CPC

COMMISSION

FOR THE PROTECTION
OF COMPETITION

COMPETITION PROTECTION LAW 207/89

CONCENTRATION OF ENTERPRISES LAW 22(I)/99

ANNUAL REPORT

2002

C O N T E N T S

1. COMMISSION FOR THE PROTECTION OF COMPETITION

The Council of Ministers by its decision no.52.904 dated 20.12.2000, has appointed, in accordance with sub sections (1) and (2) of section 9 of the Protection of Competition Law of 1989 (law No.207/89) as this was substituted by section 3 of Amendment Law No. 155(1)2000, the Chairman and the members of the Commission for the Protection of Competition, as follows:

Chairman:

Christodoulos Tselepos
Lawyer
(for a period of five years, that is until 20/12/2005)

Members:

1. Costis Efstathiou
   Lawyer
   (for a period of five years, that is until 20/12/2005)

2. Evangelos Sykopetritis
   Chartered Accountant - Auditor
   (for a period of five years, that is until 20/12/2005)

3. Andreas Sophocleous
   Senior officer of the Ministry of Commerce, Industry and Tourism
   (for a period of two years and six months, that is until 20/6/2003.

4. Andreas Demetriou
   Chartered Accountant - Auditor
   (for a period of two years and six months, that is until 20/6/2003)

ANNUAL REPORT ON THE ACTIVITIES OF THE COMMISSION FOR THE PROTECTION OF COMPETITION FOR 2003

2. INTODUCTION

The Protection of Competition Law 207/89 was enacted by the House of Representatives on 30th November, 1989 and came into force on 8 June, 1990.

The enactment of the Law became necessary for the creation and promotion of condition of healthy competition with a view to protecting consumers more effectively and developing commerce and the economy in general.

3. OBJECTS AND TARGETS

The introduction of the Protection of Competition Law constitutes probably the most serious effort of the Ministry of Commerce, Industry and Tourism for creating condition of healthy competition and effective protection of consumers. The Law was fashioned within the strict framework of the Convention for the Establishment of the European Economic Community, an obligation which emanates from the Protocol of the Application of the Second Phase of the Cyprus-European Union Association Agreement.

The existence of many suppliers competing among themselves to win the market constitutes for the consumer the best guarantee for ensuring the availability of products and services at competitive prices. Many times, however enterprises instead of competing, they attempt to cooperate resulting in the formation of anti-competitive cartels aiming at keeping artificially high prices and maximizing their profits.

The legislation for the protection of competition aims at defining the framework within which free competition, as the cornerstone of our economic system will be functioning.

In addition to ensuring possibilities of choice among various products and services offered in competitive qualities and prices, competition secures and promotes technical and economic progress due to the fact that competitive enterprises are encouraged to be constantly modernized. This is conjunction with the best distribution of productive sources, which results from the effective application of the competition policy, is expected to lead to an increase in productivity, reduction of cost, creation of more remunerative employment opportunities and generally to the improvement of the people's standard of living.

3.1.1 THE CONCENTRATION OF ENTERPRISES CONTORL LAW NO.22(1)/99

Within the framework of the efforts of the Ministry of Commerce, Industry and Tourism to ensure conditions of healthy competition and also to harmonize our Legislation with the acquis communautaire, the Competition and Consumers Protection Division of the Ministry prepared a Bill entitled "The Concentration of Enterprises Control Law of 1999", which was submitted to the House of Representatives for enactment and was put into effect as from 19 March 1999.

The Law is based on regulation no. 4064/89 and on corresponding legislation of member-states of the European Union.

The object of the Law is to introduce a system of state control on all the significant, from the economic point of view, concentration of enterprises with the object of preventing those concentrations which tend to create or strengthen a dominant position in the market that would impede to a great extent effective competition in the affected markets within the Republic.

The most important provision of the Law are:

(a) The provisions of section 5 and 6 which define the scope of application of the proposed law.
(b) The provisions of section 9 and 38 which give the Minister of Commerce, Industry and Tourism the power to declare, subject to certain prerequisites, concentrations of enterprises as enterprises of major public interest, including them in the scope of implementation of the law even though they do not normally come under it.
(c) The provisions of section 13 which contain the criteria of compatibility of a concentration with the requirements of effective competition.
(d) The provisions of section 14 which impose on the enterprises concerned the obligation to notify within a fixed deadline the concentrations they intend to create.
(e) The provisions of sections 40 and 41 which give the Council of Ministers the power to examine certain cases of concentrations and to take a final decision in connection with them.
(f) The provisions of sections 44 and 48, which allow the imposition of partial or total liquidation of a concentration incompatible with the effective competition as well as the measures which are considered necessary for the restoration of effective competition in the affected markets.
(g) Finally, the provisions of sections 54 and 55 which concern the imposition and collection of various fines by the Commission for the Protection of Competition are significant from the point of view of implementation of the whole system which is introduced.

4. SERVICE OF THE COMMISSION FOR THE PROTECTION OF COMPETITION

For the carrying out of its work the Commission for the Protection of Competition is assisted by the Service of the Commission. According to the legislation, in addition to acting as Secretariat of the Commission, the following functions come under the jurisdiction of the Service:

(a) to keep a public Register of Consortiums and a public Register of Decisions of the Commission and the Supreme Court on Consortiums and Actions.
(b) to gather and check information necessary for the carrying out of the functions of the Commission.
(c) to introduce complaints and to submit recommendations to the Commission and
(d) to take action for the necessary notifications and publications.

5. ACTIVITIES OF THE COMMISSSION FOR THE PROTECTION OF COMPETITION

5.1 EXAMINATION OF COMPLAINTS

During the year 2002 the Commission for the Protection of Competition held 58 meetings at which dealt mainly with the following matters:

5.1.1. Complaint by the Building Contractors Associations Federation of Cyprus against brick manufacturing factories.

This case concerns a complaint by the Building Contractors Associations Federation of Cyprus (OSEOK) against all the brick manufacturing factories for possible harmonized practice in the fixing of uniform prices and production control.

More specifically, OSEOK complains that all the brick manufacturing factories have cooperated and control the production so that all brick manufacturing factories sell their stocks with the result that the price of bricks is stable and almost uniform for all brick manufacturing factories.

The Commission examined the letter/complaint and gave instructions to its Service to carry out the necessary preliminary investigation and to inform it about its position..

The Service established, from the investigation, inter alia, the following:

1. The brick manufacturing factories stop manufacturing bricks at least three times a year for various reasons such as e.g. plant maintenance, cost reduction, sale of stocks, summer vacations, holidays.
2. As the managers of the various brick factories themselves said, they close more or less during the same periods because consecutive holidays as during the Christmas/New Year period, Easter and in August, occur when building workers take their leave.
3. The prices of ordinary bricks of broad consumption, which covers 90% of the market range from 150-170 pounds per thousand.
4. As the managers themselves said, not all factories charge the same prices and in any case they have a different pricing policy for each one of their customers.

The Commission, after examining the necessary investigation put before it by the Service, unanimously decided the following:

a) The complainants have a legal interest in making a complaint and
b) There is prima facie case of possible violation of section 4(1), (a) and of the Protection of Competition Law 207/89 on the part of the brick manufacturing factories

More specifically, it has been established at prima facie, that there has been a concerted practice with the aim or result the limitation, obstruction or adulteration of competition and more specifically the limitation or control of the manufacturing of bricks

The Commission gave instructions that a statement of objections be prepared and sent and invited the parties involved before it for continuation of the examination of the complaint.

The brick factories involved and the complainants appeared before the Commission and through their lawyers set out their positions to the Commission and produced documents and information as well as evidence in support of these positions

The Commission, after examining all the documents and information before it, evaluated the evidence produced both by the complainants and those against whom the complaint has been made and after listening to the final submissions of the lawyers of the parties involved issued Decision no. 13/2002-12.12.2002, which, inter alia, says:

(a) The Commission on the basis of the evidence before it, the contents of the investigation carried out by the Service of the Commission in connection with the present complaint and all the evidence in general placed before it, reaches the conclusion that those against whom the complaint has been made from the middle of 1999 until the conclusion of the hearing followed a harmonized practice (cooperation)

(b) The market of manufacturing of bricks 10X20X30, as it is analyzed above, cannot be described as oligopoly. The operation of 8 brick manufacturing industries, the production capacity of the said industries, which covers more than twice the requirements of the market, and the size of the Cyprus market, are elements which led the Commission for the Protection of Competition to the above conclusion, i.e. that the relevant market does not constitute an oligopoly and, consequently, the whole matter will not be judged on the basis of the principles which govern an oligopoly market.

(c) In view of the above findings, the Commission reached the conclusion that the complainers violated the provisions of section 4(1) and (b) by establishing a concerted practice from the middle of 1999 until the trial of the case, which had as objective or result the obstruction, limitation and adulteration of competition which consisted in the indirect fixing of the prices of bricks 10X20X30 and control of the manufacturing of the specific product.

(d) The Commission, bearing all the above in mind, went ahead and examined the provisions of section (5) of Law 207/89 even though no request for individual exemption had been made by the complainers to see whether the harmonized practice (consortium) of those against whom the complaint has been made may enjoy the benefit of individual exemption, in accordance with the provisions of the above mentioned section, and reached the conclusion that the prerequisites envisaged by section (5) of L. 207/89 exist cumulatively, and, therefore, they cannot be accorded the benefit of individual exemption.

The above decision was taken unanimously at the meeting of the Commission on 12.12.2002 and was communicated to the parties concerned at the Commission's meeting dated 17.12.2002.

Following the communication of the decision, the lawyers of the party against which the complaint has been made were asked to speak regarding the imposition of penalty. The lawyers asked to be given time to prepare their address for the purpose of mitigation of the penalty. The Commission for the Protection of Competition regarded this request reasonable and fixed a new meeting for the above purpose on 19 December 2002 at 12:30 pm.

At the meeting of the Commission for the Protection of Competition on 19 December 2002, the lawyers of the party against which the complaint has been made expressed their opposition to the decision of the Commission and refused to make addresses for mitigation of the penalty, disclaiming this right given them by the Law. The same tactic was followed also by the Chrysafis Ltd Keramio, one of those against which the

complaint has been made, through its manager Kikis Chrysafis which was not represented by a lawyer but by its manager.

The Commission unanimously decided to impose a penalty of a total of CP 100.000 for violation of the provisions of section 4(1)(a) and (b) of the Law on the part of those against whom the complaint has been made.

