

Annual Report





Annual Report 2004





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Foreword

2004 was the year of great challenges for the Commission for the Protection of Competition (C.P.C.). Cyprus' entry into the European Union signaled the implementation of the *acquis communautaire* in the field of competition and the adoption of competition policy rules focusing on the smooth and free function of the market and aiming at consolidating «a regime that would ensure competitiveness in the internal market». Moreover, with Cyprus' accession the various sectors of the economy are being liberalised having as a result the frequent intervention of the C.P.C. in order to sustain a healthy and competitive market.

The Commission for the Protection of Competition is an independent authority aiming at protecting the market conditions and fostering an environment of free and unhindered competition, through combating any anti-competitive practices. By this, the C.P.C. allows economic entities to have equal opportunities to compete and to gain access to the market.

Cyprus' accession to the European Union, along with the implementation and enforcement of the European competition policy and the liberalisation of various sectors of the market at a national level, which to this day functioned at a fully protected from competition environment, on the one hand strengthened the role of the C.P.C. and on the other hand increased its obligations.

The C.P.C. corresponded to all the above challenges with success, by making the most of the experience, expertise, knowledge and know-how acquired since its operation. With the help of the Service, the C.P.C. launched and concluded a plethora of investigations and issued several decisions with the object of ensuring a competitive environment.

In 2004, the Service of the C.P.C. launched investigations that covered the entire spectrum of the Cyprus economy, from the agricultural sector up to the telecommunications and energy sector. *Inter alia*, there were

investigations and decisions by which conducts that infringed the competition rules were terminated in the area of trading potatoes, telecommunications, energy, financing and banking, media, sale of airplane tickets, petroleum, including the traditional monopolies that henceforth are called to function and operate in accordance with the rules of a liberalised market. The C.P.C., by initiating new investigations and by directly corresponding to all submitted complaints, aimed at ensuring the smooth transition of the monopolies regimes to a competitive open market and intends to intensify its efforts within the forthcoming year.

The control of concentrations notified to the C.P.C. was conducted in a way that ensured that the structural reorganisation of the companies would be in accordance with the conditions of a competitive market. During the past year, markets researches were conducted in the field of services and goods such as the sale of cleaning products, animal food and airline transportation.

With the completion of the first wave of recruitment of permanent officials (appointment of 7 permanent officials), at the beginning of the year, in combination with the existing staff of the Service, the C.P.C. accomplished to correspond with success to its increased obligations within 2004 and expects that the activities of the Service will expand even more.



As a means of entrenching and expanding the competition culture into all aspects of the Cypriot society, we have improved the official website of the C.P.C (www.competition.gov.cy) with the regular reformation of the website and by bringing the information up-to-date. We have also organised competition seminars and we have promoted the education of our officials with the frequent attendance of trainings, held by the Competition Directorate General.

During 2004, we reached our goals, set at the beginning of the year, in eliminating harmful restrictions on competition. The forthcoming year, the C.P.C. will continue working towards full harmonisation with the *acquis communautaire* and the enhancement of the foundations of the competition culture at a national level, by making the public aware that in a healthy competitive market

the consumer enjoys goods at lower prices, improved quality, better services and has the opportunity to enjoy the fruits of technological development. Moreover, competition impels the companies to aim on competitiveness and economic efficiency, with the simultaneous creation of a propitious environment for innovation and technological development.

The C.P.C. is the custodian of undistorted competition in the market and enforcement of competition rules. It ensures that the legal principles and policies of free competition are properly enforced and duly protected. The operation of the economy under competitive market conditions benefits the public at large, as it results in a wider choice of goods and services being offered to the consumer at lower prices and more attractive standards of quality and service.

Christodoulos Tselepos
Chairman of the C.P.C.



Organisation & Structure

Members

The C.P.C. is an administrative body, consisted by the Committee and the Service. The Committee of the C.P.C. is composed of the Chairman and four Members, who are appointed by a decision of the Council of Ministers, on the proposal of the Minister of Commerce, Industry and Tourism. The Chairman and the Members are appointed for a term of five years and may be reappointed according to the relevant provisions of the Law.

The Chairman and the Members of the C.P.C. during 2004 were:

Christodoulos Tselepos	Appointed Chairman of the C.P.C. in December 2000 - Lawyer.
Costis Efstathiou	Appointed Member of the C.P.C. in December 2000 - Lawyer.
Elias M. Theodorou	Appointed Member of the C.P.C. on 19 June 2003, replacing Mr. Andreas Sofocleous - Chartered Accountant.
Andreas Demetriou	Reappointed Member of the C.P.C. on 19 June 2003- Chartered Accountant.
Leontios Periclous	Appointed Member of the C.P.C., from May 2004 until 19 December 2005, replacing Mr Evangelos Sykopetritis. Senior Officer of the Ministry of Commerce, Industry and Tourism and Deputy Director of the Service of Competition and Protection of Consumers.
Evangelos Sykopetritis	Appointed Member of the C.P.C. in December 2000- Chartered Accountant.



Christodoulos Tselepos was appointed as a full-time chairman of the C.P.C. in December 2000 for a period of 5 years. He graduated from the Law School of the University of Athens in 1978 and was then admitted to the Cyprus Bar. Shortly after, Mr Tselepos set up his own legal practice in Paphos.

In 1996, Mr Tselepos was elected member of the Board of the Cyprus Bar Association for a term of three years and also participated in the management boards of various organisations and authorities. He was also appointed President of the Cyprus Referees Committee, a quasi-judicial body of the Cyprus Football Association.



Costis Efstathiou is a lawyer and has been practicing law in Nicosia since 1990. In 1986 he graduated from the Legal Department of the University of Athens and continued his studies at Universite Libre de Bruxelles (1987 - 1989), where he acquired a post-graduate degree in Licence Speciale en Droit Europee. In 1990, he was awarded a Diploma in competition by the University of Bristol, in UK. He has been member of the Eurocypria Board of Directors and in 2001 he was elected Mayor of the Latsia Municipality. In 1998 he was appointed member of the Commission for the Protection of Competition by the Council of Ministers and his appointment was renewed for a period of five years in December 2000.

Elias M. Theodorou studied economics at the London School of Economics and Political Science and he is a fellow of the Institute of Chartered Accountants in England and Wales (ICAEW). On his return to Limassol Cyprus, in 1991, he was appointed Manager of the Audit Department of PriceWaterhouseCoopers and since 1997 he is a partner, providing audit and financial advisory services to a large portfolio of clients. He also serves as member of the Executive Board of PriceWaterhouseCoopers. During 2000-2002, he served as the President of the Limassol-Paphos Committee of the Institute of Certified Public Accountants of Cyprus (ICPA). In 2003, he was appointed, by the Council of Ministers, member of the Commission for the Protection of Competition.



Andreas Demetriou is a partner at Ernst & Young, in charge of its Financial Services practice for the Southeastern Europe since 1998. He has been providing audit and financial advisory services for over twenty-five years to banking and other financial institutions and the insurance sector. He is a member of the Institute of Chartered Accountants in England and Wales (ICAEW) and of the Institute of Certified Public Accountants of Cyprus (ICPA). He has served as member of the Cyprus Ports Authority and as a Council member of the ICPA and chaired several committees of the Institute. He has been a member of the Commission for the Protection of Competition since 1999.

Leontios Pericleous was awarded the degree of Agriculturist from the Aristotelio University of Thessalonica and the degree of Economist from the Macedonia University of Thessalonica. He has been working at the Ministry of Commerce, Industry and Tourism since 1973, where he now holds the post of Senior Commercial and Industrial Officer and Deputy Director of the Competition and Consumers Protection Service. During his 31 years in the Ministry, he participated in several boards of directors of various semi-Governmental Organisations and Ministerial Committees. He was also involved in Committees with the European Commission for the transposition of the European acquis





to the Cyprus legislation into the sectors of the protection of competition and the protection of consumers. On the 12th of May 2004, he was appointed as a Member of the Commission for the Protection of Competition.

Evangelos Sykopetritis studied economics at the London School of Economics and Political Science. He is a member of the Institute of Chartered Accountants in England and Wales (ICAEW). He is a partner at SIS Chartered Accountants/Inpact International, where he provides audit and financial advisory services to banks and other financial institutions. He has extensive experience on taxation matters and tax planning. He is also acting as an investment advisor of CLR Stockbrokers Ltd. In 2000 he was appointed member of the Commission for the Protection of Competition by the Council of Ministers.

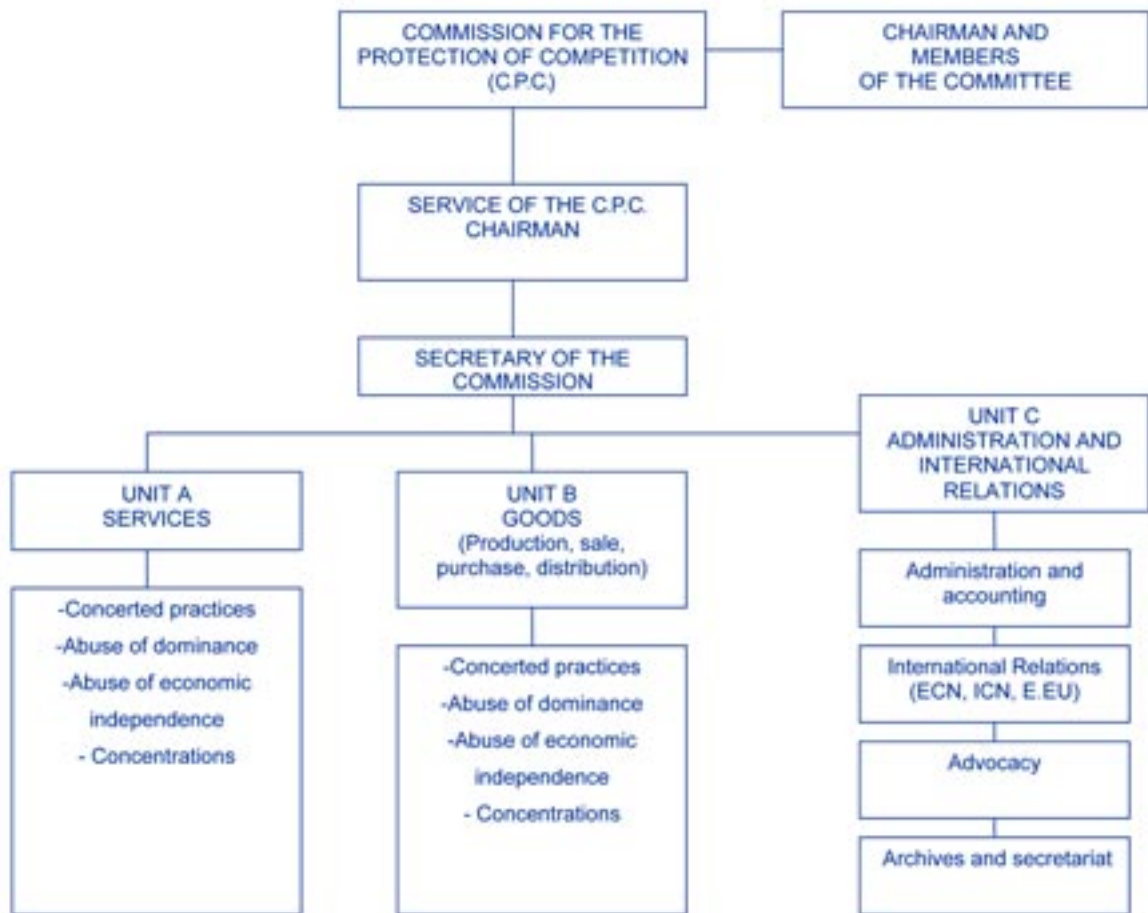
The Service of the C.P.C.

