliminary investigation for thirteen of them. The remainders are expected to be examined in 2014. Two of the submitted complaints were eventually withdrawn.

During 2013, thirty-nine proposed concentrations between undertakings were notified to the Service of the Commission, in accordance with the Control of Concentrations between Undertakings Laws of 1999 and 2000, of which thirty were examined and evaluated by the end of 2013, whereas the rest of them will be examined within 2014.

In 2013, the Commission decided to conduct a full investigation in relation to the notified concentration among Proteas Press Ltd, JG Cassoulides & Son Ltd and Litho Web Ltd.



- New Complaints
- New Notifications of Concentrations

3.3. Dawn Raids

In 2013, the Commission decided to conduct two Dawn Raids. In particular:

(a) On 19/9/2013, a Dawn Raid was carried out at the premises of GPM HENKEL LTD and five retail stores which sell HENKEL's products in the area of Nicosia. This investigation was conducted following a complaint submitted by K.A.C Constantinides Trading Ltd against GPM Henkel Ltd for alleged infringement of Sections 6(l)(a), (b) and (d) of the Law (L13(l)/2008).

(b) On 22/10/2013, a Dawn Raid was carried out at the offices and the premises of Mattheos Ioannou Ready Mix Concrete Ltd, K. Kithreotis Concrete Ltd, Skyramix Ltd, A.G. Kazanos & Son Construction Services Ltd, Ahtinodorou & Poullas Super Beton Ltd, Top Mix Concrete Ltd, C.M. Starbeton Ltd, A.G. Kazanos & Son Construction Services Ltd and C.M. Starbeton Ltd J.V., Farmakas Quarries Public company Ltd, Iacovou Brothers (Concrete) Ltd, M.S. (SKYRA) VASAS Ltd, Poullas Tsadiotis Ltd and Athinodorou Super Beton Public Company Ltd. The above investigation was conducted on the basis of an ex officio investigation by the Commission regarding the possibility of bid rigging of three public tenders for ready mix concrete for the District of Lemesos, which took place between November 2011 and June 2012, in contravention of Section 3 of the Law.

The Commission wishes to point out that the conduct of an investigation does not indicate by any means that a party under investigation is guilty of an infringement of the Protection of Competition Law 13(l)/2008, but has as its aim to collect all information and evidence deemed necessary, as per the Commission's powers of investigation for the implementation of the Law.

3.4. Brief Presentation of Important Commission Decisions for infringements of the Protection of Competition Law

Decision No. I/2013

Complaint by P&M Air-Sea-Land Services Ltd against Salamis Shipping Services Ltd (Case No. II.17.007.33, Decision dated: 9/1/2013)

The case concerned a complaint filed to the Commission for the Protection of Competition (hereinafter the "Commission") by P&M Air-Sea-Land Services Ltd (hereinafter "P&M"), against SALAMIS SHIPPING SERVICES LTD (hereinafter "SALAMIS"), for an alleged infringement of Section 6 of the Protection of Competition Law 13(l)/2008 (hereinafter the "Law"). In particular, the complaint referred to the refusal of SALAMIS to transport goods for P&M, abusing in this way the dominant position it holds on specific routes.

P&M is engaged in the transportation of goods and passengers and it is based in Lemesos. The company is licensed to transport goods internationally, in other words to transport goods to and from Cyprus.

SALAMIS represents ships at the ports of Lemesos and Lamaka and is also active at customs clearance and transports in Cyprus, in loading and unloading ships, in international road transport and in the provision of freight services. Also SALAMIS holds a license to transport goods internationally, in other words, to transport goods to and from Cyprus.

The Commission having taken into account all the information of the administrative file, decided to define as the relevant product market in this case, the transportation of goods on routes (a) Lemesos - Haifa - Lemesos and (b) Lemesos - Piraeus - Lemesos by "ro-ro" ships. Regarding the relevant geographic market of the abovementioned product market, the Commission decided that this extends throughout the territory of the Republic of Cyprus.

Based on the evidence, the Commission considered that there is also an associated market of the above relevant product market, namely the market of “The provision of international freight services”, in which both companies, P&M and SALAMIS, are active. The relevant geographic market for the said product market was defined as the territory of the Republic of Cyprus.

The Commission noted that in relation to the relevant product market, P&M and SALAMIS have a customer–supplier relationship, that is, a vertical relationship. In relation to the associated product market though, P&M and SALAMIS have a horizontal relationship, which makes them competitors, because they both transport goods internationally on behalf of their customers.

The Commission assessed all the evidence of the administrative file, including the written submissions of the parties and unanimously concluded that SALAMIS:

(a) Infringed Section 6(1)(b) of the Law, as a result of the abuse of the dominant position it holds in the relevant product market of the transportation of goods on routes (a) Lemesos - Haifa - Lemesos and (b) Lemesos - Piraeus - Lemesos by “ro-ro” ships, which led to the limitation of provision of services to the prejudice of consumers.

(b) Infringed Section 6(2) of the Law, as a result of the abuse of the relationship of economic dependence it had with P&M.

(c) Infringed Section 6(1)(b) of the Law, as a result of the refusal to provide services to P&M, which resulted to the limitation of the provision of services to the associate market of international freight services to the prejudice of consumers.

Therefore, the Commission, taking into consideration the nature, the duration and the severity of the infringements, and the need to prevent repetition of offenses, unanimously decided pursuant to Sections 24(a)(i) and 42(1) of the Law, to impose a fine on SALAMIS, of €217.721.

Decision No. 06/2013**Complaint by Primetel PLC against Cyprus Telecommunication Authority (CYTA) (Case No. II.I7.007.08, Decision dated: 25/1/2013)**

The case concerned a complaint filed to the Commission for the Protection of Competition (hereinafter the "Commission") by Primetel Ltd (hereinafter "Primetel") against Cyprus Telecommunication Authority (hereinafter "CYTA"), for the alleged infringement of Section 6(I)(c) of the Protection of Competition Law 13(I)/2008 (hereinafter the "Law") as a result of the discriminatory pricing applied to the detriment of Primetel, and for the alleged infringement of Section 6(I)(a) as a result of the imposition of unfair prices. The basis of the complaint was the Contract signed between CYTA and Primetel, dated 1/7/2006, for the acquisition of Rights of Use on capacity in the undersea cable system SMW-3, for a period of 12 years.

On 29/8/2010, the Commission, on the basis of the investigation conducted by the Service, found that there was a prima facie infringement of Section 6(I)(a) of the Law by CYTA and unanimously decided to send a Statement of Objections. The Commission also decided that there was no infringement of Section 6(I)(c) of the Law.

