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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GREECE

-- 2011 --

This report is submitted by Greece to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 13-14 June 2012.

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2011 ANNUAL REPORT ON COMPETITION POLICY IN GREECE

Hellenic Competition Commission *

Executive summary

1. Year 2011 marked the abolition of Law 703/1977 which governed (with consecutive amendments) the protection of competition in Greece in the last 34 years.
2. The new Competition Act for Greece (Law 3959/2011) was the result of a long drafting procedure¹ and took effect in April 2011, under the light of the internal and international demand for better institutions and a more competitive national economy.
3. Following the new institutional framework, the Authority sought to adapt swiftly to the revised Competition Act, which entered into force in mid-2011, and enables the HCC to modernize its operations and to enhance its effectiveness.
4. During this process, the HCC maintained a consistent level of core enforcement action, and at the same time it expanded considerably its advisory/consultative functions, in order to promote much needed structural reforms in the context of Greece's Economic Adjustment Program overseen by the EU Commission, the ECB and the IMF.
5. The HCC seized the latter opportunity to diversify its activities and increase its overall visibility, thereby raising further its status and reputation as an independent authority.

1. Changes to competition laws and policies

1.1 *The introduction of the New Competition Act (Law 3959/2011)*

6. Law 703/1977 on the protection of free competition was abolished, instead of being amended one more time, as the legislator of Law 3959/2011 (the New Competition Act) declared its intention to avoid the risk of conflicting rules and oversights and to produce a coherent statute which is easier to understand and to implement.

* This document is submitted by the Greek Delegation to the OECD Competition Committee for its forthcoming meeting on June 13h and 14th 2012 and covers the period from 1 January to 31 December 2011.

¹ A Legislative Drafting Committee ("Expert Committee") was set up by the Ministry of Economy & Competitiveness on 2/2/2010 with the task of proposing specific amendments to the Greek Competition Act. The Expert Committee, headed by the President of the HCC Mr. Kyritsakis, mostly comprised professors of law and economics, as well as representatives of the HCC and the Ministry. The Committee concluded its work on 19/7/2010 and submitted its proposals to the Ministry. Following a public consultation, as well as extensive cooperation with the European Commission, Law 3959/2011 on the protection of free competition (hereinafter "the new Act") was adopted and published at the Government Gazette on 20/4/2011.

7. The new Competition Act adopted the central structure of the former, keeping intact, with only minor grammatical and technical changes², its core substantive law provisions, namely Art. 1 on restrictive agreements, and Art. 2 on the abuse of a dominant position (closely drafted to Art. 101 and 102 TFEU respectively). The amendments regarding concentrations are also mostly technical in nature³, whereby the respective provisions, as well as all the subsequent ones, have undergone extensive renumbering.

8. The new Competition Act introduced, however, other significant amendments concerning, *inter alia*, the organization and operation of the Hellenic Competition Commission, the prioritization of cases, the administrative and criminal penalties for violations, as well as several procedural rules. The amendments served the following objectives⁴:

- the harmonization of Greek legislation with European standards and the modernization of the operations of HCC,
- the strengthening of the deterrent effect of sanctions,
- the empowerment of the authority to intervene in whole sectors of the economy,
- the institutional strengthening of HCC, and probably primarily, and all-encompassing,
- the enhancement of the effectiveness of its actions.

1.1.1 Summary of the organizational changes introduced by the New Competition Act

9. Overall, the new Act preserved the long-standing status of the HCC as an independent administrative authority (since 1995), exclusively responsible for the enforcement of national and EU competition rules. It further maintained the dualist structure of the Authority, essentially comprising two bodies: the Directorate General for Competition (“Directorate-General”) which is conducting the investigations, and the HCC Board, which is the decision-making arm of the Authority.⁵

10. The most significant change in structure brought about by the new Act was the reduction of the HCC Board Membership from nine (9) to eight (8), as well as the appointment of a Vice-President. In particular, the HCC Board now comprises the following Members⁶: 1 President, 1 Vice-President⁷, 4 Full-time Commissioner-Rapporteurs⁸, 2 Part-time Members (and their alternates)⁹.

² The legislator has however, included, notably inspired by Art. 2 Reg. 1/2003 (see Explanatory Report, p.2), a provision stating that in Art. 1 and 2 proceedings before the HCC, each party has the burden to prove its allegations (see Art. 4 Law 3959/2011).

³ E.g. extension from 10 to 30 days of the notification deadline (Art. 6 para 1 Law 3959/2011) and a detailed procedure for commitments (Art. 8 para 8 Law 3959/2011, as already amended by Art. 19 para 1 Law 4013/2011).

⁴ See Explanatory Report to Law 3959/2011 (hereinafter Explanatory Report), available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/P-PROANT-eis.pdf>.

⁵ As a result, the Greek institutional arrangements preserved their basic quasi-judicial characteristics (including the exchange of rounds of written pleadings and a fully-fledged oral hearing before a separate decision-making body, with rights to examine witnesses, cross-examine etc.). This is albeit the softening of the strict separation between the investigatory and decision-making functions of the Authority in recent years, particularly with the appointment of 4 Commissioner-Rapporteurs on a full-time basis (2009 reform) and now with the creation of a Vice-President (coordinating HCC’s operations).

