



COMMISSION FOR THE PROTECTION
OF COMPETITION



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ANNUAL REPORT
2009

COMMISSION FOR THE PROTECTION OF COMPETITION

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

September 15, 2010



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Costakis Christoforou

Statement by the Chairman of the Commission for the Protection of Competition

“pivotal infrastructure at all levels of its operations”

Following last year’s hectic schedule, the established Commission operated without facing any of the previous operational challenges, by developing all the pivotal infrastructure at all levels of its operations.

The plan for reorganizing the Service which aids and facilitates the implementation of the Commission's work began slowly, yet surely, to yield its first results. Despite the fact that the pace for filling the new posts of the Service was not as anticipated (for which other relevant bodies are responsible) in comparison to past efforts, it can be said, that a lot has been achieved in this area.

The Commission has set its goals and proceeds steadily towards the implementation of its action plan.

As indicated by the number of cases investigated, the Commission established a more active stance in the market. Major market players began taking into serious consideration these newly set initiatives. By surpassing all subjective aims, the Commission’s firm and irrevocable objective has been to serve the public interest based on the principles of legality and impartiality. The impartial execution of duties by all those who form an

integral part of this institution is imperative, in order to best serve the public interest and meet the needs of all the citizens, for whom the Commission was established.

The Commission has identified several problems and weaknesses, and is determined to deal with them effectively, using the existing infrastructure and despite the limited financial resources at its disposal.

Finally, the Commission has initiated and is currently proceeding with the required preliminary work for the enhancement and effective use of its relevant legal framework, following suit other competition authorities with longer term operation and experience.

The work that has been carried out by the Commission is reflected in this report which is also presented for the public's critical evaluation.

A handwritten signature in black ink, consisting of a large, sweeping 'C' followed by a horizontal line and a small flourish.

Costakis Christoforou

Chairman of the Commission for the Protection of Competition



1. The Commission for the Protection of Competition in 2009

1.1 The Commission for the Protection of Competition

The Commission for the Protection of Competition (C.P.C.) is the independent Authority vested with the exclusive competence for ensuring a healthy competitive environment.

The Protection of Competition Law of 2008, in accordance with the Control of Concentrations between Enterprises Laws of 1999 and 2000, establishes the framework of regulations and principles aimed at securing effective and healthy competition within the Cypriot market. The competition policy secures the effective and productive operation of the market, thus contributing to the creation of a climate favourable to innovation and technological advancement for the benefit of consumers, who can enjoy better quality products and services at competitive prices.

As effective competition is vital in an open economy, the C.P.C. is vested with broadened powers and competences, which ensure the adherence of the principles and regulations in a free economy.

The main competences of the Commission are:

- To control restrictive agreements and concerted practices by enterprises having as their object or effect the elimination, restriction or distortion of competition
- To control the abuse of dominant position possessed by one or more enterprises
- The control of concentrations between enterprises aiming at preventing distortions in effective competition and ensuring that the principles of competitive markets are respected.

With the enactment of the Protection of Competition Law of 2008 (Law No. 13(I)/2008), the powers of the C.P.C. were broadened to incorporate the application of competition rules, as provided in 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), through its designation as the competent National Competition Authority in the Republic of Cyprus.

1.2 Main activities during 2009

The year under review was marked by important facts which gave a new perspective on competition issues. More precisely:

- On 05/12/2009, the Plenary of the Supreme Court on Administrative Recourse no.48/2007 ratified the decision on Administrative Recourse no. 3902, whereby the Court had declared that the participation of Mr Efstathiou in the Commission was unlawful. Following the decision of the Plenary of the Supreme Court, a number of the Commission's decisions were annulled, and under its new composition the Commission, was called to decide their re-examination.
- On 6/8/2009, the Commission announced its decision in relation to the ex officio investigation against the petroleum companies, on which a total fine of €42.904.000 was imposed.
- Between October 5th and 6th of 2009, Representatives of the Competition Commission of the Republic of Gambia visited Cyprus and participated in the educational Programme organized by the Cyprus Institute of Mediterranean, European and International Studies.
- Drafting of the Regulation on Granting Immunity and Reducing Administrative Fines in cases of collusions or concerted practices, or agreements in contravention to section 3 of Law 13(I)/2008 and/or article 101 of the Treaty on the Functioning of the European Union (Leniency Programme) was completed and forwarded via the Ministry of Commerce, Industry and Tourism to the Law Office of the Republic for legal review.
- Drafting of the Regulation for the Operation of Internal Procedures of the Commission commenced.
- The procedure for filling the new post of the Director of the Service of the Commission for the Protection of Competition which was created by the Protection of Competition Law 13(I)/2008 and approved in the 2009 Budget, begun.

- The schemes of service for the new posts of the Director of the Service of the Commission for the Protection of Competition, the Senior Officers of the Service (A13) and the Officers A' (A11) were approved. Moreover, the schemes of service of the positions of Officers of the Service (A8-A10-A11) were modified in order to meet the emerging needs of the Service by adjusting the required qualifications according to the needs of the Commission during the opening of these positions.
- As part of the advocacy program of the Commission, it organized conferences and published relevant informative material.
- The issuance of a monthly newsletter intended to inform the Media about the Commission's activities was adopted as a matter of course.
- In view of the anticipated employment of fourteen new Officers of the Service, the Commission for the Protection of Competition began its relocation in newly-erected offices, completed in 2010.



Composition Organization Training

2. Structure of the Commission for the Protection of Competition

2.1 The Commission - Members

The enactment of the new Law for the Protection of Competition of 2008 provides that the Commission will consist of the Chairman 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 Chairman and the members of the Commission are of a high standing and probity, possessing specialized knowledge and experience in law, or economics, or competition, or accounting, or trade, or industry, and are well placed to contribute to the effective application of the Law. The Law prohibits the members of the Commission from having any financial or other interest likely to affect the impartiality of their judgement in the exercise of the functions, powers and duties of the Commission. The term of office of the Chairman and the members is for a period of five years and may only be renewed once.

A. Chairman

With the enactment of the Law for the Protection of Competition of 2008 and by the virtue of a decision by the Council of Ministers, Mr Costakis Christoforou was appointed as Chairman of the Commission for a period of five years, as from 18/4/2008.

B. Members and Substitute Members

By virtue of a decision by the Council of Ministers dated 14/5/2008 the following were appointed as Members of the Commission for a period of five years as from 14/5/2008 to 13/5/2013:

Mr Leontios Vryonides, Ms Eleni Karaoli, Mr Demetris Pitsillides and Ms Loukia Christodoulou.

The Council of Ministers also appointed the following substitute members: Mr Andreas Karydes, Mr Costas Mavrides, Mr Sotos Hadjittofis and Ms Eleni Christodoulidou-Papageorgiou.

2.2 Service of the Commission for the Protection of Competition

The Commission is supported by the Service of the Commission and following the authorization by the Commission, is competent to duly conduct preliminary investigations to determine whether there have been infringements of the Protection of Competition Law. It is also competent to evaluate concentrations between enterprises pursuant to the provisions of the Control of Concentrations between Enterprises Law.

