



Competition Law and Merger Control in Cyprus

Protecting Competition from Unfair Trading
Practice and Ensuring Merger Compliance

Anastasios Antoniou LLC is a boutique Cyprus law firm advising on all aspects of Cyprus Law, EU Law and International Law with an expert focus on competition law, commercial and corporate law, investment funds and financial services law, IP and energy law.

What sets our Firm apart is its commitment to the provision of comprehensive legal solutions to contemporary legal challenges in a clear, reliable and unequivocal manner.

Anastasios Antoniou LLC is a Member Firm of **EUROJURIS**, the leading network of law firms in Europe, covering more than 40 countries worldwide.

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Anastasios Antoniou LLC's Competition Law Practice has been awarded as the best such practice in Cyprus by Corporate INTL's Legal Awards in 2011 and has also received the Global Award for Competition Legal Advisory Excellence in 2010.

Anastasios A. Antoniou, the Firm's Senior Partner is a Member of the European Competition Lawyers Forum, the IBA's Antitrust Committee and is a regular contributor of articles in journals and legal publications on Competition Law.

Competition Law

Competition is a basic mechanism of the market economy and encourages companies to provide consumers with the products that consumers want. It encourages innovation, and pushes down prices. Competition (or antitrust) legislation is there to ensure that market participants can compete equally and that anticompetitive practices, abuses of dominant positions in the market and concentrations such as mergers and acquisitions do not prevent or hinder competition in any given market, nationally or within the Single Market of the EU. Under fair competition conditions, consumers are offered goods and services at higher quality and at competitive prices, which increases efficiencies in the operation of the market to the benefit of economic growth and development, as well as towards research and innovation.

"...legislation is there to ensure that market participants can compete equally and that anticompetitive practices, abuses of dominant positions in the market and concentrations such as mergers and acquisitions do not prevent or hinder competition in any given market..."

ARTICLES AND 102 OF THE TREATY

Competition law has been present in the legal order of the European Union since its inception as the European Economic Community in 1957. The Treaty on the Functioning of the European Union (TFEU) enshrines the protection of competition in a very wide-reaching manner, by virtue of Articles 101 and 102.

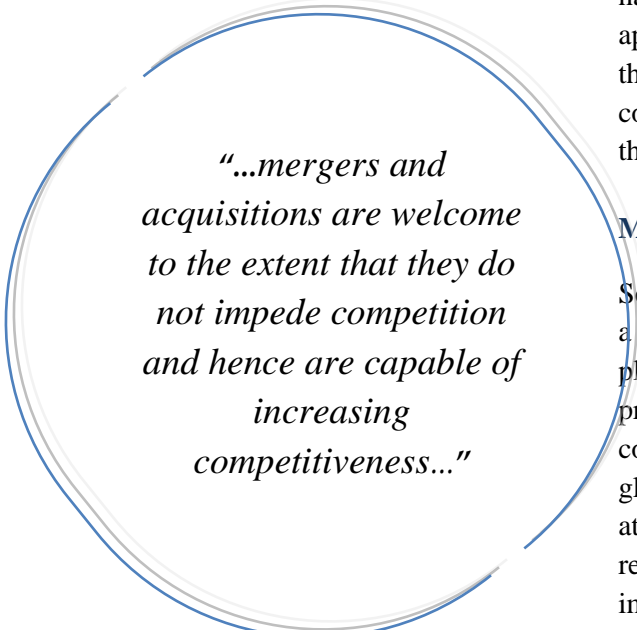
Article 101 TFEU prohibits agreements between undertakings that affect trade and have their object or effect the prevention, restriction or distortion of competition within the Common Market. It specifies particular types of such agreements as being those that:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) 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 such contracts.

Article 102 TFEU provides for the incompatibility and

prohibition of the abuse of an undertaking's dominant position in the market.

The European Commission is empowered by the Treaty to apply these prohibition rules and enjoys a number of investigative powers to that end (e.g. inspection in business and non business premises, written requests for information, etc). It may also impose fines on undertakings that violate EU antitrust rules. Since 1 May 2004, all national competition authorities are also empowered to apply fully the provisions of the Treaty in order to ensure that competition is not distorted or restricted. National courts may also apply these prohibitions so as to protect the individual rights conferred to citizens by the Treaty.



"...mergers and acquisitions are welcome to the extent that they do not impede competition and hence are capable of increasing competitiveness..."

MERGER CONTROL

Some mergers and acquisitions may reduce competition in a market, usually by creating or strengthening a dominant player. This is likely to harm consumers through higher prices, reduced choice or less innovation. Increased competition within the European single market and globalisation are among the factors which make it attractive for companies to join forces. Such reorganisations are welcome to the extent that they do not impede competition and hence are capable of increasing the competitiveness of European industry, improving the conditions of growth and raising the standard of living in the EU.

