



COMMISSION FOR THE PROTECTION  
OF COMPETITION



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**ANNUAL REPORT**  
2008

# COMMISSION FOR THE PROTECTION OF COMPETITION

ANNUAL REPORT 2008

The present Annual Report is prepared and submitted by the Commission for the Protection of Competition to the Minister of Commerce, Industry and Tourism and the House of Representatives, in accordance with article 48 of the Protection of Competition Law of 2008.

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**COMMISSION FOR THE PROTECTION  
OF COMPETITION**

46 Themistokle Dervi street,  
Medcon Tower 4th floor,  
1066 Nicosia,  
Cyprus

Tel: +357 22 875910  
Fax: +357 22 304944

e-mail: [chairman@competition.gov.cy](mailto:chairman@competition.gov.cy)  
[www.competition.gov.cy](http://www.competition.gov.cy)

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## **Costakis Christoforou**

Foreword by the Chairman of the Commission for the Protection of Competition

# “All that is required is hard and responsible work”

The modernization and revision of the legislation in force for the protection of competition was the main event of the year 2008. The new legislation has set the grounds for the effective operation of the Commission for the Protection of Competition.

The incorporation of the competition rules in the national legislation as provided for in articles 81 and 82 of the Treaty of the European Community (EC), has set a new ground for competition issues.

The protection and the promotion of a healthy level of competition, especially under the current challenging economic conditions, is more than imperative, as it is necessary to cultivate the appropriate environment for the effective operation of enterprises, while at the same time respecting the rights and the welfare of consumers.

During the past year, the Commission was mainly involved in investigating all pending cases dating from 2001 onwards. In doing so, the Commission was able to express its stance on pending cases, as obligated by its public duty, but it was also able to re-evaluate the gaps and weaknesses in its internal operation, as well as its whole methodology of work.

The problems that have been identified determined the course of action of the Commission. The basis for the restructuring of the Service was set, which emphasized the need for the recruitment and training of new staff and the creation of a database of information for several different sectors of market activity. In particular, several issues requiring legislative regulation were identified; a program for cultivating the necessary competition culture was placed in effect. Finally, an action plan was drafted based on the Commission's priorities, which to a great extent is commanded by the current adverse economic conditions.

The Commission's main aim is to promote the effective operation of the market that would best serve the interests of all players: the promotion of a healthy business environment and consumer welfare, as both promote welfare and progress of the country.

With patience and persistence all difficulties arising from the past will be overturned and the good results will follow suit. By operating within the framework of the relevant Law and within the Rule of Law in general, there can be no magical or easy solutions to competition issues. All that is required is hard and responsible work. The convincing proof of this, are the Commission's proceedings in the pages that follow.

**Costakis Christoforou**

Chairman of the Commission for the Protection of Competition



# 1. The Commission for the Protection of Competition of 2008

## 1.1 The Commission for the Protection of Competition

The Commission for the Protection of Competition (C.P.C.) is the independent Authority vested with the exclusive competence of securing a healthy competitive environment.

The Protection of Competition Law of 2008, in conjunction with the Control of Concentrations between Enterprises Laws of 1999 and 2000, create the framework of regulations and principles aimed at securing effective and healthy competition within the Cypriot market. The competition policy secures the effective and productive operation of the market, thus contributing to the creation of a favorable climate for innovation and technological advancement for the benefit of enterprises and consumers, who can enjoy better quality products and services at competitive prices.

As effective competition is vital in an open economy, the C.P.C. is provided with broadened powers and competences, which ensure that the regulations and principles of competition are adhered to in a free economy.

## The main competences of the Commission are:

- To control restrictive agreements and concerted practices by enterprises having as their object or effect the elimination, restriction or distortion of competition
- To control the abuse of dominant position possessed by one or more enterprises
- The control of concentrations between enterprises aiming at preventing distortions in effective competition and that the principles of competitive markets are respected.

With the enactment of the Protection of Competition Law of 2008 (Law No. 13(I)/2008), the powers of the C.P.C. were broadened to incorporate the application of competition rules as provided for in articles 81 and 82 of the Treaty of the European Community and it was designated as the competent National Competition Authority in the Republic of Cyprus.

### 1.2 Main events during 2008

The year under review was marked by important facts which gave a new perspective on competition issues. Specifically:

- On 18th April 2008, the new Law for the Protection of Competition of 2008 was enacted which replaced the previous Law. The aim of the Protection of Competition Law of 2008 was to enact contemporary rules for the protection of competition as well as to encompass the application of competition rules within the Republic of Cyprus as provided for in articles 81 and 82 of the Treaty of the European Community.
- On the 14th May 2008, by virtue of a decision of the Council of Ministers, the new five-member Commission was appointed, consisting of the Chairman and four members serving on a full-time basis. The Council of Ministers also appointed four substitute members for each of the members of the Commission with the exception of the Chairman.



