



ΚΥΠΡΙΑΚΗ
ΔΗΜΟΚΡΑΤΙΑ



ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ
ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

Decision CPC: 32/2019

Case Number 8.13.019.23

**THE CONTROL OF CONCENTRATIONS BETWEEN ENTERPRISES LAW
No. 83(I)/2014**

**Notification of concentration concerning the acquisition of the business of white cement
of CEMEX S.A.B. de C.V. by Hacı Ömer Sabancı Holding A.Ş, via Çimsa Çimento Sanayi
Ve Ticaret A.S.**

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou,	Chairperson
Mr. Andreas Karidis,	Member
Mr. Aristos Aristidou Palouzas,	Member
Mr. Panayiotis Oustas,	Member
Mr Polinikis-Panagiotis Charalambides	Member

Date of decision: 12/06/2019

SUMMARY OF THE DECISION

On 30/5/2019, the Commission for the Protection of Competition (hereinafter the “Commission”) received on behalf of Hacı Ömer Sabancı Holding A.Ş (hereinafter the “Sabancı Group”), a notification of a proposed concentration.

The notification was filed according to Section 10 of the Control of Concentrations between Enterprises Law 83(I)/14 (hereinafter the “Law”) and it concerns the acquisition of the business of white cement (hereinafter the “Target Business”) which belongs to CEMEX S.A.B. de C.V.

(hereinafter the “Cemex”), by Hacı Ömer Sabancı Holding A.Ş, via Çimsa Çimento Sanayi Ve Ticaret A.S. (hereinafter the “Çimsa”), through a wholly-owned subsidiary set up in Spain.

The Target Business, which is currently owned by Cemex, includes assets and liabilities, which constitute the business for the production of white cement through the Buñol plant station which is owned by Cemex. The Target Business is active in Cyprus in the supply market of white cement.

Hacı Ömer Sabancı Holding A.Ş, is a company duly registered under the laws of Turkey and is a member of Sabancı Group, which is a Group of Companies with a portfolio of investment. The said Group is active in the sector of banking and insurance services, energy, cement as well as in the retail and industrial sectors. The Sabancı Group, is currently active in 13 countries and sells its products throughout Europe, the Middle East, North Asia, Africa, North and South America. It is active in the non-controlled areas of the Republic of Cyprus.

Çimsa is a company duly registered under the laws of Turkey and is owned by Sabancı Group. The said company is active in the production and marketing of cement, with terminals in Germany, Italy, Spain, Romania, Russia and Cyprus. Çimsa is active in the regions which are not under the effective control of the Government of the Republic of Cyprus.

The transaction is based on an Asset Purchase Agreement between Cemex and Çimsa.

The Commission, having evaluated all the information of the administrative file of the case, concluded that:

(a) The total turnover of Sabancı Group was approximately €[...] for the year 2018, while the total turnover of the Target Business was approximately €[...] for the year 2018,

b) Sabancı Group and the Target Business operate within the Republic of Cyprus,

(c) Sabancı Group operates in the areas that are not controlled by the Government of the Republic of Cyprus, with an annual turnover amounting to €[...] in 2018. The Target Business is active in the non-occupied areas of Cyprus in the supply market of white cement, with an annual turnover which amounted to €[...] in 2018.

The Commission noted that a critical element for the application of the Law is its geographical scope. As is clear from the combined application of the term "Republic" of article 2 and of the cumulative conditions of article 3 (2) of the Law, the geographical scope is the whole territory of the Republic of Cyprus.

The Commission notes that the responsibility of the Republic of Cyprus to legislate for the whole territory is not affected by the consequences of the Turkish invasion, the presence of Turkish troops and the inability of the Government of the Republic of Cyprus to exercise effective control over the areas occupied by these troops. The first conclusion which emerges from this is that the Republic of Cyprus, as a sovereign State, has the legislative responsibility for the whole territory and that the Cypriot legislation applies throughout the territory, unless the law provides otherwise.

