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13(I) of 2008

THE PROTECTION OF COMPETITION LAW, 2008

(English translation)

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NOTE FOR THE READER

This publication of the Office of the Law Commissioner is an English translation of Law No. 13(I) of 2008 enacted in Greek.

However useful the English translation of the Law is in practice, it does not replace the original text of the Law since only the Greek text of the Law published in the Official Gazette of the Republic of Cyprus is authentic.

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THE PROTECTION OF COMPETITION LAW OF 2008

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No. 13(I) of 2008

**A LAW TO PROVIDE FOR THE CONTROL AND SUPPRESSION OF
RESTRICTIVE COMPETITION COLLUSIONS AND PRACTICES, THE
PROTECTION OF COMPETITION, THE FUNCTION OF THE
COMMISSION FOR THE PROTECTION OF COMPETITION, AS WELL
AS THE APPLICATION OF THE COUNCIL REGULATION
(EC) No. 1/2003**

Preamble . In order to regulate and protect free competition in the
Republic and to apply the act of the European Union with title
Official Journal of the EU: “Council Regulation (EC) No. 1/2003 of 16 December 2002
L 1, 4.1.2003, p. 1. on the implementation of the rules on competition laid down in
L 269, 28.9.2006, p. 1. Articles 81 and 82 of the Treaty”, as last amended by Council
Regulation (EC) No. 1419/2006 of 25 September 2006, and
as further from time to time amended or substituted,

The House of Representatives enacts as follows:

**PART I
PRELIMINARY PROVISIONS**

Short title. **1.** This Law may be cited as the Protection of Competition
Law, 2008.

Interpretation. **2.** In this Law, unless the context otherwise requires–

“Advisory Committee on Restrictive Practices and
Dominant Positions” means the Advisory Committee
established by virtue of Article 14 of Council Regulation (EC)
No. 1/2003;

“agreement” means any arrangement between at least two
undertakings or associations of undertakings, by virtue of
which one of the parties has willingly undertaken the

obligation to constrain its freedom to act in respect of the other party;

“Article 81 EC” means article 81 of the Treaty;

“Article 82 EC” means article 82 of the Treaty;

“association of undertakings” means any company, partnership, association, society, institution or body of persons having legal personality or not, which represents the trade interests of autonomous undertakings and takes decisions or enters into contracts for the promotion of those interests;

“Chairman” means–

- (a) the Chairman of the Commission and
- (b) for the purposes of sections other than 9, 10, 11, 12, 13, 16 and 53, the member of the Commission replacing the Chairman;

“collusion” means any formal or informal, written or oral, legally enforceable or not, agreement of two or more undertakings or associations of undertakings or concerted practice of two or more undertakings or the decision of an association of undertakings, but it does not include agreement or concerted practice–

- (a) of the holding and subsidiary company, if–
 - (i) they constitute a single economic entity within which the subsidiary has no real freedom to prescribe its own manner of acting, and
 - (ii) the agreement or concerted practice relates exclusively to the allocation of activities between the holding and

subsidiary company;

- (b) of two or more subsidiary companies provided they constitute a single economic entity with the holding company;

“Commission” means the Commission for the Protection of Competition established under section 8;

“Community competition law” means Articles 81 to 89 of the Treaty and the secondary law enacted pursuant to them;

“Competition Authority” means the authority or authorities of the member states responsible for the protection of competition and designated as such by the member states pursuant to Article 35 of Council Regulation (EC) No. 1/2003;

“concerted practice” means any positive act which even if it is not a real agreement it nevertheless acts in a concerted manner in the business dealings of the undertaking;

“Court” means a competent court;

“dominant position”, in relation to an undertaking, means the position of market power that an undertaking holds and makes it capable to obstruct the maintenance of an effective competition in the relevant market and enables it to act, in a substantial degree, independently from its competitors and customers and finally from the consumers;

“European Commission” means the Commission of the European Communities”;

“good” means anything that can be evaluated in money and capable of constituting the object of a commercial transaction;

“member state” means a member state of the European Union;

“Minister” means the Minister of Commerce, Industry and Tourism;

“product” means any good or service;

“Regulation (EC) No. 1/2003” means the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty as last amended by Council Regulation (EC) No. 1419/2006 of 25 September 2006 and as further from time to time amended or substituted;

“Republic” means the Republic of Cyprus;

“Service” means the Service of the Commission provided for in section 19(1);

“services” means the undertaking and performance, for profit or remuneration, of obligations of any kind, except the production and supply of goods and includes professional services, however not including the services provided to an employer under an employment contract;

“State” means the state, the municipalities or the civil parishes;

“state monopoly” means an undertaking that occupies a monopoly position in the market due to the exclusive rights granted to it by the State in order to increase the profit of the State;

“supply” includes sale, exchange, leasing, hire purchase and the offer for any of the above;

“trade” means any kind of financial activity and includes both the provision of goods and services;

“Treaty” means the Treaty establishing the European Community;

22(l) of 1999
107(l) of 1999
154(l) of 2000.

“turnover” means the turnover of an undertaking , as calculated pursuant to the relevant provisions of the Control of Concentrations between Undertakings Law;

“undertaking” means any natural or legal person which exercises financial or trade activities irrespective of whether such activities are profitable or not; moreover it includes any undertaking governed by private or public law where the State may exercise, directly or indirectly, due to ownership, financial participation or pursuant to the provisions governing it, decisive influence; it is presumed to exercise decisive influence when the State directly or indirectly–

- (a) owns the majority of the paid capital of the undertaking, or
- (b) owns the majority in voting rights connected to shares of the undertaking, or
- (c) may control over more than the half number of members of the administration, management or supervision of the undertaking.

PART II

CONTROL AND SUPPRESSION OF RESTRICTIVE COMPETITION COLLUSIONS AND PRACTICES

Prohibition of
restrictive
enterprise
practices and
invalidity thereof.

3.–(1)Subject to the provisions of sections 4 and 5, all agreements between undertakings or associations of undertakings, all decisions by associations of undertakings and any concerted practices having as their object or effect the elimination, restriction or distortion of competition within the Republic, shall be prohibited, and in particular those which–

- (a) directly or indirectly fix purchase or selling prices

or any other trading conditions;

- (b) limit or control production, markets, technical development or investments;
- (c) divide markets or sources of supply into geographical or other sectors;
- (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.

(2) Subject to the provisions of sections 4 and 5, agreements, decisions and concerted practices mentioned in the provisions of subsection (1) of this section, shall be void ab initio, no prior relevant decision by the Commission being required.

Collusions falling within the scope of section 3(1) and are permissible and valid.

4.—(1) Any agreement, decision and concerted practice falling within the scope of subsection (1) of section 3, shall be permissible and valid no prior relevant decision by the Commission being required, if the following requirements concur:

- (a) it contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) it does not impose on the undertakings concerned restrictions which are not indispensable to the

attainment of these objectives; and

- (c) does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the product in question.

(2) The burden of proof that a collusion is permissible and valid by virtue of subsection (1) shall lie upon the undertaking or association of undertakings concerned invoking the abovementioned subsection.

(3) The Commission may decide that any agreement, decision or concerted practice in respect of which subsection (1) is being invoked, does not meet the conditions provided for in the said subsection. As long as such a Commission decision remains in force, the relevant agreement, decision or concerted practice shall be subject to the prohibition and invalidity resulting from section 3.

