

Decision CPC: 25/2013

Case Number

11.17.012.15

THE PROTECTION OF COMPETITION LAW, 2008

(Law N. 13(I)/2008)

Complaint of Sigint Solutions Limited against the University of Cyprus.

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Leontios Vryonides	Member
Mrs. Eleni Karaoli	Member
Mr. Demetris Pitsillides	Member
Mr. Costas Melanides	Member

Date of decision: 29 March 2013

SUMMARY OF THE DECISION

The case concerned the complaint of Sigint Solutions Limited (hereinafter "Sigint") which was submitted to the Commission for the Protection of Competition (hereinafter the "Commission") against the University of Cyprus (hereinafter the "University").

The subject of the complaint was the alleged violations of articles 3 and/or 6 of the Protection of Competition Law 13 (I)/2008 (hereinafter the "Law") and of articles 101 and/or 102 and/or 107 of the Treaty for the Functioning of the European Union (hereinafter "TFEU"), regarding the participation of the University in the tender of the

Cyprus Telecommunications Authority (hereinafter “CYTA”) No. 14/2012, in relation to the provision of measurement services for electromagnetic fields in mobile base stations for 2012.

On the basis of the evidence gathered during the investigation, the Commission concluded as follows:

There are two mobile companies in Cyprus i.e. CYTA and MTN which own the mobile bases stations and a number of companies (including Sigint and the University) which offer them measurement services for electromagnetic fields in mobile base stations from time to time. The Commission found that during the submission of the tender offers, the University did not hold any market share in relation to the provision of measurement services for electromagnetic fields in mobile base stations. The University actually acquired a market share of about 50% after CYTA accepted its tender offer and the company which offered its services to MTN held the other 50% of the market.¹ Notwithstanding that, the Commission noted that the acquisition of the 50% market share refers to a period of only six months.² In this context and taking into account the short term of the market share that the University held in the provision of measurement services for electromagnetic fields in mobile base stations, the Commission found that the said market share is not enough to amount to a dominant position. As such, the Commission noted that there is no further reason to examine the complaint under article 6 of the Law and 102 TFEU.

Regarding the allegation of Sigint of violation of article 3 of the Law and 101 TFEU, the Commission noted that the complainant did not establish the existence of a concerted practice and that ultimately the complainant revoked the said allegation.

In relation to the allegation of Sigint of violation of article 107 TFEU, the Commission notes that according to article 23(1) of the Law, the Commission is incompetent to examine issues of State aid and that the competent authority for this is the State aid Commissioner of the Republic of Cyprus.

The Commission also noted that according to article 23(1) of the Law, it is not competent to examine the legitimacy of the University to participate to the tender under examination and that there are other competent authorities, such as the Tenders Review Authority and possibly the Supreme Court.

¹ Υπόθεση T-65/98 Van den Bergh Foods v. Commission [2003] ECR II-4653, [2004] 4 CMLR 14, [2005] All ER (EC) 418, παρα. 155; Υπόθεση T-219/99 British Airways v. Commission [2003] ECR II-5917, [2004] 4 CMLR 1008, [2004] All ER (EC) 1115.

² Bellamy & Child - “European Community Law of Competition”, Sixth Edition, P. 928.

On the basis of the above assumptions, the Commission decided that there is no reason to examine the complaint any further and as such to reject it.

Loukia Christodoulou

Chairperson

Commission for the Protection of Competition