



COMMISSION FOR THE PROTECTION OF COMPETITION (C.P.C)

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COMMISSION FOR THE PROTECTION OF COMPETITION DECISION
Relating to a proceeding under sections 4 and/or 6 of Law 207/89
(Case No.: 11.17.01.36)

Decision dated: 22.6.2004

Before: Christodoulos Tselepos- Chairman
Costis Efstathiou- Member
Leontios Perikleous-Member

Counsels for the Respondents:

Mr. Poliviou representing Bank of Cyprus Ltd and Alfa Bank Ltd

Mr. Papaefstathiou representing the Cyprus Popular Bank Ltd and Commercial Bank of Greece (Cyprus) Ltd

Mr Georgiades representing Hellenic Bank Ltd

With regard to the Protection of Competition Law of 1989, as amended and

With regard to the Ex-Officio investigation of the Commission for the Protection of Competition for infringement of section 4 of the Protection of Competition Law of 1989, by the Commercial Banks in Cyprus.

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he Commission for the Protection of Competition, at its meeting of 22 June 2004, issued the following decision

1. INTRODUCTION

On 19.02.2002 the Commission for the Protection of Competition (CPC) decided to proceed with an Ex-Officio investigation of the Commercial Banks in Cyprus for the existence of a possible cartel in Cyprus, contrary to section 4 of the Protection of Competition of Law 207/89, as amended ("the Law").

This decision has been issued after the CPC appraised all the findings of the ex-officio investigation, that inter alia, included several documents, such as minutes of committee meetings and internal correspondence of the banks that were obtained during the inspections at the banks' premises by the Service of the CPC, as well as information collected from the responses of the banks to the questionnaires that were sent out by the Service of the Commission to them.

2. THE CYPRUS BANKING MARKET

At the time of the investigation, 8 banking institutions were operating in Cyprus, as well as several cooperative societies. In addition, there were also a number of offshore banking units that offered limited banking services in the Cypriot market.

It must also be noted that, at the time of the investigation, the banking sector had just emerged from a long period of stable interest-rates, during which, the maximum interest rate that could be applied was prescribed by Law. (This law was abolished on the 1/1/2001). The banks' competitive strategies were restricted by this law, which also led to the application of uniform rates by all the banks.

The sector is dominated by three Cypriot banks that hold between them a market share in excess of [...%]. Another characteristic of this sector is the barriers to entry for new competitors which exist in the market. The penetration of the market by new commercial banks is rendered very difficult, due to the traditional predominance of the three major Cypriot banks. The very small market shares that all non-Cypriot banks possess, as well as, the newly established ones such as Universal Bank Ltd, are evidence of the barriers to entry which exist in this market.

A likely aggressive pricing policy on the part of a new bank is restricted by the inelastic costs that prevail in the banking sector, mainly because of the salaries scales, which are the result of collective bargaining between the banks and the Trade Union of the Banking Employees in Cyprus and the wide network of branches maintained by most banks all over Cyprus. The motivation of commercial banks for aggressive pricing policies is also contained by the fact that the tendency of customers to switch from one bank to another is limited due to (a) the complexity and the costs that are involved in the closing of the various accounts and settling of loans with a bank and (b) the limited benefits that one would gain from such a move due to the observed uniformity of applicable rates which exist among the various banks.

At the time of the investigation, the banking sector was also adversely affected by events at the Cyprus Stock Exchange. A large drop in both the index and the investment activity, left the banks with a number of problems, relating especially to the repayment of loans and the adequacy of the collateral which was offered as security for loans and facilities.

3. UNDERTAKINGS AND PRODUCTS CONCERNED

The initial investigation concerned all the commercial banking institutions, including the Central Co-op Bank. However at a later stage, the CPC, by an intermediate decision held that the proceedings would only concern the following banks:

- (a) Bank Cyprus Ltd
- (b) Cyprus Popular Bank Ltd (Laiki Bank Ltd)
- (c) Hellenic Bank Ltd

The Bank of Cyprus Ltd has a dynamic presence in Cyprus and its banking activities extend to Greece, the United Kingdom, Australia and the Channel Islands. The Bank of Cyprus Ltd, and its affiliated companies offer a wide spectrum of banking products and services. The Group of Bank of Cyprus operates through 272 points of service, 181 of which are in Cyprus, 75 in

Greece, 7 in the United Kingdom, 8 in Australia and in the Channel Islands. Moreover, the Bank of Cyprus has Representative Offices in the USA, Canada, South Africa, Russia and Romania. The Group of Bank of Cyprus employs, 5.518 persons internationally.

