

CPC

2000

ANNUAL REPORT

***COMMISSION FOR THE PROTECTION
OF COMPETITION***

***COMPETITION PROTECTION
LAW 207/89***

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1. COMMISSION FOR THE PROTECTION OF COMPETITION

The Council of Ministers by its Decision number 48.301 dated 26.8.1998, appointed, according to subsections (1) and (2) of section 9 of the Protection of Competition Law of 1989 (Law No. 207/89) the Chairman and the Members of the Commission for the Protection of Competition for a period of four years, that is until 28.6.2002.

Chairman:

Christodoulos Tselepos
Lawer

Members:

1. Stelios Rigas
Lawer
2. Maro Ftellecha
Economist
3. Costis Efstathiou
Lawer
4. Andreas Sofocleous
Senior Officer, Ministry of Commerce, Industry and Tourism
5. Andreas Demetriou
Chartered Accountant-Auditor
6. Evangelos Sykopetritis
Chartered Accountant-Auditor

It also reappointed the Director of the Competition and Protection of Consumers Division, Mr. George Mytides, Rapporteur of the Commission for the Protection of Competition.

ANNUAL REPORT ON THE ACTIVITIES OF THE COMMISSION FOR THE PROTECTION OF COMPETITION FOR 2000

2. INTRODUCTION

The Protection of Competition Law 207/89 was enacted by the House of Representatives on 30th November, 1989 and came into force on 8 June, 1990.

The enactment of the Law became necessary for the creation and promotion of conditions of healthy competition, with a view to protecting consumers more effectively and developing commerce and the economy in general.

3. OBJECTS AND TARGETS

The introduction of the Protection of Competition Law constitutes probably the most serious effort of the Ministry of Commerce, Industry and Tourism for creating conditions of healthy competition and effective protection of consumers. The Law was fashioned within the strict framework of the Convention for the Establishment of the European Economic Community, an obligation that emanates from the Protocol of the Application of the Second Phase of the Cyprus – European Union Association Agreement.

The existence of many suppliers competing among themselves to win the market, constitutes for the consumer the best guarantee for ensuring the availability of products and services at competitive prices. Many times, however, enterprises try to co-operate, instead of competing, resulting in the formation of anticompetitive cartels aiming at keeping artificially high prices and maximizing their profits.

The legislation for the Protection of Competition aims at defining the framework within which free competition, as the cornerstone of our economic system, will be functioning.

In addition to ensuring possibilities of choice among various products and services offered in competitive qualities and prices, competition secures and promotes technical and economic progress due to the fact that competitive enterprises are encouraged to be constantly modernized. This, in conjunction with the best distribution of productive sources, which results from the effective application of the competition policy, is expected to lead to an increase in productivity, reduction of cost, creation of more remunerative employment opportunities and generally to the improvement of the people's standard of living.

3.1 The Control of Concentrations between Enterprises Law No. 22(I)/99

Within the framework of the efforts of the Ministry of Commerce, Industry and Tourism to ensure conditions of healthy competition and also to harmonise our Legislation with the *acquis communautaire*, the Competition and Consumers Protection Division of the Ministry prepared a Bill entitled "The Control of Concentrations between Enterprises Law of 1999", which was submitted to the House of Representatives for enactment and was put into effect as from 19 March 1999.

The Law is based on regulation no. 4064/89 and on corresponding legislations of member/states of the European Union.

The object of the Law is to introduce a system of state control on all the significant, from the economic point of view, concentrations of enterprises with the object of preventing those concentrations which tend to create or strengthen a dominant position in the market that would impede to a great extent effective competition in the affected markets within the Republic.

The most important provisions of the Law are:

- (a) The provisions of sections 5 and 6 which define the scope of application of the proposed law.
- (b) The provisions of sections 9 and 38 which give the Minister of Commerce, Industry and Tourism the power to declare, subject to certain prerequisites, concentrations of enterprises as enterprises of major public interest, including them in the scope of implementation of the law even though they do not normally come under it.
- (c) The provisions of section 13 which contain the criteria of compatibility of a concentration with the requirements of effective competition.
- (d) The provisions of sections 14 which impose on the enterprises concerned the obligation to notify within a fixed deadline the concentrations they intend to create.
- (e) The provisions of sections 40 and 41 which give the Council of Ministers the power to examine certain cases of concentrations and to take a final decision in connection with them.
- (f) The provisions of sections 44 until 48 which allow the imposition of partial or total dissolution of a concentration incompatible with effective competition, as well as of measures which are considered necessary for the restoration of effective competition in the markets affected.
- (g) Finally the provisions of sections 54 and 55, which concern the imposition and collection of various fines by the Commission for the Protection of Competition, are significant from the point of view of effectively ensuring the implementation of the whole system which is introduced.

4. FUNCTIONS OF THE COMPETITION AND CONSUMERS DIVISION SERVICE

For the carrying out of its work the Commission for the Protection of Competition is assisted by the Competition and Consumers Protection Division. According to the legislation, in addition to acting as Secretariat to the Commission, the following functions come under the jurisdiction of the Competition and Consumers Protection Division:

- (a) to keep a public Register of Notifications of consortiums and a public Register of Decisions of the Commission and the High Court on Consortiums and Actions,
- (b) to collect and check information necessary for the carrying out of the functions of the Commission,
- (c) to introduce complaints and to submit suggestions to the Commission, and

- (d) to take action for the necessary notifications and publications.

5. ACTIVITIES

During the year 2000- the Commission for the Protection of Competition held 40 meetings at which it dealt mainly with the following matters:

5.1. Examination of Complaints

5.1.1. Complaint by the Cyprus Shipping Agents Association against the Cyprus Ports Authority for possible violation of section 6 of L. 207/89

This case concerns a complaint made by the Shipping Agents Association against the Cyprus Ports Authority for possible violation of section 6 of L. 2089, More specifically, the Shipping Agents Association in a letter to the Commission for the Protection of Competition charged that the Cyprus Ports Authority, on account of the dominant position it has, forces shipping agents and generally managers of ships which sail into the Cyprus ports in order to unload or load containers or other goods to undertake the responsibility for possible damage that may be caused when they use the cranes which are property of the Cyprus Port Authority.

