



**COMMISSION FOR THE PROTECTION  
OF COMPETITION**

# 2012

ANNUAL REPORT



REPUBLIC OF CYPRUS



# COMMISSION FOR THE PROTECTION OF COMPETITION

## ANNUAL REPORT 2012

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

## CONTENTS

	Statement by the Chairperson of the Commission for the Protection of Competition	2
<b>1.</b>	<b>THE COMMISSION FOR THE PROTECTION OF COMPETITION IN 2012</b>	<b>4</b>
	1.1. Mission	
	1.2. Main activities during 2012	
<b>2.</b>	<b>STRUCTURE OF THE COMMISSION FOR THE COMPETITION</b>	<b>8</b>
	2.1. The Commission for the Protection of Competition	
	2.2. Service of the Commission for the Protection of Competition	
	2.3. Staff training	
	2.4. Organization of Lectures	
<b>3.</b>	<b>OVERVIEW OF THE COMMISSION'S ACTIVITIES</b>	<b>14</b>
	3.1. Overview of the Decisions of the Commission	
	3.2. Brief Presentation of Decisions issued by the Commission	
	3.3. Overview of Notifications of Concentrations of Undertakings	
	3.4. Judgments of the Supreme Court	
<b>4.</b>	<b>RECENT LEGAL DEVELOPMENTS</b>	<b>30</b>
	4.1. Immunity and Reduction of Administrative Fines in cases of concerted practices that infringe Section 3 of the Law and/or Article 101 TFEU (Leniency Programme) Regulations	
	4.2. Revision of the ECN Model Leniency Programme.	
<b>5.</b>	<b>ADVOCACY</b>	<b>32</b>
	5.1. Participation of the Commission for the Protection of Competition in Parliamentary Committees of the House of Representatives	
	5.2. Opinions	
<b>6.</b>	<b>EUROPEAN COMPETITION DAY</b>	<b>34</b>
<b>7.</b>	<b>EUROPEAN AND INTERNATIONAL COOPERATION</b>	<b>36</b>
	7.1. Cooperation on a European Level	
	7.2. Cooperation on an International Level	



---

## Statement by the Chairperson of the Commission for the Protection of Competition

The past year constituted a transitional stage for the Commission for the Protection of Competition, which was called to respond to particular challenges with which it was confronted. The examination of a large number of pending cases which under the circumstances was deemed imperative, and the review of new cases, comprised a difficult bet which certainly ought to be won.

Despite this and regardless of the difficulties arising mainly due to the lack of human resources, the Commission for the Protection of Competition, with a high sense of responsibility and commitment to the mission the legislator appointed it to serve, succeeded in examining all pending cases. As a result, the examination process of cases has accelerated and a vertical increase in the number of decisions was observed. These have enhanced the facts which laid solid foundations for the efficient application of competition policy against distortions and disturbances which have been observed in the market.

**“a high sense of responsibility and commitment to the mission the legislator appointed it to serve, succeeded in examining all pending cases”**

The Commission for the Protection of Competition, as it was announced in 2011, organized and held a series of events aiming to promote competition culture. Additionally, having realized the importance and effectiveness of Leniency Programmes in the fight against cartels, the Commission forwarded a proposal to the Council of Ministers for the adoption of Regulations which outline the criteria and conditions according to which the amount of the administrative fine imposed to undertakings or association of undertakings may be reduced and/or totally immune. Immunity and Reduction of Administrative Fines in cases of concerted practices that infringe Section 3 of the Law and/or Article 101 TFEU (Leniency Programme) Regulations came into force on 2 May 2012.

The Commission has the obligation to modernize national legislation taking into account current economic needs and community law. On this basis the Commission has drafted a proposal for the revision of the Control of Concentrations between Enterprises Law 22(I)/1999, so as to be able to respond to the contemporary legal and financial reality. The relevant legal proposal has already been submitted by the Commission to the Ministry of Commerce, Industry and Tourism and its adoption by the legislative body is pending.

In 2012, during the Cypriot Presidency of the Council of the European Union and amongst the events organized by the Presidency, the Commission held the European Competition Day, which was attended by the Vice-President of the European Union and European Commissioner Mr Joaquin Almunia, the Director General of the Directorate General for Competition Mr Alexander Italianer, Cypriot judges of the European Court and of the General Court of the European Union, Ministers and Officers of the Cypriot Republic as well as members of the legal and business world of Cyprus. This event offered the Commission the opportunity to present its work, to extract useful expertise from other Competition Authorities and to establish its position in the European family of competition. In any case, positive feedback received by all participants regarding the standard of the Commission's work represents a reward and is also an illustration of the Commission's hard work for achieving this goal.

A fundamental and irrevocable objective of the Commission is to serve and preserve the effective and undistorted competition, aiming at modernizing the structure of the market and at eliminating any distortions of competition for the benefit of consumers and the Cypriot economy as a whole.

Maintaining a steady focus on the above-mentioned objectives, the Commission, aims at expanding its horizons and extending its investigations in various sectors of the economy. A valuable tool for this attempt is the right to conduct ex officio investigations whereby the Commission has the ability to intervene where it thinks necessary, ensuring the efficient application of competition rules, acting to the benefit of enterprises to the best interest of the economy as a whole and consequently for the public interest.



**Loukia Christodoulou**  
Chairperson of the Commission  
for the Protection of Competition

# I.

## THE COMMISSION FOR THE PROTECTION OF COMPETITION IN 2012



### I.I. Mission

The Commission for the Protection of Competition (hereinafter called the "C.P.C." or "Commission") is the independent Authority vested with the exclusive jurisdiction for ensuring a healthy competitive environment.

In particular, the Protection of Competition Law of 2008, in conjunction with the Control of Concentrations between Enterprises Laws of 1999 and 2000, establish the framework of regulations and principles aiming at securing effective and healthy competition within the Cypriot market. The competition policy secures the effective and productive operation of the market, thereby contributing to the creation of an environment favourable to innovation and technological advancement, to the benefit of consumers, who can enjoy higher quality products and services at competitive prices.

As effective competition is vital in an open economy, the C.P.C. is vested with broad powers and duties, which ensure adherence to the principles and regulations in a free economy.

### The main duties of the Commission are:

- To investigate restrictive agreements and concerted practices by undertakings, having as their object or effect, the elimination, restriction or distortion of competition;
- To investigate any probable abuse of dominant position possessed by one or more undertakings;
- To investigate concentrations between undertakings, aiming at preventing distortions in an effective competitive environment and ensuring that the principles of competitive markets are applied.

Additionally the C.P.C., through its designation as the National Competition Authority, is empowered to apply Articles 101 and 102 of the Treaty on the Functioning of the European Union (ex Articles 81 and 82 of the Treaty of the European Community), Council Regulation (EC) No. 1/2003 of the Council of the European Union of 16<sup>th</sup> of December 2002, on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty on the Functioning of the European Union.



**Beyond all important cases which were handled during the year under review, the Commission points out the following important events which took place:**

**I.2. Main activities during 2012**

- On 4 April 2012, Dr Savvas Papasavvas, Chairman of the 5<sup>th</sup> Department of the General Court of the European Union, held a lecture entitled “The Control of Decisions made by the European Union in cases of Cartels” at the offices of the C.P.C.
- On 2 May 2012, the Council of Ministers by its decision implemented the Immunity and Reduction of Administrative Fines in cases of concerted practices that infringe Section 3 of the Law and/or Article 101 TFEU (Leniency Programme), Regulations of 2011.



- On 25 May 2012, Dr Kai-Uwe Kuhn, Chief Economist of the Directorate General (DG) for Competition of the European Commission, held discussions on various issues regarding competition economics with the personnel of the C.P.C.
- In September 2012, the Commission submitted to the Minister of Commerce, Industry and Tourism, a proposal in the form of a bill, for the review of the Control of Concentrations between Enterprises Laws of 1999 and 2000.
- On 2 October 2012, the Commission for the Protection of Competition, under the Cyprus Presidency of the Council of the European Union, held a Conference for the European Competition Day entitled “Effective Enforcement of Competition Rules in the European Union”.
- The training programme for the Service’s staff continued through a number of internal lectures and presentations as well as the participation in seminars.

# 2.

## STRUCTURE OF THE COMMISSION FOR THE PROTECTION OF COMPETITION



### 2.1. The Commission for the Protection of Competition

According to the Law for the Protection of Competition of 2008, the Commission consists of the Chairperson and four Members, serving on a full time basis and on terms defined by virtue of a decision by the Council of Ministers. The Law also provides for the appointment of four substitute members, one for each member of the Commission. The Chairperson of the Commission is of high standing and probity, possessing specialized knowledge and experience in law and well placed to contribute towards the effective application of the Law. The four Members of the Commission are persons with specialized knowledge and experience in law or economics or competition or accounting or trade or industry, well placed to contribute towards the effective application of the Law. The Law prohibits the Chairperson and the Members of the Commission from having any financial or other interest likely to affect the impartiality of their judgment in the exercise of their functions, powers and duties. The term of office of the Chairperson and the Members is for a period of five years and may only be renewed once.

