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

-- 2012 --

*This report is submitted by Greece to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 June 2013.*

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## Executive summary

1. Following the new institutional framework adopted in 2011 (Law 3959/2011), in 2012 sought to broaden and further diversify its enforcement action as to cover all forms of anti-competitive behavior, to make a better and more efficient use of the new or/ and enhanced powers and investigative tools granted to it by the new Competition Act (Law 3959/2011), including advocacy tools, and to implement and adapt its internal procedures to the new framework as to allow a shift response on its part to the growing challenges of the Greek economy and a better allocation of its human and financial resources. The purpose of these actions has been to increase the Authority's overall systemic effect..

2. In this context, the HCC expanded its enforcement record notably with regard to abuse of dominance cases and horizontal collusion practices (notably in the context of trade associations) in sectors such as production and distribution of natural gas, basic consumer goods, building materials and digital satellite pay-TV services. The HCC's diversified record of this year also included interim measures in the retail sector of pharmaceutical products and an obstruction of dawn raids decision, while the Authority also issued a Statement of Objections in its broadest ever cartel investigation. As an aside, considerable fines were imposed, notwithstanding the constraints due to the severe economic downturn.

3. Tools such as commitment decisions and sector inquiries were widely used to achieve an imminent impact on fast moving markets or to acquire a better understanding of the price transmission mechanisms and identify inefficiencies (structural or other) in the food sector or in consolidated markets such as the oil/fuel sector.

4. Furthermore, the HCC reviewed mergers of an increasingly strategic nature, thus raising more competition concerns and prompting a more intense competition analysis (and potentially more complex remedies). In particular, the HCC faced successfully the wave of merger notifications regarding the banking sector, thus contributing to the smooth and timely restructuring of the sector.

5. Advocacy work in the fields of liberal professions, market regulation and the fuel sector amounted for an important percentage of HCC's total output in 2012, thereby increasing the Authority's overall visibility and consolidating its status.

6. Finally, the HCC streamlined prioritization procedures and applied a new internal management tool in the form of a "point-system" that allowed an expedited handling of unfounded cases, while also facilitating a more efficient allocation of resources to cases with a systemic impact on crucial and/or innovative sectors of the economy still under distress.

7. Overall, the Authority's commitment and sustained efforts continued to turn the crisis into an opportunity, by adapting swiftly to the situation and further solidifying its role in promoting a genuine competition culture in Greece.

### 2012 Highlights

1. In 2012, the HCC expanded its enforcement record notably with regard to (a) abuse of dominance cases, (b) horizontal collusion practices (notably in the context of trade associations) and (c) advocacy.
2. Considerable fines (of approx. € 21 million in total) were also imposed, notwithstanding the ongoing financial crisis. The sum total of cartel fines reached € 5.3 million, while the sum total of abuse of dominance fines exceeded € 16 million (see Section 2 below).
3. Enforcement action is increasingly diversified, with the HCC further consolidating its practice on commitment decisions (first 2 binding commitment decisions in abuse of dominance cases adopted in 2012) and sector inquiries (2 sector inquiries underway in 2012 involving fuels, fruits & vegetables). Key decisions included (see Sections 2.1.2 & 2.2.2 below):
  - (a) DEPA commitment decision (distribution of natural gas – extensive set of commitments made binding on gas incumbent, including unbundling and opening up of reserved capacity to ensure sufficient access to Greece’s gas transmission network)
  - (b) Tasty Foods (abuse of dominance case in the market for savory snacks from 2000 to 2008 – heavy fines imposed – findings upheld by the Court of Appeals)
  - (c) Forthnet commitment decision (digital satellite pay-TV market – waiver of exclusivity)
  - (d) Restructuring of the banking sector (complex review of at least 6 consecutive mergers & acquisitions involving Greece’s systemic banks – all notified and assessed in the second half of 2012)
  - (e) Poultry cartel (price-fixing) investigation (statement of objections issued – hearings concluded – the most wide ever cartel case pursued by the authority with more 14 addressees and suspected duration exceeding 10 years )
  - (f) Interim measures decision against pharmacists & pharmaceutical houses (collective boycott concerning baby milk/formulas)
  - (g) Elgeka/VitaPi early implementation decision (fines for implementing a merger in breach of the suspension obligation).
4. Investigations intensified & dawn raids substantially increased as compared to both 2010 and 2011.
5. Advocacy work accounted for approx. 30% of total output during 2012, setting a new record (see Section 3 below). In this context:
  - (a) The HCC’s Task Force on liberal professions successfully completed in 2012 the review of regulatory restrictions regarding the entry and exercise of a number of regulated professions. 17 Formal Opinions issued in the course of 2012 alone, with recommendations affecting more than 55 regulated professional activities,
  - (b) Sector inquiry into the fuel sector completed in October 2012 with the adoption of a Formal Opinion (including 31 recommendations aimed at removing regulatory restrictions that impede effective competition).
  - (c) Following an agreement between the OECD and the Greek Government, the OECD Competition Assessment Project, in partnership with the HCC, was launched in December 2012 to assess the costs

