COUNTRY STUDIES

Greece - The Role of Competition Policy in Regulatory Reform

2001

Introduction

The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers. This report on the role of competition policy in regulatory reform analyses the institutional set-up and use of policy instruments in Greece. This report was principally prepared by Mr. Michael Wise for the OECD.

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LE ROLE DE LA POLITIQUE DE LA CONCURRENCE DANS LA RÉFORME DE LA RÉGLEMENTATION

FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *The Role of Competition Policy in Regulatory Reform* analyses the institutional set-up and use of policy instruments in Greece. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Greece* published in 2001. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as electricity and telecommunications, and on the domestic macroeconomic context.

This report was principally prepared by Michael Wise in Directorate for Financial and Fiscal Affairs of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Greece. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Executive Summary

Background Report on The Role of Competition Policy in Regulatory Reform

Is competition policy sufficiently integrated into the general policy framework for regulation? Competition policy is central to regulatory reform, because (as background report to Chapter 2 shows) its principles and analysis provide a benchmark for assessing the quality of economic and social regulations, as well as motivate the application of the laws that protect competition. Moreover, as regulatory reform stimulates structural change, vigorous enforcement of competition policy is needed to prevent private market abuses from reversing the benefits of reform. A complement to competition enforcement is competition advocacy, the promotion of competitive, market principles in policy and regulatory processes. This report addresses two basic questions: First, is Greece's conception of competition policy, which depends on its own history and culture, adequate to support pro-competitive reform? Second, do national institutions have the right tools to effectively promote competition policy? That is, are the competition laws and enforcement structures sufficient to prevent or correct collusion, monopoly, and unfair practices, now and after reform? And can its competition law and policy institutions encourage reform? The answers to these questions are assessed in terms of their implications for the strategies and sequencing of regulatory reform.

One of Greece's long-term priorities has been establishing more complete economic integration with Europe, first through EU membership and most recently through joining the euro zone. Recognition of the key role of competition policy, both in the larger sense of policies supporting and promoting competition and markets and in the narrower sense of laws and institutions applying rules about competitive behaviour, has been slower to emerge. Despite the long-term general policy of conforming to European norms, delays and derogations from EU liberalising directives are common. The memory and habit of planning and price control are recent. "Gentlemen's agreements" that constrain free price competition have been tolerated and even encouraged, in order to meet EMU inflation criteria. A better approach to moderating price increases would be to promote competition in sheltered sectors and in historically state-dominated sectors.

The institutions of competition policy, an independent decision-making Competition Committee supported by a Secretariat that is responsible to it rather than to a ministry, are relatively new. They lack resources and political support. Although personnel has been increased by three positions (about 15%), the Secretariat staff is still a small fraction of the size of the competition agencies of similar sized OECD countries. The Competition Committee's representative structure is more suited to compromise among interests than to consistent application of policy. Nearly all of the Competition Committee's time and resources has been devoted to reviewing merger applications, even though anti-competitive mergers are not likely to be a major issue as Greece integrates better with the EU. On the contrary: businesses are small-scale, and there is substantial opportunity for consolidation to improve efficiency and international competitiveness in many sectors. Meanwhile, there have been no resources to deal with horizontal issues, which are likely to be significant in the wake of a tradition of formal and informal price control.

Competition policy has had little impact on policy-making generally. The Competition Committee has not used its authority to offer policy advice about regulations and government decisions that impair competition. The Competition Committee does not have the capacity to deal with competition problems raised by policies and decisions by other bodies that seek to protect inefficient state-owned enterprises, and it has undertaken little systematic enforcement or other activity about sectors that show significant competition problems. The Competition Committee has not been consulted about reforms in network infrastructure sectors or about other aspects of policy. It is nominally independent in its decision-making function, but it has been made too dependent on the Ministry of Development, which has not shared its policy goals, for budget and other support.

Competition policy can make a serious contribution to promoting efficiency and innovation in competitive markets only if staff resources are expanded. Additional resources must be devoted to issues other than unnecessary merger reviews. In particular, attention should shift to horizontal agreements and to the competition problems that are arising in the process of establishing competition in historically monopolised sectors. Analysis and advocacy should thus become higher priorities. Legislation adopted in August, 2000 addresses these problems, by authorising double the staff, reducing the merger review burden, enabling the Competition Committee to undertake policy advocacy on its own initiative, and protecting the Committee's independence.

Box 1. **Competition policy's roles in regulatory reform**

In addition to the threshold, general issue, whether regulatory policy is **consistent** with the conception and purpose of competition policy, there are four particular ways in which competition policy and regulatory problems interact:

Regulation can **contradict** competition policy. Regulations may have encouraged, or even required, conduct or conditions that would otherwise be in violation of the competition law. For example, regulations may have permitted price co-ordination, prevented advertising or other avenues of competition, or required territorial market division. Other examples include laws banning sales below costs, which purport to promote competition but are often interpreted in anti-competitive ways, and the very broad category of regulations that restrict competition more than is necessary to achieve the regulatory goals. When such regulations are changed or removed, firms affected must change their habits and expectations.

Regulation can **replace** competition policy. Especially where monopoly has appeared inevitable, regulation may try to control market power directly, by setting prices and controlling entry and access. Changes in technology and other institutions may lead to reconsideration of the basic premise in support of regulation, that competition policy and institutions would be inadequate to the task of preventing monopoly and the exercise of market power.

Regulation can **reproduce** competition policy. Rules and regulators may have tried to prevent co-ordination or abuse in an industry, just as competition policy does. For example, regulations may set standards of fair competition or tendering rules to ensure competitive bidding. Different regulators may apply different standards, though, and changes in regulatory institutions may reveal that seemingly duplicate policies may have led to different practical outcomes.

Regulation can **use** competition policy methods. Instruments to achieve regulatory objectives can be designed to take advantage of market incentives and competitive dynamics. Co-ordination may be necessary, to ensure that these instruments work as intended in the context of competition law requirements.

1. COMPETITION POLICY FOUNDATIONS

Although Greece's competition law was adopted to conform to EU standards, it is not being used to support related, larger-scale reforms. Greece's approach to competition policy has been derivative. The principal direction that emerges clearly is a general intention to follow EU models. The goals of EU membership, and of the single market and monetary union, could have been anchors for substantive reform. But the general goals have been embraced more strongly than the many particular, concrete policy changes needed to conform to EU norms. Government-wide, the policy framework for the use of regulation in carrying out social and economic policy objectives has made too little use of competition principles. The lack of a clear conception of competition policy and its objectives has made competition policy ineffective as a general framework for market-oriented regulatory reform.

1.1. Formal competition policy has been in place since 1977, but its roots are still shallow

Values and habits in Greece have long encouraged a strong entrepreneurial culture. Industry has tended to be small scale (with notable exceptions, such as cement and primary metals), while services, which also tend to be small-scale, have flourished. An unusually high proportion of the working population has been self-employed. Thanks in part to conditions that encourage initiative, there has been substantial material progress since the 1950s; however, the style of governance, institutional infrastructure, and policy frameworks have been slow to adapt and modernise (Clogg, 1992).

Long-standing social values and expectations about the proper role of government present some obstacles to establishing a rule-based system of competition policy. These values and attitudes may even date from the centuries before independence, when the rule of law was weak and people sought protection in family and clientelist relationships. Since the 19th century, Greek reformers have installed new institutions, such as criminal and civil codes, based on borrowed models, to displace existing laws, institutional relationships, and cultural traditions (Clogg, 1992). The practice of incorporating borrowed, external models still characterises some contemporary reforms, notably competition policy itself. In a business and policy culture that has long been characterised by extensive state regulation, direct control of prices, and substantial state-owned enterprises, competition policy has not been a high priority. The basic method of regulatory intervention for many years was direct price and market control.

Greece adopted a competition law as part of the program of preparing for membership in the European Community. Greece's first general competition law was adopted in 1977 (Law 703/1977 on the Control of Monopolies and Oligopolies and the Protection of Free Competition). Except for the general goal of conforming to EU expectations, the law did not respond to any domestic policy issue or impetus, and it was not based on pre-existing Greek laws or institutions. Rather, European models were transposed directly, in substance and procedure.

Two years after the law was enacted, the first decision was issued. When the government changed in the early 1980s, the Competition Committee's powers were reduced — along with those of other independent bodies — because the new government wanted to bring policies more closely under its control. The Competition Committee became an advisory body, and actual decisions were taken by the Minister, based on the Competition Committee's recommendations. The Minister usually followed those recommendations, although he also usually reduced the recommended fines. Most of the enforcement concern was about abuse of dominance, but the Competition Committee also handled some matters involving horizontal agreements. A few mergers were also reviewed, under the provisions about abuse of dominance, despite the lack of explicit merger authority in the law at that time. Much of the Competition Committee's work was dedicated to increasing awareness of the law, and not just among the public and the business community. In that period, the purpose of competition policy was not always clearly understood elsewhere in the government; for example, ministries sometimes asked the Competition Committee to intervene to control prices and profits.

In 1991, when the government changed again, the Competition Committee regained the power of decision. But the power was exercised cautiously at first. Over a two year period, the Competition Committee issued only 10 decisions. Merger notification and control were added to the law, but no decisions blocked mergers during that period. The Competition Committee was given the power to initiate enforcement action, in addition to deciding about applications and notifications (OECD CLP, 1998). Other changes that year included providing for block exemptions, issued by the Minister of Commerce, and adding the concept of "economic dependence" to the section of the law dealing with abuse of dominance.

Amendments adopted in 1995 were intended to strengthen the enforcement structure further. One step that was intended to make enforcement more independent was to put the Secretariat under the Competition Committee's direct control. Up until then, the Competition Committee was supported by the Directorate for Market Research and Competition of the Ministry of Commerce. The competition policy aspects of merger control were made more important, by establishing a two-stage process for review and approval. The Competition Committee was given the power to order interim relief and the power to issue opinions about other policy matters. The power to issue negative clearances was reinstated. Competition Committee membership and organisation were also revised (OECD CLP, 1998).

The Competition Committee may have been justified in asserting that the old regulatory approach, of heavy reliance on direct controls, was being replaced by the principles of protection of free competition and consumer protection (OECD CLP 1997*b*). But the Minister responsible for these reforms (Costas Simitis, who later became Prime Minister) left office, and his successors did not give competition policy the same priority. Indeed, most of the staff from the Ministry refused to join the new independent body, and even went on strike protesting the proposals to strengthen competition policy and make it independent. The 1995 reforms did not strengthen competition policy; instead, in important ways they weakened it. The 1995 law compelled the Competition Committee to devote most of its resources to the low-priority task of merger review, while leaving it dependent for support on a Ministry that has not shared its policy goals. Although the professionals who work in and with the Competition Committee have a clear understanding of the economic and other benefits of market competition, the institutional infrastructure of competition policy has been neglected.

1.2. Reform has made little use of competition policy or principles

The goals for competition policy in Greece must be inferred from the circumstances. There is no explicit statement of policy or purpose in the competition law itself. In connection with adoption of the original legislation in 1977, the government stated two purposes: to protect free market competition for the benefit of the economy in general and of consumers in particular, and to harmonise Greek law with EC legislation, anticipating accession to the Common Market (OECD CLP, 1998). The 1995 amendments were intended to strengthen the enforcement of the law, so that the historic methods of state intervention in the economy, namely price control, could be replaced by reliance on free market competition (OECD CLP, 1998).