### A. Chairperson

Chairperson of the Commission for 2012 was Mrs Loukia Christodoulou, who was appointed by virtue of a decision of the Council of Ministers dated 20 December 2011 for the remaining term of office of the former Chairperson Mr Costakis Christoforou, i.e. for the period up to 18 April 2013.

### B. Members and Substitute Members

By virtue of a decision of the Council of Ministers dated 20 December 2011, Mr Leontios Vryonides, Mrs Eleni Karaoli, Mr Dimitris Pitsillides and Mr Costas Melanides were appointed as Members of the Commission for the remaining term of office of the former Members, i.e. for the period up to 14 May 2013. During the same period, the Substitute Members were Mr Andreas Karydes, Mr Nikos Damianou, Mr Sotos Hadjittofis and Ms Eleni Christodoulidou-Papageorgiou.

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

The Commission is supported by the Service of the Commission. The Service, following authorization by the Commission, has the responsibility to duly conduct preliminary investigations to determine whether there have been infringements of the Protection of Competition Law. It also has the responsibility to assess concentrations between enterprises, pursuant to the provisions of the Control of Concentrations between Enterprises Law.

The Service is empowered to collect and examine the information necessary for the exercise of the Commission's functions, to conduct on-the-spot investigations of undertakings, to submit complaints and recommendations to the Commission, to make the necessary notifications and publications, to conduct preliminary assessments of concentrations of enterprises, to prepare written reports and to grant the Commission every possible assistance in order for the Commission to fulfill its functions, powers and duties.

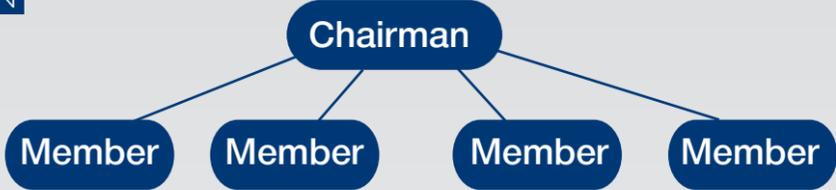
The Service, comprises the Director, 2 Senior Officers, 3 Officers A', 5 permanent officers and 2 officers on a temporary basis. Consequently, by the end of 2012, the staff of the Service of the Commission amounted to 13 people with scientific training.

In addition to the above staff, the Service is assisted by a Chartered Accountant who has been seconded by the Accountant's General Office Treasure of the Republic of Cyprus, as well as by 14 other secretarial and auxiliary staff.

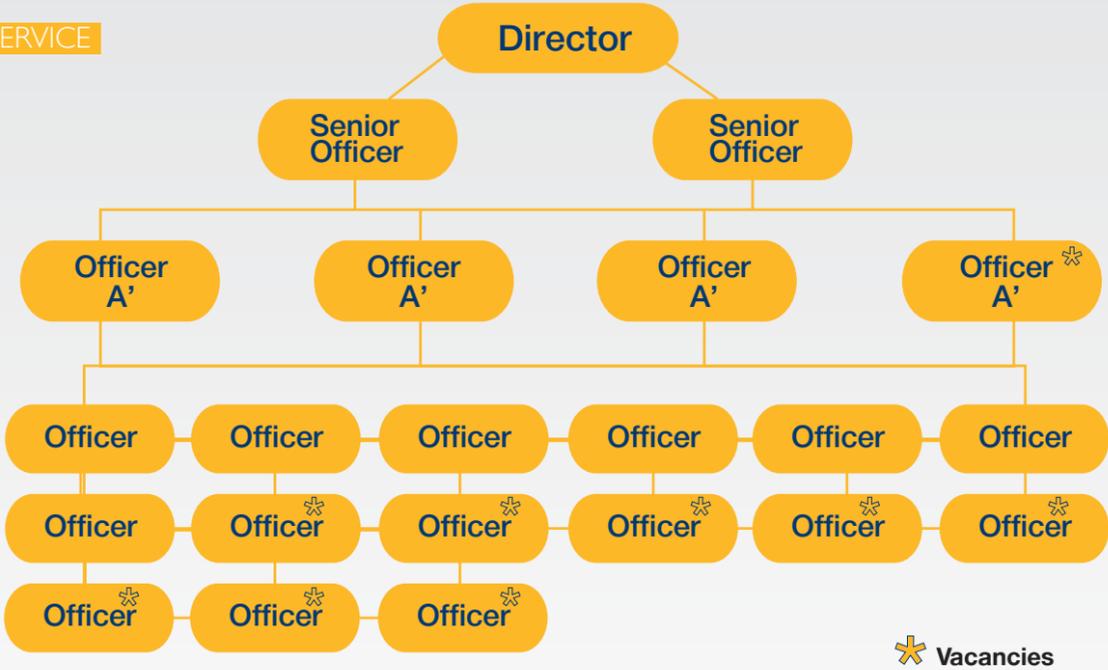
During 2012, through the process of public tenders, the C.P.C. contracted the services of 4 lawyers specializing in the fields of competition law and 2 economists specializing in the fields of industrial organization and econometrics.

# Organisational Chart of the Commission for the Protection of Competition 2012

**COMMISSION**



**SERVICE**



According to the budget which was voted upon in 2013 by the House of Representatives of the Republic of Cyprus, and specifically the Governmental Budget with regard to Independent Services, the positions available for Officers of the Service, which are vacant and may be filled have been reduced, as a result of the financial crisis. In particular, whilst in 2012, a total of 14 positions of Officers were foreseen in the budget, following the reduction brought by the budget of 2013, these positions have been reduced to 8.

### 2.3. Staff Training

#### 2.3.1. Educational Visit of the Officers of Competition Authorities to the offices of EFTA SURVEILLANCE AUTHORITY in Brussels

Two Officers of the Service of the Commission participated in an educational programme organized by the Italian Competition Authority in Brussels from the 15<sup>th</sup> of October 2012 until the 19<sup>th</sup> of October 2012 and from the 18<sup>th</sup> of November 2012 until the 22<sup>nd</sup> of November 2012, respectively. This programme was financed primarily by the European Union, and it related to forensic information technology. The said educational programme is part of the more general European programme for the “Control and Repression of Crime”.

#### 2.3.2. Educational Visit of the Officers of Competition Authorities of the European Competition Network to the European Commission – Directorate General for Competition

An Officer of the C.P.C. took part in a specially designed work programme of the European Competition Network, from the 5<sup>th</sup> of March 2012 until the 30<sup>th</sup> of March 2012 at the Directorate General for Competition of the European Commission. The Officer participated in Directorate BI, which specializes in the of competition law in the field of energy and environment. He also had the opportunity to attend a number of seminars and practical analysis of cases.

### 2.3.3. Participation in seminars held in Cyprus

During 2012, staff members of the Service of the Commission had the opportunity to participate in a series of Seminars which were held in Cyprus.

In particular, staff members of the Service participated in:

1. The presentation of the National Reform Programme (NRP), which was held in Nicosia on the 5<sup>th</sup> of April 2012, where a public discussion was carried out relating to the Annual Survey for Development in 2012, as well as relating to the analytical evaluation of the NRP and of Stability Programmes in areas such as Public Finance, Energy and Climate Change, the Labour Market and Education.
2. The 13<sup>th</sup> seminar "CEPR/JIE Conference on Applied Industrial Organisation", which was held from the 23<sup>rd</sup> of May until the 26<sup>th</sup> of May 2012 by the University of Cyprus. The seminar focused upon econometric models in the areas of the productivity and development of businesses, innovation and the dynamics of demand.
3. The seminar "Looking beyond the AVMS Directive: the challenge of Connected TV", which was co-held by the Cypriot Radio Television Authority and the European Council under the Presidency of the Council of the European Union, and took place on the 25<sup>th</sup> and 26<sup>th</sup> of October 2012. The subject of the seminar was the upcoming release of the Green Paper and the possible amendment of the Directive for services of audiovisual means in view of the potential changes due to the insertion of 'Connected TV' and the convergence of media.



### 2.4. Organization of Lectures

On the 4<sup>th</sup> of April 2012, a lecture entitled "The Control of Decisions made by the European Union in cases of Cartels", was held at the offices of the C.P.C. by Dr Savvas Papasavvas, Chairman of the 5<sup>th</sup> Department of the General Court of the European Union. The Assistant Attorney General, the Director of Service for the Protection of Competition and Consumers of the Ministry of Commerce, Industry and Tourism, the Commissioner of Electronic Communications and Postal Regulation, the Chairperson of the Cyprus Consumers Association, the Chairperson of the Cyprus Consumers Union and Quality of Life, lawyers and other interested parties, attended the lecture.



