

Antitrust Cyprus

Competition and Antitrust law is of course an integral part of the business world, ensuring fair competition between competitors and guarding against one company dominating the market, and therefore limiting the choice and variety that the market is offered. To find out about the issues affecting the antitrust sphere at the moment, *Lawyer Monthly* speaks to Maria H. Kyriacou, a lawyer from the Corporate Department of Christodoulos G. Vassiliades & Co. LLC. She is also the head of the EU and Competition Law Department of the firm.

What are the key cases you deal with related to antitrust law?

Our firm's EU and Competition Law department is relatively new. We have provided advice in relation to a number of mergers and successfully obtained merger clearance. Further, we have offered advice in relation to certain corporate restructurings which raised serious competition and state aid issues as well as in relation to a case of an abuse of a dominant position and anti-competitive agreements which involved exclusionary practices and exclusive supply agreements. We are in a position to advise clients on all aspects of competition law (anti-competitive agreements and practices, abuse of dominance, merger control, state aid), both prior to and after a competition law violation occurs. We may represent clients before the Cyprus Competition Commission ('CPC') as well as before the competent national courts.

Do you see many cases of price-fixing?

There have been numerous cases of price-fixing over the years which have been condemned by the CPC, across a broad spectrum of industries, from dentists, dental technicians, local fresh fish, sparkling beverages, concrete, insurance companies, banking charges, gas stations, old people's homes, local wines, gynaecologists and orthopaedics, clinical laboratories, etc. Many findings have been made as a result of ex-officio investigations of the CPC rather than as a result of individual complaints filed. Further, a number of such cases shared the common feature that the common fixed prices had been determined as a result of decisions adopted by the professional organisation of the industry in question, which had issued a common price list or which had set maximum or minimum prices for the product in question.

What challenges do they bring?

It is a rare occasion where competitors put in writing

any agreement they may have reached amongst themselves to fix prices. Having said that, hard evidence does exist at times and the CPC is faced with the sensitive task of ensuring that in any raid it carries out at the premises of undertakings with the aim of gathering such evidence, it does so within the proper limits of the law to ensure that any evidence thus discovered (in hard copies and electronically), would be eligible for use in any actions to be brought. In other cases where there is no hard evidence to prove an agreement between the parties, the CPC is faced with the arduous task of proving that certain parallel behaviour tantamounts to a concerted practice. The use of red herrings by undertakings to throw the CPC off their trail makes the task of the CPC harder, whilst any exchange of information has to be evaluated carefully by the authority to ascertain whether or not it violates the competition rules. Especial problems arise in the cases of oligopolistic markets where parallel behaviour may be the norm due to the structure of the market and the CPC would thus be called to analyse numerous commercial data and practices applied by the undertakings in question, in order to assess whether their parallel behaviour may be explained by the market conditions or not (in this latter case, their behaviour would be considered as collusive). Here, there are the practical problems of lack of historical data to which the CPC may resort to for analysis. In addition, the CPC may lack the necessary scientific expertise within the Service of the Commission to carry out the necessary econometric analyses which may be required to examine the case.

Is there anything else you would like to add?

On 9th September 2013 two public consultations were announced by the CPC, one relating to the revision of the Law on the Protection of Competition and another on the Law on the Control of Concentrations between Undertakings. The revision of the said laws is a condition of the Memorandum of Understanding entered into between the Republic of Cyprus and Troika, with

the commitment to enact the revised laws by the end of 2013. The driving force behind the revision of the Law on the Protection of Competition is to bring it more in line with the provisions of Council Regulation 1/2003, in order to increase the degree of harmonisation of the national law with the existing Community legal framework. The law on the Control of Concentrations between Undertakings is being revised in order to harmonise fully and more effectively the current provisions with those of Council Regulation EC 139/2004. A notable proposed amendment in the Law on the Protection of Competition is to render any decision of the CPC, the European Commission and of any national competition authority, especially in the context of actions for damages before national courts. As regards the Law on the Control of Concentrations between Undertakings, an important amendment which is contemplated is the change of the current definition of a 'concentration' so that one of the criteria for establishing whether there is a concentration would be the existence of 'two or more' participating undertakings being active in Cyprus. **LM**

Contact:



Ms Maria H. Kyriacou
 Advocate | Head of EU & Competition
 Law Department
 Christodoulos G. Vassiliades & Co. LLC
 Email: mariak@vasslaw.net
 Telephone: +357 2255677
 Fax: +357 2255688



CHRISTODOULOS G. VASSILIADES & CO. LLC
 Advocates - Legal Consultants