⁶ According to Art. 12 of Law 3959/2011, the HCC Board members are high-ranked state officials employed on a full-time and exclusive basis, shall be “*individuals of recognised standing, as well as of scientific*

11. The new Act also put renewed emphasis on measures aimed at increasing the independence of HCC members. In particular, the President and the Vice-President will in the future be selected by the Greek Parliament's Chamber of Presidents, thus ensuring broader parliamentary consensus. All other Members, including the 4 Commissioner-Rapporteurs, will continue to be selected by the Minister of Development & Competitiveness following a hearing before the Parliamentary Committee of Institutions and Transparency. Moreover, the term in office of all new of the HCC's Board will be extended from 3 to 5 years, in order to decouple it from election cycles and strengthen continuity of operations. Notably, following the transitional provisions of the new Act, while the existing full-time Members of the Board remained in office, the HCC Board was in March 2012, partly renewed.

12. Finally, it should be noted that no changes were made to the organisation and structure of the Directorate-General (the investigative arm of the Authority).

1.1.2 *Procedural and substantive amendments introduced by the New Act*

- Introduction of a “dynamic” reference to EU Block Exemption Regulations

Interestingly, Law 3959/2011 introduced, following the example of the German legislator¹⁰, a “dynamic reference”¹¹, prescribing the application by analogy of the EU Block Exemption Regulations also on agreements, decisions and concerted practices, which affect Greece but are not likely to affect EU trade. The reference ensures that such agreements will not be treated more strictly than those falling within the scope of Article 101 TFEU¹², and is attuned with Art. 3 § 2 Reg. 1/2003, even if not directly associated with it.

- Abolition of notification procedures established for market mapping purposes

A major amendment, in terms of the enhancement of the efficiency of the authority, is the abolition of the duty to notify to it for “market-mapping” purposes, restrictive agreements, which the parties, following their “self-assessment”, considered exempted. Notably, the respective omission to notify was fined under the previous regime, but did not result in the prohibition, according to Greek law, of agreements falling within the ambit of both EU and national law,

formation and professional ability in law and in economics, particularly as regards competition-related matters” (Art. 12 of Law 3959/2011).

⁷ The Vice-President is responsible for the coordination and supervision of the HCC's operations and the monitoring of compliance with HCC decisions (Art. 19 of Law 3959/2011). He also presides over HCC Chambers and acts as an alternate to the President.

⁸ The new Act preserves the role of the four (4) Commissioners – Rapporteurs, who serve on a full-time basis. The latter are not just members of the decision-making body, the HCC Board, but further supervise the drafting of the Report – Proposal for each case that is introduced to the HCC for resolution (be it a statement of objections, a rejection of a complaint or a recommendation that no further action is needed). In the context of drafting each Report – Proposal, the Commissioner-Rapporteur is assisted by members of the Directorate-General assigned to each specific case.

⁹ The new Act thereby reduces the total number of part-time Members from 4 to 2.

¹⁰ See Art. 2 para 2 of the German Law on the Protection of Free Competition (GWB).

¹¹ Art. 1, para 4 Law 3959/2011.

¹² See also Explanatory Report, p. 1.

which would not be prohibited or exempted according to the former¹³. It was, however, a regulatory burden on businesses and on the authority, which was receiving the numerous notifications and/or complaints regarding the omission to notify.

Along the same line, the new law also abolished the post-merger notification obligation of former Article 4a of Law 703/77, which was meant for “smaller” mergers (not meeting the pre-merger notification requirements) and served also “market-mapping” purposes.

- Introduction of discretion to prioritize and to archive complaints

A most notable amendment is the abolishment of the provision mandating the authority to issue decisions on all complaints within six to eight months from their date of submission¹⁴. As a means of rationalizing the handling of complaints, the law finally permits the prioritization of cases which meet certain criteria specified by the authority¹⁵ and take into account "*in particular the public interest, the likely effect on competition, consumer protection, the newly introduced prescription period and the impact expected from the authority's intervention.*"¹⁶ The introduction and implementation of a system awarding “prioritization points” to complaints, should henceforth enable the HCC to focus its actions on cases with a significant impact on consumers, and, following the prescribed procedure, to refrain from investigating complaints which serve only private interests and not competition at large¹⁷. At the same time, it restricts the discretion of the authority in order to safeguard the transparency of the prioritization process.

Also with a view to enhancing its effectiveness, the new law grants the authority an opportunity to archive, following the prescribed formalities and increased publicity, complaints pending before it¹⁸.

- HCC's authority to intervene in whole sectors of the economy

The legislator preserved HCC's competency to make regulatory interventions in sectors of the economy¹⁹. Also, it retained the authority's right to issue opinions acting on its own initiative. It placed, however, greater emphasis on the advisory role of the HCC, with an explicit reference to its competence to deliver opinions on draft laws and regulations which may distort competition²⁰ and a further reference to the authority's ability to initiate investigations on whole sectors of the economy and into types of agreements with or without the issuance of a report²¹.

¹³ At least from the time Art. 21 of Law 3784/2009 abolished Art. 21 para 1 subpara a) of Law 703/1977 (prescribing that the omission to notify an agreement resulted in the inapplicability of the provisions regarding exemption).