In the enforcement of the Law, the C.P.C. is supported by the Service of the C.P.C., which is composed by the Secretary and the Case Handlers (Officers). The Secretary of the C.P.C. is responsible for the Service of the C.P.C., he attends the C.P.C. meetings and prepares the minutes of the meetings of the Committee. Seven of the case handlers of the Service of the C.P.C. are lawyers and four are economists, all of which are responsible for the enforcement of the Protection of Competition Law 207/89 and of the Control of Concentration between Enterprises Law 22(I)/99, as amended. Supporting the work of the Service and the C.P.C. there is an economic consultant and the supporting staff.

Name	Position (qualifications)
Theofanis Tryfonos	Secretary of the C.P.C. (Lawyer, MBA)
Panayiotis Thoma	Case Officer/Analyst (Economist)
Maria Michael	Case Officer/Analyst (Economist, Bsc, MA)
Olga Droussioti	Case Officer/Analyst (Lawyer LLB, MA)
Athina Kyriakides	Case Officer/Analyst (Lawyer, LLB, LLM)
George Karrotsakis	Case Officer/Analyst (Economist, BA Honst)
Andreas Thoma	Case Officer/Analyst (BSc, DIP.Law, Barrister, LLM)
George Cambanellas	Case Officer/Analyst (Athens Economic Univ)
Georgia Kastanou Karapataki	Case Officer/Analyst (Athens Uni., LLM)
Demetra Kalli	Case Officer/Analyst (Lawyer, LLM in European Law and LLM in International Economic Law)
Amalia Hadjiyianni	Case Officer/Analyst (Lawyer)
Polina Koursarou	Case Officer/Analyst (Lawyer, LLB, LLM)
Christiana Sideri	Economic consultant (BSc (Econ), M.Phil)
Maria Rapsa	Secretariat of Chairman
Maria Roussou	Secretariat
Evdokia Christdoulou	Secretariat-Archives
Christina Efstathiou	Secretariat-Archives
Agatha Georgiou	Secretariat-Archives
Andreas Spyrou	Assistant
Constantinos Kaouris	Assistant



Structure





Goals & Activities

Aim of our Activities

The Commission for the Protection of Competition (henceforth «C.P.C.») is the Authority responsible for competition issues with the task of promoting and maintaining an environment of free and effective competition in all sectors of the market for the benefit of the consumers.

The C.P.C. has jurisdiction to deal with:

- Anti-competitive agreements, decisions and concerted practices that may effect competition (section 4 of Law 207/89).
- Abuses of dominance (section 6 of Law 207/89).
- Application for negative clearance and individual exemption (section 16 of Law 207/89).
- Control of Concentrations (section 3 of Law 22(I)/99).

In addition to the above, the C.P.C. may provide consultations. The Service of the C.P.C. has the ability to issue informal guidance to individuals or undertakings or/and consumers, without them being of a binding nature. The primary goal is to ensure effective enforcement of the competition rules in the market.

Major steps of proceedings

The Protection of Competition Law 207/89, as amended

The prohibition of agreements, decisions and concerted practices between undertakings and the prohibition of abusive conducts by undertakings holding a dominant position constitute the two founding policies of the Protection of

Competition Law 207/89, as amended (henceforth «Law 207/89»). Although both prohibition policies aim at the same result, they differ, since section 4 of Law 207/89 prohibits agreements, decision and concerted practices between undertakings, in contradiction with section 6 by which unilateral conducts of undertakings are prohibited. Both provisions contained in sections 4 and 6 are inspired by the equivalent articles 81 and 82 of the EC Treaty.

The C.P.C., according to section 8 of Law 207/89, is an independent administrative body and on the basis of section 22 of Law 207/89 is empowered to investigate infringements of sections 4 and 6 of the Law and issue decisions on investigations. It should be noted the national legislation requires natural or legal entities to show legitimate interest on submission of a complaint. Based on the provisions of Law 207/89, the C.P.C. is under a duty to consider all the complaints before it and if it considers that there is a prima facie infringement of the Law 207/89, the C.P.C. instructs the Service to conduct a preliminary investigation.

Upon receiving instructions from the C.P.C., the Service launches an investigation. One of the most significant powers, which Law 207/89 arms the C.P.C., is the launch of investigations in the business premises of the companies under investigation. These kinds of investigations may be launched either on surprise or with a written notice and the aim is the collection of information, documents necessary for the conclusion of the case.



With the conclusion of an investigative report and upon a *prima facie* finding of an anti-competitive conduct, the C.P.C. communicates a statement of objections, indicating the infringements, date and the timing of the appearance to both parties along with those documents and information upon which it intends to base its case. After the first meeting, the C.P.C. sets a day for the hearing.

The C.P.C. is not obliged to communicate to the undertakings concerned the whole file of the particular case, but has obligation to communicate to it all those documents of the file upon which it intends to base its decision. Where those documents are already accessible to the undertaking, it will indicate them in writing in order for the undertakings to be informed in due course of all the documents that will be used by the C.P.C. as evidence. The C.P.C. cannot base its decision on a document that has not been communicated or indicated to the undertaking concerned. There is no disclosure of confidential information and non-confidential version of the documents is provided to the parties concerned. Accordingly, the C.P.C. proposes to the undertakings concerned to indicate that information and documents that they consider being of a confidential nature.

The C.P.C. safeguards the right to a fair hearing by firstly obtaining the parties' written arguments and secondly by conducting a hearing. The undertakings concerned and third parties, having a legitimate interest, may participate in the hearing either in person or by an authorised lawyer for the purpose of supporting their case. During the oral hearing, minutes are kept. The decisions of the C.P.C. are fully reasoned and are communicated to every interested undertaking and summaries of the decisions are also published in the official Gazette of the Republic.

An aggrieved party seeking to annul the C.P.C.'s decision has the right to file an administrative recourse to the Supreme Court.

Cases with a Community dimension

The Council Regulation (EC) 1/2003 on the implementation of the rules on competition, laid down in articles 81 and 82 of the EC Treaty (henceforth «Regulation 1/2003»), established a system of parallel competences on the basis of which the European Commission (henceforth «Commission») and the National Competition Authorities (henceforth «NCA») can apply articles 81 and 82 of the EC Treaty.

The system of parallel competences provides the NCA with the power, pursuant to the national legislation, to apply articles 81 and 82 of the EC Treaty and the responsibility to efficiently divide the work and effectively allocate cases that will be investigated. Under this system, cases are either dealt by one NCA, or more, or the Commission. In most instances that a national authority receives a complaint or starts an *ex officio* procedure, it will remain in charge of the investigation. Where the re-allocation of a case is deemed necessary for the effective protection of competition, then three cumulative conditions should be met (a) the agreement or practice has substantial direct actual or foreseeable effects on competition within its territory, (b) the competition authority is able to effectively bring the entire infringement to an end and (c) it can gather the evidence required to prove infringement.

In order to ensure the efficient cooperation of the NCA and the Commission and thus far the effective implementation of Regulation 1/2003, the NCA and the Commission together formed a network called European



Competition Network (henceforth «ECN»), on the basis of which there will be discussions and exchange of views on the application of the European competition rules, for the creation and maintenance of a common competition culture in Europe. The members of the network will inform each other on pending investigations at the early stages of an investigation and more specifically, before or without delay after commencing the first formal investigative measure, in order to ensure an efficient and quick re-allocation of cases. An equivalent obligation exists before the issue of decisions whereby articles 81 and 82 of the EC Treaty are applied.

A competition authority, on the basis of article 13 of Regulation 1/2003, has the power to suspend proceedings or reject a complaint or part of it, on the ground that another authority is dealing with the case or has dealt with the case. Similarly, the initiation of proceedings by the Commission on the same case relieves the national competition authorities from their competence to apply community law.

The key element of the functioning of the network is the power of the NCA and the Commission to exchange and use information, which has been collected by them for the purpose of applying articles 81 and 82 of EC Treaty. The said provision includes safeguards for the protection of the natural and legal persons. Another innovation, contained in Regulation 1/2003, is the ability of a competition authority to ask another competition authority for assistance in order to collect information on its behalf.

It should be mentioned that since Cyprus' accession in the European Union, the national Courts have the power and obligation to apply the *acquis communautaire*, meaning that they have the power to apply articles 81 and 82 of the EC Treaty.

To summarise up, the new system created by Regulation 1/2003 allows for more enforcement of articles 81 and 82 of the EC Treaty that will increase the efficiency of the enforcement through the enhancement of the rule of the national competition authorities.