The Service is empowered to collect and examine the information necessary for the exercise of the Commission's functions, to conduct on-the-spot investigations of enterprises, to introduce complaints and submit recommendations to the Commission, to make the necessary communications and publications, to conduct preliminary evaluations of concentrations of enterprises, to prepare written reports, and to grant the Commission every possible facilitation in order to fulfill its functions, powers and duties.

During 2009, the structure of the Service changed significantly since two of the Officers of the Service were promoted to the position of Officers A' of the Service of the Commission, as approved in the 2009 Supplementary Budget. In 2009, the Service of the Commission for the Protection of Competition totalled fifteen Officers.

The Service is also assisted by the secretarial and auxiliary personnel who totalled thirteen employees.

During 2009, two Economists were commissioned on the basis of a specific contract of services, one of which resigned during the course of the year.

Within 2009, the procedure for filling the vacant posts of the Director of the Commission for the Protection of Competition as approved in the 2009 Budget, and fourteen vacant Officers' posts, also approved in the 2009 Budget commenced. The recruitment of additional Officers and other specialized personnel will reinforce the teams in charge of investigations and promote the faster implementation of the Commission's action plan.

2.2.1 Schemes of Service

In early 2009, the scheme of service for the new post of the Director of the Service which was created by the Protection of Competition Law 13(I)/2008 was drafted and approved. The procedure for filling the new post which was approved in the 2009 budget was put into effect.

In addition to the post of the Director of the Service, an additional position of a Senior Officer of the Service (A13), as well as two positions of Officers of the Service A' (A11) were also approved in the 2009 Supplementary Budget, thus providing an effective structure for the Service of the Commission. Consequently with the creation of these posts, it was deemed necessary to adjust the scheme of service for the post of the Officer of the Service (A8-A10-A11), in order to meet the emerging needs of the Service by adjusting the required qualifications according to the needs of the Commission during the opening of these positions.

Due to the pending appointment of the Director of the Service of the Commission for the Protection of Competition, it became necessary to also modify the duties and responsibilities as well as the required skills, for the posts of Senior Officer of the Service (A13) and Officer of the Service A' (A11).

2.3 Personnel Training

2.3.1 2009 Training Programme for National Judges and Lawyers in European Community Competition Law

From May 25th to 27th of 2009, Members of the Commission, and members of the Service of the Commission for the Protection of Competition attended a training programme of the European Commission, organized under the auspices of the Law Commissioner. The training programme was organized in collaboration with overseas universities, and focused on the implementation of the Competition Law in Cyprus. The training programme was also attended by representatives of new member states of the European Union, such as Bulgaria and Romania, as well as candidate states for accession to the European Union. The seminar was addressed by the Law Commissioner Mrs Leda Koursoumba, the Chairman of the Commission for the Protection of Competition, Mr Costakis Christoforou, the President of the Supreme Court, Mr Petros Artemis, the Attorney-General, Mr Petros Clerides, as well as the Judge of the Court of Justice of the European Union, Mr George Arestis.

2.3.2 Educational Programme for the Competition Commission of the Republic of the Gambia

On October 5th to 6th of 2009, an educational Programme was organized by the Cyprus Institute of Mediterranean, European, and International Studies, under the auspices of the Small States Network for Economic Development. Furthermore, a meeting was held at the offices of the Commission between representatives of the Competition Commission of the Republic of the Gambia, the Chairman and members of the Service of the Commission, during which, various issues concerning the Competition Commission of the Republic of the Gambia were discussed.

Application of law and Supervision



3. Recent legal developments

3.1 Regulation on Granting Immunity and Reducing Administrative Fines in cases of collusions or concerted practices, or agreements in contravention of section 3 of Law 13(I)/2008 and/or article 101 of the Treaty on the Functioning of the European Union (Leniency Programme)

In 2003, following a decision by the Commission for the Protection of Competition, a Programme on Granting Immunity and Reducing Administrative Fines was adopted, in cases of collusions in contravention to section 3 of the Law (Leniency Programme). The leniency programme was never enforced by the Commission as on prima facie, it did not possess the pledges of lawful action eligible within the framework of the existing law.

The Commission, acting under the Protection of the Competition Law of 2008 (Law Number 13(I)/2008), and in particular pursuant to section 46, prepared a draft Regulation on granting immunity and/or reducing administrative fines for infringements according to the Law.

The proposed Regulation as empowered by the Law was deemed necessary since Leniency Programmes proved useful tools of work and have proven value.

According to the drafted Regulation, the Leniency policy pursued is based on the assumption that certain enterprises involved in secret collusions, are willing to put an end to their participation and provide evidence relating to the existence and operation of the secret collusion, but are dissuaded by the imposition of sanctions against them. The Commission considers that it is in the public interest to “reward” those enterprises which are willing to terminate their participation in this type of illegal practices and collaborate with it, thus contributing to the opening of an investigation or to the detection and proving of anti-competitive behaviour, by granting immunity from the imposition of any fines imposed by the Commission. Moreover, the collaboration of one or more enterprises may justify the reduction of administrative fines by the Commission, on condition that certain requirements are fulfilled.

As it is generally acceptable, secret collusions are extremely harmful for the healthy operation of the market, as they limit or even eliminate competition, but by their very nature are difficult to detect and to prove due to lack of evidence. Consequently, the collaboration of enterprises in this area is particularly valuable to bring a successful action against such secret collusions.

In the light of this position, the Commission undertook a comparative study of other leniency programmes applied in other member states of the European Union as well as the Programme applied by the European Commission and the Model Leniency Programme of the European Competition Network and drafted a Regulation. The relevant Regulation sets out the criteria and conditions laid down in section 24 of the Protection of Competition Law 13(I)/2008, by which the Commission for the Protection of Competition may grant immunity and/or reduce administrative fines imposed on an enterprise or associations of enterprises.

The drafted Regulation has already been forwarded to the Ministry of Commerce, Industry, and Tourism which, will then be submitted to the Law Office of the Republic for legal review before being approved by the Council of Ministers and subsequently forwarded to the House of Representatives to be enacted.

3.2 The Protection of Competition Law Regulation (Internal Operations Procedure)

In accordance with the Protection of the Competition Law of 2008 (Law Number 13(I)/2008), and specifically pursuant to section 46, the Commission began in 2009 the preparation of a draft Regulation governing its internal operation.

The proposed Regulation, as empowered by the Law, was deemed necessary, since throughout the years of the Commission's operation it became clear that there was a need to regulate certain aspects of the procedures adopted by the Commission in the enforcement of the Law. Consequently, this will result in greater transparency in its operations, so both the Courts and the parties involved become acquainted with the procedures followed by the Commission.

In passing the Regulation, various issues related to the impediment of the Chairman and the members will be resolved as well as the issues of granting access to the administrative file, issuing of decisions, the examination of complaints, the initiation of ex officio investigations, the ordering of interim measures and the acceptance of commitments. Other issues that are likely to be resolved are the initiation of proceedings before the Commission in the investigation of the alleged infringements pursuant to the Law as well as the determination of the method for imposing administrative fines.