Despite the refusal of those against whom the complaint has been made to argue for mitigation of the penalty the Commission, in imposing the above penalty, took into account for the mitigation of the penalty, the following:

a) The provisions of section 22 of Law 207 (I)89
b) The total gross income of all the factories against whom the complaint as been made during the year 2000 amounted to CP7.026.967, while the total gross income from the manufacturing of the bricks in question (10X20X30) amounted to CP6.098.249 during the year 2000.
c) The year and the duration of the violations which took place in or about June 1999 and afterwards.
d) The effects on consumers and the bricks market 10X20X30 from this behaviour.
e) The benefit which resulted from the whole behaviour
f) Serious consideration was given to the fact that the brick manufacturing sector is facing serious problems due to the fact that the sale prices of the said products were controlled by the state until 1997 and, therefore, manufacturers did not have the possibility to adopt a competitive behaviour. But in case of continuation of this and/or similar behaviour which will result in further obstruction of competition, the Commission for the Protection of Competition will impose very severe penalties and regulatory measures.

5.1.2 (a) Complaint by the Cheese-makers Association of Cyprus and the company "Pittas Ltd against the Cyprus Milk Industry Organisation (CMIO)

(b) Complaint by the CHARALAMBIDES Dairies Ltd and CRISTIS LTD against the Cyprus Milk Industry Organisatation(CMIO).

These cases concern two separate complaints which were made to the Commission by the same Law Office against the CMIO for abusive exploitation of dominant position in the milk production and marketing sector.

With the consent of all the parties concerned the Commission decided that the two complaints should be tried jointly since they concerned the same facts.

More specifically, both the **Charalambides Dairies** Ltd and Christis Ltd and the Cheese-makers Association of Cyprus and the company Pittas Ltd complain that the CMIO is abusively exploiting the dominant position it holds in the milk production and marketing sector by:

(a) Indirectly fixing unfair milk purchase and sale prices
(b) Limiting the production or marketing of Cyprus pasteurization products to the detriment of the complainants since it does not deliver to them the quantities they have agreed.
(c) Indirectly implementing different terms for equivalent transactions with the result that the complainants are placed in a disadvantageous positions in the competition. More specifically, the CMIO. gives priority to Lanitis and has

started delivering to the latter quantities of milk while it arbitrarily refuses to meet its commitments regarding the complainants since it refuses to deliver to them all the quantities of milk it has promised them.

(d) Exploiting the economic dependence relationship the complainants have with the CMIO as the sole supplier of milk in Cyprus. The complainants, who are customers of the CMIO do not have an equivalent alternative solution and cannot get the quantities of milk from another source.

(e) By implementing also a policy of discrimination between the complainant and the newly established Lanitis company in a way that seriously affects competition as it gives priority to Lanitis and delivers to him quantities of milk while it arbitrarily refuses to deliver to the complainants all the quantities of milk it has promised them.

(f) By imposing arbitrary transaction terms demanding that the complainants should take delivery of milk on the basis of unilateral and binding statements to the CMIO about cow milk daily without the CMIO having a corresponding obligation to deliver milk to them.

At the same time the complainants request the taking of interim measures so that the CMIO may deliver to them the quantities of milk they have agreed pending the examination of the complaint and the issue of a decision by the Commission

The Commission after examining the letter/complaint it gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it and at the same time invited both the complainants and the CMIO as well as the Lantis company Ltd as interested party to appear before it for examination of the request for the taking of interim measures.

The lawyers of the parties involved appeared before the Commission at a total of three meetings and set out the facts and their positions and views regarding the request for the taking or interim measures and subsequently made their final addresses.

The Commission, after studying all the evidence, information and positions and views before it unanimously issued Decision no. 9/2001 which, inter alia, says:

(a) The milk market sector in Cyprus presents such distortions that in reality there is no adequate room for healthy competition. These distortions are due primarily to the regulating role which the CMIO is playing on the basis of Law 4/69 and the Organization practically controls through regulating and other similar decisions all the critical matters which concern the milk market sector.

(b) At first sight and on the basis of the results of its actions, the CMIO by this decision aggravates the already distorted competition field in the milk market sector. In this case it is an indisputable fact that a new businessman has entered the market at the expense of the two complainants on the basis of rules, criteria and a procedure defined by the Organization which even fixed the percentages of the market share of each one of the parties involved in a dominant manner and without the basic competition rules being taken into consideration. In this sense, the Commission reaches the decision that a prima facie case exists against the CMIO for possible violation of section 6(3) on the basis of the amendment of the Law.

What particularly exercised the Commission was the urgent character of the case and in this connection we judge that the positions and the field itself became clear and the situation took its definite form in August 2001 after the CMIO had defined the

manner and also the extent of the cuts and the introduction of the Lanitis Bros Company Ltd into the milk market. The Commission finds that the period between the above events and the date when the complaint was made is not such as to de-describe the case as urgent

Regarding the third criterion, that of serious risk of irreparable harm, the Commission judges that in view of the structure of the milk market in Cyprus, any damage to the complainants may be made good or assessed for the following reasons:

(a) The Organization using exactly the same procedure which it has applied can restore the initial market shares to the complainants.
(b) The competition field in the milk market sector is so distorted that it is possible by simple mathematics to calculate the costs, the expenses, the income and the profit and loss depending on the market share each enterprise has.

In view of the above findings, the Commission unanimously reaches the decision to reject the request for the taking of interim measures since in this case there is no danger of irreparable harm or damage to the complainants"

The Service subsequently put before the Commission the necessary preliminary investigation.

The Commission after examining the necessary preliminary investigation put before it by the Service unanimously established that:

(a) The complainants have a legal interest in submitting the complaint and
(b) There is a possible prima facie violation of the provisions of section 6 sub-section (3) of amendment Law 111(I)/99.

More specifically, on the basis of the necessary preliminary investigation of the Service, it has been established that there is prima facie case of possible abusive exploitation of the dominant position the CMIO has in the milk market regarding the decision of the Organization to allocate part of the limited quantity of milk production to a new pasteurization industry, cutting these quantities from the existing dairy and milk pasteurization products industries, taking into account the economic dependence relationship of the existing industries and the fact that no alternative solution exists, without the CMIO taking the actions necessary to secure increased milk production that would satisfy the entrance of new companies and the existing ones.

The Commission, after establishing the above, gave instructions that statements of objections should be prepared and sent and invited all the parties involved before it for continuation of the case.

All the parties involved appeared before the Commission and through their lawyers set out their positions and views and produced documents, information and also evidence in support of these positions.

The Commission examined all the evidence, information and documents before it, evaluated the evidence produced both by the complainants and by those against whom the complaint has been made and after listening to the final positions of all the parties involved from their lawyers issued Decision no. 6/2003-30/04/2002 which, inter alia, says:

"The Commission by a 3-1 majority decision (with member A. Sophocleous disagreeing) reaches the conclusion that the CMIO has failed to convince the Commission that the manner and the terms contained in its decision no.28.2.2001 regarding the entry of the LANITIS company into the pasteurized milk market was the only and/or appropriate manner for the carrying out of the mission entrusted to it by the state. The CMIO had the possibility to adopt such measures or to impose such conditions in its decision for the entry of the LANITIS company into the pasteurized milk market as to be compatible with the provisions of section 6 of the Law, without the carrying out of its specific mission entrusted to it by the State being affected and, therefore, it cannot be exempted under the provisions of section 7, as amended by Law 87(I)/2000.

The Commission in view of the above findings reaches the conclusion that the CMIO as an organization holding a dominant position in the milk market, abused its dominant position in violation of the provisions of section 6(2) and (3) of Law 207/89 and, consequently, the complaint against the Organization succeeds regarding the violation of the above provisions by the Organization.

The above decision was notified at the Commission's meeting dated 30.4.2002 in the presence of all the interested parties.

With the notification of the decision, the lawyer of the CMIO was given the floor in order to argue for mitigation of the penalty. The lawyer in his address in this connection suggested that the Commission for the Protection of Competition should judge the CMIO very leniently for the following reasons:

(a) All the actions of the CMIO regarding the decision to allow the LANITIS Company to enter the pasteurization sector were bone fide actions and aimed at strengthening competition in this specific market.
(b) The CMIO is a non profit enterprise and on the basis of the relevant legislation, as the sole agent regulating production and marketing, has as mission to promote greater economic capacity in the dairy industry also to the benefit of milk producers, consumers and various specific interests, taking the public interest into account.

Following the address of the lawyer of the CMIO, the members of the Commission for the Protection of Competition withdrew and following discussion and an exchange of views decided to judge the CMIO leniently taking into account: that:

(a) Indeed the CMIO, as shown by the wording of its decision dated 28.2.2002, acted in good faith and had no intention of violating the provisions of the Protection of Competition Law.
(b) Indeed, the CMIO is a non profit Public Law Organization-Public Enterprise This is evidenced also by the audited accounts of 2001 which were submitted to the Commission and which show losses of CY556.064 pounds.

After taking the above into consideration, the Commission by a 3-1 majority decided to impose the following penalties:

(a) A penalty of CY50.000 pounds
(b) Furthermore, because, from the time the complaint was made until today, the CMIO has not taken any steps to remove all those factors which violate the provisions of section 6(2)(a) and (3) in the pasteurized milk market, it recommends that within two months, the Organization should take all necessary measures so that the sector in question may operate without the

provisions of section 6(2) and (3) being violated. In case the above deadline expires and it is established that the Organization has not succeeded in creating conditions that will be in keeping with the provisions of the above section, an additional penalty will be imposed in the form of a fine of CP 2.000 for each day of continuation of the violation after the expiry of the said deadline.

The above decision regarding the penalties was notified in the presence of all the interested parties at the meeting of 30.4.2002".

5.1.3. Complaint by doctor Sotos Demetriou (S.D. Clinic Co. Lt) and Andreas Prokopiou (Chrysovalantos Clinic) against the insurance companies (Health Section) Universal Life, General Insurances of Cyprus, Aspis-Pronoia, Ethniki Asphalistiki, Atlantic Insurance, Liberty Life, Cypria Life, Bupa, Eurolife, Alico Interlife.

This case concerns a complaint made by Doctor Sotos Demetriou – S.D. Clinic Ltd and Andreas Prokopiou-Chrysovalantos Clinic, against the insurance companies (Health sector) for possible violation of section 4 and/or 6 of L207/89.

More specifically the above two clinic owners complain that practically all the insurance companies (health sector) have established a consortium and created a common list of clinics with which they have signed contracts and have not included in the said list their own clinics abusing the dominant position they have acquired through their concerted practice.