Exemptions from the scope of section 3.

5.—(1) The Council of Ministers may, following a reasoned opinion of the Commission, issue Orders to be published in the Official Gazette of the Republic, which declare section 3 inapplicable to certain categories of collusions.

(2) In respect of collusions to which the provisions of this Law and not the provisions of the Community law apply, the provisions of the Community Regulations made pursuant to paragraph 3 of Article 81 EC shall apply, *mutatis mutandis*, as long as there is not a contradictory provision in an Order made pursuant to subsection (1) of this section; in such a case, the collusions are deemed to be permissible and valid pursuant to Community Regulation, regulating the same category of collusions in the context of the Community

competition law.

(3) (a) The burden of proof that a collusion does not fall within the scope of section 3 pursuant to an Order made pursuant to subsection (1) of this section, shall lie upon the undertaking or association of undertakings involved and invoking the said Order.

(b) The burden of proof that a category of collusions is permissible and valid pursuant to the Community Regulation referred to in subsection (2), shall lie upon the undertakings or association of undertakings invoking the relevant Community Regulation.

(4) (a) The Commission may decide that a collusion in respect of which an Order made under subsection (1) of this section is being invoked, does not fall within a category of collusions where section 3 is rendered inapplicable pursuant to that Order. As long as such a decision of the Commission remains in force, the relevant collusion falls within the scope of section 3 and shall be subject to the prohibition and invalidity resulting from that section.

(b) The Commission may decide that a collusion, in respect of which a Community Regulation pursuant to subsection (2) is being invoked, does not fall within the category of collusions regulated by the Community Regulation in the context of the Community competition law. As long as such a decision of the Commission remains in force, the relevant collusion falls within the scope of section 3 and shall be subject to the prohibition and invalidity resulting from the said section.

(5) An Order made pursuant to subsection (1) shall come

into force on the date of its publication in the Official Gazette of the Republic, unless otherwise therein provided.

Abuse of a dominant position or relationship of economic dependence.

6.-(1) Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it in respect of a product shall be prohibited, especially if it affects or may affect—

- (a) the direct or indirect fixing unfair purchase or selling prices or any other unfair, under the circumstances, trading conditions;
- (b) limiting production, distribution or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions, thereby placing certain undertakings at a competitive disadvantage;
- (d) making 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.

(2) Any abuse by one or more undertakings, of a relationship of economic dependence where an undertaking stands compared to that or those undertakings, which is either a client, supplier, producer, representative, distributor or commercial collaborator, shall be prohibited, even as far as a specific kind of products or services is concerned, and it does not have an equal alternative solution.

This abuse of a relationship of economic dependence may, in particular, be constituted of the imposition of unfair trading conditions, the application of discretionary treatment, the

interruption of trade relationships by assumption or transfer of the activities developed in these trade relationships in a way that essentially effects competition or of sudden and inexcusable interruption of long-term trade relationships.

Exemptions from the scope of this Law.

7.-(1) The provisions of this Law shall not apply to—

- (a) agreements relating to wages and terms of employment and working conditions;
- (b) undertakings entrusted with the operation of services of general economic interest or having the character of state monopoly, in so far as the application of these provisions obstructs the performance in law or in fact, of the particular tasks assigned to them by the State.

(2) For the purposes of paragraph (b) of subsection (1), it is presumed that the application of the provisions of this Law obstructs the performance in law or in fact of the particular tasks of the said undertakings when there is not financial or technical way in the disposal of these undertakings, which is compatible with the provisions of this Law and allows the implementation of the particular tasks assigned to these undertakings by the State.

(3) The burden of proof that agreements or undertakings do not fall within the scope of this Law pursuant to subsection (1) shall lie upon the undertakings or associations of undertakings involved, invoking the said subsection.

(4) The Commission may decide that an agreement or undertaking, in respect of which subsection (1) is being invoked, does not fulfill the conditions provided for in the said subsection. As long as such a decision of the Commission

remains in force, the relevant agreement or undertaking falls within the scope of this Law.

PART III

COMMISSION FOR THE PROTECTION OF COMPETITION

Commission for
the Protection of
Competition.

8. There is hereby established an independent Commission, to be known as the “Commission for the Protection of Competition”, which shall be constituted, operate, function, have the powers and duties determined by or under this Law.

Composition and
operation of the
Commission.

9.—(1) The Commission shall be composed of five members and shall consist of the Chairman and four other members appointed by a decision of the Council of Ministers, on a proposal of the Minister. The Council of Ministers shall appoint four substitute members of the Commission in accordance with the provisions of subsection (7).

(2)(a) The Council of Ministers shall, on a proposal of the Minister, appoint the Chairman of the Commission, who shall be a person of a high standing and probity possessing specialized knowledge and experience in law and being capable to contribute to the carrying into effect of the purposes of this Law.

(b) The Council of Ministers, shall appoint four other members of the Commission, nominated by the Minister, who shall be persons possessing specialized knowledge and experience in law, or economics, or competition, or accounting, or trade, or industry, capable to contribute to the carrying into effect of the purposes of this Law.

(c) The Chairman and the four other members of the Commission shall serve under full-time employment contract.

(3) The Chairman, the other four members of the Commission, or the substitute members, shall not be allowed to have any financial or other interest likely to affect the impartiality of their judgment in the exercise of the functions, powers and duties of the Commission in accordance with this Law.

(4) The term of office of the Chairman and the other four members of the Commission shall be of five years and may be renewed once only, subject to the provisions of subsection (2).

(5)(a) Where the office of the Chairman or other member of the Commission becomes vacant before the expiry of his term of office, the Council of Ministers, shall on a proposal of the Minister, appoint a new Chairman or other member for the remainder of the term of office of the Chairman or other member, as the case may be, whose office has become vacant, subject to the provisions of subsection (2). The term of office of the Chairman or other member of the Commission who shall be appointed pursuant to this paragraph, shall be renewable twice, provided that at his first appointment the Chairman or the other member shall be summoned to serve for a period less than two years and six months.

(b) Any vacancy in the office of the Chairman or other member of the Commission shall not affect the legal composition of the Commission and the fulfilment of its functions, powers and duties.

(c)(i) Where the office of a member of the Commission, besides the Chairman, becomes vacant before the expiry of his term of office, until the appointment of a new member in the application of paragraph (a), the substitute member appointed under section (7) shall participate in the Commission, in the place of the member whose office

became vacant.

(ii) Where the office of the Chairman becomes vacant before the expiry of his term of office, until the appointment of a new Chairman in the application of paragraph (a), the Commission shall continue to operate with the rest of its members, subject to the provisions of subsection (7).

(6) Where—

(a) the Chairman is temporarily hampered from exercising his duties for any reason, or

(b) the office of the Chairman becomes vacant until the appointment of a new Chairman,

the Chairman shall be replaced by a member of the Commission elected amongst the members participating in the meeting. In case of an equality of votes, the older member shall serve as the Chairman.

(7)(a) The Council of Ministers shall, on a proposal of the Minister, appoint as a substitute member for every member of the Commission, besides the Chairman, persons possessing specialized knowledge and experience in law, or economics, or competition, or accounting, or trade, or industry, capable to contribute to the carrying into effect of the purposes of this Law. The substitute member shall replace, in the exercise of his duties, the member of the Commission—

(i) when the member of the Commission is temporarily hampered for any reason, or

(ii) in the case of paragraph (d).