The Competition and Protection of Consumers Service acting on the basis of instructions of the Commission for the Protection of Competition, carried out the necessary investigation in order to establish whether those who made the complaint had a legal interest against those reported and there was a prima facie case regarding the above complaint.

During the investigation, the investigating officer of the Competition and Protection of Consumers Service, came into touch both with representatives of the Cyprus Ports Authority (the party reported) and with a representative of the Shipping Agents Association of Cyprus (complainants). The following evidence emerged from the investigation:

- The Cyprus Ports Authority is considered a semi-state organisation which is a legal person, possesses all the proprieties of a legal person and its functioning is governed by relevant legislation.
- Sections 4 and 5 of the legislation on the Cyprus Ports Authority refer to the establishment, the objects and incorporation of the Authority. The Authority is managed by a seven-member board of directors. The Chairman, the vice-chairman, and 4 members are appointed by the Council of Ministers for a period of up to 3 years, while the seventh member is the Director of the Department of Customs ex officio.
- Therefore, on the basis of section 7(1)(a) of the Protection of Competition Law 207/89 the acts and actions of the Cyprus Ports Authority are regarded as actions of the state and therefore are exempted from the legislation in force since the Authority is considered to be exercising a public utility power which emanates from the relevant legislation which governs its functioning.
- The decision of the High Court no. 303 dated 13.11.1984 which describes the actions of the Authority as state actions that serve the Republic is relevant.

The Commission for the Protection of Competition after examining the necessary preliminary investigation put before it by the Competition and Consumers Protection Service, unanimously established that the complaint is outside the powers vested in it by Law 207/89 and more specifically on the basis of the provisions of section 7(1)(a) and therefore it cannot go ahead with further examination of the complaint. The Commission issued on 10.5.2000 Decision no . 3/2000 .

5.1.2. Complaint by the company Chrysaetos “Pavilion Goods Ltd” against the company C.T.C. Trading Ltd - Cassandra Operations.

This case concerns a complaint submitted through its legal adviser by the company “Chrysaetos” Pavilion goods Ltd against the company CTC LTD – Cassandra Operations for possible violation of section 6.

More specifically the legal adviser to the company “Chrysaetos” Pavilion Ltd in a letter sent to the Commission for the Protection of Competition accuses the company C.T.C Ltd – Cassandra Operations of refusing to supply Marlboro and Philip Morris cigarettes.

The Commission for the Protection of Competition after examining the contents of the letter/complaint gave instructions to the Competition and Protection of Consumers Service to carry out an investigation for possible violation of section 6 of L.207/89 by the company CTC LTD-Cassandra Operations.

The investigation which has been carried out by the service has established the following:

- The company CTC Ltd – Cassandra Operations sent a letter to the company Chrysaetos Pavilion goods Ltd by which it informed it that if it did not pay fully the amount it owed, it would not serve any member and shareholder of the company “Chrysaetos” Pavilion goods Ltd.
- Following visits by an official of the Service to various shareholders and members of the company “Chrysaetos” it was established that the company CTC Ltd- Casandra Operations indeed stopped serving all the members and shareholders of the said company without exception.
- At a meeting of officers of the Competition and Protection of Consumers Service with representatives of the company CTC LTD – Cassandra Operations it was established that they had indeed stopped serving the shareholders and members of the company Chrysaetos on account of the amount due but any member of the said company could buy cigarettes from the central stores of the company in cash. Also the representatives of the company “Chrysaetos” stated that they were ready to talk with the board of directors of the company “Chrysaetos” to find a so solution to the problem which had arisen.
- A meeting was arranged with the representatives and legal advisers of the parties. The meeting took place at the office of the legal adviser to the company “Chrysaetos” in Limassol, in the presence of an official of the Competition and Consumers Protection Service. Following an exchange of views an agreement was achieved between the two parties to settle the differences between them and it was decided that the company CTC Ltd-Cassandra Operations should start again serving the members and shareholders of “Chrysaetos” as before.

- The company “Chrysaetos Ltd” sent a letter asking the Commission for the Protection of Competition to regard the matter as closed and said the dispute they had with C.T.C. Lt-Cassandra Operations no longer existed and therefore they withdrew the complaint.

The Commission for the Protection of Competition, after examining the preliminary investigation put before it by the Consumers and Protection of Consumers Service and the letter sent by the legal adviser of the company “Chrysaetos Ltd” established that the company CTC LTD-Cassandra Operations acted in accordance with the appropriate framework and for this reason it unanimously decided not to examine the complaint further.

5.1.3. Complaint by butcher Neophytos Hadjialexandrou against the Municipal Abattoir of Paphos for possible violation of section 6 of L. 207/89

This case concerns a complaint made by butcher Neophytos Hadjialexandrou against the Municipal Abattoir of Paphos for possible violation of section 6 of L. 207/89.

More specifically, Mr N. Hadjialexandrou complains that due to the fact that the slaughter fees imposed by the Paphos Municipal Abattoir are unduly high compared with those of other Municipal Abattoirs, he gets his slaughtered animals from other Municipal Abattoirs. But, as he claims, he is in a disadvantageous position from the point of view of competition, because after paying the Municipal Abattoir from where he gets the meat, he is also obliged by the Paphos Municipal Abattoir to pay slaughter fees despite the fact that it offered him no service. His colleagues-butchers who are outside the Paphos Municipal Boundaries and are at a distance of only 2-3 kilometres from his butchery are not charged double slaughter fees and thus they have lower costs, while himself does not have this right and is in a disadvantageous position from the point of view of competition.

The Commission, after examining the contents of the letter/complaint of Mr. Neophytos Hadjialexandrou and following discussion and exchange of views, unanimously established that the complaint was outside the scope of the powers granted to it by the Protection of Competition Law 207/89 and therefore it could not proceed to examine it.

Despite the fact that the Commission reached the above conclusion it considered it advisable to point out the following:

- (a) The policy being followed distorts the structure of the said market with the result that negative conditions are created in competition with adverse effects on the consumer.
- (b) The competent services should examine the whole matter in depth and give such solutions as to promote the free competition rules which will be ultimately to the benefit of consumers.