On 25/1/2013, following the completion of the hearing process, the Commission assessed the parties' written submissions, evaluated all the evidence before it and unanimously decided that CYTA had infringed Section 6(I)(a) of the Law.

The Commission concluded that CYTA held a dominant position in the relevant market for the available capacity that could potentially be sold to a telecommunications operator in Cyprus. The Commission reached this conclusion taking into account the general financial position of CYTA as a telecommunication organisation, the fact that since its establishment CYTA has been operating in a monopolistic protected environment, the existence of the high legal and economic barriers in dumping submarine cable systems, the available capacity that could be purchased by an operator in Cyprus, and the absence of an alternative root and of an alternative submarine-capable systems controlled by other telecommunication operators.

The Commission held in its decision that, the time at which Primetel had required the above mentioned international capacity from CYTA was crucial and highly important to Primetel. Primetel at that point had just entered the retail market of the broadband services, having CYTA as its main competitor, while at the same time CYTA was Primetel's supplier for inter-connection services, unbundled access to the local loop and international capacity through the submarine cable systems.

In relation to the above mentioned facts, the Commission concluded that CYTA taking advantage of its dominant position in the supply of international capacity, compared to other competitors within the market, imposed significantly high prices to Primetel regarding the supply of international capacity, hindering Primetel's possibility of charging lower prices for the same services CYTA was charging its own customers.

Considering all the above, the Commission, having regard to the nature, duration and gravity of the infringement unanimously decided to impose on CYTA a fine of €295.277.

Decision No. 09/2013
Complaint by Andros Kiosk Ltd against Fereos Ltd
(Case No. II.17.006/2006, Decision dated: 15/2/2013)

The case concerned the re-examination of the complaint filed to the Commission for the Protection of Competition (hereinafter the “Commission”) on 18/1/2006 by Andros Kiosk Ltd (hereinafter “Andros Kiosk”) against Fereos Ltd (hereinafter “Fereos”), concerning the alleged infringement of the Protection of Competition Law 207/89, that was in force at the time, by Fereos.

Andros Kiosk Ltd is a limited company based in Pafos, operating a kiosk. Fereos Ltd, is active in the import and distribution of a wide range of retail products, including well known brands in the Republic of Cyprus. Fereos also operates a large distribution network covering the whole territory of the Republic, supplying, inter alia, kiosks/convenience stores, supermarkets, groceries, restaurants, pubs, cafes, bakeries, tobacco shops, petrol stations, etc. The cooperation between the parties began with the commencement of work and/or operation of Andros Kiosk, whereupon Fereos began to supply the complainant with its products.

The Commission proceeded with the re-examination of the complaint, in the light of the annulment of the Commission’s decision for which an application for annulment was pending before the Supreme Court of Cyprus, as a result of the decision of the Supreme Court in appeals No. 1544/09, 1545/09, 1596/09 and 1601/09 (ExxonMobilCyprusLtd etc. and Commission for the Protection of Competition).

The Commission, on 15/2/2013, having evaluated all the evidence before it, unanimously concluded that Fereos abused its relationship of financial dependence with Andros Kiosk Ltd, contrary to Section 6(2) of the Law. The Commission reached the conclusion that Fereos suddenly and unjustifiably terminated its long-term relationship of financial dependence with Andros Kiosk, whilst it was impossible for Andros Kiosk to find equivalent alternative solutions from other business choices, as a result of the behavior of Fereos, which led Andros Kiosk to irreparable damage since it had relied on the agreements of provision that it had attained with Fereos for the proper operation of its business.

Therefore, the Commission, acting on the basis of Section 24(a)(i) of the Law, concerning the established infringement of Section 6(2) of the Law, unanimously deemed fair under the circumstances the imposition of an administrative fine upon Fereos, amounting to €204.575.

Decision No. 19/2013

Complaint by CallSat Telecom Ltd against Cyprus Telecommunications Authority Ltd (CYTA) (Case No. II.17.01.I/2003, Decision dated: 12/4/2013)

The case concerned the re-examination of the complaint filed by CallSat Telecom Ltd (hereinafter "Callsat") against Cyprus Telecommunications Authority (hereinafter "CYTA"), for which a decision had been issued on 26/4/2006, but the Advocate General of the Republic accepted the annulment of the decision as a result of the Supreme Court's judgment in the Appeal no. 3902 (CYTA vs. Commission for the Protection of Competition).

On 12 April 2013, following the completion of the hearing process, and after taking into consideration the concerned parties' written submissions, the Commission, evaluated all the evidence before it and unanimously concluded that CYTA infringed Section 6(1)(a) of the Law as a result of applying excessive prices for the supply of International Private Leased Lines (IPLL), and specifically of the services CytaBusiness.Link, in 2003.

In particular, the Commission held that CYTA at the time of the infringement, was the only active organisation in the market of IPLL in Cyprus, therefore it was considered as the dominant undertaking in the relevant market.

The Commission assessed all the evidence before it and concluded that the pricing of international private leased lines in the form of 2Mbps, 34Mbps and 45Mbps circuits, was unreasonably excessive. On the basis of this, the Commission concluded that CYTA had infringed Section 6(1)(a) of the Law.

The Commission, in its assessment in relation to the infringement of Section 6(1)(a) of the Law, took into account the period chosen by CYTA to increase the prices of IPLL, which was considered to be crucial, since the new prices were introduced just as the market was liberalised and the complainant was licensed to operate in the Cypriot market and thus became able to purchase services from CYTA and sell them to the consumers.

Moreover, the Commission also took into account the fact that CYTA failed to justify sufficiently and objectively the reasons and the methodology used for the calculation of the specific prices, in connection with the fact that CECPR a few months later imposed clearly lower prices for the same services.

With regard to the prima facie infringements of Sections 6(1)(a) and 6(1)(b) of the Law and the refusal of CYTA to satisfy the demands of CallSat for the increase of the leased capacity to Greece, the Commission on the basis of all the evidence before it, unanimously decided that there was no infringement of the Law.

Concerning the alleged infringement of Section 6(1)(b) of the Law by CYTA as a result of the abolition of CYTA Internet Link, the Commission unanimously decided that there was no infringement of the Law.

With regard to the alleged infringement of Section 6(1)(c) of the Law in relation to the application of discriminatory prices to the detriment of CALLSAT and to the advantage of CYTA retail services (Cytanet), the Commission, unanimously decided that there was no infringement of the Law.

The Commission reached this conclusion taking into account that CALLSAT was no immediate or even potential competitor of CYTA. Furthermore, with regard to the abuse of the relationship of economic dependence, the Commission concluded that the provisions of Sections 6(1) and 6(2) overlap each other and therefore once declared that CYTA held a dominant position, the examination of the relationship of economic dependence, for the same alleged practices was unnecessary.