These plain statements, and the evident lack of further elaboration in decisions or other pronouncements, suggest that Greece has not been concerned about some of the potential conflicts among goals that are often encountered elsewhere. Invocation of policy goals has not played a major part in interpreting and elaborating the law, although the stated goals have no doubt guided its administration. For example, the inclusion of consumer benefit as one of the explicit purposes in 1977 may have helped the Competition Committee resist misuse of the prohibition against abuse of economic dependence.

Liberalisation and privatisation brought changes in the 1990s. Competition policy did not contribute much, though, to these changes. The progress of reform does not show a general embrace of the principles of competition, but rather slow accommodation in particular situations, in response to external pressures. Over period of these changes, the prestige and effectiveness of the competition authorities declined, while competition was introduced in regulated settings only to the degree required by externally imposed constraints. An example of the effort to postpone, rather than encourage, competition was the award to local firms, in December 1997, of a huge package of long-term utility procurement contracts — totalling 3.5% of GDP — just before an EU directive would have required open competition for them. (Greece had already obtained a one-year extension for compliance) (OECD, 1998, p. 108). The fact that Greece has consistently sought more time to comply with EU market-opening and liberalising directives shows the relative importance assigned to competition compared to the nurturing of domestic constituency interests.

A November 1997 "pact of confidence" among the government and social partners acknowledged the need for a number of structural reforms, particularly about labour markets but also about product markets. Recognising the importance of competition in development, one objective of the pact was to strengthen the role of the competition committee (OECD, 1998, pp. 72-73). At that time, the Competition Committee was perceived as limiting its attention to approving mergers, rather than performing a wider role as competition watchdog. Those perceptions remained accurate as of 2000.

Public enterprises have been a principal focus of concern about the extent and vigour of market competition. Public enterprises have been misused as vehicles for policy objectives (such as job creation) unrelated to the objective of providing goods and services most efficiently (OECD, 1998). Yet restructuring moved slowly, and competition policy concerns have played no part in the process. The public enterprise sector has been dominated by about 10 firms, mostly monopolists providing key inputs such as transport, energy, and communications. But it also has included several dozen other firms, a few of them in industrial sectors. In addition, until recently several important industrial firms, most of them not financially healthy, were *de facto* state-controlled, being under the control either of the Industrial Restructuring Organisation (IRO) or of state-owned banks. Sectors where major firms have been under direct or indirect government control included (and in some cases, still include) shipyards, mining, textiles, metal working, cement, paper, and petroleum (OECD, 1998). Among the non-utility enterprises in public hands were duty free shops, real estate, airline catering and travel agency, horse racing, and football pools and lotteries (IOBE, 1999*a*). Privatisation is underway, in stages, of the National Tourist Organisation, which owns or controls many small and medium sized hotels and other tourist facilities (IOBE, 1999*c*). Direct controls of manufacturing firms have been eliminated, except for four defence firms, and two of those have been set for partial privatisation in 2000. The IRO is to be liquidated after the firm remaining on its books is disposed of (Greece, 1999, p. 4). Because that firm is in a cyclical industry, timing a profitable sale is difficult. But indirect holdings may remain, as the Bank for Industrial Development still had major interests in large, troubled industrial firms in 1999.

A major national policy goal is joining the euro zone, and thus attention is concentrated on the macroeconomic performance measures that determine qualifications. Thus there may be a temptation to intervene in markets to control prices, notably for petroleum products, to help meet the inflation standards (EIU, 1999, p. 19). The government reportedly sought “gentlemen’s agreements” from large producers to keep price increases in 1999 below 3% (EIU, 1999, p. 21). And the government is concerned that inflation in private services and some retail sectors has been particularly intractable, indicating some combination of demand pressure and inadequate competition (IMF, 1999, p. 7). There is no sign that competition policy was considered relevant to these concerns, even though competition is the only sustainable approach to tempering price increases in a market economy.

1.3. Key issues in competition policy today

The situation of competition policy in Greece is critical. The Competition Committee lacks influence, support, and resources. The members are not paid much and their expenses are not reimbursed, so attendance at meetings is inconsistent. Vacancies on the Competition Committee have sometimes remained open for as long as a year. Economic expertise is limited: there is only one economist on the Competition Committee and only one Ph.D economist on the staff. The staff does not have adequate resources for reviewing complaints, doing *ex officio* investigations, or engaging in policy analysis and advocacy. Greece was the only EU member that did not respond in the EU’s process of revising its policies about vertical restraints.

The Competition Committee has been subject to influence by a ministry that has disagreed with its policy direction. In 1999, the Ministry of Development, which supervises the Competition Committee’s budget and appointments, endorsed “gentlemen’s agreements” between the government and the sellers of consumer products to keep price increases down. The Ministry is responsible for administering many potentially anti-competitive constraints on entry, in the form of licensing requirements. And it has recently proposed rules to control prices for auto spare parts and set minimum prices for local truck transport of containers. The Ministry’s response to the Competition Committee’s request for more staff was unsatisfactory: rather than increase its staff complement or budget, the Ministry agreed only to authorise detailing other Ministry staff to assist the Competition Committee part-time. In that status, it would be difficult for the Competition Committee to use the help effectively. Moreover, there are other reasons to be concerned that the staff detailed from the Ministry would not be helpful; it was their refusal to join the new Competition Committee Secretariat that had crippled it in 1995.

Major reforms of network infrastructure are proceeding slowly (see Chapter 1 and background reports to Chapters 5 and 6). Programs of privatisation and liberalisation of energy, telecommunications, and transport have slowly opened national markets and traditional monopolies to active competition. These tentative steps toward reform are being undertaken with little or no consultation with the Competition Committee or its staff. Unless the Competition Committee's resource problems are resolved, it is doubtful that it would have the capability of participating in designing and implementing these reforms. Market-opening reforms should be a reason to strengthen competition institutions, to deal with the kinds of problems that appear in an increasingly liberalised economy.

Competition problems that deserve attention include the systems of permits and licenses that control entry, which the Competition Committee has never examined. Many observers report that overt agreements among firms about their prices, operating hours, and services are common, despite the competition law's prohibitions. Even industry trade groups believe that the Competition Committee should be reinforced in resources to deal with important problems and to demonstrate to the business community that competition policy is to be taken seriously. A sign that priorities are changing is the adoption in August 2000 of several amendments to the Competition Act.[1] Among other things, these amendments could substantially increase the Competition Committee's resources and enable it to shift its resources to horizontal restraints and advocacy.

2. SUBSTANTIVE ISSUES: CONTENT OF THE COMPETITION LAW

The basic content of the substantive law about agreements and dominance tracks standard EU principles. The merger rules also track EU regulations, but a market share test still applies to notifications and the merger rules require spending too many resources for merger reviews. The substantive legal criteria and available sanctions should be adequate to deal with competition problems that may have been required or encouraged by regulation, or that will appear as regulatory structures change.

Box 2. **The competition policy toolkit**

General competition laws usually address the problems of monopoly power in three formal settings: relationships and agreements among otherwise independent firms, actions by a single firm, and structural combinations of independent firms. The first category, **agreements**, is often subdivided for analytic purposes into two groups: "horizontal" agreements among firms that do the same things, and "vertical" agreements among firms at different stages of production or distribution. The second category is termed "**monopolisation**" in some laws, and "**abuse of dominant position**" in others; the legal systems that use different labels have developed somewhat different approaches to the problem of single-firm economic power. The third category, often called "**mergers**" or "**concentrations**," usually includes other kinds of structural combination, such as share or asset acquisitions, joint ventures, cross-shareholdings and interlocking directorates.

Agreements may permit the group of firms acting together to achieve some of the attributes of monopoly, of raising prices, limiting output, and preventing entry or innovation. The most troublesome **horizontal** agreements are those that prevent rivalry about the fundamental dynamics of market competition, price and output. Most contemporary competition laws treat naked agreements to fix prices, limit output, rig bids, or divide markets very harshly. To enforce such agreements, competitors may also agree on tactics to prevent new competition or to discipline firms that do not go along; thus, the laws also try to prevent and punish boycotts. Horizontal co-operation on other issues, such as product standards, research, and quality, may also affect competition, but whether the effect is positive or negative can depend on market conditions. Thus, most laws deal with these other kinds of agreement by assessing a larger range of possible benefits and harms, or by trying to design more detailed rules to identify and exempt beneficial conduct.

Vertical agreements try to control aspects of distribution. The reasons for concern are the same — that the agreements might lead to increased prices, lower quantity (or poorer quality), or prevention of entry and innovation. Because the competitive effects of vertical agreements can be more complex than those of horizontal agreements, the legal treatment of different kinds of vertical agreements varies even more than for horizontal agreements. One basic type of agreement is resale price maintenance: vertical agreements can control minimum, or maximum, prices. In some settings, the result can be to curb market abuses by distributors. In others, though, it can be to duplicate or enforce a horizontal cartel. Agreements granting exclusive dealing rights or territories can encourage greater effort to sell the supplier's product, or they can protect distributors from competition or prevent entry by other suppliers. Depending on the circumstances, agreements about product combinations, such as requiring distributors to carry full lines or tying different products together, can either facilitate or discourage introduction of new products. Franchising often involves a complex of vertical agreements with potential competitive significance: a franchise agreement may contain provisions about competition within geographic territories, about exclusive dealing for supplies, and about rights to intellectual property such as trademarks.

Abuse of dominance or **monopolisation** are categories that are concerned principally with the conduct and circumstances of individual firms. A true monopoly, which faces no competition or threat of competition, will charge higher prices and produce less or lower quality output; it may also be less likely to introduce more efficient methods or innovative products. Laws against monopolisation are typically aimed at exclusionary tactics by which firms might try to obtain or protect monopoly positions. Laws against abuse of dominance address the same issues, and may also try to address the actual exercise of market power. For example under some abuse of dominance systems, charging unreasonably high prices can be a violation of the law.

Merger control tries to prevent the creation, through acquisitions or other structural combinations, of undertakings that will have the incentive and ability to exercise market power. In some cases, the test of legality is derived from the laws about dominance or restraints; in others, there is a separate test phrased in terms of likely effect on competition generally. The analytic process applied typically calls for characterising the products that compete, the firms that might offer competition, and the relative shares and strategic importance of those firms with respect to the product markets. An important factor is the likelihood of new entry and the existence of effective barriers to new entry. Most systems apply some form of market share test, either to guide further investigation or as a presumption about legality. Mergers in unusually concentrated markets, or that create firms with unusually high market shares, are thought more likely to affect competition. And most systems specify procedures for pre-notification to enforcement authorities in advance of larger, more important transactions, and special processes for expedited investigation, so problems can be identified and resolved before the restructuring is actually undertaken.

2.1. Horizontal agreements: The rules are adequate, but they have gone disused for lack of resources

The first section of the law is the prohibition of restrictive agreements, both horizontal and vertical. (Art. 1). Both the basic prohibition and the criteria for exemptions are transposed from the EU legislation (see Box 3). Individual exemptions are granted by the Competition Committee, and block exemptions can be issued by the Minister of Development, with the concurrence of the Competition Committee (Art. 7(2)).

A famous early case, from 1981, highlighted the relationship between the prohibition of horizontal agreements and the impact of other regulations. The Athens newspapers colluded to triple the rates for printing formal notices that were required by law. They enforced their collusion through a pooling scheme that discouraged cheating. The newspapers tried, unsuccessfully, to defend themselves from liability by claiming that they were not commercial "undertakings" but rather were performing political and cultural functions (Christoforou, 1990). Other enforcement actions include an order against a public announcement by the bakers association calling for a uniform price increase. And during the same period (1993-94), research by the Ministry staff into the car repair industry uncovered a price agreement, which the Competition Committee ordered the firms to terminate (OECD CLP, 1997).

