



**Template pursuant to Section 3 (a) of the  
ICN Framework on Competition Agency Procedures**

**COMMISSION FOR THE PROTECTION OF COMPETITION, CYPRUS**

The following template is submitted by the Commission for the Protection of Competition of Cyprus, pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

**I. Introduction**

The Commission for the Protection of Competition (CPC) is an independent authority of the Republic of Cyprus, responsible for the harmonious operation of the market within the rules of fair competition. The CPC is composed of five members and consists of the Chairman and four other members that serve under full-time employment contract. The CPC was established in 1990 with the enactment of the Protection of Competition of Law 207/89. The law in question was abolished with the enactment of the Protection of Competition of Law 2008 (Law number 13 (I) /2008) that was amended by the Law 41(I)/2014. The Protection of Competition Laws 2008 and 2014, inter alia, determine the Commission as the competition authority of the Republic of Cyprus, responsible for the application of Regulation 1/2003, and of articles 101 and 102 TFEU, where necessary. [http://www.competition.gov.cy/competition/competition.nsf/page04\\_en/page04\\_en?OpenDocument](http://www.competition.gov.cy/competition/competition.nsf/page04_en/page04_en?OpenDocument)

**II. Laws, Regulations, and Policies relevant for the implementation of the CAP**

The competences and powers of the Commission in the field of competition law are defined by the Control of Concentrations of Enterprises Law 83(I)/2014 and the Protection of Competition Law no. 13(I)/2008 that was amended by the Law 41(I)/2014 ([http://www.competition.gov.cy/competition/competition.nsf/page15\\_en/page15\\_en?OpenDocument](http://www.competition.gov.cy/competition/competition.nsf/page15_en/page15_en?OpenDocument)). Specifically, the Protection of Competition Laws 2008 and 2014 in conjunction with the Control of Concentrations of Enterprises Law 83(I)/2014 ([http://www.competition.gov.cy/competition/competition.nsf/page15\\_en/page15\\_en?OpenDocument](http://www.competition.gov.cy/competition/competition.nsf/page15_en/page15_en?OpenDocument)), constitute the rules and principles that have as an objective the maintenance of effective competition within the Cypriot market. The Commission is the designated

competition authority of the Republic of Cyprus responsible for the application of articles 101 and 102 of the Treaty for the Functioning of the European Union.

The Protection of Competition Laws 2008 and 2014 contain provisions that relate to conflicts of interest in relation to the members of the Commission whereas conflicts of interest of the staff who are public servants is covered by the Public Service Law of 1991. Both laws (antitrust and concentrations laws) contain provisions pertaining to the investigative process, the examination of concentrations, confidentiality, notices that have to be served, deadlines that are set, opportunities given to defend or respond, the opportunity for a party to be represented by anyone it wishes and the obligation for the CPC's decision to be duly reasoned and published. Please note that the CPC's decisions, in their non-confidential versions are published on the CPC's website and also in the Official Gazette of the Republic of Cyprus .

Furthermore, the CPC ensures that the rules and principles of competition are respected through the Leniency Programme (Immunity from and Reduction of Administrative Fines in cases of Restrictive Collusions Infringing Section 3 of the Law or/and Article 101 of the TFEU Regulations, of 2011 (P.I. 463/2011)) which is the legal framework that defines the leniency or full exemption from administrative fines of an undertaking and/or associations of undertakings wishing to cooperate with the Commission for the Protection of Competition to uncover illegal cartels, which are prohibited by Section 3 of the Protection of Competition Law and Article 101 of the Treaty for the Functioning of the EU. The Leniency Programme ([http://www.competition.gov.cy/competition/competition.nsf/page18\\_en/page18\\_en?OpenDocument](http://www.competition.gov.cy/competition/competition.nsf/page18_en/page18_en?OpenDocument)) basically codifies the procedure, the conditions and the criteria for granting an exemption or reduction of the administrative fine imposed by the Commission for the Protection of Competition to an undertaking or association of undertakings. The Leniency Programme contains specific provisions in regards to the rights and procedures followed for its application.