¹⁴ Compare former Art. 24 para 4 Law 703/77 with Art. 36 paras 3-5 Law 3959/2011.

¹⁵ See HCC Decision 525/VI/2011 on the Criteria for the Prioritization of Cases, issued on 7/7/2011 available at < http://www.epant.gr/img/x2/apofaseis/apofaseis652_1_1315906934.pdf >.

¹⁶ Art. 14 para 2 subpara k) point aa) and Art. 15 para 1 Law 3959/2011.

¹⁷ See Art. 14 para 2 subpara l) L. 3959/2011.

¹⁸ See Art. 14, para 2, subpara l) in conjunction with Art. 37 and Art. 50 paras 1-2 Law 3959/2011.

¹⁹ See Art. 11 Law 3959/2011, which practically repeats Art. 5 of abolished Law 703/1977.

²⁰ Art. 23 para 3 Law 3959/2011. In the course of 2011, the HCC has already made extensive use of this new instrument, e.g. by embarking on its most far-reaching intervention in the area of liberal professions.

²¹ Art. 40 Law 3959/2011.

- Introduction of a limitation period

A very significant change, both for reasons of efficiency, and for promoting further harmonization with EU competition law and practice, is the introduction of a five-year limitation period²². The relevant provision is very closely drafted to Art. 25 Reg. 1/2003 and should significantly contribute to legal certainty regarding the competence of HCC to impose fines for past violations. Also, it is an important addition to the new prioritization regime, whereby the authority is no longer bound to examine each and every complaint, even if it concerns past infringements with little effect on existing markets.

- Increase of individual liability

Aiming at strengthening the deterrent effect of sanctions for competition infringements, the new law increases individual liability. Natural persons face, for the first time, individual administrative fines ranging from 200,000 to 2,000,000 euros²³. At the same time, persons participating in horizontal agreements (cartels) are subject to imprisonment of at least 2 years (instead of 6 months in the previous regime) and criminal fines (to be imposed by criminal courts) ranging from 100,000 to 1,000,000 euros.

Also, while criminal liability for violations relating to vertical agreements and concentrations remained unchanged, the criminal fines in abuse of dominance cases increased, now ranging from 30,000 to 300,000 euros. In such cases, where the perpetrators cannot take advantage of the leniency program to insulate themselves from any criminal or administrative sanctions, they may be exempted from criminal liability for confessing their illegal actions before the authority or the public prosecutor²⁴.

- Judicial review of HCC decisions

The new Act provides that specialized competition chambers can be established at the Athens Administrative Court of Appeals, the aim being to further enhance the effectiveness of judicial review.²⁵ The new Act further introduces provisions aimed at streamlining the procedure for the suspension of fines upon appeal, such that a greater proportion of the fines imposed are paid pending the appeal process.²⁶

1.2 New Guidelines by the Hellenic Competition Commission

13. With a view to adapting swiftly to the new institutional framework set by the revised Competition Act, and in order to enhance further the effectiveness of the Authority, the HCC has issued in the year 2011 decisions concerning a) its revised Leniency Program, b) the Prioritization of Cases, and c) the New Merger Notification Form and of the Form for the Submission of Remedies in Merger Cases.

²² See Art. 42 Law 3959/2011.

²³ Art. 25 para 2 subpara c) Law 3959/2011.

²⁴ Art. 44 para 4 Law 3959/2011.

²⁵ Whereby under the current regime, the Athens Administrative Court of Appeals already conducts a full-blown review of the HCC decisions, while judgments rendered by the said court may be brought for further judicial review (control of legality) before the Council of State (Supreme Administrative Court – Conseil d'Etat).

²⁶ In particular, pending the appeal process, fines can only be suspended for up to 80% of the amount (unless the HCC decision is deemed manifestly unfounded, in which case the total amount can be suspended).

1.2.1 The New Leniency Program (Decision No. 526/VI/2011)

14. Aiming at promoting full alignment with current EU standards, and to creating a modern incentive framework to reward companies or individuals who are willing to put an end to their participation in the cartel, the HCC issued on August 30, 2011 its Decision No. 526/IV/2011 on the New Leniency Program. The New Program was published in the Official Government Gazette on November 23, and replaced the former regime, established, with little success, in year 2006.

15. The revised Program complies fully with the ECN Model Leniency Program, introducing both Type 1A²⁷ and Type 1B²⁸ Immunity from fines, and the possibility to grant a Reduction of fines²⁹. Also, it introduces a marker system, which the former leniency program lacked. Further changes of the previous regime include the improvement of the institutional setting for leniency, which now reduces the role of the Director General and strengthens further the role of the President of the HCC; also, the abandonment of the recidivism exception of the old system (whereby recidivists were excluded from applying for immunity or leniency) and of the ringleader exception (which are now not excluded from immunity, unlike coercers who continue to be exempted). Furthermore, the New Leniency program allows for oral corporate statements, thus dealing with the problem of their discoverability in civil proceedings. Finally, in conjunction with the increase in individual liability of natural persons, the Program extends immunity/leniency to individuals.