- On the 24th-27th July 2008, the European Commissioner for Competition, Ms. Neelie Kroes visited Cyprus, following an invitation from the Cyprus Chamber of Commerce and Industry. During her visit, Ms. Kroes met with the Chairman, the Members of the Commission and staff members of the Service and had the chance to discuss and exchange views on current competition issues.
- As a result of a decision by the Supreme Court on Administrative Recourse no. 3902, which declared the participation of one of the Commission's members as unlawful, the workload of the C.P.C. increased significantly, since all pending caseload during the year under review had to be re-examined. By the end of 2008, the C.P.C., managed to investigate all pending cases and to issue relevant decisions.
- A training programme on competition issues was placed in effect through the organisation of conferences and the publication of relevant informative material.
- The Commission decided to issue a monthly statement for Mass Media Communication to keep them informed of the Commission's activities.
- A new structure of the Service of the C.P.C. was created and the necessary actions were taken for its immediate realisation.



- A study of the rules governing the internal operation begun and the drafting of a Leniency Programme for cases where an enterprise provides evidence that aids the Commission to prove an infringement.
- The Register of Complaints and of Decisions of the Commission is diligently maintained and the decisions are regularly publicised.
- The filing system of the Commission was reorganised so that the administrative files provide clearly the manner in which the Commission exercises its competences.

# Composition Organization Training



## 2. Structure of the Commission for the Protection of Competition

### 2.1 The Commission – Members

The enactment of the new Law for the Protection of Competition of 2008 provides that the Commission will consist of the Chairman and four members serving on a full time basis, and on terms defined by virtue of a decision by the Council of Ministers. The Law also provides for the appointment of four substitute members for each member of the Commission. The Chairman and the members of the Commission are of a high standing and probity, possessing specialised knowledge and experience in law, economics, or competition, or accountancy, or trade or industry and capable of contributing to the implementation of the purposes of the Law. The Law prohibits the members of the Commission from having any financial or other interest likely to affect the impartiality of their judgement in the exercise of their competences, powers and the functions of the Commission. The term of office of the Chairman and the members is for a period of five years and may only be renewed once.

The composition of the Commission for the year 2008 was as follows:

#### A. The Chairman

During the period from 1/1/2008 to 15/3/2008, the Chairman of the C.P.C. was Mr. Panayiotis Kallis, while for the period from 2/4/2008 to 31/12/2008 the Chairman was Mr. Costakis Christoforou.

#### B. Members and Substitute Members

By virtue of a decision by the Supreme Court, dated 4/12/2007, on Administrative Recourse no. 3902, two of the Commission members, Mr. Efstathiou and Mr. Pericleous, resigned and by mid December 2007, the Commission ceased from being lawfully structured. By virtue of the decisions by the Council of Ministers dated 19/12/2007 and 3/1/2008, Mr. Doros Lykourgos was appointed in the place of Mr. Costis Efstathiou, and Ms. Agni Efstathiou Nicoletopoulou was appointed in the place of Mr. Leontios Pericleous respectively.

With the enactment of the Law for the Protection of Competition of 2008, the term of office of the Commission expired, and by virtue of a decision by the Council of Ministers dated 14/5/2008, the following members of the Commission were appointed for a five year period:

Mr. Leontios Vryonides (Economics and Public Administration), Ms. Eleni Karaoli (Lawyer), Mr. Demetris Pitsillides (Economist), Ms. Loukia Christodoulou (Lawyer).

The Council of Ministers also appointed the following substitute members: Mr. Andreas Karydes (Economist –Journalist), Mr. Costas Mavrides (University Professor –Economist), Mr. Sotos Hadjittofis (Auditor), and Ms. Eleni Christodoulou-Papageorgiou (Lawyer).

## 2.2 Service of the Commission for the Protection of Competition

The Commission is supported by the Service of the C.P.C., which on the basis of the Commission's instructions, is competent to conduct proper preliminary investigations to determine whether there have been infringements of the Protection of Competition Law and to evaluate concentrations between enterprises under the provisions of the Control of Concentrations between Enterprises Law.

The Service by virtue of a decision by the Commission has the power to collect and examine information that is necessary for the exercise of the Commission's functions, to conduct on-the-spot investigations without advance notice to enterprises, to introduce complaints and submit recommendations to the Commission, to effect the necessary communications and publications, to conduct preliminary evaluations of concentrations of enterprises, to prepare written reports, and to assist the Commission in accomplishing its competences, powers and duties. One of the members of the Service acts as the Secretary of the Commission, attends the Commission's meetings and keeps minutes of meetings.

During 2008, the structure of the Service changed significantly since two of the Officers of the Service were promoted to Officers A' of the Service of the C.P.C., while six temporary Officers of the Service, one Administrative Officer, and a Qualified Accountant were hired for the Service's specialized needs. Furthermore, during the year under review, two other Officers resigned from the Service, as they were appointed in other governmental posts. Overall, the Service of the Commission for the Protection of Competition totalled sixteen Officers in 2008.

The Service is also assisted by the secretarial and auxiliary personnel who totalled ten employees.

Additionally, during 2008 two Economists were commissioned on the basis of a specific contract of services.

Within the course of the year 2009, the vacant posts of the Director of the Commission for the Protection of Competition as approved in the 2009 Budget, five existing vacant posts and another nine Officers' posts also approved in the 2009 budget are expected to be filled. The recruitment of additional Officers and other specialized personnel will reinforce the teams in charge of investigations and facilitate the faster implementation of the Commission's action plan.



