

Cartel Regulation in Cyprus

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Legislation and jurisdiction

1 Relevant legislation

What is the relevant legislation and who enforces it?

The applicable legislation in Cyprus is the Protection of Competition Law, Law 13(I)/2008 (the Competition Law), which has enacted the provisions of Council Regulation 1/2003 into domestic law, and article 81 of the EC Treaty. The Competition Law is enforced by the Committee for the Protection of Competition (CPC), which acts either on its own initiative or following a complaint received from a third party with a legitimate interest, and by industry-specific regulators such as the Telecoms Authority.

The CPC, which is an independent body established by the Competition Law, comprises five members, the chairman and four other members. The CPC is appointed by a decision of the Council of Ministers following a proposal from the Ministry of Industry, Commerce & Tourism. The CPC is assisted in its enforcement of the Competition Law by the Service.

The Service, which comprises the secretary (of the CPC, who is the senior officer), officers and administrative staff, totals 12 people on a full-time or contract basis who are either lawyers or economists. The role of the Service is, following instructions from the CPC, to carry out preliminary investigations of infringement of the Competition Law, carry out investigations of undertakings, examine notifications (whether of concentrations or agreements), monitor enforcement of CPC decisions and draw up relevant proposals to the CPC.

The CPC has been quite active in all sectors but is particularly concerned with price-fixing cartels and monopoly practices.

2 Substantive law

What is the substantive law on cartels in the jurisdiction?

As regards the provisions of article 81 of the EC Treaty, please see the EU chapter. This chapter will only consider the Cyprus legislation. Section 3 of the Competition Law (which is similar to article 81 of the EC Treaty) provides that all concerted practices that have as their object or effect the prevention, restriction or distortion of competition are prohibited. Section 3(1) then goes on to list those items that are particularly considered as prohibited, namely:

- direct or indirect fixing of purchase or sale prices or other trading conditions;
- limiting or controlling production, distribution, technical development or investment;
- sharing markets or supply sources, geographically or otherwise;
- applying dissimilar conditions to equivalent transactions; and
- making the conclusion of contracts subject to acceptance by other parties of supplementary obligations that by their nature or according to commercial usage have no connection with the subject matter of such contracts (tie-ins).

The Competition Law is criminal and civil in terms of the penalties and punishments that can be imposed.

Cartels are not per se illegal, only where they have as their object or effect the prevention, restriction or distortion of competition.

3 Industry-specific offences and defences

Are there any industry-specific offences and defences?

The Competition Law provides that the following do not fall within the provisions of section 3:

- transactions of general economic interest or public monopolies; and
- agreements relating to wages, terms of employment and working conditions.

In addition, the CPC has enacted various block exemptions covering various sectors providing exemptions subject to the satisfaction of certain conditions. These include:

- certain categories of agreements, decisions and practices in the insurance sector;
- certain categories of agreements and concerted practices in the motor vehicle sector;
- vertical agreements and concerted practices;
- technical cooperation in the field of air transport;
- agreements, decisions and concerted practices in the field of road transport;
- agreements, decisions and concerted practices between liner shipping companies (consortia);
- agreements between air transport undertakings concerning consultations on passenger tariffs on scheduled air services and slot allocation at airports;
- agreements, decisions and concerted practices in relation to the production or trade in agricultural products; and
- liner and conferences in maritime transport.

4 Application of the law

Does the law apply to individuals or corporations or both?

The Competition Law applies to individuals (acting as sole traders) and corporate entities.

5 Extraterritoriality

Does the regime extend to conduct that takes place outside the jurisdiction?

The Competition Law will apply to actions outside the jurisdiction of Cyprus that have as their object or effect the prevention, restriction or distortion of competition in Cyprus. In accordance with Council Regulation 1/2003, if the CPC is to consider a cartel that may affect

trade between member states it must apply the provisions of article 81 of the EC Treaty.

6 Proposals for change

Are there any proposals for change to the regime?

As new legislation has been enacted in 2008 there are no immediate plans to introduce any amendments to the Competition Law or the regime.

Investigation

7 Steps in an investigation

What are the typical steps in an investigation?

The CPC, either acting on its own initiative or following a complaint, will consider the matter. If it is of the view that there is a prima facie case, it will instruct the Service to conduct an investigation.

The CPC has the necessary powers to obtain the information or data that will enable the Service to carry out the investigation. At the start of the investigation, the CPC usually addresses written requests to the undertakings under investigation requesting the delivery of information so requested. The CPC must, however, clearly state the legal basis for the request, the information required, a reasonable time limit within which to provide such information and the penalties for non-compliance. The CPC is not permitted to go on a 'fishing expedition'.

