

# Cyprus

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## MERGER CONTROL

### 1. Are mergers and acquisitions subject to merger control in your jurisdiction? If so, please describe briefly the regulatory framework and authorities.

Mergers and acquisitions are regulated primarily by the Law on the Control of Concentrations between Enterprises of 1999 (Concentrations Law).

The relevant national competition authority is the Commission for the Protection of Competition (Commission) (*see box, The regulatory authority*). This was established under the Law on the Protection of Competition of 1989 and reconstituted under the Law on the Protection of Competition of 2008 (Competition Law).

### 2. What are the relevant jurisdictional triggering events/thresholds?

#### Triggering events

The following events give rise to a concentration and trigger the provisions of the Concentrations Law:

- A merger of two or more previously independent undertakings.
- One or more persons that already control at least one undertaking, or one or more undertakings, acquiring direct or indirect control of the whole or part of one or more other undertakings. This can be done through a purchase of securities or assets, by agreement, or otherwise.
- The establishment of a joint venture that permanently carries out all the functions of an autonomous economic entity (*see Question 37*).

#### Thresholds

Concentrations are notifiable when all of the following apply:

- At least two of the participating enterprises (participants) each have an aggregate turnover in excess of EUR3,417,202.88 (about US\$5 million).
- At least one of the participants engages in commercial activities within Cyprus.
- At least EUR3,417,202.88 of the aggregate turnover of all the participants relates to the provision of goods or the supply of services within Cyprus.

In addition, the Minister for Commerce, Industry and Tourism can declare a concentration to be notifiable as being of major public interest because of the effect it may have on:

- Economic and social development.
- Technical progress or employment.
- The supply of services necessary for the public security of the Republic of Cyprus (as a whole, or its territories).

### 3. Please give a broad overview of notification requirements. In particular:

- **Is notification mandatory or voluntary?**
  - **When should a transaction be notified?**
  - **Is it possible to obtain formal or informal guidance before notification?**
  - **Who should notify?**
  - **To which authority should notification be made?**
  - **What form of notification is used?**
  - **Is there a filing fee? If so, how much?**
  - **Is there an obligation to suspend the transaction pending the outcome of an investigation?**
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- **Mandatory or voluntary.** Notification is mandatory.
  - **Timing.** Notifications must be submitted within one week of the earlier of the:
    - signing of the relevant agreement; or
    - publication of the offer to purchase, exchange or acquire a participation that grants control of the undertaking.
  - **Formal/informal guidance.** The Commission makes informal guidance available through its Secretary, who heads the Service of the Commission (Service) (*see box, The regulatory authority*). The Service acts as the Commission's secretariat and (among other things) collects and examines all information necessary for the Commission to discharge its functions (*see box, The regulatory authority*).
  - **Responsibility for notification.** The participants can notify individually or jointly.

- **Relevant authority.** The notifications must be submitted to the Service.
- **Form of notification.** The form of notification must comply with Schedule III of the Concentrations Law, which contains a list of the information that notifications must contain, including:
  - the identity of the participants;
  - supporting documents (such as copies of recent annual reports);
  - details of the concentration;
  - relationships of ownership and control between the participants;
  - personal and economic ties between the participants;
  - a description and analysis of the affected markets;
  - confidentiality clauses; and
  - the parties' statements certifying the accuracy of the information provided.

The notification must be submitted either by hand or by post.

- **Filing fee.** There is no filing fee.
- **Obligation to suspend.** The transaction must be suspended pending the outcome of an investigation. However, one or more of the participants can apply to the Commission for permission to complete the transaction prior to approval. Such permission may be granted, with or without conditions, if the applicant can show that a delay in implementing the transaction may cause it serious damage.

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#### 4. Please set out the procedure and timetable.

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##### Preliminary investigation

After the Service receives the notification, it makes a preliminary evaluation of the concentration and promptly prepares a report to the Commission. The Commission is under a duty to immediately consider the concentration. It will then (through the Service) notify the participants of its decision to:

- Authorise the merger.
- Order a full investigation.

The Service communicates the Commission's decision to the notifying party no later than one month after receipt of notification. This period can be extended for a maximum of 14 days.

##### Full investigation

The Service prepares and submits a report to the Commission within a maximum of three months after receipt of notification. The Commission considers the report and notifies the participants (through the Service) of its decision to:

- Authorise the merger.
- Authorise the merger subject to conditions.
- Prohibit the merger.

The Service communicates the Commission's decision to the notifying party no later than four months from receipt of notification.

