

# Cartels

Enforcement, Appeals & Damages Actions

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# Cyprus

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## Overview of the law and enforcement regime relating to cartels

Cyprus, as part of the European Union, adopted the Protection of Competition Law of 2022 (Law No. 13(I)/2022) on 23 February 2022. This law transposes Directive (EU) No. 2019/1 into Cyprus's legal system. Law No. 13(I)/2022 effectively repeals and replaces the previous legal framework governing competition law (the Protection of Competition Law of 2008 (Law No. 13(I)/2008, as amended by Law No. 4(I)/2014)), reinforces the powers of the Cyprus Commission for the Protection of Competition (CPC) and gives guidance and clarity on several procedural issues. Law No. 13(I)/2022 has been recently amended through the Amendment Law on the Protection of Competition, Law No. 169(I)/2022 (the Amendment Law). The Amendment Law provides for significant alterations to the criteria of persons who can be appointed as Chairperson and Members of the CPC and also amends the level of the fine that a Regulation of the Council of Ministers can determine for criminal offences from €85,000 to €350,000.

Apart from Law No. 13(I)/2022, which is the primary legislation in governing competition in Cyprus, there are also other ancillary legislations, such as (i) the Law on Actions for Damages for Infringements of Competition Law of 2017 (Law No. 113(I)/2017), which deals specifically with the right of a person/entity who has suffered harm due to an infringement of competition law to claim full compensation against the relevant undertaking or association, and (ii) the Leniency Programme (Immunity from and Reduction of Administrative Fines in cases of Restrictive Collusions Infringing Section 3 of the Law and/or Article 101 of the Treaty on the Functioning of the European Union (TFEU) Regulations of 2022 (P.I. 442/2022)), which, in essence, offers those undertakings involved in a cartel that self-reports and hands over evidence either total immunity from fines or a reduction of the fines that the CPC would have otherwise imposed.

Although Law No. 13(I)/2022 does not define the term “cartel”, Section 3 of Law No. 13(I)/2022 (which mirrors Article 101(1) of the TFEU) prohibits agreements, concerted practices and decisions of associations of undertakings whose object or effect is the prevention, restriction or distortion of competition within Cyprus, and particularly those that:

- i. directly or indirectly fix purchase or selling prices or trading conditions;
- ii. limit or control production, markets, technical development or investments;
- iii. share markets or sources of supply;
- iv. apply dissimilar conditions to equivalent transactions, thereby placing certain undertakings at a competitive disadvantage; and
- v. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Pursuant to Section 4(1) of Law No. (I)/2022, in the absence of a prior decision to the contrary by the CPC, an agreement, decision or concerted practice that falls within the ambit of Section 3(1) shall be permissible and not prohibited if it cumulatively satisfies the conditions set out below:

- i. with the reasonable participation of consumers, the agreement decision or practice contributes to a resulting benefit in the development of production or distribution of goods, or the promotion of technical or financial development;
- ii. it does not impose restrictions on the undertakings concerned unless they are absolutely necessary for the achievement of the above-mentioned purposes; and
- iii. it does not afford the undertakings concerned the possibility of eliminating competition from a substantial part of the product market concerned.

The competent body for the enforcement of competition law in Cyprus is the CPC, which is endowed with the powers to investigate, enforce competition rules, decide on the infringement of competition law, and impose administrative fines and sanctions upon findings of cartels. The CPC is assisted by the Service of the CPC, which is responsible for collecting and verifying all the necessary information so as for the CPC to be in a position to exercise its powers, keeping records, conducting inspections (dawn raids) in the premises of undertakings under investigation, conducting interviews and filing proposals to the CPC.

### Overview of investigative powers in Cyprus

The CPC has wide powers in terms of investigation. An investigation procedure can be initiated either by the CPC on its own (*ex officio*) or following the submission of a complaint by a third party who has a “legitimate interest”. A person has a “legitimate interest” when he is able to prove that he suffered or is at risk of imminent danger to suffer economic harm or was placed in a disadvantageous position as a direct result of the alleged concerted practice.

Pursuant to Law No. 13(I)/2022, the CPC has exclusive competence to:

- i. collect information from undertakings, associations of undertakings, other physical or legal persons, or public or private entities;
- ii. summon physical or legal persons for interviews for the purpose of receiving statements and information concerning the subject of the investigation, with an additional power to issue administrative fines in cases of failure to comply;
- iii. enter premises, land and means of transport of undertakings or associations of undertakings (with the exception of residences) for the purpose of conducting an inspection (dawn raid);
- iv. examine and take copies or extracts of records, books, accounts and other documents related to the business;
- v. seal any business premises and records, books, accounts and other documents to inspect them; and
- vi. ask representatives or employees questions and record their answers.

