CPC

2001
ANNUAL REPORT

COMMISSION FOR THE PROTECTION OF COMPETITION

PROTECTION OF COMPETITION LAW 207/89

CONTENTS

1. COMMISSION FOR THE PROTECTION OF COMPETITION

The Council of Ministers by its decision no. 52.904 dated 20.12.2000, has appointed, in accordance with sub sections (1) and (2) of section 9 of the Protection of Competition Law of 1989 (Law No. 207/89) as this was substituted by section 3 of Amendment Law No. 155(1)2000, the Chairman and the Members of the Commission for the Protection of Competition, as follows:

Chairman:

Christodoulos Tselepos
Lawyer
(for a period of five years, that is until 20.12.2005)

Members:

1. Costis Efstathiou
   Lawyer
   (for a period of five years, that is until 20.12.2005)

2. Evangelos Sykopetritis
   Chartered Accountant-Auditor
   (for a period of five years, that is until 20.12.2005)

3. Andreas Sophocleous
   Senior officer of the Ministry of Commerce, Industry and Tourism
   (for a period of two years and six months, that is until 20.6.2003)

4. Andreas Demetriou
   Chartered Accountant-Auditor

ANNUAL REPORT ON THE ACTIVITIES OF THE COMMISSION FOR THE PROTECTION OF COMPETITION FOR 2001

2. INTRODUCTION

The Protection of the 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 the 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 CONCENTRATION OF ENTERPRISES CONTROL 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 Concentration of Enterprises Control 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 section 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. SERVICE OF THE COMMISSION FOR THE PROTECTION OF COMPETITION

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

(a) to keep a public Register of Notifications of Consortiums and a public Register of Decisions of the Commission and the Supreme Court on concerted practices.

(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 OF THE COMMISSION FOR THE PROTECTION OF COMPETITION

During the year 2001 the Commission for the Protection of Competition held 58 meetings at which it dealt mainly with the following matters:

5.1. Examination of Complaints

5.1.1. Complaint and request for taking of interim measures against CYTA by various companies selling mobile telephony terminals and equipment

This case concerns a complaint and request for the taking of interim measures by various companies selling mobile telephony terminals and equipment.

More specifically these companies accused the Cyprus Telecommunications Authority (CYTA) of violating the provisions of section 6 of L. 207/89, in other words that CYTA, abusing its monopoly character and dominant position in the telecommunications services field, by operating in its premises retail shops for telephone apparatus of all kinds selling to consumers products competitive to those sold by the complainants.

At the same time the complainants ask the Commission to take interim measures for the suspension of sale of interim equipment products by CYTA.

The Commission, after examining the complaint, gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it and at the same time summoned both the complainants and CYTA before it for examination of the request for the taking of terminal measures.

The lawyers of the two companies appeared before the Commission at a total of seven meetings and after producing evidence, set out the facts, their positions and views regarding the request for the taking of interim measures and then made their final addresses.

The Commission, after studying all the evidence, information, positions and views of the parties, unanimously issued a Decision, no. 2/2001, which, inter alia, says:

"…The Commission has laid down the principles which govern its activities regarding interim measures. These principles are:

- The application for interim measures should be accompanied by a complaint on the part of the applicants.

- In trying the cases the Commission should take into account the interests of all the parties involved.

- There should be strict compliance with the legislation and other precedents.

- A strong prima facie case should be proved.

- The Commission relies only on evidence provided by the parties and does not carry out its own investigation into the matter.

- Unjustified delay on the part of the applicants may lead to rejection of the application.

- The Commission may order or set a deadline upon the expiration of which the matter may be re-examined in case the measures have been taken or may order that these measures should remain in force pending the final decision.

- In any case, upon the application of any party the Commission may, irrespective of its decision, go ahead and reconsider its decision if the conditions have changed.

- The applicants define, as far as possible adequately and accurately, the nature of the orders which are sought, without this meaning that the Commission is bound to issue specific measures in the specific form in which they are requested.

- The acceptance of application for interim measures in no way affects the final decision of the Commission regarding the violation of the sections of the relevant Legislation.

- The measures cannot change the position of the company against which the complaint has been made regarding its business activity in a non reversible manner.

- The Commission may order the payment of guarantee by the successful applicant, as in any case, this is envisaged by Law 207/89.

- In any case following the decision on the interim measures it is necessary that the substance of the case should be immediately dealt with.

It should also be mentioned that in the decision in the case *Sea Containers Vs Sealink* dated 21.12.1993 the Commission decided that it issues more easily, provided of course the prerequisites and criteria are fulfilled, interim measures allowing entry into the market, than in the case where the measures aim at the maintenance of the position of an enterprise already operating in the market.

On the basis of the above, it is evident that the Commission should take the following facts into account:

(a) The evidence provided regarding the claims of the applicants.

(b) The fact that the applicants are already enterprises operating in the mobile telephony, terminals and equipment market.

(c) That CYTA is trying to enter this field, that is the mobile telephony, terminals and equipment market.

(d) That immediately after CYTA entered the market the applicants complained about its activity.

(e) That apart from the parties the effects of the activities of the parties on consumers should also be taken into consideration.

Having in mind the above, the application should inevitably be rejected. In this case there is complete inability to produce evidence with which:

(a) To define the dominant position of CYTA in the mobile telephony, terminals and equipment market, and

(b) To document that this dominant position has led to its abuse by CYTA.

Despite the above decision the Commission would like to make the following recommendations to CYTA:

- To avoid in future actions which may create perhaps wrong impressions or even doubts about the credibility of its intentions to contribute to the strengthening of the rules governing free and healthy competition (e.g. advertising of its activities such as the marketing of mobile apparatus through telephone bills).

- CYTA should seriously consider the possibility of creating a subsidiary company in the fields where it operates in addition to providing telecommunication services, bearing always in mind transparency, the forthcoming liberalization and the expected tough competition even in the telecommunications sector. The Commission has a duty and obligation to be vigilant regarding the strict compliance with the rules governing healthy competition and in case it establishes any violation, to exercise immediately its discretion for own initiative investigation and suppression of actions which aim at adulterating the free competition rules. For these reasons the Commission and its service will be monitoring the behaviour of CYTA in this specific sector and in case it appears that it is operating in a way likely to adversely affect the rules of operation of healthy competition it will intervene at its own initiative.

Finally, the Commission thanks both sides and particularly their lawyers for their cooperation and contribution to the conclusion of such a serious and complicated case".

The Service subsequently put before the Commission the necessary preliminary investigation which concerned the complaint.