The criteria for granting exemptions permit agreements for pro-competitive joint actions. An example is the decision permitting a production joint venture between two competing suppliers of bottled gas, Petrolina and EKO; the parties would supply raw materials independently and their branded products would continue to compete downstream, with prices set by the parents separately (OECD CLP, 1997*c*). So far, the power to issue block exemptions has not been exercised. The Minister may also issue decisions, again with the concurrence of the Competition Committee, defining agreements or categories of agreements that are not considered to fall within the prohibition (Art. 7(3)).

Box 3. **The EU competition law toolkit**

The law of Greece follows closely the basic elements of competition law that have developed under the Treaty of Rome (now the Treaty of Amsterdam):

Agreements: Article 81 (formerly Article 85) prohibits agreements that have the effect or intent of preventing, restricting, or distorting competition. The term "agreement" is understood broadly, so that the prohibition extends to concerted actions and other arrangements that fall short of formal contracts enforceable at civil law. Some prohibited agreements are identified explicitly: direct or indirect fixing of prices or trading conditions, limitation or control of production, markets, investment, or technical development; sharing of markets or suppliers, discrimination that places trading parties at a competitive disadvantage, and tying or imposing non-germane conditions under contracts. And decisions have further clarified the scope of Article 81's coverage. Joint purchasing has been permitted (in some market conditions) because of resulting efficiencies, but joint selling usually has been forbidden because it amounts to a cartel. All forms of agreements to divide markets and control prices, including profit pooling and mark-up agreements and private "fair trade practice" rules, are rejected. Exchange of price information is permitted only after time has passed, and only if the exchange does not permit identification of particular enterprises. Exclusionary devices like aggregate rebate cartels are disallowed, even if they make some allowance for dealings with third parties.

Exemptions: An agreement that would otherwise be prohibited may nonetheless be permitted, if it improves production or distribution or promotes technical or economic progress and allows consumers a fair share of the benefit, imposes only such restrictions as are indispensable to attaining the beneficial objectives, and does not permit the elimination of competition for a substantial part of the products in question. In the past, such exemptions might be granted in response to particular case-by-case applications; however, the EU is changing the enforcement regulation so that the exemption criteria would apply directly, without the need for application and specific approval. In addition, there are generally applicable "block" exemptions, which specify conditions or criteria for permitted agreements, including clauses that either may or may not appear in agreements (the "white lists" and "black lists"). Some of the most important exemptions apply to types of vertical relationships, including exclusive distribution, exclusive purchasing, and franchising.

Abuse of dominance: Article 82 (formerly Article 86) prohibits the abuse of a dominant position, and lists some acts that would be considered abuse of dominance: imposing unfair purchase or selling prices or trading conditions (either directly or indirectly), limiting production, markets, or technological development in ways that harm consumers, discrimination that places trading parties at a competitive disadvantage, and imposing non-germane contract conditions. In the presence of dominance, many types of conduct that disadvantage other parties in the market might be considered abuse. Dominance is often presumed at market shares over 50%, and may be found at lower levels depending on other factors. The prohibition can extend to abuse by several firms acting together, even if no single firm had such a high market share itself.

2.2. Vertical agreements

Restrictive agreements between parties in different stages of supply and distribution may maintain or establish relationships that impair competition where regulations of related conduct are changing. As the EU proceeds with changing its substantive rules about vertical agreements (in the standards for granting exemptions), Greece will no doubt follow.

A 1997 decision imposing conditions on a “franchise” arrangement concerning cosmetics and luxury items demonstrates the Competition Committee’s thinking: the Competition Committee disapproved of clauses that controlled franchisee advertising, that described the covered products generally rather than specifically, that prevented the franchisee from buying from other franchisees or authorised distributors, that prohibited acquiring interests in competing firms (regardless of whether the holding influenced policy concerning the franchise operations), and that imposed a six-year non-compete obligation after the end of the franchise contract. *Hondos Center* (OECD CLP, 1998). An exemption decision indicates a degree of suspicion about exclusive dealing: even though Aramco had been permitted (by the EU) to acquire control over Hellenic Motor Oil, the long-term exclusive supply contract between the parent and the subsidiary (for crude oil) was cut back from 25 years to 15 years (OECD CLP, 1997*c*).

Suggesting maximum resale prices may be permitted. At least, the Competition Committee gave the Minister of Commerce a favourable official opinion, in response to the Minister’s request, concerning the Minister’s decision to permit bottlers to print prices on consumer packages of bottled water and similar refreshments. The concern was to prevent “gouging” at resorts, stadiums, and tourist attractions, by permitting the packager to indicate what was hoped would become a maximum price (OECD CLP, 1998).

The content of the law about restrictive agreements, being essentially consistent with that of the EU, is generally adequate as a tool to support reform. But application of the law has been seriously compromised by the Competition Committee’s resource problems. This effect is perhaps less critical for vertical restraints than for horizontal ones, both because vertical agreements tend to be notified to enforcement agencies, so fewer resources are needed to investigate them, and because vertical agreements tend to be less anti-competitive, so there is less reason for concern if they are relegated to a lower priority.

2.3. Abuse of dominance

The basic prohibition of abuse of dominance is copied from the EU model, Art. 82 of the Treaty of Amsterdam (Art. 2). This provision could in principle be used to prevent or remedy market power, including that arising from reform-related restructuring of historically monopolised industries.

The prohibition against abuse of dominance has rarely been applied to network industries or others that may be subject to restructuring and reform. In 1997, a bus line complained about the railway’s low fares on a competing route, but the Competition Committee decided that the railway did not have a dominant position. In the absence of experience applying the law, it is difficult to say how effective it would be in practice to control against abuses such as denial of access or monopolistic pricing strategies.

In the same section of the law, there was a separate prohibition against the abuse of a relationship of economic dependence (Art. 2a). This prohibition, modelled on German law, was added in 1991. An enterprise is in a relationship of “economic dependence” when, as a buyer from or supplier to another firm, it has no equivalent alternative suppliers or outlets. Abuse may consist of imposition of arbitrary trading conditions, exercise of “discretionary” behaviour, or sudden and unjustified termination of long term established commercial relationships. The Competition Committee could issue orders for interim, that is, immediate, relief in these cases.

Complaints about abuse of economic dependence are usually disputes about contract termination, which may have little to do with public-interest competition policy. The Competition Committee tried to apply the rule without becoming an arbiter of private contract controversies. For example, it refused to order interim relief, that is, to force a supplier to fill an order, where the customer had only made one previous order — and had sent most of it back — and had not complied with the suppliers’ usual conditions about terms of payment and condition of sales premises. Yet the decision seemed to turn on the supplier's low market share, under 10% (in the cosmetics market) and thus the absence of dominance, as much as on the failure of these contract issues to disclose any abuse of economic dependence. *E. Mastoris-Sosifar Hellas SA* (OECD CLP, 1998). For other complaints about contract termination, decisions have often turned on the fact that the alleged offender actually had a tiny market share, so the "victim" had other sources to turn to (OECD CLP, 1996).

This provision has not been as important in Greece as its counterpart has been in other jurisdictions that have similar rules (Tzouganatos, 1998). As could be expected, small business representatives strongly support devoting resources to its enforcement, though. Since July 1995, the Competition Committee has dealt with 35 cases. The Competition Committee seemed to be trying to decide them on the basis of an implicit *de minimis* test, that there can be no problem if the relevant market share is below 10%. But even applying that standard means the Competition Committee must do enough analysis to identify the market and the share. And the demand to consider petitions for interim relief on a short deadline would distract enforcement attention from other issues. The August 2000 amendments to the Competition Law eliminated the ban on abuse of economic dependence, because these complaints about essentially private controversies were taking too much of the Competition Committee's time.

2.4. Mergers: substantive rules are adequate, but administration has distorted priorities greatly

Concentrations are regulated by a separate provision of the statute (Art. 4). Much of the law and regulation about mergers parallels the EU Merger Regulation. The Competition Committee is to prohibit mergers that "may significantly impede competition in the national market or in a substantial, with respect to the characteristics of the products or services, part of it and particularly by creating or strengthening a dominant position." (Art. 4*c*). The coverage is defined according to the same concepts used in the EU merger regulation. The law makes explicit that a "concentration" covered by this section is not to be separately considered under other parts of the law; that is, "a concentration between undertakings, as such, shall not fall into the scope of the prohibitions of Article 1(1) and Article 2 of the present Act." (Art. 4.1). Conversely, this language means that an otherwise illegal restrictive agreement does not necessarily become legal simply by taking the form of a corporate combination (Christoforou, 1990).

A market definition standard is implied in the language setting out the market share test for notification: "products or services which are regarded as identical because of their properties, their prices and their intended use." Factors to be considered include "the structure of all the relevant markets concerned, the actual or potential competition from undertakings located either within or outside Greece, the existence of any legal or other barriers to entry, the market position of the undertakings concerned and their financial and economic power, the alternatives available to suppliers and users by the undertakings concerned as well as by actually or potentially competitive undertakings, their access to suppliers or markets, the supply and demand trends for the relevant goods or services, the interests of the intermediate and ultimate consumers and their contribution in the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition." (Art. 4*c*(2)). An otherwise prohibited merger can be allowed if it is "regarded as being indispensable for the public interest, especially where it contributes to the modernisation and rationalisation of production and economy, the attraction of investments, the strengthening of competitiveness in the European and International market and the creation of new employment positions." (Art. 4*c*(3)).

Notification before a deal can be consummated is required if the combined market share exceeds 35% in a national market or a substantial part of it (with "substantiality" determined by reference to characteristics of the products or services at issue), or the combined turnover exceeds 150 million Euros (and at least two participants have turnover in Greece of more than 15 million Euros each). These thresholds were recently increased; before August 2000, they were 25% or 25 million Euros. Including market share as a criterion for notification is a generally unsatisfactory approach (Art. 4*a*), which the law originally borrowed from EU models. The Competition Committee has considered removing the market share criterion from the notification thresholds, but it recently decided to retain it for another 2 or 3 years. Notification had also been required after a deal took place if the parties' combined market share was over 10% or if the merging firms' combined turnover exceeded 15 million Euros; this "post-merger" notification requirement was dropped by the August 2000 amendments.

Merger control is a two-stage process. In the first stage, the Competition Committee decides whether the merger may significantly restrict competition. If so, it issues a decision prohibiting the concentration within two months from the date it is notified to the Competition Committee. In the second stage, the Ministers of National Economy and Development can nonetheless permit the merger if it has economic advantages in the public interest. This decision must be fully explained and published and is subject to judicial control (OECD CLP, 1998). But the grounds for a Ministerial decision to override the Competition Committee are not specific: "advantages of general economic nature that counterbalance the resulting restriction of competition." Some authority to decide about transactions that do not meet the pre-consummation notification threshold has been delegated to the President of the Competition Committee. The President of the Competition Committee is to issue a decision within a month concerning mergers that fall below the pre-merger reporting thresholds (Greece, 2000).