Additionally, the CPC as an administrative collective body of the Republic of Cyprus is obliged to follow the Constitution of the Republic of Cyprus and apply the provisions of the Law of the General Principles of Administrative Law 1999 (Law 158(1)/99), namely the law that codified the applicable general principles of administrative law. In accordance with the Constitution and said law the CPC's decisions are examined by the Administrative Court for lack of competency, violation of the provisions of the Constitution and the Law, procedural irregularity, lack of adequate reasoning, violation of the principle of equality, violation of the

principle of natural justice, improper exercise of discretionary power, abuse of power, factual and legal error, lack of due inquiry, violation of the principle of proper administration.

**b) Non-Discrimination**

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

The Commission applies its powers and responsibilities always bearing in mind the need for equal and non-discriminatory treatment of each competitor in the market. The CPC affords equal treatment during the investigations to the parties before it, depending on the likeness of circumstances. Namely, comparable situations should not be treated differently and different situations should not be treated in the same way, unless such treatment is objectively justified.

Moreover, the CPC is obligated to follow the relevant administrative law. According to the General Principles of Administrative Law, Law of 1999 (158 (I) / 1999) article 38 requires that administrative bodies apply the equal treatment principle and article 42 the principle of impartiality. Based on these principles the CPC keeps a non-discriminatory behavior towards the parties which are being investigated under its jurisdiction and competences. Its decisions can be reviewed by the competent courts on the basis of impartiality or discrimination.

Also, public officers that comprise the CPC's Service are bound by the Public Service Law of 1990, as it has been amended, and are obliged to examine cases as far as possible with impartiality and fairness, without having regard to who are the parties and on the basis of objective criteria.

**c) Transparency and Predictability**

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*

- iv. *Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

Competition Laws and regulations that apply to investigations and enforcement proceedings in Cyprus are publicly available in the CPC's website, in the Official Gazette of the Republic of Cyprus and in the freely accessible electronic database of <http://www.cylaw.org/>.

In accordance with section 18 of the national competition law and section 28(2) of the national concentrations law, the CPC's decisions are published. The decisions are published after the procedures in relation to the non-inclusion of business secrets and information of confidential nature as well as any personal data issues are finalized. These decisions are easily accessible through the CPC's website and can also be found in the Official Gazette of the Republic of Cyprus.

In addition, according to the Protection of Competition Laws of 2008 and 2014, section 23 A, the Commission, by a decision published in the Official Gazette of the Republic, notifies of the criteria to be taken into consideration in order to determine the priority for examination of cases concerning infringements of sections 3 and/or 6 of the Law and/or Articles 101 TFEU and/or 102 TFEU. Furthermore, the decision of the Commission pursuant to subsection (1), shall be issued, following public consultation, taking into account the public interest, the possible effect on competition and/or consumers and the limitation periods as defined in section 41 of the law.

In the same way and in accordance with the national law on concentrations, the Service of the CPC publishes the fact that a notification has been received, both on the CPC's website as well as in the Official Gazette of the Republic of Cyprus. The CPC follows the same procedure in relation to the issuance of decisions under said law as well as in cases of full investigations of concentrations.

Additionally, the procedures in relation to the filing of a complaint with the CPC can be found in section 35 and the Annex of the national antitrust law whereas the procedures in relation to concentrations are clearly set out in the national concentrations law and its annexes. Both the national antitrust and concentrations law contain provisions in relation to the procedures followed by the CPC in case of a prima facie infringement decision and an issuance of a Statement of Objections. In the same way all relevant information in regards to leniency

application may be found in the Leniency Programme. All relevant documents and laws are on the CPC's website. Moreover, the relevant administrative law contains provisions in relation to the CPC's procedures and decision-making process and principles, as an administrative body of the Republic of Cyprus.

#### **d) Investigative Process**

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The CPC's procedures in accordance with the Protection of Competition Laws of 2008 and 2014, as set out in the law, allow for the investigation to take place or begin either through an inspection (section 31), through collections of information (section 30) or through taking statements (section 30A). In each one of these instances the law sets out the CPC's obligation when the interested party is requested to allow an inspection, to answer to a request for information and to give a statement. In a similar way, the Control of Concentrations between Undertakings Law of 2014 sets out the CPC's obligations and the parties' obligations. The antitrust law sets out time limits in relation to requests for information in section 30 and the concentrations law, in section 42, sets out the relevant obligations. Furthermore, the parties may apply for extensions if they wish to do so, which are examined by the Service of the CPC or the CPC itself, depending on the stage of the proceedings.