# 3.

## OVERVIEW OF THE COMMISSION'S ACTIVITIES

### 3.1. Overview of the Decisions of the Commission

During the year under review, the Commission held 79 regular meetings and dealt with a vast range of issues which were submitted before it and which related to complaints, applications for interim measures, ex officio investigations and notifications of concentrations.

During 2012, the Commission, following the decision of the Supreme Court dated 25 May 2011 in appeals no. 1544/09, 1545/09, 1596/09 and 1601/29 (ExxonMobil Cyprus Ltd et. al. and C.P.C.), that the appointment of the then Chairman of the Commission was illegal, decided to re-examine 21 cases which were annulled by the Supreme Court. The Commission also decided the ab initio investigation of another 27 cases, the examination of which was pending before the Commission and which related to the application of the Protection of Competition Law.

Additionally, during 2012, the Commission accepted 18 new complaints regarding infringements of Law No. 13(I)/2008, initiated 2 ex officio investigations, and examined 4 applications for interim measures.

The Commission further examined 37 concentrations between enterprises, based on Law No. 22(I)/1999, and decided, under section 22 of EC No. 139/2004, the referral of one concentration for examination by the European Commission. The said concentration related to the acquisition of Olympic Airways Services S.A. by Aegean Airlines S.A.

By the end of 2012, the Commission issued 13 decisions by which it imposed fines amounting in total to €4,841,804.00, which related to infringements of Law No.13(I)/2008 and Law No.22(I)/1999. The fines which were imposed related to infringements in various sectors of the economy, such as the provision of paid TV and broadband services, postal services, industrial gases, the domestic electrical appliances sector, the management of airports sector, the public transport sector and porter services at the ports of Cyprus. In relation to Law No.22(I)/1999, the fines concerned the failure to notify within the set time limit and putting into effect concentrations without prior approval by the Commission.

Furthermore, the Commission, following a preliminary investigation by the Service, issued 10 decisions whereby it unanimously concluded that, based on the evidence before it, no infringements of the Law were found. The said decisions related to the areas of cable television and broadband services, banking services, pharmaceutical services, public services and tourist services.

Moreover, the Commission issued 4 decisions on applications for interim measures against undertakings/associations engaged in the supply of fresh cows' milk and the supply of vehicle fuels. Of the 4 applications, only one was granted interim measures. This concerned the application for interim measures by Pittas Dairies Ltd and Pittas Dairy Industries Ltd against the Pancyprian Organisation of Cattle Farmers (POCF) Public Ltd.

Illustrated below is a cumulative table of decisions issued by the Commission for the year under review:

#### CUMULATIVE TABLE OF DECISIONS ISSUED

Complaints for infringements of Law No. 13(I)/2008 (including the decisions which were annulled by the Supreme Court and were re-examined)	<b>20</b>
Interim Measures	<b>4</b>
Infringements of Section 30 of Law No. 13(I)/2008	<b>1</b>
Withdrawn Complaints	<b>7</b>
Dismissed Complaints based on Section 35 of Law No. 13(I)/2008	<b>10</b>
Concentrations	<b>40</b>
<b>Total</b>	<b>82</b>

### 3.2. Brief Presentation of Important Decisions made by the Commission

#### **Decision No. 19/2012 – Complaint and Application for Interim Measures by Pittas Dairies Ltd and Pittas Dairy Industries Ltd against the Pancyprian Organisation of Cattle Farmers (POCF) Public Ltd (Case No. II.17.012.07, Decision dated: 20/6/2012)**

The Commission, at its meeting which was convened on 20 June 2012, examined the application for interim measures from Pittas Dairies Ltd and Pittas Dairy Industries Ltd against the Pancyprian Organisation of Cattle Farmers (POCF) Public Ltd, which was submitted with the complaint which the two companies submitted against POCF. The subject of the complaint was the allegation of the complainant companies that POCF abused its dominant position in the relevant market for the wholesale provision of fresh cows' milk, and in particular sections 6(1)(a), (b) and (c) and 6(2) of the Law.

The Commission, with its decision unanimously concluded that all the conditions set out in section 28 of the Law were satisfied with for the issuance of interim measures, since the Commission established that there was reasonably strong prima facie case of infringing section 6(1)(b) of the Law, the situation was of urgency and lastly that a very serious danger existed of irreparable harm to the applicants' interests. All three cumulative prerequisites were substantiated by Pittas Dairies Ltd and Pittas Dairy Industries Ltd.

Therefore, the Commission decided that POCF would supply fresh cows' milk to Pittas Dairies Ltd and Pittas Dairy Industries Ltd, on the basis of the same terms which applied for the rest of the clients of POCF in relation to the selling price of the product.

#### **Decision No. 29/2012 – Complaint by TECHNOPLASTICS LTD against Linde-Hadjikyriakos Gas Ltd (Case No. II.17.010.04, Decision dated: 10/8/2012)**

The Commission, at its meeting convened on 10 August 2012, having evaluated all the evidence before it, unanimously concluded that the actions and/or omissions of Linde-Hadjikyriakos Gas Ltd by imposing daily rent on gas cylinders of its ownership, constituted an abuse of its dominant position in the market in violation of section 6(1)(c) of the Protection of Competition Law L13(1)/2008 (hereinafter called "the Law"). More specifically, Linde-Hadjikyriakos Gas Ltd adopted the above practice on October 2008 lasting up to the last quarter of 2010, by which time it terminated the above practice after fully completing the update of its software system.

The C.P.C., on the basis of all the evidence before it, did not accept that the justification brought forth by Linde-Hadjikyriakos Gas Ltd, namely, that this was due to the incorrect and untimely update of its software system, constituted an objective justification. As a consequence of this practice, Linde-Hadjikyriakos Gas Ltd treated its customers in a discretionary manner, by imposing a daily rent only to some of its customers, and not to all. The imposition of daily rent depended on whether the software was updated or not. This discriminatory behaviour is evident from the charges imposed on Technoplastics Ltd.

Therefore, the C.P.C., pursuant to section 24(a)(i) of the Law, imposed on Linde-Hadjikyriakos Gas Ltd, an administrative fine of €67.570 after taking into account, amongst other factors, the special responsibility of Linde-Hadjikyriakos Gas Ltd as the company having the monopoly in the relevant market at the relevant period under investigation.

#### **Decision No. 35/2012 – Complaint by Andreas Alexandrou Accessories Ltd against the Department of Postal Services (Case No. II.17.009.21, Decision dated: 29/8/2012)**

The Commission, at its meeting convened on 29 August 2012, having evaluated all the evidence before it, unanimously decided that the Department of Postal Services (hereinafter called "the DPS") infringed section 30 (3) of Law No.13(1)/2008 (hereinafter called "the Law"), as a result of its omission to provide the requested information, namely, the separate financial accounts for DPS's products and services in accordance with the methodology of fully distributed pricing, for the year ending 31<sup>st</sup> December 2009, within the relevant time period.

The C.P.C. concluded that the above information requested from the DPS, was absolutely essential in order to conduct a preliminary examination of the alleged infringement, since the alleged period of infringement was the year 2009. More specifically, the requested information was necessary in order to conduct the necessary economic analysis using the methodology of the average variable cost and total cost, based on the audited financial accounts for 2009. This analysis aimed at indicating whether the retail prices of DPS' service for Items Without Delivery Address during the said period, resulted from cross subsidizing the above service with other profitable services.

The C.P.C. did not accept the reasons given by the DPS for not providing the information requested. The C.P.C. pointed out that the data is recorded in the accounting system and that the DPS has a statutory obligation to prepare audited financial accounts on an annual basis, something that it omitted to do and for which it had already been fined by the Commissioner of Electronic Communications and Postal Regulation.

The C.P.C. unanimously decided to impose an administrative fine of €10.000 on the DPS for the infringement of Section 30 (3) of the Law.

The C.P.C. further decided to order DPS to submit separate accounts for its products and services, based on the methodology of fully distributed pricing, for the year ending 31<sup>st</sup> December 2009, and/or account statements for its service for Items Without Delivery Address for the year ending 31<sup>st</sup> December 2009, using the methodology of the Average Avoidable Cost (AAC) and the Average Total Cost (ATC), as well as to provide the economic data used and the calculations performed for the preparation of these statements, accompanied by a certificate from certified external accountants / auditors verifying their truthfulness, by the 31<sup>st</sup> of January 2013.

**Decision No. 39/2012 – Complaint by Golden Telemedia Ltd against CYTA (Case No. II.17.007.20, Decision dated: 3/9/2012)**

The Commission, at its meeting convened on the 3<sup>rd</sup> of September 2012, having evaluated all the evidence before it, unanimously concluded that the acts and/or omissions of the Cyprus Telecommunications Authority (CYTA) and in particular its decision to block calls to premium services for users of prepaid mobile telephony, resulted in the abuse of its dominant position in the market. This constituted an infringement of sections 6 (l) (a), 6 (l) (b) and 6 (l) (c) of the Protection of Competition Law No. 13 (l) / 2008 (hereinafter called "the Law").