1.2.2 Notice on Enforcement Priorities (Decision No. 525/VI/2011)

16. On 7 July 2011 the HCC adopted the Notice on Enforcement Priorities (525/VI/2011), according to which the prioritization of cases is generally based on the criterion of public interest. In particular, the HCC will be assessing the public interest considerations, which arise from a particular case, in light of the estimated impact of a practice on the functioning of effective competition, and especially on consumers. Priority will be given to ex officio investigations or complaints pertaining to:

- Hardcore restrictions (e.g. price-fixing, market sharing and sale or production restrictions) of national scope, especially in cases of horizontal agreements, taking particularly into account the market position of the undertakings involved and the structure of the relevant market.
- Product- and services-markets of major importance to the Greek consumer, where the anticompetitive practice may have a significant impact on the increase of prices and/or the quality of the services supplied (especially in comparison with other Member States of the European Union).
- Anticompetitive practices with cumulative effect (i.e. practices followed by a large number of companies that have the ability to pass on the increased prices to intermediate undertakings or final consumers).

²⁷ Immunity from fines – Type 1A: Full immunity from fines shall be granted to the applicant who will be the first to submit evidence enabling the HCC to initiate a targeted inspection with regard to a suspected cartel, as long as the HCC did not already possess, at the time of the application, sufficient evidence which would allow the initiation of the investigation procedure concerning the cartel.

²⁸ Immunity from fines – Type 1B: Full immunity from fines shall be granted to the applicant who will be the first to submit evidence which enables the HCC to establish the infringement of article 1, law 3959/2011 and/or article 101 par. 1 TFEU, in case the evidence already in the possession of the HCC were not sufficient in this respect.

²⁹ Reduction from fines – Type 2: In case the conditions for the granting of immunity are not met, a reduction from the fine that would otherwise have been imposed may be granted to the applicant who shall provide the HCC with evidence of the suspected cartel, representing significant added value with respect to the evidence already in the HCC's possession.

17. Priority will also be given to compliance with the decisions of the Athens Administrative Court of Appeal and the Council of State, concerning prior HCC decisions.

18. Finally, among HCC's priorities are also its advisory powers on draft laws and other regulatory arrangements that may create barriers to the functioning of free competition pursuant to Article 23(3) of Law 3959/2011. The prioritization of a particular case will also depend on the available resources of the HCC, the possibility of establishing proof of an infringement, the necessity of providing guidance on novel issues of interest, as well as the assessment of whether the HCC is the best-placed authority to act (particularly as compared to the jurisdiction of national courts to deal with cases of private interest).

1.2.3 The New Merger Notification Form (Decision No. 523/VI/2011) and the Form for the Submission of Commitments in Merger Cases (Decision No. 524/VI/2011)

19. On July 7, 2011 the HCC adopted the New Merger Notification Form (Decision No.523/VI/2011), as prescribed in Article 6 par. 5 of the New Competition Act (Law 3959/2011). The updated Merger Notification Form takes into account the amendments to the merger proceedings introduced by the New Competition Act. Also, it incorporates in its questionnaire the information necessary for the assessment of merger notifications within the context of the specific provisions of Law 3592/2007 on "Media Concentrations".

20. Also, on the same date, the HCC introduced for the first time guidance regarding the submission of remedies in merger proceedings (Decision No. 524/VI/2011). The new Form on Merger Commitments clarifies the information and documents which have to be submitted by undertakings offering remedies within the framework of merger proceedings pursuant to Article 8(8) of the New Competition Act, and should streamline the procedure to the benefit of the HCC and the interested parties.

2. Enforcement of competition laws and policies

21. The HCC's 2011 enforcement record focused on investigations pertaining to abuses of dominance, horizontal collusion practices notably in the context of trade associations, as well as mergers of strategic nature which warranted more complex remedial action.

22. Albeit the severe economic downturn affecting Greece, the HCC enhanced its enforcement action by intensifying its efforts on oligopolistic markets with perceived rigidities (resulting to more abuse of dominance cases), on cases with increased systemic effect (collusive practices of associations that artificially raise the rents paid by consumers), and on cases with significance for consumer welfare (notably with regard to the food supply chain).

23. Considerable fines (of approximately € 20 million) were also imposed, notwithstanding the apparent constraints due to the financial crisis. Following the above, it can be concluded that the HCC maintained a consistent level of core enforcement action as compared with last year.

24. At the same time, the HCC also markedly expanded its advisory/consultative functions in order to promote the structural reforms pledged in the context of the Greece's Economic Adjustment Program.

2.1 Anticompetitive Practices

2.1.1 Summary of Activities regarding Anticompetitive Practices

25. The HCC issued 5 decisions enforcing articles 1 of Law 703/1977 and/or 101 TFEU. In 3 decisions it concluded that an infringement had in fact been committed, while in 1 decision it dismissed the allegations. Furthermore, it issued 1 preliminary decision (continuation of investigation).

26. In view of the severe financial crisis and the persistent rigidities identified in selected oligopolistic markets, the HCC continued to put emphasis on investigations pertaining to abuse of dominance. The highest number of abuse of dominance investigations underway at any one time in 2011 was 46 cases (19 new investigations launched). The highest fine imposed by the HCC throughout 2011 in one single case (€ 11,739,387) concerned an abuse of dominance infringement (i.e. against Pepsico/Lay's – Tasty Foods in the market for salty snacks – see the respective case summary below).