In accordance with the spirit of the above, the Commission gave instructions that a letter be sent to the complainant with copies to the Ministers of the Interior and Agriculture, Natural Resources and Environment and the Mayor of Paphos.

5.1.4. Complaint by Laiki Supermarket “Orphanides Ltd” against the company C.T.C. Argosy Operations for possible violation of section 6 of Law 207/89

Laiki Supermarket “Orphanides Ltd “ (Larnaca) in a letter to the Commission for the Protection of Competition accuses the company CTC - Argosy Operations of not executing its orders because the supermarket sells at lower retail prices than those fixed by the company CTC Ltd - Argosy Operations.

The Commission for the Protection of Competition gave instructions to the Competition and Protection of Consumers Service to carry out the necessary preliminary investigations into the matter and to submit its findings before it.

It was established from the investigation carried out by the Service that at first sight, the company CTC Ltd – Argosy Operations violates paragraphs a), b) and c) of section (2) of section 6 of the Protection of Competition Law 207/89 due to the fact that holding a dominant position as sole representative in the import of the goods referred to in the investigation, exploited this position in order to impose its own price policy (fixing minimum retail prices) on the Supermarket Orphanides Ltd. It also applied dissimilar terms for equivalent transactions allowing other supermarkets to determine freely their price policy in contrast to the Orphanides Supermarket Ltd on which it imposed its own price policy, preventing in this way free competition and placing the Orphanides Ltd Supermarkets in a disadvantageous position.

It has been established that the complaint of the Orphanides Supermarket about the non execution of its orders by the company CTC Ltd -Argosy Operations is not justified because the deliveries of the orders took place within reasonable time limit and without any economic loss being caused. This has been documented on the basis of the date on which the order was placed and the delivery was made by the company CTC Ltd - Argosy Operations to the Orphanides Supermarket Ltd.

The Commission, after examining the necessary preliminary investigation put before it by the Competition and Protection of Consumers Service unanimously established that:

- a) The Laiki Orphanides Supermarket has a lawful interest in submitting the complaint and
- b) there is prima facie possible violation of section 6(2) (a), (b) and c) of L. 207/89 on the part of the company CTC Ltd - Argosy Operations,

and summoned both the complainants and those reported before it in order to express their positions and views.

During the hearing before the Commission the complainant said that the dispute that had arisen between them and those reported had been settled and asked to withdraw their complaint.

The Commission accepted the request for withdrawal of the complaint but at the same time unanimously decided to go ahead ex proprio motu to examine the said case.

The Committee summoned before it the CTC Ltd - Argosy Operations Company in order to hear its positions and views on possible violations.

The lawyer of the company under charge told the Commission that there was no violation because in practice the circulars sent by his company to the Laiki Supermarket Orphanides Ltd were not implemented. At the same time he admitted that the circulars had wrongly been sent but they had never been implemented and therefore there was no violation in actual fact.

The Commission having in mind what was said before it and also the Supreme Court's judgment in the case no. 838/99 "Photos Photiades Zythoviomichania" Ltd against the Commission for the Protection of Competition which was issued one day before the taking of a final decision by the Commission in the said case and in which the Supreme Court cancelled the Commission's decision, due to the participation of the rapporteur of the Commission in the hearing and the non withdrawal of the Secretary at the taking of the decision, unanimously decided to cancel the process of the said case, due to the participation of the Rapporteur in the hearing.

5.1.5 Complaint by the Building Contractors Association of Paphos against the companies manufacturing readymade concrete of Paphos district for possible violation of section 4 and/or 6 of law 207/89.

This case concerns a complaint filed by the Paphos Building Contractors Association against the factories manufacturing readymade concrete in Paphos district for possible violation of section 4 and/or 6 of Law 207/89.

More specifically, the complaint is that the companies of Paphos manufacturing ready made concrete have formed a trust and work as a common company.

The Commission after examining the contents of the complaint gave instructions to the Competition and Protection of Consumers Service to carry out the necessary preliminary investigation and to put it before it.

The Competition and Protection of Consumers Service, acting in accordance with the instructions of the Commission asked the companies of Paphos manufacturing readymade concrete for information regarding the complaint under investigation. The companies instead of the information asked for sent a copy of their agreement which was made on 29 January 2000.

As it is stated in the agreement the company Athinodorou Brothers Super Beton Ltd which will hereinafter be called the "Parent Company" has purchased the share capital of the other four companies:

- (i) Georgiou & Efstathiou Concrete Ltd
- (ii) Moditis Concrete Works (Paphos) Ltd
- (iii) Athinodorou & Kouklis Super Beton Ltd
- (iv) Pharos Concrete (Paphos) Ltd

granting to them in exchange a number of shares in the capital of the Parent Company.

It is noted that the issued shares of the Parent Company have been increased to 90.00.000. After the granting of the 54.900 shares to the four companies. as mentioned above, the Parent Company appears to possess the remaining 35.100 shares which correspond to 39% of its share capital.

The object of the companies which are carrying out the concentration is the listing of the Parent Company on the Cyprus Stock Exchange and in case it is listed the shareholders of this company will offer to the public a number of shares proportionate to their share capital

In Paphos District a total of six concrete manufacturing industries are operating, the following:

1. Athinodorou Bros Super Beton Ltd
Anatoliko Industrial Estate
PC 60470 Paphos
2. Moditis Concrete Works (Paphos) Ltd
Anatoliko Industrial Estate
Ayia Varvara, Yeroskipou, 8200 Paphos
3. Pharos Concrete (Paphos) Ltd
Anatoliko Industrial Estate
Paphos
4. Georgiou & Efsthathiou Concrete Ltd
Anatoliko Industrial Estate
Paphos
5. Yennadios Theologou & Sons
Polis Chrysochous
6. C.G.S. Beton Ltd
Yiolou Paphos

The first four industries, which are the largest in Paphos district, are about 5 kilometres east of Paphos town. The fifth industry is north of Polis Chrysochous and the sixth is in Yiolou village north of Paphos town. Due to their small capacity these two industries served only the nearby village (Polis tis Chrysochous -Pachyammos-Tssada area). In addition, on account of the long distances and the morphology of the terrain and given the limited time until the use of readymade concrete these industries are not capable of transporting readymade concrete to the town of Paphos where major works are constructed.