The C.P.C. did not accept as an objective justification CYTA's position that the design of mobile prepaid telephony service (so easy) was irrelevant with Golden Telemedia's Ltd or other content providers' submitted request. CYTA's position related to the protection of children from purchasing this service. In relation to CYTA's justification, the C.P.C. noted that the users of prepaid mobile telephony had already access to adult content through services of Premium SMS, and therefore rejected CYTA's justification as not being objective.

The C.P.C.'s decision noted that CYTA, under the conditions of the general authorization, must ensure the functionality of networks and services throughout Cyprus, as well as the obligation not to discriminate amongst customers in mobile telephony.

The infringements relate to the period from 2005 to 13 June 2008, the date, 25 May 2008, on which CYTA's Board of Directors decided to provide the requested service.

Therefore, C.P.C., acting on the basis of Section 24 (a) (i) of the Law, decided to impose CYTA a total fine of €390.000 for the infringement of sections 6(l)(a), 6(l)(b) and 6(l)(c) of the Law.

**Decision No. 41/2012 – Complaint by NETSMART (CYPRUS) LTD against CYTA (Case No. II.17.007.003, Decision dated: 11/9/2012)**

The Commission, at its meeting convened on 11 September 2012, having evaluated all the evidence before it, unanimously concluded that the actions and/or omissions of the Cyprus Telecommunications Authority (CYTA) and particularly the refusal to provide direct access to its SMS Centre, and to all related services that are essential to a provider of electronic communications to enable them to offer value-added texting services (Premium SMS) charging them at the end of the message (mobile termination). This constituted an abuse in violation of section 6(l)(b) and 6(l)(c) of the Protection of Competition Law L.13(l)/2008 (hereinafter called "the Law").

The subject of this case was the re-examination of the complaint of NETSMART (CYPRUS) LTD against CYTA, for which decision No. 42/2010 had been issued, which was annulled by the Supreme Court as a result of its judgment in appeal No. 1544/09, 1545/09, 1596/09 and 1601/09 (ExxonMobil Cyprus Ltd etc. and the Commission for the Protection of Competition).

The Commission in its decision on 11<sup>th</sup> September 2012, held that CYTA, as the dominant undertaking in the relevant market concerned, failed to respond to its "special responsibility" to provide the complainant company, NETSMART (CYPRUS) LTD, access to the SMS Centre in order to be able to provide value-added texting services (Premium SMS - Method), directly to CYTA's mobile users.

The Commission in its decision held that the infrastructure for the provision of services of Premium SMS-MT was essential for the development of competition in this area, and thus, CYTA ought to have provided it and should have taken all necessary actions that would enable NETSMART (CYPRUS) LTD to overcome any obstacles, technical or of any other nature.

The Commission, having examined all the evidence before it, concluded that the reasons, portrayed by CYTA, of its refusal to offer the specific facilitation to NETSMART (CYPRUS) LTD so that it could also be in a position to provide value-added texting services (Premium SMS - Method) to CYTA's mobile users, were not objectively justified and that the issues could have been dealt with through a commercial agreement.

The infringements concerned the period from November 3, 2005, the date on which NETSMART (CYPRUS) LTD had requested in writing, the ability to provide Premium SMS services to the subscribers of CYTA, charging them at the termination of the message, up to April 15, 2010, date at which the technical solution for the implementation of the service requested was found and notified to NETSMART (CYPRUS) LTD by CYTA.

Therefore, C.P.C., acting on the basis of Section 24 (a) (i) of the Law, decided to impose CYTA a total fine of €637.712 for the infringement of section 6(l)(b) and 6(l)(c) of the Law.

**Decision No. 42/2012 – Complaint of ALPHA ELECTRIC HOUSE LTD against FISSLER GmbH (Case No. II.17.010.16, Decision dated: 3/10/2012)**

The Commission, at its meeting convened on 3 October 2012, having evaluated all the evidence before it, unanimously concluded that the actions and/or omissions of FISSLER GmbH (hereinafter called "FISSLER"), and in particular the imposition of unfair terms of transaction upon ALPHA ELECTRIC HOUSE LTD (hereinafter called "ALPHA ELECTRIC"), constituted an abuse of the financial dependence of the latter on the former, and therefore infringed section 6(2) of Law No. 13(I)/2008.

The subject of the complaint under examination concerned the allegation for the abuse of the relationship of financial dependence of ALPHA ELECTRIC (previous representative of FISSLER products) by FISSLER, as a result of unfair terms which the latter attempted to impose on the former in order for their cooperation to continue, and subsequently, FISSLER's termination of their commercial cooperation.

The Commission, having evaluated all the evidence before it, which was part of the relevant administrative file, and included the written and verbal positions of the involved parties, unanimously concluded that the acts and/or omissions of FISSLER in terms of its cooperation with ALPHA ELECTRIC, and in particular its attempt to impose arbitrary terms of transactions as a condition to continue their cooperation, constituted an abuse of the relationship of financial dependence, thus infringing section 6(2) of Law No. 13(I)/2008. Specifically, the Commission held that, under the circumstances, the following constituted arbitrary terms:

- (a) The various additional obligations which were imposed upon ALPHA ELECTRIC, according to the proposed Agreement of Cooperation and to the proposed Business Plan, constituted an integral part of the Agreement of Cooperation and was consequently binding, placing ALPHA ELECTRIC at risk, in case of failure to fulfill these terms, resulting in the termination of its exclusive distribution.
- (b) The proposed by FISSLER minimum sales per category of product, again would result to the termination of the agreement in case the said minimum was not attained, without taking into account the possibility of a financial crisis in the market and/or other mitigating facts.
- (c) The term relating to the non-exercise of competition for a period of one year, in case of termination of the proposed agreement between them, as well as the imposition of a penalty in case of default.

Regarding the discontinuance of the commercial cooperation between ALPHA ELECTRIC and FISSLER, as notified to ALPHA ELECTRIC through a letter sent by FISSLER dated 6 May 2010, the Commission unanimously concluded that the said termination did not constitute "a sudden and unjustified termination of long-term commercial relationships". The Commission concluded the above, having taken into account that FISSLER, through its said letter, had given warning of 18 months, commencing on the 31<sup>st</sup> of May 2010 and ending on 30<sup>th</sup> November 2011, that it would terminate their cooperation. Consequently, the Commission held that this margin of 18 months is satisfactory, therefore the present termination may not be considered as sudden.

The Commission, acting on the basis of section 24(a)(i) and having evaluated everything that was submitted by FISSLER's advocates for the purposes of mitigating the penalty with an administrative fine, unanimously decided the imposition of a monetary fine amounting to €112.294,00 to FISSLER for infringement of section 6(2) of Law No. 13(I)/2008.

**Decision No. 47/2012 – Complaint by Thunderworx Ltd against CYTA (Case No. II.17.64/2005, Decision dated: 8/10/2012)**

The Commission, at its meeting convened on 8 October 2012, evaluated all the evidence before it and unanimously decided that the actions and/or omissions of the Cyprus Telecommunications Authority (CYTA), and particularly its refusal to provide direct access to the SMS Centre of CYTA, and to all related services that are essential for electronic communications providers to be able to offer Premium SMS services to the mobile subscribers of CYTA, charged at the termination of the message (mobile terminations) or at the origination of the message (mobile origination), constituted an infringement of section 6(1)(b) of the Protection of Competition Law L.13(I)/2008 (hereinafter called "the Law").

The subject of the case was a re-examination of the complaint filed by Thunderworx Ltd against CYTA, for which C.P.C.'s decision No. 132/2008 was issued. The C.P.C. decision was annulled by the Supreme Court as a result of its judgment in appeal No. 1544/09, 1545/09, 1596/09 and 1601/09 (ExxonMobil Cyprus Ltd etc. and the Commission for the Protection of Competition).

The infringement of the Law concerned the refusal by CYTA to provide direct access to the SMS Centre and to all related and necessary services, so that a provider of electronic communications could be in a position to provide value-added texting services (Premium SMS), either by charging CYTA's subscribers through mobile origination or through mobile termination. CYTA's refusal constituted an infringement of section 6(1)(b) of the Law.

The C.P.C. noted the fact that CYTA during the period under review, as a provider of mobile telephony services, held a dominant position in relation to its network, in the wholesale market of access and origination of calls in public mobile telephony networks, as well as in the wholesale market of termination of calls in individual mobile telephony networks as well as related services which are connected to its network. The possession of such dominant position places a further burden on CYTA in relation to the infringement of section 6(1)(b) of the Law, due to its special responsibility as a dominant player in the market.