27. Overall, the HCC targeted a large numbers of sectors including salty snacks, beer (brewery), production and distribution of meat/poultry, production and distribution of flour, the supply chain for fruits and vegetables (ongoing sector inquiry), the construction, energy (distribution of gas and electricity), steel, foreign language schools, driving schools and Pay-TV. In this respect, the authority conducted 41 dawn raids in companies for the investigation of 15 cases.

28. It should be noted that, based on the ECN statistics regarding enforcement activity within the Network (as maintained by the European Commission³⁰), Greece retained its position and comparative record with regard to envisaged infringement decisions and new investigations, while having the second highest ratio between investigations started and infringement and/or commitment decisions actually issued.³¹

2.1.2 Description of Significant Antitrust Decisions

- Decision No. 520/VI/2011 (TASTY FOODS)

By the said Decision, the HCC found that TASTY FOODS, a subsidiary of Pepsico mainly active in the production and distribution of salty snacks (notably under the brand name Lay's), abused its dominant position within the meaning of Articles 2 of Greek Law 703/77 and 102 TFEU.

The case was initiated following two complaints filed by competitor "TSAKIRIS Food & Snacks Company", alleging that TASTY implemented a targeted policy on a systematic basis, seeking to exclude its competitors from the market by means of exclusivity and discrimination. In the course of the ensuing investigation, the HCC gathered an extensive set of data from the dawn raid at TASTY's premises and from several information requests addressed to competitors and customers, with a view to establishing TASTY's dominant position and practices. Extensive economic analysis was also conducted for purposes of defining the relevant product market, after the submission of economic reports and testimony by both TASTY and the complainant.

Following the conclusion of the oral hearing and written pleadings, the HCC found that TASTY holds a dominant position in the market for the production and distribution of salty snacks (mainly comprising potato chips, corn chips and extruded snacks), with markets shares ranging from 70% to 85% (consistently over the last decade). The HCC also found that TASTY had adopted and implemented a single, consistent and targeted policy in the market of salty snacks that sought to exclude its competitors from the distribution channel of smaller retailer outlets (notably kiosks, grocery stores and traditional food stores & mini markets) and to limit their growth possibilities. To achieve this objective, TASTY employed various abusive practices throughout the period from 2000 until at least 2008, some of which exhibited extraordinary intensity, including:

³⁰ See < <http://ec.europa.eu/competition/ecn/statistics.html> >.

³¹ See also European University Institute-Robert Schuman Centre for Advanced Studies: *Does independence affect regulatory performance? The case of National Competition Authorities in the European Union*. (EUI Working Papers-RSCAS 2011/64).

- Exclusivity agreements on wholesale level,
- Agreements for the provision of cabinets on the basis of exclusivity, aimed at capturing the available space at smaller retailer shops (e.g kiosks) and raising entry/expansion barriers to the exclusion of competitors,
- Rebates conditional upon the commitment of all, or the most substantial part of available shelf/store space for its products,
- Target rebates at both wholesale and retail level and
- Coordinated and targeted acts of replacing and removing, by unorthodox means, the products and cabinets of competitors from those outlets.

In view of the above, the HCC imposed a fine of € 11.739.387 for infringements of Articles 2 of Greek Law 703/77 and 102 TFEU (abuse of dominance), taking into account the gravity of the abusive practices, some of which were of extraordinary intensity, and their extensive duration. Additional fines were imposed for restrictive agreements within the meaning of Article 1 of Greek Law 703/77 and 101 TFEU. The HCC further ordered TASTY to discontinue the violation of the abovementioned competition rules and to refrain from that conduct in the future.

- Decision No. 518/VI/2011 (Estate agents)

By the said Decision, the HCC found that four (4) major associations of estate agents throughout Greece infringed Articles 1 of the Greek Competition Act and 101 TFEU, notably by fixing the minimum fees for estate agents' services and imposing several other restrictions regarding the exercise of the profession.

In particular, following an extensive investigation, the HCC concluded that the above real estate trade associations employed several practices qualifying as decisions of association within the meaning of competition rules, which consistently aimed at fixing the minimum fees of real estate agents at 2% of the value of each sale, while also prohibiting the advertising of fees below that threshold.

Fines were imposed on the trade associations concerned. The HCC also ordered them to comply with several publicity requirements (newspapers listings and press releases), with a view to informing the general public that no minimum fees applied.

The case, which attracted a lot of media attention given the importance of real estate in Greece, was prioritized in view of its anticipated systemic effect: albeit the liberalization of the profession (following the abolition of price-fixing regulations which were in place for a number of years), the above associations sought to negate in practice the efficiency gains of the liberalization (as well as the ensuing direct benefit to consumers in the form of lower prices) by engaging in the collusive conduct in question.

- Decision No. 516/VI/2011 (“Gas Supply Company of Thessaloniki S.A.” and “Gas Supply Company of Thessaly S.A.”)