The Control of Concentration between Enterprises Law 22(I)/1999, as amended

The Control of Concentration between Enterprises Law 22(I)/1999 as amended (henceforth «Law 22(I)/99»), forms the rules by which reorganisations by corporate companies in the form of concentrations are controlled in order to ensure that they do not result in the distortion of the structure of the market and thus, damaging competition.

The scope of application of Law 22(I)/99 covers only concentrations of major importance, as interpreted in section 2 of Law 22(I)/99, in connection with the geographical dimension of the activities of the companies involved and the quantitative thresholds. Law 22(I)/99 provides also the possibility to concentrations of major importance to be declared through a Reasoned Order of the Minister of Commerce, Industry and Tourism.

A concentration takes place if (i) two or more previously independent undertakings merge, or (ii) one or more persons already controlling at least one undertaking, or one or more undertakings acquire, directly or indirectly, control of the whole or parts of one or more of the other undertaking, or (iii) if a joint venture is established, which permanently carries out all the functions of an autonomous economic entity.

Law 22(I)/99 is based on a preventative principle to control concentrations between undertakings and therefore, it is compulsory for concentrations, that fall within the scope



of Law 22(I)/99, to be notified to the C.P.C. before they are put into effect, within the time limits set by Law 22(I)/99. Failure to notify a concentration renders the defaulter liable to a fine.

Once all the necessary information is collected, in conformity with Schedule III of Law 22(I)/99, the Service conducts a preliminary investigation of the notified concentration and submits its findings to the C.P.C. in which it records its reasoned opinion whether the concentration is capable of being declared compatible or not with the demands of the competitive market. The Service has a period of one month, starting from day all the information mentioned in Schedule III of Law 22(I)/99 were communicated.

Where the C.P.C. decides that the concentration raises doubts as to its compatibility with the competitive market, it instructs the Services to conduct a full investigation. The Service may provide applicants with legitimate interest, but who are not participating in the concentration, with the opportunity of a hearing to express their views in relation to the concentration. Moreover, before reaching a decision and if considered expedient the C.P.C. may carry out negotiations, hearings or discussions with any interested parties or other persons.

The C.P.C., when controlling a concentration, has the power to either unconditionally clear the concentration as being compatible with the competitive market, or impose conditions to the undertakings, or prohibit the notified concentration, if the concentration creates or strengthens a dominant position in the affected markets within the Cyprus Republic.

Lastly, it is noted that an aggrieved party, seeking to annul the C.P.C.'s decision, has the right to file an administrative recourse to the Supreme Court.

Concentrations of Community dimension

With Cyprus accession in May 2004, Council Regulation (EC) 139/2004 on the control of concentration between undertakings (henceforth «Regulation 139/2004») is also applied. The scope of Regulation 139/2004 is the effective control of concentration that falls within its scope and is exclusively examined at a community level by the European Commission (henceforth «Commission»), with close and constant liaison of the National Competition Authorities.

Regulation 139/2004 contains provisions for the control of concentrations with community dimension, as defined in article 1, and provisions on the liaison of the Commission with the authorities of the member states, as defined in article 19. The preamble of Regulation 139/2004 refers to the close cooperation of the Commission with the national competition authorities with the formation of a network of public authorities, by which they will share information and consultation.

Further, Regulation 139/2004 contains rules for the referrals of notified concentrations from the Commission to the member states and from the member states to the European Commission. The aim is to balance, on the one hand, the interests of the member states when a concentration with a community dimension threatens significantly to affect competition within the market of the specific member state, presenting all the characteristics of a distinct market and on the other hand, to improve the efficiency of the system of control of concentrations within the Community, when a concentration, which does not constitute a substantial part of the market, threatens to affect the internal market.



An innovation introduced by Regulation 139/2004 is the possibility of the undertakings concerned to request from the Commission, before a concentration is notified, to either refer a concentration with community dimension to a member state, or refer a concentration not having a community dimension to the Commission, also by applying the provisions contained in the Regulation.

To summarise up, Regulation 139/2004 permits the effective control of all concentrations from the point of view of their effect on competition in the Community, in order to ensure a system of undistorted competition in the common market, in accordance with the principles of an open market with free competition.

Relationship with other national bodies

The C.P.C, in accomplishing its tasks, it cooperates with other national bodies on a regular basis, namely:

- The Service for the Protection of Consumers of the Ministry of Commerce, Industry and Tourism.
- The Office of the Regulator of Telecommunication and Postal Services.
- The Regulator of Energy and Gas.
- The Consumers Protection Association, independent private body, which represents the consumer's interests.

Goals of 2004

All the goals set out at the beginning of 2004, on the elimination of harmful restrictions on competition, on the assessment of the competitiveness in specific sectors of the Cyprus market and on the strengthening of the Service competences for an effective enforcement of

the competition policies at national level, were completed. Although the C.P.C., along with the Ministry of Commerce, Industry and Tourism and the Legal Service of the Government made all efforts to complete the legal vetting of the proposed legislation that would have accommodated all the provisions of the European Regulation 1/2003, the new legislation on the protection of competition did not come into force.

Strengthening our Competency

The C.P.C. continued to strengthen the competency of the Service and provide the necessary training of the staff:

- (a) By enhancing the Service with the recruiting of five new officers in February 2004.
- (b) By authorising two of its officers to participate in a three month period stage programme at the Competition Directorate-General of the European Commission. The two officers were placed in different Units of the D.G. Competition, which were the Telecommunication and the distributive trade and other services.
- (c) By continuing the organisation of study visits to competition authorities in several Member States. The C.P.C. noted the significant advantages its officers gained from the study visits that were organised in 2003, promoted the reorganisation of such study visits that would provide the officers with the opportunity to build on their abilities and academic knowledge of competition law, by learning from the experiences of the staff from other Competition Authorities, who have been active in the enforcement of national and community competition rules. The officers of the C.P.C. visited the Conseil de la Concurrence in Belgium, Kokurrenserket in Sweden and the Bundeskartellamt in Germany.



(d) By facilitating the attendance of its staff at relevant national and international conferences, seminars and workshops. It also organised an ongoing monthly series of in house seminars on topics of work related interest and the development of the European competition policies delivered by in house experts.

(e) During 2004, the C.P.C. enriched its library and purchased periodicals and journals on articles and case-law on competition issues and several books that deal with legal issues and economic analysis. The C.P.C. strives to keep the library updated and its aim is to purchase more books dealing with competition law in general, competition practices in specific sectors of the Cyprus market such as telecommunications, as well as journals dealing with competition from an economic perspective.

Implementing European Regulation 1/2003

On 1st May 2004, the Council Regulation 1/2003 on the implementation of the rules laid down in articles 81 and 82 EC Treaty (henceforth «Regulation 1/2003»), which replaces Regulation 17/62 comes into force. Regulation 1/2003 establishes a new legal system for more effective enforcement of articles 81 and 82 of the EC Treaty, through direct effect and greater involvement of national bodies. The main elements of Regulation 1/2003 are the abolition of the notification and authorisation system, the more effective application of articles 81 and 82 of the EC Treaty at national level, creation of network of competition authorities and new types of European Commission decisions.

In the light of Regulation 1/2003, the national legislation during 2004 was under legal reform in order to accommodate the provisions included in Regulation 1/2003

and thus designating the C.P.C. as the competition authority responsible for the application of articles 81 and 82 of the EC Treaty, in a way that the provisions of Regulation 1/2003 are effectively complied with. In the new piece of legislation there are provisions that improve the current powers of the C.P.C., like the extended powers in investigations of business premises and non business premises.

The central feature of amendments is the abolition of the national notification system for companies to obtain negative certification or individual exemption and as a result, agreements that fulfil the conditions of section 5(1) of the existing Law 207/89 are legally valid and enforceable without the intervention of an administrative decision. Also, the Cartel Immunity Programme and Reduction of a Fine, that came into force on the 1st of February 2003, which sets out the basis of the leniency policy in situations where an undertaking that is part of an illegal cartel in accordance with section 4 of Law 207/89 can obtain total immunity or reduction of fines, it will become part of the national law with the new legislation.

Moreover, in the light of article 15 of Regulation 1/2003, the Supreme Court is planning to issue a Procedural Order to accommodate the provisions of article 15(3), enabling, thus the C.P.C. to submit written or oral observations to the national courts on issues relating to the application of articles 81 and 82 of the EC Treaty.

Raise public awareness and understanding of the benefits of competition

One of the major targets of the C.P.C. is to make consumers, enterprises and the public in general aware of the competition policies by adopting measures such as:



(a) Since the lodge of the website of the C.P.C., there have been constant efforts for its further development to a very useful tool for the public. The C.P.C. considers this site to be a means, which offers the most comprehensive information on competition law as applied in practice. The website of the C.P.C. may be found at the following address: **www.competition.gov.cy**

(b) The media has proved to be an effective means towards increasing public awareness and to keep the public informed about the activities of the C.P.C.. It increased the number of press releases, initiating formal media briefings, on a regular basis.



International relations

European Commission

The C.P.C. maintains excellent relations of collaboration with the European Commission and most of its international work is concerned with the European Commission. The C.P.C. is represented at all the European Union committees relating to competition policies, by whichever of its divisions has responsibility for the subject matter of the particular meeting. Indicatively, we refer to the C.P.C.'s participation at meetings of the Directors' General meetings and in the various Committees and working groups that deal with various sectors of the economy, such as energy, cars etc.

European Competition Network

On 1st May 2004, Council Regulation 1/2003 on the implementation of the rules laid down in articles 81 and 82 of the EC Treaty, which replaces Regulation 17/62, came into force. The new Regulation 1/2003 establishes a new legal system for more effective enforcement of articles 81 and 82 through direct effect and greater involvement of national bodies.

In order to facilitate cooperation between the national competition authorities, a network has been set up, namely the European Competition Network (henceforth «ECN»). The network is a forum for discussion and cooperation in the application and enforcement of EC competition policy. It provides a framework

for the cooperation of European competition authorities in cases where articles 81 and 82 of the EC Treaty are applied and is the basis for the creation and maintenance of a common competition culture in Europe.