### Overview of cartel enforcement activity during the last 12 months

The most recent decisions by the CPC relating to cartels were issued on 13 January 2022 and 15 November 2021.

The first decision related to a complaint filed by a Cyprus company – which provided conventional monitoring services of newspapers, magazines, television and the internet – against the Cyprus Association of Newspaper & Magazine Publishers for infringement of competition law. The complaint focused on the agreement entered into between all

publishers of the Association for granting exclusive use permission of their publications to specific companies, for the purpose of conventional monitoring of media. Having examined the evidence collected and on the basis of the Cyprus Supreme Court's decision stating that reproduction of works without the permission of the beneficiaries constitutes an infringement of the intellectual rights of such works, the CPC found that there was no infringement of Section 3 of Law No. 13(I)/2008, since the complainant did not obtain the requested permission from the publishers, whereas the other company did.<sup>1</sup>

On 15 November 2021, the CPC issued another decision following a complaint against shipping agencies made by Cyprus companies operating in the grain market. This complaint related to collusion between the shipping agencies that resulted in the passing on of an additional fee to the complainants, whereas the Cyprus Grain Commission was not asked to pay that fee. The CPC, based on the evaluated evidence, decided that the non-passing on of the disputed charge to the Cyprus Grain Commission could not be substantiated as being the result of any concerted collusion by the persons against whom the disputed complaint had been lodged. Any different treatment of the complainants that had come about could not be considered the result of collusion between the shipping agencies.<sup>2</sup> Therefore, the alleged infringement of Section 3(1)(d) of the Law was deemed unsubstantiated.

### **Key issues in relation to enforcement and investigation policy**

The investigation and prosecution of cartels constitute a priority for the CPC. In that framework, the CPC operates a “cartel hotline”<sup>3</sup> for the submission of complaints or any information on illegal agreements, which can be useful for the CPC to discover and break up illegal cartels.

### **Leniency/amnesty regime**

The Leniency Programme repealed the previously applicable Regulations on the Immunity from and Reduction of Administrative Fines in Cases of Restrictive Collusions Infringing Section 3 of the Law or/and Article 101 of the TFEU (Regulation 463/2011). Regulation 442/2022 defines the leniency or full exemption from administrative fines of an undertaking wishing to cooperate with the CPC to uncover illegal cartels, which are prohibited by Section 3 of Law No. 13(I)/2022, and lays down the procedure and the requirements for granting an exemption or reduction of the administrative fines imposed by the CPC to an undertaking or association of undertakings.

The CPC grants immunity from administrative fines that would otherwise be imposed on an undertaking due to its involvement in an alleged concerted practice where it is the first that submits evidence to the CPC that:

- i. enables the CPC to carry out a targeted inspection in connection with the secret cartel, provided that the CPC did not yet have in its possession sufficient evidence to carry out such an inspection or had not already carried out such an inspection; or
- ii. is sufficient for the CPC to find an infringement of Article 3, provided that the CPC did not yet have in its possession sufficient evidence to find such an infringement and that no other undertaking previously qualified for immunity from fines under point (a) in relation to that secret cartel.

As far as the reduction of administrative fines is concerned, the CPC can proceed with granting that reduction if the undertaking:

- i. does not fulfil the conditions for immunity from fines;
- ii. cumulatively fulfils the conditions of Regulation 6 of the Leniency Programme;
- iii. discloses to the CPC its participation in a secret cartel; and

- iv. submits to the CPC evidence of the alleged secret cartel that represents significant added value for the purpose of proving an infringement covered by the Leniency Programme, relative to the evidence already in the CPC's possession at the time of the application for reduction of fines.

### **Administrative settlement of cases**

There is no provision of an administrative settlement of cases pending before the CPC.

### **Civil penalties and sanctions**

Law No. 13(I)/2022 provides only for administrative sanctions for antitrust violations. In accordance with Section 29 of the Law, for every violation of Section 3 of Law No. 13(I)/2022 or Article 101 of the TFEU committed by undertakings or associations of undertakings, the CPC may, by decision:

- i. impose administrative fines, depending on the gravity and duration of the infringement;
- ii. oblige the undertakings or associations of undertakings concerned to terminate, within a fixed time limit, the infringement in question and desist from any future repetition, and if the infringement is terminated before the issuing of a decision by the CPC, the latter may issue a declaratory decision condemning the infringement; and
- iii. impose any terms and measures (whether behavioural or structural, depending on the infringement ascertained) necessary to bring the infringement to an end.

The volume of the fines is calculated based on the turnover of an undertaking or undertakings in the preceding financial year (Section 47). In practice, at the time of imposing a fine, the CPC takes into account the gravity as well as the duration of infringement and also whether the undertaking participates in the Leniency Programme.