The Commission after examining the contents of the letter-complaint gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it.

The investigation of the Service established the following:

1. The insurance companies Universal Life, General Insurances of Cyprus, Aspis-Pronoia, Ethniki Asphalistiki, Laiki Asphalistiki, Atlantic Insurance, Liberty Life, Cypria Life, Bupa, Eurolife, Alico, Interlife have established a negotiating committee which discussed and negotiated with doctors and clinics the prices to be charged by them for the various medical services they offer to those insured in the health branch.
2. The insurance companies have published a list for the insured with the names of doctors and clinics which have a contract with them.
3. The clinics S.D. Clinic Co. Ltd and "Chrysovalantos" despite the fact that they have accepted the conditions have not been included in the list of the clinics parties to the contract.

The Commission after examining the necessary preliminary investigation put before it by the Service unanimously established that:

(a) The complainants have a legal interest in making the complaint, and
(b) The consortiums of the companies against which the complaint has been made and the whole practice which is followed for the fixing of prices in the supply of medical services by doctors and clinics, at first sight leads to the conclusion about possible violation of the provisions of section 4(1) (a) and (d) which **provides**:

The Commission then gave instructions that a Statement of Objections should be prepared and sent to the complainants, and invited all the interested parties before it for continuation of the examination of the case.

All the parties involved appeared before the Commission and through their lawyers expressed their positions and views and produced documents, information as well as evidence in support of these positions.

The Commission examined all the evidence, information and documents, evaluated the evidence produced both by the complainants and by those against whom the complaint has been made and after listening to their final positions as they were set out by their lawyers issued Decision 10/2002 which inter alia, says

"The Commission for the Protection of Competition unanimously reached the conclusion that the insurance companies which make up the Network abused the collective dominant position they hold as a result of the creation of the Network and which consists of:

(a) the arbitrary non inclusion of the complainants and other clinics also in the list they have prepared without adequate justification. An adequate justification would be the exclusion of the complainants and/or others due to the fact that they did not meet the objective criteria on the basis of which they had prepared the relevant list.
(b) (i) the indirect fixing of unfair under the circumstances prices regarding the preparation of the Price list with the clinics in violation of section 6(2)(a),
(c) ii) the imposition of unfair under the circumstances transaction terms regarding the insured who choose to get medical services from a clinic which is not included in the list of clinics of the Network in violation of section 6(2)(a)

The above decision was taken at the meeting of the Commission for the Protection of Competition on 3rd September, 2002, and was then notified to all the interested parties at an open meeting of the Commission, on the same day. Following the notification of the decision the lawyer of those against whom the complaint has been made, Mr. Haviaras, was given the floor in order to argue in connection with the sentencing. Following the arguments of the lawyer of those against whom the complaint has been made, the Commission decided to reserve its decision regarding the extent and type of the penalty it would impose and to this end it set September 9 as the date for announcement of the penalty. On 5th September 2002 at its meeting the Commission in the presence of all those participating in the procedure,

Unanimously decided to impose the following penalties:

(a) A fine of a total of CY200.000 pounds for violation by those against whom the complaint has been made of the provisions of section 4(1)(a), of section 6(2) and of section 20.
(b) All the agreements with the clinics which have emerged from the creation of the Network is a result of violation of the Protection of Competition Law L.207(I)/89 and, consequently, they are illegal.
(c) Every insurance company can freely negotiate the supply of medical services with each clinic separately which would like to negotiate on the basis of the Objective Criteria List.
(d) A notice to their clients that the list of clinics no longer applies.

The Commission for the Protection of Competition in imposing the above penalties took into consideration for the purpose of mitigation of the penalty the following:

(a) The provisions of section 22 of Law 207(I)89

(b) The total gross income of all those against whom the complaint has been made in the field of supply of health insurance contracts which during the year 2001 amounted to CY9.412,768 pounds.

(c) The time and duration of the violation which dates back to 1st September, 2001

(d) The effects the behavior in question had on consumers and the health insurance contracts market.

(e) The benefit which has resulted from the whole behavior.

(f) It was seriously taken into consideration that the health insurances sector is indeed problematic and most insurance companies suffer losses. An extremely severe penalty would create further negative effects in this specific field which would have the long term result of possible decrease of competitors, the limitation of consumers' options, the possible increase in insurance premiums to ensure the viability of insurance companies, which would be harmful and detrimental to consumer public

5.1.4. Complaint by the company MTV COSMETICS LTD against the majority shareholder and the company WELLA INTERNATIONAL for possible violation of section 6 of L. 207/89.

This case concerns a complaint by the shareholders of the company MTV COSMETICS LTD against the majority shareholder of the said company and the German company WELLA INTERNATIONAL for possible violation of section 6 of L. 207/89 as this was amended by L. 111(1) 99.

More specifically the shareholders of MTV charge that the majority shareholder and the company WELLA INTERNATIONAL following an understanding agreed to transfer the exclusive manufacturing and distribution of WELLA products in Cyprus from the company MTV COSMETICS LTD to the majority shareholder of M & V COSMETICS LTD which belongs exclusively to the majority shareholder of MTV COSMETICS LTD. According to the complainants, this agreement practically led the company MTV COSMETIC LTD to economic ruin because all the business of the said company has to do with the exclusive manufacturing and distribution of WELLA products.

The Commission after examining the letter-complaint of the lawyer of the shareholders of the company MTV COSMETICS LTD gave instructions to its Service to carry out the necessary preliminary investigation.

The Service sent a letter both to the company M &V COSMETICS LTD and to the German company WELLA INTERNATIONAL asking, according to section 24 of L.207/89, for evidence and information for investigation of the complaint. The lawyer of the company M& V COSMETICS LTD did not send the evidence and information asked for within the deadline stipulated by the Law and in a letter to the Commissions asked that the investigation of the case by the Commission should stop because a process was already pending before the District Court of Nicosia which concerns the same facts.

The Commission at its meeting discussed the whole matter and unanimously established that there was prima facie violation by those against whom the complaint has been made of sections 24 and 25 of L. 207/89 that is they did not send the evidence and information asked for within the deadline set by section 24 of L. l207/89.

The Commission gave instructions that those against whom the complaint has been made should be invited to appear before it to express their positions and views on the above possible violation.

The lawyer of those against whom the complaint has been made appeared before the Commission and said that there had been no refusal to submit the evidence and information the Service had asked for but, on the contrary, there had been an immediate response on the part of his clients who in a letter had asked that the investigation should stop and had brought some facts to the knowledge of the Commission. At the same time the lawyer of those against whom the complaint has been made raised pre-trial objections which concern the confidentiality of the information asked for and the right of his clients to a “fair trial” and also the fact that his clients should not be tried twice for the same offences.

The Commission, after studying and evaluating all the evidence and information before it, and particularly the arguments of the lawyers of the two parties, issued Interim Decisions no. 5/2002 which inter alia, says:

1. The Commission of Protection of Competition is an administrative organ charged, inter alia, with implementing of the provisions of law 207/89.

2. Section 26 of the law says that information of a confidential nature creates an bligation of secrecy for all the members of the Commission and the employees of the Service and/or other civil servants who receive information because of their position or in the exercise of their duties.

3. The Commission in the exercise of its powers on the basis of the provisions of section 24 has the right to ask, through its Service, the parties involved, following a complaint about possible violation of the provisions of the law, for essential information which will help the investigation of any complaint.

4. All the arguments of the lawyer of the party against which the complaint has been made focused basically on two parameters;

(a) that the parties against which the complaint has been made are two, his client and the company WELLA A.G. and the investigation is being carried out against his client only.

(b) the fact that the Commission is a body which has taken the revoked decision and therefore cannot decide on the matter since such a decision will be contrary to constitutional rights of his client and to the rules of natural justice.

5. Decision 8/2001 dated 26.9.2001 was revoked on purely legal and technical grounds which are stated above. The Commission, it is repeated, is an administrative organ and exercises jurisdiction defined by the Law, which is given exclusively to the Commission and, therefore, it cannot disclaim the exercise of its powers.

6. The argument that no information has been asked from the other party against which the complaint does not justify the position of Mr. Antonis Vouros to refuse or to fail to comply with the suggestions of the Commission and its Service to provide the requested information and evidence, which the Commission and its Service consider necessary under the provisions of the legislation for investigation of the complaint made. Moreover, the claim that the Commission and its Service did not apply to the company Wella A.G. is entirely unfounded since by its letter dated 22.6.2001 the Service, through the investigating officer, asked for some evidence and information exactly for the same purpose for which they had asked from the other party against which a complaint has been made.

On the basis of the above assessments, the Commission unanimously rejects the position of the party against which the complaint has been made and decides that it has an obligation to give the information and evidence asked for by the Service of the Commission by its letter dated 11/06/2001.

At the Commission's meeting no. 523 dated 2.4.2002, the said interim decision was read in the presence of the lawyer of the party against which the complaint has been made. The Commission then asked the lawyer of the party against which the complaint has been made to express his positions and views on why no penalty should be imposed for the said violation.

The lawyer of the party against which the complaint has been made told the Commission that, without prejudice to his client's rights regarding which it may take steps after the interim decision has been studied, his client will comply with the Commission's decision and asked for fifteen days for the submission of the requested evidence and information.

The Commission accepted the request of the lawyer of the party against which the complaint has been made and set 17.4.2002 as deadline by which the requested evidence and information should be submitted.

At the same time the Commission, exercising the power vested in it by section 24(5) of L.207/89, decided in case of failure to provide the requested evidence and information by 17.4.2002, to impose as penalty a fine of five hundred Cyprus Pounds (CY500-pounds) for each day of continuation of the violation.

The party against which the complaint has been made complied with the above interim Decision of the Commission and sent all the evidence and information requested by the Commission.

The Service after studying all the evidence prepared the necessary preliminary investigation and put it before the Commission.

The Commission after examining the necessary preliminary investigation put before it by the Service unanimously reached the following conclusions:

The investigation, which is being carried out within the framework of this complaint does not concern the validity of the agreement or of its termination or of the right to damages which emanates from the alleged termination in accordance with the Agreements Law (Cap. 149). Checking the above comes exclusively under the jurisdiction of civil courts which are the competent organs for the implementation of the relevant legislation and the imposition of sanctions regarding the right to damages. The Commission within the framework of this complaint is called upon to

examine whether the actions of the company against which the complaint has been made constitute violation of fair competition as this is defined by Law and specifically by section 6(3).