With regard to the Callsat allegations that the Agreement for the supply of Special Telecommunication Service CIL, included additional terms that were not linked to the prevailing commercial practices, but rather promoted discriminatory behavior, the Commission unanimously decided that the examination of the specific terms does not fall within its jurisdiction. Also, regarding the alleged infringement of Section 6(l)(c) due to the alleged failure to sign a respective agreement between CYTA and Cytanet, the Commission concluded that there was no infringement, since Cytanet is part of CYTA and not a separate legal entity. Additionally, concerning the obligation of Callsat to sign a contract with CYTA, the Commission decided that this does not constitute by itself an infringement of Section 6(l)(d) of the Law.

The Commission, in exercising its discretion, issued a declaratory decision, condemning CYTA's behavior for infringing Section 6(l)(a) of the Law.

Decision No. 23/2013

Complaint by AGS Agrotrading Ltd against Cyprus Grain Commission (Case No. II.17.007.60 & II.17.007.61, Decision dated: 29/3/2013)

The case concerned the re-examination of the complaint, filed to the Commission for the Protection of Competition (hereinafter the "Commission") by AGS Agrotrading Ltd (hereinafter "AGS"), against Cyprus Grain Commission (hereinafter "CGC") concerning the alleged infringement of Section 6 of the Protection of Competition Law (hereinafter the "Law"), by CGC as a result of charging prices below cost regarding the supply of barley for forage use.

Before the accession of Cyprus to the European Union, CGC held a monopoly on imports and marketing of grains in Cyprus. After 1/5/2004, the market was opened to competition and now any business can be active in this market. AGS is active in import and distribution of cereals for animal feed, by importing and distributing all the classifications of simple animal feed and competes with CGC.

On 31/1/2012, the Commission, as a result of the Supreme Court's decisions no. 3902 (CYTA and the Commission for the Protection of Competition) and no. 1544/09, 1545/2009, 1546/2009 and 1601/2009 (ExxonMobil Cyprus Ltd etc and the Commission for the Protection of Competition), revoked its previous decisions, since it was decided by the Supreme Court that they had been taken by a non - legally composed administrative body, and decided the ab initio examination of the complaint.

The Commission, when assessing the level of the fine to be imposed, it took into consideration the written submissions of the CGC, the nature, gravity and duration of the infringement, as well as the following:

- (a) The Cyprus Grain Commission had not committed any other previously infringements of the Law.
- (b) The Cyprus Grain Commission, stated that it had no intention nor sought to harm competitors and that all of its actions and decisions aimed at creating stable conditions in the grain trading for the good of the consumer and the economy in general.
- (c) The Cyprus Grain Commission proceeded to abuse its dominant position in the relevant market with the sale of barley under the average variable costs.
- (d) The facts determined that the Cyprus Grain Commission proceeded to sell barley below average variable costs for a period of nine months, from the end of 2007 and for several months in 2008. It is noted that this specific market is characterized by large fluctuations in prices, as the sale price is largely based on international prices of barley. However,

in this case, the rationale put forward by the Cyprus Grain Commission that its sales prices followed international values are not justifiable, because it did not take into account the prices at which the barley was bought during the period under review, as well as other expenses of the business.

(e) AGS Agrotrading Ltd, which is a competitor of the Cyprus Grain Commission, sustained economic losses throughout the period during which the Cyprus Grain Commission followed this abusive behavior.

(f) A large part of the CGC's turnover results from the activity of barley sale.

Therefore, the Commission, acting on the basis of Section 24(a)(i) of the Law, concerning the violation of Section 6(l)(a) of the Law, unanimously deemed correct and fair under the circumstances, the imposition of an administrative fine on the Cyprus Grain Commission, which amounts to €148,450.

Decision No. 28/2013

Complaint of EFL Eurorefund Ltd against Global Refund Cyprus Ltd (Case No. II.17.008.26, Decision dated: 4/4/2013)

The case concerned the complaint of EFL Eurorefund Ltd (hereinafter "EFL") submitted to the Commission for the Protection of Competition (hereinafter the "Commission") against Global Refund Cyprus Ltd (hereinafter "Global Refund").

The subject of the complaint was the alleged infringement of Section 6(l)(b) of the Protection of Competition Law 13(l)/2008 (hereinafter the "Law") by Global Refund, regarding its behavior in the market for the provision of VAT return services.

In its preliminary assessment (statement of objections), the Commission, in evaluating all the available data, found that Global Refund, as a dominant undertaking, was infringing Section 6(l)(b) of the Law by enforcing an exclusivity system supported by a rebate system with its resellers.

Global Refund submitted a set of commitments pursuant to Section 24(e) of the Law in order to meet the concerns expressed by the Commission in its preliminary assessment, which were published in the Cyprus Government Gazette of 1st March 2013. The Commission noted that the above mentioned case may not be regarded as a hardcore case and therefore the acceptance of commitments is the optimal tool to deal with this case. To this end, the Commission accepted certain commitments offered by Global Refund and decided the following.

In particular, Global Refund was obliged within fifteen (15) days from the date of the notification of the said decision to submit to the Commission solemn declaration stating that it has completed the amendments of the agreements by erasing the following condition:

"Obligations of the Retailer:

3.1 The Retailer will appoint GRC as its agent for the processing and repayment on his behalf of all eligible refunds of VAT to entitled customers."

The Commission noted that in case of refusal or omission by the undertaking involved to comply with the above mentioned commitments, may impose an administrative fine up to €85,000 for each day during which the infringement continues.

Furthermore, the Commission, pursuant to Section 50 of the Law and Article 9(2) of the Council Regulation (EC) 1/2003, may, upon request or on its own initiative, reopen the proceedings:

- (a) Where there has been a material change in any of the facts on which the decision was abused
- (b) Where the undertakings concerned act contrary to their commitments; or
- (c) Where the decision was based on incomplete, incorrect or misleading information provided by the parties.

Decision No. 29/2013

Complaint of B&A The Best MCC Limited against Hermes Airports Ltd (Case No. II.I7.009.37, Decision dated: 4/4/2013)

The case concerned the complaint of B&A The Best MCC Limited (hereinafter “The Best”) submitted to the Commission for the Protection of Competition (hereinafter the “Commission”) against Hermes Airports Ltd. (hereinafter “Hermes”).

The subject of the complaint was the alleged infringement of Sections 3 and/or 6 of the Protection of Competition Law 13(I)/2008 (hereinafter the “Law”) regarding the conclusion of contracts subject to acceptance by parties renting spaces at the Lamaka and Pafos airports of a supplementary obligation, namely the obligation to contract with Hellenic Tzilalis (hereinafter “HT”), for the supply of cleaning services.