The immediately next largest industry manufacturing readymade concrete is more to the east of Paphos at Pissouri village. This company is Athinodorou and Kouklis Super Beton Ltd which has concluded an agreement with the four industries operating in the Anatoliko area of Paphos.

It is noted that the next nearest companies are in the west suburbs of Limassol. The great distance, the morphology of the terrain and also the limited time during which readymade concrete can be used make the transportation of this product from Limassol to the town and district of Paphos product impossible.

The Commission after examining the necessary preliminary investigation put before it by the Competition and Protection of Consumers Service, established that the companies under charge have merged and gave instructions to the Service to carry out an investigation in accordance with the Control of Consortioms Law 22(I)/99 if the said trust falls within the provisions of L. 22(I)99.

The Service, acting in accordance with the instructions of the Commission carried out an investigation in order to establish whether the said companies had an obligation in accordance with section 13 of L.22(I)/99 to communicate the agreement on their consortiums to the Commission for approval.

It was established from the investigation that the said consortium does not fall within the provisions of section 3(i)(a) of L.22(i)/99 because only one of the five participating companies had a turnover of more than two million pounds as stipulated by the Law. For this reason they have no obligation in accordance with section 13 of L.22(i)/99 to make the consortium known to the Commission.

The Commission after examining the note submitted to it by the Competition and Protection of Consumers Service gave instructions to the Service to keep an eye on the behaviour of the company Athinodorou Bros. Super Beton Ltd, in the market to ascertain whether the competition rules and mainly the provisions of section 6 of L. 207/89 are complied with. If any violation of the competition rules is established the Commission should be immediately informed for the taking of the necessary measures provided by L. 207/89.

5.1.6. Complaint by the company G.Theologos & Sons Ltd against the company Skyropiia Poullas Tsadiotis Ltd for possible violation of section 4 and/or 6 of L. 207/89

This case concerns a complaint made to the Commission by the company G.Theologos & Sons Ltd against the Company Skyropiia Poullas Tsiadiotis Ltd for possible violation of section 4 and/or 6 of L.207/89.

More specifically the company G. Theologos & Sons Ltd has complained that the company Skyropiia Poullas Tsadiotis Ltd ceased to provide quarry materials to it using as justification its cooperation with the readymade beton company Athinodorou Bros.

The Commission after examining the contents of the complaint gave instructions to the Competition and Consumers Protection Service to carry out the necessary preliminary investigation and put it before it.

The Competition and Protection of Consumers Service acting in accordance with the instructions of the Commission carried out the necessary preliminary investigation which it put before the Commission.

The investigation established the following:

- The real reason for which the company Skyropiia Poulla Tsadioti Ltd stopped providing quarry materials to the company G. Theologos & Sons Ltd (readymade beton) is because the latter company owed the first a substantial amount of money and refused to pay. As the representative of the company Skyropiia Poulla Tsadioti Ltd said as soon as the debt was fully paid it was in a position to supply to the company G.Theologos Sons Ltd quarry materials

on condition, however, that the quarry material would be paid for in cash or fortnightly and on the strength of a bank guarantee.

- The above conditions were faxed by the company Skyropiia Poulla Tsadiotis Ltd to the company G.Theologos & Sons and were communicated to the Competition and Protection of Consumers Service.
- The Competition and Consumers Service repeatedly had telephone communication with the company Skyropiia Poulla Tsadioti Ltd from which it received the assurance that it could supply quarry material to the company G. Theologos & Sons Ltd provided it would be paid according to the terms it had set to it.
- At the same time a representative of the company G. Theologos & Sons informed the Competition and Protection of Consumers Service that it accepted the above terms, but until this moment it has not applied to get quarry material from the company Skyropiia Poulla Tsadioti Ltd.
- The Commission after examining the necessary preliminary investigation put before it by the Competition and Protection of Consumers Service unanimously reached the conclusion that there was no prima facie case and therefore it would not proceed to the further examination of the complaint.

5.1.7. Complaint by the Pancyprian Association of Private Medical and Nursing Institutions against the Hadjkyriakos Industry Ltd for possible violation of section 6 of N.207/89

This case concerns the complaint made to the Committee of the Pancyprian Association of Private Medical and Nursing Institutions (P.A.P.M.N.I) against the company "Hadjkyriakos Ltd" for possible violation of section 6 of L.207/89

More specifically P.A.P.M.N.I complains that the company Hadjkyriakos Industry on account of the monopoly it enjoys in the production of oxygen for nursing purposes in the market it imposes its own terms on the supply of oxygen to private clinics and private doctors.

The Commission after examining the contents of the complaint gave instructions to the Competition and Protection of Consumers Service to carry out the necessary preliminary investigation and put it before the Commission.

The following were established from the investigation:

- The company Hadjkyrakos in a circular dated 18.5.2000 informed private doctors and private clinics about its decision to charge the amount of CP6 for every delivery of gas worth under CP20.00. For purchases over CP20 the delivery would continue to be free of charge.
- Until today the policy of the company was to distribute the gas to private doctors in Nicosia free of charge regardless of the value of the gas that would be delivered. For the distribution of the gas the company used a vehicle and a team consisting of two persons who took delivery of the empty cylinder from the clinic, carried it to the factory to be filled and returned it filled the following day. This free of charge service was provided from 1937 until now and was introduced because the Nicosia doctors were originally few and could easily be served at a small cost. Today this policy of free distribution cannot be

continued due to the fact that the number of doctors has increased significantly and continues to increase with the result that the free of charge distribution of gas has become unprofitable for the company. In fact it is noted that there are doctors who buy gas worth CP2 to CP3 for which the distribution-delivery necessitates two runs by the company's team. Regarding these doctors who buy gas of small value it is proposed that they themselves should take delivery of the gas so that they may not be burdened with any extra charge.