(b) The term of office of the substitute members of the Commission shall be of five years and may be renewed.

(c) Where the Commission in a meeting thereof (hereinafter called the “current meeting”) is dealing with a matter that has dealt with it in a previous meeting (hereinafter called the “previous meeting”), and in the current meeting–

- (i) a substitute member of the Commission which had not participated in the previous meeting, is participating under paragraph (a) of this subsection or subparagraph (i) of paragraph (c) of subsection (5), or
- (ii) a member of the Commission which had not participated in the previous meeting, is participating, irrespective of whether the substitute member had participated on his behalf or not,

the procedure and the discussion that has already been made in the previous meeting, shall not be repeated, while the validity of any decision of the Commission on the matter shall not be affected, on condition that the member or, depending on the case, the substitute member is informed on the minutes and the rest of the data of the previous meeting and such information shall be noted in the minutes of the current meeting.

(d) Where, under subparagraph (i) or (ii) of paragraph (a), a substitute member of the Commission is participating in a meeting of the Commission during which a certain matter is discussed, the Commission may decide that the substitute member shall continue replacing the member of the Commission, that has been substituted for, in any or all of the subsequent meetings where the Commission shall deal with

the same matter.

(8) A defect in the appointment of the Chairman, other member or substitute member of the Commission shall not affect the legal composition of the Commission and the fulfilment of its functions, powers and duties.

Remuneration, working conditions and other benefits of the Chairman, members and substitute members.

10.—(1) The Council of Ministers may, by its decision, determine the working conditions, remuneration and other benefits of the Chairman, the other members of the Commission and the substitute members thereof.

(2) The Council of Ministers shall not adversely modify the working conditions, the remuneration and the other benefits determined pursuant to subsection (1), during the term of office of a member or substitute member of the Commission, about whom the said working conditions, the remuneration and the other benefits had been so determined.

Nature of service of the Chairman and the other members of the Commission.

11. The Chairman and the four other members of the Commission shall apply the hours of work of public officers determined from time to time by the Council of Ministers.

Prohibition of private employment of the Chairman and the other members of the Commission.

12. The Chairman and the four other members of the Commission shall not be allowed to practice any profession or occupation or to employ themselves in a business of any nature or to accept payment for any kind of employment besides their duties, except only with the permission of the Council of Ministers.

Vacancy of office.

13.—(1) The office of the Chairman, other member or a substitute member of the Commission shall be vacated—

(a) in case his term of office has expired; or

- (b) in case of his death; or
- (c) in case of his resignation according to subsection (2); or
- (d) in case of impediment to the exercise of his duties for more than six months; or
- (e) in case of removal from office declared by the Council of Ministers according to subsection (3).

(2) The Chairman, other member or substitute member of the Commission may submit to the Council of Ministers his resignation from such office in writing; the aforementioned resignation shall not be subject to withdrawal, yet it shall become effective immediately no prior approval from the Council of Ministers being required.

(3) (a) The Council of Ministers may remove from office the Chairman, other member or substitute member of the Commission, if any of the following circumstances concur:

- (i) if he has been declared bankrupt under the current legislation of the Republic or if an order for the appointment of a syndic has been made against him or if he has entered into a composition with his creditors;
- (ii) if he has been declared insane or mentally incapable under the current legislation of the Republic;
- (iii) if he has been convicted for a criminal offence which entails dishonesty or moral turpitude;
- (iv) if he is incapable, by reason of physical incapacity or disease, to perform his duties;

- (v) if he has maintained or acquired a financial or other interest which may affect the impartiality of his judgment and he did not submit his resignation;
- (vi) if he has so abused his tenure of office as to render the continuance of his term of office prejudicial to the public interest;
- (vii) upon recommendation of the Commission, in case of an unjustified abstention from the exercise of his duties and in particular in case of an unjustified absence from three consecutive meetings of the Commission.

(b) The Council of Ministers, before removing anyone from office by virtue of paragraph (a), shall give that person the opportunity to submit his views.

158(l) of 1999. In this case, subsections (3), (4) and (6) of section 43 of the General Principles of Administrative Law, Law of 1999 shall apply.

Powers of the Chairman.

14. The Chairman shall preside over the Commission, shall convene a meeting according to section 15, and shall sign the minutes and any other important document.

Convening a meeting.

15.—(1) The Chairman shall convene the Commission to a meeting whenever it deems necessary, however he shall be bound to convene a meeting as soon as possible and, in any case, within a period of seven days if requested so to do by notice in writing by at least three members of the Commission, who shall also, at the same time, specify the matters to be discussed.

(2) The summons of a meeting shall be in writing and shall

be addressed to the members of the Commission at least twenty-four hours prior to the date appointed for the meeting; as an exemption, in extraordinary cases, a meeting of the Commission shall be convened by a summons circulated among the members immediately prior to the meeting.

(3) The agenda shall be drawn up by the Chairman and shall be communicated along with the summons to a meeting. As an exemption, if the Commission so decides, in extraordinary and justified cases, a matter outside the agenda may be introduced for discussion, both by the Chairman and by another member of the Commission.

Quorum and decisions.

16.–(1) Subject to the provisions of subsections (5)(c), (6) and (7) of section 9, the Commission shall be lawfully in session only if at such meeting at least three members are present.

(2) The decisions of the Commission shall be taken by majority, and in case of an equality of votes, the presiding member shall have a casting vote.

Rules governing the proceedings before the Commission.

17.–(1) The Commission shall decide to initiate the proceedings for the investigation of an infringement, as long as the Commission finds, following a proper preliminary investigation, that an infringement of the provisions of this Law and/or Articles 81 EC and/or 82 EC is possible.

(2) The Commission shall prepare a written statement in order to inform the undertakings or associations of undertakings on the objections raised to their detriment. The said statement of objections shall be served on them or on a person duly authorized by the said undertakings or associations of undertakings, in any manner they are

summoned before the Commission in accordance with section 45.

(3) Where the existing information before the Commission is changed or new information arises, the Commission may proceed to the modification of any objections raised against the undertakings or associations of undertakings involved and the preparation and communication of a modified statement of objections to the undertakings or associations of undertakings involved.

(4) During the proceedings before the Commission for the investigation of infringements, or for the investigation of complaints lodged pursuant to this Law, or for any other proceedings provided for by this Law and/or the regulations made thereunder, there shall be allowed to be present–

(a) upon invitation from the Commission–

(i) the persons who lodged the complaint, personally, through an authorized lawyer or personally with an authorized lawyer,

(ii) the persons involved in the proceedings or/and the complaint before the Commission,

(iii) any person, who may, at the Commission's discretion, help in the investigation of the infringement or/and the complaint;

(b) following decision of the Chairman, any member of the staff who serves at the Service:

Provided that the aforementioned shall also apply in respect of the ex-officio investigations initiated by the Commission for infringements of sections 3 and/or 6 of this Law and of Articles 81 EC and/or 82 EC:

Provided further that the persons referred to in paragraph (a) shall withdraw before the opening of session of the Commission for the taking of decision.

(5) A reasonable, under the circumstances, time-limit shall be set to the persons summoned as hereinabove mentioned, which may be justifiably extended.

(6) The Commission shall grant every possible opportunity to the persons present before it, to submit written observations on the objections raised to their detriment and, to this effect, a reasonable time-limit shall be set, which may be justifiably extended. The Commission shall not be bound to take into account written observations, submitted after the expiration of the set time-limit.

