

Unclassified

DAF/COMP(2005)18/09



Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

23-May-2005

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

DAF/COMP(2005)18/09  
Unclassified

**ANNUAL REPORT ON THE COMPETITION POLICY DEVELOPMENTS IN GREECE**

-- 2004 --

*This report is submitted by the Greek Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting (1-2 June 2005).*

**JT00184666**

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**1. Changes to competition laws and policies, proposed or adopted**

1. In the year 2004, the newly elected government expressed its will to give top priority to competition policy.
2. Among its first measures was the recruitment of 12 expert lawyers and economists, in order to reinforce the Commission's staff with expert personnel, very well trained and educated in questions of competition law and economy. By the end of 2004, 13 more posts for expert lawyers and economists were published.
3. Furthermore, the Minister of Development asked the Commission for its suggestions and proceeded to a proposed amendment of the relevant legislation (law 703/77 on the control of monopolies and the protection of free competition).
4. The draft of the project law aims at strengthening the legal instruments of the Authority, in order to perform its duty of safeguarding competition more efficiently.
5. The draft of the project law provides, among other things, for the introduction of sector inquiries and reinforces the investigative powers of the Commission to this purpose. It also provides for the Commission the possibility to take structural and behavioural measures, as well as to impose commitments to undertakings, for the prevention of infringements of competition law.
6. The draft of the project law provides also for the adaptation of the national legislation to the competition enforcement system, as provided in EC Council Regulation 1/2003 on the implementation of the rules of competition laid down in Articles 81 and 82 of the EC Treaty. The main scope of the proposed provisions is that the Hellenic Competition Commission can fully and efficiently carry out the implementation of the rules of Articles 81 and 82 of the EC Treaty and effectively participate in the cooperation mechanisms provided in EC Council Regulation 1/2003, that is the European Competition Network. The introduction of a leniency program is also provided.
7. Last but not least, the draft of the project law proceeds to the abolition of the market share criterion for the ex ante notification of a merger, simplifying the merger control and establishing clear and understandable notification thresholds.
8. The proposed draft will be submitted and voted by the Hellenic Parliament in the first semester of 2005.

## 2. Enforcement of competition law and policies

9. During the reporting period, seventeen (17) cases were examined by the Hellenic Competition Commission, which can be classified as follows:

**Table 1**

<b>Cases examined in 2004 by the Hellenic Competition Commission</b>	
Complaints	<b>2</b>
Mergers	<b>10</b>
Provisional Measures	<b>3</b>
Miscellaneous	<b>2</b>
Total	<b>17</b>

10. Also in six (6) merger cases a President's Act was issued according to art.4d para.2 of law 703/77.

11. Furthermore, the Secretariat of the HCC conducted in 2004 fifty-eight (58) ex officio investigations, the majority of which (i.e. 55 investigations) concerned the retail sale of motor fuel.

## 3. Main cases

### 2.1 *Ex officio investigation in the retail sector*

12. The Trade Association of Greek Super Markets (SESME) issued and sent both to its members and the suppliers, in October 2001, a recommendation fixing unilaterally the exact percentage of rebates to be included in the invoices of all major suppliers of groceries and consumer goods addressed to the major super markets- members of the Trade Association. The Trade Association asked from its members and the suppliers to apply the abovementioned list.

13. Furthermore, the seven biggest Greek super markets (Veropoulos SA, ATLANTIC SA, Vassilopoulos SA, METRO SA, Massoutis SA, Sklavenitis SA and TROFINO SA) in February and April 2004 convoked two meetings, asking major suppliers to participate, with two main subjects: First, how to deal with big multinational super markets (namely Carrefour) which, according to them, sell goods below cost and second, how to deal with big multinational discount stores (namely *Lidl* and *Plus*), which recently seem to gain market share in the Greek market. During the two meetings, the representatives of the seven super markets (with a total market share in the Greek market above 50%), had a common position, asking the suppliers not to supply with goods the abovementioned multinational super markets (which were not invited to the meeting) and threatening to keep any supplier who would not cooperate away from their shelves.

14. The relevant product market is the retail sales of groceries and consumer goods and the territory affected by the prohibited practices is Greece.

15. According to the jurisprudence of the CFI and the Court of Justice, a recommendation issued by a Trade Association may be considered as prohibited agreement in the sense of article 81 EC Treaty. Thus, the recommendation issued by the Association of Greek super markets and distributed both to its members and all major suppliers seeking to fix unilaterally a standard percentage of rebates included in the invoice for each major supplier, has as its final and true object to indirectly fix prices to a level satisfactory for the members of its Board of Directors. According to the report issued by the Secretariat of the Hellenic Competition Commission, the above recommendation constitutes a decision by an association of undertakings, having as an object the prevention, restriction or distortion of competition within the relevant market, prohibited both by article 81 para.1 EC Treaty and by article 1 para.1 of law 703/77.

16. Furthermore, the convocation of the two meetings at a hotel, with the warning that the meetings should be kept secret and not to be mentioned anywhere at the hotel, by the seven largest Greek super markets having a common position, asking the major suppliers not to supply with goods the above mentioned multinational super markets (which were not invited to the meeting) threatening to keep any supplier who would not cooperate away from their shelves, constitutes a concerted practice prohibited both by article 81 para.1 EC Treaty and by article 1 para.1 of law 703/77.