Furthermore, the Commission on the basis of the facts of the present case, CYTA, being dominant player in the market and having a special responsibility, ought to have overcome any obstacle, technical or of other nature, which rendered difficult the use of Premium SMS services by third parties within reasonable timeframes and without proceeding to unjustified delays.

The C.P.C., following the evidence before it, found that CYTA failed to respond to a letter from Thunderworx dated June 26, 2002, by which the latter requested access to this service. On the 22nd of April 2003, the Board of Directors of CYTA decided to find a technical solution for this request. The C.P.C. considered that, for a telecommunications organization of the size of CYTA with its extensive and long experience and activity in the market, this period (i.e. 11 months) cannot be regarded as objective and reasonable, in order to respond to Thunderworx's Ltd request. Therefore, the C.P.C. did not accept the position of CYTA that the elapsed time was reasonable to realize and/or understand the request of Thunderworx Ltd.

Moreover, the C.P.C. found that there was a systematic delay in informing Thunderworx Ltd on the progress that was made in regard to the provision of the requested service. Even more, the C.P.C. found that the elapsed time from the date Thunderworx Ltd filed its request to CYTA up until the necessary technical solution for the provision of the service was completed, was unreasonably long, since it lasted more than 3 years.

The infringements concern the period from 26 July 2002, the date on which Thunderworx Ltd had requested in writing the ability to provide Premium SMS services to the subscribers of CYTA, up to June 2005, when an Agreement was signed between the two parties.

Therefore, the C.P.C., acting according to Section 24 (a) (i) of the Law, decided in respect of the infringement of Section 6 (l) (b) of the Law, to impose a fine on CYTA amounting to €130.000.

**Decision No. 48/2012 – Complaint by Thunderworx Ltd against CYTA (Case No. II.17.68/2005, Decision dated: 8/10/2012)**

The Commission, at its meeting convened on 8 October 2012, evaluated all the evidence before it and unanimously decided that the actions and/or omissions of CYTA and particularly its refusal to provide direct access to the SMS Centre of CYTA, and to all related services that are essential to a provider of electronic communications to be able to offer services of Premium SMS charged at the end of the message (mobile terminations) to the subscribers of CYTA, resulting to impeding Thunderworx Ltd from providing services which are provided by CYTA through Cybee, namely, subscribing services, and consequently placing it in a competitively disadvantaged position, constituted an abuse in violation of sections 6(l)(b) and 6(l)(c) of the Protection of Competition Law L13(l)/2008 (hereinafter called "the Law").

The subject of the case was a re-examination of the complaint filed by Thunderworx Ltd against CYTA, for which C.P.C.'s decision No. 43/2010 had been issued on 14 October 2010. The C.P.C. decision was annulled by the Supreme Court as a result of its judgment in appeal No. 1544/09, 1545/09, 1596/09 and 1601/09 (ExxonMobil Cyprus Ltd etc. and the Commission for the Protection of Competition).

The C.P.C. in its decision held that the infrastructure for the provision of services of Premium SMS-MT was essential for the development of competition in this area, and thus, CYTA ought to have provided and to have taken the necessary actions that would help them overcome any obstacle, technical or of other nature, that existed in the provision of such service and/or facility.

The C.P.C., having considered all the evidence before it, concluded that the reasons for refusal put forward by CYTA to provide the requested facility to Thunderworx Ltd, in order to be able to provide services of Premium SMS-MT to users of CYTA's mobile network, was not objectively justified. The C.P.C. considered that the issues that concerned CYTA could be addressed in a written agreement or a code of practice.

Also, the C.P.C. considered that the time taken for the implementation of the software from August 2005, i.e. the date on which it was specifically requested to provide this facility, until April 2010, i.e. a long period of time elapsed until a technical solution was found by CYTA, as evidenced in the data collected by the Service in its preliminary investigation of the case, which indicated that actions to solve the problem on the part of CYTA had only begun in 2009 and were completed in 2010, just one year after. The fact that there was no software available and that neither could be bought, cannot constitute an objective justification for the elapsed time from 2005 to 2010.

The infringements concerned the period from 31<sup>st</sup> August 2005, the time when Thunderworx Ltd had requested in writing the ability to provide Premium SMS services to the subscribers of CYTA, charged on message termination until April 2010, the time when the technical solution for the implementation of the requested service was found and notified to Thunderworx Ltd by CYTA. Therefore, the C.P.C., acting according to Section 24 (a) (i) of the Law, decided to impose CYTA a total fine of €960.000 for the infringement of section 6(l)(b) and 6(l)(c) of the Law.

**Decision No. 52/2012 – Complaint by MEGA FLYPARK LTD against HERMES AIRPORTS LTD (Case No. II.17.008.35, Decision dated: 31/10/2012)**

The Commission, at its meeting convened on 31 October 2012, having evaluated all the evidence before it, unanimously concluded that the practices / actions of HERMES AIRPORTS LTD, as an undertaking holding a dominant position and having special responsibility in the market for the provision of management services at Lamaka airport, limit, hinder and distort competition in the relevant market of the provision of long-term parking services to passengers of Lamaka Airport travelling abroad, in violation of section 6(l)(a) of the Protection of Competition Law L13(l)/2008 (hereinafter called "the Law").

The C.P.C., on the basis of all the evidence before it, did not accept HERMES AIRPORTS LTD position as constituting an objective justification, and reasoned that the only explanation for its actions was the exclusion of the undertakings which provide long-term parking services outside the airport grounds and the strengthening of its position in the provision of long term parking services within the airport grounds to passengers of Lamaka airport travelling abroad.

Therefore, the C.P.C. imposed on HERMES AIRPORTS LTD, pursuant to section 24(a)(i) of the Law, an administrative fine of €75.000.

**Decision No. 54/2012 – Complaint by Messrs Theodoros Kapnisis and Aristoteles Meletiou against the Limassol Licensed Porters Association (LLPA) and the Cyprus Ports Authority (Case No. II.17.70/2006, Decision dated: 19/11/2012)**

The C.P.C. at its meeting convened on the 10<sup>th</sup> of October 2012 after evaluating all the evidence before it, unanimously decided that the Limassol Licensed Porters Association (LLPA) infringed sections 3(l)(b) and 3(l)(d) of the Protection of Competition Law (L. 13(l)/2008) (hereinafter called "the Law"), as well as sections 6(l)(b) and 6(l)(c) of the Law.

The subject of the case was the re-examination of the complaint (no. II.17.70/2006) submitted by Messrs Theodoros Kapnisis and Aristoteles Meletiou to the C.P.C., for which decision no. 43/2012 was issued, and for which the Advocate General of Republic accepted its annulment as a result of the judgment taken by the Supreme Court in appeals no. 1544/09, 1545/09, 1596/09 and 1601/09 (ExxonMobil Cyprus Ltd etc. and Commission for the Protection of Competition).

The complaint concerned the possible infringement on behalf of LLPA and The Cyprus Ports Authority, of the Protection of Competition Law.

The C.P.C., by its decision dated 10 October 2012, unanimously reached the following decision:

(a) The decision of the LLPA as an association of undertakings, not to accept the complainants as its members, and further to refuse them the ability to use the machinery of LLPA, constituted a concerted practice which is forbidden under section 3(l) of the Law. Specifically, the agreement was in breach of section 3(l)(b) of the Law by: i) restricting to provide contrary to section 3(l)(b) of the Law, and ii) contrary to section 3(l)(d) of the Law, by implementing dissimilar conditions for equivalent transactions, resulting to specific businesses being placed at a competitively disadvantaged position.

(b) The LLPA holds, firstly, a dominant position in the relevant market for the provision of transfer and delivery services of goods in the Limassol port, and, secondly, a dominant position in the relevant market for the management and usage of specialized machines and/or installations which are essential and/or basic for the provision of the above-mentioned services (basic facilities). LLPA was found to be i) in violation of section 6(l)(b) of the Law, by its refusal to transact with the newlylicensed porters and by its refusal to provide access without an objective justification, to basic facilities, and ii) in violation of section 6(l)(c) of the Law, by its discretionary treatment which it applied against the complainant licenced porters, in contrast to other porters which were able to transact and were given access to basic facilities.

The C.P.C., at its meeting which was convened on 19 November 2012, in light of the written observations made by the LLPA and having taken into consideration the severity and duration, as well as the nature and gravity of the infringement, and considering any mitigating and aggravating circumstances, according to sections 24(a)(i) and 42(l) of the Law, unanimously decided to impose LLPA with a total fine of €214.063

**Decision No. 58/2012 – Complaint by PrimeTel Co Ltd against CYTA (Case No. II.17.36/2005, Decision dated: 10/12/2012)**

The C.P.C. at its meeting convened on the 10<sup>th</sup> of December 2012 after evaluating all the evidence before it, unanimously decided that CYTA had infringed section 6 (l) (a) of the Protection of Competition Law (hereinafter called "the Law").