The Cyprus Popular Bank Ltd is a big financial organisation in Cyprus; its banking activities extent to Greece, the United Kingdom and Australia. The Cyprus Popular Bank Ltd, through its subsidiary companies, offers a wide spectrum of financial products and services. The Group employed 3425 employees in 2002.

The Hellenic Bank Ltd is a relatively large financial institution in Cyprus, with activities in Greece and Representative Offices in the United Kingdom, Russia and South Africa. The Group of Hellenic Bank operated 87 branches in Cyprus in 2002.

4. THE INVESTIGATION

At its meeting on the 19/2/2002, the CPC decided to proceed with an ex-officio investigation into the uniformity of the banking charges of the commercial banks in Cyprus.

Acting upon the instructions of the CPC, the Service of the CPC collected information through a series of requests for information sent to all the banking institutions over the period extending from March 2002 to April 2003. It also conducted an unannounced inspection at the premises of the Association of the Commercial Banks of Cyprus, in May 2002, during which no evidence was found of any collusive behaviour of the banks in Cyprus. Similar inspections were also carried out in March 2003 at the premises of the three larger banking institutions, namely the Bank of Cyprus Ltd, Cyprus Popular Bank Ltd and Hellenic Bank Ltd, during which a number of documents were collected which formed the backbone of the findings of the CPC.

The most important documents that were examined during the unannounced inspections at the bank's premises were the minutes of committee meetings, circulars issued by the Management and other internal correspondence.

4.1 Inspection at the Premises of Bank of Cyprus Ltd (20/03/03)

The most important documents collected by the Service were the following:

(1) **"Minutes of the Chairman's Committee 5/11/01**

Decision:

1. Strategic Direction

(b) the possibility of promoting hire-purchase loans as an alternative to banking loans

.....The final decision on the strategic direction that will be followed by the Bank of Cyprus Finance Organisation should be taken within the next 2-3 weeks and the Governor should be kept informed and will also give the final approval. Following that there will be contacts with the other finance organisations so as to ensure that there will not follow a price war. The contacts will not concern the corporate sector."

(2) "Memo from Vassos Shiarli, D.G. of Sector of Private clients and Small and Medium-sized Enterprises to N. Sparsi, Director of Retail Administration, dated 24.10.01

Subject: Interest Rates of Credit Cards

.... In view of the above and the likely announcement of further reduction of the base rate, I suggest that, in agreement with the other Banks (with regard to (a) (informing customers) and (b) (the period that will be agreed on will be at least 6 months but they (the Central Bank) would prefer a period of 12 months) we decide shortly the policy that will be followed on the subject and also how we will respond in case a new reduction of interest rates is announced for example in 1 week, or in 1 month or in 2 months or within the first quarter 2002.

I request that the subject be discussed extensively with all the interested parties and a proposal is submitted within this week."

(3) Circular of Bank Cyprus to Regional Directors from the Director of Retail Banking N. Sparsis, dated 15.02.02:

"Following an agreement between the Treasuries of commercial banks it is expected that the maximum interest rates for notice deposit accounts (depending on their duration) will be structured in the following way:

Duration 3 months: [...] %

Duration 6 months: [...] %

Duration 12 months: [...] %"

4.2 Search at the premises of the Cyprus Popular Bank Ltd (20/03/03)

The most important documents collected by the Service were the following:

(1) " Minutes of the Pricing Committee dated 14.01.02

Subject: Letter of D. L.F (Director Laiki Finance) dated 10.01.02 with regards to the new interest rates for Hire-Purchase/ Leasing

The Committee was presented with the new reduced rates for Hire-Purchase/ Leasing. Basically, these rates are the result of an agreement between our Bank, Hellenic Bank and the Bank Cyprus.'

.....The member of the committee Takis Fidias undertook the task of communicating with Bank of Cyprus in order to convince them (so that the reduction in the rates is smaller). The effort was made, but with no effect.