On the basis of section 6(3) the economic dependence relationship consists of a relationship of client, supplier, producer, agent, distributor or commercial associate which an enterprise has vis a vis another and has no equivalent alternative relationship in the sense that either no alternative solutions at all are available or that the existing solutions are linked to serious shortcomings for the dependent enterprise.

On the basis of section 6(3) of the Law, the abusive exploitation of an economic dependence position can be effected in various ways such as the imposition of arbitrary transaction terms in the implementation of discriminatory treatment, the interruption of commercial relations through the undertaking or transfer of the activities which are developed through the said commercial relations in a way that substantially affects competition and the sudden and unjustified interruption of long commercial relations.

It is established from the evidence and information provided that:

(a) section 6(3) regulates the relations of two enterprises. The specific complaint does not concern enterprises but acts of shareholders of an enterprise.

(b) The Commission would examine whether the prerequisites of section 6(3), i.e. (i) the existence of economic dependence and (ii) the possibility of existence of an equivalent alternative solution, were fulfilled only in the case in which the complaint were made by the company MTV Cosmetics Ltd against WELLA A.G.

In conclusion it is established that the interruption of the long commercial relations between WELLA AG and MTV Cosmetics and the transfer of the exclusive right to distribution of WELLA products to M&V Cosmetics has not affected at all the market structure nor has it affected to any extent the competition in the said market or the interests of consumers.

The Commission concludes that the complaint does not fall within its jurisdiction as it comes from a natural person in his capacity as shareholder of the company and not from the company itself, in this case TV Cosmetics Ltd, which has an economic dependence relationship with Wella A.G. and, therefore, it will not proceed to further examine the complaint

5.1.5 Complaint by the company Cyprus Trading Corporation Ltd (CTC) against the shipping companies for imposition of additional charge in violation of sections 4 and 6 of L. 207/89.

The above case concerns a complaint submitted to the Commission by the company C.T.C. and subsequently by the Cyprus Chamber of Commerce and Industry accusing the shipping companies of having introduced a new charging method with the addition of the Terminal Handling Charge (T.H.C.)

More specifically, the C.T.C complains that some shipping companies decided as from 1st January 2001 to impose an additional charge, the so-called “Terminal Handling Charge (T.H.C.) The T.H.C. was fixed at 50 pounds for a 50 foot container

and at 65 pounds for the 40 feet container and this decision concerned all imports and all exports of specific destinations.

The Commission after examining the letter/complaint gave instructions to its Service to carry out the necessary preliminary investigation and to put it before the Commission.

From the preliminary investigation the Service established the following:

The Shipping Agents have adopted the THC not as part of the price list but as a charge separate from the other usual charges such as the Freight, Landing Charge, Primage, Notification Charges, Delivery, Porterages, Empty return, Service Fee, other charges etc.

The Shipping Lines, which have adopted the THC, are Shipping Owning companies/ Shipping Lines which are members of various shipping conferences.

THC is an international term and has been applied for years in most countries and ports of the world and the manner of the application of the THC differs from port to port.

The Cyprus Ports Authority informed the Service that there was no legislation forbidding the implementation of the THC system in Cyprus.

The Shipping Agents Association of Cyprus, which represents, inter alia, the agents of shipping companies in Cyprus also is adopting the following position:

(a) Ship owners have imposed the THC in all European countries

(b) The THC was agreed with the exporters Councils in Europe in 1980 and has since been implemented in all the main European ports.

(c) The European Community legislation which allows the Conferences to function (Regulation 4056) and does not exactly define what is acceptable or not. The interpretation of this belongs to the European Community (DG COMP) and

(d) The association also claims that there is a continuing dialogue with the European Competition Directorate regarding the framework within which the Conferences function on the basis of Regulation no. 4056/86 and that the from port to port activities approved by the European Commission within the framework of the above regulation include also the THC which is acceptable to the Commission.

Taking into consideration the international character of the case, the Service of the Commission for the Protection of Competition deemed advisable to coordinate itself with the European Competition Directorate to ensure uniformity in the decisions in cases of international character.

The principles established by law in recent European Court decisions on the matter which were followed by the European Commission constitute a significant guideline in this case.

In view of the above, it is expected that the Service will complete the investigation early in 2003 and that the said complaint will be put before the Commission the soonest possible

5.I.6 Complaint by kiosk owner Demetrakis Christoforou against the Hellenic Distribution Agency Ltd for possible violation of section 6 of L.207/89

This case concerns a complaint submitted to the Commission by kiosk proprietor Demetrakis Christoforou against the foreign press distribution agency Hellenic Distribution Agency for possible violation of section 6 of L. 207/89.

More specifically, Mr. D. Christoforou complains that the Hellenic Distribution Agency, abusing its dominant position in the distribution of foreign publications in Cyprus, unjustifiably stopped supplying foreign magazines and newspapers to his kiosk.

The Commission after examining the contents of the complaint gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it.

The Service acting in accordance with the instructions of the Commission went ahead and carried out the preliminary investigation which it put before the Commission.

The Commission after examining the findings of the preliminary investigation unanimously established that the reasons which led the Hellenic Distribution Agency to stop supplying foreign publications to the kiosk of Mr. Christoforou are both economic differences and breach of the terms of the cooperation agreement they had between them on the distribution of foreign publications.

Therefore, the Commission unanimously decided that the Hellenic Distribution Agency did not abuse its dominant position in the distribution of foreign publications in Cyprus and for this reason it did not proceed to examine the complaint.

5.1.7 Complaint by the Company Mercury Telecommunications LTD against CYTA for possible violation of section 6 of L.207/89.

This case concerns a complaint submitted to the Commission by the company Mercury Telecommunications LTD against CYTA.

More specifically, the company Mercury complains that CYTA abusing its dominant position in the supply of telecommunication services unjustifiably interrupted the ISDN primary rate telephone connections it had provided to the complaining company.

The Commission after examining the contents of the complaint gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it.

The Service acting in accordance with the instructions of the Commission carried out the necessary preliminary investigation.

As a result of the investigation it was established that:

One year ago the Company Mercury imported into Cyprus and installed in its office equipment which secure the possibility of providing the VOIP service (Voice Over Internet Provider). More specifically, this equipment turns voice into data which is

transmitted through the Internet to their destination and then is turned into voice again. In this way the clients of Mercury can communicate with friends, associates or relatives in the country and abroad and vice-versa and the procedure costs only 1 cent of a dollar. Consequently, through the functioning of this equipment the Company Mercury is in a position to provide a telephone service

Early in October it started providing the above service on a trial basis, diverting telephone calls from Canada (through its subsidiary company there) to people living in the Republic of Cyprus.

A spokesman of the company Mercury invoking the argument that his clients in Cyprus did not pay any amount for the telephone calls they received during the trial denies the charges made by CYTA about violation of the relevant legislation. On the contrary, he considers that CYTA by interrupting the ISDN primary rate connections of the company Mercury abused its position in the telecommunications field violating section 6 of the Protection of the Competition Legislation.

The company Mercury in its effort to gain a lead in the telecommunications field in view of the expected liberalisation, made use of the specific ISDN telephone connections in a manner not compatible with the purpose for which the connections were provided. Even the use on a trial basis, as the company Mercury claims, without the approval of CYTA, constitutes violation of the Telecommunications Service Law, Cap 302 of 1954 and the Regulations made under it.

The allegation about “trial use”, is in the view of the Service, untenable since, as the spokesman of Mercury admitted, his clients from Canada who communicated by telephone with people living in Cyprus paid the relevant cost at the office of the subsidiary company in Canada.

Consequently, it appears from the above admission that the company Mercury provided a telephone service. On the basis of the Telecommunications Service Law, CYTA enjoys a monopoly in the supply of telecommunication services and, therefore, Mercury violated the above legislation and the terms of supply of ISDN connections.

The Commission after examining the necessary investigations put before it by the Service unanimously decided that no violation of the provisions of section 6 of L. 207/79 is proved and therefore it will not proceed to examine the complaint further.

5.1.8 Complaint by the Progressive Movement of Larnaka against the Ministry of Commerce, Industry and Tourism about non existent competition in petroleum products.

This case concerns a complaint by the Progressive Movement of Larnaka against the Ministry of Commerce, Industry and Tourism, as responsible for the non existence of competition in petroleum products.

The Commission, after examining the contents of the complaint, gave instructions to the Service to prepare the relevant report.

The Service, acting in accordance with the instructions of the Commission, prepared a report which it put before the Commission.

The Commission after examining the report of the Service and also the contents of the complaint unanimously issued Decision no. 1/2002 which, inter alia, says:

"The petroleum products sector is governed by the Participating Oil Companies (Ratification) Law of 1965. It should be noted that this is basically the agreement concluded by the Republic of Cyprus with three alien companies so that they may establish an oil refinery in Cyprus.

The prices of petroleum products are governed by the Petroleum Products (Retail Sale Price Readjustment) Law 23/1986 as this has been amended by Law 208/90. On the basis of these Laws the Minister of Commerce and Industry readjusts the retail price of petroleum products every six months or earlier whenever he deems it advisable for reasons of public interest.

According to section 4(1) of Law 207/89 "any consortium of enterprises which have as object or result the obstruction, limitation or adulteration of competition is prohibited".

Section 4(1) is intended clearly for enterprises and does not apply directly to Governments.

Also section 4(1) applies only to actions which enterprises have taken at their own initiative. In this case, the actions of companies are governed and regulated by legislation which nullifies any competitive measures on their part.

The agreement as a whole and also the fact that the prices are fixed by the Minister of Commerce and Industry for the time being prevents the companies from taking any autonomous action which obstructs limits or adulterates competition.

Section 6(1) of Law 20/89 prohibits the abusive exploitation of the dominant position of an enterprise in the market of a product and contains provisions about the abusive exploitation of a dominant position.

Right from the outset it should be stressed that section 6(1) and also section 4 of Law 207/89 presuppose autonomy in an enterprise.

According to the provisions of Law 23/1986, as this has been amended by Law 208/90, companies do not have the possibility to fix prices. Also, on the basis of the agreement (Law 42/65) companies are limited regarding the import and production of petroleum products beyond the quantity required for meeting the needs of Cyprus.

Since any effect on competition cannot be attributed to Companies, section 6(1) cannot be applied.

The companies have been charged by the Government with managing general interest services, a responsibility which was necessary for the creation of refineries even if they have led to the limitation of competition. This action of the Government imposes on the companies the obligation to provide a public service. As long as these companies adhere to the agreement with the Government and do not act contrary to or beyond it then they are not subject to the competition rules.

