



EUROPEAN COMMISSION

Brussels, 08.11.2018
C(2018) 7529 final

Fairness in Fees Limited
23 The Ridge
Coulsdon, Surrey,
CR5 2 AT
The United Kingdom

Subject: Case AT. 40378 Legal fees in Cyprus
Commission Decision rejecting the complaint
(Please quote this reference in all correspondence)

Dear Madam/Sir,

- (1) I am writing to inform you that the European Commission (the "Commission") has decided to reject your complaint against the Cyprus Bar Association ("CBA"), pursuant to Article 7(2) of Commission Regulation (EC) 773/2004.¹

1. THE COMPLAINT

- (2) By letter dated 24 February 2016, you requested the Commission to launch an investigation into the CBA, the representative body of all practising lawyers in the Republic of Cyprus.²
- (3) Your complaint alleges that the CBA, by enacting the Minimum Fees Regulation³ on the basis of powers given to it by Article 24(1)(k) of the Advocates' Law, breached Article 101 TFEU. According to you, the minimum fees amount to a decision by an association of undertakings, which has the object of preventing, restricting or distorting competition and affects trade between Member States. Your complaint also alleges that the ability of

¹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24.

² CBA was established under Article 23 of the Advocates' Law Cap (Act 42/61, as amended, latest by Act 107(I)/2018 published in the Official Journal of the Republic of Cyprus, No 4668 of 25 July 2018, p. 520) ("the Advocates' Law").

³ Minimum Fee Limits of Practising Lawyers (out-of-court) cases Regulations of 1985-2006, Regulatory Administrative Act 118/2008, E.E. Annex (III) (I) N° 4268, dated 4 April 2008.

lawyers and their clients to opt-out of the minimum fees does not prevent the breach of Article 101 TFEU. Finally, your complaint alleges that the minimum fees cannot be justified under Article 101(3) TFEU.

- (4) By letter of 14 August 2018, the Commission informed you of its intention to reject your complaint considering that the CBA had repealed the Minimum Fees Regulation by decision of 19 June 2018 and that the State had withdrawn the relevant provision of the Advocates' Law on 25 July 2018.
- (5) In response, by letter of 5 September 2018, you informed the Commission that there has been no evident effort from the Cypriot authorities, or press, to connect abrogations of the Minimum Fees Regulation and relevant sections of the Advocates' Law to any prior unlawfulness of the Minimum Fees Regulation under Articles 101 and/or 102 TFEU, or to treat them as connected to your complaint. In addition you expressed concerns that the referred abrogations have been presented as voluntary actions by the Republic of Cyprus and the CBA which are entirely disconnected from the subject matter of your complaint and that the Commission's intention to reject your complaint will be used to reinforce a narrative that your complaint had no merit and was unconnected to these abrogations. To this end you seek a statement from the Commission that your complaint was found to be justified in relation to the unlawfulness of the Minimum Fees Regulation prior to their abrogation. Finally, you request the Commission to provide you with all the correspondence and submissions on which the Commission's decision to reject your complaint is based.

2. THE SERVICES CONCERNED

- (6) Your complaint refers to the minimum fee scale initially adopted by the CBA in 1985, which was amended several times.
- (7) Article 3 of the Minimum Fee Regulations provided that *“these Regulations apply to the provision of services by lawyers for whose fee no other provision in any other Procedural Regulations exist which have been issued by the Supreme Court and includes Civil and Criminal procedures”*.
- (8) Your complaint therefore relates to services provided in the Republic of Cyprus by lawyers for out-of-court work, such as the drawing up of contracts, wills and deeds of gift, registration of companies, trademarks, powers of attorney, bills of exchange and administration of estates.

3. THE PROCEDURE

- (9) Following your complaint, the Commission addressed requests for information to the CBA, in order to clarify the factual and legal situation.
- (10) Considering that the legislation of the Republic of Cyprus may also raise doubts as to its compliance with EU competition law, the Commission also addressed questions to the authorities of that Member State.
- (11) On 29 June 2018 the decision of the CBA to abrogate the Minimum Fees Regulation in its entirety, including its annexes that determined minimum fees for the provision of specific type of services related to out-of-court cases, was published in the Official Journal of the Republic of Cyprus.

- (12) On 25 July 2018 recently adopted amendments to the Advocates' Law were published in the Official Journal of the Republic of Cyprus. According to amended Advocates' Law, in particular Article 24(1)(k) thereof, the CBA is no longer empowered to fix lawyers fees for out-of-court cases that would be generally applicable to all lawyers providing this type of legal services in the Republic of Cyprus.

4. THE NEED FOR THE COMMISSION TO SET PRIORITIES

- (13) The Commission is unable to pursue every alleged infringement of EU competition law which is brought to its attention. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints.⁴
- (14) When deciding which cases to pursue, the Commission takes various factors into account. There is no fixed set of criteria, but the Commission may take into consideration whether, on the basis of the information available, the complaint concerns ongoing conduct or conduct that lies completely in the past.