Hermes Airports Ltd is the operator of the Lamaka and Pafos Airports pursuant to the relevant concession agreement made on 12/5/2006 with the Republic of Cyprus. The Commission found that Hermes enjoys a monopoly in the relevant market of operating the airports in Cyprus, which amounts to dominant position according to Section 6(I) of the Law. The Commission stressed that Hermes bears a special responsibility to abstain from any act that is likely to cause harm to competition.

In its preliminary assessment (statement of objections), the Commission found that Hermes was infringing Section 6(I)(d) of the Law by depending the conclusion of the agreements for renting space at the airports to whether the parties will accept other contractual obligations that had no relation to the object of the said agreements. Specifically, the Commission in its preliminary assessment argued that the contractual clause defining HT as the provider of cleaning services or the contractual clause referring to a “pre-approved provider” without objectively defining the relevant prerequisites and terms was considered an abusive behavior by Hermes.

Hermes Airports Ltd submitted a set of commitments within the meaning of Section 24(e) of the Law in order to meet the concerns expressed by the Commission in its preliminary assessment, that were published in the Official Gazette of 1st March 2013. The Commission noted that the above mentioned case may not be regarded as a hardcore case and therefore the acceptance of commitments is the optimal tool to deal with this case. To this end the Commission accepted certain commitments offered by Hermes and decided the following. In particular, Hermes is obliged within fifteen days from the date of the notification of the said decision to publish on its webpage all relevant prerequisites and terms that must be satisfied to become an approved provider of cleaning services. Moreover, there will be sole reference to pre-approved provider without any particular subcontractor being named. Hermes is obliged within one month from the date of the notification of the said decision to replace the contractual clause defining HT as the provider of cleaning services with the contractual clause to a “pre-approved provider”.

The Commission noted that in case of refusal or omission by the undertaking involved to comply with the above mentioned commitments. It may impose an administrative fine up to €85.000 for each day during which the infringement continues.

Furthermore, the Commission, pursuant to Section 50 of the Law and Article 9(2) of the Council Regulation (EC) 1/2003, may, upon request or on its own initiative, reopen the proceedings:

- (a) Where there has been a material change in any of the facts on which the decision was abused
- (b) Where the undertakings concerned act contrary to their commitments; or
- (c) Where the decision was based on incomplete, incorrect or misleading information provided by the parties.

Decision No. 35/2013

Complaint and application for interim measures by Lanitis Bros Ltd against the Pancyprian Organisation of Cattle Farmers (POCF) Public Ltd (Case No. II.17.012.17, Decision dated: 12/4/2013)

The case concerned the complaint and application for interim measures submitted to the Commission for the Protection of Competition (hereinafter the "Commission") by Lanitis Bros Ltd (hereinafter "Lanitis") against Pancyprian Organisation of Cattle Farmers (POCF) Public Ltd (hereinafter "POCF").

The subject of the complaint was the alleged infringements of Sections 6(l)(b) and 6(l)(c) of the Protection of Competition Law 13(l)/2008 (hereinafter the "Law") and Article 102 of the Treaty On the Functioning of the European Union (hereinafter "TFEU").

The Commission unanimously concluded that POCF, which holds a dominant position in the relevant market of the supply of raw cow milk, impliedly refused transactions with the complainant by imposing restrictions to the supply of raw cow milk, to the detriment of the consumers, by affecting consumers' choice and limiting access to Lanitis fresh pasteurized milk, in breach of Section 6(l)(b) of the Law. In relation to the alleged application of Section 6(l)(c) of the Law, the Commission unanimously concluded that the requirements of that section are not fully fulfilled. As far as the application of article 102 of the TFEU is concerned, the Commission having taken into account all the facts concerning this case, concluded that there is no evidence that POCF affects the intra-community trade in any substantial way in areas or against customers who may be the target of competitors from other Member States in the supply of raw cow milk, and that dairy goods from raw cow milk are produced only within the Republic of Cyprus.

The Commission, in light of the written submissions of POCF and having taken into account the importance and duration, the nature and seriousness of the infringement, as well as any mitigating or aggravating conditions, unanimously decided, according to the procedures of Sections 24(a)(i) and 42(l) of the Law, on the amount of the administrative fine.

The Commission, in examining the amount of the fine, further noted the following:

- (a) Raw cow milk is essential for the operation of the complainant.
- (b) POCF holds a dominant position in the wholesale market of raw cow milk, and was obliged to respond to its special responsibility, by acting in a way that would not distort competition in the downstream market of the production of dairy goods from raw cow milk. POCF's restriction of supply to Lanitis makes the infringement of the Law more severe, since POCF is active in the downstream market through its subsidiary company, Papouis Dairies Ltd.

(c) Taking into consideration the production quota, the sensitivity of fresh cow milk, the fact that it is impractical to import it from another country and the dominant position of POCF the Commission concludes there are no viable alternatives to the complainant.

(d) Despite the short duration of the infringement of one month, the actions of POCF, as evidenced by articles in the Press, resulted in milk shortage with an immediate impact on the market and the consumers in general.

(e) The company under investigation has not been convicted in the past for similar violations of the Law.

(f) The POCF, having appeared before the Commission in a number of cases, was or should have been aware of its obligations in respect of competition Law enforcement. In exceptional cases, the Commission may take into consideration the undertaking's inability to pay a fine. A reduction is granted only on the basis of objective evidence that an imposition of a fine would jeopardize the economic viability of the undertaking concerned.

The Commission took into account the position of POCF in relation to a reduction of the fine and specifically the impact of the recent economic developments on POCF, and requested evidence of its declarations, which the POCF sent.

The Commission, in exercising its discretion, took into account the impact of the recent economic crisis in the banking sector in Cyprus and the effect it had on POCF, based on data sent, but also the fact that, based on case law, the Commission is not obliged to consider any negative effects on an undertaking when setting a fine. The Commission imposed the fine after having evaluated the evidence supplied by the POCF along with all the other factors mentioned above.

The Commission, taking into account all the above, and acting on the basis of Section 24(a)(i) of the Law, in respect to the infringement of Section 6(1)(b) of the Law, unanimously decided to impose an administrative upon the POCF amounting to €276.832.

Decision No. 38/2013

Complaint and application for interim measures by Primetel PLC against Cyprus Telecommunications Authority (Case No. II.17.008.29, Decision dated: 13/6/2013)

The decision concerns the application for interim measures filed by Primetel PLC (hereinafter "Primetel") on 5/6/2013 to the Commission for the Protection of Competition (hereinafter the "Commission") against Cyprus Telecommunications Authority (hereinafter "CYTA for the alleged infringement of Sections 6(1)(b) and 6(2) of the Protection of Competition Law 2008 (L. 13(I)/2008) (hereinafter the "Law").