One of the only mergers that the Competition Committee has disapproved would have combined two Greek baking companies and led to a domestic market share of between 75% and 83% (depending on whether the product market included unpacked as well as packaged products). The Competition Committee also imposed a fine because the parties did not await the Competition Committee's decision before they closed the transaction. By contrast, the Competition Committee approved an acquisition that combined two major Greek cement companies. Despite the high resulting market share in Greece (between 48% and 53%), the Competition Committee found the resulting structure was not a significant impediment to competition. Some of the reasons appear sound: lack of barriers to entry into the market through imports, and the presence of two domestic competitors and two significant importing firms. Some of the other reasons are less convincing. That demand is price-inelastic would normally argue for being more, rather than less, concerned about high concentration, for example. Here again, the parties were nonetheless fined for failure to notify on time and for putting the agreement into effect without awaiting the Competition Committee's decision (OECD CLP, 1997*c*). The cement industry was the focus of the most recent test of Greece's merger policy, as a UK firm proposed to acquire the merged Greek firm, while a consortium of Greek construction firms submitted a competing offer.[2] The Competition Committee's investigation, which was initially set to end 31 March, was extended with the consent of the parties; the Committee's decision approving the acquisition was issued in May.[3]

Merger decisions comprise about half of all of the Competition Committee's decisions, and nearly all of the decisions in the last few years. Only two mergers have been blocked (and one of those mergers was nonetheless permitted, after a Ministerial decision overriding the Competition Committee), and three were approved subject to conditions (OECD CLP, 1998). An increasing proportion of transactions are now subject to "pre-merger" control, rather than post-transaction notification. The large number of matters still listed as "pending" suggests that there is a problem with decision backlog, probably explained by lack of staff resources. Since 1995, the Commission has handled 183 merger cases, fully reviewing each application. Yet this work has disclosed that, so far at least, Greece has not faced much of a problem with anti-competitive concentrations. The Competition Committee has spent so much time because the statutory thresholds for notification and decision were very low and review is mandatory. The threshold had been even lower; it was raised in 1999, with the result of eliminating 11% of the merger cases that required full decisions. Further increases in August 2000, along with ending post-merger notification, should eliminate many more.

Table 1. **Merger filings and decisions**

	Notified transactions	
	Post-merger (Art. 4*a*)	Pre-merger (Art. 4*b*)
1995 (May-December)	30	17
1996	74	15
1997	71	45
1998	76	52
1999	82	77
2000 (January)	11	6
Total	338	212
Decisions	12	144
Closed	141	23
Pending	185	45

Source: Greece, 2000.

Problems in the administration of the merger law may be limiting its relevance to assessing competition issues in sectors subject to reform or in efforts to promote reform. A recent amendment to the privatisation law creates an exemption from the notification and review process for privatisation transactions involving bankrupt firms. The specific object of this special exemption is evidently a state-owned paper plant, which IRO was trying to sell.

The delay that the review process imposes on transactions in Greece is perceived as a major problem. The Competition Committee estimates that the average time required to process a merger from notification to decision is from two to two and a half months, but private parties who deal with the Competition Committee believe it is somewhat longer. But the Competition Committee notes that companies do not always provide the information needed promptly, without further inquiry and effort by the Competition Committee. The risk of delay is countered somewhat by a provision permitting parties to show reasons why they must proceed to close the transaction before a decision can be issued; the Competition Committee can give them special, but conditional, permission to do so. This happens in about 15% of prior-notification cases. Though it avoids some of the costs of holding up the transaction, the parties are still in a position of uncertainty until the Competition Committee issues its final decision, and the process requires the Competition Committee to consider the transaction twice. The Competition Committee recognises that Greece’s present circumstances generally would support and even encourage mergers, which often involve major foreign investments or implement the program of privatisation. Thus a process that delays them would undermine achievement of reform goals.

Changes in the merger law and administration should make competition policy a more effective tool for reform. The time periods and deadlines are too long for approving mergers that have no competitive effects. Amendments to the legislation may shorten them (Greece, 2000). The Competition Committee recognises that the attention to mergers has had a distorting effect on its priorities. The Competition Committee should develop, either in practice or by change in the law, an abbreviated procedure for dealing with the transactions that are obviously non-problematic. Now, the Competition Committee cannot make such a distinction, and it must follow the entire process for transactions that meet the statutory thresholds. But dealing with the problem by exempting certain economic sectors from notification and review, as some have suggested, could be a mistake. So far, Greece has evidently chosen not to shift all merger control to *ex post* review and regulation of any resulting dominant positions. This is good, because remedies after the fact are likely to be costly, ineffective, or both.

2.5. *Unfair competition: The privately-applied rules could impair competition, if they were strongly enforced*

The law of unfair competition can protect markets and the competitive process, or it can protect competitors in ways that make markets work less well. Greece has had legislation to control unfair competition since 1914. The law on unfair competition is enforced principally by private lawsuits for damages or other relief, brought by competitors and trade associations. As a result, activities such as false advertising, deception, passing off, and trademark disputes are handled by the civil courts, not by the Competition Committee (Greece, 2000). Wilful deception may also, in theory, be subject to criminal penalties, although the fine is trivial (Drs 3 000) and imprisonment is unlikely (Law 146/1914, Art. 4). Offering discounted prices without authorisation (that is, without a formal liquidation or outside of the end-of-season discount period) is also subject to criminal penalties. Offering discounts on some goods in order to attract customers who might then buy other products is especially condemned as "against moral principles and business ethics" (Law 146/1914, Art. 7.12). Such rules, found in many jurisdictions, that prevent firms from attracting customers by calling attention to low prices, can seriously inhibit retail-level competition. The Competition Committee has not undertaken to determine whether the actual application of these laws has been consistent with competition policy principles and goals, of ensuring free competition for the benefit of the economy and of consumers.

2.6. *Consumer protection: Policy has no clear connection to competition policy goals, and application is left principally to private action*

The relationship between consumer policy and competition policy is informal and implicit, at best. The General Secretariat for Consumer Protection is within the administrative structure of the Ministry of Development, the same ministry that oversees the budget and legislation for the Competition Committee (and is housed in the same building). Thus, there is a natural channel for co-ordination among these policies. Since 1995, there has been a consumer representative on the Competition Committee (Greece, 2000). Before that time, that is, before there were organised consumer groups under Greek law, there was a labour representative on the Competition Committee, who also was considered to represent consumer interests.

Consumer protection laws and rules are for the most part formally consistent with EU norms, but there are problems with the effectiveness of their enforcement, and in some cases, with the transposition of EU norms into local law. In insurance, for example, the terms of policies contain provisions such as unilateral rights to increase premiums that, according to consumer groups, do not conform to pertinent EU directives. The government's own consumer protection office appears weak and under-funded, like the Competition Committee. The consumer protection Department in the Ministry of Development lacks status, resources, and experienced staff. Its total staff, which once numbered about 35, is now below 20. There are administrative fines, ranging up to Drs 25 million, which can be doubled for repeated violation, and licenses could be revoked in cases of repeated violation. These rules and sanctions are not often applied, though. There is a National Consumers Council, which is not strictly a consumer group, because it includes producer interests as well. It is attached to the Ministry of Development, but has essentially no staff support — one individual performs its secretariat functions. It meets only a few times per year and is only rarely asked for its opinion about legislation affecting consumers. It could be a vehicle for consultation about policies, but it is not always used or respected. Indeed, in the course of a consultation about consumer problems in credit contracts a few years ago, the Ministry of Development excluded the Council representative and limited the consultation to the government and the banks themselves. There was no consumer input into deliberations about recent proposals for regulations affecting competition in taxi services and service station hours.

Ensuring that consumers are adequately protected against abuses in the developing market economy is left to private groups. In the absence of effective public enforcement, a principal means of enforcing consumer protection principles is private, class-action litigation. Consumer organisations can, in principle, go to court on behalf of consumers to correct market abuses. And some have done so. More than a dozen cases have been brought about such issues as telemarketing, abusive contract term (against banks and insurance companies), and mobile phone services, and about advertisements addressed to children. These actions takes time and resources. The parties that bring these suits on behalf of consumers risk not being compensated for their efforts, for the court may order the parties to bear their own costs, if the issue is not clear. These suits can recover "moral" damages, in theory, and in fact they have resulted in awards of Drs 385 million for "moral distress". But this money, if paid (and so far, none of these judgements has actually been collected), is to be deposited in a fund to be distributed by the ministry for social purposes; it is not used to reimburse the litigants' expenses nor to reimburse consumers for their injuries. There is no provision for class actions for actual damages.

The NGO consumer groups that undertake these efforts get very little support from the Greek government. Most depend on EU support, membership fees, and other sources. Consumer groups are not strong enough to counter pressures by business and other interest groups for rules and laws limiting competition. Consumer groups fear that the government downplays consumer protection rules because it feels they are perceived as an obstacle to foreign investment, and that the government is content for Greece to have a reputation of being a lower-cost place to do business, to the extent enforcement of these rules is lax.

3. INSTITUTIONAL ISSUES: ENFORCEMENT STRUCTURES AND PRACTICES

Reform of economic regulation can be less beneficial, or even harmful, if the competition authority cannot act vigorously to prevent abuses in developing markets. Institutional reforms are needed to ensure against this. The Competition Committee, which is solely responsible for applying the general competition law, is legally autonomous but practically weak. Its representative membership structure implies that it is considered to be a body for balancing interests, rather than applying policy. It has insufficient staff and resources to do more than review routine applications.

The Competition Committee has nine statutory positions. Of these, only three are appointed by the government. Appointments to the other six are within the power of other institutions, including four from interest groups. Each member has a deputy, so that there are 18 persons who may be involved in Competition Committee decisions. The Competition Committee may take action in divisions of four members; that power has been little used, though, and the Competition Committee acts as a body. The required membership, and the bodies that have the power to designate members, are:

– A member (or former member) of the Council of State;

– A judge (or former judge) (designated by the Supreme Court);

– Federation of Greek Industries;

– National Confederation of Greek Trade;

– General Confederation of Small & Medium Sized Businesses, Craftsmen & Traders of Greece;

– National Consumers' Council;

– Professor of competition law (designated by the Minister of Development);

– Professor, experienced in competition matters (designated by the Minister of Development); and

– "A person of recognised status with experience in the competition field" (designated by the Minister of Development).

Members serve terms of three years, which can be renewed. The Minister of Development appoints the President of the Competition Committee from among the members. The August 2000 amendments to the law provide that the Minister must get the opinion of Parliament for this appointment; this change is intended to give the President more legitimacy and independence from the government. The President is considered "a state functionary being exclusively employed." The President has a casting vote in the event of ties, and is responsible for ensuring the execution of Competition Committee decisions, directing the Competition Committee's Secretariat, and representing the Competition Committee in international forums (a power that can be delegated to the Director). Only the President of the Competition Committee is occupied with Competition Committee business full-time. Judges and other public officials appointed to the Competition Committee may be relieved of their other public obligations while serving.

The Competition Committee is supported by a Secretariat, headed by a Director appointed by the Minister of Development after consultation with the Competition Committee. The Director serves for a 5 year term, which may be renewed. Up to 80 staff positions are authorised by statute; the August 2000 amendments increased that number from the previous level of 40. That number could be increased by presidential decree (Art. 8*c*(2)). But the actual staffing levels have been far short of these levels. At first (that is, in 1995), the Secretariat had a staff of only 8 persons, and half of those resigned in 1996. The average staff level under the previous regime, before the 1995 amendments established a separate Secretariat, was 30 (OECD CLP, 1998).

The Competition Committee and its membership and powers have changed substantially several times. At first, in 1977, the Committee for Protection of Competition had decision-making power. Its seven members were not representatives of other bodies, except the chair, who was a member of the Council of State, and the Head of the Service for the Protection of Competition, which was the Competition Committee's staff in the Ministry of Commerce. In 1982, a joint ministerial decision replaced this body with the Competition Committee and transferred decision making authority to the Minister of Commerce. The new Competition Committee's role was now advisory, and its membership was changed so that it represented interest groups: the Ministry of Finance, the Bank of Greece, the Federation of Greek Industries, the association of small and medium sized enterprises, the Trade Union of Athens, and the General Confederation of Workers. That system lasted until the 1991 amendments, which established a structure similar to the current one: two judges (a president of the Administrative Court of First Instance, acting as chairman, and a judge of Civil Court of First Instance), a professor of commercial law or economics, an expert in the competition field, and representatives from the Bank of Greece, the Association of Greek Industries, and the Union of Greek Trade Associations (OECD CLP, 1998). At the outset, cases were prepared by the Service for the Protection of Competition in the Ministry of Commerce; this office was renamed twice, as the Directorate for the Protection of Competition and later the Directorate for Market Research and Competition, but with the same functions (OECD CLP, 1998). The Secretariat was separated from the Ministry and attached to the independent Competition Committee in 1995.