The drafted Regulation will first be forwarded to the Ministry of Commerce, Industry, and Tourism and it will then be submitted to the Law Office of the Republic of Cyprus for legal review before being approved by the Council of Ministers and subsequently forwarded to the House of Representatives to be enacted.



The Commission's Work

4. Overview of the Commission's activities

4.1. Overview of the decisions of the Commission

During the year under review, the Commission for the Protection of Competition held sixty meetings, during which, it examined a wide range of issues relating to complaints submitted, applications for interim measures, ex officio investigations and notifications of concentrations.

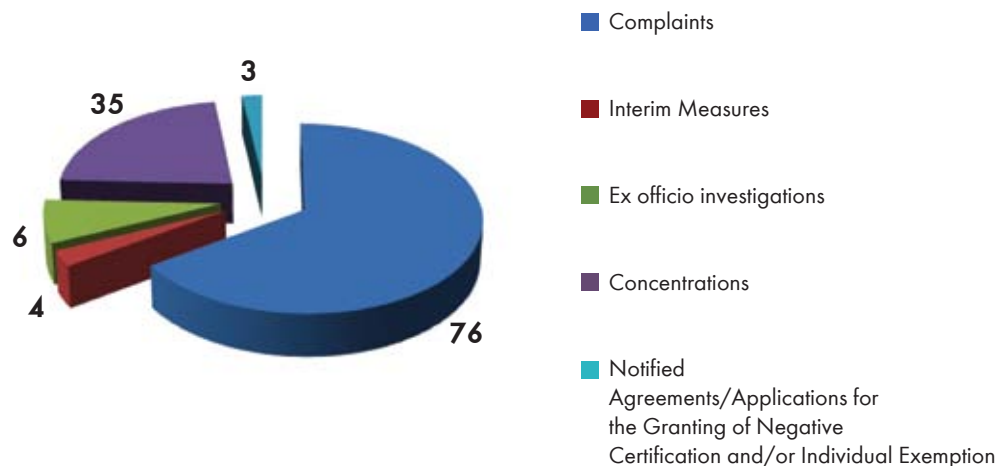
During 2009, the Commission issued eight decisions for infringements of the Law and unanimously ordered their termination, and imposed administrative fines. Out of the eight decisions issued four concerned infringements of section 3 of the Law, three of them related to infringements of section 6 of the Law, and one of them concerned infringements of both sections. The respective decisions related to the petroleum products, wholesale trading of tobacco products, the vaccines market, the financial services sector as well as the transportation and delivery of goods by licensed porters. The total amount of administrative fines imposed during the year under review, amounted to €43.973.151.

In addition, following the conduct of preliminary investigation by the Service, the Commission issued twelve decisions and unanimously concluded that, based on the available evidence no infringements of the Law were found. The respective decisions related to the telecommunications market, public sector activities, insurance and travelling services.

Furthermore, during 2009 the Commission issued four interim decisions on applications for interim measures that concerned the import and trading of wines, the distribution and delivery of promotional items bearing no address, airport operational management and Value-Added-Tax Refund Services, as well as the provision of educational seminars to the Parents Association of Public and Private Schools.

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

CUMULATIVE TABLE OF DECISIONS ISSUED	
Complaints	76
Interim Measures	4
Ex officio investigations	6
Notified Agreements/Applications for the Granting of Negative Certification and/or Individual Exemption	3
Concentrations	35
Total	124



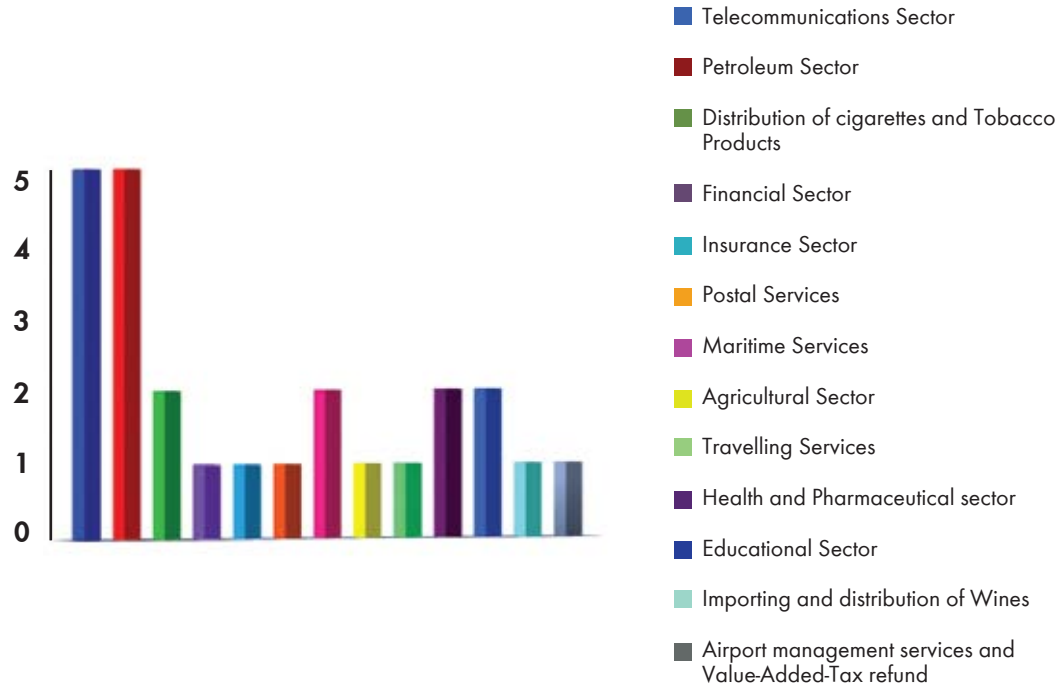
The Commission decided that for twenty-seven of the complaints lodged, the alleged practices did not fall within the sphere of the Commission’s competences, due to the fact that either the Commission had no substantive jurisdiction, or the complaints dealt with contractual relationships, or the complaints were lodged against other governmental departments which did not constitute economic activities but instead they exercised powers of a public authority.

Moreover, twenty-eight complaints submitted to the Commission were dismissed, as they did not comply with the provisions of the relevant legislation, despite the fact that the complainants were given the opportunity to re-submit their complaints.

Finally, the Commission accepted sixteen requests for withdrawal of the lodged complaints.

4.1.1 Sectors of the economy for which decisions have been issued

Case investigations conducted in 2009 for which decisions were issued related to various sectors of the Cyprus economy. Apart from the investigated complaints, an ex officio investigation was conducted by the Commission against petroleum companies and four decisions were issued on which the Commission imposed administrative fines (a summary of selected cases is provided in chapter 4.1.2). Moreover, several investigations conducted related to the distribution of cigarettes and tobacco products, the pharmaceutical sector, the educational services sector as well as the provision of maritime services. Detailed below is a comprehensive table for each market sector for which an investigation was conducted and a decision was issued during 2009:



4.1.2 Summary of Selected Cases

1. Decision numbers: 65-69/2009: Ex officio investigation against petroleum companies for alleged infringement of section 4 of the Law 207/89, currently section 3 of the Law 13(I)/2008 (Case number: 11.17.79/2005, Decision dated: 6/8/2009)

On 20 October 2005, the Service following instructions by the Commission begun an ex officio investigation against the petroleum companies Hellenic Petroleum Cyprus Ltd, Exxon Mobil Cyprus Ltd, Petrolina (Holdings) Public Ltd and Lukoil Cyprus Ltd, which operated in the Cyprus Market, for allegedly infringing section 3(1) of the Protection of the Competition Law of 2008 L.13(1)/2008.