More specifically, according to the Protection of Competition Law of 2008 and 2014, section 30, the Commission may collect information that is necessary for the exercise of its

competences, powers and duties under said 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 person or public or private entity. Additionally, 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.

It must be referred that under article 30 par. 4, where the reply and/or the information provided by the person, the undertaking, the association of undertakings, the public or private entity, 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, undertaking, association or undertakings, the public or private entity 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 (7) days, as well as the possible sanctions in the event of non-compliance with the above obligation.

Also, under the provisions of the same law article 30A the Commission may, in the exercise of its competences, powers and duties under this Law, conduct interviews with every natural or legal person that consents to it, in order to take statements regarding the subject of the investigation that is conducting. The relevant interview may be conducted with all available means; the Commission may register, in any form, the statements it takes from the interviewees, provided it informs them accordingly. Before the interview starts, the Commission notifies the intended interviewee, of the legal basis and the purpose of the interview, reminds him of its consensual nature and informs that that the interview is recorded. A copy of the transcribed recorded interview is available to the interviewee, who signs it after approving it.

Last but not least under article 31 par. 3, the Commission's request for investigation shall be in writing and shall specify the subject - matter and purpose of the inspection, specify 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. It is noted that the relevant section of the Concentrations Law is section 43.

**e) *Timing of Investigations and Enforcement Proceedings***

*Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

The CPC consistently endeavors to conclude its investigations and enforcement proceedings within a reasonable time period, which must always be examined in relation to the complexity and nature of each case, any other matters that are raised by the parties and must be examined or matters that arise because of difficulties encountered during an investigation or when a case is before the CPC. Furthermore, the reasonableness of the time period must be viewed in light of the procedures that have to be followed in accordance with the laws for the safeguard of the rights of all parties involved and in order to follow the applicable administrative law principles and the CPC's obligations as an administrative body responsible for the application of the laws.

**f) *Confidentiality***

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

In accordance with section 33 of the antitrust law and section 48 of the concentrations law, 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 with the exceptions mentioned in said sections, namely when and in so far as this proves necessary for the application of the laws. Furthermore, the same duty to secrecy is also owed by any other natural or legal person who obtains such information in the application of the laws according to the

proceedings provided for in said laws. Violation of this duty is considered a disciplinary offence for public officers and a criminal offence.

Under Protection of Competition Law of 2008 and 2014 article 30(10), the person, the undertaking or the association of undertakings, the public or private entity to whom the request is addressed, with the provision of the information requested, indicates documents, statements and any material it considers to contain confidential information and/or business secrets justifying its opinion, and provides a separate, non-confidential version within the time limit set by the Commission for notification of his/her opinion. Provided that the person, the undertaking or the association of undertakings, or the private entity does not exercise its right conferred to it by subsection 10 of section 30, the Commission may consider that the relevant documents, statements and the rest of the material do not contain confidential data and/or confidential information. The concentrations law in section 42(6) sets out the same obligations. In accordance with both laws the confidentiality of information must be also taken into account when publishing its decisions.

Furthermore, in the case of a Statement of Objections and in accordance with section 17(6) of antitrust law and section 34(2)(b) of the concentrations law, when submitting written observations, the parties must clearly indicate any confidential information and/ or business secrets.

The CPC has also issued an announcement in 2019 in relation to applications filed by parties in the context of the antitrust and concentrations law and the way in which such applications should be filed with the CPC. This can be found on the CPC's website (<http://www.competition.gov.cy/competition/competition.nsf/All/577C01E272095E89C225840000406E5C?OpenDocument>)

Generally, the CPC's practice in relation to the application of the duty of secrecy/confidentiality is evident in its published decisions where the CPC has examined issues raised by parties in relation to the non-revealing of information that have been deemed to be business secrets or information of a confidential nature. Namely, the balancing of competing interests exercise followed by the CPC is evident in its final decisions. Furthermore, access to the CPC's files is limited in accordance with the State Archives Law.

Lastly, please note that the Law for Actions for damages for Violations of Competition Law L.113(I)/2017 covers the procedures in relation to business secrets/ information of confidential nature when a damages claim is filed before the Cyprus courts.

