Competition Assessment of Laws and Regulations in Five Sectors of the Greek Economy

Laws and regulations are key instruments in achieving public-policy objectives, such as consumer protection, public health and environmental protection. When they are overly restrictive or onerous, however, a comprehensive review can help identify problematic areas and develop alternative policies that still achieve government objectives without harming competition.

The OECD was asked to carry out an independent policy assessment to identify rules and regulations that may hinder the competitive and efficient functioning of markets in five sectors of the Greek economy: e-commerce, construction, media, wholesale trade and selected sub-sectors of manufacturing, such as chemicals and pharmaceuticals.

The Competition Assessment of Laws and Regulations project aims to identify regulatory barriers, including those that restrict entry to a market; constrain firms’ ability to compete (e.g. by regulating prices or limiting advertising); treat competitors differently (e.g. by favouring existing suppliers); facilitate co-ordination among competitors; or restrict consumers’ ability to change suppliers. The methodology followed in this exercise is the Competition Assessment Toolkit, developed by the OECD to help governments identify regulatory barriers to competition and correct them by less restrictive policies.

The project proceeded in five stages. Stage 1 defined the exact scope of all sectors. A list consisting of 1,288 sector-relevant legislation was collected with the help of government experts. In Stage 2 this legislation was screened, using the OECD’s Competition Assessment methodology, to identify potential competition barriers. The review included both national provisions and pieces of legislation transposing EU directives. In Stage 3 we researched the policy makers’ objective for each provision. An in-depth analysis was carried out qualitatively. In Stage 4 we developed draft recommendations for those provisions that were found to restrict competition, taking into account EU legislation and equivalent provisions in comparable countries, notably other EU Member States. In the final stage, recommendations were finalised. At the same time, several workshops with ministerial experts were held to build the Greek administration’s competition assessment capabilities.

1. The benefits of competition

The main benefits of competition include lower consumer prices, greater consumer choice, better quality of products and services, higher employment, greater investment in research and development (R&D), and faster innovation adoption. The consumers’ ability to choose between different providers of goods benefits not only consumers themselves, but also the economy as a whole. When customers can choose and shop around for products and services, firms are incentivised to compete with each other, innovate more and be more productive. Industries in which there is greater competition experience faster productivity growth. These conclusions have been confirmed by a wide variety of studies, as summarised in the OECD “Factsheet on how competition policy affects macro-economic outcomes”. The primary reason why competition stimulates productivity is that it allows more efficient firms to enter the market and gain share.

In addition to the evidence that competition promotes growth, there are many studies that have shown the positive effects of more flexible product market regulation, the area most closely relevant for this project. These studies analyse the impact of regulation on productivity, employment, R&D and investment, among other variables. Differences in regulation also matter and can significantly reduce both trade and Foreign Direct Investment.
There is a particularly large body of evidence on the productivity gains from more flexible product market regulation. As summarised by Égert (2016), “[m]ore stringent product market regulation (PMR) can hamper [productivity] by impeding the efficient allocation of capital and labor within and across firms and industries”. In addition, anti-competitive regulations have an impact on productivity that goes beyond the sector in which they are applied. Specifically, a large part of the impact on productivity goes through the channel of investment in R&D.

Innovation and investment in knowledge-based capital, such as computerised information and intellectual property rights, are also affected by product market regulation. Pro-competition reforms are associated with an increase in the number of patents. In addition, lifting barriers enables innovative firms to combine more efficiently the resources needed to market new ideas and products. More generally, more stringent product market regulations are shown to be associated with less investment (lower capital stock) and also to amplify the negative effects of a more stringent labour market.

Greater flexibility can lead to higher employment. For example, after deregulating the road transport sector in France, employment levels increased at a faster rate than before deregulation. A recent OECD study finds that small firms that are younger than five years on average contribute to about 42% of job creation. As noted in OECD (2015), “such a disproportionately large role by young firms in job creation suggests that reducing barriers to entrepreneurship can contribute significantly to income equality via employment effects”.

Lifting anti-competitive regulations has two main effects on income inequality: on one hand, greater flexibility leads to higher employment; on the other, deregulation is also associated with greater wage dispersion. Recent work investigates the relationship between competition and inequality by assessing the redistributive effects of market power. It is found that market power benefits the wealthiest households and that the share of wealth of the top 10% of households deriving from market power is between 10% and 24%.