By its Decision No 516/VI/2011 upon completion of the evidential proceedings, the HCC held, following a complaint filed by the company “CH. DIMOVASSILIS & CO E.E.”, that the companies “Gas Supply Company of Thessaloniki S.A.” (EPA of Thessaloniki) and “Gas Supply Company of Thessaly” (hereinafter referred to as EPA of Thessaly) abused their dominant position within the meaning of Article 2 of Law 703/77, from February 2006 onwards.

The case was prioritized as it related to the liberalization of the energy market at large and as it pertained to a novel issue regarding the interrelation of competition rules with EC technical regulations adopted in the context of the single-market.

The HCC concluded that EPAs of Thessaloniki and Thessaly abused their dominant position on the relevant market pertaining to the authorization of natural gas installations, by way of discrimination, as they objected to the use of certain types of pipes for gas indoor installations (without due justification). This practice resulted to an impediment of competition in the relevant market, while placing competitors-suppliers of gas pipes, which are active in the neighboring market for flexible steel pipes, at a competitive disadvantage. The said practice also narrowed choices to the detriment of consumers.

The HCC ordered the undertakings concerned to cease the infringement, while threatening with the imposition of a daily fine of 5,000.00 Euros in case of non-compliance. By the same decision, the HCC imposed on EPA of Thessaloniki and EPA of Thessalia fines totalling € 419,781.88 and € 201,201.28 respectively for abusing their dominant position. Furthermore, the HCC also ordered the undertakings concerned to inform installation engineers and technicians accordingly.

- Decision No. 531/VI/2011 (obstruction of a dawn raid)

By the said Decision, the HCC took action against the Association of Greek Flour Industries, the company KAPLANIDIS MILLS S.A, as well as certain natural persons, for obstructing the on-site inspections conducted by the Directorate-General for Competition, in the context of an ongoing investigation into the flour market (suspected cartel conduct within the meaning of Article 1 of the Competition Act and 101 TFEU).

Following the conclusion of the oral hearing and written pleadings, the HCC found that the undertakings and persons concerned breached their obligation to cooperate actively during the inspections, thereby imposing fines.

The prioritization of this case signified a renewed interest of the HCC in cases which may involve obstruction of searches, given several such incidents in recent months. 3 such cases were initiated in the course of 2011 alone, while at the same time the HCC advocated in favor of introducing stricter penalties for obstructive conduct. This ultimately result to an amendment of the Greek Competition Act in just April 2012 (to the effect that maximum fines are now increased to 1% of turnover, mirroring EU Reg. 1/2003, while criminal sanctions of pecuniary nature are re-instated).

2.2 Merger Enforcement

2.2.1 Statistics on Notified Mergers

29. In the Year 2001 (1 Jan.-31 Dec. 2011) the HCC received 43 filings pursuant to article 4a of the former Competition Act. The authority furthermore received 4 filings pursuant to article 4b of the former Act (art. 6 of the new Act), of which all 4 led to an in-depth review (phase II merger investigations).

30. The HCC received hence 47 filings in total. Notably, merger filings decreased during the course of 2011, mainly due (a) the severe financial crisis which essentially halted business development and (b) the fact that the post-completion notification requirements concerning “smaller” merger & acquisitions, (i.e. mergers that do not meet the turnover thresholds triggering a prior notification requirement), were

abolished in mid-2011, pursuant to the new Competition Act (so as to streamline and simplify procedures and decrease the ensuing administrative burden on companies and the HCC).

31. Nonetheless, the mergers notified have been increasingly of strategic nature (as opposed to acquisitions by financial investors), thus often raising substantial competition concerns. This qualitative change prompted the adoption of clearance decisions made subject to more complicated remedies, as described in the following cases.

2.2.2 *Description of Significant Merger Cases*

- Decision No. 515/VI/2011 (MEVGAL & VIVARTIA)

On 14 February 2011, the HCC cleared the notified acquisition of control by VIVARTIA over MEVGAL, The concentration concerned a range of dairy product markets.

The HCC's in-depth investigation indicated that the proposed transaction, as originally notified, could have raised competition concerns in the markets for the procurement of raw milk, chocolate milk and fresh milk. It has been the most extensive merger investigation of the HCC in recent years, as the HCC gathered an extensive set of data from the undertakings concerned and third parties, conducted several interviews and undertook econometric analysis to distinguish between different types of milk.³²

The notifying party offered several set of commitments to remedy the HCC's concerns. Finally, the HCC approved the notified concentration, subject to the following conditions and obligations:

- The merged entity shall divest the chocolate milk business currently operated under the brand name “*Topino*”, in order to remove the horizontal overlap between the parties. To ensure the viability and competitiveness of the divested business activity, Vivartia further commits to provide potential buyers with access to its distribution network and production, at their own choice, for a transitional period of two (2) years following completion of the divestiture.
- In order to ensure sufficient access to raw milk, competitors shall be able to source raw milk from the merged entity for a maximum yearly volume of 30,000 tn of raw milk, at cost basis and pursuant to objective, transparent and verifiable set of criteria, for a total period of five (5) years following completion of the merger.
- The merged entity shall refrain, for a total period of five (5) years, from any practice which may result to or may otherwise be deemed to induce, directly or indirectly, exclusivity at retail outlets, including freezer-cabinet exclusivity.
- Pending initiatives at European and at national level regarding contractual relations between producers and processing companies, the merged entity shall continue to procure milk, under current volumes and general trading terms, from producers situated in five (5) prefectures of Northern Greece for a transitional period of three (3) years, at the producers' absolute choice and freedom.

