



ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

Decision no: 22/2022

File no: 11.17.017.11

**THE PROTECTION OF COMPETITION LAW 2022
(Law no. 13(I)/2022)**

Ex officio investigation against CYTA and suppliers and/or importers and/or representatives and/or distributors of telecommunications terminal equipment for alleged infringements of Sections 3 and/or 6 of the Law 13(I)/2008 as amended and Sections 101 and/or 102 of the TFEU

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Andreas Karydis	Member
Mr. Panayiotis Ousta	Member
Mr. Aristos Aristeidou Palouzas	Member
Mr. Polynikis-Panagiotis Charalambides	Member

Date of decision: 18 April 2022

SUMMARY DECISION

The Commission for the Protection of Competition (hereinafter referred to as “Commission”) initiated an ex officio investigation for the possible infringement of section 3 and 6 of the Protection of Competition Law¹, as well as the corresponding Articles 101 and 102 of the TFEU that concerned:

- (a) the behavior of CYTA and of the suppliers of telecommunications terminal equipment (authorized distributors/representatives), and in particular the

¹ It is noted that at the start of the ex officio investigation the Laws of the Protection of Competition of 2008 and 2014 were in force, while today the Law of the Protection of Competition of 2022 is in force.

- examination of whether CYTA might have received privileged information or treatment in regards to discounts on relevant products,
- (b) CYTA's retail prices for the purchase of mobile monthly services "RED packages", when purchased with a mobile device and/or the price of basic and smart mobile telephony devices,
 - (c) the actions and omissions of CYTA vis-à-vis its authorized partners (distributors) who maintain retail shops selling telecommunications terminal equipment and in particular issues of determining purchase prices and/or other transaction terms, limiting the availability of products and applying dissimilar conditions to transactions.

The ex officio investigation concerned the actions and omissions of the concerned undertakings that took place in the period from 2016 to the first quarter of 2018.

Following the preliminary investigation, it was noted by the Commission that eighteen companies were active on the wholesale level which were authorized/official and non-authorized/unofficial distributors of mobile telephony devices, within the Republic of Cyprus. At the retail level, a large number of stores for the sale of mobile telephony devices were active, and mainly selling the devices through CYTA, MTN² and PRIMETEL which constitute the three main mobile networks (out of four in total) within the Republic of Cyprus. Specifically, CYTA had a network of 65 retail stores (21 of which were owned by CYTA), PRIMETEL had a network of 32 retail stores (10 of which were owned by PRIMETEL) and MTN had a network of 43 retail stores (18 of which were owned by MTN).

In its decision, the Commission having taking into account all the evidence before it, defined the following relevant product markets within the Republic of Cyprus: (a) Retail mobile telephony market, offering voice calling services (national and international calls), text messages and advanced data services, (b) Wholesale supply of mobile telephony devices which consists, separately, of the market of supply of (i) basic mobile telephony devices and (ii) smart mobile telephony devices and, (c) Retail supply of mobile telephony devices which consists, separately, of the market of supply of (i) basic mobile telephony devices and (ii) smart mobile telephony devices.

The Commission noted that for all the years up to 2017, CYTA maintained the first position in the retail mobile telephony market with much larger market shares than

² Now known as EPIC.

MTN, which seems to be its main competitor in the said market. Nevertheless, the Commission also observed that from 2013-2017 CYTA has a downward trend in terms of its market share, which seems to stabilize during the years 2017-2018, while respectively MTN and PRIMETEL have an upward trend, increasing their shares in the retail mobile telephony market.

Regarding the wholesale supply of smart mobile telephony devices, the Commission, concluded that ALPAN maintained the largest percentage of sales in the said market from 2013 to 2017. In relation to the wholesale supply of basic mobile telephony devices, the Commission concluded that LOGICOM, maintained in the period 2013-2017 the largest percentage of sales in the said market.

As regards the retail level regarding smart mobile telephony devices, the Commission concluded that from 2013 to 2017, CYTA and MTN have always held the largest market shares. Regarding basic mobile telephony devices, it was concluded that from 2013 to 2017, most sales overall concern STEPHANIS which holds the largest market share. It was also noted that in 2013, the largest market share was held by MTN.