The Service, acting in accordance with the instructions of the Commission, carried out an inspection at the offices of the petroleum companies on the 10th and 11th of November 2005, during which several documents and other evidence were collected. The Service also sent out questionnaires to them for the purpose of collecting more information and further clarifications.

The Commission after analyzing and evaluating all the available evidence, unanimously concluded that all four petroleum companies had operated, during the period under review, on the basis of a concerted practice and indirectly fixed retail prices for unleaded gasoline of 95 octanes, unleaded gasoline of 98 octanes and diesel LS. This they did, without reaching the stage of an agreement, but by consciously replacing the risks of competition through cooperation.

The Commission also concluded that during the same period, each of the four companies had operated independently on the basis of vertical agreements with their petrol stations through circulars / announcements of recommended or maximum prices, which resulted in direct or indirect fixing of prices for unleaded gasoline of 95 octanes, unleaded gasoline of 98 octanes and diesel LS.

Throughout the course of the administrative proceedings, the Commission conducted the investigation for both horizontal and/or vertical agreements which restricted competition.

In exercising its competences, as empowered by the Law, the Commission analyzed thoroughly the representations submitted by the petroleum companies, in respect of the infringements committed as per the ex officio investigation conducted and imposed the following administrative fines:

- To Exxon Mobil Cyprus Ltd, an administrative fine of thirteen million three hundred and sixty-six thousand euros (€13.366.000) for infringement of the provisions of section 3(1)(a) of the Law.

- To Petrolina (Holdings) Public Ltd, an administrative fine of twelve million five hundred and sixty-two thousand euros (€12.562.000) for infringement of the provisions of section 3(1)(a) of the Law.
- To Hellenic Petroleum Cyprus Ltd, an administrative fine of fourteen million two hundred and sixty-nine thousand euros (€14.269.000) for infringement of the provisions of section 3(1)(a) of the Law.
- To Lukoil (Cyprus) Ltd, an administrative fine of two million seven hundred and seven thousand euros (€2.707.000) for infringement of the provisions of section 3(1)(a) of the Law.

At the same time, the Commission ordered the aforementioned companies to avoid repeating in the future, such practices and/or actions which distort the rules of a freely competitive market.

2. Decision number: 46/2009: Complaints of Messrs Theodoros Kapnisis and Aristotelis Meletiou against the Limassol Licensed Porters Association (LLPA) and the Cyprus Ports Authority (Case number: 11.17.70/2006, Decision dated: 11/5/2009)

The case concerned a complaint filed by Messrs. Theodoros Kapnisis and Aristotelis Meletiou against the Limassol Licenced Porters Association (LLPA) and the Cyprus Ports Authority for alleged infringements of the Protection of Competition Law; the alleged infringement concerned the unjustifiable refusal to provide access to the complainants in the markets of operating and using specialized equipment and the service of transportation and delivery of goods by licensed porters to the Limassol Port and for discriminatory treatment of the complainants in relation to other licensed porters.

The Commission having evaluated all the available evidence unanimously concluded that:

(A) The LLPA's practice constitutes: (i) a decision by an association of undertakings prohibited by section 3 of the Law as it restricts the availability of portage services in breach of section 3(1)(b) of the Law, as a result of the LLPA's refusal to provide access to the complainants (licensed porters) in the markets of operating and using specialized equipment without objective justification that led to their inability to gain access in the markets of transportation and delivery of goods by licensed porters, and (ii) a decision by an association of undertakings prohibited by section 3 of the Law by applying dissimilar conditions to equivalent transactions thereby placing them at a competitive disadvantage, in breach of section 3(1)(d) of the Law, as a result of the discriminatory treatment exercised by the LLPA against the complainants, in contrast to older and newly licensed porters. And,

(B) Such behaviour, actions and/or omissions on the part of the LLPA constitute an abuse of dominant position in the markets of transportation and delivery of goods by licensed porters and the markets of operating and using specialized equipment and/or facilities that are essential and/or necessary for the provision of the aforementioned services (basic facilities) in breach of sections 6(1)(b) and 6(1)(c) of the Law.

Following the Commission's decision an administrative fine of €250.000 was imposed on the LLPA. At the same time, the Commission ordered the LLPA to avoid repeating in the future, such practices and/or actions which distort the rules of a freely competitive market.

3. Decision number: 3/2009: Complaint by Andros Kiosk Ltd against Fereos Company Ltd for alleged infringement of Law 13(1)/2008(Case number: 11.17.6/2006, Decision dated: 08/01/2009)

The case concerned a complaint filed by the company Andros Kiosk Ltd against the company of Fereos Ltd, for the alleged infringement of section 3 and/or 6 of the Protection of Competition Law. In particular, the complaint referred to the abrupt and unjustifiable interruption of cooperation and the refusal of the defendant to supply the products imported and distributed in the Cyprus Market to the complainant, in or about the year of 2005.

Based on the complaint filed, their collaboration was terminated two years after it began as the defendant refused to collaborate and supply the complainant with its products. The defendant had gained exclusive rights with the production company for importing and distributing several of the products that were sold on a retail basis by the complainant in the local market.

In its final decision, the Commission unanimously concluded that Fereos Ltd abused its relationship of economic dependence that Andros Kiosk Ltd had towards it, as a result of the arbitrary and unilateral termination of the customer relationship which it had with the complainant. As a result of the defendant's actions it was not possible for the complainant to find equivalent alternative trading options and continue its market operations causing it to suffer irreparable damage. Consequently, with its behaviour, the defendant abused its relationship of economic dependence which the complainant had towards it, in breach of section 6(2) of the Law.

The Commission imposed an administrative fine of €409.151 on the defendant company Fereos Ltd. At the same time the Commission ordered the defendant to terminate the continued infringement to the complainant company, and to avoid repeating such practices and/or actions distorting the rules of a freely competitive market.

4. Decision number: 14/2009: Complaint of Akis Panayiotou & Son Ltd against (1) WYETH HELLAS Anonimos Emporiki kai Viomikhaniki Etairia Farmakeftikon Proionton (Cyprus branch) and (2) Phadisco Ltd for enjoying a monopoly in the market for the pneumococcal vaccine (Case number: 11.17.59/2005, Decision dated: 29/1/2009)

The case concerned a complaint filed by Akis Panayiotou & Son Ltd, against Wyeth Hellas Anonimos Emporiki kai Viomikhaniki Etairia Farmakeftikon Proionton and Phadisco Ltd. The complaint referred to the practice of the companies against which the complaint was lodged of offering together with the purchase of a specific quantity of the pneumococcal vaccine (Prenevar), a specific free quantity of the alternate Meningitec vaccine, in breach of the Protection of Competition Law.

