

CARTEL REGULATION

Cyprus



Cartel Regulation

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Quick reference guide enabling side-by-side comparison of local insights, including relevant law and institutions; application of the law and jurisdictional reach; international cooperation; specifics of investigations and cartel proceedings; criminal, civil and administrative sanctions; private damage claims and class actions; treatment of cooperating parties; defending a case; getting any fine down; and recent trends.

Generated 07 January 2023

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LEGISLATION AND INSTITUTIONS

Relevant legislation

What is the relevant legislation?

The relevant legislation is the following:

- the Protection of Competition Law of 2022 (Law No. 13(I)/2022) (the Law), which repealed and supplanted the previously existing Protection of Competition Law of 2008 (Law No. 13(I)/2008, as amended by Law No. 41(I)/2014);
- the Law on Actions for Damages for Infringements of Competition Law of 2017 (Law No. 113(I)/2017); and
- the 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 Treaty on the Functioning of the European Union (Leniency Programme) of 2011 (Regulation 463/2011).

Law stated - 08 September 2022

Relevant institutions

Which authority investigates cartel matters? Is there a separate prosecution authority? Are cartel matters adjudicated or determined by the enforcement agency, a separate tribunal or the courts?

The competent authority for the enforcement of cartel matters in Cyprus is the Commission for the Protection of Competition (CPC), which has been granted the powers to investigate, enforce competition rules and issue infringement decisions, and impose administrative fines and sanctions upon findings of cartels.

The CPC is assisted by the Service of the CPC, which provides preliminary evaluation and reports to the CPC.

Law stated - 08 September 2022

Changes

Have there been any recent changes, or proposals for change, to the regime?

The Law was enacted on 23 February 2022, repealing and replacing previous legislation, to transpose the ECN+ Directive (EU) 2019/1 . The new regime ensures better harmonisation in proceedings that have been instigated in parallel with other national competition agencies and affords the CPC more extensive guarantees of independence, resources and effectiveness in its enforcement and fining powers.

Law stated - 08 September 2022

Substantive law

What is the substantive law on cartels in the jurisdiction?

Section 3 of the Law is the applicable provision. It prohibits agreements, concerted practices and decisions of associations of undertakings whose object or effect is the prevention, restriction or distortion of competition within Cyprus. In particular, section 3 regulates those that:

- directly or indirectly fix prices or any other trading conditions;
- limit or control production, markets, technical development or investments;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions, thereby placing certain undertakings at a competitive disadvantage; and
- make the conclusion of contracts subject to supplementary obligations that are not connected to the subject of such contracts.

Although it is not specified within the provision whether cartels are deemed to restrict competition by object or effect, the case law has evolved in such a way that they are considered to be hardcore infringements that prevent, restrict or distort competition by object.

The level of knowledge or intention is irrelevant for attributing liability for cartel infringement. The key element for establishing liability is participation in a cartel that has as its object or effect the prevention, restriction or distortion of competition.

Law stated - 08 September 2022

Joint ventures and strategic alliances

To what extent are joint ventures and strategic alliances potentially subject to the cartel laws?

Joint ventures and strategic alliances are subject to cartel law to the extent that they fall within the Law's definitions related to undertakings.

Law stated - 08 September 2022

APPLICATION OF THE LAW AND JURISDICTIONAL REACH

Application of the law

Does the law apply to individuals, corporations and other entities?

The recently enacted Protection of Competition Law of 2022 (Law No. 13(I)/2022) (the Law) applies to undertakings and associations of undertakings.

The term 'undertaking' is defined as any entity engaged in economic activities, regardless of legal status or the way in which it is funded. An 'association of undertakings' is defined as any company, partnership, association, society, institution or body of persons, having a legal personality or not, that represents the trade interests of autonomous undertakings and takes decisions or enters into contracts for the promotion of those interests.

Law stated - 08 September 2022

Extraterritoriality

Does the regime apply to conduct that takes place outside the jurisdiction (including indirect sales into the jurisdiction)? If so, on what jurisdictional basis?

The regime applies to conduct that takes place outside the jurisdiction to the extent that such conduct affects competition in Cyprus by either its object or its effect.

As per the recently introduced provisions of the Law relating to extraterritoriality, the Commission for the Protection of Competition has been granted extensive powers to effectively enforce the Law outside its jurisdiction, both during the investigation phase and the sanctioning phase.