Increasing the Competition Committee's strength and autonomy was a principal purpose of the 1995 amendments of the competition law (OECD CLP, 1998). Those goals were not fulfilled, but recent amendments and appointments are promising steps toward greater strength and independence. The

Competition Committee is an “independent authority”, but in the Greek context, that status appears to be a weakness, not a strength. By law, the members are not to be subject to direction by others, but are to decide matters solely according to the competition act and their consciences. In its decision-making, the Competition Committee is reportedly more independent of political oversight and manipulation than is typical in the Greek public service, and some long-time observers believe there is little outside pressure to control the Competition Committee’s decisions. There is little in the administrative or legal structure to protect and re-enforce that independence, though, and there are indirect controls on its effectiveness. Although administratively separate, the Competition Committee is supervised by the Minister of Development, and its budget is a special item in that Ministry’s budget (Arts. 8(1), 8(2)). In the past, the Ministry has, as a practical matter, consistently rejected the Competition Committee’s requests for additional resources. Competition Committee members serve virtually as volunteers, as their remuneration and reimbursement for expenses are not significant. Only the President receives significant compensation, and that compensation is not very great. And there have been a few instances of more direct efforts to influence the membership of the Competition Committee and its enforcement priorities, such as the pursuit of actions against temporary price increases that accompanied devaluation, to support other goals. It is a demonstration of the weakness of “independent” bodies in Greece that such demands have been agreed to. The August 2000 amendments take a significant step to increase the Competition Committee’s independence, by providing a source of funds that will not depend on the Ministry, namely a levy of a small percentage (.001) of the value of the capital of newly formed companies or increases in registered capital.

The membership and structure of the Competition Committee do not overlap or intersect with other policymaking bodies. Its formal independence from the Ministry and the government has the effect of cutting it off from the process of considering policy matters. Its relationships with sectoral regulatory bodies and other government agencies are mostly through informal communication. By law, the Competition Committee can offer opinions about the implications of other government actions on competition. But because the law implied that the Competition Committee must be specifically asked for its opinion, and its opinion has virtually never been requested, the Competition Committee has played almost no role in the development of policy outside of its own area or in the reform of other regulatory regimes that may affect competition. The recent amendment provide for greater co-operation with other regulators, and permit the Competition Committee to take a more independent advocacy role.

3.1. Law enforcement tools are not well tested

Applicants, complainants, and respondents may be heard in person or by attorneys, at the Competition Committee’s periodic meetings. Because of the “prohibition” nature of the law, the Competition Committee’s principal law enforcement functions are imposing fines and reaching decisions on mergers and on applications for individual exemption or negative clearance (Art. 8*a*(2)(a)–(e)). The Competition Committee’s power to require information appears very broad. It can require undertakings and natural and legal persons to respond to questions (Art. 25). In applying the statute’s prohibitions, the Competition Committee and the Director have powers to examined documents and premises and take testimony (Art. 26). The Competition Committee does not report any defects in the law that impair its ability to obtain information and reach decisions; rather, the problem is lack of resources to undertake investigations that are needed against firms that do not volunteer their information.

Sanctions, which can be imposed directly by the Competition Committee, range from an order to cease infringing conduct though fines for infringements and penalty payments for repeated violations. The Competition Committee may threaten fines as well as impose them. The amount of a fine is flexible, determined by the duration and gravity of the violation; the ceiling is 15% of the infringing firms’ annual gross receipts. Penalties for failure to comply with a Competition Committee decision and order can range up to Drs 2 million per day of continued failure. Non-compliance with merger notification requirements can result in a fine between Drs 1 million and 5 million (provided that the amount falls between 5% and 7% of the firms' aggregate turnover) (Articles 4*a* and 4*b*). Completing a merger before a decision is issued results in a fine of at least Drs 10 million, but not exceeding 15% of the firms' aggregate turnover; failure to comply with an order concerning a merger results in a fine of up to 15% of the firms' aggregate turnover and a penalty payment of up to Drs 3 million for each day of continued non-compliance (Greece, 2000). The Competition Committee may also order interim ”provisional measures” where there is an "urgent need" to prevent "an imminent and incurable damage to the complainant or to the public interest." (Art. 9(4)). Complainants have most often sought such orders in cases alleging abuse of economic dependence.

Criminal sanctions against individuals are potentially available, but they have never been imposed. They include fines of Drs 1 million to Drs 5 million, and double those amounts for repeated violations. For impeding an investigation, refusing to supply information, or supplying false information, the law sets harsh penalties: imprisonment for a minimum (not a maximum) of three months and a fine of between Drs 1 million and Drs 3 million. The penal sanctions could apply to entrepreneurs, general partners, administrators of limited liability or co-operative enterprises, and the directors of joint stock companies who voted in favour of conduct that is found to be in violation of the law.

The Competition Committee is required to respond to complaints within six months (Art. 24). There is no deadline for responding to notifications, that is, to requests for exemption or negative clearance. But the applicant does not bear the risk of the Competition Committee's failure to decide on time. If the parties make a timely notification, any decision would have prospective effect only; their arrangement is considered provisionally valid until the Competition Committee acts (OECD CLP, 1998). Decisions, along with reasoning, are published in the official gazette. In addition, the Competition Committee can order an infringing party to bear the costs of publishing the decision in the national or local press. (If the Competition Committee's decision is reversed on appeal, then the Competition Committee has to bear the costs of publishing that decision in the same media) (Art. 13*a*).

Some expert observers have noted that the Competition Committee's procedures are not very transparent. It has not issued guidelines or made other efforts to explain the content of competition law and the obligations under it to the business public. Rather, competition policy appears to be carried on in a closed community among the Competition Committee and the lawyers who specialise in the subject.

Disappointed parties, including respondents, complainants, the Minister of Development, and indeed "any third party having a legitimate interest" can appeal Competition Committee decisions (and Ministerial decisions about mergers). Previously, those appeals were taken to the Athens Administrative Court (Art. 14). The process appears swift, at least in theory: the law says a hearing must be held in three months. The competition law provided for the possibility of establishing a special division of this court to deal with cases arising under the competition law. (If issues under the competition law arise in another legal proceeding, the court may decide about the validity of agreements or the existence and abuse of dominance or economic dependence, but it may not disregard a determination of individual exemption by the Competition Committee (Art. 18)). The recently adopted Code of Administrative Procedure has had the unfortunate effect of making the review of competition matters more complex, uncertain, and time-consuming. The Code eliminated most special panels for direct review of official decisions. Thus, parties challenging Competition Committee decisions had to go to the lowest level courts, from which they faced the prospect of two further levels of appeal. The August 2000 amendments corrected this anomaly, so challenges are heard by a second-level court, with only one further appeal possible, by writ of error to the Council of State.

3.2. *Other means of applying general competition principles*

The prohibition in the competition law, declaring offending agreements to be null and void, would support a right of independent private action for damages or other relief under the civil code. In addition, a party who believes it has been harmed by anti-competitive action can obtain independent, judicial consideration of its claims. If the Competition Committee rejects the complaint, it must explain its decision, and the disappointed complainant can appeal that decision to the courts (Greece, 2000).

The Competition Committee is designated by the statute as the competent national authority to take actions directly under the EU competition law (Art. 13*b*(3)). The EU is considering a fundamental change in its method of enforcing the prohibition against restrictive agreements. One key proposal would have the effect of eliminating the requirement that a potentially restrictive agreement must be notified in advance. If this aspect of EU practice changes, Greece may have to revise its law to remain consistent. And the European Commission is calling for shifting many enforcement responsibilities to national agencies, so the EU Directorate can concentrate on the largest transactions and the most wide-spread restrictive agreements. Changing the rules so that agreements need not be filed in advance would reduce the burden of processing routine filings. But net effect of the changes could be to increase national agencies' workloads, because those agencies will be increasingly responsible (under both EU and national law) for the most difficult and resource-intensive cases, that is, those involving agreements which the parties try to keep secret. If notification continues to be required in Greece, the substantive requirements would likely be on the basis of the new EU guidelines about vertical restraints. And in the meantime, it will be important to educate Greek courts about the EU's changes, because those courts may be called on to apply EU law directly.

3.3. *International trade issues in competition policy and enforcement*

Greece makes an expansive claim of extraterritorial jurisdiction, over all restrictions of competition that have effects or may have effects within the country, including combinations or agreements among firms that have no establishments in Greece and including abuses of dominance or economic dependence that are "manifested" within Greece (Art. 32). The 1995 amendments extended this jurisdictional claim to mergers with effects in Greece. But the claim of extraterritorial authority has actually been exerted only once in a non-merger setting[4] (Greece, 2000). Trans-national effects and concerns appear mostly in merger matters. Many notified transactions are among foreign firms, whose turnover in Greece is sufficient to require them to file there. To improve inter-jurisdictional co-ordination of merger oversight, the forms now call for firms notifying mergers to indicate whether they are filing in Greece, rather than the EU, solely because of the "two thirds" rule (under which national authorities may take responsibility for mergers that otherwise meet the EU filing requirements, but that involve parties that do two-thirds or more of their business in a single Member state), and to identify any other jurisdictions where the parties are filing notifications (OECD CLP, 1998)

The Competition Committee is authorised to co-operate with international and European competition agencies (Art. 13*b*(1)). In particular, the statute authorises use of Greek processes and institution in aid of EU competition law enforcement efforts (Art. 13*b*(2). The Competition Committee has not played any role in efforts to remove regulatory obstacles to competition from foreign producers (other than an opinion, described below, supporting a regulation that allegedly restricted market access, on the grounds that it served a legitimate consumer-protection purpose). In general, though, there is no indication of discrimination against foreign firms, which are in the same position with respect to their rights and protections as Greek firms are. The law may lack measures to apply if a firm uses market power in Greece to impair competition elsewhere, thus leaving parties to their remedies in the other jurisdiction. The issue does not appear to have arisen yet, however.

3.4. *Agency resources, actions, and implied priorities*

Resource commitment measures seriousness and likely effectiveness. By that standard, Greece gives a low priority to effective competition policy. The Competition Committee's staff complement is the smallest among OECD Member countries, except perhaps for that of Ireland, a country that is only one-third the size of Greece. Other OECD countries with populations about the same as Greece have competition policy agencies that are from 50% larger (Austria, Belgium) to from four to six times larger (Czech Republic, Hungary, Sweden). The total number of Competition Committee members and alternates (18) is almost as great as the number of staff supporting them (now 25, up from 22 two years ago). Observers who work with the Competition Committee consider the Secretariat's management to be very good and very co-operative. But below that level, the staff lacks expertise and experience, and there are not very many of them.