The Commission, after examining the necessary preliminary investigation and taking into account all the facts put before it, in considering the request for the taking of interim measures, unanimously decided that the above complaint cannot be pursued and is, therefore, rejected. The rejection of the complaint is based on the fact that from the whole investigation, it is established that CYTA´s share in the terminals market ranges around 10% (statistical mistake ± 2) a percentage which cannot justify the description of CYTA as a company with a dominant position in the market. For the provisions of section 6 of Law 207/89 to be violated, it should be proved that the party against which the complaint has been made enjoys a dominant position.

5.1.2. Complaint and request for the taking of interim measures by the companies Podium Engineering Ltd and Masterline Trading Ltd against the companies XEIKON NV (Belgium) Linomedia S.A. (Greece) and Linomedia (Cyrpus) Ltd

The above case concerns a complaint submitted to the Commission by the Company Podium Engineering Ltd and Masterline Trading Ltd against the companies XEICON NV (Belgium) Linomedia S.A. (Greece) and Linomedia (Cyprus) Ltd for possible violation of section 6 of Law 207/89 as this was amended by L. 111(1)/1999.

More specifically, the companies Podium and Masterline complain that the companies XEIKON, Linomedea (Greece) and Linomedia (Cyprus) stopped supplying them with products and spare parts for the professional printing machines

manufactured by the company XEIKON, which is represented by the companies Linomedia of Greece and Cyrpus, in violation of the provisions of L. 207/89 as this was amended by L. 111(1)/1999.

At the same time, the companies Podium and Masterline submitted a request for the taking of interim measures against the said companies and that they should continue to be supplied both with products and mainly with spare parts in order to be able to respond to the needs of their customers pending the examination of the complaint by the Commission.

The Commission, after studying a complaint, gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it and at the same time summoned both sides before it for examination of the request for the taking of interim measures.

The lawyers of the two parties involved appeared before the Commission at a total of three meetings and set out the facts, and also their positions and views regarding the request for the taking of interim measures.

The lawyer of the complaints argued, inter alia, that the companies against which the complaint had been made unjustifiably stopped supplying to their customers with their products and due to the fact that this is their only and exclusive business as a company they have sustained irreparable financial losses.

The lawyers of the companies against which the complaint has been made supported, inter alia, that they never refused to supply their products to the complaining companies, but due to financial differences and the large amounts due by the complainants to the companies they represent, the latter stopped supplying to them their goods until the payment of their debts.

The Commission after examining all the evidence, information, positions and views before it, unanimously issued Decision number 11/2001 which, inter alia, says:

"…The Commission has the power to order the taking of interim measures on the basis of the provisions of section 23 provided the following prerequisites exist cumulatively:

(a) A strong prima facie case of violation of section 4 and/or 6 is built.

(b) The case is urgent.

(c) There is a serious risk of irreparable damage to the interests of the applicants or to the public interest.

After the evidence before the Commission was studied following the conclusion of the process of examining the application for the taking of interim measures, it was established that the reason for which the company against which the complaint has been made refuses to supply its products to the complainants is the refusal of the latter to pay off their debts to them. This fact was not disputed by the complainants during the hearing. Moreover, the company against which the complaint has been made, stated clearly, and bound itself before the Commission, that in case the complainants paid off their debts it was ready to continue to implement the agreement between them on the same terms as in the past.

On the basis of the above the Commission unanimously decided:

(a) The refusal of the companies against which the complaint has been made to supply products to the complainants is considered justified because those responsible for this are the complainants who refuse to pay off their debts, not even the amounts they themselves estimate.

(b) Therefore, the prerequisites of the provisions of section 23(2)(a) do not apply in this case. As the prerequisites envisaged in section 23(2)(a), (b), (c) are cumulative and not alternative and therefore all three should necessarily apply for the Commission to be able to issue an order for interim measures we do not consider it necessary or advisable to examine whether the prerequisites (b) and (c) of section 23(2) apply.

In view of the above the Commission unanimously rejects the request of the complainants for the taking of interim measures since they have not proved the provision of section 23(2)(a), that is, a strong prima facie case of violation of section 4 and/or 6".

The Service subsequently put before the Commission the necessary preliminary investigation which concerned the complaint.

The Commission after examining the necessary preliminary investigation and also taking into account all the facts put before it in considering the request for the taking of interim measures, unanimously decided that no violation of the provisions of the Protection of Competition Law 207/89 by the companies XEIKON N.V., Linomedia SA and Linomedia Cyprus Ltd is established and therefore it will not proceed to further examination of the complaint.

5.1.3. Complaint and request for the taking of interim measures by cattle breeder G. Kappas against the Cyprus Dairy Industry Organisation

The above case concerns a complaint by cattle breeder George Kappas against the CDIO, for abusive exploitation of its dominant position in the production and marketing of milk. Moreover, by his complaint Mr. G. Kappas asks for the taking of interim measures against CDIO, so that he may be paid for the whole quantity of milk he produces pending the examination of his complaint by the Commission.

More specifically, G. Kappas complains that the CDIO abusing its dominant position in the production and marketing of milk, receives from him the whole quantity of the milk he produces and pays him only for his quota, that is the quantity the CDIO suggested to him to produce. At the same time he requests the taking of interim measures so that the CDIO may pay him for the entire production of milk he has delivered to the CDIO and may pay him for the entire production he will deliver to the Organisation pending the examination of his complaint by the Commission.

The Commission after examining the contents of the letter/complaint of G. Kappas, gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it. It subsequently summoned both G. Kappas and the CDIO before it for examination of the request for the taking of interim measures.

The two parties involved appeared before the Commission at a total of three meetings and set out the facts as well as their positions and views on the request.

The lawyer of Mr. G. Kappas said, *inter alia*, that while his customer delivered about 25.000 litres of milk to the CDIO he was paid for only about 5.000, which was the quota allotted to his client.

The lawyer of the CDIO supported that the Organisation had acted within the framework defined by the Law governing the Organisation. G. Kappas had a much higher milk production quota which he had transferred to another cattle breeder who had compensated him. G. Kappas kept for himself a quota of the order of 5.000 litres milk, the quantity for which he is paid by the Organisation.

According to the Law governing the Organisation, the production and marketing of milk is carried out through the CDIO and if a milk producer produces a quantity over and above his quota the CDIO receives it but not only does it not pay him but also imposes a fine for the extra quantity of milk he produced.

The Director of the Organisation told the Commission that the Board of Directors of the CDIO has decided, and has already informed all milk producers by letter, that it will pay them for the whole quantity of milk over their quota which they will produce from 1.1.2002 until 31.12.2001.

The Commission, after examining all the facts, evidence, information, positions and views of the two parties, but particularly following the binding statement of the Director of the Organisation that until the end of 2001 the Organisation will receive and pay for the whole milk production of the applicant as well as that of other producers, unanimously decided that at this stage the issue of the interim order applied for is not necessary and, therefore, the process for taking interim measures is suspended.