**g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

Under Protection of Competition Law of 2008 and 2014 section 9(3) and article 13, 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 competences, powers and duties of the Commission in accordance with said Law.

Furthermore, under the Principle of impartiality which derives from the General Principles of Administrative Law, Law of 1999 (158 (I) / 1999), any administrative body involved in the production of an administrative act must provide the assurance of impartial judgment. For that reason a person who has a special relationship or a related blood or marriage bond up to the fourth degree or is in an acute hatred with the person concerned by the case or who has an interest in its outcome is not involved in the production of an administrative act.

Also, public officers that comprise the CPC's Service are bound by the Public Service Law of 1990, as it has been amended, and are obliged not to participate in any procedures/ decisions where they have a special relationship or a related blood or marriage bond up to the fourth degree with the parties of the case.

**h) Notice and Opportunity to Defend**

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's*

*possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

In case of infringements of the antitrust legislation the CPC issues an SO in accordance with section 17 of the antitrust law and in the case of concentrations the CPC issues an SO in accordance with section 34 of the concentrations law. The CPC, subject to the provisions of section 33 of the antitrust law and section 48 of the concentrations law, is 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 the undertaking or association of undertakings is informed in due course of all the documents that shall be used by the Commission as evidence. The CPC is not allowed to base its decision on a document that has not been communicated or indicated to a person to whom the statement of objections has been addressed.

The parties have the right to submit their written observations and also the CPC may decide to carry out oral proceedings. It is noted that according the General Principles of Administrative Law, Law of 1999 (158 (I) / 1999), article 43 the right to be heard shall be granted, except in cases expressly provided for by law, to any person affected by the adoption of an act or to the adoption of an administrative measure of a disciplinary or punitive nature; which is otherwise unfavorable in nature.

Please note that the CPC sets out reasonable time limits which may be justifiably extended.

Additionally, in accordance with section 42 of the antitrust law 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, of 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.

The party also has the opportunity to inform the CPC through its Service of any other information it deems relevant in relation to the case against it under section 30 of the antitrust law and section 42 of the concentrations law.

**i) Representation by Counsel and Privilege**

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

According to the concentrations law, representatives of the parties may send information and represent them before the CPC. According to the antitrust law the parties that have filed a complaint can be represented personally, through an authorized lawyer or personally with an authorized lawyer. Furthermore, in accordance with section 30(6) lawyers duly authorized, may supply information on behalf of their clients all the information required. It is noted that the CPC has accepted the representation of the parties to which a Statements of Objections has been addressed as this right is contained within section 43(6) of the General Principles of Administrative Law 1999 (Law 158(1)/99) -right to be heard.

As mentioned the parties have the right to be heard but time limits must be observed or, if not possible, applications for extensions must be filed with the CPC for approval. Witnesses may be called under section 26 of the antitrust law, and parties may and, on many occasions in the past, have adduced written testimonies and / or, with the CPC's permission, oral testimonies during oral hearings.

In relation to legal professional privilege with external counsels the CPC recognizes such privilege in accordance with national caselaw and also EU law. In cases where such an issue has been raised, the CPC has followed relevant rules.

**j) Decisions in Writing**

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

As already mentioned, in accordance with section 18 of the national competition law and section 28(2) of the national concentrations law, the CPC's decisions are published. The decisions are published after the procedures in relation to the non-inclusion of business secrets and information of confidential nature as well as any personal data issues are finalized. These decisions are easily accessible through the CPC's website and can also be found in the Official Gazette of the Republic of Cyprus. In accordance with applicable administrative law the CPC's decisions must be reasoned and notified to the parties in order to have binding effect.

In relation to commitment decisions, these are also published in accordance with section 18 of the national competition law and section 28(2) of the national concentrations law.

**k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

The CPC is an administrative body. Its decisions are reviewed in accordance with applicable administrative law. Namely, pursuant to article 146 of the Constitution of the Republic of Cyprus and the Law of the General Principles of Administrative Law 1999 (Law 158(1)/99), the CPC's decisions can be reviewed by the Administrative Court when an administrative

recourse is filed. The decisions of the Administrative Court may be reviewed by the Supreme Court of Cyprus.»