After the 1995 law was adopted, what had been a staff of 40 nearly disappeared, as fewer than 10 of the previous staff from the Ministry wanted to join the newly-separate Secretariat. The remaining staff — and half of those who did come to the new agency quit shortly afterwards — worked 7 days a week, 16 hours a day, to make up for the defections. The staff has been increased somewhat since, but it still falls far short of the statutory authorisation of 80 staff positions (40, before August 2000). The Competition Committee has been continuously asking for additional staff and financial autonomy, but the responses from the Ministry were meagre and, as a practical matter, useless. The 1999 revision to the law, Law 2741/99, provided that the Competition Committee could receive staff support from the other departments and agencies in the Ministry of Development. But most other parts of this Ministry are concerned with regulation, not with competition. Indeed, it was the staff of this Ministry that refused to join the Competition Committee's Secretariat. Their part-time involvement, not fully subject to the oversight and management of the permanent Competition Committee staff, could actually impair, rather than assist, sound competition policy.

The staff problem is not just one of numbers, but also of approach and expertise. Increasing staff to the level authorised by statute is necessary, but it is also important for the staff to have the necessary skills. In particular, there is a need for more economic expertise, because the Competition Committee's decisions, and hence the Secretariat's recommendations, depend strongly on analysis of market facts and conditions. On the Competition Committee itself, there is only one economist, so if it ever sat in sections, one section would have no economist. About half of the Secretariat staff are economists, but only one has a PhD degree.

The Competition Committee has lacked the flexibility, in hiring and compensation authority, to get the staff it needs. It takes too long to hire, and the Competition Committee cannot pay enough. The Competition Committee estimates that its salaries would have to be raised 50% to attract the right people. Since 1995, the Competition Committee has requested some exemption from the general hiring rules so it could recruit directly and pay higher salaries than the basic levels, but that authority has not been granted. In 1997, the Competition Committee requested authority, through the public sector recruitment office under the provisions of Law 21/90, to hire 7 special expert staff. The positions were not posted until 1998; applicants were not interviewed until 1999; and hiring may not happen until after the election in 2000. Only 18 applications were submitted, most of them from persons who are not qualified. And despite the Competition Committee's need for economists, all the applicants were lawyers. Yet the Competition Committee cannot be too discriminating, for if it rejects applicants, it would have to wait another three years to go through the process again. The recent amendments increase the Competition Committee's ability to recruit staff directly, without going through the process that was previously required.

Deadline requirements and legal obligations forced the Competition Committee to focus this limited staff on mergers. The Competition Committee must reach a reasoned decision about each of the pre-notified "section 4b" mergers. For the "section 4a" mergers, the decision was delegated to the President of the Competition Committee, and since there was no real deadline for action on them, these could be treated more routinely, as matters of simple notification. But the overwhelming majority of the Competition Committee's actions have been merger decisions, and virtually all of these decisions approved the mergers as notified.

The other parts of the law have been neglected. The data imply that the Competition Committee has not actually imposed sanctions or orders against any restrictive agreement since 1995. There are 300 pending notifications and complaints about restrictive agreements and abuse of dominance, which the staff has virtually no resources to follow up. A handful of *ex officio* cases are under consideration, involving products and services such as pacemakers, dialysis, milk, petroleum, and shipping. And the Secretariat staff would like to look more closely at patterns of co-ordinated industry-wide price increases. But the merger workload has been overwhelming. Even concerning mergers, the pressure of meeting decision deadlines prevented the staff from studying the Section 4a "notification" mergers thoroughly, both to correct any that might be anti-competitive and to establish a "database" of information and experience in market analysis which could help in reaching decisions in all merger cases more quickly and confidently. The Competition Committee and the Secretariat have had virtually no involvement in advocacy or in actions involving sectors which are objects of reform efforts.

Table 2. **Trends in competition policy resources**

	Person-years	Budget (Drs MM)
2000	25	122
1999	25	88
1998	22	134
1997	22	114
1996	8	99

Source: OECD CLP, 1998; Greece, 2000.

Table 3. **Trends in competition policy actions**

	horizontal agreements	vertical agreements	abuse of dominance	mergers
1999: matters opened	23			159
sanctions or orders sought				2
orders or sanctions imposed				2
total sanctions imposed, Drs				135 000 000
1998: matters opened	27			128
sanctions or orders sought				4
orders or sanctions imposed				4
total sanctions imposed, Drs				86 150 000

	horizontal agreements	vertical agreements	abuse of dominance	mergers
1997: matters opened	13			195
sanctions or orders sought				5
orders or sanctions imposed				5
total sanctions imposed, Drs				63 150 000
1996: matters opened	12			124
sanctions or orders sought				2
orders or sanctions imposed				2
total sanctions imposed, Drs				241 694 000

Source: OECD CLP, 1998, OECD CLP, 1997; Greece, 2000.

4. LIMITS OF COMPETITION POLICY: EXEMPTIONS AND SPECIAL REGULATORY REGIMES

4.1. Economy-wide exemptions or special treatments

The ability of competition policy to provide a suitable framework for broad-based regulatory reform is partly determined by the extent and justification for general exemptions or special treatment for types of enterprises or actions. In Greece, there are few formal exemptions, either broad-based or sector-specific. For example, there is no general provision in the competition law that subordinates it to other laws or regulatory actions. In practice, particular regulations that impair competition take precedence when they conflict with the more general provisions of the competition law.

The law applies to publicly owned enterprises, in principle. But it also permits exemption, by joint decision of the Ministers of National Economy and Development, for undertakings of “public utility” that are of “general importance to the national economy.” Art. 5(1). The Competition Committee is to be consulted before the Ministerial decision. Exemptions can be granted both to particular firms and to “categories” of firms as well. On two occasions, the Competition Committee has considered whether the law would apply to allegedly anti-competitive actions by public firms. These involved the explosive and ammunition industry (1984) and the aerospace and arms industry (1980), where notified agreements received an exemption of 6 years. No other applications for exemption invoking this article have been issued since then (Greece, 2000).

There is no explicit exemption or special treatment for small and medium sized businesses, such as a formal *de minimis* market share test for liability, either in the law or in enforcement guidelines. In practice, though, the Competition Committee does apply a similar concept on a case by case basis (Greece, 2000).

Agreements the “exclusive aim of which is to insure, promote or strengthen exports” are exempted from the competition law, unless the Ministers of National Economy and Development decide otherwise, after consulting with the Competition Committee (Art. 6). These decisions, if any, would apply to categories of agreements.

4.2. Sector-specific exclusions, rules and exemptions

Although few sectors have explicit exclusions or exemptions from the law's coverage, regulations and government decisions about many sectors have impaired free competition there.

4.2.1. Agriculture, Forestry, and Fisheries

The Competition Act applies in principle to firms and associations in producing, processing, or trading in agricultural, livestock, forestry and fishery products. But a provision like the one that is applied to public enterprises permits exemptions for particular firms or for categories of firms, issued by joint decision of the Ministers of Economy, Development, and Agriculture. The Competition Committee must be consulted about these exemptions, but it has no decision authority. Evidently, the ministers' decision must be unanimous. The law sets no substantive criteria for this class of exemption (unless they are implied by the first part of this section, "general importance to the national economy") (Art. 5(2)).

4.2.2. Transport

The Competition Act applies in principle to transport firms and associations. Pursuant to a provision of the law like the ones that apply to agriculture and to public enterprises, joint decisions of Ministers can exempt firms or categories of firms. These exemptions require the assent of the ministers of National Economy and Development in all cases, along with that of the Minister of Transport and Communications for land and air transport and of the Minister of Merchant Marine for maritime transport. The substantive criterion for the exemptions is simply that they must be "necessitated by transport policy." (Art. 5(3)). Some of the most important transport areas where regulation has displaced competition policy oversight, trucking and ferry services, are discussed in another chapter of this review.

In air transport, development of competition has had to accommodate the interests of the publicly-controlled national airline, Olympic Airways. Competition in international service has reduced the market share of Olympic over the last 20 years. The share of foreign scheduled airlines has also declined, because charter service is relatively important, accounting for over 60% of total passengers. When some of the domestic market was opened to competition (from other Greek carriers) in 1992, several small carriers gained an aggregate market share of 25–30% and forced down prices on major routes such as Athens-Thessaloniki. Olympic's remaining monopoly, on scheduled service to the islands, ended in 1998, but the EU has granted Greece an extension until 2003 before non-Greek firms can offer that service. Some of the new entrants in Greece are in financial difficulty, in part because of intense competition. Olympic has additional reasons for its poor performance: labour policies that result in high costs, the costs of its obligation to fulfil other non-remunerative functions (such as linking the islands, daily press service, and free tickets for favoured groups — including unpaid arrears from political parties), and poor management and strategy. Olympic's profitability depended on revenues from its monopoly of airport ground handling. After EU objections to that monopoly position, a second passenger handling firm was introduced at Athens in 1999. The government has taken steps to replace and improve management, but change has proved difficult to accomplish (OECD, 1998). Further intervention has been needed to retain the strategic partner that was brought in to improve management; one such step was to end the requirement that Parliament approve Olympic's business plan.

A current controversy involves taxicab service. Poor taxicab service is one of the principal consumer complaints in Greece. One proposal to improve service was to authorise a "mini-bus" service, intermediate between taxis and regular-route local buses. The taxi industry has generally objected. The state of competition in local taxicab markets is unclear. The number of officially issued licenses is evidently limited, but there are many unauthorised, unlicensed taxis in operation too. The unlicensed taxis provide competition, but they probably escape consumer protection oversight.

4.2.3. Telecommunications

The National Telecommunications and Postal Services Commission is responsible for safeguarding competition in the industries under its jurisdiction, applying special rules in the telecoms legislation (Greece, 1999, p. 10). The sectoral regulator thus displaces the Competition Committee concerning competition issues in this sector, except for mergers, which remain under the Competition Committee's control (Greece, 2000). The division of responsibility is not completely clear; although it appears that the Competition Committee could impose fines for violations sections 1 or 2 of the Competition Act, it might not have the power to order any other relief. The sectoral body has taken some action, fining the national telecoms firm, OTE, Drs 80 million in October 1998 for non-competitive practices (OECD, 1998). The Commission does not have very many staff to handle these cases. There is no formal link between the Commission and the Competition Committee, although there is a well-established informal relationship. Despite the lack of precision and the potential for overlap, no practical problems about jurisdictional uncertainty have arisen yet. The Competition Committee has received some complaints about OTE, and the Commission has proposed getting together with the Competition Committee to work out how to handle such matters. But the Commission may prefer to do it through rules and decisions under the telecoms law.

Meanwhile, as detailed more in background report to Chapter 6, competition in telecoms is coming more slowly in Greece than in most of the rest of the EU. By derogation from the EU directive, Greece does not have to open its voice telephony market until the end of 2000 (EIU, 1999, p. 14). OTE is protecting its monopoly by filing complaints about firms that are using "call-back" to avoid it. The telecoms regulator has not finally decided these cases, a year after they were filed, and it may not decide them on the merits until after liberalisation in 2001.

4.2.4. Broadcasting and other media

The National Broadcasting Commission is responsible for some competition-related issues in that sector (Greece, 1999, p. 10). Mergers in the press and electronic media are subject to the oversight control of this Commission, which is exercised through the Commission's power to determine who may hold registered shares (Greece, 2000). Legislation in 1995 was intended to reduce concentration in broadcast ownership and incorporate EU rules about advertising. But no licenses have been issued under the new rules, and stations are thus operating on provisional authorisations that are nearly a decade old (EIU, 1999, p. 15).