### 2.3 Personnel Training

During 2008 two internal educational programs were organised, in respect of which, the Service of the Commission for the Protection of Competition succeeded for the first time to obtain finance from the European Union: 1) the Technical Assistant Program and 2) the Twinning Light Program. The Technical Assistant Program was undertaken by RBB Economics while The Twinning Light Program was undertaken by the Hungarian Competition Authority following the procurement of a public tender.

- Within the framework of the Technical Assistant Program which lasted for ten weeks the Officers of the Service received training on the following topics: (i) economy of markets and competition policy, (ii) market research analysis, (iii) control of concentrations between enterprises and (iv) the telecommunications and energy sectors.
- Within the framework of the Twinning Light Program numerous seminars were organised throughout the year 2008. The topics discussed were in relation to: (1) the application of articles 81 and 82 of the Treaty of the EC, (2) the application of economic models in relation to articles 81 and 82 of the Treaty of the EC, (3) the control of concentrations between enterprises and (4) the application of competition regulations in recently liberalized markets.



Additionally, the C.P.C. held two 2-day conferences from the 13th – 16th October in Limassol and Nicosia, featuring guest speakers from the Hungarian Competition Authority with the subject “Raising awareness among the economic agents”. The aim of the conferences was to inform the general public on competition issues. Specifically, the workgroups of the conference focused mainly on: the application of the principles of competition in the banking sector, the free markets and the telecommunications market, as well as with the latest European developments with respect to mergers and acquisitions of enterprises and anti-competitive practices and behaviors.

- Moreover, within the framework of the Twinning Light Program four officers of the Service of the C.P.C., had the chance to visit the offices of the Hungarian Competition Authority and to observe closely the investigation of cases and to discuss various issues in relation to carrying out their duties. The visits took place in two different phases, with the first one being in June and the second one taking place from the 29th September – 3rd October 2008.

In addition to organising the above activities, the Commission for the Protection of Competition in an effort to provide constant training for its personnel, enriched its library with the purchase of books specializing on the legal and economic analysis of European Competition Law. During the year under review, the Commission also updated its website with the addition of supplementary information.





# Application of law and Supervision

## 3. Recent legal developments

### 3.1. Powers and Competences of the Commission for the Protection of Competition

The new Law's major amendments include the broadened and additional powers vested in the Commission as a means of securing and protecting a healthy competitive environment both for enterprises and consumers. The additional competences are summarised as follows:

To investigate and issue decisions in relation to infringements of articles 81 and 82 of the Treaty of the European Community (EC), following the lodgement of a complaint or on the Commission's own initiative.

To grant immunity and/or reduce the amount of the administrative fine imposed on an enterprise or a group of enterprises, in the event that the enterprise or group of enterprises collaborates with the Commission and/or provides assistance or supporting evidence that will aid the Commission to prove an infringement. The criteria for granting immunity and/or reducing the amount of the administrative fine will be determined by a relevant regulation.

To impose terms and behavioural measures and/or structural remedies, depending on the infringement committed necessary to bring the infringement to an end.

To issue announcements for the benefit of interested parties with respect to its competences.

To provide non-binding opinions to other public bodies on issues relating to the Commission's competences without being confined by the subject-matter of a subsequent decision.



Another reform of the new Law is the ability given to interested parties to undertake certain commitments in order to respond to the Commission's initial objections. In the event that the Commission intends to adopt a decision requiring that the infringement is brought to an end, the Commission may by decision make those commitments binding on the enterprise or group of enterprises. The Commission's decision is issued for a particular time period, on the presumption that there are no other reasons for taking any further action. In case, the enterprises refuse or fail to comply with the Commission's imposed measures, then the latter has the power to impose a fine up to €85.000 for each day the infringement continues.

Furthermore, with the new Law, financial sanctions have increased significantly for infringements of the Law, particularly in relation to the following:

the imposition of a fine in case of omission to provide the required information within the fixed time limit, or for the intentional or negligent provision of inaccurate or incomplete, false, or misleading information (up to €85.000 and €17.000 for every day the infringement continues).

the imposition of a fine during the conduct of an inspection in the enterprise's premises, pursuant to article 31 of the Law if, it intentionally or negligently produces deficient or misleading records, books, accounts or other business documents or fails to comply with the order of the Commission for the conduct of an inspection (up to €85.000).

the imposition of a fine for failure of the enterprise or groups of enterprises to comply with the Commission's order for carrying out a relevant investigation (up to €17.000 for each day the continuation of failure to comply).

the imposition of a fine for failure by the enterprise or groups of enterprises to comply with the Commission's ordered interim measures (up to €17.000).

The new Law also clarifies the manner in which financial sanctions (fines) are imposed to groups of enterprises (article 44).

The new Law has also provided the Commission with broadened powers to conduct on-the-spot investigations at the premises of an enterprise or groups of enterprises, without providing advance notice, to collect all the required evidence and information. The Commission's powers may only be exercised for the purpose of the inspection, or for the purposes of applying Community Competition regulations. In particular, the Commission shall have the power to:

enter into every office, premise, land and transportation means of enterprises and groups of enterprises,

examine records, books, accounts as well as any other document of business nature, irrespective of the medium in which they are stored,

replicate and to photocopy records, books, accounts and other documents of business nature, irrespective of the medium in which they are stored and to obtain replicates and photocopies,

seal any business premises and records, books, accounts and other documents of business nature for the period and to the extent necessary for the inspection, and

ask any representative or member of staff of the enterprise or group of enterprises questions and ask for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.