Law stated - 08 September 2022

Export cartels

Is there an exemption or defence for conduct that only affects customers or other parties outside the jurisdiction?

No provisions within the Law contain exemptions or defences concerning conduct that affects only customers or other parties outside the jurisdiction.

Law stated - 08 September 2022

Industry-specific provisions

Are there any industry-specific infringements? Are there any industry-specific defences or exemptions?

No provisions within the Law concern industry-specific infringements.

Section 3 of the Law may be declared inapplicable to specific categories of agreements, concerted practices and decisions by associations of undertakings by order of the Council of Ministers based on section 5(1) of the Law. Orders relating to the motor vehicle sector, the insurance sector and vertical agreements have been issued by the Council of Ministers.

Law stated - 08 September 2022

Government-approved conduct

Is there a defence or exemption for state actions, government-approved activity or regulated conduct?

The Law does not apply to undertakings that have been assigned to operate services of general economic interest or that have the character of a revenue-producing monopoly, insofar as it obstructs them from the performance of the tasks assigned to them by the state (section 7(1)(b) of the Law). Section 7(2) of the Law presumes that the tasks cannot be carried out in another financial or technical way that is compatible with the Law.

Undertakings that have no discretion in respect of their conduct but comply with mandatory government decisions or regulations cannot be held liable for competition law infringements.

Law stated - 08 September 2022

INVESTIGATIONS

Steps in an investigation

What are the typical steps in an investigation?

The Commission for the Protection of Competition (CPC) may initiate an investigation either on its own (ex officio) or

following the submission of a complaint.

In conducting an investigation, the CPC has the power to collect information concerning a potential infringement or infringements, acting on its own authority or on behalf of other national competition agencies, or both.

To that end, the CPC may address written requests to undertakings, associations of undertakings or other natural persons, or public or private entities requesting the provision of information within a reasonable time frame, which cannot be less than 20 days. Where necessary, the CPC may request the provision of additional information or clarifications within a set time frame, which cannot be less than seven days.

Upon enactment of the Protection of Competition Law of 2022 (Law No. 13(l)/2022) (the Law), the CPC was vested with greater authority to conduct interviews, being empowered to summon any natural or legal person of interest to receive statements and collect evidence or information with regard to the subject of the investigation. Failure to comply, or the provision of false or inaccurate information – or a combination thereof – are regulated by the new framework, which empowers the CPC to impose relevant administrative fines.

The CPC may also conduct unannounced inspections (dawn raids), and enter the premises of undertakings and associations of undertakings (with the exemption of residences).

In cases where the CPC ascertains the existence of a prima facie case of infringement, the investigation stage concludes with a written statement of objections, which is sent to the undertaking or undertakings investigated or to a designated representative.

Undertakings or associations of undertakings that form the object of CPC investigations may access the entire administrative file, with the exceptions of confidential information, business secrets and, where applicable, leniency applications. In cases where the CPC finds that the complaint does not fall within the Law or that no reasonable grounds for the suspected infringement exist, it issues a decision.

Law stated - 08 September 2022

Investigative powers of the authorities

What investigative powers do the authorities have? Is court approval required to invoke these powers?

The CPC derives the following regulatory powers from its authority as the competent national authority or as an authority acting on behalf of NCAs established in other EU member states:

- to collect information through written requests to undertakings, associations of undertakings, other natural or legal persons, or public or private entities;
- to subpoena natural 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;
- to 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) – the inspection of residences or any other location not included herein may be conducted only upon issuance of a duly reasoned judicial warrant;
- to examine and take copies or extracts of records, books, accounts and other documents related to the business (regardless of the medium used for their storage) – following the new legal framework, this power may extend to digital or electronic evidence and, in general, all evidence regardless of format or manner of storage;
- to seal any business premises and records, books, accounts and other documents to inspect them;
- to ask representatives or employees questions and record their answers; and

- to conduct sectoral inquiries or inquiries into particular types of agreements in several sectors when suspecting a restriction or distortion of competition due to the trend of trade, the rigidity of prices or other circumstances.

In relation to the final point above, the CPC may request information and conduct inspections. Moreover, it may publish a report on the results of its inquiry, as well as use the evidence acquired for potential infringement investigations.