(7) Where the undertaking or association of undertakings, on which the statement of objections was served, omits and/or refuses to submit any written observations in respect of the objections raised against it within the time-limit set, the Commission may proceed to the issue of a decision for the alleged infringements included in the statement of objections.

(8) The aforementioned persons summoned shall be entitled, within the context of their written observations submitted by them relating to their case, to request development of their arguments in the context of an oral proceeding before the Commission, whereas the Commission may approve or reject such a request. The Commission may, by its decision, set a time-limit for the development of arguments of the persons summoned in the context of an oral proceeding before it.

(9) As regards the Commission, the following rules shall

apply:

- (a) the Commission shall not be bound to communicate to the undertaking or association of undertakings against which the complaint or the ex-officio investigation is turned to, the whole file formed by the Commission on the case; however, it shall, subject to the provisions of section 33, be bound to communicate to it all of those documents of the file on which it intends to base its decision, with the exception of those documents constituting business secrets; or, if those documents are already available to the undertaking or association of undertakings, it must indicate them to the undertaking in writing, so that this undertaking or association of undertakings be informed in due course of all the documents that shall be used by the Commission as evidence;
- (b) the Commission shall not be allowed to base its decision on a document that has not been communicated or indicated to the undertaking or association of undertakings against which the complaint or the ex-officio investigation is turned to, according to paragraph (a);
- (c) during the proceedings before the Commission, if the Commission intends to base its decision on a document that it has not communicated or indicated to the undertaking or association of undertakings against which the complaint or the ex-officio investigation is turned to, according to paragraph (a), the Commission shall be bound to communicate the said document to the said undertaking or association of undertakings and

shall grant to it reasonable time to examine the said document;

158(l) of 1999.

- (d) subject to the provisions of this Law and the provisions of the General Principles of Administrative Law, Law of 1999, the internal Rule governing the works of the Commission shall be determined by the Commission itself.

Decisions of the Commission.

18.—(1) Subject to the provisions of section 33, the decisions of the Commission, duly reasoned, shall be communicated to every undertaking or association of undertakings involved and shall be published in the Official Gazette of the Republic.

(2) The decisions of the Commission shall take effect from the date of their communication. A defective communication or publication shall not affect the validity of the decision.

PART IV

SERVICE OF THE COMMISSION FOR THE PROTECTION OF COMPETITION

Service of the Commission.

19.—(1) The Service of the Commission shall have the staff, operation and functions determined by or under this Law.

(2) The members of the staff of the Service shall be members of the Public Service and shall be appointed as provided for in the Public Service Law, including the Director of the Service. The Director of the Service shall designate a member of the staff of the Service to be the Secretary of the Commission.

1 of 1990
71 of 1991
211 of 1991
27(l) of 1994
83(l) of 1995
60(l) of 1996
109(l) of 1996
69(l) of 2000
156(l) of 2000
4(l) of 2001
94(l) of 2003
128(l) of 2003
183(l) of 2003
31(l) of 2004
68(l) of 2005

79(l) of 2005
105(l) of 2005
96(l) of 2006.

Notwithstanding the provisions of the Public Service Law, in case of abolition of the Service, the members of its staff shall be placed among the personnel of the Ministry of Commerce, Industry and Tourism or any other Ministry or independent authority, without any change in their conditions of service, being understood that their duties may be differentiated.

207 of 1989
111(l) of 1999
87(l) of 2000
155(l) of 2000.

(3) Persons who, on the date of the entry into force of this Law, are members of the Service provided for in section 15A(1) of the Protection of Competition Laws, 1989 to (No. 2) 2000, shall serve in the Service provided for in subsection (1) of this section, as from the aforementioned date, without their conditions of service, seniority, appointment or promotion or their retirement benefits being affected.

(4) The members of the staff of the Service shall, following a decision of the Chairman, be allowed to be present in the meetings and/or the proceedings before the Commission, including the consultations of the Commission, for the taking of decision, and to inform and/or express their opinion to the Commission on issues entrusted to them, while their presence shall not affect the validity of the decisions of the Commission.

(5) Without prejudice to subsection (6), the Director of the Service shall be the head of the administration and shall be responsible for the Service.

(6) The Chairman shall be the competent authority for the purposes of the Public Service Law, who shall usually act through the Director of the Service.

(7) The Secretary of the Commission shall, according to any instructions that may be given to him by the Director, be present in the meetings and/or the proceedings before the Commission and keep the minutes.

Functions of the Service.

20.—(1) The functions of the Service shall be—

- (a) to carry out the secretarial work of the Commission;
- (b) to keep the Registers referred to in section 22;
- (c) to collect and examine the information necessary for the exercise of the functions, powers and duties of the Commission in accordance with this Law;
- (d) to introduce complaints and submit recommendations to the Commission;
- (e) to make the necessary communications and publications in accordance with this Law;
- (f) to grant to the Commission every possible facilitation in order to fulfil its functions, powers and duties.

Provision of information to the Minister on consumers protection.

21. If during or as a result of the investigation by the Commission of a case concerning possible infringement of sections 3 and/or 6, either on a complaint or on its own initiative, it is ascertained or there is a reasonable suspicion for possible infringement of the law relating to consumers protection, the Commission shall inform the Minister, through the Service, in writing, as it may deem expedient.

Keeping of Registers.

22.—(1) The Service shall be responsible for the keeping of a Register of Complaints and Ex-Officio Investigations of the Commission, in which all the complaints submitted according

to section 35 and all the ex-officio investigations of the Commission shall be recorded.

(2) The Service shall be responsible for the keeping of a Register of Decisions on collusions or practices, in which there shall be registered–

- (a) the decisions of the Commission on matters pertaining to the provisions of sections 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC;
- (b) the decisions of the Supreme Court on the same matters.

The Registers kept under this section shall be public.

PART V – FUNCTIONS OF THE COMMISSION AND APPLICATION OF THE COMPETITION LAW

Functions of the
Commission.

23.–(1) The Commission shall constitute the Competition Authority of the Republic for the implementation of Articles 81 EC and 82 EC, according to Article 5 of Regulation (EC) No. 1/2003.

(2) Subject to the provisions of Regulation (EC) No. 1/2003, the Commission shall have the following functions:

- (a) to investigate and decide upon infringements of sections 3 and/or 6, either on its own initiative or on a complaint;
- (b) to decide whether the illegal collusions of subsection (1) of section 3 fulfil the conditions provided for in subsection (1) of section 4;
- (c) to decide whether a collusion, in respect of which an Order made by virtue of subsection (1) of section 5 is being invoked, falls within a category

of collusions for which the said Order declares section 3 inapplicable;

- (d) to decide whether a collusion, in respect of which a Community Regulation by virtue of subsection (2) of section 5 is being invoked, falls within the category of collusions regulated by the Community Regulation in the context of Community competition law;
- (e) to decide whether a collusion or undertaking does not fulfil the conditions provided for in subsection (1) of section 7;
- (f) to investigate and decide upon infringements of Articles 81 EC and/or 82 EC, either on a complaint or on its own initiative or as otherwise determined by Regulation (EC) No. 1/2003;
- (g) to decide whether the collusions falling within the provisions of paragraph 1 of Article 81 EC may be allowed and considered valid, as defined in paragraph 3 of Article 81 EC or pursuant to Community secondary legislation for the application of paragraph 3 of Article 81 EC in a category of collusions;
- (h) to impose administrative fines and other sanctions, as defined in the provisions of this Law and/or the regulations made thereunder;
- (i) to decide upon the taking of interim measures in cases provided for in section 28;
- (j) applying Article 29 of Regulation (EC) No. 1/2003, to withdraw the benefit of the application of an exemption Regulation issued by the European

Commission in respect of a specific collusion, when the distinct geographic market is the Cyprus market;

- (k) to publish announcements for the information of any party interested in the issues within its competence;
- (l) to submit an opinion on issues within its competence to any public entity:

Provided that the opinion submitted shall not bind the Commission as to the context of a subsequent decision, nor does it affect the validity of such a decision;

- (m) any other function granted to it by this Law or the regulations made thereunder.