The members of the Committee had no other choice but to approve the proposed reductions."

(2) "Letter of Director Laiki Finance dated 30/01/02 to the Chairman of Pricing Committee

Subject: New Rates for Hire-Purchase / Leasing – minutes of 14/01/02

.....It would have been better if the reduction of the interest rates for new cars was bigger e.g. at [...] % and the reduction for used cars smaller e.g. at [...]%. This did not take place mainly because the Director of BCFO (Bank of Cyprus Finance Organisation) believes that the difference of [...] % should be maintained

..... Generally the position of Bank of Cyprus was to bring about big reductions. In the end following pressure from our side, the reductions that will be effected are much smaller and much closer to the position of L.F (Laiki Finance).”

4.3 Search at the premises of Hellenic Bank Ltd (26/03/03)

The most important documents collected by the Service were the following:

(1) “Internal Memo dated 10/06/02 from Mr Gl. Mavros, Assistant D.G. to Mr P. Galanos, Chairman and First Executive Director, via Mr. G. Epaminondou, First Director General

Subject: Interest rates for deposits in Cyprus Pounds

“ Due to the prevailing situation on the subject of interest-rates for some time now, we have information that the Bank of Cyprus will announce in the press on Thursday, 13 June 2002 a change in the interest rates of both deposit and notice accounts as well as bills. Even though the announcement will be of a general nature and will not mention a drop in the interest rates for obvious reasons - as per the attached table of interest rates - they will be inviting customers to communicate with their branches for further information. A similar announcement will be published in the press by the Cyprus Popular Bank on 17 June 2002 and we propose that Hellenic Bank proceeds with the publication of a similar announcement on 18 June 2002.

We would like to report that, as far as the Banks that we have spoken with are concerned, it is perceived that they consent to the above proposed reduction and all, with the exception of Alpha Bank, will follow with similar announcements in the press.

Our position as Hellenic Bank is to exercise pressure (and we are acting towards this direction) on Alpha Bank for issuing a statement similar to the other banks.

Also I would like to report that the Co-Ops agree in principle with a certain reduction in interest rates but it is doubtful that they will proceed with a similar announcement in the press.

.....

You must realise that this subject should be handled with extreme caution and care due to the fact that the Commission for the Protection of Competition has shown a lot of sensitivity on the subject of banking charges by the Commercial Banks and under no circumstances should this proposal be perceived as a pre-agreement with the other Banks.’

(2) Another important document that was found in the possession of Hellenic Bank Ltd was a table of interest rates for deposit and notice accounts of Bank of Cyprus Ltd. The document contained all the maximum interest rates that were going to be offered by the Bank of Cyprus Ltd for deposit and notice accounts. The document in question was sent (by fax) on 23 May 2002 from the department of Retail Banking of Bank of Cyprus and was then forwarded by the office of the Regional Director of Hellenic Bank (22751258) to another destination. At the bottom of the document, under the interest rates tables, there was the following handwritten note:

“31/05/2002 – BOC (Bank of Cyprus) will announce on 13/6 via daily newspapers that i.rates (interest rates) are amended as above and customers are called upon to communicate with branches. Same will be followed by CPB (Cyprus Popular Bank).”

4.4 Announcements in the Press

The Service of the CPC, reviewed the daily press of the dates mentioned in the document retrieved at the premises of Hellenic Bank Ltd so as to ascertain whether the said announcements were made. The announcements were made in the daily press as agreed and the wording of the said announcements was the same as that mentioned in the documents found at Hellenic Bank Ltd. The announcement of Bank of Cyprus Ltd was made on 13 June 2002 and on 18 June 2002, Cyprus Popular Bank Ltd and Hellenic Bank Ltd made theirs respectively.

4.5 Further investigation

On 20 March 2003 and on 22 April 2003, the Service sent additional questionnaires to the banks requesting detailed information on the interest rates for loans, deposit accounts, Hire-Purchase/Leasing and Credit Cards. The banks were requested to provide the above information on a monthly basis as from 1/01/2001 until the date of the questionnaire, highlighting any changes that were effected.