Law stated - 08 September 2022

INTERNATIONAL COOPERATION

Inter-agency cooperation

Is there cooperation with authorities in other jurisdictions? If so, what is the legal basis for, and extent of, such cooperation?

The Commission for the Protection of Competition (CPC) is part of the European Competition Network, the European Competition Authorities Network and the International Competition Network.

The CPC has had in place a memorandum of cooperation with the Hellenic Competition Commission since 2014 and has cooperated with other competition authorities in the past, including the French Competition Authority and the Irish Competition and Consumer Protection Commission, for staff training purposes.

The recently enacted Protection of Competition Law of 2022 (Law No. 13(I)/2022), incorporating the ECN+ Directive (EU) 2019/1, enhances mutual cooperation among national competition agencies through the introduction of new clauses for the provision of assistance with conducting investigations, disclosure of documents with a cross-border interest and the enforcement of sanctions, as well as the enforcement of administrative fines to guarantee effective implementation of the competition law framework.

Law stated - 08 September 2022

Interplay between jurisdictions

Which jurisdictions have significant interplay with your jurisdiction in cross-border cases? If so, how does this affect the investigation, prosecution and penalising of cartel activity in cross-border cases in your jurisdiction?

The CPC has no significant interplay with any other jurisdictions in relation to cross-border cases.

Law stated - 08 September 2022

CARTEL PROCEEDINGS

Decisions

How is a cartel proceeding adjudicated or determined?

Cartel proceedings are adjudicated or determined by the Commission for the Protection of Competition (CPC) following the completion of the investigation stage. Upon examination of evidence collected during the investigation stage, the CPC decides whether a prima facie case of infringement can be established.

In cases where it ascertains the existence of a prima facie case of infringement, the CPC draws up a statement of objections and addresses it to the undertakings concerned, providing a reasonable time frame for the submission of

their written observations. At this stage, and upon assessing the seriousness of the potential infringement, the CPC may also adopt interim measures based on proportionality grounds.

The new provisions provided in the Protection of Competition Law of 2022 (Law No. 13(I)/2022) (the Law) have vested the CPC with the power to reject further examination of complaints of potential infringements of the Law on the basis of its enforcement priority criteria.

The undertakings concerned may request to develop the arguments contained within their written observations in an oral proceeding. The CPC has the discretionary power to approve their request.

The CPC may reserve its decision for a later date. If it intends to impose an administrative fine, it is obliged to inform the undertakings concerned of its intention and reasoning, and provide a strictly limited period of 30 days for the submission of any observations.

The level of the fine is determined by the gravity and duration of the infringement, and may be up to 10 per cent of the turnover achieved by the infringing undertaking in the preceding year.

If an administrative fine is imposed following an infringement decision, the undertakings concerned must, unless expressed otherwise, arrange payment of the administrative fine within a 60-day time frame from notification of the decision.

In cases of ongoing infringement, the CPC may issue a decision ordering its termination within a set time frame. In cases where the infringement has already ceased, the CPC may condemn it through a declaratory decision.

Law stated - 08 September 2022

Burden of proof

Which party has the burden of proof? What is the level of proof required?

The burden of proof rests with the CPC, which must prove infringement beyond a reasonable doubt.

However, the burden of proof in relation to the invocation of defences or exemptions lies with the undertaking making the claim.

Law stated - 08 September 2022

Circumstantial evidence

Can an infringement be established by using circumstantial evidence without direct evidence of the actual agreement?

An infringement may be established by using circumstantial evidence and without direct evidence of actual agreement. However, such circumstantial evidence must be considered holistically. The evidence must be sufficiently accurate, convincing and converging to support an allegation of infringement.

Law stated - 08 September 2022

Appeal process

What is the appeal process?

Decisions issued by the CPC may be challenged before the Administrative Court of Cyprus on the basis of article 146 of the Constitution of the Republic of Cyprus within 75 days from the date of its publication or the date on which the

undertaking was notified of the CPC decision.

A decision issued by the Administrative Court may be subsequently appealed before the Supreme Court of Cyprus within 42 days from its issuance.

Law stated - 08 September 2022

SANCTIONS

Criminal sanctions

What, if any, criminal sanctions are there for cartel activity?

The Protection of Competition Law of 2008 (Law No. 13(I)/2008, as amended by Law No. 41(I)/2014) did not contain any provisions for the imposition of criminal sanctions for cartel activity.