The subject of the case was the complaint against CYTA (No. II.17.36/2005) submitted by PrimeTel Co Ltd to the C.P.C. on 3 June 2005, for the alleged infringement of section 6 of the Protection of Competition Laws of 1989 until (no. 2) 2000, which was replaced by the Protection of Competition Law of 2008 (L. 13(l)/2008), as a result of reductions in the retail prices of i-choice (broadband access) and miVision (pay TV services) which came into force on 1 June 2005, as well as promotional offers made by CYTA, in relation to the above products.

(a) The imposition of unfair retail prices for the provision of the i-choice service, as evidenced from the fact that the retail prices for the sale of the i-choice service for the years 2004, 2005 and 2006 exceeded the average variable cost, but remained under the total cost. The intention to eliminate competition was evident from the various internal documents prepared by either the General Manager or the relevant Departments of CYTA.

(b) The imposition of unfair retail prices for the provision of the miVision service, as evidenced from the retail prices for the sale of the miVision service for the years 2004, 2005 and 2006, which were below the average variable cost. For the years 2007 and 2008, although the retail prices exceeded the average variable cost and were below the total cost, the intention to eliminate competition was evidenced in various internal documents which were prepared by either the General Manager or the relevant Departments of CYTA.

(c) The imposition of unfair retail prices in the bundling of the miVision and i-choice services, as evidenced from the fact that the retail sale prices for the miVision and i-choice services for years 2004, 2005 and 2006 were below the average variable cost. For the years 2006, 2007 and 2008, although the retail price of the bundled services exceeded the average variable cost and were below the total cost, the intention to eliminate competition was either evidenced in the various internal documents which were prepared by the General Manager or the relevant Departments of CYTA.

The C.P.C. held in its decision that the infringements were serious, because CYTA's actions aimed at inhibiting other businesses from operating within the electronic communications sector, and therefore intended to foreclose the market by implementing a plan, known as the "aggressive promotion" plan. According to CYTA's plan, this would be effected through the reduction of retail prices for both services, the provision of free installation, and the offering of free subscription. Specifically, through the provision of free subscriptions, CYTA aimed at tying the clients of i-choice (broadband access) for a period of 8 months and to "bundle" these services with the service of miVision (pay TV).

Furthermore, from the evidence submitted, C.P.C. concluded that CYTA, in order to strengthen its dominant position in the market of Pay TV, attempted to increase the number of its subscribers in the market of the retail broadband access. This attempt, based on the evidence submitted by CYTA, proved to be successful as the majority of CYTA's subscribers for the miVision service were simultaneously subscribers of the i-choice service.

In relation to the pricing of the i-choice service the C.P.C held that, the duration of the infringement was 3 years. Regarding the pricing for the service of miVision, the duration of the infringement was 5 years, whilst regarding the bundling of the services miVision and i-choice, the duration of the infringement was again 5 years. The C.P.C. has noted that the last financial year for which financial data and accounts had been submitted, was the one ending on 31<sup>st</sup> December 2008. Taking into account the abovementioned, the C.P.C. considered that the infringements were of a long duration.

Therefore, the C.P.C. acting according to section 24 (a) (i) of the Law, has decided to impose CYTA a total fine of €2.150.680 for the infringement of section 6(1)(a) of the Law.

### 3.3. Overview of notifications of concentrations

Based on the provisions of the Control of Concentrations between Enterprises Laws of 1999 and 2000, by the end of 2012, 47 notifications of concentrations were notified to the Service of the Commission for the Protection of Competition, of which 37 were approved, 1 was referred to the European Commission, 7 were still under examination by the Service, and 2 notifications did not constitute concentrations, as there was no change of control as provided by section 4 of the Control of Concentrations between Enterprises Laws of 1999 and 2000.

Furthermore, the Commission imposed fines with regards to the following 2 notifications of concentrations, due to the failure to submit the notification within the set time limit as well as putting into effect the concentrations, prior to relevant approval by the Commission:

(a) Notification by C.A. Papaellinas & Co Ltd concerning the acquisition of 50% of the share capital of Demetriades & Papaellinas Ltd through the acquisition of the total share capital of Sofoklis Demetriades & Son Ltd. The Commission, unanimously decided that C.A. Papaellinas & Co Ltd infringed sections 9 and 13 of the Control of Concentrations between Enterprises Laws of 1999 and 2000, and imposed a fine amounting to €7.000 (Case No. 8.13.010.10, Decision No. 7/2012, Decision dated: 30/3/2012).

(b) Notification of concentration between Swissport Cyprus Ltd and LGS Handling Ltd for the creation of the joint venture S&L Airport Services. The Commission, at its meeting which was convened on 27 April 2012, unanimously decided that Swissport Cyprus Ltd and LGS Handling Ltd infringed sections 9 and 13 of the Control of Concentrations between Enterprises Laws of 1999 and 2000, and imposed a fine amounting to €7.000 (Case No. 8.13.0.010.14, Decision No. 12/2012, Decision dated: 27/4/2012).

### 3.4. Judgments of the Supreme Court

During 2012, 12 applications were submitted to the Supreme Court for the annulment of the Commission's final decisions, of which 2 included decisions for interim decisions, whilst no administrative recourse against a decision was submitted to the Supreme Court. The said requests of appeal concerned the following decisions made by the Commission:

- 1) Decision No. 17/2012 – Complaint by A&F Electroquip Ltd against DOMS CO (CARS) LTD (Case No. 11.17.35/2005, Decision dated: 6/1/2012).
- 2) Decision No. 18/2012 – Complaint by Mr Teggerakis against Wella AG and M&V Cosmetics Ltd/A.Vourou (Case No. 11.17.01.3/2001, Decision dated: 15/6/2012).

- 3) Decision No. 19/2012 – Complaint and application for interim measures of Pittas Dairies Ltd and Pittas Dairy Industries Ltd against the Pancyprian Organisation of Cattle Farmers (POCF) Public Ltd (Case No. II.17.012.07, Decision dated: 20/6/2012).
- 4) Decision No. 25/2012 – Complaint by Mr Georgios Stylianou against the Ministry of Labour and Social Insurance (Case No. II.17.007.44, Decision dated: 26/7/2012).
- 5) Decision No. 26/2012 – Complaint and application for interim measures of Mr Andreas Karagiorgis against Messrs Petrolina (Holding) Public Ltd and Petrolina and/or Lefkaritis and Petrolina Group of Companies (Case No. II.17.012.13, Decision dated: 29/8/2012).
- 6) Decision No. 34/2012 – Complaint by Andreas & Panikos Mappa against Linde-Hadjikyriakos Gas Ltd (Case No. II.17.010.08, Decision dated: 29/8/2012).
- 7) Decision No. 35/2012 – Complaint by Andreas Alexandrou Accessories Ltd against the Department of Postal Services (Case No. II.17.009.21, Decision dated: 29/8/2012).
- 8) Decision No. 39/2012 – Complaint by Golden Telemedia Ltd against CYTA (Case No. II.17.007.20, Decision dated: 3/9/2012).
- 9) Decision No. 41/2012 – Complaint by NETSMART (CYPRUS) LTD against CYTA (Case No. II.17.007.03, Decision dated: 11/9/2012).
- 10) Decision No. 42/2012 – Complaint by ALPHA ELECTRIC HOUSE LTD against FISSLER GmbH (Case no/ II.17.010.16, Decision dated: 3/10/2012).
- 11) Decision No. 47/2012 – Complaint by Thunderworx Ltd against CYTA (Case No. II.17.64/2005, Decision dated: 8/10/2012).
- 12) Decision No. 48/2012 – Complaint by Thunderworx Ltd against CYTA (Case No. II.17.68/2005, Decision dated: 8/10/2012).

During the year under review, the Supreme Court issued one decision in appeal no. 1023/2012 by which it upheld the decision of the Commission no. 19/2012, which had ordered the Pancyprian Organisation of Cows' Milk Producers (POFC) to provide fresh cows' milk to Pittas Dairies Ltd and Pittas Dairy Industries Ltd in accordance to the same terms which were in force for the rest of POCF's clients with regards to the selling price of the product.

# 4.

## RECENT LEGAL DEVELOPMENTS

### 4.1. Immunity and Reduction of Administrative Fines in cases of concerted practices that infringe section 3 of Law No. 13(I)/2008 and/or article 101(I) of the Treaty on the Functioning of the European Union Regulations (Model Leniency Programme)

On 2 May 2012, by its decision, the Council of Ministers brought into force the Immunity and Reduction of Administrative Fines Regulations in cases of concerted practices that infringe section 3 of Law No. 13(I)/2008 and/or article 101(I) of the Treaty on the Functioning of the European Union Regulations (Model Leniency Programme) of 2011. The issue of the said Regulations was held to be necessary since Model Leniency Programmes have proved to be notably useful working tools of proven value.