(3) Notwithstanding the provisions of any other law or secondary legislation, but without prejudice to the Community law or any law or secondary legislation aiming at the harmonization with the Community law, the Commission may–

- (a) obtain services directly on issues relating to the exercise of its functions and powers pursuant to this Law and the execution of its duties or the training of the staff of the Service to this effect, and
- (b) enter into contracts of services, for the aforementioned reasons, according to a procedure determined by the same.

Functions of the Commission when it finds infringements of sections 3 and/or 6.

24. For every infringement of sections 3 and/or 6 committed by undertakings or associations of undertakings, the Commission may, by its decision, take the following measures:

- (a) to impose administrative fines, according to the gravity and duration of the infringement–
 - (i) not exceeding ten per cent of the total turnover of the undertaking, or
 - (ii) not exceeding ten per cent of the sum of the total turnover of every undertaking which is a member of the infringing association of undertakings,

where the turnover corresponds to the year within which the infringement took place or the immediately preceding year of the infringement:

Provided that the Commission may exempt and/or reduce the amount of the administrative fine which would have been imposed on an undertaking or association of undertakings, according to the criteria and conditions of section 46, if the said undertaking or association of undertakings co-operates and/or gives such assistance or proof which will assist the Commission to prove the infringement;

- (b) to force the undertakings or associations of undertakings involved to bring to an end within a fixed time-limit the infringement ascertained and avoid any repetition of it in the future; in case the infringement is brought to an end before the

issuing of the decision of the Commission, the Commission may condemn the infringement by a declaratory decision;

- (c) to impose any terms and measures whether behavioural and/or corrective, depending on the infringement ascertained, which are necessary for the bringing to an end of the said infringement;
- (d) in case of continuation of the infringement by the undertakings or associations of undertakings involved, to impose an administrative fine up to eighty-five thousand euros for each day during which the infringement continues;
- (e) where the Commission intends to issue a decision requiring that an infringement be brought to an end and the undertakings or associations of undertakings involved offer commitments to meet the concerns expressed by the Commission in its preliminary assessment, the Commission may make those commitments binding on the undertakings or associations of undertakings; the decision of the Commission may be issued for a specified period of time and subject to the condition that the Commission has concluded that there are no longer grounds for further action;
- (f) in case of refusal or omission by the undertakings or associations of undertakings involved to comply with the measures determined by the Commission pursuant to paragraph (b) or (e), to impose an administrative fine up to eighty - five thousand euros for each day during which the infringement continues.

Functions of the Commission when it finds infringements of Articles 81 EC and/or 82 EC.

25. The Commission may, by its decision, take any of the measures defined in section 24 of this Law, in relation to the undertakings or associations of undertakings which infringe Articles 81 EC and/or 82 EC.

Nature of proceedings.

26. The proceedings before the Commission, in the exercise of its functions and powers, as defined in sections 23 to 25, shall be of an examining and/or exploratory nature and the Commission may submit questions, request clarifications and explanations from the parties involved, order the adducing of evidence, call witnesses and determine matters in contestation for the better carrying out of the provisions of this Law.

Revocation or amendment of a decision of the Commission.

27. The Commission may, upon request or on its own initiative, revoke or amend its decision issued pursuant to sections 24 or 25–

- (a) if a substantial real event on which its decision was based, has changed;
- (b) if the terms imposed by the decision of the Commission were not observed;
- (c) if the decision is due to the Commission being misled by the provision of inaccurate information or the concealing of accurate;
- (d) if the undertakings or associations of undertakings involved omit and/or refuse to comply with the measures imposed by the Commission in its decision taken.

Interim measures.

28.–(1) The Commission may order the taking of interim measures and impose such terms which under the

circumstances deems necessary. Such measures, whether mandatory or prohibitory, must be of temporary and conservative nature and their extent must not exceed what is absolutely necessary under the circumstances.

(2) The Commission shall, according to this section, either act on its own initiative or on the application of the interested parties, which application may be submitted either *ex parte* or by service of a summons on all the undertakings or associations of undertakings involved, as long as the following circumstances concur:

- (a) a reasonably strong *prima facie* case of infringement of section 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC, is set;
- (b) it is an emergency case, and
- (c) there is a serious risk of an irreparable damage to the interests of the person making the application or to the public interest.

(3) Any interested party may, by an *ex parte* application, apply for the taking of interim measures. The application shall be accepted only as long as it is accompanied by a complaint made as defined in section 35 or follows the complaint or as long as it is lodged during the proceedings before the Commission for infringement of section 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC. The application shall be accepted as long as in the application the required interim measures are prescribed and the applicant pays, upon request of the Commission, a guarantee for damages that may be caused to the undertaking or association of undertakings against which the interim measures are ordered in case no infringement is found.

(4) The Commission may impose on the undertaking or association of undertakings concerned an administrative fine up to seventeen thousand euros for each day during which it omits to fully comply with a decision of the Commission on the taking of interim measures as defined in this section.

Advisory
Committee on
Restrictive
Practices and
Dominant
Positions.

29. The Commission shall participate in the meetings of the Advisory Committee on Restrictive Practices and Dominant Positions, as defined in Regulation (EC) No. 1/2003, with a member of the Commission or of the staff of the Service, designated by the Commission.

PART VI

COMMISSION'S POWERS TO COLLECT INFORMATION AND INSPECTION

Commission's
powers to collect
information.

30.—(1) The Commission may collect information that is necessary for the exercise of its functions, powers and duties under this Law, both on its behalf as well as on behalf of other Competition Authorities, by addressing to that effect a written request to undertakings, associations of undertakings or other natural or legal persons.

(2) When sending a request, the Commission shall specify the required information, the provisions of this Law or of the Regulation (EC) No. 1/2003 on which the request is based, the reasoning of the request, a reasonable time-limit fixed for the provision of information which may not be less than twenty days and the possible sanctions in the event of non compliance with the above obligation for the provision of information.

(3) The person, or the association of undertakings or the undertaking to whom the request by the Commission is addressed to shall be bound to provide in due course, in full

and accurately the required information within the time-limit fixed.

(4) Where the reply and/or the information provided by the person, the association of undertakings or undertaking to whom the request is addressed, are incomplete, ambiguous or need further clarifications and/or investigation, the Commission may submit a new request addressed to the said person, association or undertaking, in order to obtain all the information required and/or clarifications and/or explanations necessary. In the said request, there shall be specified a time-limit for the provision of this information and/or clarifications which may not be less than seven days, as well as the possible sanctions in the event of non compliance with the above obligation.