In applying section 3(b) of Amendment Law 87(1)2000, the application of Law 207/89 would prevent the carrying out, either legally or actually, of the mission entrusted to the companies by the state.

Finally, the second paragraph of section 3(b) by itself strengthens the above.

On the basis of the above, the Commission unanimously decides that the above complaint does not fall within the field of implementation of the provisions of law 207/89 and, therefore, is incompetent to proceed to the further examination of the complaint which is thus rejected".

5.1.9 Complaint by the Fruit and Vegetables Exporters against Cyprus Airways and/or other airlines for possible violation of sections 4 and 6 of L.207/89.

The above case concerns the complaint submitted to the Commission by the Fruit and Vegetables Exporters against Cyprus Airways and/or other airlines for possible violation of sections 4 and 6 of L. 207/89/

More specifically, the Associations complains that:

(a) Cyprus Airways, abusing its dominant position in air transport, has arbitrarily increased its terminal charges for the handling of their cargoes delivered for export at the Larnaka and Paphos airports.

(b) The introduction of the said charges was made following an agreement of all the airlines which carry out services from and to Cyprus.

(c) The list of charges is called Cy Cargo Tariff manual and has been agreed by all the airlines which are members of IATA.

The Commission after examining the contents of the complaint gave instructions to its Service to carry out the necessary preliminary investigation and put it before it.

This case is expected to be completed in 2003.

5.1.10 Complaint by Larticon Company against Detergenta Developments Ltd for possible violation of section 6 of L. 207/89.

This case concerns a complaint submitted to the Commission by Larticon Company against Detergenta Developments Ltd for possible violation of the provisions of section 6 of L.207/89I.

More specifically, the said complaint concerns the abusive exploitation on the part of the company Detergenta Developments Ltd of the economic dependence relationship which Larticon Company has with it.

The Commission after examining the contents of the complaint gave instructions to the Service to carry out the necessary preliminary investigation and to put it before it.

The Service acting in accordance with the instructions of the Commission carried out the necessary preliminary investigation.

The following facts were established as a result of the investigation:

The complainants (former Larticon Synthetic Detergents Company Ltd) concluded an agreement with the company Detersa Ltd in 1969 which was succeeded in 1982 by the company Henkel (Cyprus) Ltd and later in 1987 by the company against which the complaint has been made. The above agreement and cooperation of the two parties started in 1969 and continued for a period of more than 30 years.

On the basis of the above agreement, the complainants are authorised, inter alia, to prepare and pack, on an exclusive basis, on behalf of the company against which the complaint has been made, all the products of the company against which the complaint has been made which will be put on the market.

During the 33 years of their cooperation the parties concluded supplementary agreements in addition to the initial one which resulted in amendment of various terms of their cooperation.

As far back as 2000 there arose differences regarding the sources of raw materials and other matters which concerned the debiting and manufacturing of products which prompted the two parties to hold continuous meetings to find solutions Moreover, reference was made by the company against which the complaint has been made to the possibility of entrusting the manufacturing and packing of its products to a company in Greece which would have as result the termination of the cooperation with the company against which the complaint has been made.

Despite the long cooperation of the two parties the company against which the complaint has been made sent on 23 April 2002 a letter to those against whom the complaint has been made terminating, without notice and/or compensation, the cooperation between them, with immediate effect.

The Commission examined the necessary preliminary investigation put before it by the Service and after taking into consideration all the information and evidence put before it unanimously established:

a. that Larticon Company has a legal interest to submit its complaint under consideration and

b. That there is prima facie possible violation of section 6(3) of the Law on the part of the company Detergenta Developments Ltd.

More specifically, the company Detergenta Developments Ltrd in April 2002 suddenly and unjustifiably interrupted the long commercial relations with Larticon Company, which constitutes, prima facie, possible abuse of the economic dependence relationship which existed between the above two involved companies.

The Commission gave instructions that a Report of Grounds should be prepared and sent to the company Detergenta Developments Ltd and at the same time decided to invite the lawyers of the two companies concerned before it to set out their positions and views on the question of possible violation.

The said case is expected to be completed in 2003.

5.1.11. Complaint by the Latsia Municipality against the Engineering Works Contractors of Cyprus (SEMEK) and the Companies-Members of the Association which sign the memorandum of an Agreement between them, about possible violation of section 4 and/or 6 of L. 207/89.

This case concerns the complaint of Latsia Muncipality against the Engineering Works of Cyprus Association (SEMEK) and its members which sign the memorandum of an agreement about possible violation of section 4 and/or 6 of L. 207/89.

More specifically the Latsia municipality complaints that S.E.M.E.K and 25 companies' members of it signed between them a memorandum of an agreement in violation of sections 4 and 6 of L. 207/89.

The Commission after examining the contents of the complaint gave instructions to its Service to carry out the necessary preliminary investigation and to put it before it.

The Service acting in accordance with the instructions of the Commission carried out the necessary preliminary investigation the results of which were put before the Commission.

The investigation established the following facts:

1. The Latsia Municipality invited tenders for the electrical and engineering installation in the Municipal Hall and in the Cultural Events Hall under construction.

2. On 17.9.2002 a letter was received from the Latsia Municipality dated 13.9.2002 which was sent by SEMEK and called on the Latsia Municipality to amend its conditions of the above tender so that, on the one hand, the term of the main Contract for building contractors. "Fluctuations in labour costs", which does not apply to the sub-contraction contract, may be implemented (defining an elementary percentage of 30%) and thus cover possible increase in labour costs and, on the other, the " Detention Limit" Percentage and the "Percentage of Proper Execution Guarantee" which is contained ion the Sub-construction contract may be amended so that the former percentage may become 5% instead of 15% provided in the main Contract, and the latter may be changed from 15% to 10%. It is noted that the smaller percentages SEMEK asks for are recorded in the main Contract when no other percentages are fixed.

3. In case of refusal of the Latsia Municipality SEMEK said it had no alternative but to ask its members to implement the provisions of the Memorandum of Agreement which was attached and which, it should be noted, enumerates the coordinated actions of the members of SEMEK in case of non inclusion or deletion of, or amendment to, the above mentioned provisions.

4. The Latsia Municipality in a letter dated 18.9.2002, pointed out to SEMEK that the contents both of its letter and of the Memorandum of Agreement constituted a consortium which was contrary to L. 207/89, and reminded the Association of the Decision of the Commission for the Protection of Competition no. 23.1.2002.

5. After receiving the above letter SEMEK called on its members not to submit tenders for the execution of the project, considering that the non implementation of Sections 31 (Fluctuation in labour costs and materials) & 32 (Changes to import duties) of the Sub-Contraction Contract is unfair and downgrades the profession of engineering works contractor vis-à-vis the main contractor. It is noted that regarding the terms "Detention Limit Percentage" and "Percentage of Proper Execution Guarantee" SEMEK withdrew the demand for modification because the percentages of 10% and 15% which were fixed, respectively, in the above conditions are applied in the main Contract also

6. The engineering and electrical works consultants of the Latsia Municipality in a letter to SEMEK dated 26.9.2000 stress that they are not against the amendment of any conditions of the contracts provided this is accepted by the client and in case of increased cost of management of the contract the client should pay the increased remuneration of the consultants. Moreover, it is pointed out in the letter that the revision of the terms cannot be done in an ultimatum like manner but should be a result of discussion of the positions of the two sides and following proper costing.

7. The Latsia Municipal Council cancelled the said tender due to the high cost of the construction of the whole project. The Municipality will invite new tenders following an amendment to the plans of construction of the municipal hall and the cultural events hall so that the cost involved may be reduced.

The Commission after examining all the evidence put before it unanimously established that:

a. The Latsia Municipality has a legal interest in making the complaint under consideration and

b. There is prima facie case of possible violation of section 4(1)(a)(b) and (e) of the Law on the part of SEMEK and the companies-members of SEMEK which sign the relevant memorandum of Agreement.

More specifically, the relevant memorandum of Agreement is governed by the adoption of a common behaviour by those who signed the said memorandum which in this case results in the limitation of supply of services in the field of execution of engineering works, which prima facie constitutes a consortium, which is forbidden by the Law.

The Commission gave instructions that a report of grounds should be prepared and sent to SEMEK and at the same time called on the parties involved before it in order to hear their positions and views about the possible violation.

The said case is expected to be concluded early in 2003.

5.1.12. Complaints which are in the stage of investigation by the Service of the Commission for the Protection of Competition

a. A complaint by a group of cattle breeders against the Cyprus Cattle Breeders Organisation (POA) and the Cyprus Milk Industry Organisation (CMIO) for possible violation of section 4 and/or 6 of L.207/89.

b. A complaint by Mrs. Nassia Andreou against the company Travel Express Ltd for possible violation of section 4 and/or 6 of L. 207/89.

c. A complaint by the company A. Hadjikyriakos Ltd (Fru-Fru Biscuits) against the company CTC Ltd-Argosy Operation about possible violation of section 6 of L. 207/89.

d. A complaint by the Solar Energy Manufacturers Union of Cyprus against the plastic water tanks manufacturing company MEGAPLASTICS for possible violation of sections 4 and/or 6 of L. 207/89.

e. The examination of the above complaints is expected to be completed in 2003.

5.2. EX PROPRIO MOTU INVESTIGATIONS

5.2.1 Investigation into possible violation of section 6 of L.207/89 on the part of the Cyprus Telecommunications Authority (CYTA)

Following the publication of the financial statements of CYTA for the year 2000 and the submission of a Report by the Auditor General to the House of Representatives, the Commission for the Protection of Competition unanimously decided to give instructions to its Service to carry out an investigation into possible abusive exploitation of the dominant position it enjoys in the telecommunications field.

The Service acting in accordance with the instructions of the Commission carried out an investigation, prepared a report and put it before the Commission.

According to the report of the Service, the following facts were established:

In this case the directly involved party is CYTA. CYTA is a semi-state organisation and is governed by the Telecommunications Service Law Cap. 302 on the basis of which CYTA enjoys a monopoly in the supply of telecommunication services.

On the basis of Section 19 of the Law, Cap. 304 of 1954, CYTA charges for telecommunication services it supplies should be fixed at such level that the revenue of the Authority may simply cover its operational expenses, the repayment of capital and the interest on loans and also its reserves should be such as CYTA considers sufficient for depreciations, extensions, renovations etc.

The telecommunication charges are fixed by CYTA with the approval of the House of Representatives..

