



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 section 6 of Law 207/89

(Case No.: 11.17.59/2003)

Decision dated: 23/12/2004

Before: Christodoulos Tselepos- Chairman
Costis Efstathiou- Member
Andreas Demetriou-Member
Elias Theodorou-Member

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

Having regard the complaint filed by the Association of Authorized Agents of Race Bets against the Nicosia Race Club,

The Commission for the Protection of Competition (hereinafter «C.P.C») in its meeting 23/12/2004 unanimously decided as follows:

1. The Association of Authorized Agents of Race Bets (hereinafter «Association») submitted a complaint against the Nicosia Race Club (hereinafter «Club») for abusing its dominant position by imposing unfair and dissimilar terms to the agreements of their appointment in violation of section 6 of Law 207/89.
2. The C.P.C. in its meeting dated 12/12/2004, instructed the Service of the C.P.C., on the basis of section 22 of the Law, to conduct an investigation on the basis of the complaint filed by the Association of Authorized Agents of Race Bets.
3. The C.P.C. in its meeting dated 23/12/2004, having taken into consideration the investigative report prepared by the Service, all the information and documents provided by the parties, and all the other documents and information included in the case file, unanimously decided that:
 - (a) The Association has legal interest to submit a complaint in order to defend the rights of its agents-members.
 - (b) The Club is an undertaking within the meaning of the Law. It holds a dominant position in the relevant market and the fact that the Club imposes different minimum limits of the held sales per race meeting to the agents, infringes section 6 (2)(c) of Law 207/89 in as far as, the terms that the Club applies to the agents' contracts are dissimilar without taking into consideration objective criteria that justify the differentiation.

(c) Based on these data, the C.P.C. observed the existence of dissimilar terms on equivalent transactions that have as a consequence that certain "undertakings" are placed at a competitive disadvantage compared to other competitors. Furthermore, it has been evaluated under the case law of ECJ, the equivalence or not of the agents' transactions and thereupon, the C.P.C. concluded that all the agents provide precisely the same services, meaning, the sale of Race bets. However, the Club should take into account the conditions that exist in the particular geographic region where the authorisation is given to the agent. Meaning that the Club must determine objective criteria concerning the minimum limits of the held sales per race meeting.

(d) Due to its dominant position, the Club is in a relation of economic dependence with its agents. Based on the above the CPC concluded that there is an infringement of section 6 (3) of Law 207/89 as the Club abuses the relation of dependence with its agents to the degree that imposes arbitrary-abusive terms in their contract.

(e) Moreover, the Club has the power to suspend, for as long as it considers it correct, the authorisation of the agents with the excuse that the agent's behavior offends the interests of the Club.

(f) Consequently, these terms on the contracts should be abolished.

(g) Further, the Club applies discriminatory treatment (section 6 (3) (2)) between its agents by imposing different minimum limit of transactions per race meeting to them despite the fact that the conditions for providing the services are not justifying this behaviour.

(h) In regard to the complaint for the Value Added Tax (VAT), the Commission concluded that the C.P.C. does not have any competence to rule on the issue or even to interpret the terms of the contracts unless these terms contravene to the rules of fair competition and the relevant legislation.

Based on the above, the C.P.C. concluded that some of the terms included in the contracts between the Club and its agents opposed to the provisions of the Law 207/89; consequently, the Club has failed to convince the Commission that the relevant contracts are absolutely compatible with the provision the legislation.

Therefore, the C.P.C. considers that, the above findings should be considered as recommendations/orders for the compliance of the defendant.

Christodoulos Tselepos
Chairman of the Commission
for the Protection of Competition