(5) In case of submission of a request pursuant to subsection (2) or (4)–

- (a) all the members of the managerial or administrative board or committee arranging the affairs of the legal person,
- (b) the general manager or director or managing director of the legal person, and
- (c) the persons who, according to the law or articles of association, are authorized to represent companies or associations having no legal personality,

shall be bound to provide in full and accurately all the information required on behalf of the person, the undertaking or association of undertakings involved within the time-limit fixed.

(6) Lawyers duly authorized, may supply on behalf of their clients all the information required:

Provided that the natural and legal persons who are obliged to provide information by virtue of subsections (1) to (5) shall remain fully responsible for the full and in a timely manner provision of the said information.

(7) In case–

(a) of omission to provide the required information within the time limit fixed; or

(b) of intentional or negligent provision of false, incomplete, inaccurate or misleading information,

the Commission may impose an administrative fine up to eighty-five thousand euros.

(8) In case of omission to provide the required information within the time-limit fixed, the Commission may additionally impose an administrative fine up to seventeen thousand euros for each day during which the infringement continues.

(9) The information provided to the Commission in the exercise of its functions under this section may be used only for the purpose for which the information was required, with the exemption of those cases where this proves necessary for the application of the Community competition law.

Commission's
powers of
inspection.

31.–(1) The Commission may, in the exercise of its functions, powers and duties under this Law, conduct all necessary inspections of undertakings or associations of undertakings and for this purpose –

(a) enter any office, premises, land and means of

transport of undertakings and associations of undertakings, with the exemption of residences;

- (b) examine the records, books, accounts, and other records related to the business, irrespective of the medium on which they are stored;
- (c) copy and photocopy records, books, accounts and other records related to the business, irrespective of the medium on which they are stored, and receive copies and photocopies;
- (d) seal any business premises and records, books, accounts and other business records, for the period and to the extent necessary for the inspection;
- (e) ask any representative or member of staff of the undertaking or association of undertakings, for explanations on facts or documents relating to the subject-matter and purpose of the inspection and record the answers.

(2) Inspections under subsection (1) shall be conducted and the relevant powers shall be exercised by competent officers of the Service at the request of the Commission. If deemed necessary by the Commission, the said officers shall be accompanied by other officers, namely public officers and/or officers of the wider public sector, and/or persons with special knowledge who may be employed by the Commission.

(3) The Commission's request shall be in writing and shall accurately specify the subject - matter and purpose of the inspection, fix the date on which it is to begin, the provision on which this power of the Commission is based and the

possible sanctions where the undertaking or association of undertakings refuses to comply with the Commission's request.

(4) Inspections shall be conducted without prior notification of the undertaking or association of undertakings concerned, unless the Commission deems that notification will assist the inquiry.

(5) The undertaking or association of undertakings in which the inspection is conducted may consult its lawyer during the inspection, but his presence is not legally required for the validity of the inspection and/or defence for non and/or defective compliance with the Commission's request.

(6) The Commission, where appropriate, shall request the assistance of the Police so as to become capable to exercise its powers according to the provisions of this section.

(7) The Commission may impose on an undertaking or association of undertakings an administrative fine up to eighty-five thousand euros, where, either intentionally or negligently it produces the required records, books, accounts or other business records in incomplete or falsified manner or where the undertaking or association of undertakings refuses to comply with the Commission's request for inspection.

(8) The Commission may additionally impose on the undertaking or association of undertakings concerned an administrative fine up to seventeen thousand euros for each day it omits to comply with an order of the Commission to conduct an inspection according to this section.

(9) The information received by the Commission in the exercise of its functions under this section may be used only

for the purpose for which the inspection is allowed, with the exemption of those cases where this proves necessary for the application of the Community competition law.

(10) Every undertaking or association of undertakings which is subject to an inspection pursuant to this section and every person to whom questions are submitted or from whom explanations are requested pursuant to paragraph (e) of subsection (1), shall have the obligation to provide the investigating officer, as long as the latter reasonably demands, with—

- (a) any facilitation,
- (b) any information, and
- (c) any declaration on whether the information he provides to the investigating officer is true,

whereas the investigating officer may demand and receive such facilitation, information and declaration.

(11) Any person commits a criminal offence, who—

- (a) refuses or omits to comply with an obligation imposed on him by subsection (10); or
- (b) conceals, destroys or falsifies an information, record, book, account or other record related to the business, which is the subject of an inspection pursuant to this Law, or provides the Commission or its investigating officer, false, incomplete, inaccurate or misleading information, declaration, record, book, account or other record related to the business, or refuses or omits to provide the Commission or its investigating officer information, declaration, record, book, account or other record related to the business required in

the exercise of the powers granted by this Law,
and shall be subject to a sentence of imprisonment not exceeding one year or to a fine not exceeding eighty-five thousand euros or to both such penalties.

(12) In case of prosecution for an offence pursuant to subsection (11)–

- (a) in relation to refusal or omission to comply with an obligation imposed by virtue of subsection (10), it shall be a defence for the accused if he proves that he had reasonable cause for the said refusal or omission;
- (b) in relation to the provision of false, incomplete, inaccurate or misleading information, declaration, book, account or other business record, it shall be a defence for the accused if he proves that he provided the information, declaration, record, book, account or other business record in good faith and without knowing that it was false, incomplete, inaccurate or misleading.

On the spot inspections of other premises.

32.–(1) The conduct of an inspection in any premises, land and means of transport other than the one provided for in section 31 or in residences shall not be allowed except upon the issue of a duly reasoned judicial warrant.

(2) The Commission may apply to the Court for making an order, ordering the conduct of an inspection, as long as there are reasonable suspicions that in that place there are records, accounts, books, other records related to the business or

other particulars relating to the investigation of the case.

(3) The Court shall make an order for entry, access and conduct of inspection in a residence or any other premises, land and means of transport, if satisfied that the application submitted according to subsection (2) is justified by the facts.

(4) The procedure of submission and hearing of the application shall be governed by a rule of court made by the Supreme Court, but until the making of such rule, the application should be supported by an affidavit of an authorized officer.

(5) Every search warrant shall be under the hand of a Judge issuing the same, shall bear the date and time of issue, as well as a declaration of the Judge that he has been justifiably satisfied on the need for the issue of the said warrant.

Duty to secrecy for the protection of business secrets and confidential information.

33.—(1) The Chairman, the other members and the substitute members of the Commission, the persons working under the supervision of the Commission, the staff of the Service and other public officers who by reason of their post or in the performance of their official duties obtain information on business secrets and information of a confidential nature, shall have a duty to secrecy and shall be bound not to communicate and/or publicize such information, except in so far as this proves necessary—

- (a) to prove an infringement of sections 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC of the Treaty;
- (b) to implement the provisions of this Law.

(2) The same duty to secrecy shall be also owed by any other natural or legal person who obtains such information in the application of this Law according to the proceedings provided for in this Law.

(3) Without prejudice to section 38, violation of the duty to secrecy under this section shall constitute, in the case of public officers, a serious disciplinary offence punishable in accordance with the relevant disciplinary provisions.

(4) Nothing in this Law shall prevent the notification and/or publication of information for the purposes of applying the Community competition law.

PART VII

COMMUNICATION OF INFORMATION AND COMPLAINT OF INFRINGEMENTS

Duty of public officers to communicate information.