The Commission may in future go ahead and issue a decision on the request for the taking of interim measures if the present conditions, under which the above decision has been taken, change.

The Commission then examined the necessary preliminary investigation which concerns the complaint put before it by the Service. The Commission, after taking into consideration all the evidence, information, positions and views of the parties involved before it, unanimously decided that no violation of the provisions of the Protection of Competition Law 207/89 by the CDIO is proved and therefore it will not go ahead and examine the complaint further.

5.1.4 Complaint by the Company G. Mavroudes Brothers (Keryniotes) Ltd against the Ministry of Health

This case concerns a complaint submitted to the Commission by the Company G. Mavroudes Brothers (Keryniotes) Ltd against the Ministry of Health.

More specifically the Company G. Mavroudes Brothers Ltd (Kernel-oil importers and bottlers) has complained that the Ministry of Health after misleading the Cyprus Olive Products Marketing Board (SEKEP), blockled the marketing of olive pomace oil and gave instructions that it should be withdrawn from the Cyprus market for precautionary reasons until the necessary tests had been carried out and it had been proved that it was suitable for consumption.

The Commission after examining the letter/complaint of the said company gave instructions to the Service to carry out the necessary preliminary investigation and to put it before it.

The Service after carrying out the investigation established the following:

- Olive pomace oil is oil extracted from the kernel of olives. The method used in the process of its production is distilling with the use of a chemical catalyst, usually hexane. The problem lies in the process of separation of olive pomace oil from the hexane, which cannot be separated from olive pomace oil completely. As a result, the dregs of the catalyst remain in it. Another problem in the production of olive pomace oil appears during the heating of the olive kernel. The resins which are in it are liable to chemical alterations with the result that they form benzopyrene, one more powerful carcinogen substance.

- The company G. Mavroudes Ltd, claims that SEKEP availed itself of the opportunity to defame olive pomace oil, which is included in the group of olive oils, and to describe it as carcinogen oil, its aim apparently being to turn the virgin olive oil market into a monopoly. The excuse was provided by a cargo of Spanish olive pomace oil which reached Czechia and Ireland, and which contained high levels of the harmful substance benzopyrene. The Ministry of Health, influenced by the attitude of SEKEP, decided to give instructions that the product be withdrawn from the market and certain tests be carried out regarding its suitability. The owner of the company argues that the olive pomace oil he imports is Greek and has no problem. The reason for this conflict is because olive pomace oil is cheaper than virgin olive oil.

- The Health Services of the Ministry of Health supports that the Prompt Food Information System informed them that Spanish and Greek olive pomace oil was located in Norway and contained percentages of polyaromatic hydrocarbons which exceeded 60 times the normal levels with carcinogen risks for the consumer. The competent authorities were informed also by FAO as well as by a statement of the Food Standards Agency (FSA). The Ministry of Health decided to block the marketing of the olive pomace oil existing in the Cyprus market for a precautionary check. Samples from bottled olive pomace oil as well as from the stocks were sent to England for laboratory tests. This decision was taken in the public interest and was not influenced by any organisation.

The Commission, after examining the necessary preliminary investigation put before it by the Service, unanimously decided not to go ahead and further examine the complaint because it does not fall within its jurisdiction.

According to the Protection of Competition Law 207/89, the Commission has jurisdiction regarding actions of legal or natural persons, which are in conflict with the provisions of the Protection of Competition Law provided they can be described as undertaking. The party against which the complaint has been made does not fall within the meaning of “undertaking” as this is given in the Law but it is an administrative organ and any decisions thereof may be disputed before the competent organ, which is none other than the Supreme Court.

5.1.5 Complaint by the Federation of Building Contractors Associations of Cyprus against the brick manufacturing factories

This case concerns a complaint by the Federation of Building Contractors of Cyprus (BCC) against all the factories manufacturing bricks for possible harmonised practice in the fixing of uniform prices and in production control.

More specifically, the Federation charges that all the factories manufacturing bricks have cooperated and control the production with the result that all the brick manufacturing factories sell their stocks and thus the price of bricks is steady and almost uniform for all brick manufacturing factories.

The Commission after examining the letter/complaint gave instructions to the service to carry out the necessary preliminary investigation and to put it before it.

The Service has established, following the investigation, inter alia, the following:

The factories manufacturing bricks stop manufacturing bricks at least three times a year for various reasons such as plant maintenance, reduction of costs, sale of stocks, summer vacations, holidays.

As the managers themselves of the various brick manufacturing factories said, they stop operations more or less during the same periods because during these periods Christmas/New Year, Easter and August, which is the month for the builders´ holidays, continuous holidays coincide.

The prices of common bricks of broad consumption, which covers 90% of the market, ranged from 150-170 Cyprus Pounds per thousand.

As the managers themselves said, not all factories have the same price and besides they have a different policy regarding each customer.

The Commission, after examining the necessary preliminary investigation put before it by the Service, unanimously established the following:

(a) The complainants have a legal interest to make a complaint and

(b) There is *prima facie* case for possible violation of section 4(1),(a) and (b) of the Protection of Competition Law 207/89 by the brick manufacturing companies.

More specifically it has been established at first sight that there is cooperation of undertakings for the object, or result of limiting, obstructing or adulterating competition (section 4(1), L. 207/89) and particularly limiting or controlling production and the marketing of bricks (section 4(1)(b).

5.1.6. (a) Complaint by the Cheese Makers Association of Cyprus and the Company Pittas Ltd against the Cyprus Dairy Industry Organisation. (CDIO)

(b) Complaint by the Charalambides Dairies Ltd and Christis Ltd against the Cyprus Dairy Industry Organisation (CDIO)

These cases concern two separate complaints submitted to the Commission by the same Law Office against the Cyprus Dairy Industry Organisation for abusive exploitation of its dominant position in the milk production and marketing sector.

With the unanimous agreement of all the parties involved the Commission decided that the two complaints should be tried jointly since they concern the same facts.

More specifically both the Charalambides and Kristis Dairy Industries Ltd the Cyprus Cheese Makers Association, and the Pittas Company Ltd accuse the CDIO of possible abusive exploitation of the dominant position it enjoys in the production and marketing of milk by:

(a) Indirectly fixing unacceptable milk purchase and sale prices.

(b) Limiting the production or marketing of Cyprus pasteurised products to the detriment of the complainants since it does not deliver to them the quantities of milk they have agreed.

(c) Indirectly implementing dissimilar terms for equivalent transactions with the result that the complainants are placed in a disadvantageous competitive position. More specifically the CDIO gives priority to Lanitis and has started delivering to him quantities of milk while it arbitrarily refuses to carry out its obligations regarding the complainants since it refuses to deliver to them all the quantities of milk it has promised them.