The Commission may also request the assistance of the Police to render itself capable of exercising its powers.

The Commission may also conduct an inspection of any premises, land and transportation means, or residence following the issue of a properly reasoned judicial order from a Court. The procedure to request and obtain such an order is set by a judicial regulation to be issued by the Supreme Court. Until this regulation is issued, the request is supported by a sworn statement by an authorized officer.

Lastly, another reform in the new Law relates to the abolition of the system for the notification of agreements for the granting of an individual exemption or negative certification of agreements between enterprises by the Commission. Consequently, the undertakings now have to take up full responsibility in reviewing the terms of any agreements drafted between them, and ensure that they are compatible with the competition rules and regulations, since agreements that follow the rules set by articles 4 and 5 of the Law are valid and can be put into effect without the prior approval of the Commission.

### **3.2. Procedure for the investigation of complaints submitted and ex officio investigations**

As far as the procedure for the investigation of complaints is concerned, it should be mentioned that under the Law of 2008, the application form previously used for the lodgement of a complaint, is now invalid. In choosing to lodge a complaint, the complainant should submit all the necessary information as outlined in the Annex of the Law, relating both to the complainant as well as the complainee while at the same time including information on the relevant markets of the products and details of the alleged infringement. This information potentially allows the Commission to decide whether or not it will proceed with the investigation of complaints lodged. The submission of all the required information is of vital importance to the Commission, as it determines the course of the investigation of the complaint while at the same time it aids the Commission to obtain a clearer understanding of the real facts underlying the complaint and its effective investigation.

In the event that the lodged complaint does not provide all the necessary information as outlined in the Annex of the Law, then the Commission can only proceed with the acceptance of the complaint if it deems that whatever information submitted along with the complaint is acceptable for a valid investigation to be carried out.

The new Law specifies the rules governing the investigation procedure before the Commission. In cases where an infringement has been decided, after a preliminary investigation was duly conducted by the Service, the Commission ascertains an alleged infringement of the provisions of the Law and/or articles 81 and 82 of the Treaty of the EC. The Commission then compiles a statement of objections informing in writing, the enterprise or group of enterprises concerned, of the objections raised against them. Accordingly, the Law regulates the procedure for summoning duly qualified persons of an enterprise or group of enterprises (article 45 of the Law) and the oral hearing procedure conducted before the Commission.

# The Commission's Work

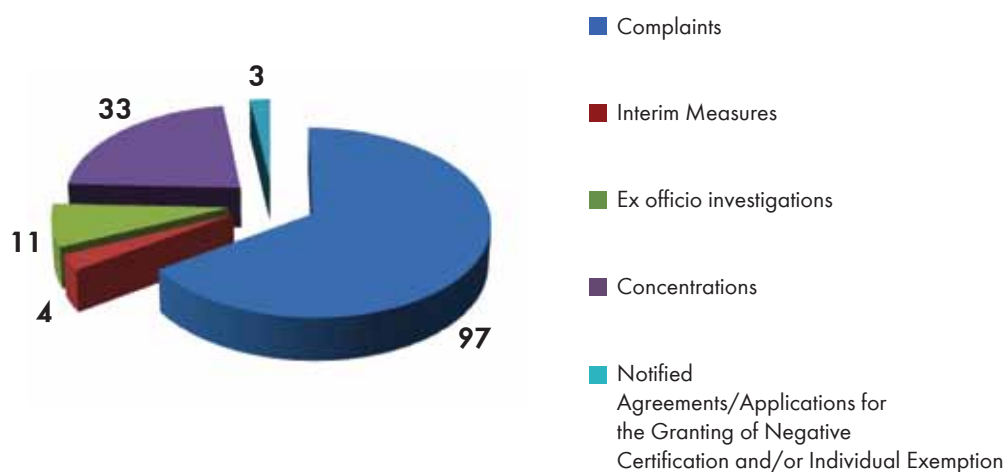


## 4. Overview of the Commission's activities

### 4.1. Overview of the decisions of the Commission

During the year under review, the Commission for the Protection of Competition held forty-two meetings during which, it examined a wide range of issues relating to complaints submitted, applications for interim measures, ex officio investigations, notified agreements, and applications for the granting of negative certification and/or individual exemption and notifications of concentrations.

Complaints	97
Interim Measures	4
Ex officio investigations	11
Notified Agreements/Applications for the Granting of Negative Certification and/or Individual Exemption	3
Concentrations	33
Total	148



During 2008, the C.P.C. identified and ordered by decision the termination of infringements in two different complaints lodged relating to the sectors of telecommunications and dairy products. In one case, the C.P.C. imposed a fine of €75.000.

Furthermore, the C.P.C. decided that for four complaints lodged relating to the telecommunications market, travelling services and public sector activities there was no violation of the provisions of the Protection for Competition Law.

The C.P.C., also examined four applications for interim measures submitted against enterprises operating in the petroleum products, airport management services and the telecommunications sectors.