According to the Regulation, the Leniency policy pursued is based on the assumption that certain undertakings involved in cartels, are willing to put an end to their participation and provide evidence relating to the existence and operation of the cartels, but are dissuaded by the imposition of sanctions against them. The Commission considers that it is in the public interest to “reward” those undertakings which are willing to terminate their participation in this type of illegal practices and collaborate with it, as such contributing to the investigation or detection and determination of anti-competitive behaviour, by granting immunity from the imposition of any fines imposed by the Commission to the first informant. Moreover, the collaboration of one or more undertakings may justify the reduction of administrative fines by the Commission, upon the condition that certain requirements are met.

As it is generally accepted concerted practices are extremely harmful for the efficient and proper operation of the market, as they limit or even eliminate competition, but by their very nature are difficult to detect and determine due to lack of evidence. Consequently, the collaboration of enterprises in this area is particularly valuable in taking successful action against such cartels.

### 4.2. Changes to the Model Leniency Programme of the European Union

In 2012, the European Competition Network (ECN), which consists of the European Commission and the Competition Authorities of all Member States of the European Union, in light of concerted practices being harmful for the operation of the market, revised and improved the Model Leniency Programme (MLP) based on which the National Competition Authorities formulate their own Leniency Programmes. The MLP was issued in 2006 to facilitate businesses to submit an application for leniency in cases where it is not clear which Competition Authority should examine a case (MEMO/06/356).

The ECN, through the optimization of the MLP, has clarified and simplified the information which ought to be provided by the companies which submit applications to different Competition Authorities.

#### The basic changes are the following:

- All leniency applicants who submit the relevant application to the European Commission, in situations where one case involves more than three Member States, will be able to submit a Summary Application to the National Competition Authorities. Prior to this, only the first applicant, in other words the person applying for exemption, had the right to submit a Summary Application of Exemption according to MLP, even though certain national authorities had already extended this right to all applicants.
- Additionally, the ECN has agreed on Summary Applications of a standardized form which companies will be able to use in all Member States.
- Lastly, the ECN has published a list with all the National Competition Authorities that accept Summary Applications in English.

# 5.

## ADVOCACY

### 5.1. Participation of the Commission for the Protection of Competition to the House of Representatives

During the year under review, the Commission for the Protection of Competition, acting within its jurisdictional powers, responded to invitations of various House of Representatives Committees to attend their deliberations and submit its views from the perspective of Competition, on various issues that were under consideration by these Committees.

### 5.2. Opinions

The Commission, pursuant to section 23(ib) of the Protection of Competition Law 13(I)/2008 has the power to provide public entities with opinions concerning issues related to its competence. The Commission for the Protection of Competition, acting under these powers, was requested and responded and, on several occasions, to provide its opinion on various matters relating to Competition Law.

The C.P.C. has provided its opinion on the following instances:

- Discussion at the House of Representatives Committee for Industry and Commerce, in relation to the proposed law for "Setting price caps on wholesale and Retail prices under extraordinary conditions".
- Discussion at the House of Representatives Committee for Transport, regarding the amendment of the Law which regulates Telecommunications and Postal Regulations of 2012.
- Discussion at the House of Representatives Committee for Industry and Commerce, in relation to the amendment of the Standardisation, Accreditation and Technical Notification Law.
- Discussion at the House of Representatives Committee for Internal Affairs, regarding the amendment of the Municipalities and Communities Law.
- Discussion at the House of Representatives Committee for Legal Affairs, regarding the capacity of the Cyprus Protection of Competition to effectively apply competition rules to oligopolistic markets.

- Discussion at the House of Representatives Committee for Legal Affairs, regarding the regulation on Betting and Gaming conducted by OPAP Group of Companies.
- Discussion at the House of Representatives Committee for the Environment, regarding the Waste Management Plan.

# 6.

## EUROPEAN COMPETITION DAY

The Commission for the Protection of Competition, in the context of the Cyprus Presidency of the Council of the European Union, held a Conference for the European Competition Day on the 2<sup>nd</sup> of October 2012. The subject of the Conference was the

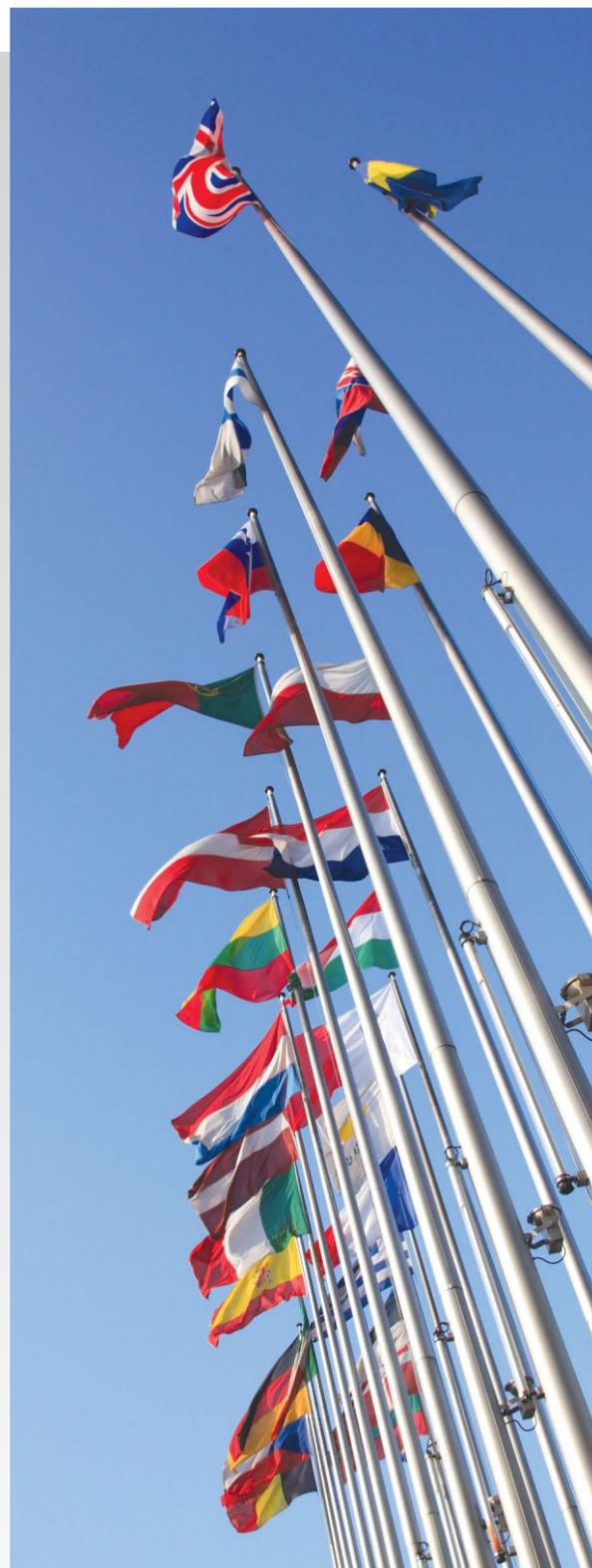
### “Effective Enforcement of Competition Rules in the EU”

The Vice-President of the European Commission and European Commissioner for Competition Mr Joaquin Almunia, the Minister of Finance, the Minister of Commerce, Industry and Tourism of the Republic of Cyprus, judges from the European Courts and the High Court of the United Kingdom, the Director General and representatives from the Directorate General for Competition, Heads and representatives of competition authorities and consumer protection agencies, experts specializing in the field of competition law from international organizations, lawyers, economists, academics, members of the press, as well as representatives from the business world of Cyprus, attended the Conference held in Nicosia.

Mrs Christodoulou, Chairperson of the Commission for the Protection of Competition in Cyprus, in her welcoming speech underlined the importance of effective enforcement of competition rules and the central role it plays in the process towards economic recovery.

In his opening speech, Commissioner Almunia, emphasized the importance and outlined the benefits of effective enforcement of Competition Rules in the EU. Mr Almunia placed particular emphasis on the role that competition authorities play in the market economy of the EU and pointed out that the actions of EU competition authorities have broader implications that will help to overcome the recession, return to growth at sustainable pace, and advance the progress of integration.

The panelists discussed three topics and provided useful information towards enhancing the effective enforcement of Competition Rules.