(d) It exploits the relationship of economic dependence the complainants have with the CDIO as the only provider of milk throughout Cyprus. The complainants, who are customers of the CDIO, do not have an equivalent alternative solution and cannot get the quantities of milk from another source.

(e) Also implementing a policy of discriminatory treatment between the complainants and the newly established Lanitis Company in a way that substantially affects competition by giving priority to Lanitis and delivering to his Company quantities of milk while it arbitrarily refuses to deliver to the complainants all the quantities of milk it promised them.

(f) Imposing arbitrary transaction terms and demanding that the complainants should get milk on the basis of unilateral and binding to the CDIO statements for cow milk, daily, without the CDIO undertaking a corresponding obligation to deliver milk to them.

At the same time the complainants ask for the taking of interim measures so that the CDIO may deliver to them the quantities of milk they agreed pending the examination of the complaint and the issue of a decision by the Commission on it.

The Commission, after examining the complaint, gave instructions to its Service to carry out the necessary preliminary inquiry and to put it before it and at the same time summoned both the complainants and the CDIO and also the Lanitis Brothers Company Ltd as interested party before it for examination of the request for interim measures.

The lawyers of the parties involved appeared before the Commission at a total of three meetings and set out the facts, their positions and views regarding the request for the taking of interim measures and then made their final addresses.

The Commission, after studying all the evidence, information, positions and views before it, unanimously issued Decision No. 9/2001 which, *inter alia*, says:

"(a) The milk market in Cyprus presents such distortions that in reality there is no adequate room for healthy competition. These distortions are due primarily to the regulating role which the CDIO inevitably plays on the basis of law 4/69 and the Organisation practically controls by its regulatory decisions all the critical issues connected with the milk market.

(b) At first sight and on the basis of the results of its actions, this decision of the CDIO aggravates the already distorted field of competition in the milk market. In this case it is an indisputable fact that the entry of the new businessman has been detrimental to the two complainants on the basis of rules, criteria and procedures defined by the Organisation, which moreover fixed the percentages of the market share of each one of the parties without the basic rules governing competition being taken into consideration. In this sense the Commission reaches the decision that there is a *prima facie* case against the CDIO for possible breach or section 6(3) on the basis of the amendment of the Law."

The Commission has paid special attention to the urgency of the case and in this regard we consider that the positions and the field itself had become crystallised and the situation took its definite form in August 2001 after the CDIO defined the manner and also the size of the cuts when the Lanitis Brothers Company Ltd entered the milk market. The Commission judges that the time which has elapsed from the above events until the complaint was made is not such that the case has lost its urgent character.

In connection with the third criterion, that of serious danger of irreparable damage, the Commission judges that in view of the structure of the milk market in Cyprus, any damage that may be caused to the complainants can be made good or assessed for the following reasons:

(a) Through exactly the same process which the Organisation applied, it may restore the initial market shares to the complainants.

(b) The competition field in the milk market is so distorted that by simple arithmetic the expenditure, the profit and loss may be determined depending on the market share of each undertaking.

In view of the above findings, the Commission unanimously reaches the decision to reject the request for the taking of interim measures since in this case there is no danger of irreparable damage or harm to the complainants".

The Service subsequently put the necessary preliminary investigation before the Commission.

The Commission after examining the necessary preliminary investigation put before it by the Service unanimously established that:

(a) The complainants have a legal interest in submitting the complaint, and

(b) There is a *prima facie* case of possible breach of the provisions of section 6, paragraph (3) of amended Law 111(I)/99.

Most specifically on the basis of the necessary preliminary investigation of the Service, it has been established that there is *prima facie* case of probable abusive exploitation of the dominant position the CDIO enjoys in the milk market, as a result

of the Organisation´s decision to allocate part of the limited quantity of milk production to a new pasteurisation industry, depriving the existing dairy and milk pasteurisation industries of these quantities, taking into consideration the economic dependence relationship of the existing industries regarding the supply of milk and the non existent alternative solution, without the CDIO taking action to secure increased milk production that would meet the requirements of new companies entering the market as well as of the existing ones.

The Commission, after establishing the above, gave instructions that a Statement of Objections should be prepared and sent and summoned all the parties involved before it for continuation of the examination of the case.

The said case is expected to be completed early in 2002.

5.1.7. Complaint by Dr. Sotos Demetriou (S.D. Clinic Co. Ltd) and Andreas Procopiou (Chrysovalantos Clinic) against the insurance companies (health sector) Universal Life, Cyprus General Insurance, Aspis Pronia, Ethniki Asfalistiki, Laiki Asfalistiki, Atlantic Insurance, Liberty Life, C Cypria Life, Bupa, Eurolife, Alico, Interlife.

This case concerns a complaint submitted by Dr. Sotos Demetriou – S.D. Clinic Co. Ltd and Andreas Procopiou – "Chrysovalantos" Clinic against the insurance companies (health sector) for possible violation of section 4 and/or 6 of L. 207/89.

More specifically the above two clinic owners complain that practically all the insurance companies (health sector) have cooperated and created a common list of contracted clinics and have not included in the said list their own clinics abusing the dominant position they have secured by their cooperation.

The Commission after examining the content of the complaint gave instructions to its service to carry out the necessary preliminary investigation and to put it before it.

The following have been, inter alia, established from the investigation of the Service.

- The insurance companies Universal Life, Cyprus General Insurance, Aspis Pronia, Ethniki Asfalistiki, La¨iki Asfalistiki, Atlantic Insurance, Liberty Life, Cypria Life, BUPA, Eurolife, Alico, Interlife, have established a negotiating committee which discussed and negotiated with doctors and clinics the prices charged by them for the various medical services provided to those insured in the health sector.

- The insurance companies have issued a list to the insured persons with the names of doctors and clinics with whom they have a contract.

- The S.D. Clinic Co. Ltd and "Chrysovalantos" clinics despite the fact that they accepted the terms they were not included in the list of the clinics covered by the contract.

The Commission after examining the necessary preliminary investigation put before it by the Service unanimously established that:

(a) The complainants have a legal interest in submitting the complaint, and

(b) The cooperation of the companies against which the complaint has been made and the whole practice which is followed in the fixing of prices for the

offer of medical services by doctors and clinics at first sight leads to the conclusion about possible violation of the provisions of section 4(1)(a) and (d) which provides that:

"4(1) Any cooperation of enterprises which has as object or result the obstruction, limitation, adulteration of competition are prohibited. This applies particularty to cooperation which aims at:

(a) the direct or indirect fixing of purchase or sale prices or other terms of transaction

(b) the implementation of dissimilar terms for equivalent transactions with the result that certain enterprises are placed in a disadvantageous position in the competition."