### **Right of appeal against civil liability and penalties**

A decision issued by the CPC can be challenged before the Administrative Court of Cyprus pursuant to Article 146 of the Constitution of the Republic of Cyprus. The timeframe to challenge such a decision is 75 days from the date of the publication of the decision or the date on which the undertaking was notified about the decision of the CPC. Once the Administrative Court issues its judgment, that judgment can be further appealed before the Supreme Court of Cyprus within 42 days from its issuance.

### **Criminal sanctions**

Law No. 13(I)/2022 does not include any provision for the imposition of criminal sanctions for cartel activity. The only parameter for which a criminal sanction may be imposed is for non-cooperation with the CPC during inspection procedures (Section 38), the failure to comply with a final decision (Section 59), a decision for interim measures (Section 60), or with the duty of secrecy (Section 61), or a combination of the above.

### **Cooperation with other antitrust agencies and cross-border issues**

The CPC is part of the European Competition Network (ECN), the European Competition Authorities (ECA) and the International Competition Network (ICN).<sup>4</sup> Also, in October 2014, the CPC entered into a memorandum of cooperation with the Greek Competition Commission. Furthermore, Law No. 13(I)/2022, which adheres to Directive (EU) No.

2019/1, provides for mutual cooperation between the national competition authorities of the Member States through the establishment of new clauses for the provision of assistance in respect of conducting investigations, disclosing documents, and enforcing sanctions and administrative fines in cases with cross-border elements, in order to guarantee the effective implementation of the competition law framework.

### **Developments in private enforcement of antitrust laws**

The very first judgment in Cyprus awarding damages for the infringement of competition law was issued in February 2022. Although the claim did not relate to cartels but to the abuse of a dominant position in the market, the judgment in question creates an important judicial precedent in the Cyprus legal system, as it recognises the right of individuals or entities to receive compensation for damages suffered as a result of an infringement of competition law.

More specifically, the claim was filed by a Cyprus company, which was engaged in the business of imports, distribution and marketing, both in retail and wholesale, of raw cereals – such as wheat and barley – against the Cyprus Grain Commission. According to the claim, the claimant suffered losses due to practices of the Cyprus Grain Commission that constituted an abuse of its dominant position in the market.

In 2007, a complaint was lodged with the CPC. The CPC examined the matter and concluded that the actions of the Cyprus Grain Commission with regard to barley sales below the average variable costs during specific periods constituted an abuse of its dominant position in the market. Specifically, the Cyprus Grain Commission abused its dominant position by pursuing an aggressive pricing practice in the market for barley sold for use in animal feed. The evidence of the infringement was based on the imposition of prices lower than the average variable cost. The CPC imposed a fine on the Cyprus Grain Commission regarding the infringement.

The issue raised before the Cyprus District Court was whether the claimant suffered losses as a result of the actions of the Cyprus Grain Commission. The Court, after applying European case law on the matter, accepted that the claimant suffered loss as a result of the sales made by the Cyprus Grain Commission below its variable cost and assessed the damages in the total amount of €257,000. The Court was satisfied that the said financial loss was the result of the aggressive pricing applied by the Cyprus Grain Commission during the material period, abusing its dominant position in the cereals market.<sup>5</sup>

### **Reform proposals**

The competition landscape in Cyprus has significantly developed during the last year in relation to both substantive and ancillary legislation. This will undoubtedly give rise to massive competition disputes as well as private enforcement of competition law through follow-on civil claims for damages. Therefore, the application and effectiveness of this legislation must be seen in practice in the forthcoming years.

\* \* \*

### **Endnotes**

1. [http://www.competition.gov.cy/competition/competition.nsf/All/39160B35C607DA2DC225897400302CD7/\\$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%20%CE%95%CE%A0%CE%91%204\\_2022.pdf](http://www.competition.gov.cy/competition/competition.nsf/All/39160B35C607DA2DC225897400302CD7/$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%20%CE%95%CE%A0%CE%91%204_2022.pdf).

2. [http://www.competition.gov.cy/competition/competition.nsf/All/E5FF04B6F95435D0C22588B000305927/\\$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%20%CE%95%CE%A0%CE%91%2068\\_2021.pdf](http://www.competition.gov.cy/competition/competition.nsf/All/E5FF04B6F95435D0C22588B000305927/$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%20%CE%95%CE%A0%CE%91%2068_2021.pdf).
3. [http://www.competition.gov.cy/competition/competition.nsf/page30\\_en/page30\\_en?OpenDocument](http://www.competition.gov.cy/competition/competition.nsf/page30_en/page30_en?OpenDocument).
4. [http://www.competition.gov.cy/competition/competition.nsf/page20\\_en/page20\\_en?OpenDocument](http://www.competition.gov.cy/competition/competition.nsf/page20_en/page20_en?OpenDocument).
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