The above measures aim at safeguarding conditions of effective competition in the markets for chocolate milk and the procurement of raw milk, in particular by facilitating unimpeded access by competitors to the relevant markets and sales outlets, while also strengthening the negotiated power of producers in local areas of Northern Greece where the merged entity is expected to hold significant buying power.

VIVARTIA was also threatened with the imposition of substantial fines in case of non-compliance.

³²

The HCC's investigation resembled to the EC's investigation in Friesland / Campina, in many respects.

- Decision No. 513/VI/2011 (EVGA S.A. & ELAIS UNILEVER HELLAS S.A.)

On 13 January 2011, the HCC decided to clear the notified concentration of EVGA S.A. and ELAIS UNILEVER HELLAS S.A. The latter acquired the ice cream brands of the former. The concentration was cleared with the following conditions and obligations, which correspond to specific commitments made to, and accepted by, the HCC:

- EVGA’s existing co-operation and distribution contracts and contracts for the provision of freezer cabinets on a rent-free basis shall be modified, so as to delete any exclusivity clause therein; and
- The duration of the transaction’s non-competition clause, which binds EVGA, as far as production and marketing of branded ice cream in co-operation with third parties is concerned, shall be reduced from three (3) to one (1) year.

In this case, HCC mainly aimed at safeguarding conditions of effective competition and, in particular, by ensuring unimpeded access by competitors to the relevant markets and sales outlets.

2.3 Court Judgments

32. The Athens Administrative Court of Appeals (AACA) which reviews all HCC’s decisions on the merits, has issued eighteen (18) final judgments in 2011 following appeals filed against fourteen (14) infringement decisions of the HCC. Out of those 14 infringement decisions:

- 11 HCC decisions were upheld;
- 1 HCC decision was annulled;
- 1 HCC decision was annulled and referred back to the HCC to be treated as a complaint; and
- 1 HCC decision was referred back to the HCC by the Court to be re-assessed.

3. The role of the HCC in the formulation and implementation of other policies - Advocacy

3.1 Opinions – Advisory Powers on Liberal professions

33. As already mentioned, in the context of the MoU signed between the EU-ECB-IMF and the Greek Government, the HCC (as an independent authority) was called upon to issue formal Opinions with regard to several liberal professions, an exercise which essentially comprised an extensive review of existing laws and regulations from the point of view of competition, focusing on the entry and exercise of a number of regulated professions. In this regard, the HCC applied the key methodology of the OECD Competition Toolkit and/or similar competition impact assessment techniques. This prompted the most far-reaching intervention of the HCC in the area of liberal professions (and the most far-reaching intervention ever in terms of regulatory obstacles to competition).³³

34. Only in the course of 2011, the HCC’s Task Force on Liberal Professions reviewed laws and regulations affecting more than 45 regulated professions (ultimately issuing 8 formal Opinions). It is

³³ The HCC has taken concrete action for abolishment and/or amendment of regulatory restrictions to competition also in the past: see e.g. HCC decision No 438/V/2009 (stevedores / loaders for land operations at central markets) and HCC decision No 455/V/2009 (foreign language books).

anticipated that the project will continue at least until mid-2012 (based on the applicable provisions and deadlines of the MoU). In particular:

35. HCC's intervention started with its formal Opinion of 23 March 2011 on the basic Law 3919/2011 (liberalization of regulated professions), which was a key component of the action plan on structural reforms. This Law: (1) provided for the abolition of a number of restrictions affecting horizontal all liberal professions (including fixing of fees, geographic restrictions in the exercise of a profession, numerous *clausus* restrictions, second-establishment restrictions, restrictions on advertising etc.), (2) replaced the administrative system of (prior) licensing to provide services with a notification obligation coupled with a stand-still period of 3 months, and (3) included specific provisions for the liberalization of some key professions, such as lawyers, notaries, chartered accountants and engineers:

1. Legal profession: removal of restrictions on fixed minimum tariffs, the effective ban on advertising, territorial restrictions on where lawyers can practice in Greece;
2. Notaries: removal of restrictions covering fixed tariffs, limits on the number of notaries, territorial restrictions on where notaries can practice and the effective ban on advertising;
3. Architects/Engineers: restrictions covering fixed minimum tariffs;
4. Auditing services: restrictions covering fixed tariffs.

36. Subsequently, the HCC reviewed all exemption requests from Law 3919/2011 (on competition grounds). These exemption requests concerned the maintenance and/or re-instatement of prior authorization requirements and certain restrictions regarding the exercise and access to several liberal professions.³⁴ By way of example, the HCC has reviewed in the course of 2011 laws and regulations pertaining to the following professions:

- sworn-in (chartered) valuers³⁵
- actuaries
- accountants & tax consultants
- licensed professions relating to public security
- tourist guides etc
- butchers and establishment & operation of birds forage plants

³⁴ The updated MoU of February 2012 provided that for those liberal professions where reinstatement of restrictions is required in line with the principles of necessity, proportionality and public interest, the Greek Government will pass the required legislation no later than end-June 2012 upon consultation with the Hellenic Competition Commission, as an independent authority (and, subsequently, with the EC Commission, IMF and ECB staff teams).

