

## Competition - Cyprus

### Newly restructured commission issues first interim order

Contributed by **L Papaphilippou & Co LLC**

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Following a number of recent appointments, the Commission for the Protection of Competition has a new composition. Lawyer Loukia Christodoulou has been re-appointed as chair and lawyer Eleni Karaoli has been re-appointed as a member. New members Andreas Karides and Charis Pastellis, active in the field of economics, and Christos Tsingis, active in the fields of commerce and industry, complete the line-up.

On June 13 2013 the newly restructured commission granted its first interim order. The order was granted in favour of Primetel PLC against the Cyprus Telecommunications Authority, a semi-governmental organisation, following the filing of a relevant application by Primetel to that effect on June 5 2013.

Primetel had filed the complaint to which the interim order related on November 6 2008, submitting that the authority had allegedly violated Sections 6(1)(a), (b) and (c) of the Protection of Competition Law 2008. However, the application for an interim order was triggered by:

- the authority's June 3 2013 decision to terminate access to the Minerva cable system; and
- its announced intention to terminate two existing agreements, signed during 2008 and 2009 respectively, and to reclaim the provided capacity.

Within the remit of the granted interim order, the commission concluded unanimously that all conditions of Section 28 of the law had been cumulatively met; accordingly, the interim order could be justifiably issued. The commission noted:

- evidence of a *prima facie* case of violation of Section 6(1)(b) of the law by the authority;
- a present element of urgency; and
- a serious risk of irreparable damage to both Primetel's interests and public interest.

Section 6(1)(b) of the law provides that:

*"any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it in respect of a product shall be prohibited, especially if it affects or may affect ... (b) limiting production, distribution or technical development to the prejudice of consumers."* (emphasis added)

The authority had refused to accept payment of the relevant sum in instalments. However, it had submitted no reasoning for such a refusal and no proposal so as to facilitate such payment. As a result, and on the basis of other evidence presented before it, the commission observed that termination of the relevant agreement and reclamation of the provided capacity by the authority constituted a *prima facie* abuse of its dominant position in the relevant market (providing the right to use international capacity in underwater cables).

The commission took into account, among other things:

- the fact that Primetel paid a monthly sum towards other obligations owed to the authority;
- the adverse financial circumstances affecting the banking sector and undertakings in Cyprus in general; and
- the fact that Primetel constituted an authority client in the relevant market for providing the right to use international capacity in underwater cables (upstream market), while also constituting an existing competitor of the authority for the

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provision of electronic communications services to consumers (downstream market).

Further, the commission observed that:

- Primetel had been cooperating with the authority since 2005;
- it had acted in good faith regarding the performance of its contractual obligations; and
- it had already made a payment in advance of a significant sum to the authority under the relevant agreement.

The commission also argued that its main concern is to prevent damage to consumers, which would inevitably result from potential termination of the relevant agreements and reclamation of the provided capacity.

Accordingly, the commission issued the interim order on the basis of Sections 23(2) and 28 of the law, ordering the authority:

- not to terminate the two relevant agreements between it and Primetel; and
- to reconnect (by the appropriate technical or other means) the capacity on the basis of which Primetel had purchased the right to use the Minerva cable system from the authority, as per the stated agreements, and which the authority had disconnected as of June 3 2013.

However, the interim order will cease to have effect if Primetel does not pay certain sums to the authority by the dates stipulated by the commission in the interim order.

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