

DECISION OF THE COMMISSION FOR THE PROTECTION OF COMPETITION
Relating to a proceeding under section 6 of the Law 207/89
(Case No.: 11.17.25/2004)

Decision dated: 30/5/2005

Before: Christodoulos Tselepos- Chairman
Leontios Pericleous- Member
Costis Efstathiou- Member
Andreas Demetriou – Member

Having regard the Protection of Competition Law 207/89 (hereinafter the Law) as amended,

Having regard the Commission's for the Protection of Competition (hereinafter C.P.C) own initiative investigation relating to a possible abuse by the Cyprus Telecommunications Authority (hereinafter CYTA) of its dominant position in the telecommunication services market, in violation of section 6 of the Law as amended,

The C.P.C in its meeting 30/5/2005 unanimously decided as follows:

1. On the 27th of July 2004, the Office of the Commissioner of Telecommunications and Postal Regulations (hereinafter OCECPR) notified to the CPC a possible infringement of section 6 of the Law by CYTA. The OCECPR claimed that CYTA was liable for price squeezing in the market for the provision of internet services, having as a result the placing of the company TelePassport Telecommunications Ltd (hereinafter Telepassport) at a disadvantageous position regarding competition.
2. The CPC, in its 640th meeting dated 31/8/2004, after examining the letter of the OCECPR, gave instructions to its Service to carry out an own initiative investigation of CYTA for a possible infringement of section 6 of the Law.
3. On the 27th of September 2004, the company Telepassport, as an interested party to the case, sent additional information to the CPC complaining about the unprofitable fee charged by CYTA for providing access to the internet.
4. The Service, acting in accordance with the CPC's instructions, conducted the necessary preliminary investigation and submitted a relevant report to the CPC on the 28th of September 2004.
5. On the 5th of October 2004, the C.P.C, after examining the relevant report of the Service and having taken into consideration all the documents and information included in the case file, unanimously decided that the above mentioned acts of CYTA constituted *prima facie* an infringement of section 6(1) and 2(b)(c) of the Law, which involves an abuse of dominant position. Specifically, the CPC

- decided prima facie that CYTA applied different terms for identical transactions, since it provided the same service (access to the internet) to its subscribers and to Telepassport, using a different way of connection. By this act of CYTA, Telepassport was charged a much higher fee at the wholesale level than the subscribers of CYTA at the retail level.
6. For this purpose the C.P.C, on the basis of section 14(1) of the Law, instructed the Secretary of the C.P.C to issue and notify a statement of objection to CYTA, inviting it to attend the meeting dated 2nd November 2004, personally, either with a lawyer or by an authorised lawyer to set its views and objections. Simultaneously, based on the statement of objections, the CPC provided to CYTA the documents on which it was going to base its decision.
 7. On the 27th of October, the Law Firm of Mr. Lellos Demetriades, on behalf of the company Callsat Telecom Ltd (hereinafter Callsat), filed a complaint against CYTA for abuse of its dominant position. The CPC, after examining the complaint, decided that the said complaint raised similar issues and queries to those the Service was examining in its own initiative investigation of CYTA. Thus, by letter dated 23rd of November 2004, the CPC invited the company Callsat to attend the fixed meetings of the CPC, as an interested party.
 8. The CPC, on the 1st of February 2005, gave instructions to its Service to investigate more the legal aspects of the case. The Service, acting upon the instructions of the CPC, submitted to the CPC a supplementary report on the 7th of February 2005. This report was examined by the CPC in its meeting dated 21/2/2005.
 9. The CPC's meeting dated 30/5/2005 was attended by the Lawyer of CYTA Mr C. Hatzioannou, by the Lawyer of Telepassport Mr A. Hasikos, by the Lawyer of Callsat Mr A. Demetriades and the Sales manager of Callsat Mr M. Vlahos. The CPC taking into consideration not only the relevant report of the Service and its annexes but also the written and the oral views of CYTA and the interested parties and based on section 22 of the Law, unanimously decided that CYTA's acts towards its competitors (alternate providers) constituted an abuse of its dominant position in the market for the provision of internet services, in violation of section 6 of the Law. Specifically, the CPC decided that CYTA was liable for price squeezing since it provided to its competitors a product/service at a high price, whereas it provided to its customers the final product at the retail market at a lower price. Also, the price that CYTA charged to its competitors was found by the CPC as excessive, having as a result the violation of section 6(2)(a) of the Law.
 10. Mr Hatzioannou stated reasons for the mitigation of the penalty and asked the CPC to take them into serious consideration. Amongst others, he noted:
 - (a) The pricing policy of CYTA, that infringed the Law, had been seriously influenced by the OCECPR's Order no. 3/04, that was later annulled by the Supreme Court.
 - (b) Since the Order no. 3/04 of the OCECPR was annulled by the Supreme Court, the CPC's own initiative investigation of CYTA was left without an object to be examined.

- (c) CYTA has changed its fees retrospectively and is now charging lower prices to its competitors. Also, CYTA will return to its competitors the extra amount that they have been charged based on the previous pricing policy.
- (d) If CYTA did not conform to the OCECPR's Order no. 3/04, the OCECPR would have imposed a fine to CYTA for violating its Order.

11. The CPC taking into serious consideration everything mentioned by the Lawyer of CYTA for the purpose of imposing a fine, concluded that:

- (a) It cannot exempt CYTA from the infringements of the Law, due to the fact that its behavior towards its competitors was based on the Order no. 3/04 of the OCECPR.
- (b) It has not been convinced that CYTA can be exempted based on section 7 of the Law since the acts of CYTA were not necessary in order to fulfil its duties.
- (c) The alternative solutions proposed by CYTA to the alternate providers were disadvantageous to them.
- (d) CYTA will have to choose a pricing policy towards its competitors that will not come into conflict with the sections of the Law and specifically section 6, which involves an abuse of dominant position.

12. The CPC, after taking into serious consideration everything mentioned by CYTA's lawyer and especially the fact that CYTA changed its fees retrospectively and is now charging lower prices to its competitors, that it will return to its competitors the extra amount that they have been charged based on the previous pricing policy and the fact that the pricing policy of CYTA, that infringed the Law, has been seriously influenced by the OCECPR's Order no. 3/04, unanimously decided to judge the said violations of the Law by CYTA exercising considerable leniency and to impose a fine of £50,000.

Christodoulos Tselepos
Chairman of the Commission
For the Protection of Competition