The Commission decided that for a number of complaints lodged, approximately twenty-seven, the alleged practices did not fall within the sphere of the Commission's competences, due to the fact that either the Commission was not the appropriate authority to examine them, or the complaints dealt with contract terms, or the actions being reported related to other government departments which did not constitute an enterprise activity but instead performed tasks of a public nature.

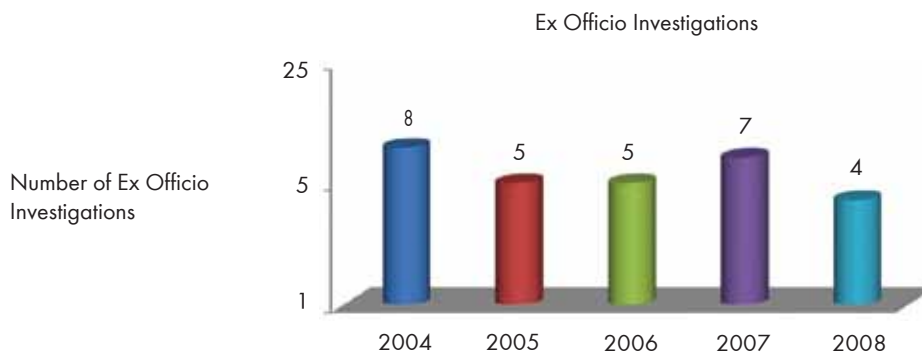
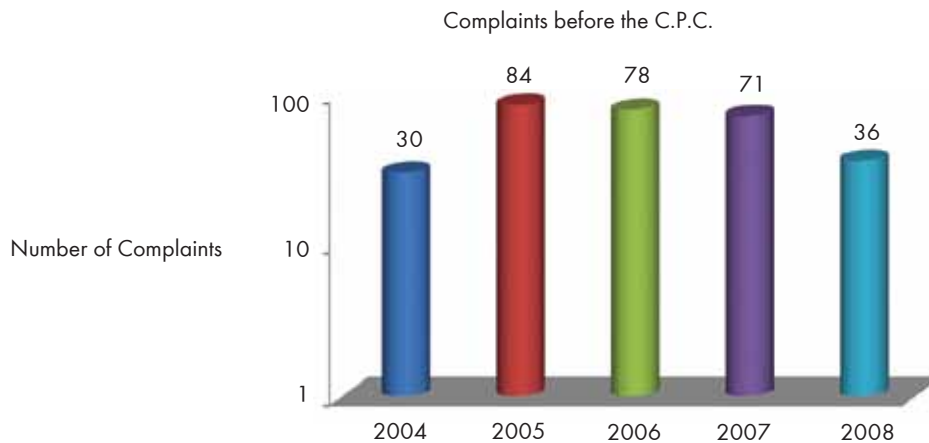
Moreover, thirteen complaints submitted to the Commission were dismissed as they did not comply with the provisions of the relevant legislation, despite the fact that the complainants were given the opportunity to do so.

Finally, the Commission accepted thirty-one requests for withdrawal of the lodged complaints.

## 4.2. General overview of cases in 2008

### 4.2.1. The Protection of Competition Law of 2008

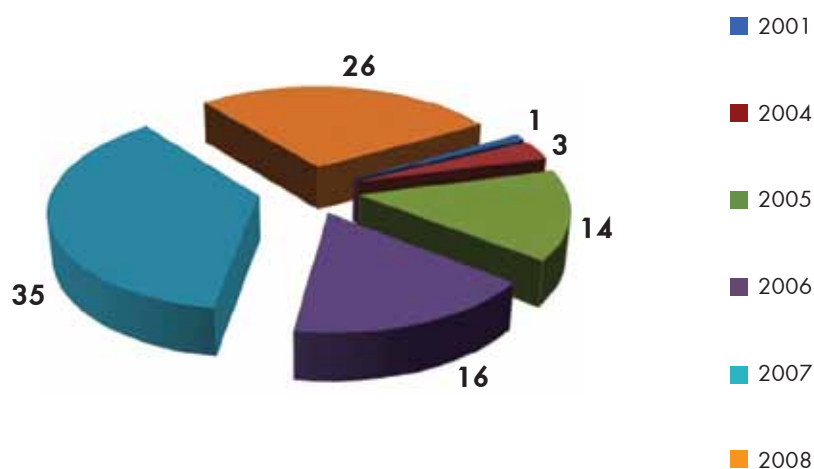
During 2008, a total number of thirty-six new complaints were lodged for infringements of the Protection of Competition Law of 2008 and four ex officio investigations were ordered by the Commission of the Protection of Competition to be carried out by the Service. The comparison of previous years of the investigations which were carried out by the C.P.C. appears in the illustrations below.





Out of the thirty-six complaints lodged in 2008, thirty of them were considered to be falling within the competences of the C.P.C., and the Commission issued instructions to the Service to carry out a proper preliminary investigation. Consequently, out of the thirty complaints lodged, four were withdrawn, and as a result the number of complaints for which a preliminary investigation was conducted in 2008, was reduced to twenty-six. The remaining complaints were either found not falling within the competences of the C.P.C., or were not submitted in the designated legal form, and therefore were rejected.