- Oxygen was delivered free of charge only to doctors in Nicosia. The doctors of Larnaka-Limassol-Paphos received themselves the medical gas they needed from the distribution centres of the Hadjikyriakos company.
- Also the government hospitals, government departments, laboratories, the national guard and also other private customers receive the gas from the factory using their own transport.
- The only other case in which the company made free of charge distribution of oxygen concerned poor patients regarding whom the Ministry of Health did not undertake to transport it free of charge. The Hadjikyriakos company asked these patients, if they could, to receive themselves the gas they needed. But in case it is established that indeed patients are unable to come to the factory to receive the gas then the company undertakes to deliver it to them free of charge.
- The Hadjikyriakos company states that it does not force anyone to accept the transport of gas by the company so as to shoulder the transportation cost. The fact that transport expenses are charged for purchases of gas less than CP20 is not a result of exploitation of the monopoly position enjoyed by the company but is due to the need to cover the expenses the transport of cylinders to a continuously increasing number of doctors involves.
- The Commission after examining the necessary preliminary investigation put before it by the Competition and Protection of Consumers Service established that no violation of the provisions of section 6 of L.207/89 is proved and unanimously decided not to proceed to further examine the complaint.

5.1.8. Complaint by the company G&V HADJIDEMOSTHENOUS LTD against the wells drilling companies of Paphos District for possible violation of sections 4 and/or 6 of L.207/89

This case concerns a complaint made to the Commission by the company J&V HADJIDEMOSTHENOUS LTD against the well drilling companies of Paphos District for possible violation of sections 4 and/or 6 of L.207/89.

More specifically, the complaint is that the well drilling companies in Paphos have established a common office and all charge the same prices.

The Commission after examining the contents of the complaint gave instructions to the Competition and Protection and Consumers Service to carry out the necessary preliminary investigation and to put it before it.

The Competition and Protection and Consumers Service on instructions from the Commission of the Protection of Competition, carried out an investigation to establish whether there was uniformity in the prices charged by the owners of drills of Paphos District for drilling wells in constructions and also violation of Sections 4 and 6 of the Protection of the Competition Law.

According to a list prepared by the Water Development Department the licensed drilling operators in 2000, are 73, 6 of whom have declared that their address is in Paphos. Most of the above drilling operators lack the elementary company infrastructure (e.g. offices, staff) and for this reason gathering information about the conduct of their work is difficult.

On the basis of the information gathered it has been established that mainly operating in Paphos are the companies:

- N.P. DRILL LTD (with main office in Limassol)
- A. Koudounas (LAPITHOS DRILL LTD.) (with main office in Limassol)
- STELIOS GABRIELLIS LTD (with main office in Paphos)
- ARISTOS T. ARESTI (with main office in Paphos)
- P. STROUTHOS & SONS LTD (with main office in Paphos)
- Y & M DRILLING LTD (with main office at Xylymbou)

The addresses recorded above show that the well drilling companies do not limit their activities to their District only but operate in all the Districts of Cyprus. Despite the existence of a significant number of drilling operators and the undertaking by them of work in almost all the districts of Cyprus, the Service has established that in each district there is some kind of agreement between the drilling operators which concerns the distribution of work and the fixing of uniform prices in each area. The above conclusion is based mainly on the prices written on the invoices gathered by the Service, as well as on the oral evidence of persons involved in this specific business. In Paphos in particular the Service has established that a common office operates through which work is carried out for at least two companies.

On the basis of the invoices which have been gathered and which concern customers from almost the whole of Cyprus, the following conclusions have been reached:

- In the Nicosia and Larnaca Districts where the rocks are soft and consequently the degree of difficulty in drilling wells is small the prices are low and range from **CYP 1,50 to 2,00** per foot. The wells in these areas are shielded with "cement pipes" which cost from **CY20,00-25,00 each**.
- In the Limassol and Paphos districts, where the rocks are harder and the degree of difficulty in drilling works is greater, the prices are higher. More specifically they range from **CY4,00 – 7,00 per foot**.
- For the mountainous areas the price may be as high as **CY50,00** per metre on account of the very hard rocks in these areas.

The uniformity of prices observed in each area is a result of a harmonised practice among the well drilling companies operating in each district, which constitutes violation of section 4 of the Protection of Competition Law.

Despite the fact that there is no fully documented proof about the establishment of an association among the well drilling companies, nevertheless there are indications and evidence leaving to the conclusion about the existence of co-operation among these companies at district level. This co-operation concerns mainly the distribution of work but also the shaping of prices.

The Commission, after examining the necessary preliminary investigation put before it by the Competition and Protection of Consumers Service, unanimously established that:

- (a) The complainants have a lawful interest in filing the complaint and
- (b) There is a prima facie case for possible violation of section 4(1) and 4(1)(a) of the Protection of Competition L.207/89, on the part of the well drilling companies operating in Paphos. On account of the amendment of the Legislation which provides for replacement of the members of this Commission by 24 December

2000, the further examination of the matter is referred to the Commission under the new composition.

The Commission is expected to complete the examination of the case in 2001.

5.1.9 Complaint and request by CALLSAT TELECOM LTD for the taking of temporary measures against the Cyprus Telecommunications Authority (CYTA) for possible violation of section 6 of L. 207/89

On 9 November 2000 the company CALLSAT TELECOM LTD made a complaint to the Commission against CYTA for possible violation of section 6 of L.207/89 and a request for the taking of temporary measures in accordance with section 23 of the same Law.

More specifically the company CALLSAT TELECOM LTD complains that CYTA abusing its dominant position in the field of supply of telecommunication services refused to supply two local leased lines in violation of section 6 of L.207/89 and asks for the issue of an order by the Protection of Competition Commission in accordance with section 23 of the same Law, for the taking of temporary measures, that is that it should be provided with the said local lines in order to be able to meet its obligations towards its customers pending the examination of the case by the Commission and the issue of a final decision of the complaint.

The Commission at a meeting on 14 November 2000, after carefully examining the contents of the complaint and the request, unanimously decided, on account of the urgent nature of the application, to invite the two parties involved before it in order to express their views and positions so that the Commission may be able to decide on the specific application for the taking of temporary measures.