For an overview of the notification process, see flowchart, *Cyprus: merger notifications*.

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#### 5. In relation to merger inquiries:

- **How much publicity is given?**
  - **At what stage of the procedure is information released?**
  - **Is certain information automatically kept confidential?**
  - **Can the parties request that certain information be kept confidential?**
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- **Publicity.** Publicity (including the Commission's decisions after a preliminary or full investigation) is given in the *Official Gazette of the Republic of Cyprus (Official Gazette)* and on the Commission's website (see box, *The regulatory authority*).

- **Procedural stage.** After notification, when the Service ascertains that the concentration falls within the scope of the Concentrations Law, it publishes a notification in the *Official Gazette* and on the Commission's website indicating the:

- names of the participants;
- nature of the concentration; and
- economic sectors involved.

- **Automatic confidentiality.** No information is automatically considered to be confidential. The Service and the Commission take into account, as far as is possible, the affected enterprises' legitimate interest in the protection of their business secrets.

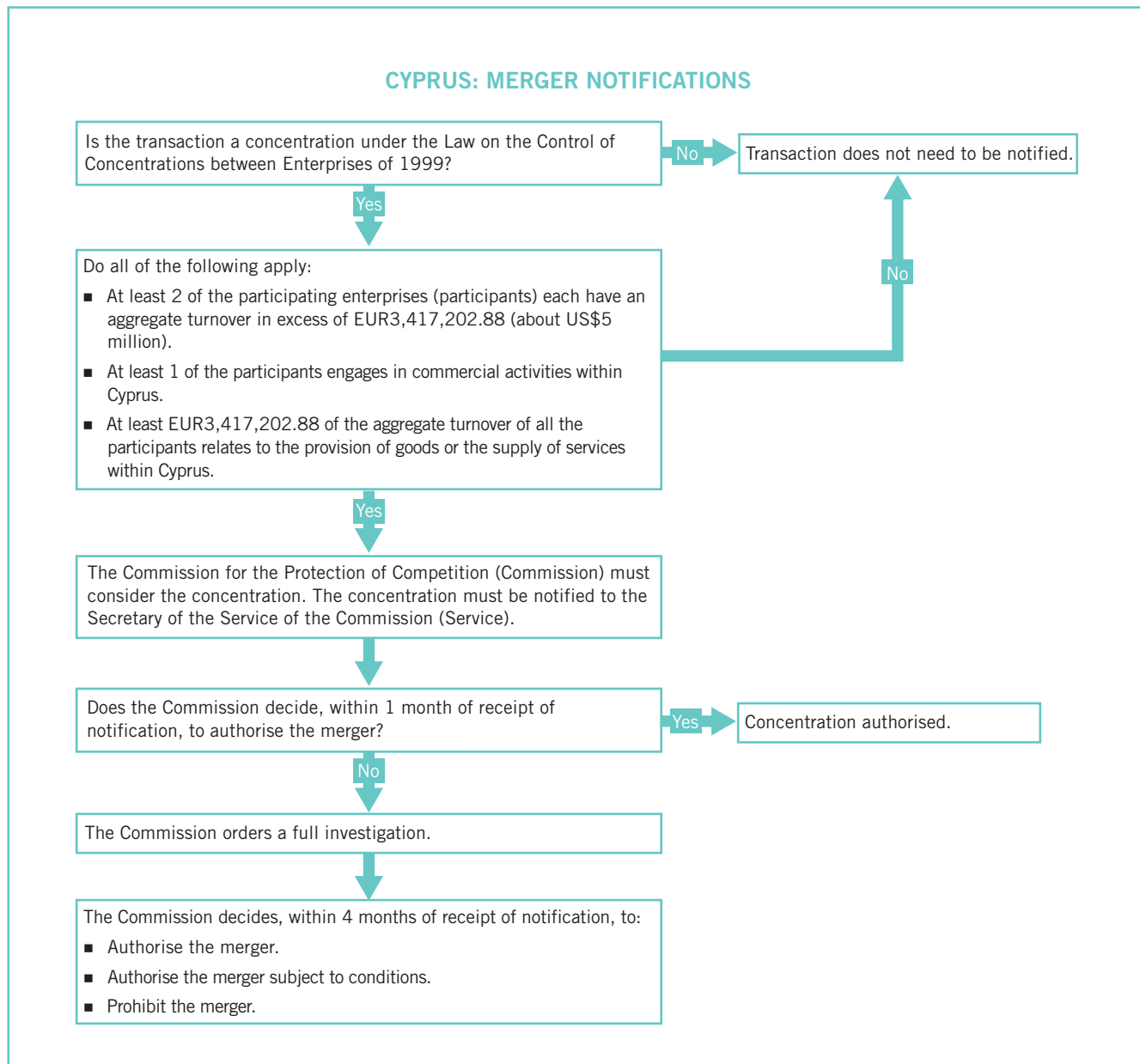
- **Confidentiality on request.** When a party submits the notification (or any additional information on the Service or the Commission's request), it can indicate that the information is confidential and give the reasons why it is confidential.

