

DECISION

File No: 11.17.01.27

Decision No: 8/20022-27.8.2002

Present: Christodoulos Tselepos (Chairman), Costis Efstathiou, Evagkelos Sykopetritis, Andreas Demetriou, Andreas Sophocleous (Members)

Mr Costas Hadjioannou representing CY.T.A.

Decision on investigation against the Cyprus Telecommunications Authority (CY.T.A.) concerning a possible abuse of dominance- section 6 of Law 207//89

Upon publication of its financial statements for the year 2000 and the submission of the Report by the Auditor-General to the House of Representatives, the CPC instructed its Service to initiate an investigation against CY.T.A. concerning a possible infringement of section 6 of Law 207/89 (abuse of dominance).

CY.T.A., a monopolist in the telecommunications sector, is a quasi-governmental organisation and is governed by national legislation. *Inter alia*, according to the law governing CY.T.A. (Cap. 304), the conglomerate is obligated to fix its charges based on a number of criteria including, but not limited to, its operational costs, provisions for depreciation, loan interests, etc.

In its decision, the CPC examined the two following issues:

- (a) Whether the pricing practice and policy that CY.T.A. followed during the period from July 2000 until the initiation of the investigation contradict the provisions of section 6 of the Law; and
- (b) if so, whether the CPC has jurisdiction on this specific practice by CY.T.A. based on section 7 of the Law, as amended by Law 87(I)/00, the provisions of which restrain public undertakings and undertakings to which the Republic has granted special or exclusive rights from acting contrary to the rules of competition.

The CPC held that:

- (a) It was evident that CY.T.A. accumulated excessive profits in the range of CY£68,6 million for the year 2001 because of its excessive pricing practices. CY.T.A. even admitted, through its lawyer, that they overcharged international and mobile telephony calls in order to compensate for the losses incurred by the local telephony call charges.
- (b) CY.T.A. could have fulfilled the tasks that were assigned to it by the state without violating section 6 of the Law, i.e. lower prices and, consequently, lower, but still within their own forecast, earnings.
- (c) That their pricing policy received Parliamentary approval through a legislative act was immaterial, as they were able to submit proposals amending the charges and therefore comply with the competition rules and principles.

- (d) Section 7 of the Law is inapplicable because CY.T.A. could have used other means and/or policies in order to fulfil the obligations the government entrusted the telecommunications giant to perform.
- (e) CY.T.A. infringed section 6(a) of the Law by setting excessive charges taking advantage of its monopolistic position in the market.

The CPC imposed the following penalties:

- (a) A fine of CY£20 million, or 9% of CY.T.A.'s turnover of the period from June 2000 until December 2001;
- (b) CY.T.A. was instructed to take all such measures necessary in order to remedy its excessive pricing practices by January 1st, 2003; and
- (c) Should CY.T.A. fail to level their charges accordingly by the above date, a fine of CY£5,000 will be imposed for every day the infringement continues.