The CPC is under a duty to ensure adequate protection for the rights of the undertakings under investigation, in particular as to secrecy and confidentiality of the information provided and to use the information purely for the purposes of the investigation.

Upon conclusion of the preliminary investigation, the Service will prepare a report and, upon a finding of a prima facie infringement, the CPC will forward a statement of objections to the undertakings concerned. The undertaking is also allowed to have full access to the case file and to the documents upon which the CPC will base its case.

The formal hearing of the matter proceeds first by way of written addresses and then by way of a formal oral hearing before the CPC.

While there are no formal rules of procedure for cases before the CPC, the rules followed are similar to those applied in the courts.

Upon conclusion of the case, the CPC will issue a fully reasoned decision. A decision of the CPC is subject to appeal by way of recourse before the Supreme Court. The decision of the Supreme Court is final.

8 Investigative powers of the authorities

What investigative powers do the authorities have?

The CPC can collect information necessary for the carrying out of its duties under the Competition Law by addressing a written request to this effect to natural or legal persons. If information is not provided within the specified time or the information is inaccurate or misleading the CPC may impose fines (both lump-sum and periodic penalties).

The CPC may conduct unannounced visits ('dawn raids') to the premises of undertakings in order to obtain information it needs or to follow up a written request for information. Officers of the Service of the CPC conduct these following written authorisation by the CPC.

The term 'premises' includes, inter alia, business premises and vehicles of undertakings. Searches at residential premises can only be carried out upon obtaining a court order.

On arrival at the premises, the investigating officers must show evidence of their identity and authorisation and hand over a notice explaining the subject matter and purpose of the unannounced visit.

The investigating officers should give undertakings a reasonable time for legal advisers to arrive before the unannounced visit commences.

The investigating officers have statutory power to enter the premises and can require the undertaking to halt its business or part thereof until completion of the unannounced visit. Once they have gained access, they can require anyone present to produce any documents (and in any form, electronic or otherwise), that they consider is relevant to the subject matter of the investigation. This may include letters, diaries, travel records and other documents.

The investigating officers can also ask for oral explanations on the spot. The investigating officers can take copies of any document produced and ask for any electronic documents to be printed.

Although there is no specific provision in the Competition Law, it is generally accepted that the investigative powers of the CPC are limited by the right against self-incrimination. Given the nature of the investigatory powers of the CPC, officers or employees of an undertaking cannot be compelled to answer oppressive or incriminating questions.

A person who receives a request from the CPC to provide information must provide the information within the time limits stipulated in the request and make a full and frank disclosure, unless any rules on privilege apply. In case of an omission to provide the requested information within the specified time or intentionally or negligently providing inaccurate or misleading information, the CPC has the authority to impose a maximum fine of €85,000. In addition, the CPC may impose a fine of €17,000 for every day that the said person omits to provide the requested information.

In case of an unannounced visit, any undertaking that, intentionally or negligently, shows incomplete books or professional documents, refuses to comply with a request for information by the CPC, or destroys, falsifies or withholds books or records shall be liable on conviction to a term of imprisonment not exceeding one year or a fine of up to €85,000, or both.

International cooperation

9 Inter-agency cooperation

Is there inter-agency cooperation? If so, what is the legal basis for, and extent of, cooperation?

There are no international agreements or inter-agency agreements in place. Cyprus is a member of the European Competition Network (ECN) and cooperates with the European Commission. It is also a member of the International Competition Network (ICN).

10 Interplay between jurisdictions

How does the interplay between jurisdictions affect the investigation, prosecution and punishment of cartel activity in the jurisdiction?

The only circumstances where there may be interplay between the jurisdictions is under Council Regulation 1/2003, which may result in parallel competence on a cartel matter between two or more jurisdictions and between Cyprus and the European Commission.

11 Adjudication

How is a cartel matter adjudicated?

The cartel matter is investigated and adjudicated on by the CPC.

12 Appeal process

What is the appeal process?

The decision of the CPC may be appealed by way of administrative recourse action before the Supreme Court.

The decision of the Supreme Court is final.

13 Burden of proof

With which party is the burden of proof?

The burden of proof is with the party appealing the decision to the Supreme Court.

Sanctions**14 Criminal sanctions**

What criminal sanctions are there for cartel activity? Are there maximum and minimum sanctions?

The criminal sanctions are that any person who continues to apply an agreement that is prohibited within the meaning of section 3 or abuses its dominant position within the meaning of section 6 in contravention of a decision of the CPC that orders termination of the agreement or the abuse, shall commit a criminal offence punishable with imprisonment of up to one year or with a pecuniary penalty, or both.