The application for interim measures was submitted in the course of the complaint that had been filed to the Commission against CYTA by Primetel for alleged infringements of Sections 6(1)(a) and 6(1)(c) of the Law. The subject of Primetel's complaint was the Agreement signed with CYTA titled as "Agreement for the Right of Use Provision of Capacity Using the Minerva Sea Cable System" (Right of Use), dated 6/11/2008. On 5/6/2013 Primetel alleged that CYTA had refused to negotiate the repayment method of Operation and Maintenance fees for 2013, proceeded to a unilateral cease of the capacity that was assigned to it under the Agreements dated 8/2/2008 and 5/11/2009 and additionally, that CYTA threatened with the termination of the relevant agreements and that CYTA threatened to retrieve the assigned capacity on 17/6/2013 at 10:00 am, if the amount due was not paid.

The Commission, on the basis of the evidence before it, noted that a possible rejection of the application for the issuance of the interim measures requested includes more risks for Primetel, public interest and consumers in general than the issuance of the measures.

The Commission unanimously decided to issue the following order:

Interim Order of the Commission, on the basis of Sections 23(2) and 28 of the Law, by which CYTA is ordered:

(a) To not terminate on 17/6/2013 the Agreement between CYTA and Primetel dated 8/2/2008 ("Agreement for the Provision of Use right of Sea Capacity Using the Minerva Cable System") and the Agreement dated 5/11/2009 with the same title because of the non-payment on the part of Primetel of the issued invoice amount to [...] Euros, which became payable and not to retrieve the referred capacity, and

(b) to restore and re-connect with the appropriate technical or other way the capacity on which Primetel bought a right to use in Minerva cable system by virtue of the aforementioned agreements and which CYTA has already disconnected since 3/6/2013.

The condition under b) will be fulfilled on condition that Primetel will pay the amount due of [...] Euros (including V.A.T.) plus potential costs of reconnection, as below:

(i) Primetel shall pay CYTA the amount of [...] Euros until 30/6/2013 plus any costs for reconnection. With the payment of the said amount, CYTA is obliged to immediately and without further delay fulfill the condition under (b), and

(ii) Primetel shall pay to CYTA the remaining amount of [...] Euros in two equal installments, with the first one payable until 31/7/2013 and the second one payable until 31/8/2013.

If Primetel does not respond fully with the obligations described above, the said order for interim measures shall cease to apply.

The Commission noted that it may impose on the undertakings concerned an administrative fine up to €17.000 for each day during which it omits to fully comply with this decision of the Commission in accordance with the provision of Section 28(4) of the Law.

Decision No. 50/2013

Complaint and application for interim measures by Primetel PLC against CYTA (Case No. II.17.008.29, Decision dated: 5/9/2013)

The decision concerned the application for interim measures filed by Primetel PLC (hereinafter «Primetel») to the Commission for the Protection of Competition (hereinafter the "Commission") against Cyprus Telecommunications Authority (hereinafter "CYTA") for the alleged infringement of Sections 6(1)(b) and 6(2) of the Protection of Competition Law No. 13(I)/2008 (hereinafter the "Law"). The application was submitted in relation to an ongoing investigation against CYTA. The investigation concerns the complaint filed by Primetel, alleging that the prices charged by CYTA in relation to the right of use of capacity over the MINERVA cable system were excessive and discriminatory.

On 13/06/2013, the Commission, having considered all evidence before it, unanimously decided to issue an Interim Order pursuant to Sections 23(2) and 28 of the Law regarding the application for interim measures against CYTA (Decision no: 38/2013), which concluded as follows:

a) To not terminate on 17/06/2013 the Agreement between Primetel and CYTA dated 8/2/2008 and the agreement dated 5/11/2009 due to failure to pay the invoice issued by CYTA, and not to recover the capacity, that Primetel had a right to use over the MINERVA cable system.

b) To restore and re-connect the capacity that Primetel had a right to use over the Minerva cable system by virtue of the aforementioned agreements and which CYTA had already disconnected as from the 6/03/2013.

The term under b) will be fulfilled on condition that Primetel will pay the amount due plus potential costs of reconnection, as below:

- i) Primetel shall pay CYTA a first installment until 30/06/2013 plus any costs for reconnection. With the payment of said amount, CYTA is obliged to immediately and without further delay obey with the condition under (b), and
- ii) Primetel shall pay to CYTA the remaining amount in two equal installments, with the first payable until 31/07/2013 and the second payable until 31/8/2013.

If Primetel does not respond fully with the obligations described above, in the order for Interim measures shall cease to apply.

On 19/6/2013, Primetel deposited in the bank account of the CYTA the first installment which accounted for 50% of the amount due and on the same day notified this to CYTA, asking for restoration and reconnection of the capacity that was disconnected at 3/6/2013. CYTA however, did not proceed to reconnect the capacity and systematically avoided any attempt of communication with Primetel.

On 1/7/2013, Primetel informed the Commission that CYTA had not complied with the Commission's decision dated 13/6/2013, calling to activate the provisions of Section 28(4) of the Law and to take all necessary measures to ensure CYTA's compliance with the Commission Interim measures.

During the oral hearing before the Commission, CYTA argued that Primetel did not fully comply with the Interim Order of the Commission date 13/6/2013, because although it proceeded to pay the sum due, it did not requested to be informed on whether there was any additional cost, nor offered any additional amount. Therefore, CYTA alleged that the Interim Order of the Commission ceased to apply on 30/6/2013.

On 5/9/2013, the Commission issued a decision stating that the Interim Order dated 13/6/2013 was clear. CYTA became aware of this on 17/6/2013 and as it emerged from the evidence before the Commission it had knowledge of what was expected from it, while not requested any clarification on the matter. The Commission noted, on the basis of the evidence before it, that CYTA proceeded on 1/7/2013 to terminate the agreement signed with Primetel and thus failed to comply with the Commission's Interim Order dated 13 June 2013. Also, CYTA failed to make an immediate and without further delay reconnection of the capacity or otherwise that Primetel had a right of use over the Minerva cable system pursuant to Agreements signed between them and which CYTA had disconnected as from the 3/6/2013, without informing about the existence of any potential cost of reconnection despite the letters or/and calls that Primetel made and despite the fact that Primetel had paid CYTA the sum on 28/6/2013 pursuant to the Commission's Interim Order. The Commission, in the light of the written comments submitted by CYTA in relation to the failure to comply with the order on the basis of Section 28(4) of the Law, unanimously decided that CYTA had indeed failed to comply with the order and to impose an administrative fine.