4.6 Findings of the investigation conducted by the Service

All the information provided by the commercial banks was processed and evaluated along with the evidence collected from the inspections at the premises of the banks. This led to the conclusion that, not only were the interest rates offered on deposits accounts, loan accounts, Hire-Purchase/Leasing and credit cards very similar and in some cases exactly the same, but the changes in the above rates occurred at the same time and were of the same magnitude. All these changes complied fully with the contents of the documents found at the bank's premises in particular regarding the three major banks.

5. THE PROCEEDINGS

At its meeting on 23 July 2003, the CPC examined the findings of the investigation conducted by the Service, as well as all the materials, documents and information collected by the Service during the inspections carried out at the bank's premises, the replies to all the questionnaires, the information provided by the undertakings concerned, and all the other documents and

information that were included in the administrative file of the case. Having reviewed all the above, the CPC held that the commercial banks at first sight, infringed 4 (1) (a) and (b) of the Law.

The statements of objections were drawn up and served to all the commercial banks. The CPC gave the banks the opportunity to raise any preliminary objections they had, which resulted in numerous objections being raised. At its meeting of 21 October 2003, the CPC, having given due consideration to the objections submitted by the lawyers of the Commercial Banks, issued an Intermediate Decision dismissing the objections raised against the following banks: Alpha Bank Ltd, National Bank of Greece (Cyprus) Ltd, Arab Bank Plc, Commercial Bank of Greece (Cyprus) Ltd, Universal Bank Ltd and the Central co-operative Bank Ltd. The Interim Decision also called for an amended statement of objections to be drafted and served to Bank of Cyprus Ltd, Cyprus Popular Bank Ltd and Hellenic Bank Ltd.

6. AMENDED STATEMENT OF OBJECTIONS

The amended statement of objections (21/10/2003) involved, inter alia, three infringements of article 4 (1) (a) and (b) of the Law.

In particular, the infringements of article 4 (1) (a) and (b) concerned the followings:

1. An agreement or concerted practice between the Bank of Cyprus Ltd, Cyprus Popular Bank Ltd and Hellenic Bank Ltd on the fixing and/or the uniform amendment of interest-rates for Hire-Purchase/ Leasing, which had as its object or effect, the, elimination, restriction or distortion of competition, during the period between 4 November 2001 until 31 December 2002.
2. An agreement or concerted practice between the Bank of Cyprus Ltd, Cyprus Popular Bank Ltd and Hellenic Bank Ltd on the fixing and/or the uniform amendment of interest rates of Credit Cards, that had as its object or effect, the elimination, restriction or distortion of competition, during the period between 1 October 2001 until 31 December 2002.
3. An agreement or concerted practice between the Bank of Cyprus Ltd, Cyprus Popular Bank Ltd and Hellenic Bank Ltd on the simultaneous amendment and/or fixing of interest rates for deposit and notice accounts, that had as its object and/or effect, the, elimination, restriction or distortion of competition, during the period between 15 February 2002 until 31 December 2002.

7. THE REPLY OF THE UNDERTAKINGS TO THE OBJECTIONS RAISED AGAINST THEM

At the meeting of the CPC on 22 June 2004, the Bank of Cyprus Ltd, the Cyprus Popular Bank Ltd and the Hellenic Bank Ltd were called upon to make their representations with regards to the amended statement of objections.

The lawyers of the banks did not contest or raise any objections to the infringements and the facts set out in the above statement of objections. However, they argued that, although there was some collusive behaviour and consultations between the banks, the purpose of those were not to fix prices but to avoid price wars and ultimately to ensure a smooth transition to an environment where interest rates were to be set freely and independently by each bank, following the abolition of the law fixing the maximum interest rate. They further claimed that, although the intention of the banks during the various contacts in question and/or agreements

was not the distortion of competition, nevertheless there existed the possibility to err and thus turn these consultations into collusive type of contacts. It was also stated by their lawyers, that the behaviour of the banks was the result of negligence on their part and not of conscious intention for collusive behaviour so as to restrict competition.

The lawyers of the banks claimed further, that the consultations and/or agreements that took place were of a short duration and took place during the transitional period into the new liberalised environment. They also claimed, that any agreements that took place in the past had been terminated.

Hellenic Bank Ltd, claimed that although Hellenic Bank Ltd took part in the agreements in question, nevertheless it did not initiate any agreements and also pointed out that, among the three banks involved, it is the smallest in size, and therefore, so was the effect of any restriction of competition, that may have resulted from the infringements in question.