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#### 6. Can third parties be involved in the procedure and, if so, how? What rights do they have to make representations, access documents or be heard?

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When the Commission fully investigates a concentration, non-participating parties with a legitimate interest in the concentration are given the opportunity to submit their views. In addition, the Commission can, before reaching a decision on a concentration, enter into negotiations or discussions with interested parties, or call for their attendance at hearings. Interested parties are entitled to access non-confidential documents (see *Question 5, Automatic confidentiality*).



**7. What is the substantive test?**

The test applied is whether a concentration creates or strengthens a dominant position in the affected markets within Cyprus. In assessing this, a number of factors are taken into account, such as:

- The structure of the affected markets.
- The market position of the participants.
- The economic power of the participants.
- Any alternative sources of supply of products and services traded in the affected markets and their substitutes.
- The supply and demand for all relevant products and services.

- Any barriers to entry into the affected markets.
- The interests of intermediate and final consumers.

**8. What remedies can be imposed as conditions of clearance to address competition concerns? At what stage of the procedure can they be offered and accepted?**

Once the Commission decides to carry out a full investigation, it can negotiate with the parties in relation to possible remedial commitments that might address the Commission’s competition concerns. The Commission may suggest possible remedies and the parties can also propose specific commitments. There is no time limit for the proposal of remedies by the parties. The Commission considers both structural and behavioural commitments.





- Access documents submitted to the Commission that are not subject to secrecy (see *Question 21, Automatic confidentiality*).
- Be present at hearings.
- Make representations and be heard during the course of an investigation.

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#### 20. Please set out the stages of the investigation and timetable.

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There are no strict timetables for the investigation of restrictive agreements or concerted practices.

When the Commission starts an investigation on its own initiative or following a third-party complaint, it directs its Service to prepare a report. After the report is submitted to the Commission, it may, before reaching a final decision:

- Prepare and serve on the interested parties a statement of objections.
- Request interested parties to submit information and observations.
- Initiate public hearing proceedings.

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#### 21. In relation to an investigation into a potentially restrictive agreement or practice:

- **What details (if any) of the investigation are made public?**
- **Is certain information automatically kept confidential?**
- **Can the parties (or third parties) request that certain information be kept confidential?**

- **Publicity.** Investigations into potentially restrictive agreements or practices are made public:
  - in the *Official Gazette*;
  - through the Commission's website (see *box, The regulatory authority*).
- **Automatic confidentiality.** No information is automatically considered to be confidential. The Commission and its Service take into account, as far as possible, the legitimate interest of the affected enterprises in the protection of their business secrets (see *Question 5, Automatic confidentiality*).
- **Confidentiality on request.** In submitting complaints, notifications or any additional information on the Commission's request, any party may indicate information as being confidential and give reasons justifying this confidentiality (see *Question 5, Confidentiality on request*).

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#### 22. Please summarise any powers that the relevant regulator has to investigate potentially restrictive agreements or practices.

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The Commission has the power to order interim measures during its investigation, such as requiring the parties to suspend their activities.

In addition, the Commission also has the power to:

- Collect information it deems necessary to exercise its function.
- Conduct enquiries at the offices of the enterprises involved.
- Inspect books and business documents.
- Demand and receive copies or extracts from documents.
- Require on-site oral clarifications.
- Enter all offices, premises and means of transportation of the enterprises under investigation and seal such offices and premises during an investigation.
- Call on witnesses and receive statements.
- Obtain the assistance of the police authorities to enforce any aspect of the investigation.

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#### 23. Can the regulator reach settlements with the parties without reaching an infringement decision (for example, by accepting binding or informal commitments)? If so, please summarise the procedure and the circumstances in which settlements can be reached.

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The Commission can reach a settlement with the parties without reaching an infringement decision at any time before it issues its final decision. This settlement will take the form of one or more representations and undertakings from the parties involved. The Commission will usually issue an order to this effect, which binds the parties involved. However, there is no formal procedure for the achievement of a settlement.

