George Z. Georgiou
& Associates LLC

Lawyers, Arbitrators & Legal Consultants

Major success by George Z. Georgiou & Associates in collaboration with Trojan Economics in a case before the Competition Commission

George Z. Georgiou & Associates in collaboration with Trojan Economics, successfully represented FBME Card Services Ltd ("FBMECS") in a case against JCC and several other banking institutions in Cyprus before the Commission for the Protection of Competition ("CPC"). The complaint concerned anti-competitive practices and behaviours on the part of JCC and the banking institutions in contravention of national and EU competition provisions. The total fine imposed by the CPC is €31.009.765.

Without doubt, this case is one of the largest ever presented before the CPC. The decision is significant, not only because of the level of the fine and the number of parties involved, but also for the impact it has on merchants and consumers in the markets affected.

Following a complaint by FBMECS and the subsequent full hearing conducted before the CPC, the CPC decided to impose administrative fines on JCC, Bank of Cyprus, Marfin Popular Bank, Hellenic Bank, USB Bank, Alpha Bank, Commercial Bank, National Bank of Greece (Cyprus) and Societe Generale Cyprus ("the Banks") for various violations on both national and European level of the provisions of the legislation on anti-competitive behaviour, as those are described below.

In addition, CPC requested corrective measures to be taken by JCC to ensure the presence of independent (from its bank shareholders) members on its Board of Directors.

The complaint involved on the one part, the setting of prices and terms of transactions by JCC and the Banks that were preventing or hindering effective competition. The other part involved the Bank of Cyprus' unilateral conduct as the institution which had the dominant position in Cyprus for issuing and acquiring American Express cards as well as the collective conduct of the banks, shareholders of JCC, which, through JCC had created a dominant position that allowed them to operate in the market in a manner that was not only detrimental to the consumers but also to FBMECS, for reasons that are explained below.

In order for a card payment to be made it must go through several stages. Firstly, the payments institutions such as VISA and MasterCard grant a right to the issuing companies, in this case the banks to issue payment cards to consumers. A card transaction will normally include action from the issuers, the consumers, the merchants (e.g. shops) and the acquirers. Acquirers such as JCC and FBMECS are the intermediaries between the payment institutions and the merchants, checking with the issuer (banks) that there are available funds in the consumer's account before concluding the transaction. Every time an acquirer processes a transaction, an

amount is calculated as a percentage of the value of the transaction, also known as Merchant Service Fees ("MSF") and charged to the merchant. The MSF also includes the Domestic Interchange Fees ("DIF") which is a percentage of the MSF that is returned to the issuing banks as compensation for the cost of issuing the cards. The DIF is an important part of the MSF, both of which are paid by the merchants.

Before FBMECS' entry into the market, JCC was in a state of monopoly as the sole company involved in that market. JCC continued to have the dominant position in the market even after the entry of FBMECS, since JCC in collaboration with the Banks planned for FBMECS' exclusion and did not leave any room for the development of competition on the merits.

JCC's revenues were derived from the MSF, which also included the DIF paid to the banks. The lower the DIF, the higher the profit margin for JCC.

As the shareholders of JCC were all and are still, banking institutions and JCC's Board of Directors was appointed by those banking institutions, there was no incentive whatsoever on the part of JCC to lower the DIF, which in any event would return as revenues back to the banks. Furthermore, even the banks that were not shareholders had entered into agreements with JCC in which the DIF was set at high levels, which resulted in a reduced interest to turn to FBMECS, since FBMECS could not satisfy the bank's request for a high DIF, while at the same time maintaining low MSF to attract merchants. As the CPC noted, the combination of MSF and DIF chosen by JCC or agreed between JCC and the banks made FBMECS attempt to attract merchants almost impossible and drastically pressed FBEMCS's profit margin.

In addition, the entry of competitors in the market was made even more difficult due to the predatory pricing of the MSF by JCC. As the CPC observed, when FBMECS entered the market, JCC started to charge the merchants reduced MSF, even below cost. JCC chose merchants in an elective manner by reducing the MSF of those merchants who had already been approached by FBMECS for cooperation or had already chosen FBMECS as their partner. When FBMECS finally suspended its operations, JCC brought MSF back to the levels before FBMECS entry.

American Express transactions work in a slightly different way to the above. In these schemes the parties are the merchants, the consumers and the issuing companies. Issuing and acquiring services are provided by the same payment institution, in this case the Bank of Cyprus which performs those functions on behalf of American Express, without the involvement of any other intermediary for the purpose of acquisition. The Bank of Cyprus had the exclusive rights in Cyprus to operate this system and as such it had a dominant position. Even if issuing and acquiring are done by the same bank, the processing of cards needs to take place before the acquiring step. In the case of Cyprus, JCC had been granted an exclusive right by the Bank of Cyprus (the largest shareholder in JCC) to process American Express cards. The Bank of Cyprus refused to grant a license to FBMECS to process American Express cards through JCC terminals.

This practice resulted in merchants only being able to work with JCC in order to accept payments made with American Express cards.

Adopting the positions presented by George Z. Georgiou & Associates on behalf of FBMECS , the CPC imposed the following administrative fines and corrective measures as a result of the violation of national and EU anti-competitive provisions:

1) Fine on JCC (€1.204.564) for imposing a unified system for fixing the DIF;
2) Fine on JCC (€344.161), USB BANK (€121.519), Societe Generale (€94.102) and Commercial Bank (€160.851) for fixing the DIF;
3) Fine on JCC (€172.081) for the practise of predatory pricing (price below cost to exclude competition) in relation to the MSF;
4) Fine on the Bank of Cyprus (€7.221.443), Marfin Popular Bank (€7.670.648), Hellenic Bank (€1.569.989), Alpha Bank (€1.384.271), National Bank of Greece (Cyprus) (€233.972) for excessive pricing in relation to DIF;
5) Fine on the Bank of Cyprus (€10.832.165) for refusal to grant a license to FBMECS to process American Express cards transactions through its own terminals transactions;
6) Corrective measures on JCC to ensure the presence of independent (from its shareholders) members on its Board of Directors.

Stelios Christofides
Lawyer
George Z. Georgiou & Associates LLC