The Officers of the C.P.C. participate in all the ECN Plenary meetings the topics of which are focused on the implementation and enforcement of articles 81 and 82 of the EC Treaty, without altering rights or obligations arising from Community or national law.

European Competition Authorities

The European Competition Authorities (ECA) is a form of co-operation between the competition authorities in the European Economic Area (EEA). The EEA includes the 25 member states, the European Commission, the EEA EFTA States and the EFTA Surveillance Authority and the objective of the Network is the exchange of information and views in competition matters.

The multi-jurisdictional mergers is a subject which has been given a great deal of attention by the ECA Network, and a forum to which the Service of the C.P.C. has taken an active part. During the course of this attempt, in April 2002, a Procedures Guide was adopted, which mainly describes the procedure for the exchange of information



between Member States in cases where a merger is notified to more than one authority. In addition, a set of principles regarding article 22 of Merger Regulation 4064/89 was adopted with the title "Principles on the application by national competition authorities within the ECA Network of article 22 of the EC Merger Regulation".

Due to the new EC Merger Regulation 139/2004, which replaced the old Regulation 4064/89, and the innovations introduced by article 4, a modification of the above mentioned principles were required. After a number of consultations, a new set of principles are now adopted with the title "Principles on the application by National Competition Authorities within the ECA, of articles 4 (5) and 22 of the EC Merger Regulation".

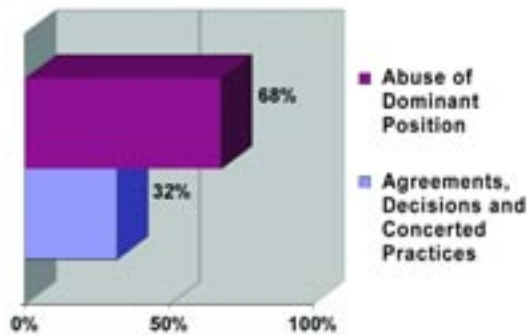


Enforcement

Graphic Presentation of Cases and Decisions of 2004

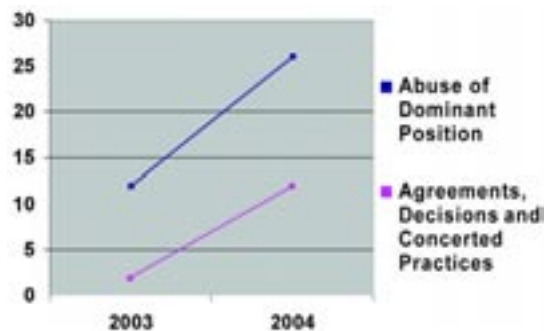
Protection of Competition Law 207/89

During 2004, thirty (30) complaints and five (5) applications for individual negative certifications or individual exemptions were submitted to the C.P.C.. During the same year, there were also eight (8) investigations initiated by the C.P.C.. Out of the thirty-eight (38) investigations, twenty-six (26) of them were concerned with the possible abuses by an undertaking holding a dominant position in various sectors of the economy and twelve (12) of them were in relation to agreements, decisions and concerted practices between undertakings that possibly resulted to the distortion of competition in the market.



Comparison with previous year

The overall number of the new investigations conducted during 2004 that originated from complaints or *ex officio* by the C.P.C., was higher, compared to the previous year. Indicatively, while in 2004 the Service of the C.P.C. investigated twelve (12) new cases in relation to concerted practices in 2003 there were only two (2) new investigations. Similarly, during 2004 there were twenty-six (26) new investigations dealing with allegations of possible abuse of dominant position by an undertaking, while in 2003 there were only twelve (12) new cases investigated.





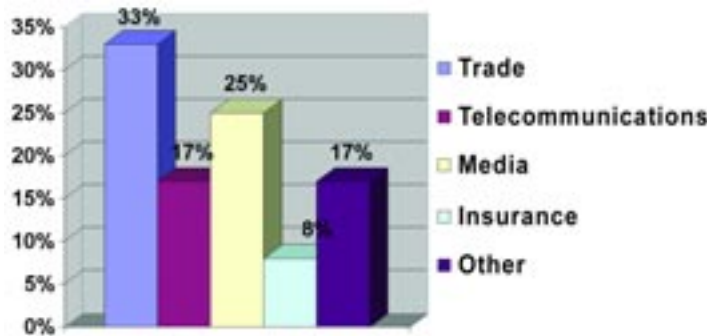
Decisions of the C.P.C. during 2004

During 2004, the C.P.C. issued twelve (12) decisions, out of which four (4) were allegations originating from complaints, four (4) ex officio by the C.P.C. and four (4) were in relating to applications for individual negative certification or individual exemption. There were also a great number of cases that were dismissed, either because no infringement was evident, or the C.P.C. had no jurisdiction to deal with the complaint.



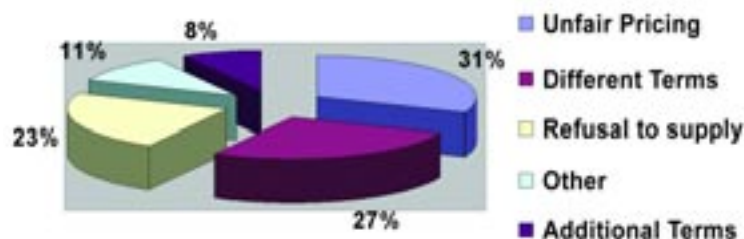
Investigations in relation to concerted practices - Cartels

The following figure illustrates that the twelve (12) cases investigated during 2004, concerning the possible abuse of section 4 of Law 207/89 and the existence of concerted practices – Cartels, were focused on the telecommunication, trade, media and insurance sector.



Investigations in relation to abuses of dominant position

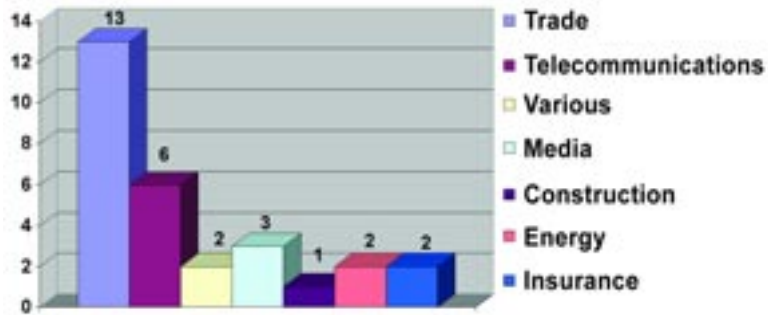
Below there is figure illustrating in detail the various types of infringements raised in the complaints filed and in investigations initiated by C.P.C.. The most frequent type of infringement raised was unfair pricing, the second most frequent allegation was the application of different terms for identical transactions and the third most frequent was refusal to supply.





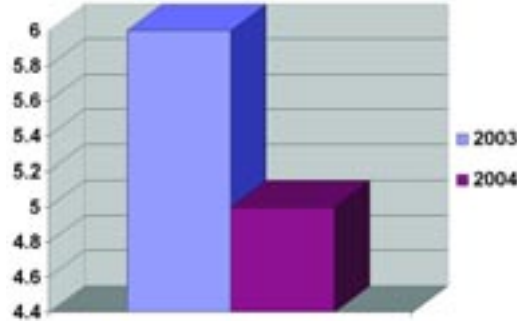
Sectors of the economy

The sectors of the economy, most frequently investigated during 2004, were trade and telecommunications, which together accounted for more than 50% of all cases dealt by the Service of the C.P.C.. Below follows a detailed figure on the sectors of the economy investigated by the Service in 2004.

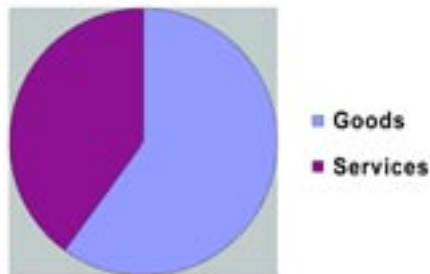


Control of Concentration between Undertaking Law 22(I)/99

During 2004, pursuant to the provisions of Law 22(I)/99, there were five (5) notifications of concentrations filed to the C.P.C., compared to six (6) that were notified in 2003. Below follows a detailed figure.



The majority of the concentration, as shown on the figure below, was concerned with animal food, cleaning products and the rest were concerned with companies engaging in activities in the insurance and tourist sector.





Synoptic Presentation of Cases and Decisions of 2004

A. The Protection of Competition Law 207/89

1. Decisions

During 2004, four (4) notifications for the applications for individual negative certification or individual exemption were filed to the C.P.C., which with the completion of the investigative reports they were either approved or rejected or approved on conditions. Below, there are summaries of three of these notifications.

Application for negative certification and/or individual exemption filed by the Cyprus Telecommunication Authority (CY.T.A.) of the agreements between CY.T.A. and companies M & P MEGAFONE LTD, INFOTEL LTD, ALP (AELIOTIS) Ltd, A. STEPHANIS & Co Ltd

CY.T.A., on 5 July 2004, submitted, according to sections 16 and 18 of the Protection of Competition of Law 1989 (henceforth "the Law"), notification of the agreements between CY.T.A. and companies M & P MEGAFONE LTD, INFOTEL LTD, ALP (AELIOTIS) Ltd, A. STEPHANIS & Co Ltd (henceforth "Collaborators") requesting the issue of individual negative certification or individual exemption. On the 9th of July 2004, a summary of the application was published in the Official Gazette of the Republic calling every interested third party to submit within a period of seven days observations regarding the application. The interested parties, that submitted to the C.P.C. their observations, were the companies Areeba, Telefone and Tel2PHONE. According to the agreement, the Collaborators will mediate for the contracting of agreements between CY.T.A. and the subscribers for a telecommunication service. *Inter alia*, according to the agreements, the Collaborator or his subsidiary companies, without the previous approval of CY.T.A. (a) will not compete CY.T.A., (b) will neither promote in the market, nor sale in the shops any kind of telecommunication goods or services that are competitive with CY.T.A. products and

(c) will not mediate for contracting agreements of future clients with the competitors of CY.T.A..