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#### 24. What are the regulator's enforcement powers in relation to a prohibited restrictive agreement or practice? In particular:

- **What orders can be made?**
- **What fines can be imposed on the participating companies? What are the consequences if they are not paid?**
- **Can personal liability, including fines, attach to individual directors or managers?**
- **Is it possible to obtain immunity/leniency from any fines?**
- **Can an entire agreement be declared void (that is, not only any restrictive provisions)?**
- **Orders.** Agreements or practices that breach the Competition Law and that do not benefit from a block exemption are void from the outset. The Commission can also order that practices or agreements be brought to an end. Where the enterprises involved offer to fulfil certain undertakings, the Commission can impose these undertakings on the enterprises, setting the time limits and conditions that it deems appropriate. The Commission can also impose conditions and remedial or behavioural measures to end the infringement.

- **Fines.** For restrictive agreements, the Commission can impose administrative fines of up to 10% of the combined annual revenue of the offending enterprises, plus a further administrative fine of up to EUR85,000 (about US\$125,000) for each day the infringement continues.

The Commission can also impose fines for:

- failing to comply with an interim measure ordered by the Commission: up to EUR17,000 (about US\$25,000) per day of non-compliance;
- failing to submit information the Commission requested, or wilfully or negligently providing inaccurate or misleading information: up to EUR85,000 (plus up to EUR17,000 per day of non-compliance);
- wilfully or negligently failing to present a full account of books or documents during a Commission investigation, or failing to comply with a search request: up to EUR85,000 (plus up to EUR17,000 per day of non-compliance).

Before imposing an administrative fine the Commission allows any interested party to submit representations. Administrative fines are recovered as a civil debt owed to the Republic of Cyprus. The Commission can initiate legal proceedings to secure a court order for payment.

In addition, a legal or natural person can be criminally liable, and penalties can be imposed for:

- failing to comply with a decision of the Commission: up to EUR345,000 (about US\$507,500) or imprisonment of up to two years, or both;
  - failing to comply with an interim measure ordered by the Commission: up to EUR345,000 or imprisonment of up to two years, or both;
  - failing to observe the duty of confidentiality: up to EUR3,500 (about US\$5,150) or imprisonment of up to one year, or both;
  - refusing or neglecting to comply with an obligation to provide assistance, information, documents and statements during the course of an investigation: up to EUR85,000 or imprisonment of up to one year, or both;
  - destroying or defacing information or documents during the course of an investigation: up to EUR85,000 or imprisonment of up to one year, or both;
  - providing inaccurate, false or misleading information or documents during the course of an investigation: up to EUR85,000 or imprisonment of up to one year, or both.
- **Personal liability.** Where a legal entity is liable to an administrative fine, the members of its board of directors, its managing director or its general manager can also be liable to the fine (*see above, Fines*).

If a legal entity is liable for a criminal act, the following individuals may also be jointly and severally criminally liable:

- members of the board of directors;
  - the managing director;
  - the general manager.
- **Immunity/leniency.** There is no official immunity or leniency programme. However, the Commission takes into account the

behaviour of the enterprises concerned, both before and during the investigation proceedings, when calculating fines.

- **Impact on agreements.** An entire agreement, and not only its restrictive provisions, can be declared void from its beginning.

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**25. Can third parties claim damages for losses suffered as a result of a prohibited restrictive agreement or practice? If so, please summarise any special procedures or rules that apply. Are class actions possible?**

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Any person who has suffered any damage from any act or omission of an enterprise which breaches the Competition Law can bring an action before the civil courts and claim compensation. Class actions are not possible.

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**26. Is there a right of appeal against any decision of the regulator and, if so, which decisions, to which body and within which time limits? Are rights of appeal available to third parties, or only to the parties to the agreement or practice?**

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Any person or entity with a legitimate interest in a decision of the Commission (whether a party to the decision or not) can bring administrative review proceedings in the Supreme Court of Cyprus to appeal the decision, within 75 days of having been notified of the decision.

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**MONOPOLIES AND ABUSE OF MARKET POWER**

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**27. Are monopolies and abuses of market power regulated under civil and/or criminal law? If so, please give a broad overview of the substantive provisions and regulatory authority.**

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The Competition Law regulates abuses of market power. It prohibits any abuse of a dominant position by one or more enterprises in a market for a product or service.

The Commission is the regulatory authority.

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**28. How is dominance/market power determined?**

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An enterprise may be in a dominant position if it holds market power that enables it to:

- Obstruct the maintenance of effective competition in the relevant market.
- Act, to a substantial degree, independently from its competitors and customers and eventual consumers.