4.2.5. Petroleum

Petroleum prices were liberalised in the early 1990s, in theory, and the retail market appears reasonably competitive now. But prices are still subject to some *de facto* administrative control. The government may impose upper limits on retail prices, locally or nationally, "to stem speculative surges" in price, usually in "crisis" periods, that are not justified by increases in costs (Greece, 1999, p. 4). One means of intervention is by government action capping the effective prices of products sold by the publicly owned refineries (IOBE, 1999*c*). Exploration and extraction rights belong to the state, which has assigned them to state-owned Hellenic Petroleum for further disposition through bidding. Some exploration and drilling permits have been granted. The petroleum industry is functionally dis-integrated. Refineries cannot distribute products directly in the inland market (although a refiner can own a wholesaler), and wholesalers cannot operate retail stations (although a wholesaler can own a retail station). Refining is essentially a duopoly of Hellenic Petroleum, with a share of about 60%, and Hellenic Motor Oil-Aramco, with about 20%; a third firm, Petrola, has limited capabilities but has announced plans to expand. (Greece, 1999, p. 14) (OECD, 1998). Hellenic Petroleum, as a state-owned firm (which has been partially privatised), has the competitive advantage of being able to rely on public funds, reducing its debt burden compared to its competitors, and another competitive advantage as the sole supplier to some large domestic consumers.

Imports offer little competition. Greek implementation of the EU's security stocking rules, Directive 68/414/EEC, does not permit traders to count stocks in other EU countries. Rather than undertake the insurmountable task of setting up storage facilities in Greece — licenses cannot be obtained — importers must transact through the incumbent firms to take advantage of their storage capacities. The EU has challenged this law as a constraint on the free movement of goods (EIU, 1999, p. 15). Because Greek law also requires that deliveries to retailers be carried on lorries owned by the marketers or by public transport companies, retailers cannot handle their own deliveries, thus increasing their costs and making deliveries less certain, and in effect they cannot import independently.

Despite the non-competitive structure of refining and distribution, there appears to be substantial retail-level competition. Most retailers are independent dealerships that do not have ties to the major oil companies. But in early 2000 the gas station operators reached an agreement to limit their opening hours. Despite the risk that this step will limit competition and create inconvenience for consumers, it was evidently considered politically acceptable because of the large number of small private operators.

4.2.6. Electric power

Derogation from the EU liberalisation deadlines means Greece will not start opening up its generation market until February 2001. The national monopoly, DEH, has been used as a device for promoting other policies, such as employment and regional parity (prices are uniform across the country despite higher costs in supplying islands that are not on the grid, for example). Prices in Greece (adjusted for purchasing power parity) are relatively high. Prices have been manipulated to combat inflation or to assist industrial sectors: DEH is required to sell power at half-price to aluminium and publicly-controlled nickel firms (the aluminium plant alone consumes one-fourth of industrial power in Greece). More detailed discussion of the competition issues raised by reforms in this sector is in background report to Chapter 5 of this review.

4.2.7. Natural gas

The natural gas industry is now being developed, after the high pressure pipeline from Russia was completed in 1997. The system is set up to be a monopoly. Greece is not under EU obligation to provide for open access until 2006, because of an exemption in the EU directive for countries that only recently set up a gas system. The low-pressure distribution system will be established over the next 20 years by award of local monopoly concessions. Private sector participants will have only minority stakes. A majority will be held by subsidiaries of the national pipeline monopoly, which is mostly government-owned (85%). Hellenic Petroleum has the right to repurchase those government shares over time, so it could succeed to the gas monopoly.

The pricing system may distort competition in downstream markets. The formula reference price for most customers, which is the basis for negotiation with industrial users, is based on the costs of competitive fuels (plus a margin) and yields a price that is in line with what appears in other countries. But major customers, including the electric power monopoly DEH, pay a price set on a different, cost-plus basis under long-term take-or-pay contracts. That price seems high, but for the electric company it may be effectively lower, because DEH has a profit-sharing arrangement with the gas company. The net result is unclear, but competition in electric generation could be impaired if other firms trying to enter cannot operate on the same cost footing. Moreover, the principal firms in three sectors are interlocked in ways that may encourage each to help the others resist competition: DEPA and Hellenic Petroleum are main suppliers of fuel to DEH, DEH and DEPA have a profit-sharing agreement (so DEPA has an interest in preserving DEH's monopoly position), DEPA's prices are set by reference to Hellenic Petroleum's ex-refinery prices, and Hellenic Petroleum has a long-term interest in buying back DEPA (OECD, 1998).

4.2.8. Accounting and other professional services

As of July, 1997, the accounting profession was to have been liberalised in the EU. Greece tried to reserve some protections for the previous state monopoly during the transition period, 1994-97. A November, 1997 presidential decree concerning audits set minimum fees, restricted the use of different types of personnel, and prohibited audit firms from doing other kinds of work for a client. The regulations were defended as necessary to promote objectivity and quality. One effect, though, may be to impair the competitiveness of multinational accounting firms operating in Greece. In general, professions in Greece demonstrate many of the anti-competitive aspects of self-regulation typically found elsewhere, in limitations on entry, regulated or recommended fees, and prohibitions against potentially efficient methods of providing services and against non-deceptive advertising.

4.2.9. Banking

One sector-specific competition rule applies in financial services. For mergers between banks, a different market share threshold is used in the regulation that determines which transactions must be notified to the Competition Committee.

4.2.10. Distribution

In the 1990s, large wholesale and retail chains began to move into Greece in competition with the hundreds of thousands of traditionally small family concerns. Most foreign branded products, especially electrical goods and automobiles, are imported under exclusive distributorships. Consumer goods franchises, particularly in food and clothing, are growing rapidly (EIU, 1999, p. 28). As is common in many countries, local governments in Greece appear to use powers over licensing, taxes, and operating hours to protect incumbent smaller retailers against the threat of competition from larger stores, discounters, and other new outlets. Despite this opposition, though, many large European retail firms have entered successfully while the number of small retail shops has dropped 50% since the late 1970s. The national government has no apparent plans to reduce the local governments' powers. The supermarkets' association complains that not enough is being done to protect Greek companies, as the multinationals find ways to enter yet local governments seem to prevent larger Greek firms from doing so.[5]

5. COMPETITION ADVOCACY FOR REGULATORY REFORM

It is difficult to identify any body that is promoting competitive, market methods and outcomes in the policy-making and regulatory processes in Greece. The Competition Committee does not participate in these processes. The new sectoral bodies are, in effect, charged with the task of introducing competition in their assigned sectors. And the Ministry of National Economy has made studies of competition policy issues. But it is not clear that any other body has a mandate or responsibility for promoting competition.

The Competition Committee has authority to issue opinions about competition matters in response to requests from identified bodies. The range of potential requesters is wide: the Parliament or its committees, the Ministries of National Economy and Development, and "associations of trade and industry and industrial or commercial unions." (Art. 8*d*). But only two such opinions have been requested and issued since June 1995 (OECD CLP, 1998). The Competition Committee could not offer an official opinion about ministerial decisions affecting competition unless it was officially asked, and it is rarely asked. The Competition Committee could communicate views unofficially even in the absence of a request, but it rarely did so. The Competition Committee recognises that the advocacy power has not been used to the extent that had been contemplated when the law was amended in 1995 to authorise this role (Greece, 2000). The August 2000 amendments include one to authorise the Competition Committee to issue opinions about policy issues on its own initiative.

Observers are unaware that the Competition Committee has issued any opinions, formal or informal, about the competitive impact of regulatory or legislative proposals. Once the Competition Committee was asked for an opinion about a rule requiring that labels for consumer packages of bottled water and soft drinks set out a recommended price. Importers complained that this rule restricted market access, because it would be costly to pre-print the price in Greek. The Competition Committee's opinion supported the proposed rule, arguing that pre-printed prices would not impair free movement of goods, but instead would protect consumers, especially tourists at hot, isolated archaeological sites, against seller opportunism. The end result was to require a posted price list at the point of sale. Because no one has asked for its opinion, the Competition Committee has not offered views about issues such as the system of uniform book prices or recent proposals about taxi regulation and service station hours.

A principal vehicle for advice about policy issues could be the annual report that the Competition Committee must submit each April to the Ministers of National Economy and Development and to the president of Parliament. In this annual report, the Competition Committee does not need an official request to justify discussing competition policies more broadly. But this outlet has not been used to comment on regulatory policy topics. And in any event, no such report was submitted in 1999. The Competition Committee's only recent, special report to Parliament was about its own resource difficulties. In November 1999, the Competition Committee met with the Parliament's Transparency and Institutions Committee to discuss the Competition Committee's work. That committee, in a report issued 10 March 2000, found that Competition Committee had been unable to handle its responsibilities because of lack of resources, traceable ultimately to lack of financial independence, and because of insufficient staff and expertise. The Parliamentary committee recommended bolstering the Competition Committee's independence by eliminating the Ministers'; power to overrule its merger decisions and by granting it financial autonomy, and providing for more specialised staff and staff training.

6. CONCLUSIONS AND POLICY OPTIONS

6.1. General assessment of current strengths and weaknesses

Competition policy and institutions have played little role in the process of reforming economic regulations to stimulate competition. In general, Greece has made relatively little progress, compared to most of its EU neighbours, in reforming aspects of economic regulations that restrict freedom of competition. Competition policy has not driven change. In implementing further reforms called for by the European community, Greece has not employed its own competition policy tools — even though those tools were themselves created in response to perceived EU requirements. Rather, each industry and issue has been approached as though it were *sui generis*. This approach reflects the pattern of domestic policymaking, in which a principal consideration seems to have been the protection of established interests.

One of the most experienced and authoritative experts on competition policy in Greece believes that the Competition Committee is "underfunctioning" even though, in his judgement, its members and the top managers of the Secretariat have been performing heroically. The 1995 changes in the law have forced the Competition Committee to spend nearly all of its time and resources on mergers, most of which have no competitive significance, and on applications for provisional relief against alleged abuses of economic dependence, most of which are unrelated to competition policy issues. Restrictive agreements are common, but the Competition Committee could do virtually nothing about them because it lacks funds, facilities, and personnel. Despite its nominal decision-making independence, the Competition Committee has been bound too much to the central administration, being dependent for its budget on the Ministry of Development, which was characterised by a different and inconsistent philosophy dating from the period of price control.

Despite the weakness of the competition policy institutions and the pervasiveness of regulations and controls that could stifle competition, some aspects of the Greek economy nonetheless appear to be thriving. The explanation is probably a combination of an individualistic, entrepreneurial culture and tradition with extensive *de facto* deregulation, as businesses and others ignore or evade regulations that impair their operations too much or that cost too much to comply with.

Reforms encouraged or required by outside pressures have worked. A notable example is financial services. Competition appears to be developing in this sector, and most of the biggest banks are now private, although the largest one is still state-owned. Reform of the financial and securities sectors could provide both an example and a foundation for further reform. But this concrete illustration of evident success of greater private initiative and competition has not been used as a model for reform elsewhere, at least not yet.

6.2. The dynamic view: the pace and direction of change

The impetus for change in competition policies still comes principally from outside Greece. To that extent, the prospects for further reform are not strong. Directives from the EU, and indeed the overall direction of change in EU economic policies, present Greece with motivations for change. Another "external" impetus for change is foreign firms, who would like to enter the Greek market if its regulatory structures were modernised. Much of the content of regulation comes from EU directives. In implementing these, Greece typically does the minimum necessary, and typically takes the maximum amount of time available — and sometimes more, as it has requested derogations from the deadlines of most if not all of the major liberalisation directives, when Greece has foreseen trouble with implementation.

The status quo has been defended by a network of alliances among political interests, public sector unions, bureaucracies and procurement officers, and private sector suppliers to the government and publicly-controlled firms. This system for avoiding conflicts with groups that might lose out in the transition to more competitive markets may have delayed achieving benefits to the Greek economy as a whole. But this system is not as strong now as it was perhaps ten years ago. Meanwhile a younger generation, educated abroad, is bringing new ideas into the system as advisors, lobbyists, and entrepreneurs. Greek entrepreneurs are pushing aggressively for new opportunities to invest and enter markets.