5. ASSESSMENT OF YOUR COMPLAINT

- (15) After a preliminary assessment of your complaint, the Commission does not intend to conduct an in-depth investigation into your claims for the reasons set out below.
- (16) Following its extraordinary meeting of 19 June 2018, the CBA decided to abrogate the Minimum Fees Regulation in its entirety, including its annexes that determined minimum fees for the provision of specific type of services related to out-of-court cases. The decision of the CBA to abrogate the Minimum Fees Regulation was published in the Official Journal of the Republic of Cyprus on 29 June 2018.⁵
- (17) In addition, the Republic of Cyprus recently enacted amendments to the Advocates' Law, in particular Article 24(1)(k), which empowered the CBA to "*fix lawyers fees for out-of-court cases*". According to amended Article 24(1)(k), the CBA does not anymore have the power to fix lawyers fees for out-of-court cases that would be generally applicable to all lawyers providing this type of legal services in the Republic of Cyprus. If, on the other hand, there is a dispute between the lawyer and its client concerning the lawyers' fees for provision of legal services in of out-of-court cases, principles of free and fair competition need to be observed when resolving the possible dispute.⁶ These amendments to the Advocates' Law were published in the Official Journal of the Republic of Cyprus on 25 July 2018.⁷
- (18) On this basis, the Commission concludes that your complaint concerns a conduct by the CBA that lies completely in the past, since the Minimum Fees Regulation, which was at the core of your complaint, was abrogated on 19 June 2018 with immediate effect. This

⁴ OJ C 101, 27.04.2004, p. 65. See also the Commission's Report on Competition Policy 2005, p. 25-27.

⁵ Official Journal of the Republic of Cyprus, E.E. Annex (III) (I), No 5096 of 29 June 2018 (Act 172/2018).

⁶ The amended Article 24(1)(k) now reads: "*Paragraph (1) of Article 24 of the Basic Law is amended by replacing paragraph (k) thereof, with the following paragraph: "(K) observing the principles of free and fair competition, to regulate the way and the procedure for resolving disputes arising in relation to lawyers remuneration for out-of-court cases;"*".

⁷ Official Journal of the Republic of Cyprus, E.E. Annex (I) (I) No 4668 of 25 July 2018 (Act 107(I)/2018).

entails that the fees for the provision of legal services by lawyers in out-of-court cases are since then governed by individual agreements between lawyers and their clients and not by the Minimum Fees Regulation, or more particularly its annexes that before the abrogation determined minimum fees for the provision of specific type of services related to out-of-court cases, as your complaint alleges.

- (19) The Commission also considers that there are no indications in your complaint or your letter of 5 September 2018 that the alleged conduct presently affects competition since:
- (i) The Minimum Fees Regulation was abrogated with immediate effect and the minimum fee scale that was part of the Minimum Fees Regulation therefore cannot be relied upon by lawyers anymore.
 - (ii) Following the amendments to the Advocates' Law, the CBA is no longer empowered to adopt similar type of generally applicable rules concerning the fees for provision of legal services in out-of-court cases.
- (20) The Commission's assessment and the conclusion presented in the present decision are based on the publicly available information, notably publications in the Official Journal of the Republic of Cyprus of the abrogation of the Minimum Fees Regulation by the CBA (see paragraph (16) above) and amendments of the Advocates' Law (see paragraph (17) above). Conversely, the Commission's assessment and the conclusion is not based on any correspondence or submissions of the Republic of Cyprus and/or CBA or any undertakings that either the Republic of Cyprus or the CBA would have communicated to the Commission.
- (21) Finally, it should be recalled that Article 7 of Regulation No. 773/2004 does not give the complainant the right to insist that the Commission takes a final decision as to the existence or non-existence of the alleged infringement and does not oblige the Commission to continue the proceedings, whatever the circumstances, right up to the stage of a final decision.⁸

6. CONCLUSION

- (22) In view of the above considerations, the Commission, in its discretion to set priorities, has come to the conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringement(s) and consequently rejects the complaint pursuant to Article 7(2) of Regulation No. 773/2004.

7. PROCEDURE

7.1. Possibility to challenge this Decision

- (23) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 TFEU.

⁸ See, to that effect, judgment in case C-56/12 P *EFIM v Commission* of 19 September 2013, EU:C:2013:575, paragraphs 57 and 82, order in case C-367/10 P *EMC Development v Commission* of 31 March 2011, EU:C:2011:203, paragraph 73 and judgement in case T-201/11 *Si.mobil* of 17 December 2014, ECLI:EU:T:2014:1096, paragraph 80.

7.2. Confidentiality

- (24) The Commission reserves the right to send a copy of this Decision to CBA. Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.⁹ If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform [REDACTED]
[REDACTED] Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website or sent to CBA.
- (25) The published version of the Decision may conceal your identity upon your request and only if this is necessary for the protection of your legitimate interests.

For the Commission

*Margrethe VESTAGER
Member of the Commission*



⁹ See paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06.