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**29. Are there any broad categories of behaviour that may constitute abusive conduct?**

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The following may constitute abusive conduct:

- Direct or indirectly fixing unfair purchase or selling prices, or other unfair terms and conditions.

- Restricting production, supply, or technological development to the loss of consumers.
- Applying different terms for identical transactions with other enterprises, placing them at a competitive disadvantage.
- Making contracts conditional on other parties accepting additional obligations which, by their nature or according to commercial usage, have no connection with the subject matter of these contracts.
- Exploiting financial inter-dependency with another enterprise where the dominant enterprise holds a position of client, supplier, producer, agent, distributor or trader and where there is no alternative solution to the dominant enterprise. Exploitation can consist of:
  - imposing arbitrary trading terms;
  - imposing unfair treatment; or
  - suddenly and unjustifiably ending long-standing trading relations.

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### 30. Are there any exclusions or exemptions?

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The Competition Law's provisions do not apply to enterprises that are either:

- Entrusted with administering services of general economic interest.
- Characterised as public monopolies.

However, this is only to the extent that the provisions legally or factually hinder these enterprises from fulfilling their special tasks (see *Question 15*).

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### 31. Is it necessary (or, if not necessary, possible/advisable) to notify the conduct to obtain clearance or (formal or informal) guidance from the regulator? If so, please set out briefly the procedure.

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It is not possible to obtain clearance for an abuse of a dominant position. It is, however, possible to obtain informal guidance (see *Question 17, Informal guidance/opinion*).

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### 32. Where different than for restrictive agreements and practices, please explain how investigations are started, the procedures that apply, the rights of third parties, what details are made public and whether the regulator can accept commitments.

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See *Questions 18 to 21 and Question 23*.

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### 33. Please summarise the regulator's powers of investigation.

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See *Question 22*.

## THE REGULATORY AUTHORITY

### Commission for the Protection of Competition (Commission)

**Head.** Costakis Christoforou

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**Outline structure.** The Commission consists of the Chairman and four other members. The Service of the Commission (Service), which operates as the Commission's secretariat, has a staff of civil servants and is headed by the Secretary of the Commission.

**Responsibilities.** The Commission is the national competition regulatory and enforcement authority responsible for the application and enforcement of the:

- Law on the Protection of Competition of 2008.
- Law on the Control of Concentrations between Enterprises of 1999.
- Articles 101 and 102 of the TFEU.

The Service has a number of responsibilities within the Commission, including:

- Acting as the Commission's secretariat.
- Maintaining the Commission's registers.
- Collecting and examining all information necessary for the Commission to exercise its functions.
- Ensuring that complaints reach the Commission, and submitting recommendations to the Commission.
- Effecting necessary communications and publications.

**Procedure for obtaining documents.** Documents are available through the Secretary of the Commission.

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### 34. What are the penalties for abuse of market power and what orders can the regulator make?

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See *Question 24*.

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### 35. Can third parties claim damages for losses suffered as a result of abuse of market power? If so, please summarise any special procedures or rules that apply. Are class actions possible?

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See *Question 25*.

## EU LAW

**36. Are there any differences between the powers of the national regulatory authority(ies) and courts in relation to cases dealt with under Article 101 and/or Article 102 of the TFEU, and those dealt with only under national law?**

The only difference is that Cypriot courts (as opposed to the Commission), do not have the power to apply the Competition Law's provisions and conduct an investigation as to whether there is:

- A restrictive agreement or concerted practice.
- An abuse of a dominant position.

## JOINT VENTURES

**37. Please explain how joint ventures are analysed under competition law.**

A joint venture established to permanently carry out all the functions of an autonomous economic entity may be subject to the rules relating to mergers (see *Question 2, Triggering events*). Other joint ventures may (depending on the circumstances) be assessed under the rules relating to restrictive agreements and practices (see *Questions 13 to 26*).

## INTER-AGENCY CO-OPERATION

**38. Does the regulatory authority(ies) in your jurisdiction co-operate with regulatory authorities in other jurisdictions in relation to infringements of competition law? If so, what is the legal basis for and extent of co-operation (in particular, in relation to the exchange of information)?**

The Commission co-operates with regulatory authorities in other jurisdictions as a member of the following:

- The European Competition Network.
- The International Competition Network.

## PROPOSALS FOR REFORM

**39. Please summarise any proposals for reform.**

There are currently no proposals for reform.

### CONTRIBUTOR DETAILS

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