Any person who, knowingly and for the purpose of misleading the CPC, furnishes false or inaccurate or deficient information or withholds true information shall commit a criminal offence punishable with imprisonment of up to one year or with a pecuniary penalty, or both.

15 Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

The CPC may impose the following sanctions:

- order or recommend the undertaking or trade association to terminate within a fixed time the infringement and avoid any repetition of it in the future or, if the infringement was terminated before the decision of the CPC, may make a finding of reconnaissance;
- if the infringement continues, a fine of up to €17,000 for every day the infringement continues;
- a fine of up to 10 per cent of the undertakings' turnover in the year in which the infringement took place or of the year that immediately preceded the infringement; and
- interim measures on such terms that under the circumstances the CPC deems, either on its own motion or on the application of a concerned party. The following conditions need to be satisfied:
 - a reasonably strong prima facie case of infringement;
 - it is a matter of urgency; and
 - there is a serious risk of an irreparable damage to the interests of the person lodging the application or to the public interest.

The imposition of pecuniary penalties is subject to limitation periods. The CPC is deprived of its power to impose pecuniary sanctions for infringements of the provisions of the Competition Law if it does not exercise this power within five years. The time limit begins from the date the infringement took place or, where the infringement continues or is repeated, from the date the infringement ended. The time limits are interrupted with the commencement of the investigation by the CPC.

16 Civil and administrative sanctions

Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?

Sanctions for cartel activity can be civil and criminal and such sanctions can be pursued for the same activity. The CPC takes the decision on which sanctions to pursue.

17 Private damage claims and class actions

Are private damage claims or class actions possible?

A person suffering loss as a result of the conduct of a cartel has a right of action for damages for the losses suffered as a result of the cartel conduct. The said person may apply for an injunction to stop the continuance of the cartel. There are no class action rules and procedures. Cyprus courts do not award punitive or exemplary damages. An award of damages will only be made for proven losses suffered. No damages action has yet been taken in the Cyprus courts.

18 Recent fines and penalties

What recent fines or other penalties are noteworthy? What is the history of fines? How many times have fines been levied? What is the maximum fine possible and how are fines calculated? What is the history of criminal sanctions against individuals?

In recent times the CPC has been more willing to impose deterrent fines and not just nominal fines. The CPC has the power to impose a fine of up to 10 per cent of the turnover of the undertaking. The CPC will, however, take into account the level of cooperation of the undertakings concerned. Thus far, there have been no instances of pursuing criminal sanctions against either natural or legal persons.

Sanctions**19 Sentencing guidelines**

Do sentencing guidelines exist?

There are no sentencing guidelines in place.

20 Sentencing guidelines and the adjudicator

Are sentencing guidelines binding on the adjudicator?

See question 19.

21 Leniency and immunity programmes

Is there a leniency or immunity programme?

There is an immunity and leniency programme (the programme) that outlines the policy and procedures involved in applying for immunity from fines and reduction of fines in cartel cases. However, nothing in the programme affects the discretion of the CPC in the exercise of its functions.

22 Elements of a leniency or immunity programme

What are the basic elements of a leniency or immunity programme?

Subject to the requirements set out below, the CPC will grant immunity if the applicant is the first to come forward and submit evidence that, in the CPC's view, may enable it to find an infringement in connection with an alleged cartel distorting competition (section 3 of the Law).

The requirements are:

- the applicant must come forward before the CPC has gathered sufficient evidence to reach a preliminary (prima facie) finding that there has been an infringement of section 3 of the Law;
- the applicant must take effective steps, to be agreed with the CPC, to terminate its participation in the illegal activity;
- the applicant must do nothing to alert its former associates that it has applied for immunity under this programme;
- the applicant must not have coerced another undertaking to participate in the illegal activity and must not have acted as the instigator or have played the lead role in the illegal activity (in this

- instance, the applicant may be eligible to benefit from a reduction of any fine set out below); and
- throughout the course of the CPC's investigation and the hearing proceedings, the applicant must provide complete and timely cooperation. In particular, the applicant must:
 - reveal any and all infringements under the Competition Law in which it may have been involved;
 - provide full, frank and truthful disclosure of all the evidence and information known or available to it under its control, including all documentary and other records, wherever located, relating to the offences under investigation with no misrepresentation of any material facts; and
 - cooperate fully, on a continuous basis and expeditiously throughout the investigation and the hearing stage.

It should be noted that an undertaking must make full disclosure after the undertaking has been reminded of its privilege against self-incrimination. This provision ensures that if an undertaking fails to comply with the terms of immunity, the CPC can use any information already submitted.