Criminal sanctions for legal or natural persons may be imposed only in the context of non-cooperation with the Commission for the Protection of Competition (CPC) during inspections, failure to comply with a final decision, a decision for the adoption of interim measures or failure to comply with the duty of secrecy, or a combination thereof.

Law stated - 08 September 2022

Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

The CPC may, depending on the gravity and duration of the infringement, impose the following administrative sanctions:

- fines of up to 10 per cent of the total annual turnover of an undertaking; and
- fines of up to the sum of 10 per cent of the total annual turnover of every undertaking that is a member of the infringing association of undertakings.

Additionally, for each day that an undertaking fails to comply with a final decision or a decision imposing interim measures issued by the CPC, the latter may impose upon the former a fine of up to 5 per cent of its average daily turnover for each day that the infringement continues.

Fines are calculated in accordance with the worldwide turnover achieved by the undertaking or undertakings in the preceding financial year.

For the purposes of the imposition of administrative fines following infringement findings, under the Protection of Competition Law of 2022 (Law No. 13(I)/2022) (the Law), the CPC may expand the notion of undertakings to enforce fines against parent companies as well as economic and legal successors of corporate entities, notwithstanding changes in their corporate structure.

Law stated - 08 September 2022

Guidelines for sanction levels

Do fining or sentencing principles or guidelines exist? If yes, are they binding on the adjudicator? If no, how are penalty levels normally established? What are the main aggravating and mitigating factors that are considered?

The Law does not contain any guidelines or principles for setting fines. In practice, when setting a fine, the CPC considers the gravity and duration of the infringement, as prescribed in section 24 of the Law, and may take into account the European Commission's guidelines on setting the fine. Fines may also be reduced through participation in the leniency programme, the provisions of which are contained in the 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 Treaty on the Functioning of the European Union (Leniency Programme) of 2011 (Regulation 463/2011) (the Leniency Programme).

Law stated - 08 September 2022

Compliance programmes

Are sanctions reduced if the organisation had a compliance programme in place at the time of the infringement?

The Law does not contain any guidelines or principles for setting fines. In practice, when setting a fine, the CPC considers the gravity and duration of the infringement, as prescribed in section 24 of the Law, and may take into account the European Commission's guidelines on setting the fine. Fines may also be reduced through participation in the Leniency Programme.

Law stated - 08 September 2022

Director disqualification

Are individuals involved in cartel activity subject to orders prohibiting them from serving as corporate directors or officers?

The Law contains no provisions concerning director disqualification.

Law stated - 08 September 2022

Debarment

Is debarment from government procurement procedures automatic, available as a discretionary sanction, or not available in response to cartel infringements?

The Law contains no provisions concerning debarment from government procurement procedures in response to cartel infringements.

Law stated - 08 September 2022

Parallel proceedings

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

Given that the Law does not provide for criminal sanctions in relation to cartel infringements, and that administrative sanctions are imposed only on undertakings and associations of undertakings, parallel proceedings are not applicable.

PRIVATE RIGHTS OF ACTION

Private damage claims

Are private damage claims available for direct and indirect purchasers? Do purchasers that acquired the affected product from non-cartel members also have the ability to bring claims based on alleged parallel increases in the prices they paid ('umbrella purchaser claims')? What level of damages and cost awards can be recovered?

Any natural or legal person, or public authority, that has suffered damage due to a competition law infringement may bring an action for damages (private damage claim) before the district courts of Cyprus on the basis of the Law on Actions for Damages for Infringements of Competition Law of 2017 (Law No. 113(I)/2017) (the Law on Damages).

Actions for damages are available to both direct and indirect purchasers.

A plaintiff bringing an action under the Law on Damages may seek to be fully compensated. Full compensation means the restoration of the party who has suffered damage to the situation it would have been in had the infringement of competition law not occurred. This includes actual loss and loss of profit, as well as interest due from the time the damage occurred until the time when the compensation is paid. Full compensation does not include punitive damages.

Indirect purchasers must prove that:

- the defendant has infringed competition law;
- the infringement resulted in the imposition of an additional charge to the direct purchaser of the defendant; and
- the plaintiff (indirect purchaser) has purchased the affected product.

Passing-on may be used as a defence by defendants, provided that they prove that the plaintiff has passed on, either fully or partially, the overcharge imposed from the infringement.