and benefits of regulations restricting competition in designated sectors and to propose specific recommendations for change,

6. In 2012, the HCC sought to implement the new institutional framework set by the revised Competition Act, in particular by streamlining prioritization procedures and applying a new internal management tool in the form of a “point-system” – the aim being to increase its overall systemic effect. Preliminary data as to the effectiveness of these internal measures are positive, as expedited rejection decisions for unfounded cases in 2012 tripled as compared to 2011, while it is estimated that the reduction of backlogged files will reach 40% once the project is fully implemented (see Section 2.1.1 below).
7. NAC staff (38 competition lawyers and economists) recruited by end-2011 now fully integrated into the organization.

## **1. CHANGES TO COMPETITION LAWS AND POLICIES**

### ***1.1 Summary of organizational changes***

8. Following the adoption of Law 3919/2011, Presidential Decree 76/2012 regarding the “Organization of the Directorate General for Competition of the HCC” came into force in June 2012<sup>1</sup>.

9. The aim of the new Presidential Decree is to adapt the former Organization of the Directorate-General to the revised Competition Act. It does signify any major changes concerning the structure of the Directorate-General, aside from the fact that it creates an autonomous and full-fledged Advocacy Unit, reporting directly to the Director-General.

10. The creation of the Advocacy Unit signifies the increased emphasis placed nowadays by the HCC on advocacy initiatives, notably in the form of Opinions aimed at identifying and removing regulatory barriers to competition.

### ***1.2 New Guidelines by the Hellenic Competition Commission***

#### ***1.2.1 Notice for the Quantification of Priority Criteria on the basis of a Point System (Decision No. 539/VII/2012)***

11. During the course of 2012, the HCC took steps to implement an internal management tool in the form of a “point-system” for the investigation of cases by the Directorate-General, as prescribed in Article 14 par. 2 of the New Competition Act (Law 3959/2011). In particular, on 24 May 2012, following and internal consultation and review of the practice in other jurisdictions, the HCC adopted the Notice for the Quantification of Priority Criteria on the basis of a Point System (Decision No. 539/VII/2012), which essentially exemplifies and quantifies the priority criteria set out in the Notice on Enforcement Priorities issued by HCC on 2011<sup>2</sup>. Pursuant to that system, the Directorate-General shall investigate pending cases according to their ranking on a scale of 1 to 10, depending mostly on the nature of infringement, its

<sup>1</sup> Official Gazette A' 132/13.06.2012.

<sup>2</sup> See detailed account of the Notice in the HCC's 2011 Annual Report to the OECD.

anticipated impact and the economic importance of the products/sectors under investigation. The HCC shall not investigate, but instead most likely reject, cases awarded 3 points or less<sup>3</sup>.

12. The above system has allowed for an increased discipline and awareness within the Authority on the need to streamline procedures and strive to pursue cases with increased systemic effect on the marketplace, an expedited examination of unfounded cases and a substantial increase in the number of such cases handled in 2012 in comparison to 2011, the identification of pending cases eligible for rejection on priority grounds (given their particularly small significance), the expansion of HCC's advocacy work and the more efficient allocation of resources to crucial sectors of the economy.

*1.2.2 The New Form for the Submission of Complaints and the accompanying explanatory Notice (Decision No. 546/VII/2012)*

13. On September 11, 2012 the HCC adopted the New Form for the Submission of Complaints and an accompanying explanatory Notice (Decision No. 546/VII/2012), as prescribed in Article 36 par. 2 of Law 3959/2011. The updated Complaint Form and the relevant Notice take into account the Notice on Enforcement Priorities issued by HCC on 2011 and the Notice for the Quantification of Priority Criteria on the basis of a Point System and set out the procedure followed by the Authority for the classification of a submission as a complaint.

