

Competition & Antitrust - Cyprus

Commission consults on prioritisation principles

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Background

Between June 23 and July 23 2014 the Commission for the Protection of Competition conducted a public consultation on the proposed prioritisation principles to be followed in the assessment of cases concerning alleged infringements of Sections 3 and 6 of the Protection of Competition Laws of 2008 and 2014, as well as Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

The newly introduced Section 23A(2) of the Protection of Competition Law provides that the commission decision through which these principles are established must be finalised following a public consultation, taking into account primarily:

- the public interest;
- the possible impact on competition and/or consumers; and
- the limitation periods for the imposition of administrative fines, as defined in Section 41 of the law.

Further, under Section 35(3) of the law, the commission is obliged to inform the complainant if the relevant complaint concerns an act, omission or behaviour which does not fall within the commission's priorities as per Section 23A.

Proposed prioritisation principles

The commission has proposed the following prioritisation principles.

Public interest

The notion of the public interest coincides with the potential effect of an obvious competition infringement both on effective competition and on social sectors such as consumers. Accordingly, the commission intends to prioritise in this regard cases which cumulatively or distinctively:

- give rise to severe restrictions of competition, such as price fixing, market allocation, limitation of production or sales, decisions of unions of undertakings and abuse of dominant position which affect the entire jurisdiction of Cyprus;
- affect product or service markets which are of vital importance to Cypriot consumers;
- concern anti-competitive practices with cumulative effects (ie, practices adopted by many undertakings which may result in higher prices for undertakings in downstream markets or consumers); or
- concern a leniency application on the basis of the 2011 Regulation on Cartel Immunity and Reduction of Administrative Fine concerning Cartels in violation of Section 3 of the Law and/or Article 101 TFEU (Secondary Administrative Act 463/2011), in the event that all relevant criteria are satisfied.

Impact on competition

This second principle refers to the structure of the particular market under scrutiny, taking into account primarily:

- the size of the market;
- the degree of concentration;
- the market shares of the undertakings involved;
- the extent of competition on the market;
- the number of consumers affected by the infringement; and

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- the markets affected by, among others, the lack of competition or an inability to meet consumer demand.

In applying this principle, the commission may take into account factors such as:

- the percentage of gross domestic product which the market represents;
- the importance of the relevant product or service;
- the substitutability of the relevant product or service; and
- the presence of a regulated market.

Consumer-related effects

This principle concerns the actual or potential effect on consumers of the assessment of a complaint or the conduct of a commission investigation on its own initiative.

In particular, the commission will evaluate whether possible intervention would cause immediate changes to the behaviour of the undertakings concerned to the benefit of consumers, manifesting mainly in lower prices, better quality and increased choice. In addition, the commission will evaluate the possible impact on consumer welfare.

Limitation periods

Under this principle, the commission may prioritise cases based on when the limitation periods for the imposition of administrative fines, as set out in Section 41 of the law, will elapse.

In this regard, the commission will take into account the strategic importance of cases which could set a precedent, safeguard legal certainty and prevent similar competition infringements, as well as human resource demands.

Next steps

Now that the public consultation has concluded, the next step will be publication of the decision. Under Section 23(A)(3) of the law, the commission is entitled to amend the decision should it consider this necessary at any time within three years of its publication.

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