The Commission, for the imposition of the fine, took into account the nature, gravity and duration of the infringement, as well as the fact that the CYTA knew or ought to have known its obligations with regard to the implementation of the decisions of the Commission and noted the following regarding the behaviour of the CYTA:

- (a) CYTA, was the only one aware of the existence of potential cost of reconnection and the amount and did not inform Primetel of the existence and of the actual amount of this, despite the letters of Primetel calling for restoring and reconnecting the capacity.
- (b) Even after the transfer of the amount in Interim Order in favour of the CYTA on the morning of 27 June 2013 and the related email of 28 June 2013 sent by Primetel to CYTA, did not inform on the existence and/or amount of the potential cost of reconnection, which was exclusively in the realm of knowledge of the company.

(c) CYTA left the time to pass without any actions on reconnection costs and verification of this amount and relative on Primetel's update, this time who on the basis of the Interim Order of the Commission had been established, so that with the expiry of 30 June 2013 to retrieve the capacity currently allocated to Primetel over the MINERVA cable system.

(d) Cyta's behavior in general could be characterised as indicative of its intention to avoid complying with the Commission's Interim measures and indifference with regard to the implementation of this.

Furthermore, the Commission noted the fact that CYTA did not put forward any mitigating factor that could be taken into account during the consideration of a possible imposition of an administrative fine.

Finally, the Commission stressed that non-compliance with a decision is considered a hardcore infringement the Law. The decisions of the Commission should be respected by the undertaking, which is obliged to actively comply with them, ensuring thus the smooth and orderly functioning of administration and the Government.

The Commission, having taken into account all the evidence before it and the behaviour of the CYTA as a whole and having regard to the nature, gravity and duration of the infringement in accordance with Section 42 of the Law, and the necessity to prevent repetition of the infringement of the law, unanimously decided to impose CYTA a fine of €17.000 for each day of failure to comply with the above-mentioned Interim measures. Therefore, the total amount of the administrative fine imposed to CYTA for the 39 days of omission of compliance amounts to €663.000.

3.5. Overview of notifications of concentrations

Based on the provisions of the Control of Concentrations between Undertakings Laws of 1999 and 2000, by the end of 2013, thirty-three notifications of concentrations were examined and evaluated by the Commission, of which thirty were notified in 2013 and the other three were notified in 2012.

Furthermore, in 2013, the Commission imposed fines with regards to the following three notifications of concentrations, due to the failure to submit the notification within the set time limit as well as putting into effect the notified concentrations, prior to relevant approval by the Commission.

Decision CPC: I3/2013

Notification of a concentration concerning the acquisition of Excel-Serve Management Ltd by IFG Group Ltd (Case Number 8.I3.012.32, Date of decision: 15/2/2013)

Subject of this decision was the IFG's failure to notify to the Commission for the Protection of Competition, the acquisition of 100% of the share capital of Excel-Serve Management Ltd in accordance with the provisions of the Control of Concentration between Undertakings Law 22(I)/99 (hereinafter the "Law") and the subsequent implementation of the Concentration without the prior approval of the Commission. The Concentration was based on a Share Purchase Agreement, dated 26/6/2008 (hereinafter the "agreement") between IFG Trust (Cyprus) Ltd (the buyer) and Vassilios Hadjivassiliou (the seller) and it was put into effect on the same day.

The Commission having examined the acquisition of International division of IFG including IFG (Trust) Cyprus Ltd, with its decision No. II/2012, dated 27/4/2012, declared the concentration compatible with the requirements of the competitive market. The Commission also found that the participating undertakings had implemented the concentration before obtaining the relevant approval notice.

On the 10/12/2012, the Commission decided that there was a prima facie infringement of Sections 9 and 13 of the Law and decided to issue a Statement of Objections, which was sent to the parties concerned. The Commission reached the above conclusion since the parties failed to notify to the Service the Concentration within the time period prescribed by the law and put the concentration into effect before receiving the relevant approval from the Service, pursuant to Section 19(a) of the Law. The Commission having examined the referred concentration in accordance with the written submissions of the parties, taking into account the nature and the gravity of the infringements in accordance with the procedures of Section 52(2) of the Law, and the necessity to prevent repetition of the infringements, unanimously decided:

(A) With regard to the infringement of Section 13(1)(a) of the Law, the imposition of an administrative fine, under Section 52(1)(a) of the Law, of €2.000 to IFG.

(B) With regard to the infringement of Section 9 of the Law, the imposition of an administrative fine, under Section 52(1)(d) of the Law, of €10.000 to IFG.

Decision CPC: 30/2013

Notification of concentration between the companies Sinergatiki Oikodomiki Etairia Dimosion Ypallilon Kyprou Ltd and Sinergatiko Tamieftirio Dimosion Ypallilon Lefkosias Ltd (Case Number 8.I3.012.42, Date of decision: 9/4/2013)

Subject of the decision was the failure to notify the merger agreement between Sinergatiki Oikodomiki Etairia Dimosion Ypallilon Kyprou Ltd (hereinafter the "SOEDYK") and Sinergatiko Tamieftirio Dimosion Ypallilon Lefkosias Ltd (hereinafter the "STADYL") within the time period foreseen in the Law 22(I)/99 (hereinafter the "Law").

On 12/10/2012, the Commission examined the written report of the Service, and acting in accordance to the provisions of the Law, decided that the concentration was compatible with the requirements of the competitive market.

During the examination of the notification of the concentration, it was noted that STADYL, was duly authorised by the Special General Meeting of its members on 15/10/2012, to transfer to SOEDYK all of its assets and liabilities. What is more, SOEDYK was duly authorised by the Special General Meeting of its members on 16/10/2012, to accept the transfer of all of STADYL's assets and liabilities.

The Commission, on the basis of the evidence before it, concluded that the material which was before it, justified the preparation of a Statement of Objections regarding the alleged prima facie infringement of Section 13(1)(a) of the Law, for failure of notification by STADYL and SOEDYK within the specified time limit foreseen in the Law.

On 9/4/2013, the Commission, having examined the referred concentration, in accordance with the written and oral submissions of STADYL and SOEDYK, the submissions of the Registrar of Cooperative Societies Supervision and Development Authority and after going through the administrative file of the case, decided that STADYL and SOEDYK failed to notify to the Service the concentration within the time period foreseen in the Law. Consequently, the Commission unanimously decided that STADYL and SOEDYK, which were the undertakings responsible under Section 13(2) of the Law to notify the proposed concentration, infringed Section 13(1)(a) of the Law.

The Commission, with regard to the nature and gravity of the infringements in accordance with the procedures laid down in Section 52(2) of the Law, and the necessity to prevent repetition of the infringements, unanimously decided with regard to the infringement of Section 13(1)(a) of the Law, the imposition of an administrative fine of €4.000 to Sinergatiki Oikodomiki & Tamieftirio Dimosion Ypallilon Kyprou Ltd.