The two parties involved, appeared at a meeting of the Commission on 22 November 2000 with their lawyers and set out their positions and views on the complaint and the application for the taking of temporary measures. The lawyer of the complainants argued that following the amendment of section 7 by amendment Law number 87(1)2000 the actions of CYTA regarding this specific service are not exempted in accordance with section 7 of the principal law with the result that there is a prima face case for abusive exploitation of its dominant position in the market by CYTA, that is possible violation of the provisions of section 6 of L.207/89 and therefore the

issue of an order by the Commission for temporary and immediate supply on the part of CYTA of the said two local lines pending the examination of, and final decision of the Commission on, the complaint is justified.

The lawyer of CYTA supported that the specific service is exempted in accordance with section 7 of L.207/89 as this was amended by amendment Law 87(1)2000 because in accordance with the Telecommunications Law, Cap. 302 and 305, the service asked for by the complainants is telecommunication and for this service to be supplied, by private individuals, in accordance with the Law governing CYTA, a licence is needed from the Council of Ministers and no such licence has been granted to the complainants. Also the lawyer of CYTA supported that if the completion ordered that the lines should be supplied, it would be like forcing CYTA to break the law because the specific law governing CYTA does not provide for the supply of such lines without some prerequisites being fulfilled, and in this case they are not fulfilled.

At its meeting held on 6 December 2000, the Commission, after examining all the evidence before it and documents submitted by the parties involved and after taking seriously into consideration the position and views set out before it by the lawyers of the two parties, reached the following conclusions:

- Section 23 of L.207/89 defines the framework of action of the Commission regarding the process of taking temporary measures. More specifically, it must be said that in taking temporary measures, the Commission cannot have more powers than those defined under section 22 of Law 207/89. On the basis of section 22, paragraph 3, sub-paragraph (a) the Commission is exclusively competent to investigate possible violation of the provisions of sections 4 and 6 and may order the taking of measures or to recommend to the enterprise concerned the measures referred to in section 22(3)(a).
- In this case, the request of the company CALLSAT TELECOM LTD is that CYTA should be ordered to supply a specific service, that is to supply two local leased lines, a request which was turned down by CYTA, by its letter dated 2/11/2000.
- Before reaching a decision as to whether to order or not the supply of leased lines the Commission should examine and interpret chapters 302 and 305 which concerns the question of regulation of the telecommunications question in

Cyprus. The Protection of the Competition Commission has no such power. If it ordered the taking of positive measures it would be like regulating or interpreting provisions and the Commission has no such jurisdiction or power. The question of whether there is or not a licence from the Council of Ministers and the question whether the specific service is telecommunication according to the meaning of the Law Cap 302 and 305 cannot be dealt with by the Commission because if the Commission did this it would proceed to take a decision on legislative provisions other than those of Law 207/89. Section 8 of Law 207/89 says that what the Commission examines are violations of the specific Law.

According to the above, the Commission unanimously decided that it had no jurisdiction to issue an order for the taking of temporary measures regarding the said request and therefore the application for the issue of an order for the taking of temporary measures is rejected.

The Commission issued decision number 8/2000.

5.2 EX PROPRIO MOTU EXAMINATION OF POSSIBLE VIOLATION OF PROVISIONS OF THE LAW

5.2.1 Ex proprio motu investigation into possible violation of section 4 and/or 6 of L.207/89 by the dry fruit processing industries.

This case concerns an ex proprio motu investigation into possible violation of section 4 and/or 6 of L.207/89 by the dry fruit processing industries. The Competition and Protection of Consumers Service acting in accordance with the instructions of the Protection of Competition Commission carried out an investigation which it put before the Commission. From the investigation the following were established:

- About 25 units, 18 of which are members of the Pancyprian Dry Fruit Processing Association, engage in the processing and sale of dry fruit, while the other six are family-based units and occupy an insignificant part of the market in question.
- From the investigation it was established that most of the dry fruit processing units do not fix in advance the retail sale prices of dry fruits they trade in. The exemptions are the companies Serano, Koyo and M. Antoniades Ltd (Gogo)

which fix the retail sale prices of their products, by printing the retail sale price of their products on the package bags of the dry fruits. The reasons which the three dry fruit packaging units invoke for printing the retail price on the package bags are the following:

- (a) The reduction of the cost given that almost all supermarkets and all retail sale shops ask the dry fruit packaging units to write the retail prices on the package bag before the products are placed on the shelves.
 - (b) The non-exploitation of consumers by averting profiteering particularly during the summer months in the tourist areas.
- From the investigation it was established that there is acute competition among the dry fruit processing industries. Also the investigation showed, with some insignificant exemptions, that there is uniformity in the prices charged by each unit in the various dry fruit resale centres whether these are supermarkets or kiosks or shops. But the discounts granted vary from customer to customer depending on the volume of sales and the manner of payment.
 - The industries under investigation in letters to the Competition and Protection of Consumers Service and the Protection of Competition Commission promised to change their package bags to eliminate any suspicion about possible violation of the provisions of the Protection of Competition Law 207/89 on their part.

The Commission after examining the note put before it by the Competition and Protection of Consumers Service and after taking into account the letters sent by the industries under investigation unanimously decided not to proceed to further examination of the case.

The Commission gave instructions to the Competition and Protection of Consumers Service to keep an eye on the matter and if it establishes any violation to inform it immediately.

5.2.2 Ex proprio motu investigation into possible violation of section 6 of L.207/89 by the company A.G. Kazanos Ltd.

This case concerns an ex proprio motu investigation into possible violation of section 6 of L.207/89 by the readymade concrete manufacturing company A.G. Kazanos Ltd.

An anonymous contractor in Solea area in a letter to the Ministers of Communication and Works, and Commerce, Industry and Tourism complained that the readymade concrete manufacturing company A.G. Kazanos Ltd. has created a monopoly situation in the above area overcharging the said contractor and generally increasing considerably the prices of its products.

The Protection of Competition Commission gave instructions to the Competition and Protection of Consumers Service to examine the above case ex proprio motu.

Following an investigation carried out by the Service it was established that the company A.G. Kazanos did not increase the prices at all from 1997 until February 2000. It increased existing prices of its products in February and in April 2000 and the increases ranged from 3.7% - 9.5%. These increases are considered reasonable due to the increase in the price of fuel and cement imposed during the current year.