Examining the results given by CYTA which have been published we observe the following:

The pre-tax surplus in the last four years have been the following:

Years	Pre-tax surplus
1998:	50 ml. pounds
1999:	62,5 ml pounds
2000:	91,4 ml pounds
2001:	78,1 ml pounds

(b) Comparing the above amounts we observe that in 1999 the pre-tax surplus showed an increase of 12.5 ml pounds i.e. 24% compared to the previous year. This increase is a result of the increase in total revenue by 12.3 ml. and a decrease of total expenditure by 0.2 ml pounds (including the exchange rate loss).

Comparing the results of the years 1999 and 2000 we observe that there has been an increase in the pre-tax surplus by approximately 29 ml. pounds i.e. by 46.2%. This increase is due to an increase in the total income by about 30 million pounds (12 million pounds were non recurrent profit) and to the increase of total expenditure by 1 ml. pounds.

(c) The surplus of 78.1 ml. pounds was realised following a decision of the Board of Directors of CYTA to write off a deficit of the order of 21.3 million pounds of the Pension Scheme by 50% in 2001 and by 50% in 2002 and to change the rates of depreciation of the equipment and software with the result that the operational cost increased by 11 million pounds. The above decision was notified by CYTA to the President of the Commission for the Protection of Competition by a letter dated 8.3.2002.

(d) Studying further the CYTA budgets for 2001 and the results of the first nine months for 2001 we establish and stress the following:

i) Advertising expenses 2000 1.58 ml pounds 2001: 3.7 ml. pounds

ii) Hospitality expenses 2000:135 thousand pounds 2001: 350 thousand pounds.

iii) Income-subscriptions: 2000:26 ml pounds 2001:36 ml. pounds

iv) Internal conversations income: 2000 66 ml 2001:80 ml pounds

v) International conversations income: 2000:67 ml pounds 2001: 56 ml pounds

e) Analysing the above data, it appears that the income from subscriptions, and internal and international conversations constitutes the main source of income of CYTA: i.e. 172 mil pounds or 82.4%% of the total (208.7 ml) of the income of CYTA for the year 2000. .In the above sectors CYTA enjoys a monopoly position and by extension is the unique provider of such telecommunication services.

In other words, according to the CYTA budgets, the net profit for the years 1998-1999-2000-2001 should have amounted to 117.12 ml pounds but amounted to 218 ml. pounds i.e. an extra 111 mil pounds or +85%

The Commission after examining both the report of the Service and all the evidence put before it unanimously established possible violation of section 6(2)(a) of L. 207/89, that is abusive exploitation of the dominant position of CYTA to fix unfair prices for the sale of Telecommunication Services

At the same time, the Commission gave instructions that a report of grounds should be prepared and sent to CYTA and invited the lawyer of CYTA before it in order to hear his positions and views on the above possible violation.

The Commission heard the positions and views of the lawyer of CYTA and after taking all the facts, evidence, information and documents put before it into consideration, unanimously issued Decision No. 8/2002-27.8.03 which, inter alia, says:

i) Is CYTA an enterprise charged with managing general economic interest services and/or does it constitute a fiscal monopoly. The answer is affirmative.

ii) CYTA is a Public Law Organisation and on the basis of Law-Cap. 302/54 the exclusive Regulator and Provider of Telecommunication Services and, therefore, is charged with managing a General Economic Interest service.

iii) It should be subsequently examined whether the pricing policy and practice of CYTA for the period of July 2000 until 31.12.01, which resulted in the accumulation of super profits and great reserves, were under the circumstances absolutely necessary i.e. whether, if CYTA had applied a different Pricing Policy, lower charges-lower profits, without violating the provisions of section 6 would, it have been unable to carry out the specific mission entrusted to it by the State.

iv) The answer to the above question is negative. CYTA was in a position to carry out its specific mission without abusing its monopoly position and violating the provisions of section 6(2)a, if the profits which it had itself estimated in the budget even with a small deviation upwards and not with systematic deviations , as analytically stated in above paragraph F(3)(a), page 18. The onus of proof is on the enterprise and it is enough, as DEK says, to prove that the exclusive rights are necessary to allow the party concerned to attain the objective it has been asked to pursue, under financially acceptable conditions, "that is, it is essential that the economic conditions in which the enterprise operates and particularly the costs it is obliged to shoulder, the provisions of the relevant legislation and particularly in connection with the status of operation of the specific enterprise should be taken into consideration".

v) On the basis of Section 19 of the Law, Cap.304 of 1954, CYTA charges for the telecommunication services which are provided should be fixed at such level that the income of the Authority can merely cover its operational expenses, the repayment of the capital and interests on loans, and also that such reserve may be left as CYTA may deem sufficient for depreciations, extensions, renovations etc.

vi) When CYTA was preparing its budgets and particularly the budgets for the years 2000 and 2001, it definitely had in mind the provisions of the above section and also its investment plan for the period 2002-2005. It judged that a net profit of the order of 23,15 ml. pounds for 2000 and 39,86 ml. for 2001 would be sufficient for depreciations, expansions, renovations etc according to the provisions of section 19, in keeping with the spirit of which CYTA determines its pricing policy. The actual financial results yielded to CYTA profits in 2000 amounting to 64,45 ml. pounds, a deviation of +178.4% compared to the budgeted profits, and in 2001 68,6 ml.pounds, a deviation of +74%, and if the observations of par. F(3)(f) are also taken into account the deviation for 2001 would reach +120% On the basis of the real results of CYTA, the total deviation for the years 2000-2001 amounts to +113%

vii) It becomes clear from the above analysis that CYTA itself has given a negative reply to the question in the above par.(iii) with the preparation of the budgets for the years 2000 and 20001.

viii) On the basis of the above findings, in connection with the implementation or otherwise of section 7 of L. 207/89, as amended by L. 87(1)/2000, and also taking into account the findings in connection with section 6 of L.207/89, to the extent that these reinforce the above findings, the Commission for the Protection of Competition unanimously decides that CYTA cannot be given the benefit of the provisions of section 7 of the Law and, therefore, finds that CYTA has abused its dominant position violating section 6(2)(a) by imposing unfair charges in the supply of telecommunication services and specifically in the international conversations and mobile telephony service which, according to CYTA, were the most profitable and, despite the fact that they subsidised other services which left losses, finally CYTA managed to achieve super profits. The above violation concerns the period from July 2000, that is from the implementation of Amendment Law 8781/2000, until 31.12.01.

The above decision was read and the CYTA lawyer was then asked to put forward arguments in connection with the imposition of sentence. After Mr. Hadjioannou finished his speech the Commission withdrew in order to decide the type and level of the penalty it would impose on CYTA, for the violation on its part of the provisions of section 6(2)(a) of Law 207/89, a decision which it announced in the presence of the CYTA lawyer and which provides for the following penalties:

(a) A fine of 20.000.00 ml. pounds for abusive exploitation of its dominant position in the telecommunication services sector in violation of section 6(2)(a) of Law 207/89 for the period between July 2000 and 31.12.2001

(b) It orders and recommends that CYTA should by 1.1.2003 take all appropriate measures and act in such manner that any possible violations of the provisions of section 6(2)(a) of the Law, may be removed, that is CYTA should stop abusing its dominant position in the telecommunication services sector. The Commission for the Protection of Competition will be monitoring closely the whole behaviour of CYTA and will act according to the financial results of 2002.

(c) In case the Commission finds that until 1.1.2003 CYTA continues to abuse its dominant position and has not taken any measures or has not taken the necessary actions so that the above violation, specifically regarding the pricing policy, may be removed, in addition to the above penalty a fine of 5.000 pounds will be imposed for each day the violation continues.

The Commission for the Protection of Competition imposed the following penalties on the basis of the powers vested in it by section (22) of Law 207/89.

The Commission in imposing the above penalties took into account the following:

(a) The gross income of CYTA for the year 2001 amounted to 228 ml. pounds.

(b) The time and duration of the specific behaviour.

(c) The effects the specific behaviour had on consumers and the telecommunication services market.

(d) The profit CYTA derived from the specific behaviour

(e) The character of CYTA, the monopoly position it enjoys and the principles which CYTA served as a Public Law Organisation.

(f) The fact that a case of this kind appears before the Commission for the first time and that the above behaviour had the approval of the House in the form of approval of the budget.

(g) The dual character of CYTA as regulator and provider, which should be ncluded in the pros of CYTA. The field of competition of CYTA is such that it is described as distorted for a number of years.

(h) It has been taken into consideration that the benefit which has resulted from the specific behaviour necessitates the imposition of such penalty as to rectify the whole situation, that is the size of the fine should be such as to take into account the large amount of the CYTA profits, the results of the whole pricing behaviour and particularly the great deviation of the profits achieved by CYTA compared to the profits it prepared itself. The level and the type of the penalty should be such as to serve as a deterrent.

(i) In addition to the above, the Commission for the Protection of Competition has also taken into consideration the suggestions made by the CYTA lawyer".

5.2.2. Ex proprio mote investigation into possible uniformity in the prices of supply of goods and/or services by various professional clubs.

The Commission under the powers vested in it by section (2) of Law 207/89 decided, inter alia, and gave instructions to the Service to proceed to an ex proprio mote investigation into possible violation of the provisions of law 207/89 and specifically of section (4) by Professional Clubs in the supply of goods and/or services.

The investigation of the Service was completed and the finding-report was presented to the Commission. The Commission after studying the finding of the Report and exchanging views unanimously established the following:

1(a) The professional clubs fall within the interpretation which is given to section (2) of Law 207/89 as "Union of Enterprises".

(b) On the basis of the provisions of section (2) "Union of Enterprises" means an Organisation of any nature with a legal personality or without a legal personality, which represents the commercial interests of other specific enterprises and takes decisions or enter into agreements for the promotion of these interests.

(c) "Enterprise" on the basis of the provisions of the same section means every natural or legal person who engages in activities of any economic or commercial nature regardless of whether the activities are profit making.

2(a) The consortium between the Club and its members under section 2 of Law 207/89 may be formal, informal, written or unwritten. A basic element is that there is no need to prove uniformity of prices among the members of the Club has emerged from a written agreement or a document in which the fixed prices are mentioned. Even in the case where the suggestions of the Clubs to their members are not binding they fall within the framework of the meaning "cooperation" as this is given in section 2 of the Law. Furthermore, the European Court in judgments stated that the common intention to provide their services to the market in a specific manner and the uniformity of the prices is sufficient for this practice to be in conflict with article 81 of the

Convention of the European Union and, by extension, with section 4 of Law 207/89 which is the one corresponding to article 81.

(b) In case there is legislation which gives the specific Club-Union of Enterprises a power to fix the prices of supply of services and/or goods, the provisions of section (4) of Law 207/89 apply following the amendment of the principal legislation by Law 87/(I)2000.