Decision CPC: 49/2013**Notification of a concentration concerning the acquisition of the share capital of Renaissance Capital Investments Ltd by Onexim Holdings Ltd (Case Number 8.13.013.01, Date of decision: 2/9/2013)**

Subject of the decision was Onexim's failure to notify the Share Purchase Agreement dated 21/12/2012, between the companies Onexim Holdings Limited (hereinafter the "Onexim") and Renaissance Capital Holdings Limited (hereinafter the "Renaissance"), within the time period foreseen in the Law 22(I)/99 (hereinafter the "Law"). This Agreement concerned the acquisition of Renaissance's share capital by Onexim and the indirect acquisition of Renaissance's subsidiaries.

The notification of this concentration was submitted to the Service on 22/1/2013 by Onexim in accordance with the provisions of Section 13 of the Law. On 19/3/2013 the Commission having examined the written report of the Service and acting in accordance with the provisions of the Law, declared the referred concentration compatible with the requirements of the competitive market.

The Commission having taken into account all the evidence before it, concluded that the material justified the preparation of a Statement of Objections regarding the alleged prima facie infringement of Section 13(1)(a) of the Law, for failure of Onexim, as the undertaking responsible under Section 13(2) of the Law, to notify the concentration.

The Commission having examined the written and oral submissions of Onexim and after going through the administrative file of the case, concluded that Onexim had failed to notify to the Service the Concentration within the time period set by the Law and consequently, it unanimously decided that Onexim infringed Section 13(1)(a) of the Law.

The Commission in its decision emphasized that according to Section 13(2) of the Law, the acts of concentration shall be notified by the companies acquiring control. Moreover, the Commission, taking into account the duration of the infringement, as well as certain mitigating and aggravating circumstances of the case, unanimously decided to impose an administrative fine of €1.000 to Onexim.

4. RECENT LEGAL DEVELOPMENTS

During 2013, the Commission in order to conform to the terms of the Memorandum of Understanding prepared proposals and suggestions for the replacement of the Control of Concentrations of Undertakings Laws of 1999 and 2000 as well as for the amendment of the Protection of Competition Law of 2008.

The Commission, after consultation with the Ministry of Energy, Commerce, Industry and Tourism launched a Public Consultation from 9/9/2013 to 23/9/2013, for the Bill entitled "The Control of Concentrations between Undertakings Law of 2013" and the Bill entitled "The Protection of Competition (Amendment) Law 2013". Upon the completion of the Public Consultation, the two Bills were sent by the competent Ministry of Energy, Commerce, Industry and Tourism to the Law Office of the Republic of Cyprus to conduct the necessary legal vetting.

The proposed amendments to the laws were deemed necessary for the significant improvement of the existing legal framework on the control of concentrations between undertakings and the protection of competition, in order to ensure a higher level of effective competition in the domestic market.

4.1. The Protection of Competition (Amended) Law, 2013

The proposed amendments are designed to further converge the national legal framework with the relevant EU legal framework, as it has been shaped both by the introduction of Regulation (EC) 1/2003, and through the jurisprudence of the EU Courts. Such convergence is essential, as it will contribute to the uniform application of the rules on antitrust practices.

The amendments intend to improve the effectiveness of competition law enforcement in Cyprus by enhancing the powers of the Commission and by providing further convergence with EU Law and the Recommendations endorsed by the ECN.

The Commission, based on both the experience to date on the implementation of the provisions of the Law, and the jurisprudence of the domestic and EU case law, proposed amendments that aim to provide the parties with greater legal certainty that will contribute substantially to the improvement of the implementation of the existing legislation.

More specifically, the provisions of the new Bill provide, inter alia, the possibility for the Commission:

- (a) to prioritise cases,
- (b) to cooperate with regulators or other authorities exercising control over certain sectors of the economy and request their assistance, and to conclude Protocols of Cooperation with other National Competition Authorities,
- (c) to require public bodies to provide information upon request,
- (d) to conduct interviews in order to collect information on the subject of a specific investigation,
- (e) to conduct inquiries into a particular sector of the economy and into types of agreements across various sectors.

4.2. The Control of Concentrations between Undertakings Law 2013

The Bill aims at replacing the Control of Concentrations between Undertakings Law 22 (I)/1999, which was enacted by the standard preexisting Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings. However, that regulation has been repealed and replaced by Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation), which made substantial and broad changes in the legal framework which governs mergers of EU interest.

The proposed Bill aims at further convergence of the national legal framework on mergers with the respective framework which was already in place with the enactment of Regulation No 139/2004. Such a convergence is essential, as it will contribute to the uniform application of legislation for the control of concentrations based on the above regulation, while guidance from the provisions of EU law for the application of the relevant legal provisions will become easier.

- (a) The prerequisite for the characterisation of a concentration as of major importance when at least two of the undertakings are engaging in commercial activities within the Republic.
- (b) The obligation to notify the concentration within a specific time period is abolished.
- (c) There is a fee of €1.000 with the submission of the notification of concentration and a fee of €6.000 before commencing the process of full investigation.
- (d) The opportunity to withdraw the notification of a concentration with a request to the Commission is introduced.
- (e) The criterion of compatibility with the competitive market is amended.
- (f) It is provided that the Commission's report will be forwarded to the participating companies regarding the doubts in reference to the compatibility of the concentration with the requirements of the competitive market, in cases where the Commission will oppose the implementation of the concentration.
- (g) There is provision for taking legal action to recover imposed administrative fines and penalties not paid.
- (h) It establishes the powers under which the Commission may collect information and conduct dawn raids to businesses and residences in conducting full investigation of a notified concentration.
- (i) Recommends an explicit obligation to confidentiality to protect business confidential information/intelligence.
- (j) Allow the participating businesses to submit a statement of voluntary waiver of the right or confidentiality for the purpose of providing confidential information/intelligence in case the concentration is examined at the same time by another Competition Authority.
- (k) It introduces provision for examination of the markets which may be significantly affected by the notified concentration, beyond the affected markets.
- (l) It introduces a form based on which the commitments by the participating undertakings will be submitted.

5. OTHER ACTIVITIES

5.1. Participation of the Commission for the Protection of Competition in Parliamentary Committees of the House of Representatives

During the year under review, the Commission, acting within its jurisdictional powers, responded to invitations from various Parliamentary Committees, and submitted its views from the perspective of Competition on a range of issues and topics. The Commission, inter alia, attended the following meetings:

- (a) The Parliamentary Committee on Internal Affairs' discussion on the Shore Protection (Amendment) Law and the Shore Protection (rights and licenses) (Amended) Regulations 2012.
- (b) The Parliamentary Committee on the Environment discussion on waste issues.
- (c) The Parliamentary Committee on Development Plans and Public Expenditure Control discussion regarding the Control of the Contract of the state with the waste treatment plant in Koshi.
- (d) The Parliamentary Committee on Internal Affairs debate on Rented Property for Business Purposes (Temporary Provisions) Law 2013.