17. The Secretariat of the Hellenic Competition Commission has suggested a prohibition decision. The suggestion was upheld by the Hellenic Competition Commission in its Decision 277/IV/2005.

## **2.2 Decision Nr. 263/IV/2004 (Service stations of Arta)**

18. This case concerned an ex officio investigation in the sector of the retail sale of motor fuel through service stations. In Greece the provision of services and all activities related to the refining, trade and storage of crude oil and petroleum products fall within the scope of law 3054/2002. The petroleum products' prices are freely set by those who are active in the trade of these products. In order to offset possible adverse effects on the national economy due to petroleum products' price increases, a ceiling on retail selling prices may be imposed under exceptional circumstances at a national or local level by a joint decision of the Ministers of Economy and Development issued upon opinion of the Regulatory Authority for Energy (R.A.E.).

19. In December 2003, the Secretariat of the HCC conducted an investigation according to art. 26 of law 703/77 in twelve (12) service stations in the prefecture of Arta. According to the findings of the HCC's Secretariat, during the period from 28.7.2003 to 21.12.2003, eight (8) out of the total of twelve (12) service stations in the region of Arta jointly proceeded to price increases and reductions at the exact same percentage and sold the relevant products at the same prices. It is also noteworthy that during this period the government had proceeded twice to the imposition of maximum retail prices, as the prices of motor fuel in that region were systematically and significantly higher than the average retail price of motor fuel at a national level.

20. In this case the relevant product market comprised the market for the retail sale of motor vehicles' fuel: a) petrol "super", b) unleaded petrol, c) unleaded petrol "super" and d) diesel. The relevant geographic market comprised the city and the wider region of Arta.

21. The HCC established that: (i) the accused undertakings coordinated their prices, whilst there was no such uniform reaction by the rest of the service stations, (ii) the prices of the accused undertakings were the highest in the relevant geographic market and (iii) the price movements in question didn't follow the fluctuation of oil prices. The HCC also ascertained that the individual service stations differed from one another as regards their economic and financial characteristics (i.e. financial strength, staff, operational costs), as well as regards their annual sales in motor fuel. Furthermore, in several occasions the trading companies sold fuel to these stations at different prices and granted them different discounts and rebates.

22. In the light of the above mentioned findings and taking into account the non oligopolistic structure of the relevant market and the relatively long duration of coordination, the HCC concluded that the coordination among the eight (8) service stations was deliberate and not a spontaneous and parallel reaction to market changes independently adopted by each undertaking. According to the HCC's ruling, the concerted practice is the only plausible explanation for the service stations' uniform behaviour, which had as effect the appreciable distortion and restriction of free competition and therefore infringed art.1 para.1 of law 703/77.

23. Finally, the HCC identified as mitigating circumstances the relatively limited margin of profit of the service stations, as well as the high level of taxation of petroleum products (75%) and imposed on each of them a fine amounting to 3% of its gross revenues for the year 2002.

### **2.3 Decision Nr. 271/IV/2004 (selective distribution for skincare cosmetics)**

24. The case involved a complaint brought by the department stores HONDOS CENTER against LAVICOSMETICA, LAVIPHARM and VICHY. According to the complainants, the accused companies refused to supply their *VICHY* and *LA ROCHE POSAY* cosmetics to three (3) out of a total of sixteen (16) HONDOS CENTER department stores; the accused companies on the contrary argued that the department stores in question did not provide for the constant presence of a dispensing chemist during all shop working hours.

25. In this case the relevant product market comprised all luxury skincare cosmetics that are sold at pharmacies or under the supervision of a dispensing chemist.

26. The HCC established the existence of a "tacit" agreement caught by article 1 para. 1 of law 703/77, between the distributor LAVICOSMETICA and the vast majority of the members of his selective distribution network, i.e. the pharmacies. The agreement involved the application of discriminatory terms to certain members within the network as well as the non acceptance to the network of undertakings which fulfilled the criteria applied for selection. More precisely, the HCC ruled that the requirement for the constant presence of a dispensing chemist is disproportionate as long as the distributor refuses to expressly undertake the commitment to execute the department stores' orders within a specific period of time. That is as it obliges the department stores to hire full-time dispensing chemists without being certain about the starting point of the delivery of the products. Furthermore, such a requirement cannot be justified by the need of a previous training of the newly hired dispensing chemists by the distributor.

27. The HCC ruled that LAVICOSMETICA's refusal to integrate the three HONDOS CENTER department stores into its selective distribution network constitutes a serious infringement of art.1 para. 1 of law 703/77 and imposed a fine amounting to 1.5% of LAVICOSMETICA's turnover for the year 2002.

#### 4. Resources of the Hellenic Competition Commission

4.1 *Annual Budget, year 2004: 14,718,772.45 €*

4.2

**Table 2**

<b>Secretariat of the Hellenic Competition Commission Number of employees, year 2004:</b>	
Economists:	<b>14</b>
Lawyers:	<b>15</b>
Other professionals:	<b>9</b>
Support staff:	<b>19</b>
All staff combined:	<b>57</b>

4.3

*Table 3*

<b>Secretariat of the Hellenic Competition Commission Year 2004, Human resources applied to</b>	
Enforcement against anticompetitive practices:	<b>28</b>
Merger review and enforcement:	<b>6</b>
Advocacy efforts:	<b>2</b>