CY.T.A. in its defence stated that the clause on non-competition does not restrict competition because a) the nature of relation between Collaborators and CY.T.A. is that of commercial agents and falls outside the scope of competition rules. Specifically, based on section 20 of Council Directive 86/653/EEC on the coordination of the laws of the member states relating to self-employed commercial agents and the corresponding section of the national legislation that foresees for the regulation of relations between commercial representative and represented Law 51(I)/92, as amended with Law 149(I)/200, b) even if it does not fall outside the scope of Competition legislation, it does not create barriers to entry in the market of any competitors of CY.T.A. and c) the market power of each Collaborator for the year 2004 amounts to 10% and all together to 30%.

The C.P.C., in its meeting held on the 15th of November 2005, based on evidence before it and on all that have been analysed above and taking into consideration all the written observations of the applicant and the interested parties, as well as the provisions of the Law, unanimously decided that:

(a) The issue of a negative certification according to section 16 of Law 207/89 is not justified and consequently, the application of CY.T.A. for the issuing of negative



certification of the agreements is rejected. Although the agreements constitute agreements of commercial agents, nevertheless, according to the Notice of the European Commission "Guidelines on vertical restraints" the existence of obligations of non-competition, in combination with the analysis of the relative market and the dominating position of CY.T.A. creates barriers to entry resulting to the restriction of competition.

(b) The issue of individual exemption on the basis of section 5 of Law 207/89 is not justified, because the conditions foreseen in section 5 of Law 207/89 are not accumulatively fulfilled and consequently, the application for the issuing of individual exemption for the agreements by CY.T.A. is rejected.

(c) As a result of the above, the agreements are declared invalid, because specific provisions infringe the Protection of Competition Law 207/89 and particularly the provisions of section 4(1) of Law 207/89, because they have as their aim or result or potential result of eliminating the competition in the relative market. Moreover, the provisions of agreements also infringe the provisions of section 6 of the Law and more specifically provisions 6(1), (2) (a) and (b) of Law 207/89.

(d) Further, the C.P.C. clarifies that the agreements in question could be applied, if the specific provisions were deleted and also all those terms that infringe the provisions of the Protection of Competition Law, particularly in regards to sections 4 and 6 of Law 207/89, e.g. the provisions of paragraph 14, "Clause of non-competition".

Application of the Insurers' Pool for Public Use Vehicles for renewal of the Individual Exemption

On the 22nd of November 2004, the Insurers' Pool for Public Use Vehicles

(hereinafter «Insurers' Pool»), submitted to the C.P.C. an application for the renewal of the individual exemption for the period of two years or until the amendment of the Law 207/89, whereby the notification system will be abolished.

The submitted application was filed following the complaint of a taxi owner/driver against the Insurers' Pool, dated 26 of March 2004. The C.P.C., in its meeting dated 3 of September 2004, having taken into consideration the investigative report prepared by the Service, all the information and documents collected by the Service during its investigation at the premises of the Insurers' Pool, the information provided by the parties and all the other documents and information included in the case file, unanimously decided that *prima facie* there is an infringement of section 6(1),(2)(c) and (3) of Law 207/89 on behalf of the Insurers' Pool, due to the application of different terms for vehicles imported to Cyprus as used and those imported as new, the results of which is that certain undertakings are placed in a disadvantageous position in respect of competition.

With the application for the renewal for the individual exemption, the Insurers' Pool notified to the C.P.C. that having taken into consideration the statement of objection issued on the 13th of October 2004, it will, as from the 1st of January 2005, terminate the application of different terms for vehicles imported to Cyprus as used and those imported as new, as regards both the age starting the imposition of additional charges, and the percentages for increasing the insurance premium.

According to the application, the termination of the discriminatory clause will have as a result the increase of the premiums and thus, the Insurers' Pool will divide up what was paid before by the used cars to the premiums of all cars. The said increase came into force on the 1st of January 2005.



The C.P.C., having taken into consideration the provisions of section 5(1) of Law 207/89 for the exemption for section 4 of Law 207/89, established that the Insurers' Pool continues to contribute, with the reasonable participation of consumers, to the accruing benefit and to the promotion of the economic progress, it does not impose on the insurance companies involved restrictions beyond those absolutely necessary and its activities do not abolish competition except up to a percentage below 5% in the whole of the motor vehicles insurance market.

On the basis of the above, the C.P.C. unanimously decided that all the requirements of section 5(1) of Law 207/89 concur and thus, approved the application of the Insurers' Pool for the renewal of the individual exemption until the amendment of the Protection of Competition Law, which accommodates Regulation 1/2003 and according to which the notification system is abolished. The present Order would come into force, as long as the discriminatory clause is terminated and the increase of the premiums is according to the letter addressed to the C.P.C. dated 3 of December 2004.

Application filed by the Cyprus Football Federation (C.F.F.) and Lumiere TV Ltd for individual negative certification and individual exemption

On the 18th of August 2004, the Cyprus Football Federation (C.F.F.) and Lumiere TV (LTV) filed two applications for individual negative certification and individual exemption according to sections 16 and 18 of Law 207/89. The two applications were filed as a result of the decision of the C.P.C. dated 12 of August 2004, by which it held that the joint selling of television rights by C.F.F., on behalf of all the football associations in Cyprus, did not infringe section 4 of the Law at the time it was adopted. Nonetheless, due to the interest expressed by other TV stations, an

application for individual exemption pursuant to section 5 of Law 207/89 was submitted in order for the C.F.F. to continue the joint selling of the TV rights of the various football associations.

Moreover, in the same decision the C.P.C. concluded, having taken into consideration that the three agreements signed by C.F.F. and Lumiere TV Ltd, in relation to the football matches for the Championship in Category A, the Cup Games and in relation to the production and transmission of snapshots will terminate with the conclusion of the Games Season 2004/2005, should they wish to continue their corporation, they will have to file for application for individual exemption pursuant to section 5 of Law 207/89.

On the 20th of August 2004, a summary of the application was published in the Official Gazette of the Republic calling every interested third party to submit within a period of seven days their observations regarding the application. The companies CY.T.A. and Antenna Ltd submitted to the C.P.C. their objections in relation to the applications.

The C.P.C., on the 2nd of September 2004, based on evidence before it all that have been analysed above and taking into consideration all the written observations of the applicant and the interested parties, as well as the provisions of Law, unanimously decided:

- (a) To reject C.F.F. 's application for negative clearance.
- (b) C.F.F. 's application for individual exemption according to sections 5, 16 and 18 of the Law on the joint selling of media rights of the football games and snapshots, is accepted under the conditions that with the termination of the agreements between C.F.F. and LTV, the C.F.F. would separate the media rights for the transmission of



football games in separate packets and hold offers through a public competition, thereby giving the opportunity to all interested parties to compete. The terms and conditions will be fixed by C.F.F. without favouring specific competitors. In no case should the duration of the said agreements exceed three years, meaning three football seasonal years. Also, any non-disposed products - football games, which are not covered by the said agreements, would be made available to the football clubs, which take part in the organisation of specific football games. The same will apply for future agreements.

(c) As regards to the application filed by C.F.F. and LTV for individual exemption in relation to the said agreements for the live coverage of football games, snapshots and more specifically the provision regarding LTV's right for automatic renewal for another three (3) years in relation to the live coverage of football games of the Cyprus Championship, for another two (2) years for the football games of the Cyprus Cup, for a period of one year for snapshots, for another one (1) year for football games of the Cyprus Championship Category B and of football games held on Sundays until the football Season 2008 with a right of choice until 2011, the C.P.C. unanimously decided to grant it on conditions.

In 2004, the C.P.C. issued four (4) decisions that originated from complaints concerning abuses by undertakings holding dominant position and abuses by the existence of concerted practices between undertakings.

Antenna Ltd / Lumiere TV Ltd, Lumiere Services Ltd and the Cyprus Football Federation (C.F.F.)

The investigation of the present case originated for the complaint filed by Antenna Ltd against Lumiere TV Ltd, Lumiere Services Ltd and the Cyprus Football Federation (C.F.F.) for the possible infringement of section 4 and/or 6 of Law 207/89.

The C.P.C., in its meeting dated 12 of August 2004, having taking into consideration all the written statements of the parties, as well as all of their agreements and the information included in the files, unanimously decided the following:

(a) The C.F.F.'s decision on the joint selling of media rights of the football games and snapshots did not restrict competition at the time it was adopted, due to the lack of interest shown by the interested parties to compete in the relevant market. Thus, the said decision of the C.F.F., at the time it was

adopted did not result to an infringement of section 4(1) of Law 207/89. Nevertheless, with the demonstration of some interest from the interested parties, a competitive environment started to exist, even at a minimum level. Therefore, if the C.F.F. wishes to continue adopting decisions on the joint selling of media rights, it will have to file a notification to the C.P.C. for an individual exemption of the basis of section 5 of the Law 207/89.

(b) In case C.F.F. and LTV do not terminate the agreements under examination based on their deadlines, the C.P.C. will impose a fine of CYP 2.000 against C.F.F. and LTV, separately, for each day the infringement continues. A fine will not be imposed for those agreements where an individual exemption has been granted.

Furthermore, with the termination of the agreements between C.F.F. and LTV and under the condition that C.P.C. would grant an individual exemption to C.F.F. for the joint selling of media rights, the C.F.F. should



separate the media rights for the transmission of football games, in separate packets and the holding of offers, through a public competition, thereby giving the opportunity to all interested parties to compete. The terms and conditions will be fixed by C.F.F. without favouring specific competitors. In no case should the duration of the said agreements exceed three years, meaning three (3) football seasonal years.

Yeomilos Trading Ltd / Cyprus Potato Trades Association

The company Yeomilo Trading Ltd (henceforth «Yeomilo»), filed a complaint on the 26th of April 2004, pursuant to section 28 of Law 207/89, against the Cyprus Potatoes Trades Association (henceforth «Association»), for the infringement of section 6 of Law 207/89 by abusing its dominant position in the market of commencing of potatoes.