34.—(1) It shall be the duty of the officers of the Competition and Consumers' Protection Service of the Ministry of Commerce, Industry and Tourism to communicate forthwith to the Commission any possible infringements of this Law which come to their knowledge by reason of their post or in the performance of their official duties.

(2) The communication under subsection (1) shall be deemed to be proper performance of official duty within the meaning of the Public Service Law, whereas an omission thereof shall constitute a disciplinary offence punishable in accordance with the relevant disciplinary provisions.

Complaint of infringements of sections 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC.

35.—(1) Any natural or legal person who has a legitimate interest to this effect, shall be entitled to lodge a complaint of infringement of the provisions of section 3 and/or 6 of this

Law and/or Articles 81 EC and/or 82 EC.

(2) A person has a legitimate interest if he can prove that he has suffered or there is a serious or possible risk that he will suffer a substantial financial injury or that he will or there is a serious or possible risk that he will be placed at a disadvantage regarding competition, as a direct result of the infringement.

Annex.

(3) The complaint shall be lodged in writing to the Commission and shall be signed by the complainant or the legal adviser or an authorized representative of the complainant. The said complaint shall include all the information referred to in the Annex to this Law, so as the Commission to be in a position to investigate the complaint lodged. Where the complaint does not include all the information of the Annex, the Commission may nevertheless accept it, if it deems that the information submitted is satisfactory for the investigation of the complaint lodged.

(4) Upon the lodging of the complaint, the Commission shall instruct the Service on the conduct of a preliminary investigation of the suspected infringement referred to in the complaint.

(5) If, following the preliminary investigation of the Service, the Commission ascertains that the complaint lodged does not fall within the scope of application of this Law and/or that there is not a reasonable ground for suspected infringement of sections 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC, based on the information before it, then the Commission shall issue a relevant decision.

(6) Where the Commission, after a proper preliminary investigation conducted by the Service, ascertains that there

is a *prima facie* case for the infringement mentioned in the complaint, section 17 shall apply.

PART VIII CRIMINAL PROVISIONS

Omission to comply with a decision of the Commission.

36. Any person who omits to comply with or acts in contravention of a decision of the Commission issued pursuant to any of sections 23 to 25, shall commit a criminal offence punishable with a sentence of imprisonment not exceeding two years or with a fine not exceeding three hundred forty thousand euros or with both such penalties.

Omission to comply with a decision of the Commission for the taking of interim measures.

37. Any person who omits to comply with or acts in contravention of a decision of the Commission issued pursuant to section 28, ordering the taking of interim measures, shall commit a criminal offence punishable with a sentence of imprisonment not exceeding two years or with a fine not exceeding three hundred forty thousand euros or with both such penalties.

Criminal offence for contravening the duty to secrecy.

38. Any person who contravenes the duty to secrecy imposed on him by section 33, shall commit a criminal offence punishable with imprisonment not exceeding one year or with a fine not exceeding three thousand five hundred euros or with both such penalties.

Liability of legal persons.

39.—(1) Where, pursuant to the provisions of this Law and/or the regulations made thereunder, a legal person commits a criminal offence, for the offence, there shall be liable besides the legal person itself—

(a) all the members of the managerial or

administrative board or committee arranging the affairs of the legal person, and

- (b) the general manager or director or managing director of the legal person,

and the prosecution for the offence may be turned against the legal person and against all or any of the above persons.

(2) Where an act or omission of a legal person causes, pursuant to the provisions of this Law and/or the regulations made thereunder, the imposition of an administrative fine by the Commission, for this act or omission and for the payment of the said administrative fine, there shall be liable besides the legal persons themselves, the persons referred to in paragraphs (a) and (b) of subsection (1).

PART IX

ACTION FOR DAMAGES, ADMINISTRATIVE FINES

Action for damages.

40.—(1) In case of an action for damages brought by any person who has suffered loss and/or financial injury from any acts or omissions of an undertaking or associations of undertakings done in contravention of sections 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC, a final decision of the Commission or of other Competition Authority or of the European Commission, ascertaining the said infringement shall constitute a rebuttable presumption about the truth of its context.

(2) The person who has suffered any damage under subsection (1) shall have the right to apply to the Court for making an injunction in order to obstruct the continuance of the contravention of sections 3 and/or 6 of this Law and/or Articles 81 EC and/or 82 EC.

Limitation period for the imposition of administrative fines by the Commission.

41.—(1) The Commission shall be deprived of its power to impose administrative fines for infringements of the provisions of this Law and/or of the Community competition law, unless it exercises its power within the following limitation periods:

- (a) within three years in the case of infringements of provisions concerning requests for information or the conduct of inspections,
- (b) within five years, in the case of all other infringements.

(2) Time shall begin to run on the day on which the infringement is committed, whereas in the case of continuing or repeated infringement time shall begin to run on the day on which the infringement ceases.

(3) The limitation period shall be interrupted by the initiation of proceedings by the Commission according to subsection (1) of section 17.

Procedure for the imposition of administrative fines by the Commission.

42.—(1) The Commission may, by a duly reasoned decision, following the conduct of a proper investigation and taking into consideration the nature and gravity of the infringement in each case, impose administrative fines for infringements of the provisions of this Law and/or the Community competition law.

(2) Before the imposition of an administrative fine, the Commission shall inform the undertaking or association of undertakings or person affected, on its intention to impose the administrative fine, informing the said undertaking or association of undertakings or person, on the reasons for which it intends to act in this way, and granting the said

undertaking or association of undertakings or person the right to submit objections, within a strictly limited period of thirty days.

Taking of judicial measures for collecting the administrative fines imposed by the Commission In accordance with this Law.

43. In case of an omission to pay the administrative fines imposed by the Commission in accordance with this Law, the Commission shall take judicial measures and shall collect the amount due as a civil debt owed to the Republic.

Imposition of an administrative fine on an association of undertakings.

44.—(1) When an administrative fine is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association shall be obliged to call for contributions from its members to cover the amount of the administrative fine.

(2) Where such contributions have not been made to the association within a time-limit fixed by the Commission, the Commission may require payment of the administrative fine directly by any of the undertakings whose representatives were members of the decision-making bodies involved of the association of undertakings.

(3) After the Commission has required payment under subsection (2), where necessary to ensure full payment of the administrative fine, it may require payment of the balance from any of the members of the association of undertakings which were active on the market on which the infringement occurred.

(4) The Commission shall not require payment under subsections (2) and (3) from undertakings which show that they have not implemented the infringing decision of the association of undertakings and either were not aware of its existence or have actively distanced themselves from it

before the Commission started investigating the case.

(5) The financial liability of each undertaking, in respect of the payment of the administrative fine imposed on the association of undertakings of which the undertaking is a member, shall not exceed ten per cent of the total turnover of this undertaking according to paragraph (a) of section 24.

Summons before
the Commission.

45. The summons of undertakings or associations of undertakings or any other person before the Commission, provided for in this Law, shall be made—

- (a) by the dispatch of a double-registered letter to the principal place of business of the undertaking, the association of undertakings or the person summoned,
- (b) through fax or any other electronic way to the principal place of business of the undertaking, the association of undertakings or the person summoned, or
- (c) by hand delivery to a director, or official or authorized person of the undertaking, the association of undertakings or the person summoned, irrespective of the place he was found.

PART X

MISCELLANEOUS PROVISIONS

Regulations.

