

DECISION

File No: 11.17.01.21. 11.17.01.22, **Decision No:** 6/2002-30.4.2002

Present: Christodoulos Tselepos (Chairman), Costis Efstathiou, Evagkelos Sykopetritis, Andreas Sophocleous (Members)

Lawyers of Complainant: Mr. Achilleas Demetrades

Lawyers of Respondent: Mr Nicos Hadjioannou

Lawyers of Lanitis Bros: Mr Kyriakos Michaelides

Two complaints were filed against the Cyprus Dairy Industry Organization (the “CDIO”):

- (1) Charalambides Dairies Ltd (“Charalambides”) and Christies Dairies Ltd (“Christies”), claiming an infringement of section 4 of Law 207/89; and**
- (2) the Cyprus Association of Cheese Producers (“CACP”) and Pittas Dairies Industries Ltd (“Pittas”), claiming an infringement of section 6 of the same Law.**

The CDIO is the exclusive regulator of the dairy market in Cyprus. The relevant markets which the CDIO regulates are part of production, allocation and distribution of milk within the Republic. The CDIO also fixes the prices of milk vis-a-vis all the producers of pasteurized milk in Cyprus.

The first complaint alleged, *inter alia*, that the CDIO and the new entrant in the pasteurized milk market, Lanitis Dairies Ltd (“Lanitis”), agreed that the quantity of milk supplied to the latter would come by way of undercutting the quantities of milk supplied to the complainants and the other competitors.

The CPC ruled negatively as to the existence of a concerted practice as Lanitis, just like the other dairy companies, was not in a position to act autonomously nor was it able to influence the decisions of the CDIO. Instead, all companies were forced to comply with the decisions and directions of the CDIO in relation to several of their commercial activities and therefore lacked the capacity to act independently.

The second complaint related to a possible abuse of the CDIO’s dominant position. In examining whether the CDIO abused its dominant position in the market, the CPC relied on the following findings:

- (i) The CDIO alone determined the quantity of milk to be supplied to Lanitis and the other dairy companies.
- (ii) The supply quantities delivered to all dairy companies were fixed by the CDIO and did not reflect the companies orders. Thus, the CDIO was controlling the production in a way that did not meet the demand of the market.
- (iii) As a result, milk-producing companies were, amongst others, indirectly financially dependent upon the CDIO.

The manner in which the CDIO allocated the supply quantities to the above companies accounted therefore to an abuse of a dominant position.

The CDIO sought an exemption under section 7 of the Law on the basis that it was a public body serving the general economic interests as prescribed by Law 17/71 that governs the CDIO, that its actions and decisions were necessary for the fulfillment of that purpose.

As to this allegation, the CPC found that the CDIO was in a position to adopt such measures or to impose such conditions without distorting competition in the market and at the same time, fulfill its purpose and duties prescribed by Law 17/71. The CDIO, therefore, was not exempted through the provisions of section 7 of the Law.

The CPC imposed the following sanctions to the CDIO for infringing section 6 of the Law:

- (1) a fine of CY£50,000; and
- (2) ordered the complete removal of all prectises that violate section 6 of the Law and directed the CDIO to take such measures in order to ensure that the market operates without any barriers to free competition. Failure to do so within two months from the date of the decision would result to a fine of CY£2,000 per day until full compliance.