5.2. Opinions

The Commission, pursuant to Section 23(2)(l) of the Protection of Competition Law L13(I)/2008, has the power to provide public entities with opinions concerning issues relating to its competencies. The Commission, acting under these powers, was called in several occasions to provide its opinion on various matters relating to Competition Law. The Commission has provided its opinion to the Parliamentary Committees in the following instances:

- Parliamentary Committee on the Environment discussion on the waste issues.
- Parliamentary Committee on Commerce and Industry in relation to the proposed legislation "Rented Property for Business Purposes (Temporary Provisions) Law 2013".

The Commission has provided its opinions to public entities in the following instances:

- To the Director-General of Ministry of Energy, Commerce, Industry and Tourism in relation to the Bill which amends the Petroleum Laws of 2004 and 2010 upon relevant request.
- To the Minister of Communications and Works in relation to the Motor Vehicle (Driver Training) Law 1968, on the basis of Section 23(2)(l) of the Protection of Competition Law L13 (I)/2008 on Commission's initiative following submission of complaint.
- To the Director of the Department of Environment, Ministry of Agriculture, Natural Resources and Environment regarding the licensing of the Integrated Domestic Solid Waste Management Plant in Koshi for packaging waste management.
- To the House of Representatives regarding the providers of internet access services.

6. EUROPEAN AND INTERNATIONAL COOPERATION

The Commission for the Protection of Competition considers international relations to be closely linked to its vision of becoming an active European Competition Authority which applies international practices and promotes competition rules at community and international level. The participation of staff members of the Service of the Commission in various working groups constitutes one of the most essential ways of developing cooperation, mutual contribution and shaping competition policies, aimed at enabling the Commission to function in the most efficient way, for the benefit of the market at large. The active participation and cooperation at Community level is considered necessary, especially after the implementation of the Council Regulation (EC) No. 1/2003.

6.1. European Conferences

- **EUROPEAN COMPETITION FORUM**

On 28/2/2013, the Chairperson of the Commission for the Protection of Competition attended the European Competition Forum, where representatives of all the Competition Authorities of the Member States of the European Union participated and which was introduced by the Vice-President of the EU and Competition Commissioner Mr Joaquin Almunia.

- **EUROPEAN COMPETITION AND CONSUMER DAY**

On 24/5/2013, the Irish Competition and Consumer Protection Authority, during the Irish Presidency of the Council of the European Union, organized the European Competition and Consumer Day in Dublin, entitled "Competition Policy and Consumer Protection: Challenges and Options." The event was attended by the Chairperson of the Commission for the Protection of Competition.

6.2. Cooperation between the Competition Authorities of the Member States

- **DIRECTORS GENERAL MEETING**

On 25/6/2013, the Director of the Service of the Commission attended the first annual Directors General meeting, which took place in Brussels. In addition, on 26 and 27/11/2013, the Chairperson of the Commission attended the second annual Directors General Meeting, in Brussels. During these meetings a wide range of issues were discussed aiming better implementation of the Community competition law.

- **ECN PLENARY MEETING**

On 6/6/2013, 23/09/2013 and 15/11/2013, the Senior Officers of the Service of the Commission attended the 35th, 36th and 37th European Competition Network (ECN) Plenary Meetings, respectively.

● **ECN RECOMMENDATIONS**

In 2013, the Competition Authorities of the Member States within the European Competition Network (ECN) adopted seven documents which reflected the ECN Recommendations regarding key investigative powers that the competition authorities should have and the decision-making powers of the Competition authorities. These Recommendations are intended to be used as advocacy tools vis-à-vis policymakers. The seven recommendations are posted on the website of the ECN and are the following:

- (i) ECN Recommendation on Investigative Powers, Enforcement Measures and Sanctions in the context of Inspections and Requests for Information.
- (ii) ECN Recommendation on the Power to Collect Digital Evidence, including by Forensic Means
- (iii) ECN Recommendation on Assistance in Inspections conducted under Articles 22(1) of Regulation(EC) No 1/2003
- (iv) ECN Recommendation on the Power to set Priorities
- (v) ECN Recommendation on Interim Measures
- (vi) ECN Recommendation on Commitment Procedures
- (vii) ECN Recommendation on the Power to Impose Structural Remedies

● **MEETING WITH REPRESENTATIVES OF UNITED KINGDOM COMPETITION AUTHORITY (OFT)**

On 12/4/2013, the Director of the Service held a meeting with representatives of the UK Competition Authority (Office of Fair Trading) in London, in order to discuss issues of common interest.

● **ADVISORY COMMITTEE ON MERGERS**

On 25/09/2013, a Senior Officer of the Service took part in the meeting of the Advisory Committee on Concentrations in Brussels. At this meeting, the proposed transaction regarding the acquisition of the share capital of Olympic Air S.A. by Aegean Airlines S.A. was discussed. The examination of the concentration was referred to the European Commission, at the request of the Commission on the basis of Section 22(3) of the European Regulation (EC) No. 139/2004.

The Commission with the referral of the concentration to the European Commission in November 2012, pointed out that the concentration has a significant impact on trade between member states, namely the Republic of Cyprus and Greece, since these companies operate in both geographic markets. Specifically, it was noted that Aegean performed six routes between Greece and Cyprus and Olympic performed one route Athens - Larnaka. In addition, the Commission noted that the concentration threatens to affect significantly competition in Cyprus, regarding the route Athens - Larnaka, since the number of the routes will be decreased from three to two. Furthermore, the Commission noted that the two companies are major competitors and as a result of the merger, a significant market share for Aegean on the route Athens – Larnaka will be created.

6.3. Cooperation at International Level and participation in International Conferences

- **ECONOMIC DEVELOPMENTS IN EUROPE COMPETITION POLICY**

On 10/12/2013, the Director of the Service attended a conference conducted by Charles Rivers Associates, entitled “Economic Developments in European Competition Policy” which took place in Brussels.

- **CN ADVOCACY WORKSHOP**

On 12 and 13/12/2013, the Chairperson and a Member of the Commission attended the workshop of the International Competition Network on Competition Advocacy. The meeting of the Group was held in Italy under the auspices of the Italian Competition Authority. During the two-day meetings, issues of improvement of the roles of the Competition Authorities as Advocacy were discussed.



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