In January 2008, there were approximately a hundred and seventy complaints pending before the Commission for the Protection of Competition, relating to the years 2001-2007. By December of 2008, the number of pending complaints was significantly reduced to ninety-five. The complete picture of the cases which were pending by the end of 2008 as from previous years, as well as the complaints lodged during the year under review appears in the illustration below:



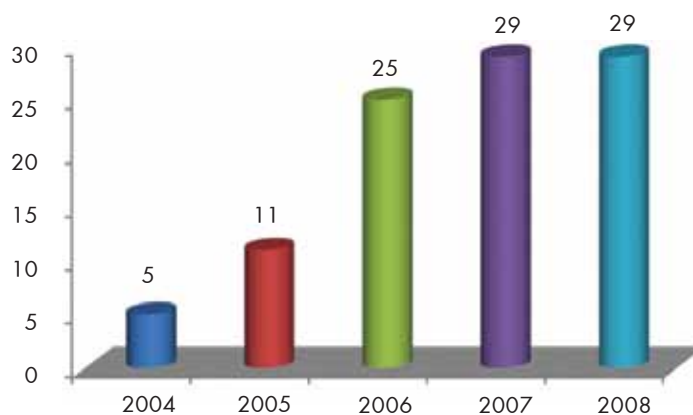
A factor that contributed to the significant increase of the workload of the C.P.C. is the decision issued by the Supreme Court on 4/12/2007, on Administrative Recourse no.3902 (CY.T.A. -v- Republic etc.), which declared the participation of Mr. Efstathiou in the Commission, as unlawful. The C.P.C., bearing in mind the Attorney General’s opinion dated 20/12/2007, which states that all decisions issued while Mr. Efstathiou was a member of the Commission are faulty, has proceeded to their annulment and re-examined a large number of cases pending before the C.P.C.

In 2008, just like the previous years, the majority of the complaints investigated by the C.P.C. concerned alleged abuse of a dominant position, whereas the rest, including the ex officio investigations, concerned the alleged existence of anti-competitive practices, agreements between groups of enterprises and concerted practices between enterprises.



#### 4.2.2. Control of Concentrations between Enterprises Laws of 1999 and 2000

Pursuant to the provisions of the Control of Concentrations between Enterprises Laws of 1999 and 2000, twenty-nine proposed concentrations between enterprises were notified to the Service of the Commission for the Protection of Competition in 2008 –a number that used to be constantly increasing during the last years until 2008 during which it remained on the same level in comparison to 2007 (2007:29, 2006:25). The illustration below shows a comparative picture of concentrations notified during the last five years.



Out of the twenty-nine concentrations that were notified to the Commission in 2008, only one concentration pertaining to the pharmaceutical sector required a full investigation to be carried out.

Furthermore, the Commission accepted the request for the withdrawal of one notified concentration.

Finally, it should be mentioned that the Commission decided in four cases not to impose a fine on concentrations that there was prima facie evidence of an alleged infringement of the provisions of the Control of Concentrations between enterprises Laws of 1999 and 2000, and decided to adopt the explanations submitted by the concerned enterprises.

### 4.3 Decisions of the Supreme Court

During 2008, no applications for administrative recourse were filed for the annulment of final or interim decisions of the C.P.C., and four applications for administrative recourse for the annulment of three final decisions of the C.P.C. were withdrawn.

During 2008, the Supreme Court issued six decisions in relation to applications for administrative recourse against decisions of the C.P.C., issued pursuant to its powers bestowed by the Protection of Competition Law No. 13(I)/2008 and the Control of Concentrations between Enterprises Law No.22(I)/1999. By those decisions, the Supreme Court annulled five final decisions and one interim decision of the C.P.C..

Four of the Commission's decisions were annulled as a result of the decision taken by the Plenary of the Supreme Court, on Administrative Recourse no. 3902, by which the Court declared that the composition of the Commission was unlawful due to the participation of Mr. Efstathiou, who at the time of his appointment also held the office of Mayor. The Commission's decisions were as follows:

(a) Ex officio investigation concerning the agreement signed between LTV-Multichoice (Cyprus) Ltd and the shareholders' agreement of Multichoice (Holdings) Cyprus Ltd and LTV and NETMED BV (case no. 11.17.14/2006, decision dated 2/6/2006).

(b) Complaint lodged by AREEBA LTD against The Cyprus Telecommunications Authority for alleged infringement of the Protection of Competition Law (case no.11.17.10/2005, decision dated 18/1/2006).

(c) Ex officio investigation against The Cyprus Telecommunications Authority for alleged infringement of the Protection of Competition Law 207(I)/89 (case no. 11.17.26/2004 and decision dated 8/9/2006).

(d) Interim decision for the infringement of article 25 of the Law by CYTA following the conduct of an ex officio investigation against CYTA and LUMIERE TV PUBLIC CO. LTD for the alleged infringement of articles 4 and/or 6 of the Law 207/89, as amended, in relation to their co-operation and/or their activities in the Paid and broadband Television sectors and other related services (case no. 11.17.12/2006, decision dated 13/3/2006).

With reference to the annulment of the decisions issued by the Supreme Court in its capacity as a First Instance Administrative Court, the Republic of Cyprus objected on behalf of the Commission, with respect to the first three of the decisions, and filed an appeal to the Plenary of the Supreme Court.