The Commission subsequently gave instructions that a Statement of Objections should be prepared and sent to the complainants, and summoned all the parties involved before it for continuation of the examination of the case.

The examination of the said case is expected to be completed in 2002.

5.1.8. Complaint by the companies SPIDERNET SERVICES LTD and LOGOSNET TECHNOLOGIES against CYTA

The present case concerns a complaint made to the Commission by the companies SPIDERNET SERVICES LTD and LOGOSTECHNOLOGIES against CYTA for possible violation of the provisions of section 6 of L. 207/89.

More specifically the companies SPIDERNET SERVICES LTD and LOGOSNET TECHNOLOGIES complained that CYTA by its action in announcing first the supply of services of ADSL connection to the Internet without previously connecting even on a trial basis the other providers of the Internet, creates conditions of unfair competition, exploitation of dominant position and abuse of power vested in it by the legislation.

The Commission after examining the complaint of the said companies gave instructions to the Service to carry out the necessary preliminary investigation. The following have been established from the investigation:

- CYTA, under the Telecommunication Service Law, enjoys until now a monopoly in telecommunication services.

- The "internet" is contained in, and covered by, the definition "Telecommunications" as it is described in the above law. Nevertheless in this sector CYTA has allowed individuals also to provide internet services with the result that they are its competitors.

- With the introduction of the new ADSL net, it is possible to provide a 24 hour connection to the internet without a charge being imposed as per connection time, but only a monthly subscription. Also another advantage offered by the net is the quicker connection. However, the above two advantages are already very attractive, as far as cost and the time factor are concerned, for the internet users, particularly for businessmen. For this reason the possibility of providing the new service is of enormous importance to all those providing internet services and it is reasonable that there should be a great

competition between them as to whom will be the first to provide this service, so as to attract an increased number of users, particularly businessmen from whom the largest income comes.

The Commission, after examining the necessary preliminary investigation put before it by the Service, unanimously established that:

(a) The complainants have a legal interest in making the complaint and

(b) there is prima facie case of possible violation of section 6(I), 2(d) of the Protection of Competition Law 207/89 on the part of CYTA.

More specifically, on the basis of the necessary preliminary investigation carried out by the Service, possible violation by CYTA has been *prima facie* established as regards:

(a) Abusive exploitation of its dominant position in the market (section 6(1) of L. 207/89).

(b) Exploiting its dominant position, CYTA showed delay in informing the private providers about the possibility of the new service being provided, while the limited time of preparation given to them (just two months for preparation of provision, costing and advertising of the service) resulted in the private providers being placed at a disadvantageous position (section 6(2)(d)).

Following the above assessments the Commission gave instructions that a statement of objections should be prepared and sent and then summoned the parties involved before it for continuation of examination of the case.

At the first hearing before the Commission, all the parties involved were present and the Commission fixed a time-table for trial of the case.

The case is expected to be completed in 2002.

5.1.9. Complaint by the shareholders of the company MTV COSMETICS LTD against the majority shareholder and the company WELLA INTERNATIONAL for possible violation of section 6 of L. 207/89

This case concerns a complaint by shareholders of the company MTV COSMETICS LTD against the majority shereholder of the said company and the German company WELLA INTERNATIONAL for possible violation of section 6 of L. 207/89 as this was amended by L.111(1)(99).

More specifically the MTV shareholders complained that the majority shareholder and the company WELLA INTERNATIONAL after consultations agreed on the transfer of the exclusive production and distribution of WELLA products in Cyprus from the company MTV COSMETICS LTD to M&V COSMETICS which belongs exclusively to the majority shareholder of MTDV COSMETICS LTD. According to the complainants this agreement practically caused the economic ruin of the company MTV COSMETICS LTD because all the business of the said company is connected with the exclusive production and distribution of WELLA products.

The Commission after examining the complaint of the lawyer of the shareholders of the company MTV COSMETICS LTD gave instructions to its Service to carry out the necessary preliminary investigation.

The Service sent a letter both to the company M&V COSMETICS LTD and to the German company WELLA International, asking in accordance with section 24 of L. 207/89, for evidence and information for the investigation of the complaint. The lawyer of the company M&V COSMETICS LTD and the majority shareholder of MTV COSMETICS LTD did not send the evidence and information asked for within the deadline specified by the Law and in a letter to the Commission asked that the investigation of the case by the Commission should stop because a trial is already pending at the Nicosia District Court which concerns the same facts.

The Commission at a meeting discussed the whole matter and unanimously established a prima facie possible violation by those against whom the complaint has been made of sections 24 and 25 of L. 207/89, i.e. they did not send the requested evidence and information within the deadline specified by section 24 of L. 207/89.

The Commission gave instructions that the party against which the complaint has been made should be summoned to appear before it, so that its position and views of the above possible violation may be heard.

The lawyer of those against whom the complaint has been made appeared before the Commission and said that there had been no refusal to provide the evidence and information asked for by the Service but, on the contrary, there had been an immediate response by their clients who in a letter asked that the investigation of the complaint should stop and brought some facts to the knowledge of the Commission. At the same time the lawyer raised pre-trial objections which concerned the confidentiality of the information asked for and his clients´ right to a “fair trial” as well as to the fact that his clients should not be tried twice for the same offences.

This case is expected to be concluded in 2002.

5.1.10. Complaints about sales of goods and/or services below cost

This case concerns complaints made to the Commission by various shopkeepers and organisations against specific supermarkets for selling goods below cost.

More specifically, shopkeepers and organizations complain to the Commission that specific supermarkets using their dominant position in the market and also their strong financial position, sell, during the period of the Christmas holidays, various products below cost with the result that medium sized shops are put in a disadvantageous position in the competition and risk closing down.

The Commission in examining the complaints gave instructions to the Service to carry out an investigation into the complaints and specifically as to whether the said supermarkets enjoy a dominant position in the market.

The Service, acting in accordance with the instructions of the Commission, carried out an investigation which showed that the said supermarkets did not enjoy a dominant position either in the market of a specific town or district or on an island-wide basis.

The Commission, after examining all the evidence and information before it, unanimously issued Decision number 10/2001 which, inter alia, says:

- “The price or sale of goods and/or services below cost is regulated by article 82 of the Treaty on the establishment of the European Community, which

prohibits the abusive exploitation of the dominant position an enterprise enjoys.

- The legislation on the Protection of Competition at a national level, which is in full harmony with the European legislation, is covered by law 207/89 and regarding this specific matter by section (6).

- On the basis of the above, the Commission in order to have competence to examine a complaint of a similar nature, should have information and evidence proving that the undertaking against which a complaint has been made, which sell goods, or services below cost, enjoys/enjoy a dominant position. In the said complaints there is no evidence or information which justify the claim that those against whom the complaint has been made enjoy a dominant position.