The Commission after examining the note submitted to it by the Competition and Protection of Consumers Service, established that no provision of L.207/89 was violated and therefore unanimously decided not to proceed to further examine the case.

5.2.3 Ex proprio motu investigation into possible violation of sections 4 and 6 of L.207/89 on the part of the mushroom growing and distributing companies

The Protection of Competition Commission, decided to examine ex proprio motu possible violation of the provisions of L.207/89 on the part of the mushroom growing and distributing companies and gave instructions to the Competition and Protection of Consumers Service to carry out an investigation and to put it before it.

On 10/3/1998 the mushroom growing companies Nemoga Mushroom Ltd, Nepro Pearl Mushrooms Ltd, West-Side Cultures Ltd, Geoma Growers Ltd, Rocel Ltd, Yefpa Agricultures Ltd, announced a consortium and submitted in accordance with

section 18 of L.207/89 an application for exemption from the provisions of section 4 of the same Law.

The Competition and Protection of Consumers Service acting on the basis of instructions of the Commission, carried out an investigation into the situation prevailing in the growing and marketing of mushrooms.

The Commission after examining the note submitted to it by the appropriate Service established that:

- (a) There is a geographical division of the market by the mushrooms growing units which have undertaken also the distribution of mushrooms.
- (b) Uniform sale prices for mushrooms are fixed by the mushroom growing companies during specific periods.

The Commission after taking into account all the evidence and facts before it, issued on 9/2/1999, its Interim Decision number 5/1999 which, inter alia, says the following:

"The Commission in examining the note has located a prima facie possible violation of sections 4 and 6 of the Protection of Competition Law 207/89 on the part of the mushrooms growing companies, specifically in the fixing uniform sale prices and the geographical restriction regarding distribution.

The Commission at this stage unanimously decided not to refer the above violations for trial since the application of the companies involved for exemption they submitted to the Commission on 10 March 1998 has only recently been examined after a lot of delay for which the applicants were not solely responsible. The Commission considers advisable and fair to allow a period of not more than three (3) months for removal of the above violations.

The Commission gives instructions to the competent service to monitor the above matter and in case it establishes that the violation continues beyond the above deadline to bring the matter again before the Commission."

The Competition and Protection of Consumers Service acting in accordance with the instructions of the Commission referred to in Interim Decision number 5/1999 carried out a new investigation and submitted a new note to the Commission.

The Commission examined the new note and after establishing that:

- (a) Their continues to be geographical division of the market by the mushroom growing units, which have undertaken also the distribution of mushrooms.
- (b) Uniformed sale prices of mushrooms continue to be fixed by the mushroom producing companies during specific periods,

summoned the companies involved before it for further examination of the case.

During the hearing before the Commission it was established that there had been recently mergers of mushrooms growing and distributing companies and therefore the Commission postponed indefinitely the trial of the case and gave instructions to the Competition and Consumer's Protection Service to carry out a new investigation.

From the investigation of the Service it was established that almost all mushrooms growing units have merged. The Service then investigated whether the mushroom growing units under investigation had an obligation, in accordance with section 13 of the Control of Concentration of Enterprises Law 22(i)99, to submit to the Commission notification of their concentration for approval.

From the investigation it was established that the said concentration of enterprises did not fall within the provisions of section 3(i)(a) of L.22(i)/99 because none of the companies participating in the concentration has a turnover of more than two million pounds as provided by section 3(i)(a) of L.287/99 and for this reason they had no obligation in accordance with section 13 of L.22(i)/99 to communicate the concentration to the Commission.

The Commission after examining the new note submitted to it by the Competition and Consumers Protection Service, gave instructions to the Service to monitor the behaviour of the new Company in the market to establish whether the rules governing competition and mainly the provisions of section 6 of L.207/89 were complied

with. If any violation of the rules governing competition were established, the Commission should be immediately informed for the taking of the necessary measures envisaged by L.207/89.

5.3 EXAMINATION OF MERGERS OF ENTERPRISES IN ACCORDANCE WITH THE CONTROL OF CONCENTRATION OF ENTERPRISES LAW 22(I)/99

During the year 2000 the Competition and Consumers Protection Service examined seventeen cases of concentration of enterprises.

Ten of them came within the provisions of the Control of Concentrations of Enterprises Law 22(i)/99 and relevant notes were prepared which were placed before the Commission for Protection of Competition for approval.

All the following concentrations of enterprises were regarded as compatible with the requirements of the competitive market:

1	Concentration of the companies N.P. LANITIS LTD. J.S.C. ECODOMIKI LTD and Evangelos Aristofanous Ltd and the establishment of the company L.C.A. DOMIKI LTD.
2	Concentration of the companies SPORTSMAN BETTING CO LTD. STANLEY RACING LTD and others and the creation of the company MEGABET Ltd.
3	Concentration of the companies P.E. Ltd Peter Malaktos Ltd, Andreas Siakolas Ltd, KIPAGROTIKI LTD and others.
4	Concentration of the Tourist Offices KINISIS TRAVEL AND TOURS LTD and TOP TEN TOURS Ltd.
5	Concentration of the companies I.G. Kasoulides Ltd and OPTION EUROCONGRESS LTD.
6	Concentration of the companies L.K.GLOBALSOF.COM LTD and W.P.C. Ltd.
7	Concentration of the companies FULCK A/S Denmark and Group 4 Securitas (International) BN Netherlands.
8	Concentration of the companies Allantika GRIGPRIOU and K&L SNACK FOOD LTD
9	Concentration of the companies CHRIS CASH AND CARRY LTD and Andronikos Vasiliades & Sons Ltd.
10	Concentration of the companies of KEO Ltd and ETIEN WINES SPIRITS AND TOBACCO LTD.

The following Concentrations of Enterprises were examined by the Competition and Consumers Protection Service but it was established that they did not fall within the provisions of the Control of Concentrations of Enterprises Law 22(i)/99 and they were not presented before the Commission.

