



ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

Commission's Decision N.54/2022 regarding the complaint of KONSTANTINOS KONNARIS LTD, C&P PHARMAKOPOLIO LTD, A. ZANNI PHARMACY LTD, MICHAIL PETRIDIS PHARMACY LIMITED και GK NEMESOS PHARMACY LTD against the Health Insurance Organisation and the Cyprus Pharmaceutical Association

The Commission for the Protection of Competition ('CPC') with its decision no. 54/2022 dated 25/08/2022, unanimously held that, based on the evidence before it, it had not been proven that the Health Insurance Organisation ("HIO") and the Cyprus Pharmaceutical Association ("CPA") had infringed sections 6(1)(b), 6(1)(c), 6(1)(d) and 6(2) as well as sections 3(1)(b), 3(1)(c), 3(1)(d) και 3(1)(e) of the Protection of Competition Laws of 2008 and 2014 (hereinafter the 'Law').

The case concerned a complaint submitted to the CPC on 24/02/2021 by KONSTANTINOS KONNARIS LTD, C&P PHARMAKOPOLIO LTD, A. ZANNI PHARMACY LTD, MICHAIL PETRIDIS PHARMACY LIMITED και GK NEMESOS PHARMACY LTD, against the HIO and the CPA.

The CPC defined the relevant market of the alleged anticompetitive behaviour of the HIO, as:

- a) the management of healthcare services provided within the framework of the Healthcare Insurance System (HIS), and
- b) the sub-market for the provision of pharmaceutical and medical products and sanitary items that are included in the products and services that are granted to HIS beneficiaries.

The complaint concerned the agreement between the HIO and the CPA, in accordance to which the HIO, during August 2019, had stopped accepting new connections with new pharmacies. As a result of this, it was contended that new pharmacies were excluded from connecting to and entering the HIS, through which they could provide healthcare services to HIS beneficiaries. This, it was alleged, placed the new pharmacists at a disadvantage, when compared to older pharmacies, since older pharmacists could continue the uninterrupted supply of cheaper pharmaceutical products to HIS beneficiaries, when compared to the more expensive pharmaceutical products of the new pharmacists.

The complainants also alleged that the HIO had abused its dominant position, by deciding to ban the inclusion of new pharmacies into the HIS.

Lastly, the complainants alleged that the CPA's decision, regarding the conditions for the inclusion of new pharmacists and/or pharmacies into the HIS, was anti-competitive.

The CPC examined whether the management of healthcare services, by the HIO, within the framework of operation of the HIS, fell under the concept of "undertaking" (economic activity) as interpreted on the basis of competition law and the decisions of the Courts of the European Union. In particular, the CPC examined the way in which **both** the HIS and the HIO both operate, the activities, actions and decisions of the HIO in relation to the provision of the specific healthcare services, as well as the aggregate set of factors that characterize the HIO's activity, before concluding that the HIO did not act as an "undertaking" when entering into contracts with healthcare service providers. The CPC noted that the State had authorized the HIO to implement, manage and ensure the operation of the HIS which was universal, mandatory and characterized by social solidarity and thus fulfills a social purpose. In addition, the legislative power and the state had regulated the powers and competences of the HIO in a strict manner, i.e. they had predetermined the framework within which the HIO operates.

Pharmacists, as independent professionals, contract with the HIO, with the aim of optimally providing services to beneficiaries of the HIS, while at the same time maintaining their autonomy in the provision of services that are not included in the HIS. Their fees are determined by the HIO, whose activities are subject to the control of the HIO Supervisory Commissioner appointed by the Council of Ministers and the Auditor General of the Republic.

Consequently, the Commission unanimously decided that the activities, actions and decisions, under investigation, of the HIO, regarding the terms of service provided by healthcare service providers, i.e. pharmacists, did not constitute «economic activity» within the meaning of competition law, but rather concerned the exercise of public authority aimed at regulating the HIS.

In relation to the CPA's alleged decision, regarding the conditions for the inclusion of pharmacists and/or pharmacies into the HIS, the CPC held that it did not appear that there had been a "decision" by an association of undertakings within the meaning of the Law, which was binding on the members of the association of undertakings. The CPC noted that in accordance with the minutes of the General Assembly of the CPA, which were sent out by the CPA, each pharmacist was free to decide whether he would contract with the HIS for the purposes of providing services to the HIS. Furthermore, the final decision to limit applications and to impose geographical and population criteria for the inclusion of new pharmacies into the HIS was taken by the HIO's Board of Directors, which subsequently had been revoked and/or withdrawn.

Consequently, the CPC concluded that, in relation to the CPA, there had not been a "decision" by an association of undertakings, within the meaning of the Law.

Finally, in regards to the existence of an agreement between the HIO and the CPA, which allegedly restricted the number of pharmacies that could join the HIS through which the pharmacies could provide healthcare services to HIS beneficiaries, the CPC concluded that there was no agreement between “undertakings”, within the meaning of the Law, since the HIO had not acted as an “undertaking”, as already mentioned above.

Based on the above, the CPC determined that the above agreement fell outside the scope of section 3 of the Law and the CPC’s competences.

As a result, the CPC unanimously rejected the complaints.

However, it must be pointed out that during the investigation, the CPC found out that following the August 2019 decision, the HIO had internal discussions, as well as discussions with the CPA for the opening up of applications to new pharmacies to the HIS, on the basis of specific geographical, as well as other criteria such as the population and /or the likelihood of transferring HIS license. The CPC examined the proposed criteria and served the HIO and the Ministry of Health with an Opinion, noting that the State and Government bodies when regulating such matters, must be in line with the *acquis communautaire* and ensure the functioning of the internal market.

The Commission’s decision can be found in the Greek language on the following link:

<http://www.competition.gov.cy/competition/competition.nsf/All/BAC35E52D773C9A2C225890A004758F1?OpenDocument&highlight=54/2022>