The issue of the validity of a law is a separate issue from the question of applicability of its provisions. Regarding the implementation of legislation of the European Union (hereinafter EU), it must be pointed out that in accordance with the Protocol No. 10 to the Act of accession of the Republic of Cyprus in the EU, the application of the *acquis* is suspended in those areas where the Government of the Republic of Cyprus does not exercise effective control. Regarding to purely national legislation (i.e. not based on EU legislation), it is valid and should be implemented as a whole. On this point, it should be noted that the book "Studies in European Public Law: thematic, national post-and national perspectives", pp. 110, Constantinos Lycourgos states:

"[...] while the *acquis* is suspended in the areas where the Government does not exercise effective control, the laws of the Republic are not. These laws are applicable in the whole territory of the Republic, even though the authorities of the Republic are, in most cases, unable to apply them in the part of that territory where the Republic of Turkey exercises effective overall control."

The aspect of inability of the application of the national legislation was examined by the Supreme Court of Cyprus. In its decision in case *Birinci v. Republic*, Case. No. 911/2004, dated 14/2/2006, the Court, considering the applicability of a purely national legislation, concluded that:

"The conditions posed by the term ' student ' and ' resident ' is impossible to be verified by the defendants due to the actual inability to conduct inspections in the occupied part of the Republic of Cyprus, which is occupied by Turkish troops. Whether the applicant 2 fulfilled or not the requirements of the above conditions was not under the circumstances possible to be verified so as to enable the application of the law. The same can be said that it could not be determined whether the family of the applicants had their permanent residence in Cyprus at the time. As it also emerges from the interpretation of the law, the applicant 2 has not graduated from a secondary school registered in the Republic of Cyprus with curriculum of the level required by the relevant legislation governing these matters. Viewed in that regard, "the certificate" attached to the request for specific grant is not a leaving certificate given by a registered secondary school in the Republic of Cyprus."

In the case of *George Matthew v. CAPO* (Case. 845/2006, DOB, 14.7.2008), where the issue involved the application of EU law, the Supreme Court reaffirmed the *Birinci* case.

Applying the above, the Commission concludes unanimously that the Law applies to the entire territory of the Republic of Cyprus. However, there is an objective obstacle for its application in areas and/or in connection with areas that are not under the effective control of the Government of the Republic. This disability to apply the Law, renders the evaluation of the notified transaction to the Commission impossible.

On the basis of the information and data in the administrative file, the notified transaction falls within the scope of the Law, but the Law cannot be applied.

The Commission underlines that it has general and inherent authority in its capacity as an administrative body, to express its judgment by issuing an administrative act, as provided for in article 3 of the General principles of the Administrative Law, No. 158 (I)/1999.

At this point, the Commission in addition to the above, makes reference to the following quote from the website of the Ministry of Foreign Affairs which is related to non-compliance with the procedures and conditions laid down by the legislation of the Republic of Cyprus:

"The relevant restrictions have been imposed by an Order of the Council of Ministers of the Republic of Cyprus issued on 3.10.1974 (P.I. 265/74) which declares the ports of Famagusta, Karavostasi and Kyrenia as closed for all vessels.

The relevant Order P.I. 265/74 has been adopted on the basis of section 25 of the Port Regulation Law, Cap. 294 as amended (now section 15(1) of the Cyprus Ports Authority Law 38 of 1973, as amended by Law 28 of 1979).

Section 15(2) of Law 38/73 provides for the relevant sanctions as follows: "The master and / or the owner of a ship which arrives and departs from a port closed for such ship or enters or stays therein in contravention of an Order under subsection (1) shall be guilty of an offence and be liable to imprisonment not exceeding two years or to a fine not exceeding seventeen thousand eighty six euro (€ 17.086) or to both such imprisonment and fine, and in the case of a ship registered in the Register of Cyprus Ships, the Court dealing with the case has the power to order her deletion from the Register of Cyprus Ships.

The above restrictions were taken in order to uphold and maintain the sovereignty of the Republic of Cyprus over its ports and harbors and due to the fact that the safety of navigation could no longer be guaranteed in the areas illegally occupied by the Turkish Army since 1974."

In Decision CPC: 10/2017 regarding the acquisition of OMV Petrol Ofisi Holding A.S. by VIP Turkey Enerji A.S, the Commission concluded that the Law applies to the entire territory of the Republic of Cyprus. However, there was an objective obstacle for its application in areas and/or in connection with areas that are not under the effective control of the Government of the Republic. The Commission pointed out that this disability to apply the Law, rendered the evaluation of the notified transaction to the Commission impossible.

Therefore, the Commission unanimously concludes that it is not possible to assess the notified transaction.

[Loukia Christodoulou](#)

Chairperson of the Commission for the Protection of Competition