2. Main recommendations

The main aim of the Competition Assessment of Laws and Regulations project is to improve competition in five sectors of the Greek economy: e-commerce, construction, media, wholesale trade and selected sub-sectors of manufacturing. These sectors account for about 11% of Gross Value Added and 16% of employment. Lifting barriers to competition in these sectors has therefore the potential to significantly help the Greek economy.

Our recommendations were developed after a thorough analysis of the legislation and of its impact in terms of harm to competition. Overall, the review has led to the identification of 577 potential regulatory barriers found in 1,288 legal texts that were included in the assessment. In total, the project makes 356 specific recommendations.
The Competition Assessment project focuses on laws and regulations relevant for the sectors under analysis. Its focus is on legislation and not its enforcement. This matters because changes in regulation can only have an impact if regulation is enforced. Business environment is also important. Complementary to this analysis, there are measures of administrative burden and ease to make business which capture these broader issues, such as the OECD’s Product Market Regulation index and the World Bank’s Ease of Doing Business index.

**E-commerce**

E-commerce was designated as a priority sector within the context of the OECD competition assessment project in Greece. Consequently, the review of the relevant legislation and the analysis of potential barriers to competition were brought forward and recommendations on the sector were delivered earlier than those in other sectors. A few recommendations have already been implemented by the authorities.

The OECD recommended adopting a uniform definition of consumer across consumer protection legislation. At the moment, the legislation incorporates a number of different definitions. This prevents e-commerce providers from applying automated processes, drafting the terms and conditions of use, offering standardised contracts etc., given that rights and obligations vary depending on, among other factors, whether their customer is an individual or an enterprise.

The Greek authorities should also clarify the definitions and distinction between legal and commercial guarantees, abolish additional obligations for local suppliers in relation to commercial guarantees, and consider adopting a shorter duration of the legal guarantees for second-hand goods.

Similar to the case on the definition of consumer, there are varying definitions of supplier found in the law on consumer protection. Moreover, current Greek legislation has the unintended consequence of burdening local (e-commerce) sellers with additional obligations, and therefore costs, compared with their competitors abroad.

Implementing these recommendations is expected to create legal certainty and increase transparency, while at the same time reducing compliance costs for Greek businesses.

More generally, streamlining and codifying Law 2251/1994 would resolve to a large extent the confusion and inconsistency resulting from fragmented legislation. Given the horizontal nature of consumer protection legislation and its application beyond e-commerce, this streamlining should follow a broader consultation with market operators.

**Construction**

A number of recommendations in the sector are aimed at increasing participation in tenders for public works and designs.

In order to participate in public tenders for works and designs, individuals and companies are required to belong to registries and register in categories depending on the nature of their activities e.g. road works and hydraulic projects. In addition, they are classified according to their experience, staffing and financial standing. OECD recommends that bidders should be able to participate in tenders, provided that they fulfil all participation criteria, irrespective of their classification within the registries.

More flexibility should be granted to individuals and companies to operate in the markets both for public works and designs. We recommend that simultaneous registration of individuals
and companies as designers and contractors should be allowed. However, they should not be
allowed to bid for the construction of a project that they have designed – unless explicitly
provided for in the call for tenders. In public designs, while individuals are currently allowed to
register in a maximum of 2 categories out of 28 in total, they should be allowed to register in a
greater number of categories consistent with their university degrees, i.e. specific disciplines of
engineering, such as civil or mechanical engineering.

These recommendations will eliminate artificial barriers to participation and allow
individuals and companies to compete on more tenders. The expected benefits include more
competition in tenders and greater synergies in works and designs.

Price lists for public works and designs are published and are binding for all contracting
authorities across the country. In the standard format for tenders, participants are required to
offer discounts with respect to these published price lists. However, the lists have not been
updated recently. According to the OECD Guidelines on fighting bid rigging in public
procurement, “contracting authorities should use maximum reserve prices only if based on
thorough market research and if officials are convinced they are very competitive.” The price
lists currently in force should therefore be updated to reflect market conditions.

Some legal provisions allow broad discretion to contracting authorities. For instance, for
works that are separate in time and nature from the main project (i.e. preliminary works)
guidelines should be issued to clarify the definition of these works in order to ensure a
consistent approach is followed by contracting authorities.

Contracting authorities should enhance good governance and integrity in public
procurement by implementing e-procurement and introducing e-monitoring of public works and
designs. This needs to encompass all stages – ranging from assessing the need for
procurement of works or designs, to contract management and final payment. Good
management, prevention of misconduct and close monitoring of public works and design
contracts can promote fair and equitable treatment of potential suppliers and improve
tendering procedures, supervision and further planning of public works.