8. CONCLUSIONS

The CPC, unanimously decided that the behaviour and acts of the banks in question during the material period, infringed section 4 (1) (a) and (b) of the Law.

The CPC also held that the said infringements called for the imposition of a fine. In determining the level of fine, the CPC took into account the following:

(1) The CPC may impose a fine, according to the gravity and duration of the infringement, of an amount not exceeding 10% of the aggregate annual revenue of the undertaking in the year in which the infringement took place or in the year which immediately preceded the infringement.

(2) In determining the fine the CPC should take into consideration, in addition to all the material contained in the case file, the general circumstances surrounding the infringement, the market conditions prevailing at the time, the duration of the infringement as well as the involvement of each of the undertakings concerned and its capability to affect competition.

(3) The undertakings involved, through agreements and/or concerted practices, coordinated their actions and thus avoided or restricted considerably any uncertainty as to each other's competitive stance in the market.

(4) According to the evidence before the Commission, it is evident that most of what had been agreed between the banks was put into effect.

(5) As mentioned by the lawyers, there were consultations and contacts between the banks which fell within the provision of section 4 (1). The documents collected from the premises of the three banks, which were neither contested nor disputed by their lawyers, provided evidence that the said contacts had as their object the fixing of interest rates charged by the three banks.

(6) As the "price" of a product or service, constitutes the most critical means of promoting of competition, each form of regulation and/or agreement regarding prices has as its object the distortion of competition. For this reason, the consultations and contacts between the three banks had as their object or potential result, the restriction of competition.

(7) It is the opinion of the CPC, that the agreements and/or the consultations had effects in the market, however it is not possible, nor essential to determine precisely the repercussions in question, that is to say, to determine the interest rates in question that would have been offered by the banks involved in the case had they been determined by free market forces.

(8) It is of utmost and decisive importance, the fact that the banks concerned did not expressly object to the statement of objections presented to them regarding this case.

(9) The situation that prevailed in the banking sector at the material period is extremely important for the determination of the level of the fine that will be imposed for the infringements in question. The detrimental financial situation to which the banking sector found itself after the year 2000, because of the vertical drop of the Cyprus Stock Exchange Index and the considerable reduction in investment activity which resulted, caused serious problems in the banking sector. In addition, the serious problems faced in the settlement of loans that had been given during the stock exchange boom period, and more specifically those given for investment purposes and those which had as collateral listed securities, all led to the banks suffering considerable losses.

(10) On 1/1/2001, the law providing for the fixing of the maximum interest rates in the Republic of Cyprus was abolished. The banks had to shift from an environment where their enterprising policy was limited by the provisions of the above-mentioned legislation into a new liberalised system of free determination of interest rates, which also involved the adaptation of their enterprising policy in the frame of free competition. This was a big innovation for the banks that had got used to functioning within a controlled framework for a very long time.

(11) The annual revenue of the banks concerned during the year 2002 is as follows:

	Market share (%)	TUROVER		
		Cyprus 2002	Abroad 2002	Total 2002
		£ '000	£ '000	£ '000
BANK OF CYPRUS LTD	[...]	396.754	209.533	606.287
CYPRUS POPULAR BANK LTD	[...]	251.161	86.027	337.188
HELLENIC BANK LTD	[...]	134.371	24.792	159.163
TOTAL		782.286	320.352	1.102.638

* Source: Annual Reports 2002

The CPC, after taking into consideration all the above mentioned as well as all the arguments put forward by the lawyers of the banks concerned, decided as follows:

1. The immediate termination of all infringements of section 4 (1) of the Law as stated in the amended statement of objections dated 21/10/2003, by the Bank Cyprus Ltd, the Cyprus Popular Bank Ltd and Hellenic Bank Ltd and the avoidance of any such repetition in the future,
2. The imposition of a fine to each bank concerned for the infringements of section 4 (1) of the Law, as stated in the amended statement of objections dated 21/10/2003, as follows:

Bank of Cyprus Ltd	CYP 2.475.000
Cyprus Popular Bank Ltd	CYP 1.695.000
Hellenic Bank Ltd	CYP 830.000

Christodoulos Tselepos
Chairman of the Commission for the
Protection of Competition