There are no specific provisions for relief on umbrella purchaser claims. However, such claims may be possible under European Court of Justice case law (Case No. C-557/12, Kone AG and others v ÖBB-Infrastruktur AG).

The level of damages is single and compensatory, as the Law on Damages stipulates that an infringing party should not be subject to multiple liabilities when the overcharge has been passed on along the supply chain (section 15).

As at September 2022, there is no case law on actions under the Law on Damages.

Law stated - 08 September 2022

Class actions

Are class actions possible? If so, what is the process for such cases? If not, what is the scope for representative or group actions and what is the process for such cases?

The Law on Damages does not contain any provisions that allow class actions.

Law stated - 08 September 2022

COOPERATING PARTIES

Immunity

Is there an immunity programme? If so, what are the basic elements of the programme? What is the importance of being 'first in' to cooperate?

The current such programme has been in place since 2011 under the 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 Treaty on the Functioning of the European Union (Leniency Programme) of 2011 (Regulation 463/2011) (the Leniency Programme). The Leniency Programme provides two kinds of beneficial treatment to cooperating undertakings:

- immunity from the administrative fine; and
- reduction of the administrative fine.

Immunity may be granted to the first undertaking that submits evidence sufficient to either initiate an inspection for an alleged infringement or find an infringement. Immunity cannot be granted if the Commission for the Protection of Competition (CPC) already possesses sufficient evidence for either of the aforementioned or if the CPC has already granted conditional immunity to another undertaking.

An undertaking seeking immunity must fulfil the following conditions:

- cooperate fully, actively and on a continuous basis with the CPC, from the date of submission to the completion of the procedure;
- terminate its involvement in the alleged infringement at the time of submitting its leniency application (unless the CPC considers it reasonably necessary to act otherwise to preserve the integrity of the inspections carried out); and
- demonstrate that it has not incited other undertakings to participate in the infringement.

Undertakings that have incited others to participate may, however, apply for a reduction of the administrative fine.

The granting of immunity or reduction of the administrative fine under the Leniency Programme does not exclude an undertaking's civil liability in private litigation.

Law stated - 08 September 2022

Subsequent cooperating parties

Is there a formal programme providing partial leniency for parties that cooperate after an immunity application has been made? If so, what are the basic elements of the programme? If not, to what extent can subsequent cooperating parties expect to receive favourable treatment?

Subsequent cooperating parties may apply for a reduction of the administrative fine, provided that they have submitted evidence of significant added value, meaning that it strengthens the CPC's ability to prove the alleged infringement.

Undertakings applying for a reduction of the administrative fine must also cooperate fully, actively and on a continuous basis with the CPC, and terminate their involvement in the infringement at the time of submitting evidence (unless otherwise instructed by the CPC).

A subsequent cooperating undertaking applying for a reduction of the administrative fine and meeting the above conditions is eligible for a reduction of up to 50 per cent of the administrative fine, depending on whether it was the first, second or third undertaking to have applied.

Law stated - 08 September 2022

Going in second

How is the second cooperating party treated? Is there an 'immunity plus' or 'amnesty plus' treatment available? If so, how does it operate?

Subsequent cooperating parties may be granted a reduction of the administrative fine by the CPC if they fulfil the necessary conditions. More specifically, the second cooperating party may benefit from a 30 per cent to 50 per cent reduction of the applicable administrative fine. The third cooperating party, and thus second under the administrative fine reduction procedure, may receive a 20 per cent to 30 per cent reduction. Subsequent parties may receive a reduction of up to 20 per cent.

There is no immunity plus or amnesty plus treatment available.

Law stated - 08 September 2022

Approaching the authorities

Are there deadlines for initiating or completing an application for immunity or partial leniency?
Are markers available and what are the time limits and conditions applicable to them?

Although the Leniency Programme does not contain a specific deadline for the submission of immunity applications, time is of the essence when applying, given that immunity is granted only to the first applicant that meets the conditions.

The first immunity applicant may apply for a marker to ensure priority until the collection of all necessary information is complete. If the marker is perfected within the time frame provided by the CPC to that end, the application is considered to have been submitted on the date the marker was granted.

Applications for a reduction of the administrative fine may be submitted at any time prior to the issuance of a decision by the CPC concerning an alleged infringement. However, if they are submitted after the issuance of the statement of objections, they may be disregarded by the CPC.