At the time of filing the complaint and the initiation of proceedings, Akis Panayiotou & Son Ltd was a local sales representative of vaccines of Chiron Company, a competitor to products imported and distributed locally by Wyeth Hellas Anonimos Emporiki kai Viomikhaniki Etairia Farmakeftikon Proionton and Phadisco Ltd. In its final decision, the Commission unanimously concluded that both Wyeth Hellas Anonimos Emporiki kai Viomikhaniki Etairia Farmakeftikon Proionton and Phadisco Ltd, during 2005, implemented a system of quantitative discounts for the supply of meningococcal vaccine (meningitec), in which market they had a dominant position, which was not based on commercially justifiable reasons and resulted in “binding” their customers and caused the complainant company to leave the market in 2008.

Consequently, with their actions both Wyeth Hellas Anonimos Emporiki kai Viomikhaniki Etairia Farmakeftikon Proionton and Phadisco Ltd abused their dominant position in the market of pneumococcal vaccine (Prenevar), in 2005, in breach of section 6(1)(d) of the Law.

The Commission deemed that under the circumstances, it was fair and proper to impose on Wyeth Hellas Anonimos Emporiki kai Viomikhaniki Etairia Farmakeftikon Proionton and Phadisco Ltd, administrative fines of €15.363 and €384.637, respectively. At the same time, the Commission ordered the defendant companies to avoid repeating in the future such practices and/or actions distorting the rules of a freely competitive market.

5. Decision number: 26/2009: Complaints of the Co-operative Savings Society of Engomi (Nicosia) and the Cooperative Savings Society of Greek Secondary Education Teachers (S.T.E.L.M.E.K.) Ltd against the Audit Office of Cooperative Societies (Case number: 11.17.59/2005, Decision dated: 29/1/2009)

The case concerned the complaints filed to the Commission by (a) the Secretary/Director of the Cooperative Savings Society of Engomi (Nicosia) Ltd and (b) the President of the Cooperative Savings Society of Greek Secondary Education Teachers S.T.E.L.M.E.K., against the Audit Office of Cooperative Societies for the alleged infringement of the Protection of Competition Law, which was in force at the time (Law 207/89):

The complaints filed related to the following:

(a) According to the relevant Law, the Audit Office of Cooperative Societies is the competent authority exclusively responsible for the audit of the financial statements of all Cooperative Credit Institutions and therefore infringed their right to contract freely, and

(b) The level of audit fees being charged by the Audit Office of Cooperative Societies, is not determined on the basis of labour hours expended on the audit (plus a reasonable amount of profit), but rather in a vague manner so that overall costs of operating the Audit Office (operational, administrative, payroll, etc.) are allocated, through audit fees, to all Cooperative Societies, according to their total assets or their turnover.

During its meeting held on 6/9/2006, the Commission decided to examine jointly the two complaints, because of their common elements and particularly, the common arguments put forward by the complainants.

During its meeting held on 3/3/2009, the Commission, having evaluated all the available evidence, unanimously concluded that the Audit Office of Cooperative Societies abused its dominant position in the market of audit services provided to Cooperative Credit Institutions, in breach of sections 6(1)(a) and 6(1)(c) of the Law.

More specifically, the Commission deemed that the actions and/or omissions of the Audit Office of Cooperative Societies constituted unfair fixing of audit fees. The Commission also concluded that as a result of the discriminatory treatment applied by the Audit Office of Cooperative Societies (applying dissimilar conditions to equivalent transactions), unjustifiable discriminations were created at the expense of some of the Cooperative Societies, in breach of section 6(1)(c) of the Law. The respective behaviour is against the rules of fair competition in the respective market being investigated, as although the Cooperative Credit Institutions are theoretically considered local, in practice, they compete both in their own environment as well as against other financial institutions. In fact, Cooperative Credit Institutions have to compete against commercial banks, which are free to contract with any audit firm they wish and agree their audit fees. Consequently, when large Cooperative Credit Institutions bear part of the cost of smaller Cooperative Credit Institutions, any potential competition is adversely affected, both in their own environment, as well as against commercial banks.

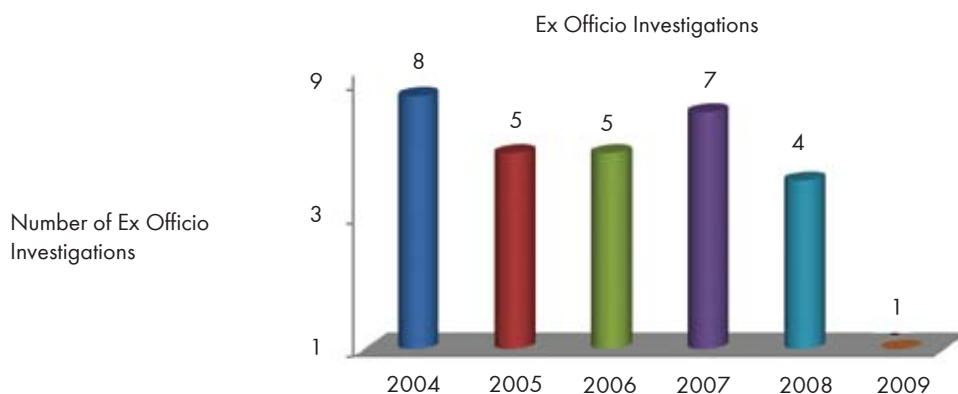
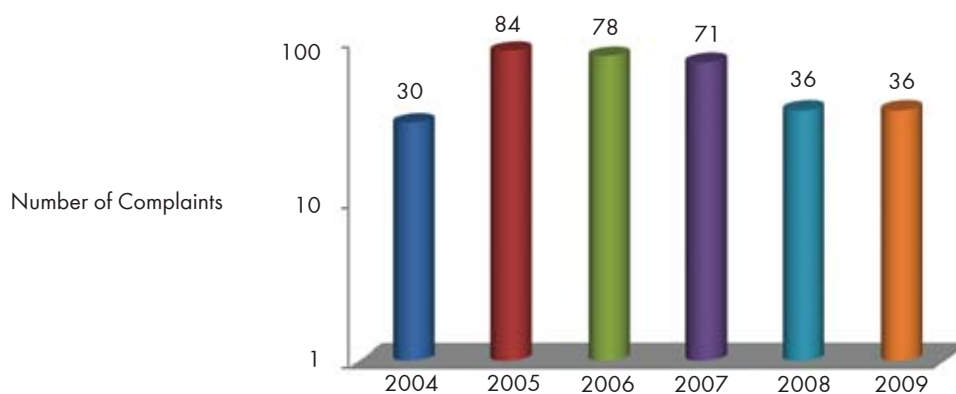
In its final decision, the Commission unanimously concluded that even though it has no substantive jurisdiction to decide on the substance and/or the scope of any legislation, it is empowered and it has a legal obligation to examine whether the enforcement of any legislation by an administrative body is made according to the principles of competition. If, on the contrary it is enforced arbitrarily, this results in discrimination.

The Commission deemed that under the circumstances, it was fair and proper to impose to the defendant an administrative fine amounting to €10.000. At the same time, the Commission ordered the Audit Office of Cooperative Societies to avoid repeating in the future such practices and/or actions distorting the rules of a freely competitive market.