The Commission's decision on the notification of the concentration between The Cyprus Cement Public Company Ltd and The Vassiliko Cement Works Ltd was also annulled following the administrative recourse submitted by the Federation of the Building Contractors' Association, K. Kythreotis Skyrodema Ltd, Matheou Ioannou Ready-Mixed Concrete Ltd, and Alfa Concrete Public Company Ltd (case nos. 1373/07, 1439/07, 1440/07, 1441/07). The C.P.C. consented to the annulment of the particular concentration decision, due to the fact that although all the relevant parties and the Minister in charge were notified in writing of the final decision issued on the 27/7/2007, the minutes of the Commission's meeting, as well as the final version of the Commission's reasoned decision were absent from the administrative file.

The Supreme Court judged that the C.P.C.'s decision was legally impaired, since no minutes were kept during the relevant Commission's meeting and the final version of the particular decision was not recorded in the administrative file.

The C.P.C. under its new composition and in compliance with the ruling of the Supreme Court, decided to re-examine the notified concentration of The Cyprus Cement Public Company Ltd and The Vassiliko Cement Works Ltd. The re-examination was effected pursuant to the provisions of article 56 of the Control of Concentrations between Enterprises' Law and on the basis of the respective actual and legal conditions present during the timeframe when the original annulled decision was taken.

The Commission came to a unanimous decision to proclaim the concentration as compatible with the requirements of the competitive market, subject to specific terms and commitments made by the participants in the concentration. In reaching this decision the Commission considered as decisive factor for its approval the benefits accruing to the consumers both in relation to pricing, as well as other benefits focused on the protection of the environment.



# International Cooperation

## 5. International and European Cooperation

The Commission for the Protection of Competition considers international relations to be closely linked to its vision of becoming a potent European Competition Authority that applies international practices and promotes competition rules at community and international level. The participation of staff members of the C.P.C. in various working groups is one of the most effective ways of developing cooperation, mutual contribution and reshaping competition policies aimed at enabling the Commission to carry out its practices in the most efficient way for the benefit of the market at large. The active participation of the Commission in the European Competition Network is considered vital, following the application of the European Community Regulation (EC) No.1/2003.

### 5.1 Cooperation on European Level

#### **Meeting of the Directors - General of National Competition Authorities**

The Chairman of the Commission for the Protection of Competition participated in a meeting of the Directors - General of National Competition Authorities, which took place in Brussels on 30th September 2008. During the meeting, views were exchanged regarding the recent developments in the competition area.

#### **Meeting of the Chief Competition Economists Working Group**

Staff members of the Commission for the Protection of Competition participated in the Ad hoc meeting of the Chief Competition Economist working group of the European Competition Network (ECN), which took place on 26th November 2008, in Madrid. The main purpose of the working group was to examine thoroughly economic analysis on competition policy and to improve the use of economic models in the application of competition law.

### 5.2. Participation in International Conferences

#### **16th European Competition and Consumer Day**

Within the framework of the European Competition and Consumer Day, the Chairman of the Commission for the Protection of Competition, participated in a conference that took place on 21st -27th May 2008 in Ljubljana, Slovenia. The conference was organized by the Slovenian Competition Authority and its main theme was "Energy - Is efficient competition a possibility?".

### **European Competition Day**

Within the framework of the European Competition Day, the Chairman of the Commission for the Protection of Competition participated on a conference which took place on 18th – 19th November 2008, in Paris. The conference dealt with Competition and Consumer Welfare, Competition and the Economic Efficiency of Businesses in the Age of Globalization and the Role of Competition in the European-Mediterranean Partnership. The aim of the conference was to allow experts and specialists in the field, to exchange views on the benefits of the policy and the competition rules for consumers, as well as the benefits that emerge from shaping a Competition Policy in the European-Mediterranean Partnership.

### **European Competition Authorities (ECA)**

Staff members of the Service participated in a meeting of the European Competition Authorities that took place on 7th-8th May 2008, in Budapest.

## 6. General Remarks

### **Self-Assessment**

It is evident from the statistical analysis displayed in this annual report, that the Commission has investigated and completed a significant number of cases covering a large spectrum of sectors of its activities. As a matter of principle, the numerical display of facts must always be accompanied by self-assessment and re-evaluation of issues, with the aim to improve and enhance the work of the Commission; particularly, since the human resources and available means to the Commission are limited, and is thus forced to carry out its mission under extremely difficult conditions.

### **Organizing the necessary Structure**

During the course of the year that ended, the Commission was called upon to investigate a large number of complaints pending from past years. The Commission considers that the practice of unjustifiably accumulating pending caseload should not be continued, as this affects the credibility of the institution. Each citizen reasonably expects, from the administrative institution to which he himself addresses, to carry out its work without unjustifiable delays, so that its decision is relevant to the real and legal circumstances. The organization of the necessary structure has already started and the Commission hopes that this issue will be satisfactorily dealt with.

### **Enhancing public information**

In analysing the decisions issued, it can be noted that a large number of them relates to complaints that were not submitted in the designated legal form. This realisation creates a set of obligations. The Commission believes that it must provide the general public with better and more detailed information on the correct way to submit complaints, something that it has already started with the preparation and distribution of relevant informative material.