Structural reforms in Greece can be classified into three phases. First came education about the potential benefits of liberalisation, which lasted until early 1998. That was followed by deeper and faster implementation in a few sectors, beginning with banking; that phase was still in process in early 2000. In the next phase, these market principles would be introduced into the utility sectors. There seems to be a consensus among policy-makers that competition principles will inevitably be incorporated in the regulatory system, but there also seems to be a consensus that it will take a long time and will have to be done industry by industry.

This conception of phased reform, although it contemplates increasing reliance on competition principles, assigns no role to strong and independent competition policy institutions. Such institutions would probably call for more rapid and widespread reform.

6.3. Potential benefits and costs of further regulatory reform

A principal objective of reform, and of having a competition policy, has been to adopt the institutions of the EU in order to cement Greece's economic and other links to Europe. Of course, a reason for adopting the policies of the EU is to achieve economic benefits. The likely improvements in efficiency and output from further reform have been well documented. The 1998 OECD Economic Survey of Greece estimated the effects of major structural reforms, using the model and methodology of the 1997 OECD Report on Regulatory Reform. First, the effect of further reform on prices was estimated, based on benchmarking from other countries' experiences, taking into account the current situation in Greece. Major savings in labour costs would result if labour costs in these sectors were at the average level for manufacturing, and falling intermediate input prices, dependent on energy, would have significant wider effects. Some prices would fall, notably telecom and petroleum, but others would increase in order to come closer to the costs of fulfilling public service obligations. The need for infrastructure investment would increase capital costs, but innovation, in telecoms and electric power, would reduce costs and prices too. Most of the static price reduction effect appears to result from reforms in the sectors where a principal element of reform is greater competition, namely petroleum, electric power, and especially telecoms. When the economy's response to those price changes is considered, the model predicts an increase in output of 1.5% (which could be larger, because important sectors such as telecoms are still maturing), and a decline in employment of .5% (which could be smaller, if the maturing sectors expand in Greece as they have elsewhere in response to liberalisation). Most importantly, though, when dynamic longer-term effects are considered, the OECD's INTERLINK model predicts a cumulative output increase of 5–7% of GDP. Considering the significance of higher quality products and better budget balance, the total income gain could be 9–11% of GDP (OECD, 1998).

Reforms to date have demonstrated some of the expected benefits, although they vary among sectors. Rents have not changed much, despite deregulation; by contrast, deregulating domestic air service has led to lower fares. Opening the sale of securities to new entry stimulated extraordinary price competition, with one new entrant charging commission rates of 0 as an introductory offer.

It is difficult to quantify the likely effects of more effective competition policy. There are many restrictive agreements in place in Greece, but their net effect on competition may not be too great, because the structure of most Greek industries appears unconcentrated and because firms probably do not comply with these agreements in all respects. That is, they probably cheat on the cartels. Still, clearly enforcing the prohibition against horizontal agreements should stimulate price competition. The effects of improved competition enforcement on mergers and restructuring are also somewhat uncertain. There appears to be a trend toward somewhat higher concentration in Greek industry. Because many sectors are virtually atomised, this trend is probably healthy in most cases. Combinations could permit small firms to achieve economies of scale and operating efficiencies, and larger, healthier firms might even offer more jobs. Of course, not all mergers in every sector will necessarily be good for competition. But it is critical that competition policy focus on the handful of mergers that could present problems, and that it not hamper or delay other transactions that are likely to be beneficial.

6.4. Policy options for consideration

Expand staff resources at the Competition Committee, at least to the levels already authorised by statute. Authorise recruitment and compensation comparable to what has been authorised for other, high-profile agencies. Some other bodies, such as the Capital Markets Committee, evidently have authority to hire outside of the usual process and to pay up to 50% more than the standard pay scale in order to attract people with the qualifications they need. If competition policy is to have a significant role in reform, its institutions must get equivalent treatment. The recent amendments give the Competition Committee power to hire independently and double the authorised staff level.

Provide for independence of financial support, so that the formally independent Competition Committee is not subject to oversight by a ministry with inconsistent priorities. To ensure that competition policy institutions can operate independently, their source of funds must not be tied to such a narrow and changeable base. One way would be for the budget to be separately authorised by Parliament. Another, which was adopted by recent legislation, would be to establish an independent source of funding, such as fees for applications or small charges on capital market transactions and registrations.

De-emphasise merger review, by setting higher merger thresholds or otherwise changing the decision rules so the Competition Committee can concentrate only on the small number of mergers that may actually have anti-competitive effects and will no longer tie up other transactions for too long, or use too many of its resources processing them. Greater resources for the competition institutions would be wasted, if they continued to be spent on detailed reviews of mergers that are highly unlikely to present problems for competition. The law was recently amended to increase the thresholds. Another step would be to fundamentally change the decision process so that most mergers can be treated quickly under a more summary process, like that which applies to the "notification" category.

Shift attention to horizontal agreements. Additional resources in competition policy should be assigned to the endemic problem of excessive co-operation among Greek businesses. Clear enforcement of the statutory prohibition will help Greek businesses prepare for the vigorous competition of the wider European market.

Complete privatisation of structurally competitive services and industries. These include tourist facilities, travel agencies, airline catering, airlines, and petroleum product distribution. In this process, it must be clear that competition policy institutions have the ability, and the responsibility, to ensure that these transactions do not perpetuate market power in private hands but instead result in workably competitive markets.

Make advocacy possible. A formal change in the law has now made it clear that the Competition Committee can offer opinions on its own initiative, without waiting for a request from some other entity. In addition, though, the Competition Committee's prestige and credibility must be restored, through more effective enforcement, before policy advice and advocacy could be credible. A prime subject of attention could be the potentially anti-competitive effect of the extensive licensing requirements that are used to control entry into many businesses, which are administered principally by the Ministry of Development. For that to be effective, the Competition Committee must achieve full independence from that Ministry's influence or control. And the appearance of being tied to industry interests should also be overcome, by eliminating the power of business and industry associations to designate members of the Competition Committee. Normally, where there is a long tradition of state ownership and government control over market institutions, a high priority should be given to advocacy. That may prove true for Greece, too. But the Competition Committee has not been in a position to undertake effective advocacy. Experienced observers, and indeed some on the Competition Committee itself, believe that advocacy is not yet a priority, because no one in the government would listen to the Competition Committee's analysis and advice. Rather, they believe that resources must first be reinforced and redirected.

Give the Competition Committee responsibilities in the process of introducing competition into previously monopolised network industries. Such a role could increase its prestige as well as help ensure that the process promotes competitive outcomes. The relevant sectoral institutions, which are just being set up, appear to have had little contact with the Competition Committee so far. Both the Competition Committee and these sectoral institutions would profit from more extensive and formal interaction. The Competition Committee should be involved in the process of creating institutional responsibilities and relationships needed to achieve the appropriate division of labour.

Broaden the base of responsibility for supporting competition. Making other ministries as well as sectoral regulators responsible for eliminating constraints on competition within their own jurisdictions would extend the scope of competition policy and emphasise its broad, horizontal importance. The Competition Committee should play a central role. Thus, these other bodies should be held responsible for co-ordinating with the Competition Committee to promote expeditious enforcement. Ministries and sectoral regulators could establish antitrust offices to work with the Competition Committee and to advise industries about their compliance obligations.

6.5. Managing regulatory reform

The government is aware of the importance of market competition to long-term economic health. But it is also aware that, in the short run, free competition would not necessarily reduce the inflation rate. Moderating inflation would be a medium to long-term result of more effective competition. The top economic policy priority in Greece has been meeting the macroeconomic performance criteria for joining the euro zone. Keeping the measured inflation rate low in the short run has been considered more important than establishing institutions that will help moderate price increases in the long run. Reflecting these overall priorities, the Ministry of Development for many years did not agree to strengthen the competition policy institutions, but instead ascribed great importance to “gentlemen’s agreements” to control inflation.

The priority of joining EMU, to make a credible, seemingly irrevocable commitment to fundamental reform, may well be understandable over a longer time horizon. Even some supporters of competition policy in Greece allow, reluctantly, that perhaps the time for strong competition policy in Greece may not come for another year or two. Reportedly, some expect that after Greece does join the euro zone, the “shock” of exposure to stronger competition may lead to demands for more effective competition policy and enforcement. Then, resources and staff would be increased to deal with “new” problems.

But the problems that result from weak competition policy institutions are present now, and they will continue to undermine reforms until something is done about them. Commitment to fundamental reform requires making an unambiguous commitment to effective competition policy, and doing so now, not at some undefined point in the future. The notion that the “shock” of stronger competition in the euro zone will elicit demands for stronger competition policy may be naive. Another likely response could be for the affected sectors to demand protection and even a reversal of the larger-scale process. Or, they might demand that the competition law be applied perversely, to cripple new, efficient competitors and protect established firms. It would be better to undertake the reform and strengthening of competition policy institutions before that happens, to ensure that the direction of policy is set and the resources are in place to implement it. Until the necessary changes are made, to shift attention from unnecessary merger reviews toward more important, albeit difficult, issues, and to provide sufficient independence and resources to do the job, competition policy will continue to impose undesirable costs that impede accomplishment of other policy goals, such as increased industrial efficiency and attracting foreign investment, while failing to accomplish its primary purpose, of promoting stronger competition to improve efficiency and benefit consumers. It is encouraging that recent appointments and amendments show an awareness of the need to shift priorities.

NOTES

1. Act 2836/3.8.2000.

2. Financial Times, 15 January 2000.

3. Government Gazette, issue 596/B/8.5.2000.

4. *Sikkens II*, case 38/1986.

5. *Hermes*, December 1999, ww.ana.gr/hermes/1999/dec.retail.htm

BIBLIOGRAPHY

Christoforou, Theofanis (1990), “Competition Law in Greece,” in *Competition Law in Western Europe and the USA*, Netherlands.

Clogg, Richard (1992), *A Concise History of Greece*, Cambridge.

Economist Intelligence Unit (2000), *Country Profile: Greece 1999-2000.*

Foundation for Economic & Industrial Research (IOBE) (1999*a*), *Quarterly Bulletin No. 20*, The Greek Economy 4/98, January.

Foundation for Economic & Industrial Research (IOBE) (1999*b*), *Quarterly Bulletin No. 21*, The Greek Economy 1/99, May.

Foundation for Economic & Industrial Research (IOBE) (1999*c*), *Quarterly Bulletin No. 22*, The Greek Economy 2/99, November.

Government of Greece (1999), Ministry of National Economy, *Progress Report on Reforms in the Product, Services and Capital Markets in Greece*, December.

Government of Greece (2000), Communication to OECD Secretariat.

International Monetary Fund (1999), Staff Country Report No. 99/131: Greece, November, Washington.

OECD (1997), *The OECD Report on Regulatory Reform*, Paris.

OECD (1998), *Economic Surveys: Greece*, Paris.

OECD CLP (1996), *Annual Report on Competition Policy Developments in Greece* (1995), Paris.

OECD CLP (1997), *Competition Policy in OECD Countries* (Annual Report of Greece, 1993-1994).

OECD CLP (1997*b*), *Competition Policy in OECD Countries* (Annual Report of Greece, 1994-1995).

OECD CLP (1997*c*), *Annual Report on Competition Policy Developments in Greece* (1996), Paris.

OECD CLP (1998), *In-Depth Examination of Competition Policy in Greece* (1997), Paris.

Tzouganatos, Dimitris (1998), “Protecting competition in Greece 1995-1998,” *Global Competition Review*, p. 25, October-November.