46.—(1) The Council of Ministers may make regulations, to be published in the Official Gazette of the Republic, for prescribing any matter which under this Law requires to be or

may be prescribed.

(2) Without prejudice to the generality of subsection (1), regulations referred to therein may regulate—

- (a) matters relating to the applications for the issue of a certified extract of the Registers kept under section 22;
- (b) the procedure followed before the Commission during the investigation of infringements according to this Law;
- (c) the determination of the way to impose administrative fines, to be released from and/or to reduce administrative fines for infringements according to this Law.

(3) Regulations made pursuant to this section may provide for criminal offences punishable with a fine up to eighty-five thousand euros and the imposition of administrative fines not exceeding eighty-five thousand euros.

(4) Regulations made pursuant to this Law shall come into force from the date of their publication in the Official Gazette of the Republic, unless otherwise therein provided.

(5) The making of regulations pursuant to this section shall not constitute a prerequisite for the application of this Law, whereas until the making of regulations for the determination of a specific matter, the Commission may regulate the said matter by its decision, except for the matters concerning the provision of criminal offences.

Rules of Court.

47. The Supreme Court may make rules of court to be

published in the Official Gazette of the Republic for the application of the provisions of–

- (a) sections 32 and 40 of this Law and
- (b) Regulation (EC) No. 1/2003 and in particular Articles 15 and 16 thereof.

Report of the activities of the Commission.

48. The Commission shall prepare and submit to the Minister and the House of Representatives an annual report of its activities.

Liability of the Chairman, members and substitute members of the Commission, members of the Service and others.

49. Subject to the provisions of this Law and the regulations made thereunder, the Chairman, the other four members and the substitute members of the Commission, the members of the staff of the Service and the persons working under the supervision of the Commission, shall have no liability for anything done or omitted to be done or said, or for any opinion stated, or any report or other document prepared in the bona fide exercise of their duties, functions or powers pursuant to this Law and/or the regulations made thereunder.

Community competition law to be applied, mutatis mutandis.

50. When in this Law or regulations or orders made thereunder a matter is not specially regulated, the Court or the Commission, as the case may be, shall apply, mutatis mutandis, the relevant provisions of the Community competition law.

Minister's Orders.

51.–(1) The Minister may, by an order published in the Official Gazette of the Republic, amend or replace the Annex of this Law and any Annex of regulations made thereunder.

Annex.

(2) (a) The Minister may, by an order published in the Official Gazette of the Republic, prescribe the fees imposed by the Commission for the services rendered by the

Commission or its Service.

(b) The Minister, before making an order pursuant to this subsection, shall submit a draft of the order to the Commission and shall take into consideration the views of the Commission. The Commission shall be bound to communicate its views to the Minister within a time-limit fixed by the Minister, which shall not, in any case, be less than thirty days.

In case the Commission shall not communicate its views to the Minister within the time-limit fixed or extended by the Minister, the Minister may make the order without taking into consideration the views of the Commission.

(3) An Order made pursuant to this section shall come into force on the date of its publication in the Official Gazette of the Republic, unless otherwise therein provided.

Repeal.
207 of 1989
111 of 1999
87(l) of 2000
155(l) of 2000.

52.—(1) The Protection of Competition Laws, 1989 to (No.2) 2000 and the Commission for the Protection of Competition formed by them are hereby repealed.

67(l) of 2001.

(2) The Remuneration of the Chairman of the Commission for the Protection of Competition Law, 2001 is hereby repealed.

Transitional provisions.

53.—(1) Orders and Regulations made by virtue of the Protection of Competition Laws, 1989 to (No.2) 2000 shall, unless incompatible with the provisions of this Law, continue in force as if they had been made by virtue of this Law, until amended or repealed.

(2) The individual administrative acts issued by the Commission for the Protection of Competition established by virtue of section 8 of the Protection of Competition Laws,

1989 to (No.2) 2000 shall continue in force under the terms and/or conditions they were issued, unless amended or revoked by the Commission.

(3) Where a law other than this Law or a regulatory administrative act or an individual administrative act refers to the Protection of Competition Laws, 1989 to (No.2) 2000, the said reference shall be deemed, mutatis mutandis, to be a reference to this Law.

(4) The procedure for the dispatching of cases, investigation of complaints and ex-officio conduct of investigations, including the procedure for the taking of interim measures, which on the date of the entry into force of this Law are pending before the Commission for the Protection of Competition established by virtue of section 8 of the Protection of Competition Laws, 1989 to (No.2) 2000, shall be deemed to be pending before the Commission established by virtue of the provisions of this Law.

ANNEX
(sections 35 and 51)
INFORMATION THAT HAS TO BE INCLUDED WHEN
LODGING A COMPLAINT PURSUANT TO SECTION 35 OF
THE PROTECTION OF COMPETITION LAW

(1) Particulars of the person lodging the complaint

- (i) Full name and surname, address (postal and electronic), number of telephone and fax of the person lodging the complaint. In the case of a legal person, full business name must be stated.
- (ii) Where the person lodging the complaint is a legal person, the group of companies where it belongs, the holding and/or subsidiary companies thereof must be stated.
- (iii) Short description of the nature, scope and professional activities of the person lodging the complaint.
- (iv) The relationship between the person lodging the complaint and the undertaking or association of undertakings against which the complaint is lodged must be stated (ie, competitor, client).
- (v) Full name and surname, address (postal and electronic), number of telephone and fax of the person who shall be responsible for the provision of additional information or/and clarifications on behalf of the person lodging the complaint.

(2) Particulars of the person against whom the complaint is lodged

- (i) Full business name and address of the undertaking or

- (ii) Short description of the nature, scope and professional activities of the undertaking or association of undertakings against which the complaint is lodged.

(3) Nature of the relevant product market

- (i) Determination of the nature of the products affected by the alleged infringements.
- (ii) Number of suppliers of the said products.
- (iii) The total (in value) of sales of the said products.
- (iv) The dimensions of the competition existing in the relevant market.
- (v) The possibilities for new competitors to enter the said market.
- (vi) Whether there are other substitutes for the relevant products.
- (vii) Determination, in the best possible way, of the relevant market and the shares in the market of the undertaking and/or undertakings against which the complaint is lodged.
- (viii) Determination, in the best possible way, of the geographic extension of the alleged infringement and explanation of the degree to which trade among member states is being affected due to the alleged infringements.

(4) Details of the alleged infringement and proof

- (i) Detailed indication of all the facts which show and/or prove infringement of sections 3 and/or 6 of the Protection of Competition Law and/or Articles 81 EC and/or 82 EC.
- (ii) Granting of every information available on the agreements, decisions or practices or concerted practices of the undertakings or associations of undertakings against whom the complaint is being lodged (i.e., text of the agreement, minutes of the meetings or negotiations, terms of transactions, business documents, circulars, correspondence etc.).
- (iii) Submission of statistical or other data which are in the possession of the person lodging the complaint and which are relevant to the facts under dispute (i.e., changes in prices, quantities, reductions, technical development, entrance bars etc.).
- (iv) Submission of names and addresses of the persons who intend to be summoned as witnesses in order to testify in relation to the facts under dispute, as well as of the persons who have been affected by the alleged infringements.

(5) Legitimate interest

The person lodging the complaint must state in detail the way he has been affected and/or may be affected by the alleged infringements and whether he is justified to lodge the complaint.

A solemn statement that all the information stated in the complaint are true.

Date and signature.