*1.2.3 Opinion of the HCC on the draft Ministerial Decree regarding the procedure of public consultation prescribed by Article 11 of Law 3959/2011 on Regulatory Sector Inquiries*

14. On October 19, 2012 the HCC adopted a draft Ministerial Decree regarding the procedure of public consultation prescribed by Article 11 of Law 3959/2011 on Regulatory Sector Inquiries to be signed by the Minister of Development, Competitiveness, Infrastructures and Networks. The draft streamlines fully the above public consultation proceedings to the provisions of the New Competition Act.

## **2. ENFORCEMENT OF COMPETITION LAWS AND POLICIES**

15. The HCC's 2012 enforcement action focused on investigations pertaining to abuses of dominance cases, horizontal collusion practices notably in the context of trade associations, as well as the revision of consecutive mergers & acquisitions involving Greece's systemic banks following the restructuring of the banking sector.

16. The HCC focused its enforcement action on crucial and/ or innovative sectors of the economy such as production and distribution of natural gas, basic consumer goods, building material, banking services, pharmaceutical products and digital satellite pay-TV services. It further consolidated its practice on commitment decisions in abuse of dominance cases and sector inquiries in the sectors of fuels (concluded on 2012), fruits & vegetables and pasta/cereals (to be concluded on 2013). The far-reaching commitments made binding on gas incumbent company DEPA are a proof of the Authority's commitment to boost the further liberalization of previously monopolistic markets.

17. Considerable fines (of approx. € 21 million in total) were also imposed, notwithstanding the ongoing financial crisis. The sum total of cartel fines reached € 5.3 million, while the sum total of abuse of dominance fines exceeded € 16 million, as its intensified enforcement action on oligopolistic markets with perceived rigidities resulted to more abuse of dominance cases.

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<sup>3</sup> This was the first time that national competition legislation provided explicitly for the possibility of rejecting complaints on priority grounds.

18. Three (3) out of the six (6) merger cases reviewed in the banking sector entailed an in-depth analysis since, due to the crisis and the ongoing restructuring of the sector, mergers are increasingly of strategic nature, thus raising more competition concerns and prompting a more intense competition analysis. Remedies imposed were of a more complex nature given the ongoing consolidation of the sector and the intensified thus need to maintain effective competition in the market while safeguarding the sustainability of the banking sector. Cooperation with the European Commission and the Central Bank of Greece (which dealt with the state-aid and financial aspects of the deals respectively) proved crucial to the effective balancing of the public interests at stake. The successful and timely conclusion of merger proceedings allowed for the smooth restructuring of the Greek banks, while further challenges lay ahead in 2013 given the continuing consolidation of the sector.

19. The HCC's Task Force on liberal professions successfully completed in 2012 the review of regulatory restrictions regarding the entry and exercise of a number of regulated professions. 17 Formal Opinions were issued in the course of 2012, with recommendations affecting more than 55 regulated professional activities. Moreover the HCC issued two opinions regarding the market regulation legislation. The sector inquiry into the fuel sector completed in October 2012 with the adoption of a Formal Opinion included 31 recommendations aimed at removing regulatory restrictions that impede effective competition. The Authority's commitment to support the necessary for the Greek economy structural changes is best attested by the fact that advocacy work accounted for approx. 30% of total output during 2012.

20. Overall, in 2012 the Authority stayed focused on its goals and expanded considerably both its enforcement and advocacy actions, proving to be a solid pillar and partner in the efforts to realign the Greek economy.

## **2.1 *Anticompetitive Practices***

### **2.1.1 *Summary of Activities regarding Anticompetitive Practices***

21. The HCC issued 9 decisions enforcing articles 1 of Law 703/1977 and/or 101 TFEU. In 5 decisions it concluded that an infringement had in fact been committed, while in 4 decisions it concluded that no infringement was committed or substantiated within the meaning of the above articles and thereby issued summary dismissal decisions. Moreover, the Authority also issued statement of objections in its broadest ever cartel investigation involving producers of poultry meat.

22. The continued emphasis on investigations pertaining to abuse of dominance resulted in 53 abuse of dominance investigations underway in 2012, of which 22 new investigations. Four (4) important cases in the sectors of salty snacks, production and distribution of natural gas and digital satellite pay-TV services were concluded in 2012, the latter two via the adoption of commitment decisions. In a landmark decision of 12 November 2012, the HCC accepted far-reaching commitments offered by DEPA, the Greek incumbent gas supplier, with a view to speeding up the liberalisation of the Greek gas supply market.