Reduction

If the immunity programme conditions are not met, an undertaking may be eligible to qualify for a reduction of a fine if it provides information of significant added value which contributes significantly to the finding of an infringement. In addition, the applicant must terminate its involvement in the infringement being investigated, according to terms and conditions that will be set by the CPC. The CPC may also take into account the extent and continuity of any cooperation provided by the undertaking following the date of its submission.

Reduction of a fine is as follows:

- first applicant: 50 to 70 per cent;
- second applicant: 30 to 50 per cent; and
- third and subsequent applicants: up to 30 per cent.

The leniency programme contains no specific provisions relating to the protection of current and former employees. However, an undertaking may choose to initiate an application on behalf of its directors, officers or any other duly authorised person. The Law contains several criminal provisions for specific acts. However, the programme does not in any way interfere with these (or any other) criminal provisions.

23 First in

What is the importance of being 'first in' to cooperate?

Its importance lies in the fact that being first in directly affects the level of the reduction in the fine to be imposed.

24 Going in second

What is the importance of going in second? Is there an 'immunity plus' or 'amnesty plus' option?

There is no 'immunity plus' or 'amnesty plus' option. The effect of going in second is the reduction of the fine.

25 Approaching the authorities

What is the best time to approach the authorities when seeking leniency or immunity?

The best time to approach the CPC seeking leniency or immunity is as soon as possible, bearing in mind the requirements mentioned in question 22. After assessing the risks, the applicant should apply no later than the launch of an investigation by the CPC.

26 Confidentiality

What confidentiality is afforded to the leniency or immunity applicant and any other cooperating party?

Any written statement made to the CPC in the context of the programme forms part of the CPC's file. It may not be disclosed or used for any other purpose than the enforcement of the Competition Law. However, the fact that an undertaking cooperated with the CPC during proceedings will be indicated in any decision so as to explain the reason for the immunity or reduction of the fine. Even after the decision of the CPC is issued confidentiality is protected through a specific provision in the Competition Law.

27 Successful leniency or immunity applicant

What is needed to be a successful leniency or immunity applicant?

See question 22.

28 Plea bargains

Does the enforcement agency have the authority to enter into a 'plea bargain' or a binding resolution to resolve liability and penalty for alleged cartel activity?

There are no specific settlement or plea bargaining procedures provided for in the Competition Law. However, the CPC always hears mitigating arguments prior to the imposition of any penalty, as is the practice of the Cyprus criminal courts.

29 Corporate defendant and employees

What is the effect of leniency or immunity granted to a corporate defendant on its employees?

The leniency and immunity will also be afforded to the officers and employees of the undertaking (see question 22).

30 Cooperation

What guarantee of leniency or immunity exists if a party cooperates?

The programme is operated by the CPC, which is the relevant authority that will investigate and determine if there is an infringement and what penalties are to be imposed. Thus, while the programme does not affect the discretions of the CPC, they will largely apply the provisions of the programme.

31 Dealing with the enforcement agency

What are the practical steps in dealing with the enforcement agency?

The applicant may initially present the case through its legal advisors in hypothetical terms so as to protect its anonymity. If the requirements stated under question 22 are met, then the relevant time is that of the initial contact. If the first applicant fails to meet these requirements, a subsequent applicant can be considered for immunity. The CPC will grant immunity only to the applicant who is the first to come forward and submit evidence. As far as reduction from fine is concerned the marker will be allowed to reduction on a first-come, first-served basis.

The applicant must cooperate fully, on a continuous basis and expeditiously throughout the investigation and the hearing stage. The CPC will evaluate the final position of each undertaking which filed an application for reduction of a fine at the end of the proceedings. Failure to meet any of the requirements set out in this programme at any stage of the proceedings may result in the loss of any favourable treatment.

32 Ongoing policy assessments and reviews

Are there any ongoing or proposed leniency and immunity policy assessments or policy reviews?

The programme is under continuous review and assessment by the CPC.

Defending a case**33 Representation**

May counsel represent employees under investigation as well as the corporation? Do individuals require independent legal advice or can counsel represent corporation employees? When should a present or past employee be advised to seek independent legal advice?

Legal counsel can act for the undertaking as well as its employees and officers. There is no requirement for separate legal representation.

34 Multiple corporate defendants

May counsel represent multiple corporate defendants?

Legal counsel may act for multiple corporate defendants provided that all such defendants agree to single representation.

Update and trends

There are no particular developments as of late, except to say that the CPC is still vigilantly pursuing apparent cartels.

35 Payment of legal costs

May a corporation pay the legal costs of and penalties imposed on its employees?

An undertaking can pay the legal costs and fines of its officers and employees.

36 Getting the fine down

What is the optimal way in which to get the fine down?

The optimal way of getting the fine down is to cooperate fully and frankly with the CPC and to withdraw from the cartel.

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