The C.P.C., in its meeting dated 5 of October 2004, having taken into consideration the investigative report prepared by the Service, all the information and documents collected by the Service during its investigation in the premises of the Association, the information provided by the parties, and all the other documents and information included in the case file, unanimously decided that *prima facie* there is an infringement of section 6(1),(2) (d) of Law 207/89 on behalf of the Association, by reserving the right to re-examine the issue of not taking deliveries of potatoes from the producers that do not deliver their whole crop to the Association, which had as a result or effect or a likely effect the making of contracts conditional upon the acceptance by the other parties of additional obligations which, by their nature or according to commercial usage, have no connection with the subject-matter of the contracts.

At the C.P.C.'s meeting dated 23 of November 2004, all the parties attended

were represented by their lawyers. The lawyer of the complainant, Mr A. Papacharalambous, admitted that his clients issued an announcement that is in violation of section 6(1),(2)(d) of Law 207/89 and continued by stating reasons for the mitigation of the fine.

The C.P.C., in its meeting dated 16 of December 2004, having taken into consideration all the information arising from the investigative report of the Service, as well as from the views and positions of the interested parties for the purpose of imposing a fine and pursuant to section 22 of Law 207/89, unanimously decided:

(a) Taking into consideration the fact that up to the liberalisation of the market the Association was an organisation that supported and promoted the rights of the potato producers, without gaining any benefit for itself, the fact that the infringement was limited to a small period of time, and the fact that the threat was never enforced and especially the fact that the Association issued a second announcement dated 23 of November 2004, by which it brought to an end the infringement, the C.P.C. decided to impose a fine of CY 20.000 pounds.

(b) For the purpose of eliminating any uncertainties as to the status of the announcement under investigation, the Association must communicate its announcement dated 23 of November 2004 in the same way it communicated the announcement under investigation.

Helios Airways Ltd / Cyprus Airways Ltd

The decision of the C.P.C. concerned the complaint filed by the company Helios Airways, (henceforth «Helios») against the Cyprus Airways Ltd (henceforth «Cy.A»), alleging that the incentive schemes of the travel agents offered by Cyprus Airways resulted in the distortion of competition.



The C.P.C., on the 11th of November 2004, having taken into consideration the investigative report prepared by the Service, all the information and documents collected by the Service during its investigation, the information provided by the parties, and all the other documents and information included in the case file, unanimously decided that prima facie there is an infringement of section 6(1),(2) (a), (b), (c) of Law 207/89 on behalf of Cyprus Airways.

At the C.P.C.'s meeting, dated 23 of November 2004, Cyprus Airways announced the enforcement of the incentive schemes for the travel agents as from the 1st of January 2003, which was in violation of Law 207/89 and specifically of sections 6(1), (2) (a) (b) (c) and stated that their intentions were to comply with the instructions of the C.P.C..

The C.P.C, having taken into consideration the information and documents included in the investigative report of the Service and the positions of the Cyprus Airways Lawyer for the purpose of the fine and pursuant to section 22 of Law 207/89, unanimously decided:

- (a) To judge Cyprus Airways with every leniency, taking into account the fact that they immediately brought to an end the infringement and therefore only issue a prohibition decision.
- (b) In case where it is noted that the said infringement continues, then the C.P.C. would impose a penalty of CY 3.000 pounds for every day the infringement continues.

Association of Authorised Agents of race bets / Nicosia Race Club

The Association of Authorised Agents of Race Bets submitted a complaint against the Nicosia Race Club for abusing its dominant position by imposing unfair and dissimilar terms to the agreements of their appointment in contravention of section 6 of Law 207/89.

The C.P.C., taking into account the investigative report prepared by the Service and all the information and documents provided by the parties, unanimously decided that there is an infringement of sections 6(2)(c) and 6(3) of Law 207/89. It is particularly reported that the action of the Race Club to impose different minimum limits on the sales per race meeting to the agents infringes section 6(2)(c) of Law 207/89 in so far as, there is no objective criteria justifying the differentiation.

Moreover, due to the fact that the Club is found in a relation of economic dependence with its agents, it abuses this relation of dependence with its agents to the degree that it imposes arbitrary-abusive terms in their contract, infringing in this way section 6 (3) of Law 207/89.

After the hearings, the C.P.C. in a meeting dated 23 of December 2004 unanimously delivered a decision where it stated that the said clauses/terms included in the agreements were in contradiction with the provisions of the Law 207/89 and made recommendations/orders for the compliance of the defendant until the 31st of January 2005. In case the infringement continues, then the Club will be liable to pay CY 3.000 pounds for every day the infringement continues.



During 2004, the C.P.C. initiated four (4) investigations, in two of which infringements were found and no infringements were found in other two.

Ex officio investigation against A & P (Andreas & Paraskevaides) Enterprises Ltd and /or other soft drink companies for the possible infringement of sections 4 and 6 of the Law 207/89

The C.P.C., pursuant to section 22 of Law 207/89, gave instructions to the Service to carry out an own initiative investigation against A & P (Andreas & Paraskevaides) Enterprises Ltd and/or other soft drink companies for the possible infringement of sections 4 or/and 6 of Law 207/89. With the conclusion of the investigative report, the C.P.C. unanimously decided that there is prima facie infringement of sections 4 and 6 of Law 207/89 and instructed the Secretary of the C.P.C. to issue and served a statement of objections to A & P (Andreas & Paraskevaides) Enterprises Ltd and Lanitis Bros Ltd.

The A & P (Andreas & Paraskevaides) Enterprises Ltd denied that it is infringing of section 6 of Law 207/89 and challenged the facts of the case as stated during the procedure, although it accepted that in the past they concluded such anti competitive agreements that infringed section 4 of Law 207/89. At the end the A & P (Andreas & Paraskevaides) Enterprises Ltd declared their wilful intention not to follow and/or adopt similar practices in the future that may infringe the provisions of the Law. The C.P.C., having taken into consideration all the above and the information included in the file of the case, decided as follows:

(1) The termination of the agreements by the companies A & P (Andreas & Paraskevaides) Enterprises Ltd and Lanitis Bros Ltd that infringed section 4 of the Law and are not exempted pursuant to the P.I. 365/2000, until the 31st of December 2004.

(2) On the basis of the termination of the said agreements and the fact that none of the parties received any profit from the conclusion of these agreements, but instead suffered a loss, the C.P.C. does not impose any fine.

(3) The undertakings concerned should avoid in the future the conclusion of any agreements that aim or result in the distortion of competition and the foreclosure of the market in the distribution and sale of soft drinks.

Ex Officio investigation against Popular Bank Ltd, Bank of Cyprus Ltd and Hellenic Bank Ltd

The C.P.C., pursuant to section 22 of Law 207/89, gave instructions to the Service to carry out an own initiative investigation for infringement of section 4 of the Protection of Competition Law of 1989, as regards the bank charges.

This decision has been issued after the C.P.C. 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 C.P.C., as well as information collected from the responses of the banks to the questionnaires that were sent out by the Service of the C.P.C. to them.

The initial investigation concerned all the commercial banking institutions, including the Central Co-op Bank. However at a later stage, the C.P.C., by an interim decision held that the proceedings would only



concern Bank Cyprus Ltd, Cyprus Popular Bank Ltd (Laiki Bank Ltd) and Hellenic Bank Ltd. At the meeting of the C.P.C. on the 22nd of 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 further claimed 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 they took part in the agreements in question, nevertheless they 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.

The C.P.C., unanimously decided that the behaviour and acts of the banks in question at the substantial time, infringed section 4(1) (a) and (b) of the Law and ordered:

(a) The immediate termination of all infringements of section 4(1) of the Law as stated in the amended statement of objections dated 21 of October 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.

(b) The imposition of a fine to each bank concerned for the infringements of section 4(1) of the Law, as follows: Bank of Cyprus Ltd CY 2.475.000 pounds, Popular Bank Ltd CY 1.695.000 pounds, Hellenic Bank Ltd CY 830.000 pounds.

Ex Officio investigation as regards the co-operation agreement CY.T.A. - VODAFONE

On the 6th of February 2004, the Cyprus Telecommunications Authority (CY.T.A.) contracted a co-operation agreement with Vodafone Marketing Sarl. The Service of the C.P.C. requested further information on the agreement of CY.T.A. with VMS, and the agreement was dispatched to it.

The C.P.C. gave instructions to the Service for carrying out an investigation with regard to the above agreement with a view to appreciate if it is possible to affect trade between the member states and it has as its object or effect the restriction or the distortion of competition inside the common market by infringing article 81 EC Treaty.

The C.P.C. after examining all the documents and the proper preliminary investigation of the Service, unanimously decided that there was no infringement of



the Law as the agreement under investigation does not have any anticompetitive results within the meaning of article 81 (1) EC Treaty.

Ex Officio investigation against the companies of petroleum products and service stations of petrol

The C.P.C. exercising the powers vested in it by section 22 of Law 207/89, gave instructions to the Service to carry out an own initiative investigation with a view to appreciate if the companies of petroleum products infringe section 4 of Law 207/89 by cooperating between them or/and between them and the service stations of petrol and section 6 of the Law for abusing their collective dominant position that they might possess these petroleum companies in the market.

After examining the preliminary investigation of the Service, the C.P.C. decided that there is no infringement of the provisions of the Law, it judged however that the Service will have to observe the behaviour of these companies in the future for the assurance of the rules of competition.

2. Cases before the C.P.C.

Bako (Nicosia) Ltd / Exxon Mobil Oil Ltd

This case concerns a complaint submitted by the company Bako (Nicosia) Ltd against the company Exxon Mobil Oil Ltd for infringement of section 6(3) of Law 207/89. BAKO complained that Exxon Mobil Oil Ltd abused the relationship of economic dependence that existed between them, because of the immediate and unjustified termination of their long-term commercial relations. Bako (Nicosia) Ltd was responsible for the transportation of fuel to all the petrol-stations of Exxon Mobil Oil Ltd, a service which Bako (Nicosia) Ltd provides for more than 50 years.

The C.P.C., after examining the content of the complaint, gave instructions to its Service to carry out the necessary preliminary investigation. At this stage, the case is at the hearing process.