The Greek authorities have already incorporated into Law 4412/2016 on public
procurement a number of OECD comments on the draft version. For instance, some articles of
the draft law restricted the business choices of bidders. The OECD also commented on the
importance of limiting the use of direct award and of ensuring transparency.

Media

The legislation sets criteria for newspapers and magazines to be eligible for publishing
state announcements and for benefitting from reduced postal rates. In both cases, the criteria
should be reviewed to ensure that new entrants and incumbents benefit from a level-playing
field.

The licensing and regulatory framework for radio stations is fragmented and to a
considerable extent not implemented in practice. The Greek authorities should ensure that
economic operators face legal certainty and can make informed business choices, based on a
clear regulatory framework.

The OECD recommends reviewing the definition of independent audio-visual producer in
line with the relevant European Directive. In addition, the compulsory registration of producers

1 The present text does not include the assessment of Law 4339/2015 and of Joint Ministerial
Decision 7577/2016 in relation to digital free-to-air TV licences, due to ongoing administrative
and legal procedures.
and production companies in Registries of Professional Chambers should be abolished. Lifting these restrictions will enable new entry in the market and enhance competition. The recommendations are also expected to facilitate intellectual property rights holders in concluding agreements related to the audio-visual production of their works.

The licensing and regulatory framework for Pay-TV/Radio should be updated so as to reflect the new technological developments. Furthermore various regulatory restrictions on Pay-TV/Radio content need to be relaxed. In addition, the restrictions on the suppliers of programme to Pay-TV/Radio should be reviewed. The recommendations aim at facilitating investment choices in a wider range of technologies and, as a result, to increase choices for consumers. Moreover, reducing business costs for Pay-TV/Radio broadcasters and for suppliers of programmes may lead to lower prices.

**Manufacture and wholesale trade of chemicals**

The authorities should allow the trading of detergents in bulk at wholesale level, enabling companies to save on packaging and potentially lowering consumer prices. Moreover, decisions to withdraw detergents should be made public, in order to ensure consumer protection, transparency and competition.

*Isopropyl alcohol* is subject to an excise duty in Greece. This yields only limited tax revenues. In addition, in case of exemption for industrial purposes, Greek producers are forced to incur the complex and costly process of denaturation foreseen by the law which adds to their costs. The savings could be recovered through lower prices, since the final industrial product will not be burdened either with excise duty or with the cost of the denaturation procedure.

The legislation on plant protection products and fertilisers is scattered across different legal texts and has changed many times in the last few years. This creates additional complexity and uncertainty for economic operators, especially new entrants and smaller firms. We recommend abolishing restrictive storage requirements, which can increase costs and act as a barrier to entry, and simplifying the requirements for the sale to take place under the supervision of a suitable professional. These recommendations will reduce costs for economic operators, while still achieving the policy objective of sustainable and safe use.

Innovation in cosmetics has led to “borderline” products that combine cosmetic and biocidal characteristics and so cannot be easily categorised. The National Organisation for Medicines (EOF) should comply with EU soft law on borderline products, recognising their primary and secondary functions, thus categorising them primarily as either cosmetics or biocides. This recommendation will remove the uncertainty currently faced by suppliers and, in consequence, lower a possible barrier to entry and help increase product variety for consumers.

EOF applies pharmaceutical type provisions to the licensing of the *biocidal* products that fall under its competency. In particular, umbrella branding would not be allowed for these products. As a result, operators would not be able to market biocidal products with different qualitative chemical composition in terms of active ingredients under the same brand name. Umbrella branding is a form of economies of scope, as it economies on the costs of creating a new brand. It leads to lower expenses such as advertising costs, trade deals, and price promotions. At the same time, it also lowers the risk for firms to introduce new products, increasing product variety for consumers. The OECD recommends that these restrictions, designed for pharmaceutical products, should not apply to biocides.
Manufacture and wholesale trade of pharmaceuticals

Pharmaceuticals legislation provides for a maximum price reduction for generics in repricing procedures. In case the revised price exceeds that of the reference product the price of the latter shall be adjusted upwards so that the two be equated. This deprives generics of their price advantage compared to the original product, leaving no room for competition or their further market penetration. The OECD recommends that the maximum price reduction rule is revised so that it always allows for a certain price difference between generic and off-patent products, promoting thus generics penetration through enhanced competition.