The objective of examining proposed mergers is to prevent harmful effects on competition. Mergers going beyond the national borders of any one Member State are examined at European level. This allows companies trading in different EU Member States to obtain clearance for their mergers in one go. The main legislative texts for merger decisions are the TFEU Merger Regulation and the Implementing Regulation. The Merger Regulation contains the main rules for the assessment of concentrations, whereas the Implementing Regulation concerns procedural issues.

Cyprus Competition Law

The Protection of Competition Law 2008 in conjunction with the Control of Concentrations of Enterprises Laws 1999 and 2000, place the rules and principles that have as an objective the maintenance of effective competition within the Cypriot market.

NATIONAL COMPETITION AUTHORITY

The Cypriot competition authority is the Commission for the Protection of Competition (CPC). The relevant legislation entrusts the CPC with the exclusive competence to enforce competition rules and ensure the harmonious operation of the market.

The CPC has the exclusive competence to:

- a) investigate and take decisions on the infringement of sections 3 and/or 6 of the Law and of Articles 101 and/or 102 of the TFEU Treaty
- b) decide whether all the conditions of section 4 of the Law are met so that an agreement, decision and concerted practice which falls under section 3(1) of the Law is valid
- c) decide whether all the conditions of Articles 101(3) of the Treaty are met so that an agreement, decision and concerted practice which falls under Article 101 of the Treaty is valid
- d) decide whether the concerted practice for which an Order has been requested pursuant to section 5(1) of the Law, falls within the category of the concerted practices provided for in the Order and thus section 3 of the Law does not apply
- e) decide whether the concerted practice for which there is an invocation of the Community Regulation, pursuant to section 5(2) of the Law, falls within the category of the concerted practices provided for in the Community Regulation
- f) impose administrative fines and other sanctions
- g) decide on interim measures
- h) recall the benefit of the application of the Community Exemption issued by the European Commission in regards to the specific concerted practice, when it concerns the geographical market of Cyprus.

“agreements, decisions and concerted practices, such as cartels, which have their object or effect the prevention, restriction or distortion of competition, will be caught and penalized by the Commission for the Protection of Competition”

The CPC has the power to impose the following measures for every infringement:-

- a) to impose an administrative fine, according to the gravity and duration of the infringement, not exceeding ten percent of the combined annual revenue of the undertaking or not exceeding ten percent of the revenue of every undertaking member of the association of undertakings, in the year within which the infringement took place or in the year which immediately preceded the infringement
- b) require that the undertakings or association of undertaking bring the infringement to an end within the set time period and avoid repetition in the future. Where the infringement has been brought to an end before the decision of the CPC, the CPC may condemn the undertakings with a reconnoitring decision
- c) impose terms and behaviour and /or structural remedies, according to the infringement, necessary to bring the infringement to an end
- d) where the infringement continues by the participated undertakings or association of undertakings, the CPC may impose and administrate fine up to €85.000 for every day the infringement continues
- e) where the Commission intends to adopt a decision requiring that the infringement is brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the CPC in its preliminary assessment, the CPC may by decision make those commitments binding on the undertakings. Such a decision may be adopted for a specific period and shall conclude that there is no longer action by the CPC.

In the case of refusal or by negligence of the undertakings or association of undertakings concerned to comply with the measures set by the CPC pursuant to subsection (b) or (e), the CPC may impose an administrative fine up to €85.000 for every day the infringement continues.

Our Services

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Competition law is a very sensitive legal field, its rules facilitating competitive balances in markets and ensure market entrants enjoy equal opportunities to compete with large market players. Collusive behaviour, cartels and abuse of market dominance in all industries are now subject to competition law and become increasingly dealt with.

We are one of the few truly specialized competition practices in Cyprus, able to deal with both domestic and cross-border competition issues, should these arise in the context of mergers, agreements or other practices. Our services can help your organization make sure that, whichever industry you are operating in, your transactions meet the requirements of all competition rules, that your business policies are compliant and that your interests are well-protected. Our full range of services in competition law also means that we are your definitive provider of legal support in cases where your business is affected by anticompetitive practices by dominant market players that could be abusing their position.

We provide our legal services in relation to the following situations:

- [Cartels, price fixing and other coordinated practices between competitors](#)
- [Abuses of market dominance as well as refusals to access or supply or other entry barriers](#)
- [Anticompetitive agreements such as tying and bundling](#)
- Advise on your agreements, decisions and practices so that these are compliant with competition rules
- [Ensure mergers and acquisitions are compliant with competition rules and are duly notified to the competent authorities for clearance](#)
- Competition Litigation of any kind, including interim measures

Our work also focuses in sector-specific compliance, including [energy](#) (electricity and gas), [telecommunications](#), air transport and media.

Contact us at corporate@antoniou.com.cy to discuss your legal needs.