Law stated - 08 September 2022

Cooperation

What is the nature, level and timing of cooperation that is required or expected from an immunity applicant? Is there any difference in the requirements or expectations for subsequent cooperating parties that are seeking partial leniency?

Participating undertakings must cooperate fully, actively and on a continuous basis with the CPC from the date of submission of the leniency application to the date the procedure is completed.

Law stated - 08 September 2022

Confidentiality

What confidentiality protection is afforded to the immunity applicant? Is the same level of confidentiality protection applicable to subsequent cooperating parties? What information will become public during the proceedings and when?

The identity of a leniency applicant, the content of its application, and the nature and extent of its cooperation are protected until a statement of objections is drawn up by the CPC, unless the latter is bound by another legal obligation or has obtained the consent of the applicant to disclose the information.

The Leniency Programme does not differentiate between the levels of confidentiality applicable to the cooperating parties.

Moreover, unless the applicant has consented or the information became known in a different way from the CPC, the latter cannot use information submitted by undertakings whose application was rejected.

Subject to its obligation to disclose documents upon which it intends to base its decision and its duty to secrecy, the CPC shall refuse requests submitted by third parties for access to a leniency application and the information contained therein.

Law stated - 08 September 2022

Settlements

Does the investigating or prosecuting authority have the ability to enter into a plea bargain, settlement, deferred prosecution agreement (or non-prosecution agreement) or other binding resolution with a party to resolve liability and penalty for alleged cartel activity? What, if any, judicial or other oversight applies to such settlements?

The relevant legislation does not contain any provisions in relation to plea bargains, settlements or other resolutions following negotiation.

Law stated - 08 September 2022

Corporate defendant and employees

When immunity or partial leniency is granted to a corporate defendant, how will its current and former employees be treated?

The relevant legislation does not contain any provisions regarding the treatment of current or former employees of undertakings participating in the Leniency Programme.

Law stated - 08 September 2022

Dealing with the enforcement agency

What are the practical steps for an immunity applicant or subsequent cooperating party in dealing with the enforcement agency?

To ensure its priority, an undertaking that wishes to receive immunity may initially apply for a marker until it collects all

the information and evidence required by the CPC. In such a case, the undertaking must initially submit the information described in Annex II of the Leniency Programme and the CPC will subsequently determine a time frame within which the said undertaking must perfect it. Perfection is accomplished by submitting the requisite information and evidence to meet the threshold for receiving immunity. An undertaking may, prior to submitting an application, informally or anonymously contact the CPC to receive guidance concerning the immunity application.

Alternatively, an undertaking may choose to submit a formal leniency application, which should include a signed statement containing, among other things, a detailed description of the alleged cartel activity, details of the undertakings participating in the alleged cartel, potential leniency applications to other jurisdictions and evidence in relation to the alleged cartel.

Undertakings that wish to receive a reduction of the administrative fine must submit an application to the CPC along with sufficient evidence in accordance with Annex IV of the Leniency Programme. Evidence submitted voluntarily for the purpose of receiving a reduction must be clearly identified as being part of a formal application.

Applications for reduction of the administrative fine are suspended until the CPC examines any application submitted for immunity in relation to the same cartel activity.

Law stated - 08 September 2022

DEFENDING A CASE

Disclosure

What information or evidence is disclosed to a defendant by the enforcement authorities?

The Commission for the Protection of Competition (CPC) is not obligated to disclose the whole administrative file of the case to the undertaking or undertakings investigated. However, subject to its duty to secrecy and excluding documents constituting business secrets, the CPC must disclose all documents upon which it intends to base its decision. If said documents are already available to the undertaking or undertakings, the CPC must identify them to ensure that the former is duly informed of the documents to be used as evidence.

If, during the course of the proceedings before it, the CPC intends to base its decision on a document that has not been communicated to the undertaking or undertakings concerned, it must inform and disclose the document to the latter, while providing a reasonable time frame for its examination.

Law stated - 08 September 2022

Representing employees

May counsel represent employees under investigation in addition to the corporation that employs them? When should a present or past employee be advised to obtain independent legal advice or representation?

Given that natural persons cannot be found criminally liable for participation in a cartel, there is no legal framework regulating the representation of employees by counsel who represent the corporation that employs them.