On the basis of the above, as well as the number of the players in the market and the barriers to entry the Commission concluded the following:

- (a) during the years 2016-2017, CYTA held a dominant position in the retail mobile telephony market within the Republic of Cyprus.
- (b) CYTA did not hold a dominant position in the relevant market for the retail supply of smart mobile telephony devices.
- (c) CYTA did not hold a dominant position in the relevant market for the retail supply of basic mobile telephony devices.

The Commission examined further the links between the markets under investigation and found that the retail mobile telephony market was closely linked with the retail mobile telephony devices market, as in a large number of instances where the consumer decided to buy a mobile device, he/ she did so with the simultaneous purchase of mobile telephony services.

The Commission proceeded then to the assessment of the evidence before it, in relation to the possible infringement of Section 6(1)(a) of the Law as a result of potential predatory pricing practices followed by CYTA. The conclusion from the

analysis of the data, showed that CYTA's revenues from the activity of selling mobile telephony terminal equipment exceeded the company's total costs. Therefore, the Commission unanimously concluded that no infringement of Section 6(1)(a) of the Law through aggressive/predatory pricing was evidenced.

Regarding CYTA's agreements with distributors/authorized representatives, the Commission noted that CYTA maintained both oral and written agreements with the distributors/authorized representatives of mobile telephony devices, while it maintained written agreements which were amended accordingly with each Partner who undertook to sell and distribute CYTA's products.

The Commission examined and took into account all the information submitted by the companies in relation to the criteria on the basis of which product supply agreements and sales are concluded (i.e., quantitatively, qualitatively and regarding exclusivity) and whether there were cases of wholesale suppliers refusing to cooperate with companies operating at the retail level and for what reasons.

Also, the Commission examined the clauses contained in the contracts between CYTA and its suppliers and focused on clauses that seemed to be most favorable customer clauses (MFN) taking into account the relevant competition law provisions regarding vertical agreements. The Commission, in the light of all the evidence before it, unanimously concluded that it does not appear that the examined clauses had the effect of hindering or distorting competition in the Republic and thus there was no infringement of Section 3 of the Law.

Furthermore, the Commission, taking into account the positions expressed by a number of businesses regarding potential preferential information or privileged periodical/seasonal/promotional actions by suppliers of mobile telephony devices to CYTA, examined the relevant actions and concluded that it appeared that the suppliers cooperated with a number of retailers at regular intervals within the period from 1/1/2016 to 31/3/2018, as well as according to their statements the decision for the actions in question was taken either by them, or in consultation with a number of their customers or by the manufacturer. Also, from the data before the Commission, it can be concluded that the suppliers of mobile telephony devices did not necessarily proceed with all their partners in specific offers or at the same time. The Commission further noted that offers were made to CYTA and its partners as well as to other market players such as MTN.

From the data that has been collected, examined and evaluated by the Commission, it did not appear that there was, either through the agreements between CYTA and its suppliers or otherwise, preferential treatment of CYTA or discriminatory treatment against other suppliers in relation to promotional/seasonal/periodical actions. Therefore, the Commission unanimously concluded that it did not appear that the promotional actions carried out by the suppliers and for which they informed their partners, had the object or effect of obstructing, limiting or distorting competition within the Republic and did not infringe Section 3(1) of the Law.

The Commission further examined the contracts concluded between CYTA and the undertakings operating at the retail level and selling CYTA's telephone packages, as well as CYTA's behavior vis-à-vis its partners. The Commission, based on all the evidence before it, concluded that no infringement of Section 3(1) of the Law was evidenced and also noted that said contracts/ agreements were altered in 2018.

Thus, the Commission, after having assessed all the evidence of the administrative file, determined that it has not been established and/or substantiated on the basis of evidence before it that the practices, actions or omissions of CYTA and the suppliers of telecommunications terminal equipment, infringed Section 3(1) and/ or Section 6 of the Law. Taking into account the Commission's conclusion that no infringement had been established for Sections 3 and 6 of the Law, it was also noted by the Commission that it was not necessary to examine the application of articles 101 and / or 102 of the TFEU.

Mrs. Loukia Christodoulou
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