Kitheo Farm Ltd / PanCyprian Association of Cow Feeders Public Ltd

Kitheo Farm Ltd filed a complaint to the C.P.C. against the PanCyprian Association of Cow feeders public Ltd (henceforth «PAC»), for the possible infringement of sections 4(1) and 6(1)(2) of Law 207/89. Specifically, it alleged that PAC abused its dominant position in the distribution and resale of milk cow and meat. Specifically, the agreements contained terms of exclusive distribution and refusal of sale and of quantities milk cow to competitors of PAC, constituting the sale of milk to Kitheo Farm that is not a member of PAC, thereby restricting the production of milk.

The Service, following the instructions of the C.P.C., started preparing a preliminary investigation of the complaint. The C.P.C. on the basis of the investigative report prepared, unanimously decided that *prima facie* there is an infringement of sections 4(1) and 6(1) and (2) of Law 207/89 on behalf of the PAC and instructed the Secretary of the C.P.C. to deliver a statement of objection. The case is at the hearing stage.

Group of clinic owners / Vouros Healthcare Ltd

This case concerns a complaint by a group of clinic owners against the company Vouros Healthcare for a possible infringement of section 6 of Law 207/89. According to their letters, the company Vouros Healthcare Ltd knowing that it had a dominant position in the market of management of clinical waste and also the obligation of the private clinics, according to the Private Clinic Law, to take



care for the right management of their clinics' waste, either by themselves or by entrusting this function to proper companies, in order to obtain a licence, it doubled its prices within a few months.

The C.P.C. based on the preliminary investigation that has been conducted by the Service, unanimously decided that a *prima facie* infringement of the provisions of sections 6(1) and 6(2)(a)(c) of Law 207/89, existed. The case is currently at the hearing stage before the C.P.C. and is expected to be completed within 2005.

Ex Officio investigation against the Electricity Authority of Cyprus

The C.P.C. initiated an investigation for the possible infringement of section 6 of Law 207/89 as amended, by the Electricity Authority of Cyprus (EAC) in 2004. The EAC constituted up until the entry of Cyprus into the EU a monopoly by law and the investigation focused primarily on the possibility of excessive pricing being exercised by the EAC. The Service of the C.P.C. examined diligently EAC's 10-year Development Plans, Budgets, Annual Reports and Financial Statements as well as other documents prepared internally by the EAC or by external consultants to the EAC and submitted a relevant Report to the C.P.C.. The C.P.C. decided that a *prima facie* case of excessive pricing existed against the EAC and issued a statement of objections against it.

Ex officio investigation in the cement sector

On the 27th of March 2004, the C.P.C. instructed the Service to initiate an investigation in the cement sector, in light of Cyprus' accession into the European Union and the liberalisation of the relevant sector, which resulted in the cumulative increases of

the prices by the two cement factories that are active in the Cyprus market.

With the investigation, the Service intended to form a view on the conditions that exist in the Cyprus market that would enable it to conclude whether after the liberalisation, the relevant market would function according to the rules of a free economy and within a competitive environment. All the information collected was put before the C.P.C. in a form of a report, according to the provisions of the Law, and a decision is expected to be issued within 2005.

Ex officio investigation against CY.T.A. as regards internet access

Pursuant to section 22 of Law 207/89, the C.P.C. gave instructions to its Service to carry out an own initiative investigation against the Cyprus Telecommunications Authority (henceforth «CY.T.A.») for a probable infringement of section 6 of Law 207/89, regarding the provision of access to the internet, in order to determine whether there was an infringement of section 6 of Law 207/89.

The C.P.C., after examining the proper preliminary investigation of the Service, decided that *prima facie* CY.T.A. refuses to supply a particular facility to Telepassport for direct access to the internet, and as a result price squeezing occurs. Also, the C.P.C. decided *prima facie* that CY.T.A. applies dissimilar conditions to equivalent transactions since it provides the same service (access to the internet) to its subscribers and to Telepassport using a different way of connection, and as a result Telepassport is charged more than the subscribers of CY.T.A..

The case is currently at the hearing stage before the C.P.C. and is expected to be completed within 2005.

**Golden Telemedia Ltd / CY.T.A.**

This case concerns a complaint by the company Golden Telemedia against CY.T.A. for the possible infringement of section 6 of Law 207/89. The company Golden Telemedia complained against CY.T.A. for the possible abuse of its dominant position in the market of provision of premium messages (Premium SMS) by refusing to connect the telecommunication system of the complainants with its SMS Centre. The connection is necessary in order for the Service Premium SMS to operate. The complainants claim that CY.T.A. has denied the provision of the Service of sending Premium SMS to any other provider of similar services, which results to the distortion of competition.

The C.P.C., after examining the content of the complaint, gave instructions to the Service to carry out a preliminary investigation. At this stage, the case is under investigation by the Service. The case is expected to be completed within 2005.

Scancom Cyprus Ltd, Telephone Ltd and M& K Telephone Ltd / CY.T.A.

On the 4th March 2004, the Office of the Regulator of Telecommunication and Postal Services communicated to the C.P.C. a complaint by Scancom (Cyprus) Ltd (now Areeba) against CY.T.A. for the conclusion of exclusive agreements with four specialized telecommunication shops, active in the whole of Cyprus. The C.P.C., in its meeting on the 1st of June 2004, instructed the Service to launch a preliminary investigation of the complaint, to determine whether there is an infringement of the provisions of the competition rules. At the same meeting, there were discussions on a letter by the M & K Telephone Ltd (henceforth «Telephone») addressed to CY.T.A. that was communicated to the C.P.C.. Following the

above communication letter, Telephone submitted a formal complaint to the C.P.C., which was taken into consideration in the investigation. The Service having completed the preliminary investigation submitted to the C.P.C. an investigative report.

The C.P.C., in its meeting dated 4 of August 2004, having taken into consideration the investigative report prepared by the Service, the information and documents included in the file, unanimously decided that:

(a) There is a possible infringement of section 4(1)(a),(b),(c) and (e) of Law 207/89 on behalf of CY.T.A., for the conclusion of exclusive agreements with the companies Malloupas & Papacostas Trading Co Ltd, Infotel Ltd, Alp (Aeliotis) Trading Ltd, Stephanides & Co Ltd, that contained no-competition clauses.

(b) There is a possible infringement of section 6(1)(2)(a),(b),(c) and (e) of the Law on behalf of CY.T.A., for the conclusion of exclusive agreements with the companies, Malloupas & Papacostas Trading Co Ltd, Infotel Ltd, Alp (Aeliotis) Trading Ltd, Stephanides & Co Ltd, that contained no-competition clauses and CY.T.A. refused to supply the rest specified stores with services and products, such as mobile telephony, mobile telephony soeasy, telecards and internet services.

The case is at the hearing process and is expected to be completed within 2005.

Ex officio investigation against Muskita Alumium Industries Ltd

The C.P.C. started an own initiative investigation for the possible infringement of section 6 of Law 207/89 as amended, by Muskita Aluminium Industries Ltd.



Specifically, given that Muskita Aluminium Industries Ltd had a dominant position in the market of profile aluminium, the Service carried out an investigation in order to establish whether Muskita Aluminium Industries Ltd abused its dominant position in the relevant market.

In this respect the Service examined whether Muskita Aluminium Industries Ltd (a) engaged in predatory pricing, (b) denied, without objective reason, to supply competitive companies and (c) followed discriminatory pricing between its customers. The case is currently at the stage of oral hearing and is expected to be completed in 2005.

Patroklos Georgiou Developers Ltd / Owners of Concrete Pumps and producers of ready made concrete in Larnaca

The case was brought before the C.P.C. following a complaint by Patroklos Georgiou Developers against the owners of concrete pumps that are also the producers of ready-made concrete in Larnaca, for infringement of sections 4 and/or 6 of Law 207/89.

Patroklos Georgiou Developers Ltd complained that owners of concrete pumps concluded an agreement for the creation of partnership between them under the name KIMON. As a result of the creation of this partnership, the participating companies fixed the prices and agreed on the terms of use of the pumps thus, leaving no room for competition between them. Furthermore, the consumers were left with no alternative solution.

The C.P.C. gave instructions to the Service to carry out a preliminary investigation, as a result of which the C.P.C. unanimously decided there was a *prima facie* infringement of the relevant provisions of the Protection of Competition Law. The present case is at the stage of the oral hearing and is expected to be concluded within 2005.

3. Pending investigations

Complaints by the kiosks' owners Pavlos Poullos, Leandros Symeou, Demetrakis Christoforou and the company Scuralie Trading Ltd against the press distribution agencies Hellenic Distribution Agency Ltd and Kronos Ltd

The kiosks' owners Pavlos Poullos, Leandros Symeou, Demetrakis Christoforou and the company Scuralie Trading Ltd filed complaints against the press distribution agencies Hellenic Distribution Agency Ltd and Kronos Ltd for a possible infringement of section 6 of Law 207/89. Specifically, they complained that the two agencies abused their dominant position in the market of distribution of newspapers and magazines due to the fact they had granted different percentages of commission on sales to their customers and a different level of deposit. Also, the said agencies were accused for refusal to supply newspapers and magazines.

The C.P.C., after examining the proper preliminary investigation of the Service unanimously decided that the above mentioned acts of the agencies constituted an infringement of section 6 of the Protection of Competition Law 207/89, which involves an abuse of dominant position.

Ex officio investigation against the Pancyprian Association of the Owners of Elderly Houses

On the 6th of December 2004, the C.P.C. instructed the Service to launch an ex officio investigation against the PanCyprian Association of the Owners of Elderly Houses (henceforth «Association»), for the possible infringement of the provisions of the protection of competition Law and specifically, section 4 of Law 207/89.



The investigation was initiated by a letter from the Association that was addressed to all the owners' of the elderly home for the application of minimum obligatory prices.

On the basis of the above, the Service will conduct an investigation, whereby it will collect all the necessary information to determine whether there is an infringement of the Law.