4.2. General overview of cases in 2009

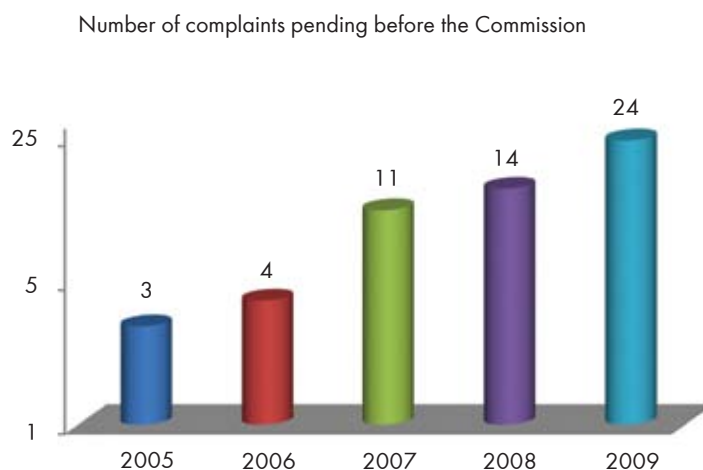
4.2.1. The Protection of Competition Law of 2008

During 2009, a total number of thirty-six new complaints were submitted for alleged infringements of the Protection of Competition Law of 2008, and one ex officio investigation was ordered by the Commission for the Protection of Competition. The graphical representations illustrated below exhibit a comparison of investigations conducted in previous years:



Out of the thirty-six complaints lodged in 2009, twenty-five of them were considered to be falling within the competences of the Commission and accordingly issued instructions to the Service to conduct a proper preliminary investigation. The remaining complaints did not fall within the competences of the Commission or were not submitted in the designated legal form. Out of the twenty-five complaints lodged, two were withdrawn, and as a result the number of complaints for which a preliminary investigation was conducted in 2009, was reduced to twenty-three.

In January 2009, ninety-five complaints were pending before the Commission for the Protection of Competition, relating to the years of 2001-2008. By the end of December 2009, the number of pending complaints was significantly reduced to fifty-six. A comparison of the cases which were pending by the end of 2009 as from previous years, as well as the complaints lodged during the year under review is illustrated in the graphic representation below:



In 2009, similarly to the previous years, the majority of the complaints investigated by the Commission concerned the alleged abuse of a dominant position, whereas the rest, including the ex officio investigations, concerned the potential existence of anti-competitive practices, or agreements between groups of enterprises and concerted practices between enterprises.

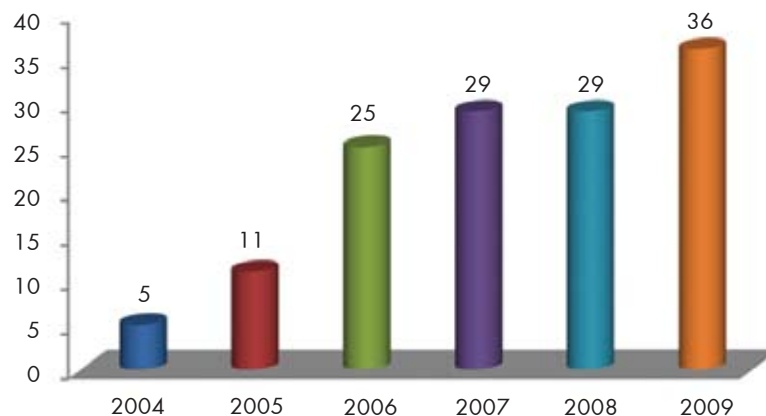
It should also be noted that as a result of a decision by the Plenary of the Supreme Court on Administrative Recourse no. 48/2007, dated 12/5/2009, the decision on Administrative Recourse no. 3902 was ratified. The court had declared that the participation of Mr Efstathiou (who at the time of his appointment as a member of the Commission was a member of the Municipal Council of the city of Latsia and later on elected as Mayor) was unlawful. Consequently, a number of the Commission's decisions were annulled. In order, for the Commission, to fully comply with the decisions of the Supreme Court, it unanimously decided to re-examine the annulled decisions on the basis of the legal and factual regime which was in force at the time of their publication. The annulled decisions for which their re-examination was decided are as follows:

1. Annulled decision regarding the complaint lodged by Callsat Telecom Ltd against the Cyprus Telecommunications Authority.
2. Annulled decision regarding the complaint lodged by Mr Christoforou against the Hellenic Distribution Agency Ltd dated 13/2/2004 for alleged infringement of section 6 of the Protection of Competition Law 207/89.

3. Annulled decision regarding the complaint lodged by Mr Efstathios Mirahi and other kiosk-owners of Nicosia against the press distribution agency Kronos Ltd and the Hellenic Distribution Agency (Cyprus) Ltd.
4. Annulled decision regarding the complaint lodged by A & F Electroquip Ltd against DOMS CO (CARS) Ltd for alleged infringement of section 6 of the Protection of Competition Laws of 1989 to 2000.
5. Annulled decision regarding the ex officio investigation relating to the agreement of LTV-Multichoice (Cyprus) Ltd and the shareholders' agreement of Multichoice (Holdings) Cyprus Ltd, LTV and NETMED BV dated 23/6/2000.
6. Annulled decision regarding the concentration of LANITIS BROS PUBLIC LTD and COCA COLA HELLENIC BOTTLING CO.S.A.
7. Annulled decision regarding the notification of Cyprus Popular Public Bank Ltd for the acquisition of up to 100% of the share capital of Marfin Financial Group Anonimi Etairia and Egnatia Bank Anonimi Etairia.
8. Annulled decision regarding the concentration of Marfin Popular Co. through the acquisition of the share capital held by the Bank of Cyprus Public Company Ltd in the Bank of Piraeus Anonimi Etairia.

4.2.2. Control of Concentrations between Enterprises Laws of 1999 and 2000

Pursuant to the provisions of the Control of Concentrations between Enterprises Laws of 1999 and 2000, thirty-six proposed concentrations between enterprises were notified in 2009 to the Service of the Commission for the Protection of Competition – a number that shows a constant increase over the years. The illustration below shows a comparative picture of concentrations notified during the last six years:



In addition to the thirty-six concentrations that were notified, the Commission also examined two notified concentrations that were outstanding from 2008.

Furthermore, the Commission accepted one request for the withdrawal of a notified concentration.

Finally, it should be noted that the Commission decided in one case not to impose a fine on a concentration on the basis of a prima facie finding of an infringement of the provisions of section 9 of the Control of Concentrations between enterprises Laws of 1999 and 2000, by the notifying undertaking due to the fact that the particular concentration was put into effect before the Commission had given its clearance. The reasons for not imposing a fine were based on the fact that the involved undertakings had no intention to infringe the Law and had acted in good faith.