### **Legal and responsible lodgement of complaints**

It is of most importance for everyone to understand that the requirements as defined in the Law for the lodgement of complaints must be satisfied, because in this way the complaints are better evidenced and it is ensured that the conclusion of their investigation will be on a sound legal basis.

Furthermore, it has been noted that many complaints have been withdrawn, immediately their investigation began. The investigation procedure requires hard and demanding work (preliminary analysis, examination of evidence, preparation of questionnaires, etc.), conducted by a limited number of staff. The Commission, although it urges citizens to claim their rights, also expects at the same time that when citizens lodge a complaint, they will do so with a sense of responsibility and having re-evaluated correctly all the relevant key factors. The Commission would never wish to see its mechanism being used as a means of exerting pressure on anyone.



### **Issuing decisions - painstaking and time-consuming work**

Based on its experience so far, the Commission has been subjected to a high level of unfair criticism due to the delay in issuing decisions. The Commission, without been disturbed by the criticism- which is welcome when it is done in good faith and objectively can actually aid the Commission to improve its work- it stresses out that reaching a decision on anti-competitive practices or behaviors, constitutes hard and demanding work on its own, which can only be achieved after all the relevant key factors have been investigated and analyzed. On the other hand, the Commission has a duty to respect the rights of the undertakings involved in the proceedings, whether those relate to the right to an oral hearing, or the right to be granted adequate time to defend their positions. The Commission does not act as a price control service which expresses its opinion instantly, something that many seem to be confused about.

Understanding anti-competitive behavior requires a thorough investigation and analysis of a significant number of parameters specified by the Law and case-law but also the economic assessment of relevant factors, which constitute a timely procedure. The C.P.C., as the competent legal authority, has a duty to act according to the Law by applying the general principles of Administrative Law that inevitably guarantee an unbiased judgment. It should also be noted that while the C.P.C. is exercising its role, it has its own legal constraints as governed by the legislative status in force.

### **Annulment of the decisions of the C.P.C. due to ex decision of the Supreme Court**

In another part of this report, reference is made to the decision of the Supreme Court on the case concerning The Cyprus Telecommunications Authority *vs* Republic etc. (2007) 3, Supreme Court Decision 560, that declared the participation of members of Municipal Councils and Mayors in the Commission as unlawful. The result of this decision, which the Commission respects fully, has forced it to withdraw the decisions reached by the Commission in its unlawful constitution and to re-examine all pending cases. The recent decision of the Supreme Court in the Appeal no. 48/2007 has put an end on this issue. The Supreme Court judged that there is no strong evidence that can overrule its original decision.

In the light of the above decision and with the latest decision as guidance, the Commission will process its pending cases, hopefully, without any other administrative obstacles which can impair its work.

### **Aims and objectives of the Commission for the Protection of Competition**

As already mentioned in various parts of this Report, the Commission for the Protection of Competition considers –as it should–that is now able to organize the necessary structures for its effective operation. Apart from the gradual increase and training of new personnel, the Commission is also revising its internal mechanisms for carrying out its everyday work.

The principles of transparency and cooperation with all involved parties have now satisfactorily been adopted. The Commission has made it clear from the start that it does not operate against enterprises but on the contrary it wishes to reinforce and strengthen enterprises operating under conditions of a free competitive market. As a result to this effort, a database of relevant information for each sector is now being developed with the help and the cooperation of all parties involved.



In the field of competition, there are a lot of European and worldwide well organized forums and Networks.

### **Reconnection with International Networks of Competition and Co-operation**

The Commission wishes to re-establish co-operation with these networks; thus enabling it to express its own stance/views on various competition issues which from time to time are the subject of collective investigation. With its participation to these networks, the Commission has only to gain, from the experience of competition authorities with more years of operation in the field of competition. Unfortunately, due to limited resources the Commission cannot always participate in Special Committees, or in the Experts' Committees for competition issues. The Commission is positive that in the near future it will be able to do so, since the participation is useful in every sense.

The new Law enacted in 2008 has undoubtedly formed the ground for a more productive and effective operation of the C.P.C., with total compatibility with the European proceedings in the field of competition. The amendments of the new Law must be applied along a number of new internal measures of operation that are viewed as necessary. The internal measures are determined by the Notices of the Commission on various technical issues, as well as the case-law of the European Courts. It is the ambition of the Commission, as mentioned earlier, to be in complete conformity with the rest of Europe, as it is nowadays deemed necessary by the common market, which continues to enlarge.

### **Established principles of the Commission**

In the area of mergers and acquisitions, there is still a lot of progress to be made. The current Law has been established many years ago, thus needs to be revised and modernized to today's standards, so it can better target issues that are currently faced in this particular section.

The strict application of the principles of a competitive market must be applied in a manner that allows a degree of flexibility when it is objectively warranted. The undertakings involved must present a more thorough notification to the Commission, in order for any intended concentration to be investigated on the basis of all the parameters surrounding it without unnecessary delays. During its first year of operation the Commission, has chosen to show flexibility and leniency, but such a stance cannot be one-way. It is expected that all parties associated with of the Commission will show a higher degree of professionalism and willingness to co-operate by submitting all the necessary information and evidence required by the Law.