The legal framework for the advertisement of over-the-counter (OTC) medicines should be updated and clearly aligned with recent amendments in the liberalisation of the distribution channels of commonly used medicines (Γενικής Διάθεσης Φάρμακα – ΓΕΔΙΦΑ / General Sale Medicines – GEDIFA) as a special category of OTCs. In addition, more flexibility should be allowed in the promotion of OTCs, including the advertisement of benefits to the public in the form of price discounts. Given that from January 2017 the prices of OTC medicines will be no more regulated, conveying this information through advertisement in all points of sale could result in enhanced competition and ultimately lower prices to the benefit of patients. The presence of pharmacists and quantity restrictions at points of sale sufficiently ensure public health protection.

The authorities should review the regulatory framework of promotions, including the prior approval of scientific events and conferences by the EOF. A notification accompanied by an ex post control mechanism by EOF could achieve the ethical, public health and financial objectives of the policymaker without affecting the firms’ marketing strategies.

Restrictions on the operation of warehouses should be lifted to enable enterprises to achieve economies of scale. The legal framework on the operation of warehouses should be made more flexible to allow for the establishment of more than one economic unit within the same prefecture and supporting storage areas outside it. The resulting economies of scale and fiercer competition among pharmaceutical wholesalers would allow more efficient use of resources, better coverage of the market and, ultimately, lower prices of medicines.

Wholesale trade

The OECD recommends that the authorities simplify and make the licensing framework for the wholesale trade of fuel more flexible in order to make entry into the market easier for new wholesalers. For instance, imposing a minimum capacity of storing spaces or a minimum number of bottles for liquid gas may create barriers to entry into this market.

Moreover, the duration of the exclusive agreements between wholesalers and retailers is regulated by law. The legislation should be clarified to ensure that the duration of these agreements cannot be extended beyond the legal term, thus encouraging competition among wholesalers each time the term of the agreements lapses.

In the area of central (wholesale) markets, the current legal framework allows for only one wholesalers’ market in each of the areas of Athens and Thessaloniki. This framework is outdated, and out of line with market developments. The restriction should be relaxed to enable wholesalers, possibly together with other market players, to set up competing markets.

The OECD recommends that the framework for own-use transport be reviewed so that it is easier for wholesalers to own trucks. In addition, the (grandfathering) rights granted to transport businesses operating under the old framework should be phased out. Finally, the requirements for obtaining a road transport operator licence should not favour companies of specific legal forms, such as sociétés anonymes, versus those of a legal form typically chosen
by smaller operators. Lifting these restrictions and asymmetric requirements will level the playing field and enhance competition between market participants, allowing companies to develop their own business strategies and operate more efficiently.

3. Horizontal findings

Frequently, provisions superseded by more recent legislation have not yet been explicitly removed from the body of legislation. In its overview of Greece, the OECD notes that “repealing old laws which are no longer necessary is not common practice” (OECD, 2015a). Among the 356 recommendations in this project, almost 90 were about obsolete provisions.

Obsolete, inactive or redundant legislation can act as a regulatory barrier by creating legal uncertainty and potentially raising regulatory and compliance costs facing suppliers and market players, notably legal costs.

The OECD recommends that superseded legislation be explicitly abolished. By removing obsolete legislation from the body of legislation and the online legal libraries of competent authorities, market participants and potential entrants face a more transparent, less complex and more certain business environment, ensuring that both operation and entry are facilitated. Streamlining legislation should be done preferably in the context of codification of the sectoral legislation.

The regulations reviewed in this project are often scattered across many different pieces of legislation. In order for businesses and consumers to have a comprehensive understanding of the legislation applicable to a specific economic activity, they need to identify the relevant provisions in many separate texts and understand how these provisions interact with each other. In addition, subsequent modifications to core pieces of legislation result in further fragmentation and a lack of clear rules.

The streamlining and codification of the legislation would be particularly beneficial to new entrants, who are less familiar with the legislation, and smaller competitors, for whom compliance costs are likely to be relatively more important than for larger companies. A previous OECD project focusing purely on the administrative burden of regulations, a subset of compliance costs, estimated they cost Greek businesses in 13 areas about EUR 3.28 billion.

The full implementation of the recommendations set out in this report is expected to deliver positive long-term effects on employment, productivity and growth. The cumulative and long-term impact of lifting the restrictions identified on the Greek economy should not be underestimated. The rationalisation of the body of legislation in these sectors, which some authorities have suggested they will undertake, will positively affect the ability of businesses to compete in the longer term – provided that the recommendations are implemented fully.
References


OECD (2014a), Factsheet on how competition policy affects macro-economic outcomes