Additionally, the Commission examined three proposed concentrations notified to the European Commission pursuant to article 4(5) of Council Regulation 139/2004 and for which, the Commission decided not to oppose to the examination of the concentrations by the European Commission because there were no affected markets within the Republic of Cyprus. The reasoned submissions related to the following concentrations:

1. Concentration between Bosch Thermotechnik GmbH of (Germany) and Loos Deutschland GmbH of (Germany). The two enterprises were involved in the production of products related to heating and water boiling systems (COMP/M.5489).
2. Concentration between BNP Paribas Investment Partners S.A and Crédit Agricole Asset Management Luxembourg S.A. (provision of services to institutional investors) for acquiring joint control of the undertaking Fund Channel (asset management). (COMP/M.5517).
3. Concentration between the undertakings Normeston Trading Limited (trading of crude oil and intermediary oil products) and MOL Hungarian Oil and Gas Public Limited Company (trading of crude oil) for acquiring joint control of MOL Energy Trade Ltd (natural gas sales and trading) (COMP/M.5629).

The Commission also examined a concentration notified to the European Commission pursuant to article 19(1) of Council Regulation 139/2004, in order to confirm, prior to the predetermined deadline that it did not intend to submit a request for referral. The concentration related to Perdigão S.A. (of Brazil) and Sadia S.A. (of Brazil) whose business activities related to the processing and supply of foods products (COMP. /M.5553).

4.3 Decisions of the Supreme Court

During 2009, sixteen petitions were filed for the annulment of final or interim decisions of the Commission while one petition for the annulment of a final decision of the Commission was withdrawn.

On 15/9/2009 the Plenary of the Supreme Court on Administrative Recourse no. 48/2007 ratified the decision of the Administrative Recourse no. 3902, by which the court had declared that the participation of Mr Efstathiou (who at the time of his appointment as a member of the Commission was also a member of the Municipal Council of the city of Latsia and later on elected as Mayor) was unlawful.

As a result of the above decision the Attorney-General withdrew three out of four administrative recourses that were filed during 2008 and accepted the annulment of a number of the decisions issued by the Commission.

Overall, the Supreme Court annulled eleven final and interim decisions of the Commission. These decisions of the Commission were as follows:

(1) Application of Callsat Telecom Ltd for the granting of interim measures against the Cyprus Telecommunications Authority (case number: 11.17.01.1 /2003, decision dated 3/6/2003).

(2) Application of the Cyprus Telecommunications Authority (C.Y.T.A.) for the granting of an Individual Exemption or Negative Certification of Agreements between C.Y.T.A. and M & P Megafone Ltd, Infotel Ltd, ALP (Aeliotis) and Stefanis Ltd (case number: 8.13.02.3, decision dated 5/11/2004).

(3) Complaint lodged by Mr. Efstathios Mirahi and other kiosk-owners of Nicosia against the agencies of press distribution Kronos Ltd and the Hellenic Distribution Agency (Cyprus) Ltd (case number: 11.17.14/2005, decision dated 2/12/2005).

(4) Complaint lodged by Areeba Ltd against the Cyprus Telecommunications Authority (case number: 11.17.10/2005, decision dated 18/1/2006).

(5) Complaint lodged by Mr Christoforou against the Hellenic Distribution Agency Ltd dated 13/2/2004 (case number: 11.17.08A/2003, decision dated 20/2/2006).

(6) Concentration between Lanitis Bros Public Ltd and Coca Cola Hellenic Bottling Co. S.A- regarding the imposition of an administrative fine (case number: 8.13.01/2006, decision dated 13/3/2006).

(7) Complaint lodged by A & F Electroquip Ltd against Doms Co (Cars) Ltd (case number: 11.17.32/2005, decision dated 3/4/2006).

(8) Complaint lodged by Callsat Telecom Ltd against the Cyprus Telecommunications Authority (case number: 11.17.01.1/2003, decisions dated 3/6/2003 and 28/4/2006).

(9) Ex Officio investigation relating to the agreement of LTV - Multichoice (Cyprus) Ltd and the shareholders' agreement of Multichoice (Holdings) Cyprus Ltd and LTV and NETMED BV dated 23/6/2000 (case number: 11.17.14/2006, decision dated 2/6/2006).

(10) Ex officio investigation against the Cyprus Telecommunications Authority for alleged infringement of the Protection of Competition Law - Interim decision for the infringement of section of 24 of the Law 207(I)/89 (case number: 11.17.26/2004, decision dated 8/9/2006).

(11) Concentration of Marfin Popular Bank Public Co through the acquisition of the share capital held by the Bank of Cyprus Public Company Ltd in the Bank of Piraeus (case number: 8.13.19/2006, decision dated 4/7/2007).

The Commission in order to fully comply with the decisions of the Supreme Court unanimously decided to re-examine eight of the annulled decisions on the basis of the legal and factual regime which was in force at the time of their issuance, as recorded in chapter 4.2.1 of the present report.

International Cooperation



5. 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 that applies international practices and promotes competition rules at community and international level. The participation of staff members of the C.P.C. in various working groups is one of the most effective ways of developing cooperation, mutual contribution and reshaping competition policies aimed at enabling the Commission to carry out its practices in the most efficient way for the benefit of the economy at large. The active participation of the Commission in the European Competition Network is considered vital, following the enforcement of the European Community Regulation (EC) No.1/2003.

5.1 Cooperation at European Level

Director Generals' Meeting

The Chairman of the Commission for the Protection of Competition participated in the annual meeting of the Director Generals' of National Competition Authorities, which took place on 21st and 22nd of April 2009, in Madrid. During the meeting, views were exchanged on the development and enforcement of competition rules and competition policy of the European Union, on the results of the various working groups on judicial control of decisions, and in the imposition of fines as well as commitments undertaken by enterprises. Particular emphasis was placed on the assessment of rescue and restructuring measures of financial markets and the approval of a range of State aid measures by the European Commission to tackle the effects of the credit squeeze on the real economy and restore confidence in financial markets.

The ultimate mission of the Directors General for Competition is to aid the European Commission in ensuring that markets operate as efficiently as possible, thereby contributing to the welfare of European consumers who can enjoy better quality goods and services at more competitive prices.

European Competition Day

On the 13th and 14th of May 2009, the Chairman of the Commission for the Protection of Competition attended a conference held in Brno in Czech Republic, on the occasion of the European Competition Day traditionally organized by the member state holding the Presidency of the European Union. The conference was organized by the Czech National Competition Authority and focused on private enforcement of competition law, abuse of dominant position, the interface between leniency programmes, direct settlement and criminal sanctions. The conference also coincided with the celebration of the fifth anniversary of the European Competition Network.

The conference is a platform to exchange views and experiences on competition policy and law for members of National Competition Authorities, government bodies, National and Community Courts, the business community as well as lawyers and other experts.

The Court of Justice of the European Union

From 19th to 20th October 2009, Cypriot and Greek lawyers visited the Court of Justice of the European Union. One member of the Commission, Mrs Loukia Christodoulou participated in the visit, following an invitation from the Judge of the Court of Justice of the European Union, Mr George Arestis. Two members of Supreme Court also participated in the visit, the Law Commissioner Mrs Leda Koursoumba and the former Attorney-General of the Republic Mr Alekos Markides. Issues discussed included the decentralization in the application of Competition Law and the contribution of National Authorities, with particular emphasis in the contribution of National Courts. Another issue discussed, was the role of National Judges in the field of state aid.