- Therefore, the Commission is unable under the law to intervene and by extension to say that an action of this kind constitutes violation of the Protection of Competition rules as they are defined by the relevant legislation".

5.1.11. Complaint by the Company Cyprus Trading Corporation Ltd (CTC) against the shipping companies for the imposition of additional charges in violation of sections 4 and 6 of L. 207/89

The above case concerns a complaint submitted to the Commission by the Company C.T.C. Ltd accusing the shipping companies of having implemented a new charging method by adding a Terminal Handling Charge (T.H.C.).

More specifically C.T.C. Ltd complains that certain shipping companies, the shipping companies/Shipping Lines (Principals), decided, as from 1st January, to impose an additional charge, the so called "Terminal Handling Charge" (THC). The THC was fixed at 50 pounds per container of 20 feet and at 65 pounds for those of 40 feet and that this decision concerned all imports and all exports but for specific destinations.

The Commission after examining the complaint gave instructions to its Service to carry out the necessary preliminary investigation and to put it before the Commission.

From the investigation the Service established the following:

The shipping agents have introduced the THC as part of the Invoice, but a separate charge from the other usual charges, such as the Freight, Landing Charge, Primage, Notification Charges, Delivery, Porterages, Empty Return, Service Fee, other charges etc.

- The Shipping Lines which have adopted the THC, are the biggest Shipping Companies/Shipping Lines and the rest are smaller transport companies and do not cover all destinations nor do they provide the necessary services and this creates a problem of choosing between companies which charge the THC and those which do not.

- The THC is an international terminology and has been applied for years now in most countries and ports of the world and the manner of this implementation differs from port to port.

- The Cyprus Ports Authority has informed the Service that there is no legislation prohibiting implementation of the THC system in Cyprus.

- The Cyprus Shipping Agents Association, which represents members belonging to the THC charge group and members which do not belong to the THC charge group, takes the following position.

(a) Ship owners have imposed the THC in all European countries.

(b) The THC was agreed with the exporters´ councils in Europe in 1980 and this has since been implemented in all main European ports.

(c) The European Council Community legislation which allows the Operation of Conferences (Council Regulation no. 4056) has no provision as to what exactly is acceptable or not. The interpretation of this belongs to the European Community (DGIV) and

(d) The association also claims that there is an ongoing dialogue with the European Competition Directorate about the framework within which the Conferences operate on the basis of Council Regulation No. 4056/86 and that the activities from port to port which have been approved by the European Commission on the basis of the above Regulation include also the THC, which is acceptable to the Commission.

Taking into account the international character of the case, the Service of the Protection of Competition Commission deemed advisable to coordinate itself with the European Competition Directorate so that uniformity in decisions in cases of international character of this king may be maintained.

The case is pending before the European Competition Directory for further action. The case is expected to be completed in 2002.

5.1.12. Other complaints made to the Commission for the Protection of Competition

The following complaints were put before the Commission but the Commission did not go ahead to examine them either because no sufficient evidence was provided by the complainants or because they do not come under the jurisdiction of the Commission.

1. Complaint about expansion of the activities of the Orphanides Supermarket Ltd in Solia area.

2. A project for transport of national guardsmen.

3. Complaint by the Company G.I. Theologos Ltd against the Poulla Tsadioti Ltd quarry.

4. Complaint by the company E. Pyrga Ltd against the company DELTA CONES LTD.

5. Complaint by N. Ioannou against the company L.P. Frangeskides Ltd

6. Complaint by the St. Andreou Supermarket Ltd, against the companies COCA COLA, KEAN and KEO.

7. Complaint by Kyriacos Georgiades against the companies Peletico Ltd-Zeplast Ltd.

8. Complaint by Cinema Films Acropole against the Ministry of Education.

9. Complaint by Mr. Nicos Konnides against the University Campus Development Office and the Ministry of Education.

5.2. THE CONCENTRATION OF ENTERPRISES LAW 22(I)/1999 EXAMINATION OF CONCENTRATION OF ENTERPRISES NOTIFIED TO THE SERVICE OF THE COMMISSION

During the year 2001 the Service of the Commission evaluated and put before the Commission twelve (12) Concentrations of Enterprises notified to it as follows:

5.2.1. Concentration of the Companies WELLGOODS LTD and CYPRESSA FOOD IMPORTERS & DISTRIBUTORS LTD

The Companies WELLGOODS LTD and CYPRESSA FOOD IMPORTERS & DISTRIBUTORS LTD notified to the Commission for the Protection of Competition notified the agreement of their concentration and the establishment of a third company under the name WELLGOODS CYPRESS LTD.

The Service of the Commission, acting in accordance with the provisions of the Law, after evaluating the evidence and information provided in accordance with Annex III of L. 22(i)/99 by the said companies, prepared a report which it put before the Commission.

The Commission after examining all the evidence before it, established that no dominant position was created or strengthened by the concentration compatible with the requirements of the competitive market. At the same time, however, the Commission established violation of section 9(a) of L. 22(I)/99 on the part of the said companies.

More specifically, the newly established company WELLGOODS CYPRESSA LTD started to carry out business by issuing invoices in its name even before it received a notice or approval as provided by the legislation.

The Commission, acting within the framework of the legislation, summoned the two companies involved before it in order to hear their positions and views on the violation.

The lawyer of the two companies apologized on behalf of his clients and said that the new company had not carried out any purchases-sales but had collected money from old invoices on behalf of the other two companies.

Finally, he asked for the leniency of the Commission due to the fact that the Control of Concentrations of Enterprises Law 22(I)/99 is a new law which is being implemented now.

The Commission, after taking into account all the facts but also the admission of the two companies, unanimously decided to impose a fine of CY2.500 pounds on each of the companies WELLGOODS LTD and CYPRESS FOOD IMPORTERS AND DISTRIBUTORS LTD.

The Commission issued Decision No. 5/2001.

5.2.2. Concentration of the companies BP (CYPRUS) LTD and MOBIL OIL CYPRUS LTD

An agreement on concentration of BP Cyprus Ltd and Mobil Oil Cyprus Ltd was notified to the Service of the Commission. In the same notice the above companies also ask for cancellation of the cooperation between them which was approved by the Commission under the provisions of the Protection of Competition Law 207/89 on 6.4.1998.

After receiving the above notice the Service of the Commission for the Protection of Competition went ahead and carried out a preliminary evaluation and prepared a written report which was presented to the Commission.

Before the Commission expressed an opinion on the compatibility of the above concentration, the Minister of Commerce, Industry and Tourism as the competent minister, exercised the right granted to him by section 36 of Law 22(I)/2000 and by a reasoned order declared the notified concentration as one "of major public interest", because "the concentration under examination may create adverse effects at the expense of technical progress, economic and social development and the supply of goods necessary for the public security of the Republic".