³⁵ Example of an Opinion: According to the HCC's Opinion on sworn-in (chartered) valuers, the claimed overriding public policy considerations for the maintenance of a number of restrictions, such as the limited access to the profession (*numerus clausus*), the exclusive rights to provide certain valuation services, the prohibition in the exercise of the profession by legal entities or other EU nationals, as well as price-fixing (remuneration as a % of the value and/or fixed fees), are not substantiated and, in any event, do not comply with the principle of proportionality. These restrictions should therefore be lifted. The HCC also proposed, *inter alia*, that the professional base of the sworn-in appraisers' organization be broadened based on transparent and objective criteria, with the admission of natural and legal entities having equivalent vocational qualifications. Otherwise, additional professional associations should also be accredited. Finally, the HCC proposes that a registry of certified appraisers be created (by specialty).

- production and marketing of propagating material and fertilizers, and
- educational services (including the establishment and operation of private primary and secondary schools, establishment and operation of tutoring and language center, establishment and operation of private vocational training institute, establishment and operation of the post secondary educational centers, teaching in schools and language centers, home instructors, certification training centers and operation of liberal studies workshops).

3.2 *Other opinions and advocacy efforts*

37. Aside from the above intense exercise of its consultative/advisory powers under the new Competition Act, the HCC pursued several additional initiatives regarding regulatory obstacles to competition.

38. For example, by its Opinion No 12/VI/2011, the HCC proposed the abrogation of paragraph 2 of Article 2 of the Ministerial Decision Y1/G.P. 47815/2008-GG 1478/B/28.07.2008 concerning the selling of infant formulas (for infants under the age of 6 months) solely in pharmacies, and in particular for those of such products which are available without prescription. The aforementioned regulation, which provided for such formulas to be exclusively sold in pharmacies, constituted an impediment to the proper functioning of free competition which cannot be justified on the basis of overriding public policy considerations and resulted to higher prices to the detriment of consumers.

39. Similar action was taken with fixed fees of energy inspectors.

40. As an aside, the HCC is contributing to the ongoing project for the simplification of the Product and Market Regulation Code.

41. Finally, preparation is underway for the launch by summer 2012 of a joint OECD – HCC project involving the application of the OECD Competition Toolkit in selected areas of the Greek Economy (namely retail trade, food processing, building material and tourism), over a period of at least 6 months.

4. **HCC resources**

4.1 *Annual Budget*

42. Total expenditure for 2011 continued to decline by a further 10% (with the exception of salary-related expenses associated with the recruitment of new staff³⁶), in accordance with Government cost-cutting measures across the board to deal with the financial crisis.

Competition-related budget (€)

| 2010 | 2011 | 2012 |
|---------------|--------------|-------------------------|
| 10,963,429.58 | 9,788,470.00 | 8,854,386 ³⁷ |

³⁶ Of that amount, the budget allotted to salary expenses is somewhat increased for 2011 and 2012 to reflect the fact that 38 new members of staff were recruited in the course of 2011. However, although this recruitment represents a significant increase in the overall number of personnel, the corresponding increase in budget allocation (and the ensuing impact on the overall expenditure) is essentially outweighed by the reduction in salaries, as result of financial adjustment measures taken by the Government.

³⁷ Includes projections.

4.2 HCC Employees-Human Resources

43. 2011 saw significant changes with regard to human resources, as a long-awaited recruitment process of competition specialists (21 economists and 15 lawyers) and 1 additional IT expert came to fruition. The recruitment process, which included written and oral examinations before a panel of experts under the auspices of ASEP (Supreme Council for the Selection of Civil Servants), had started 2 years ago, but it was only concluded mid-2011. The delay was due to recruitment restrictions applying across the public sector, as provided for in the economic adjustment program. However, given the expanded role of the HCC in the context of the Memorandum of Understanding between the EU-ECB-IMF and the Greek Government, the said recruitment process was given priority as compared to other departments of the administration at large.

44. The new members of staff have been gradually integrated into the Directorate-General, following intensive induction training that took place in June, July and September of 2011. Since then (i.e. essentially the last 3 months of the reference year), they have also been assigned their first cases/investigations.

45. Total number of staff is 115 (out of which 68 is non-administrative staff working on competition enforcement).

HCC. Non-administrative staff working on competition enforcement: Year End 2011

| Staff Category | Current Staff |
|-------------------|---------------|
| Economists | 41 |
| Lawyers | 25 |
| Other | 2 |
| Total | 68 |

46. The Directorate-General of the HCC (the investigative arm of the Authority) is organized in Units by reference to sectors of the economy (as we consider this to be optimal in the circumstances of our Authority). Within those Units, all non-administrative staff contributes to all areas of competition enforcement (mergers, anti-cartel, anti-competitive agreements, dominance-related issues, advocacy etc), according to their individual field of sectoral expertise and depending on the actual needs of the Authority and overall resources available (on a case-by-case basis).