The topic of the first panel's discussion concerned

### actions for damages: Recent developments in the Member States and the forthcoming EU proposal

The need to establish an effective system of private enforcement was emphasized by all speakers and a number of concerns were identified. These concentrated on issues of standing, the passing-on effect used as a defense by cartellists, the characterization of damages, the difficulties arising from the quantification of damages, and the inquiring as to the binding-effect of such decisions. Moreover, following the Pfleiderer case, concerns were raised in relation to the access to file of applicants, and greater emphasis was placed on leniency applicants. It was stressed that on the one hand, leniency applications must be protected and on the other hand, it was pointed out that there must be a balance regarding what to disclose and what not. In panel I, the speakers were Dr Savvas Pappasavvas, Judge at the General Court of the EU, as the mediator, Sir Justice Gerald Barling, President of the Competition Appeal Tribunal and High Court judge from the United Kingdom, Mr Eddy De Smijter, Deputy Head of Unit AI, DG Competition of the European Commission and Dr Assimakis Komninos, Lawyer at White & Case LLP, Research fellow University College London.



The second panel's topic for discussion was

## Effective Competition in the Food Sector and Retail Markets.

The Food Sector and Retail Markets are under scrutiny by most competition authorities. It was pointed out that there is an increasing need, especially taking into consideration the severe economic conditions of most Member States, to keep these markets competitive, for the benefit of consumers. It has been agreed that retail markets in general and the food sector more specifically, are very important as they interact with other sectors of the economy, play a significant role in Europe's economies and have a direct impact on the welfare of society. Examples of intervention have been discussed relating to the Greek retail markets and the food sector. More examples were also given relating to the French, German and English retail markets and the food sector, all of which demonstrate that there must be a strong bond between enforcement and advocacy, and that Competition authorities should not refrain from enforcement. Purchasing power was, also, an issue that was discussed at length and it was suggested that it should not be an excuse for violating competition law. In this panel, the speakers were Dr Alexander Italianer, Director-General of DG Competition of the European Commission, who was the mediator, Mr Andreas Mundt, President of Bundeskartellamt, Germany, Mr Bruno Lasserre, President of the Autoriti de la Concurrence, France, Mr Philip Collins, Chair of the Office of Fair Trading, United Kingdom and Mr Dimitrios Louka, Vice-Chairman of the Hellenic Competition Commission.



The topic of discussion in the third panel was

## Enforcement of Competition Rules in Member States: Opportunities and Challenges for National Competition Authorities - Cooperation and European Competition Network (ECN) Coordination.

There was a common understanding between speakers that cooperation and ECN coordination has contributed positively to the effective enforcement of Competition rules amongst Member States. Nonetheless, and despite the usefulness and importance of these tools, all speakers in Panel III outlined a number of challenges. In essence, the main challenges faced by most Member States are the effective enforcement of the leniency programme, the need to carry out market research on a regular basis that will provide accurate results on the subject matter of each case, the need to establish the right procedures that will enhance due process, and the need for more clarity in National Court decisions. In this final panel, the speakers were Ms Dorothe Dalheimer, Deputy Head of the ECN Unit, DG Competition of the European Commission, who was the mediator, Ms Clara Guzman Zapater, General Director, Investigations Directorate, National Competition Commission, Spain, Mr Jacques Steenbergen, Director General of the Belgian Competition Authority, Dr Theodor Thanner, Director General of the Federal Competition Authority Austria, and Ms Christiana Sideri, Director of the Service of the Commission for the Protection of Competition of the Republic of Cyprus.

The Conference concluded its deliberations with a summary assessment conducted by Mrs Loukia Christodoulou, Chairperson of the Commission for the Protection of Competition of Cyprus, relating to the results derived from it, as well as the concerns raised by the speakers.

# 7.

## EUROPEAN AND INTERNATIONAL COOPERATION

The Commission for the Protection of Competition considers international relations to be closely linked to its vision of becoming an active European Competition Authority which applies international practices and promotes competition rules at community and international level. The participation of staff members of the Service of the Commission in various working groups constitutes one of the most essential ways of developing cooperation, mutual contribution and shaping competition policies, aimed at enabling the Commission to function in the most efficient way, for the benefit of the market at large. The active participation of the Commission in the European Competition Network is considered vital, following the enforcement of the Council Community Regulation (EC) No.1/2003.

### 7.1. Cooperation on a European Level

#### • MEETING OF THE ECN FINANCIAL SERVICES GROUP

On the 24<sup>th</sup> of January 2012, a Senior Officer of the Service of the Commission participated in a Working Group Meeting of the European Competition Network relating to financial services.

#### • MEETING OF THE ECN BANKING AND PAYMENTS SUBGROUP

On the 25<sup>th</sup> of January 2012, the Director of the Service of the Commission participated in a meeting held by the Working Group which deals with banking services.

#### • MEETING OF THE ECN WORKING GROUP ON MERGERS

On the 26<sup>th</sup> of January 2012, the Director of the Service of the Commission, participated in a meeting held the Working Group which deals with mergers.

#### • EUROPEAN COMPETITION AND CONSUMER DAY

On the 8<sup>th</sup> of March 2012, the Danish Competition and Consumer Protection Authority, in the context of the Danish Presidency of the Council of the European Union, organized the European Competition and Consumer Day in Copenhagen, entitled "Development and New Opportunities -The Role of Competition and Consumer Behaviour". Two Members of the Commission for the Protection of Competition attended the event.

#### • MEETING OF THE EUROPEAN CONSUMER CONSULTATIVE GROUP (ECCG) ON COMPETITION

On the 27<sup>th</sup> of April 2012, a Senior Officer of the Service of the Commission attended a meeting of the European Consultative Group. The discussion dealt with the meaning of "consumer welfare", the search for a cooperation method among national competition authorities and consumer services, the creation of a new department at the Directorate General Competition, which would deal with the food sector, and the creation of a website of the Directorate General Competition under the name of Consumer's corners.

#### • ECN PLENARY MEETING

On the 25<sup>th</sup> of April and 8<sup>th</sup> of November 2012, the Senior Officers of the Service of the Commission attended the 35<sup>th</sup> and 36<sup>th</sup> ECN Plenary Meetings respectively.

#### • DIRECTORS GENERAL MEETINGS

On the 23<sup>rd</sup> of May 2012, the Chairperson of the Commission attended the first annual Directors General meeting, which took place in Brussels. Additionally, on the 20<sup>th</sup> and 21<sup>st</sup> of November 2012, the Chairperson of the Commission attended the second annual Directors General meeting, which took place in Brussels. During the said meetings, a wide range of issues were discussed which concern the better implementation of Community law of competition.

- MEETING OF THE ECN WORKING GROUP ON COOPERATION ISSUES AND DUE PROCESS

On the 26<sup>th</sup> of June 2012, a Senior Officer of the Service of the Commission attended an ECN Working Group Meeting named "Cooperation issues and Due process", which took place in Hague, Netherlands.

- MEETING WITH THE ECN LENIENCY SUBGROUP

On the 9<sup>th</sup> of October 2012, the Director of the Service of the Commission participated in an ECN Working Group Meeting, during which an exchange of opinions took place amongst the legal advisors of businesses (Stakeholder Forum).

- MEETING WITH THE ECN WORKING GROUP ENTITLED "COOPERATION ISSUES AND DUE PROCESS"

On the 22<sup>nd</sup> of March 2012, an Officer of the Service of the Commission participated, on behalf of the Commission, in a working group discussion in Brussels.

- MEETING WITH THE ECN WORKING GROUP OF CHIEF COMPETITION ECONOMIST

In November 2012, an Officer of the Service of the Commission attended the Chief Economist Working Group meeting which dealt with economists' issues and which took place at the Polish Commission for the Protection of Competition.

## 7.2. Cooperation on an International Level

- SEMINAR HELD BY THE ECN WORKING GROUP ENTITLED "EFFECTIVE USE OF ECONOMICS IN COMPETITION ENFORCEMENT"

In November 2012, an Officer of the Service of the Commission attended a seminar which was organized by the Polish Competition Authority regarding the use of financial data in competition. Amongst others, present at the seminar was Dr Kai-Uwe Kuhn, Chief economist of the Directorate General Competition, as well as representatives of different national competition authorities. The main subject of the seminar was the discussion of issues relating to the potential impact of financial analysis upon the increase of efficiency in tracing anti-competitive actions.

- MEETING OF THE UNCTAD INTERGOVERNMENTAL GROUP OF EXPERTS ON COMPETITION LAW AND POLICY

On the 9<sup>th</sup> and 10<sup>th</sup> of July 2012, the Chairperson of the Commission and the Director of the Service of the Commission participated in the 12<sup>th</sup> meeting of UNCTAD, which took place in Geneva. During the meeting, the creation of a Mediterranean Competition Council was discussed. Different mediterranean countries expressed their opinions regarding the purpose and method of ensuring the operations which the said body should adopt.



**COMMISSION FOR THE PROTECTION  
OF COMPETITION**

53 Strovolos Avenue,  
Victory Building,  
2018 Strovolos, Nicosia, Cyprus  
P.O. Box 23467, 1683 Nicosia, Cyprus

Tel: (+357) 22 606600

Fax: (+357) 22 304944

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

[www.competition.gov.cy](http://www.competition.gov.cy)