Law stated - 08 September 2022

Multiple corporate defendants

May counsel represent multiple corporate defendants? Does it depend on whether they are affiliated?

Counsel may represent multiple corporate defendants as there is no restriction by law.

Law stated - 08 September 2022

Payment of penalties and legal costs

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

The Protection of Competition Law of 2022 (Law No. 13(I)/2022) (the Law) does not contain any provisions regarding whether legal penalties and legal costs imposed on employees may be paid by a corporation that employs them.

Law stated - 08 September 2022

Taxes

Are fines or other penalties tax-deductible? Are private damages payments tax-deductible?

Fines and private damages payments are generally not considered tax-deductible.

Law stated - 08 September 2022

International double jeopardy

Do the sanctions imposed on corporations or individuals take into account any penalties imposed in other jurisdictions? In private damage claims, is overlapping liability for damages in other jurisdictions taken into account?

The Law does not contain any provisions permitting the CPC to take into account penalties imposed in other jurisdictions when the CPC determines sanctions.

The CPC may ascertain an infringement of the Law in cases where the conduct has as its object or effect the prevention, restriction or distortion of competition within Cyprus.

Regarding private damage claims, any compensation received by the same claimant in other jurisdictions will be accounted for in subsequent cases in Cyprus to avoid overcompensation of the claimant.

No case law regarding private damage claims for damages arising from cartels in Cyprus currently exists.

Law stated - 08 September 2022

Getting the fine down

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

The optimal way to reduce an administrative fine is to file a leniency application.

Based on recent case law, the CPC may consider cooperation demonstrated by the undertaking and termination of the infringement upon the initiation of the investigation as mitigating factors. Moreover, in one case, the CPC has

considered the existence of a compliance programme as a mitigating factor.

Law stated - 08 September 2022

UPDATE AND TRENDS

Recent cases

What were the key cases, judgments and other developments of the past year?

Case No. 52/2021, which concerns anticompetitive agreements between professional associations, is the most recent key cartel decision. According to publicly available information, after this case, the Commission for the Protection of Competition (CPC) has not issued any other decision concerning anticompetitive agreements.

Law stated - 08 September 2022

Regime reviews and modifications

Are there any ongoing or anticipated reviews or proposed changes to the legal framework, the immunity/leniency programmes or other elements of the regime?

The 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 Treaty on the Functioning of the European Union (Leniency Programme) of 2011 (Regulation 463/2011) are expected to be repealed by the proposed 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 (Leniency Programme) Regulations of 2022 (the Proposed Leniency Programme). The Proposed Leniency Programme purports to strengthen the effectiveness of the legal framework governing the leniency regime in Cyprus.

A proposed amendment to the Protection of Competition Law of 2022 (Law No. 13(I)/2022) (the Law) purports to impose further transparency and impartiality requirements upon the exercise of the powers vested in the CPC. The proposed amendment to the Law provides, among other things, for a 2 per cent increase in the maximum possible fine for both substantive and procedural infringements of the Law. In addition, it provides for a fine reduction of 20 per cent if the fine is paid within 45 days or as otherwise stipulated by the CPC.

Law stated - 08 September 2022

Jurisdictions

	Australia	Allens
	Austria	Baker McKenzie
	Belgium	Strelia
	Brazil	OC ARRUDA SAMPAIO Sociedade de Advogados
	Bulgaria	Wolf Theiss
	Canada	McMillan LLP
	China	DeHeng Law Offices
	Cyprus	Trojan Economics Consultants Ltd
	Denmark	Bruun & Hjejle
	European Union	Dechert LLP
	Finland	Frontia Attorneys Ltd
	Germany	Glade Michel Wirtz
	Greece	KYRIAKIDES GEORGOPOULOS Law Firm
	Hong Kong	Linklaters LLP
	India	Shardul Amarchand Mangaldas & Co
	Japan	Nagashima Ohno & Tsunematsu
	Malaysia	Zaid Ibrahim & Co
	Mexico	Valdes Abascal Abogados
	Portugal	Gomez-Acebo & Pombo Abogados
	Singapore	Drew & Napier LLC
	Slovenia	Odvetniska druzba Zdolsek
	South Korea	Shin & Kim
	Switzerland	CORE Attorneys Ltd
	Turkey	ELIG Gurkaynak Attorneys-at-Law
	United Kingdom	Clifford Chance