(c) As supported by the European Commission and ratified by the European Court, a person practicing a free profession should be completely free to fix his prices depending on the services he supplies and the client should be equally free to accept this, to negotiate and/or approach some third professional. This kind of behaviour secures competition among the services.

The European Commission has repeatedly said that the European principles which govern the protection of competition, have a superior force compared to any other national legislation which governs Professional Clubs except those arrangements which aim at the maintenance of impartiality, integrity and responsibility of the members of the Professional Association-Union of Enterprises.

On the basis of the above assessments, the Commission unanimously issued Decision no. 2/2002 which, inter alia, says:

"1. The practice which is followed by various Professional Clubs-Unions of Enterprises in connection with the formulation of a single pricing policy even in the cases of fixing of minimum charge is contrary to the provisions of section (4) paragraph 1(a) of Law 207/89.

2. On the basis of the provisions of section 22(3)(a) it recommends to all Professional Clubs-Unions of Enterprises to stop, within one month of the publication of this Decision in the Official Gazette of the Republic, formulating a single pricing policy in the supply of services and goods. After the said deadline, if it is established that the above policy is continued by any Professional Club-Union of Enterprises, the Commission will go ahead and take measures in accordance always with the provisions of the Protection of Competition Law 207/89.

3. It is also recommended that:

(a) The professional Clubs-Unions of Enterprises by decisions of their collective organs should inform their members that the pricing policy which has been followed until today cannot be continued since it is contrary to the provisions of the Protection of the Competition Law 207/89 and specifically of section 4(1).

(b) In cases where Professional Clubs- Unions of Enterprises operate on the basis of special legislation in which the charting of a single pricing policy is mandatory those involved should immediately take steps for the amendment of the legislation.

5.2.3 Ex proprio motu investigation into possible uniformity in the prices of supply of Services by the Cyprus Dentists Association.

The Commission for the Protection of Competition exercising the powers vested in it by section 22 of L 207/89 gave instructions to the Service for the carrying out of an

ex proprio motu investigation into possible violation of section 4 of L.207/89 by the Cyprus Dentists Association (POS).

The Service acting in accordance with the instructions of the Commission carried out an investigation and prepared a note which it put before the Commission.

According to the note the following were established:

(a) POS under section 13 of the Dentists (Clubs, Discipline and Pension Funds) Law 29/68 has the power to examine matters which concern the profession and to take such measures as it may deem appropriate. It has, inter alia, the power to fix the scales of fees of dentists for the services they offer or for the execution of work, which after being approval by the Council of Ministers and adopted by the House of Representatives, come into force following their publication in the Official Gazette of the Republic. On the basis of section 13(3) of L.29/68 these regulations are binding on all dentists.

(b) According to the evidence given to the Service by POS, in 1989 a list of fees was sent to the Ministry of Health for approval which had not been sent to the House of Representatives as the government's policy was not to send such lists to the House for approval.

(c) Later POS by a decision of its General Meeting in March 1996 went ahead and approved a new list of fees which again did not receive the approval of the Council of Ministers. Despite its non approval by the Council of Ministers the said list of fees was communicated to the members of POS.

(d) Almost five years later, and specifically on 28 November 2001, POS went ahead and approved a new list of fees which was sent by the Ministry of Health to the Council of Ministers for approval and submission to the House of Representatives. The list was sent to the Ministry of Health, according to a letter to the Commission for the Protection of Competition from the lawyer of POS, following the letter of the Service of the Commission for the Protection of Competition to POS dated 23.4.2002 by which the start of an ex proprio motu investigation was notified. The communication of the list of fees to the members of POS, according always to the lawyer of POS, was sent on 12.2.2002. Parenthetically it is noted that the President of the Commission for the Protection of Competition in a letter dated 16 May 2002, informed the Minister of Health about possible violation of section 4 of the Law and suggested that no measures should be taken until the Commission for the Protection of Competition announced its decision. The request was accepted by the Minister of Health.

The Commission after examining the report put before it by the Service established possible violation of section 4(1)(a) of L.207/89 on the part of the Cyprus Dentists Association and invited both the lawyer and the President of the Cyprus Dentists Association before it in order to hear their positions and views on the above possible violation.

The lawyer and the President of the Cyprus Dentists Association appeared before the Commission and set out the following positions and views:

(i) The list of fees of the Cyprus Dentists Association was approved by its general meeting.

(ii) The Commission has no jurisdiction to proceed with the case under examination since the Cyprus Dentists Association is an Administrative Organ which is governed by special legislation and, therefore, is exempted under the provisions of section (7).

(iii) The implementation of the list of fees which has been communicated to the members of POS is not obligatory but indicative.

(iv) The approval of lists of fees for dental services is necessary because this specific sector of services concerns the protection of the consumer's health.

The Commission, after taking into consideration all the evidence, information and documents it had before it as well as the positions of the Cyprus Dentists Association, as they were set out by its lawyer and also by its President, unanimously, issued Decision number 9/2002-26.8.2002 which, inter alia, says:

"On the basis of the provisions of the Law POS falls within the meaning of an enterprise which is charged with providing general economic interest services which have the character of fiscal monopoly". Even in case it is established that an enterprise falls within the meaning of the above section, this is not enough for the enterprise to be exempted from possible violations of the Protection of Competition Law. The specific enterprise should convince the Commission for the Protection of Competition that with the implementation of the Protection of Competition Law it was prevented, legally or actually, from carrying out its special mission and that its specific actions or acts through which it violated the provisions of the Protection of Competition Law were the most appropriate for the carrying out of the particular mission entrusted to it by the state.

The above decision was taken at the meeting of the Commission for the Protection of Competition dated 26.8.2002 and was read in the presence of the lawyer of POS so that he could put forward arguments in connection with the imposition of a penalty. After the arguments of the lawyer, the Commission withdrew in order to decide about the nature and level of the penalty it would impose on POS for the violation by it of the provisions of section 4(1)(a) of Law 207/89, a decision which it communicated in the presence of the lawyer of POS and its President, and which provides for the following penalties:

(a) A fine of CY800 pounds for violation of the provisions of section 4(1)(a) of Law 207/89 that is as "union of enterprises" through the communication of a list of fees to its members which had as object the obstruction, limitation and/or adulteration of competition.

(b) It orders and recommends that POS should inform, within a period of 15 days, all its members that the list of fees which it has sent them is withdrawn and is not implemented. The notification should also be published within the same period in three daily newspapers.

(c) In case the Commission establishes that POS has not complied with the above order-recommendation within the period of 15 days, in addition to the above fine, a fine of CP200 should be imposed for every day of continuation of the violation.

The Commission for the Protection of Competition imposed the above penalties under the powers vested in it by section 22 of Law 207/89.

The Commission in imposing the above penalties took into account the following:

(a) The gross income of POS during 2001, the year before the year of the violation, which comes from contributions of its members, CY20 pounds per year X668 (number of registered members)=CY13.360 pounds.

(b) The time and duration of the specific behaviour.

(c) The effects this specific behaviour had on consumers and on the dental services market.

(d) The fact that POS did not substantially benefit from this specific practice.

(e) The fact that this is the first time a case of this kind appears before the Commission.

(f) The fact that the list of fees which has been communicated does not have the character of obligatory implementation and its non implementation by the members of POS did not have disciplinary consequences.

(g) In addition to the above, the Commission for the Protection of Competition took into account also the views of the lawyer POS.

5.2.4 Ex proprio mote investigation into the imposition of an obligatory contribution and/or purchase of products during the sale of tickets by clubs.

The Commission at its meeting discussed, inter alia, the practice which is followed by various football clubs which impose, in addition to the price of tickets for football matches, a charge in the form of contribution or offer of various objects, e.g. T-shirts, emblems of clubs etc.

After exchanging views the members of the Commission unanimously decided that instructions should be given to the Service of the Commission for an ex proprio motu investigation into this practice to establish whether any provisions of the Protection of Competition Law are violated.

The Service, acting in accordance with the instructions of the Commission, investigated the above matter and prepared a report which it put before the Commission.

According to the report of the Service, the following were established:

- The power to issue tickets for football matches of clubs which come under the Cyprus Football Federation (KOP) belongs to the Cyprus Sports Organisation (KOA) which is the Supreme Sports Authority, always under the provisions of the KOA Law.

- The Clubs by themselves and/or football companies which manage the financial affairs of their football sections ask, from time to time, under the pretext of better distribution and by extension of helping football fans, to be supplied with tickets ahead of a football match.

- It has been established that in several football matches the participating clubs under the pretext of contribution or supply of various objects e.g. T-shirts,

emblems of clubs etc. impose on fans an amount in addition to the price of the ticket. The supply of tickets to fans is linked to the above and in case a fan refuses to pay the extra amount he cannot secure a ticket for the specific match.

- The Commission after examining the report of the Service and all the evidence put before it, unanimously issued Decision under number 4/2002-12.3.2002 which, inter alia, says:

- "The imposition of a charge additional to the price of the ticket constitutes on the basis of the provisions of section 6(1) & (2)(d) abuse of a dominant position and, therefore, is contrary to the Protection of Competition Law.

On the basis of the above findings, the Commission recommends to the Supreme Sports Authority (KOA) to take such measures as to prevent in future such practices and to lead to full compliance with the provisions of the Protection of Competition legislation. Continuation of this practice creates the possibility of violation of the provisions of section 4 also which provides that "all kinds of consortiums of enterprises which have as object or result the obstruction, limitation or adulteration of competition….." which means that KOA too may be regarded as jointly responsible for the adulteration of the free competition rules as envisaged by the relevant legislation.

At this stage, by this decision, the Commission recommends that all the parties concerned should stop acting in violation of the provisions of the Protection of Competition legislation.

After the publication of this decision, if it is established that the above behaviour continues, the Commission will go ahead and take measures against all the parties concerned either by imposing the penalties envisaged by the Law or even by obtaining the necessary orders in order to ensure the appropriate functioning of competition rules.".

5.2.5 Ex proprio motu investigation into possible violation of Section 6 of L.207/89 by the company Muskita Aluminium Industries Ltd in the aluminium market.

The Commission for the Protection of Competition under the powers vested in it by section 22 of Law 207/89 decided and gave instructions to the Service to go ahead and carry out an ex proprio motu investigation into possible violation of section 6 by the company Muskita Aluminium Industries Ltd in the aluminium market.