1	Concentration of the Companies ESSO Cyprus Inc. and MOBIL OIL CYPRUS LTD.
2	Concentration of the companies manufacturing readymade concrete of Paphos District, Athinodorou, Efstathiou and Georgiou Brothers Ltd and others
3	Concentration of the companies DTI Ltd and G&P OFFICE SYSTEMS Ltd.
4	Concentration of the companies L.K. GLOBALSOFT COM LTD and the CyCom Computer products Ltd.
5	Announced concentration of the companies LABOUSA VENTURE CAPITAL and MARGINA ENTERPRISES LTD.
6	Concentration of the Companies ALERT Computer Services Ltd, Alfa Copy S.A. and Good Hope Investments Company Ltd.

The Commission for the Protection of Competition exercising the power granted to it by Law 22(i)/99, in examining the concentration of enterprises presented before it, imposed a fine of two thousand and five hundred Cyprus Pounds (CY.P. 2500) on each of the companies I.G. KASOULIDES LTD. and OPTION EUROCONGRESS LTD for violation of section 13(i)(a), that is they were more than seven (7) days overdue, after the signing of the concentration agreement, in submitting their concentration notification to the Competition and Consumers Protection Service and by extension to the Commission.

6. HARMONISATION OF OUR LEGISLATION WITH THAT OF THE EUROPEAN UNION REGARDING COMPETITION

Within the framework of the harmonisation of our legislation with that of the European Union regarding Competition and particularly in view of Cyprus's application for full accession to the European Union the Commission for the Protection of Competition on the basis on section 5(2) of Law 207/89 decided to issue a collective

exemption from the provisions of section 4 of the same Law governing the Specialisation Agreements and the Research and Development Agreements according to the corresponding Regulations of the European Union.

For this purpose the Competition and Consumers Protection Service prepared relevant Orders which it submitted to the office of the Attorney-General of the Republic for legal - technical vetting before submitting it, together with the reasoned opinion of the Commission for the Protection of Competition to the Council of Ministers for approval.

6.1 Agreements between Air carriers for Consultations on Passengers Transport Fares and Distribution of the Available time of use at Airports

Two basic factors justified the issue of a regulation of exemption for the fixing of prices, following consultations, in transportation of containers:

- on the one hand the need to give the enterprises time in to adapt to the existence of competition
- on the other to contribute to the general acceptance of the terms of mutual honouring of tickets, which is beneficial both to the carriers and the users.

As regards the honoring of tickets, the following should be taken into consideration:

- It emerges from information provided by air enterprises and the international union of air carriers in the EU that the prices which are fixed through consultations are higher by 70% than the market prices. It also emerges that the transports carried out within the framework of agreements on mutual honouring of tickets are carried out at prices negotiated between them by agents the carriers or their representatives and have no substantial relation to the prices fixed through consultations. It is also established that the recognition of tickets operates in certain cases at prices which are by 50% higher than the prices fixed through consultations.

- It is also established that the companies which do not participate in the consultations for price fixing carry out, nevertheless transport without any problem within the framework of the agreements of mutual recognition of tickets.
- According to information provided by the enterprises, the percentage of flights within the Community carried out within the framework of honouring of tickets decreased from 30% in 1991 to 11% at the end of 1994. Regarding certain companies the percentage is smaller than 2%.
- In certain cases these very high prices which have been fixed through consultations are applied in the case of agents even in the absence of honouring of tickets.
- Certain companies have tried to reform the price fixing system and to introduce cheaper tickets, but this effort failed on account of the reaction of the majority of the companies.

Taking these facts into consideration, it appears that the consultations for the fixing of prices no longer contribute to the acceptance of the general terms of recognition of tickets. Besides, these consultations lead to the fixing of high prices at the expense of users and are no longer necessary for the operation of recognition of tickets particularly if the small number of the agreements in question and their virtually bilateral character are taken into consideration.

The 1998 Order (RCS 35/98) authorises the Commission to apply section 5(1) of Law 207/89 to certain categories of agreements, decisions and harmonised practices in the field of air transport which come under the provisions of section 4(1) of the same Law and which concern, inter alia, the following sectors: the joint planning and coordination of routes, the consultation on fares for transport of passengers, luggage and goods on scheduled airlines, the joint exploitation of new scheduled airlines of small frequency and the distribution of the available time at airports and the planning of routes.

6.2 Vertical Agreements and Harmonised Practices

The category includes the vertical agreements on supply or sale of goods or services which are concluded between non competing enterprises between certain competing enterprises or by certain unions of retail sellers of goods. It also includes vertical agreements with secondary clauses regarding the acquisition or the exercise of copyrights. For the purposes of this Order the term “vertical agreements” includes always the corresponding harmonised practices.

- (1) For application, through the issue of an Order, of section 5 it is not necessary to specify expressly those vertical agreements which may fall within the scope of implementation of section 4(1). In the individual evaluation of the agreements in accordance with section 4(1), various parameters, and particularly the market structure from the point of view of availability and supply, should be taken into consideration.
- (2) The benefit of exemption according to category should be limited to those vertical agreements regarding which it may be considered with sufficient degree of certainty that they fulfil the prerequisites of section 5(1).
- (3) The vertical agreements of the category defined in this Order, may improve financial effectiveness within the framework of a production or distribution chain allowing better coordination between the participating enterprises. They may in particular lead to the reduction of the cost of the transaction and distribution of the parts and to improvement of the level of investments and sales.
- (4) The possibility of the said beneficial results of more than of setting any negative effect on competition from the restrictions contained in vertical agreements depends on the strength of the participating enterprises in the market and, therefore, on the extent to which these enterprises are facing competition from other suppliers of goods or services which are regarded as alternative or substitutes by the buyer on account of their characteristics, prices and the use for which they are intended.
- (5) It may be considered that, provide the supplier's share in the market does not exceed 30%, vertical agreements which do not include certain types of very serious restrictions contrary to competition lead as a rule to improvement of

production or distribution and secure to consumers a fair part of the benefits that accrue. In the case of vertical agreements which include exclusive marketing obligations, a critical element for the definition of the overall effects of the said vertical agreements on the market is the buyer's share of the market.

COMMISSION FOR THE PROTECTION OF COMPETITION