After the issue of the above order, the Commission at a meeting examined the contents of the report prepared by the Service and established that:

- The notified concentration does not fall within the scope of implementation of Law 22(1)/1999 and

- creates serious doubts regarding its compatibility with the competitive market.

On the basis of the above assessments, the Commission unanimously decided to set in motion a process of full investigation in accordance with the provisions of section 18(c).

Within the framework of the full investigation, the Service implemented the provisions of section (23) and at a meeting it had with representatives of the companies under concentration carried out negotiations and made proposals aimed at the further decrease of the market share so that any doubts as to the compatibility of the concentration with the competitive market might be removed.

The Service then had a meeting with all the interested parties having a legal interest but did not participate in the concentration in order to give them the opportunity to express their views on the concentration.

After the completion of the full investigation the Commission at a meeting examined both the results of the meetings and the report of the Service. The Commission after examining the evidence before it, unanimously decided:

- To declare the notified concentration compatible with the requirements of the competitive market under the following conditions:

(a) Within a period of 6 months of the date of the Decision Exxon-Mobil should make available 5 petrol filling stations for sale to interested petroleum companies which are not at this stage active in the Cyprus petroleum products market.

(b) Within 6 months of the date of the Decision, BP should make available 5 petrol filling stations for sale to interested petroleum company/companies which are not at this stage active in the Cyprus petroleum products market.

(c) Exxon-Mobil and BP will be obliged to serve any new company/companies which will take over the above petrol filling stations and will become active in the Cyprus market with all the facilities enjoyed by the petroleum products companies existing in the Cyprus market including, inter alia supply, storage, costing of services and timely servicing.

(d) The petrol filling stations to be made available should not have a turnover smaller than the average turnover of all the Exxon-Mobil and BP petrol filling stations. The average turnover of each station will be estimated on the basis of the whole market share of the Exxon-Mobil and BP companies divided by the total number of the petrol filling stations they own today.

Furthermore, after the above decision the Commission decided unanimously to cancel and/or revoke the order of cooperation between Mobil and BP dated 6/4/1998.

The Commission issued decision no. 4/2001.

5.2.3. Concentration of the companies L.K. GLOBALSOFT COM LTD and A.T. MULTITECH CORPORATION LTD

The companies L.K. Globalsoft Com Ltd and A.T. Multitech Corporation Ltd submitted to the Service of the Commission for the Protection of Competition a notice of concentration in accordance with section 13 of L. 22(I)/99.

The Service, after examining the said notice, carried out a preliminary evaluation of the concentration and prepared a written report to the Commission.

The Commission after examining the said notice of concentration and the report put before it by the Service, unanimously decided to declare the said concentration compatible with the requirements of the competitive market on condition that:

"Any concentration of enterprises which the company L.K. GLOBALSOFT COM LTD will reaslise in future, in any sector, even if it does not fall within the provisions of section 3 of L. 22(I)/1999 should be immediately notified to the Commission for the Protection of Competition." At the same time the Commission in examining the Report of the Service established from the documents submitted by the company L.K. Globalsoft Com Ltd itself, violation of section 13(1)(a), i.e. it showed delay in submitting the concentration notice beyond the seven (7) days provided by section 13(1)(a) of Law 22(I)/99.

More specifically, the notification of the concentration act was submitted to the Service of the Commission on 13/3/2001 while the conclusion of the relevant concentration agreement was made on 19.1.2001 according to the documents given to the Service, that is there was a delay of about two (2) months in violation of section 13(1)(a), which provides that concentration acts of major importance should

be notified in writing to the Service within one week at the latest of the date of conclusion of the relevant agreement.

The Commission after establishing the above violation and acting in accordance with section 52(2) of L. 22(1)/99 summoned the company L.K. Globalsoft Com Ltd before it to hear its views regarding the above violation.

The representative of the company L.K. Globalsoft Com Ltd after admitting the delay and the correctness of the dates told the Commission that the delay was not deliberate but after the conclusion of the agreement they had to consult their lawyers on various legal issues which had arisen and this was the reason for the delay. The representative of the Company L.K. Globalsoft Com Ltd also told the Commission that the legislation in question was a new legislation which has not yet been fully consolidated and that they had already submitted a notice of concentration again and this was done within the deadline specified by the Law, apologized for the delay and asked for the leniency of the Commission.

The Commission, after the admission of the representative of the Company L.K. Globalsoft Com Ltd, that section 13(1)(a) was violated by them, and after hearing the explanation given by the representative of the company L.K. Globalsoft Com Ltd decided to treat the said company with leniency despite the fact that the Law provides for severe penalties regarding the said violation. The Commission exercising the power vested in it by section 52(I)(a) of L. 22(I)/99, unanimously decided to impose on the company L.K. Globalsoft Com Ltd a fine of ten trousand CY10,000 pounds for the above violation.

The Commission issued Decision no. 6/2001.

5.2.4. Concentration of the companies CHR. & K. MITSIDES LTD and ALEVROPIIA LARNACOS "ZENON" LTD

The companies CHR. And K. MITSIDES LTD and ALEVROPIIA LARNACOS "ZENON" LTD, notified to the Service of the Commission for the Protection of Competition an agreement of the company CHR. & K. MITSIDES LTD to purchase the shares the company ALEVROPIIA LARNACOS "ZENON" LTD.

After the completion of the particulars of Annex III of L. 22(I)/99 the Service prepared a report that was put before the Commission. The Commission after examining the contents of the report that was Service, unanimously established that the said concentration fell within the scope of implementation of L. 22(I)/99, but created serious doubts about its compatibility within the competitive market and gave instructions to the Service to carry out a full investigation in accordance with the provisions of section 18(c).

The Commission, after examining the supplementary report prepared by the Service, unanimously deemed advisable, before taking a final decision in accordance with section 26, to summon before it the interested parties in order to hear their views on the basis of the provisions of section 27.

At a meeting of the Commission on 22/8/2001 an opportunity was given to the company Chr. & K. Mitsides Ltd, to express its views and to put forward its argument regarding the compatibility of the notified concentration.

On 29/6/2001 the representatives of the company ALEVROPIIA LARNACOS "ZENON" LTD were summoned and appeared before the Commission and they were

also given the opportunity to put forward arguments and to express their views regarding the compatibility of the said concentration.

The Commission at a meeting after examining all the evidence and information put before it, both from the report of the Service and from the meetings it had with the parties involved, decided by a majority of 4 in favour and 1 against as follows:

- To declare the notified concentration compatible with the requirements of the competitive market under the following conditions:

(a) The flour production of the concentrated companies should in no case drop below the present level of flour which is made available in the local market.