Ex officio investigation against CYTA for the possible infringement of section 6 of the Law, as regards the international call via VoIP

The C.P.C. having taken into consideration the letter communicated by the Office of the Regulator of Telecommunication and Postal Services, as regards CY.T.A.'s conduct to offer international calls through the service «CYTA 1818» and «International Direct IP», by using the Voice over internet Protocol (henceforth «VoIP»), instructed the Service to conduct an investigation for the possible infringement of sections 4 and 6 of Law 207/89. The above letter was also accompanied with the complaint of the companies Callsat Telecom Ltd, Telepassport and OTenet Telecom in relation to the promotion of the new services in a way that affects their interests.

The Service, pursuant to the instructions of the C.P.C., will conduct an investigation that is expected to be concluded within 2005.

Telepassport Telecommunications (Cyprus) Ltd / CY.T.A.

Telepassport Telecommunications (Cyprus) Ltd submitted to the C.P.C. a complaint against CY.T.A. for refusal to supply advice charge (AoC) services during the transmission of a call or with the termination of the call

and services of charging metering to hotels (pulse per minute) 16KHz, because for technical reasons it is not possible to provide such services to the alternative telecommunications providers and thus, it infringed section 6 of Law 207/89.

The C.P.C. instructed the Service to conduct an investigation of the complaint, which is expected to be concluded within 2005.

4. Judgements of the Supreme Court

Appeal No. 795/2002 - Cyprus Telecommunication Authority against the Cyprus Government, Commission for the Protection of Competition

The Cyprus Telecommunication Authority filed an appeal at the Supreme Court of Cyprus against the decision of the C.P.C. for the infringement of section 6(2) (a) of Law 207/89, for excessive profits which resulted to the imposition of a fine, which amount to CY 20.000.000,00 pounds.

The Supreme Court, having examined the legality of the composition of the Committee, held that there was an error in the composition of the administrative body and thus upheld the decision.

Appeal No. 86/2003 - Christakis Lazarides, Byron Teggerakis against the Cyprus Government, Commission for the Protection of Competition

With the above recourse, the interested parties filed an appeal against the decision of the Commission for the Protection of Competition, by which it decided that they did not have a legitimate interest to file the complaint under examination, because it was not submitted by the company MTV Cosmetics but by the shareholders.



The Supreme Court held that the C.P.C. had wrongly interpreted the complaint and wrongly applied the provisions of the Law and continued by stating that it was impossible for the complaint to be submitted by the company, since the complaint was against the shareholders holding the majority of the shares. It further stated that section 6(3) of Law 207/89 should be applied widely and in the general form of the provisions of the Law.

Finally, the Supreme Court held that the complainants had a legitimate interest to file the said complaint.

Appeal No. 332/2003 - Cyprus Telecommunications Authority against the Cyprus Government and the Commission for the Protection of Competition

The appeal concerned the decision of the C.P.C. to grant interim measures requested by Callsat Telecom Ltd against CY.T.A., by which CY.T.A. was obligated to provide the complainants with the right to have access to the Private International leased lines of 34Mbps. CY.T.A. poses to reasons for upholding the decision of the C.P.C. (a) unlawful formation of the administrative body, based on the fact that one of its members was the mayor of Latsia and (b) violation of section 14 of Law 207/89, since the C.P.C. did not provide them with the opportunity to express their views.

The Supreme Court held that the appointment of the members of the C.P.C. is decided by the Council of Ministers and the political parties are not part of the decision making process. The only restriction provided for in Law 207/89 is that «they are prohibited from having any financial or other interest likely to affect the impartiality of

their judgment in the exercise of the functions of the Commission in accordance with this Law» and thus, it rejected the first opposition. As regards the second opposition, it held that there was no justifiable reason to uphold the decision of the C.P.C..

B. Control of Concentrations between Enterprises Law 22(I)/99

1. Compatible

Group 4 Falk A/S / Securicor PLC

On the 2nd of March 2004, the concentration between the companies Group 4 Falk A/S and Securicor Plc was notified to the C.P.C.. The said concentration concerned the merge of two companies that would take place in several stages. The merger would be completed within 2004 and by this a new company would be created, Group 4 Securicor Plc and the shareholders would be Group 4 Falk A/S, with 57,5% and the old Securicor with 42,5% shares.

The C.P.C. decided that the concentration did not create or strengthen a dominant position, because, firstly, there was no affected market within the meaning of Schedule I of Law 22(I)/99, since only one of the companies was active in the Cyprus market. Secondly, the Cypriot company Group 4 would continue operating at the same relevant market and would not change its status, and would not expand.

The C.P.C. noted that the concentration did not raise serious doubts as to its compatibility with the requirements of the competitive market and unanimously decided that the concentration was compatible pursuant to section 11 and 18 of Law 22(I)/99.



Concentration of the companies Henkel KGaA and G.P Michaelides & Sons Ltd

On the 9th of November 2004, the concentration of the companies Henkel KGaA and G.P Michaelides & Sons Ltd was notified to the Service of the Commission for the Protection of Competition (C.P.C.).

By this notification, the companies Henkel KGaA and Detergenta Developments Ltd, made known that on the 3rd of November 2004 they have contracted a written agreement by which the company Detergenta Developments Ltd, owner of the company G.P.Michaelides Ltd, would convey 51% of its shares to G.P.Michaelides Ltd to Henkel KGaA. The company G.P.Michaelides Ltd based on this agreement would be active on the production, importation, development, distribution and/or sale of detergents, products of general house cleaning and products of personal hygiene, of the company Henkel KGaA.

In its examination as to whether the concentration created or strengthened a dominant position, the C.P.C. took into consideration the market shares that the parties to the concentration held in the affected markets. In this case, serious doubts as to the compatibility of the notified concentration with the requirements of the competitive market were not raised since the market shares of the company G.P.M. were not expected to increase after the concentration would have come into effect. Also, the number of the competitors in the affected markets was not affected by the concentration. The main competitors in every affected market and also their market shares remained the same. Furthermore, there were not any barriers of entry to any affected market. So, the entrance of new players to those markets was possible. Thus, the C.P.C. unanimously decided that the

concentration was compatible with the requirements of the competitive market.

2. Concentrations that fall outside the scope of the Law

Salamis Tours (Holding) Ltd/ Thomas Cook Destinations GMBH

In February 2004, the Service of the C.P.C. noted that during December 2003, Salamis Tours (Holdings) Ltd came to an agreement with the group of companies Thomas Cook Destinations GMBH for the creation of a new company with the title Thomas Cook Services (Cyprus) Ltd. Following the preliminary investigation of the Service of the C.P.C., it was decided that the new company did not constitute a joint venture since it was not economically independent, but rather a joint agency.

Artis Petroleum Ltd / Lukoil Cyprus Ltd

On the 10th of November 2004, Artis Petroleum Ltd notified to the C.P.C. that they were planning to acquire the possessions of Lukoil Cyprus Ltd. On the basis of the agreement notified, Artis Petroleum Ltd would acquire 13 service stations established in Cyprus. Following the investigation of the Service of the C.P.C., it was decided that the said agreement did not fall within the scope of Law 22(I)/99, since the concentration did not constitute a concentration of major importance.

3. Pending Investigations

Azare Enterprises Company Ltd / Libra Holidays Group Limited

On the 24th of November 2004, the C.P.C. received a notification of a proposed concentration according to section 13 of the Control of Concentration between Enterprises Law 22(I)/99.



With their notification, the companies Azare Enterprises Company Ltd and Libra Holidays Group Public Limited informed the Service of the Commission for the Protection of Competition that on the 12th of November 2004 they had signed an agreement by which Libra Holidays Group Public Limited will acquire 100% of the share capital of Azare Enterprises Company Ltd. Azare Enterprises Company Ltd is a company based in Cyprus and is the owner of Helios Airways Limited who is active in the air transport sector with final destinations the UK, Ireland and Bulgaria. Libra Holidays Group Public Limited is a public company and is active in the tourism sector, both in Cyprus and the UK. The company's main activities concentrate in the organisation of trips, hotels and air transport.

The control of the above concentration is still pending and is expected to be completed within 2005.

Co-operatives Banks of Athienou, Aradippou and Idalion

On the 27th of October 2004, the Service of the C.P.C. received a notification concerning a proposed merger, according to section 13 of Law 22(I)/99 from the Co-operatives Idalion, Athiainou and Aradippou informing the Service of the C.P.C. that on the 20th of October 2004 they contracted an agreement whereby a new enterprise will be established. The Tree Co-operatives will transfer to the new enterprise all their assets and liabilities involved in the production and trade of provender, as well as the trade of agricultural requisites.

The Service of the C.P.C., after evaluating the information notified by the companies according to schedule III of Law 22(I)/99, prepared a preliminary report that was presented to the C.P.C.. The C.P.C., in the evaluation of the preliminary report of the Service, ascertained that the notified concentration raised serious doubts as to its compatibility with the competitive market. And therefore, the C.P.C. instructed the Service to conduct a full investigation, which is expected to be concluded within the next year.



Goals for 2005

All the goals set out at the beginning of 2004 and the increased obligation of the C.P.C., as a result of Cyprus' accession to the European Union, for the elimination of the practices that restrict competition and the strengthening of the Service audit competences for an effective enforcement of the competition policies at national level, were completed.

Next year, the C.P.C. firmly believes that its performance and quality of work will improve, in order to withstand the competitive pressure of the internal market resulting from the full and direct application of the *acquis* upon Cyprus' accession to the European Union.

The C.P.C. has opted to concentrate on the following areas in 2005:

- The completion of the legislative implementation and the amendment of the Protection of Competition Law in accordance with the EC Regulation 1/2003 and the preparation of the Service of the C.P.C. for the proper and effective application of the *acquis communautaire*.
- Develop the advisory role of the C.P.C., promote awareness to the undertakings and the consumers, specifically in relation to the new legal system that will be created at a national and EU level, through the organisation of seminars and conferences held by the Service or together with other organisations.
- Provide all the necessary training to the officers of the Services that will equip them with the knowledge to carry out their duties in a professional and competent way.
- Expansion and enrichment of the Service's library with books and articles, that will cover even more the needs of the officers of the Service and the development of the C.P.C.'s website.
- The assessment of the competitiveness in specific sectors of the Cyprus market and the conduct of own initiative investigations.