On 22/02/2002 the Service, acting in accordance with the instructions of the Commission, sent a letter to the company Muskita Aluminium Industries Ltd by which it informed it about the ex proprio motu investigation against it and at the same time asked it to submit concrete evidence necessary for the carrying out of the investigation, in accordance with section 24(4) of L. 207/89. It was asked, inter alia, to provide "possible agreements and/or cooperation agreements of the said company with other companies engaging in activities similar to its activities or otherwise".

The company Muskita Aluminium Industries Ltd. in a letter dated 05/03/2002 asked for more time for the submission of the relevant evidence until 27/03/2002. The request of the said company was accepted by the Commission, which gave instructions to the Service to communicate this decision to the company, noting,

however, that the requested date was the last deadline for the submission of the requested information.

On 27/03/2002 the Service received a letter from the company Muskita Aluminium Industries Ltd and also some other evidence asked of it. Following a detailed study of the said evidence by the Service it was established that not only did not the company in question send any of the agreements asked for but it had informed the Commission that "no agreements and/or cooperation with companies engaging in similar or other activities exist"

On 3/4/2002 the Service sent a letter to the said company informing it that it had come to the knowledge of the Service that such agreements existed, citing some of the companies which the said company had bought or with which it had concluded agreements of another kind. In its letter the Service asked for the said agreements and also for the turnover of each company. It was further stressed that the company was in continuous violation of section 24.

In reply the said company in a letter dated 4/04/2002 informed the Commission that in order to be in a position to decide the extent it was possible to provide the requested evidence or information it should first receive from the Commission concrete information, a request that was not accepted by the Commission.

On 9/04/2002 the Service informed the said company about the decision of the Commission and, inter alia, explained that under section 24 the company was obliged to provide on time full and accurate information which was considered necessary for the completion of the investigation of the Service and that due to its omission the company was in continuous violation of section 24.

On 18/04/2002 the Commission received a letter from the law office of Chrysis Demetriades & Company, lawyers of the company Muskita Aluminium Industries Ltd. by which they asked for more time until 30/04/2002 for the submission of the rest of the requested information.

The Commission examined the note submitted to it by the Service and unanimously established that there was prima facie violation of section 24(4) of Law 207/89 , that is they had failed to send the requested information within the deadline set by the Law. The Commission unanimously decided to invite representatives of the company under investigation on 30/04/2002 in order to hear their positions and views on the probable violation.

The lawyer of the company Muskita Aluminium Industries Ltd after admitting the accuracy of the above facts told the Commission that it was not their intention to delay submitting the evidence asked from them.

On the contrary, they asked through letters to the Service for clarifications concretising some evidence asked of them and when the clarifications were given the managing director of the company Muskita Aluminium Industries Ltd. was abroad and thus he could not approve the supply of specific confidential evidence and information. They then asked for extension of time until 30/04/2002, date on which they sent all the requested evidence except the turnover of the companies which were bought because they were unable to provide such evidence as the agreements concerned the purchase of equipment and stock and, therefore, they were not interested in the turnover of the companies with which they had reached an agreement.

The Commission after taking into consideration all the facts before it unanimously issued Interim Decision under number 7/2002-30/04/2002 which, inter alia, says:

"The Commission after listening carefully to the arguments and positions of the company set out through its lawyer, unanimously reached the conclusion that despite the arguments put before it, there had indeed been a violation on the part of the company Muskita given that the letter dated 22.02.2001 concretised the information for the purpose of the investigation and particularly regarding possible agreements of the company Muskita with other companies which engaged in the aluminium purchase sector.

The Commission has been convinced that there is indeed objective inability to provide the evidence regarding the turnover of the companies with which an agreement has been reached.

The Commission after taking into consideration everything put before it by the lawyer of the said company and particularly the fact that even after the deadline the company had complied, unanimously decided to judge the company Muskita Aluminium Industries Ltd. leniently and, exercising the powers vested in it by section 24(4) of Law 207/89 as this was amended by Amendment Law 155(1)2000 ,section 11(a), to impose on the company Muskita Aluminium Industries Ltd a fine of four thousand Cyprus Pounds (CP 4.000) for violation of section 24(4) of L. 287/89".

The Service after receiving from the company Muskita Aluminium all the requested evidence started to process it in order to prepare a note in accordance with the instructions of the Commission.

The case is expected to be completed in 2003.

5.2.6. Ex proprio motu investigations which are being carried out by the Service of the Commission for the Protection of Competition.

Ex proprio motu investigation into possible uniformity in Bank Charges.

Ex proprio motu investigation into possible exploitation of a dominant position by the company Akis-Mega Express Ltd in the distribution/transport of letters/packages sector.

Ex proprio motu investigation into possible uniformity in the prices of entrance tickets for cinemas.

Ex proprio motu investigation into possible abusive exploitation of a dominant position by the company Athenodorou Bros (readymade concrete) Ltd in the production and sale of readymade concrete sector in Paphos district.

The above ex proprio motu investigations are expected to be completed in 2003.

5.3 APPLICATION FOR IINDIVIDUAL NEGATIVE CERTIFICATION OR INDIVIDUAL EXEMPTION

5.3.1. Application for individual Negative Certification or for renewal of the individual Exemption of the Public Use Vehicles Insurers Association

This case concerns an application for Individual Negative Certification or for renewal of the Individual Exemption of the Public Use Vehicles Insurers Association.

More specifically, the law office of LELLOS DEMETRIADES, acting on behalf of the Public Use Vehicles Insurers Association, submitted, according to sections 16 and 18 of L.207/89, an application for Individual Negative Certification or for renewal of the existing Individual Exemption for a period of 5 years.

The Commission for the Protection of Competition examined the application of the lawyer of the Public Use Vehicles Insurers Association and gave instructions that an investigation should be carried out and put before it.

The Service of the Commission published a summary of the application and called on every third interested person to submit within 15 days its observations regarding the application.

According to the investigation the following have been established:

In this case the directly involved party is the Public Use Vehicles Insurers Association

The Association constitutes a consortium agreement among all the insurance companies which engage in the insurance of motor vehicles in accordance with the Motor Vehicles Law.

The Commission after investigating the evidence and facts put before it established that the Association fulfils cumulatively the three prerequisites of Section 5(1) of Law 207/89 and for this reason it decided to grant Individual Exemption on the basis of Section 18 of the same Law and for a period of three years

The Association has since submitted an application three times for renewal of the period of the Individual Exemption which had been approved by the Commission for the Protection of Competition.

The first application for renewal of the period of the Individual Exemption was submitted by the Association on 8 June 1993. The Commission, after establishing that the initial prerequisites on which the Commission based itself in order to grant the Individual Exemption continued to exist, approved renewal of the Individual Exemption for another four years.

The second application was submitted on 30 June 1997. The Commission examined anew the facts which were put before it and decided to renew the Individual Exemption for another 5 years, from 4 September 1997 until 4 September 2002.

The third application was submitted on 7 June 2002 and either Individual Negative Certification, in accordance with Section 16 of L.207/89 or renewal of the Individual Exemption for a period of 5 years, according to Section 18 of the same Law, was requested.

The Commission, after examining all the evidence before it, unanimously establishes that the Association continues to contribute, with the reasonable participation of consumers, to the accruing benefit and to the promotion of the economic progress, 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.

In view of the above, the Commission unanimously decided to renew the Individual Exemption for the Public Use Vehicles Insurers Association until 30 November 2003 on condition that until that date the average insurance premiums will remain

unchanged in accordance with the commitment of the Association which has been undertaken in a letter of its lawyer. The Commission will re-examine the whole matter on the expiration of the renewal if and when a similar request is made.

5.4. THE ENTERPRISES CONCENTRATION CONTROL LAW 22(I)/99.

Concentrations of enterprises which have been notified to the Service of the Commission for the Protection of Competition.

During 2002 the Service of the Commission evaluated and put before the Commission eight (8) Concentrations of Enterprises which had been notified to it as follows:

5.4.1. Concentration of the companies Laiko Kafekoption Ltd. LOEL Ltd and PRINTKO LTD

The Commission after evaluating the notification of the above concentration and the report of the Service unanimously decided to declare the above concentration compatible with the requirements of the competitive market.

5.4.2 Concentration of the companies Sharelink Financial Services Ltd and White Knight Holdings Ltd.

The Commission, after evaluating the notification of the above concentration and the report of the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.4.3 Concentration of the companies Mallouppas and Papacostas Ltd and Aemilios Eliades Ltd.

The Commission, after evaluating the notification of the above concentration and the report of the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.4.4 Concentration of the companies CHARALAMBIDES DAIRIES LTD and DELTA PROTYPOS MILK INDUSTRY LTD

The Commission, after evaluating the notification of the above concentration and the report of the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.4.5 Concentration of the companies HELLENIC PETROLEUM INTERNATIONAL AG and B.P. (CYRUS) LTD.

The Commission, after evaluating the notification of the above concentration and the report of the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.4.6 Concentration of the companies GDL Trading Ltd and Wellgoods Cypressa Ltd.

The Commission, after evaluating the notification of the above concentration and the report of the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market.

5.4.8 Concentration of the companies DELOITTE AND TOUCHE and Chrysanthou & Christoforou

The Commission, after evaluating the notification of the above concentration and the report of the Service, unanimously decided to declare the above concentration of enterprises compatible with the requirements of the competitive market

A fine of CY5.000 pounds was imposed on the new firm which has been created (DELOITTE & TOUCHE) since the approval of the above concentration for violation of section 9 of the Concentration of Enterprises Control Law 22(I)/99. More specifically, the said firm in a statement published in the daily press informed the public about the start of its operation before it received from the Commission the approval for the said concentration.

5.4.9 Other Concentrations of Enterprises

The following six (6) Concentrations of Enterprises were notified to the Service of the Commission but after they were evaluated by the Service it was established that they did not fall within the provisions of the Control of Concentrations of Enterprises Law 22(I)/99 and were not presented before the Commission.

a. Concentration of the Stock Exchange companies A.L.Prochoice Ltd and EXPRESS STOCK LTD.

b. Concentration of the Supermarkets E&S (SPOLP) Ltd and Dioghenous Supermarket Ltd in Paphos.

c. Concentration of the companies Trokkoudis Exclusives Ltd and Kyros Shops Ltd.

d. Concentration of the companies Orphanides Supermarket Ltd. and Omega Supermarket Ltd. at Paphos,

e. Concentration of the companies Cyprus Cements Company Ltd and ”Latouros” Quarries Ltd.

f. Concentration of the companies “Laundries” Ltd and White Linen (Famagusta) Ltd.