(b) The concentrated companies are obliged to increase their production in order to meet the requirements of the market in cases of increased demand or reduced production by the other competitors, by as many as 15.000 tons annually.

(c) The concentrated companies are obliged not to increase the prices of flour for the next three years provided the increase in the price of wheat and electricity will not exceed an average of 5%, in other words the increase of the cost or the price of these two commodities will range on an average up to 5%, a possible increase in the price of flour should not exceed the difference by a percentage of more than 5%.

(d) The merged companies are obliged not to increase the prices of flour for the next three years provided the increase in the price of wheat and electricity will not exceed 5% on an average, in other words the increase in the cost or the price of these two commodities will range up to 5% on an average. In cases the increase in the cost of the above commodities exceeds 5%, a possible increase in the price of flour should not exceed the difference by a percentage of more than 5%.

(e) In case of decrease of the price of electricity and wheat by more than 5% then the concentrated companies are obliged to reduce the price of flour by a percentage equivalent to the difference of decrease by more than 5%.

(f) The merged companies are obliged at any moment to keep stocks of flour in their mils, at least 350 tons.

- The Commission and its Service will continuously monitor implementation of, and compliance with, the above conditions. In case any violation of a condition or conditions following this decision which declares the said concentration as compatible is established, the provisions of section 41(b) of L. 22(I)/99 will be implemented.

The above conditions may be re-examined by the Commission following a request on the part of the company Chr. & K. Mitsides Ltd, which is taking over control of the company when the specific market operates under full liberalization conditions.

The Commission reached the above decision, taking into consideration the provisions of section 12 of Law 22(I)/99.

The Commission issued Decision no. 7/2001.

5.2.5. Concentration of the companies Highgate Leisure Holdings Ltd and ASP Royal Holdings Ltd

The Commission after examining the evaluation report put before it by the Service unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.2.6. Concentration of the companies LOUIS Catering Ltd and COMPASS GROUP INTERNATIONAL

The Commission after examining the evaluation report put before it by the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.2.7. Concentration of the companies CYFIELD DEVELOPMENTS LTD and NEMESIS ERGOLIPTIKI LTD

The Commission after examining the evaluation report put before it by the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.2.8. Concentration of the companies ATLANTICA LEISURE GROUP LTD and REUSSAG A.G. (Germany)

The Commission after examining the evaluation report put before it by the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.2.9. Other concentrations of enterprises

The following four (4) concentrations of enterprises were notified to the Service of the Commission. However, after they were evaluated by the Service, it was established that they did not fall within the provisions of the Control of Concentrations of Enterprises Law 22(1)/1999 and were not presented before the Commission.

1. Concentration of the companies Vassiliko Building Materials Ltd and Pyrga Quarries Ltd.

2. Concentration of the companies NESTLE HOLDINGS Inc. (SWITZERLAND) and RASTON PURINA (U.S.A.).

3. Concentration of the companies HEWLETT-PACKARD Co and COMPAQ COMPUTER CORPORATION.

4. Concentration of the companies Pancyprian Bakers Company Ltd and Andreas S. Kiliaris Ltd.

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

Within the framework of the harmonization of our legislation with that of the European Union and particularly in view of Cyprus´ application for full accession for the European Union the Commission for the Protection of Competition on the Basis of

section 5(2) of Law 207/89 decided to issue group exemption, from the provisions of section 4 of the same law, of special agreements between enterprises.

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

6.1. Research and Development Agreements

The Commission for the Protection of Competition taking into account that the corresponding European Council Regulation of the Exemptions by Categories (Research and Development Agreements) Order of 1997 has been abolished through the issue of a New European Council Regulation no. 2659/2000 as well as the reasons for the issue of the New Regulation by the European Commission and within the framework of the policy for harmonization of our legislation with that of the European Union, decided that the issue of a relevant order entitled "The Exemptions by Categories (Research and Development Agreements) Order of 2002" by the Council of Ministers is justified. This Order, which substitutes the "Exemptions by Categories (Research and Development Agreements) Order of 1997, specifies a Category of Agreements and Harmonized Practices which can be regarded as fulfilling, as a rule, the prerequisites of section 5(1) of Law 207/89 in order to be exempted by categories from the provisions of section 4(1) of the same Law.

6.2. Specialisation Agreements

The Commission for the Protection of Competition, taking into consideration that the corresponding European Council Regulation of the Exemptions by Categories (Specialisation Agreements) Order of 1997 has been abolished through the issue of a New European Council Regulation with no. 2658/2000, as well as the reasons for the issue of the new regulation by the European Commission, and within the framework of the policy for harmonization of our legislation with that of the European Union, decided that the issue of a relevant Order entitled "The Exemptions by Categories (Specialisation Agreements) Order of 2002" by th Council of Ministers is justified. This Order, which substitutes the Exemptions by Categories (Specialisation Agreements) Order of 1997, will define a Category of Agreements and Harmonized Practices which may be regarded as fulfilling, as a rule, the prerequisites of section 5(1) of Law 207/89 in order to be exempted by categories from the provisions of section 4(1) of the same Law.

6.3. Agreements, Decisions and Harmonized Practices among Shipping Carriers Regular Lines – Joint Enterprises

The Commission for the Protection of Competition, taking into consideration that the corresponding European Council Regulation of the exemptions by Categories, Agreements, Decisions and Harmonized Practices among Shipping Carrriers Regular Lines – Joint Enterprises Order of 1997 has been amended by the issue of the New European Council Regulation with No. 823/2000 as well as the reasons for its amendment and within the framework of the policy for the harmonization of our legislation with that of the European Union, decided that the issue of a relevant Order entitled "The Exemption by Categories (Agreements, Decisions and Harmonized Practices among Shipping Carriers Regular Lines – Joint Enterprises) (Amendment) Order of 2002 by the Council of Ministers if justified, under sub section 2 of section 5 of Law 207/89. According to this Order, which amends the Exemptions by

Categories (Agreements, Decisions and Harmonized Practices among Shipping Carriers Regular Lines – Joint Enterprises) Order of 1997 a Category of Agreements and Harmonized Practices will be defined which may be regarded as fulfilling, as a rule, the prerequisites of section 5(1) of Law 207/89 in order to be exempted by categories from the provisions of section 4(1) of the same Law.

6.4. Agreements between Enterprises with Electronic Booking Systems in Air Transport

The Commission for the Protection of Competition taking into consideration that the corresponding European Council Regulation (EC) No. 365/2 of the Exemptions by Category (Agreements between Enterprises with Electronic Booking Systems in Air Transport), Order of 1997 has been abolished by the European Union without being substituted and according to the policy for the harmonization of our legislation with that of European Union, decided that the approval by the Council of Ministers of an Order abolishing the said order of 1997 is justified.

COMMISSION FOR THE PROTECTION OF COMPETITION