The conference was addressed by Mr Vassilios Skouris, President of the Court of Justice of the European Union and Mr George Arestis, Judge of the Court of Justice of the European Union. The visitors had the chance to tour around the premises of the Court of Justice of the European Union, to attend an oral hearing of a case (case C-31/09 Bolbol) and also to exchange views with Greek and Cypriot Judges.

5.2. Representation in International Conferences

International Competition Network

From the 3rd to 5th of June 2009, the Chairman of the Commission of Protection of Competition took part in the 8th Annual Congress of the International Competition Network which took place in Zurich, Switzerland. The conference was attended by more than 450 delegates including representatives from eighty Competition Authorities from all over the world, as well as one hundred and thirty Non-Governmental Advisors. Issues discussed included the enforcement of competition policy, the control of concentrations, and cooperation of enterprises and unilateral anticompetitive practices of enterprises. This year's special project focused on Competition Law in small Economies.

International Energy Agency

On the 2nd and 3rd of December 2009, the Chairman of the Commission of the Protection of Competition participated in the seventeenth annual conference of the International Energy Agency which took place in London. The Conference focused on the future of the air transport as a result of the international economic crisis and the strategies and prospects for the recovery of airlines, which in turn will secure a more powerful and competitive market.

6. General Remarks

Accomplished Work

According to the statistical data presented, the Commission investigated and completed a significant number of cases during the period under review, which was disproportionate to the resources available at its disposal, in terms of its human workforce. The pending caseload inherited from the past has almost been completely investigated, with the exception of those cases annulled as a result of the decision by the Plenary of the Supreme Court.

Concentrations- Results and obstacles

The Commission adhered closely to the deadlines imposed by the Law in relation to the concentrations notified. Despite the Commission's repeated instigations and announcements, enterprises bearing an obligation for notification continue not to fully respond to the obligations that the Law prescribes resulting in unnecessary delays and adding burden upon the Commission's personnel, who make strenuous efforts to respond to their own obligations. As it has been sadly observed, a lot of the involved parties perceive the notification procedure as a formal clarification procedure, which is not actually so. The Concentrations' notification procedure is an ex-ante procedure, and this is how it should be regarded as far as competition issues are concerned. As officially announced, the leniency demonstrated so far, based on the mitigating factor of ignorance, will not continue indefinitely.

Legal lodgement of complaints

The absence of complete conformity to the Law was also an element which characterized a considerable number of complaints. It is of uppermost importance that any interested party comprehends and at the same time respects that the lodgement of a complaint must be in accordance with the law and must include all the information that the Law specifies. The Commission has made it absolutely clear that it is not obliged to supplement any missing information and evidence required by the Law, in respect of complaints lodged. The lodgement of a complaint should be the product of responsible action and thought, as a means of avoiding unnecessary and unprovoked adverse publicity on enterprises and individuals without justification. The deceitful lodgement of complaints harms the institution itself and as far as the Commission is concerned, it will not allow itself to become a bandwagon in furtherance of alienated aims.

Restructuring plan

As already noted, the Commission progressed slowly but steadily with the implementation of its restructuring plan. Nevertheless, in the absence of the desirable autonomy, the Commission was obliged to suffer the negative consequences of the time-consuming procedures of the governmental budget and other bureaucratic procedures. It should finally be made clear and at the same time duly respected that, the effective operation of an independent Commission for the Protection of Competition, presupposes flexibility of movements and financial and administrative independence. Otherwise, we will continue to trail behind. The Commission's stance is not an innovation but Community advice dictating that national competition authorities should be able to operate with more flexibility and effectiveness, free from any influences and dependencies.

Essential and necessary Infrastructure

One of the crucial issues for each complaint lodged is conducting the investigation within a short-time interval. A prompt investigation of a complaint ceases unfair market practices taking place at the expense of the consumer and restores the market. There is only one magic recipe for achieving this: Reinforcing the Commission's human capital. Without «case-handlers», cases pile up and the distortion of competition continues while the scopes, aims and credibility of the Commission are irreparably damaged.

Culture on competition issues

At the time of identifying and reporting these negative observations, the Commission is fully aware that the necessary culture on competition issues continues to be relatively absent from the business market and the Commission frequently faces the lack of instrumental knowledge on behalf of the major market players. The Commission, with limited resources at its disposal, will continue in planning the organization and/or its participation in conferences and other events that aim to enlighten and report on competition issues.

Issuing of decisions - painstaking and time-consuming work

As it has been repeatedly stated publicly, the Commission stresses out that reaching a decision on anticompetitive behaviour or practices constitutes a hard and demanding work, which can only be achieved after all the relevant key factors have been investigated and analyzed. On the other hand, the Commission has a duty to respect the rights of the undertakings involved in the proceedings, whether those relate to the right to an oral hearing, or the right to be granted adequate time to defend their positions. The commission does not act as a price-control service or as an observatory of prices, which expresses its opinion instantly, a confusion that systematically is linked to the Commission.

Legal restrictions and work framework

The documentation of an anticompetitive behaviour requires a thorough investigation and analysis of a significant number of parameters specified by the Law and case-law, but also the economic assessment of the relevant factors, which, by definition, constitute a timely procedure. The C.P.C., as the competent legal Authority, has a duty to act according to the law, by applying the general principles of Administrative Law that inevitably guarantee an unbiased judgement. It should also be stated that the C.P.C., in exercising its competences, has its own legal restrictions which are determined by the legal regime in force which it has to implement and adhere to.

Aims and Objectives of the Commission for the Protection of Competition

As already mentioned in various parts of this Report, the Commission for the Protection of Competition considers – as it should - that is now able to organize the necessary structures for its effective operation. Apart from the gradual recruitment and training of personnel, the internal regulations and the Commission's operating procedure are being restructured.

Transparency principles

The principles of transparency and cooperation with all involved parties have now been satisfactorily adopted. The Commission has clarified from the beginning that there is no dispute with the business market, but on the contrary, it wishes to reinforce and strengthen enterprises operating, under conditions of a free competitive market. Already, a database of relevant information for each sector of business enterprises is being developed, so far, with the assistance and the cooperation of all the parties involved.

Reconnection with International Networks of Competition and Co-operation

In the field of competition, there are a number of exceptionally organized networks operating both at a European level as well as at an International level. The Commission wishes to re-establish cooperation with these networks, thus enabling it to express its own stance/views on various competition issues which, from time to time, are the subject of collective investigation. Through its participation in these networks, the Commission has only to gain, from the accumulated experience of other competition authorities with more years of operation and more experience in the field of competition. Unfortunately, due to limited resources the Commission cannot always participate in Special Committees or in Experts' Committees where competition issues are discussed.

European proceedings

The new Legislation enacted in 2008 has undoubtedly set the ground for a more productive and effective operation of the C.P.C., with total compatibility with the European procedures in the field of competition. The new Legislation must be applied along with a number of new internal measures of operation that are considered necessary. The internal measures are determined by the Notices of the Commission on various technical issues, as well as the case-law of the European Courts. As already noted, the Commission's ambition is to be in complete conformity with the rest of Europe, which is deemed necessary anyway by the common market, which continues to enlarge and develop.

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