23. The Authority conducted 123 dawn raids for the investigation of 25 cases, a substantial increase in comparison to 2011, partly as a result of the gradual integration of the competition specialists recruited by end-2011.

24. The adoption of the "point system" allowed for a more efficient allocation of human resources and prompted an extensive exercise in dealing with backlogged cases with positive results. Expedited rejection decisions for unfounded cases in 2012 tripled as compared to 2011, while it is estimated that the reduction of backlogged files will reach 40% once the project is fully implemented.

### 2.1.2 *Description of Significant Antitrust Decisions*

- Decision No. 551/VII/2012 (DEPA - Commitment decision)

In this case, the HCC accepted commitments offered by DEPA, the Greek incumbent gas supplier, with a view to speeding up the liberalisation of the Greek gas supply market. DEPA was dominant in the market of natural gas supply and the secondary market of natural gas transmission.

The commitments revolve around four main axes:

1. The unbundling of gas supply from gas transportation services.
2. Providing for a higher degree of customer mobility and increase of liquidity in the market of natural gas.
3. The introduction of fair, transparent and non-discriminatory contractual terms and
4. The gradual opening of reserved capacity in the natural gas transmission network (such that DEPA's reserved capacity is gradually reduced to 55%).

In particular, a higher degree of customers' mobility is achieved, firstly, through the renegotiation of annual contractual gas quantities (ACQs). Each year the customers may augment or decrease their ACQs for the next year by a percentage varying from 5 to 20% of the previous year ACQ (depending on their annual gas consumption from DEPA), while at the same time still enjoying the flexibility of 80 to 110% of ACQ provided for already, by the "take or pay" provisions of the contracts in force. Furthermore, regarding new contracts or in case of renewal of existing contracts DEPA: (a) will inform its clients that they may opt for a one-year duration contract and (b) will not enter into contracts of a duration longer than two years with customers that purchase more than 75% of their actual gas supply needs from DEPA.

Most importantly, the HCC accepted commitments leading to the opening of sufficient capacity at the entry points of the transmission network for third importers and customers, in order to enable capacity acquisition at the primary market of gas transmission and thus the possibility to find alternative sources of supply. Firstly, DEPA is obliged to offer without due delay and free of charge (to the extent that it has not paid any charge) any unused transportation capacity allocated to it at the gas network entry points. Moreover, until DEPA's reserved transport capacity is reduced to 55% per network entry point, DEPA commits to transfer free of charge to its clients, following a declaration on their part that it will not purchase gas from DEPA for a certain period of time, up to 20% of its total capacity per network entry point. Secondly, DEPA commits to reduce significantly its capacity rights to 55% of the total capacity per entry point (gradually by 30 June 2017, depending on the point of entry).

Finally, an auction system shall increase liquidity in the market of natural gas supply. DEPA committed to auction each year 10% of its yearly gas supply to customers.

- Decision No. 538/VII/2012 (FORTHNET - Commitment decision)

In this case, the HCC decided to accept the commitments proposed by FORTHNET regarding the exclusive broadcast by its digital satellite pay-TV of all major private free-to-air Greek nationwide TV channels, as a way to immediately ensure more effective access of competitors to the relevant market.

According to HCC, the exclusivity clause for the satellite retransmission of the private free to air TV stations via FORTHNET's pay-TV platform secured, in practice, an advantage for Forthnet over its potential and actual competitors in the market for the provision of satellite pay TV platform, thus artificially raising barriers to entry.

FORTHNET committed to waive immediately the aforementioned exclusivity clause and amend the respective agreements accordingly, while refraining from seeking (directly or indirectly) the aforementioned exclusivity for an indefinite period.

- Decision No. 555/VII/2012 (DESFA – natural gas)

By the said decision the HCC has fined the “Hellenic Gas Transmission System Operator SA” (DESFA) with a total of € 4.3 million DESFA, a wholly owned subsidiary of DEPA, the incumbent provider of natural gas in Greece, was found to be abusing its dominant position in the primary market of natural gas transmission, by way of denying access to the gas transmission network (an essential facility) to the complainant (ALUMINIUM S.A), an aluminium manufacturer and electricity producer, client to DEPA.

According to the decision, DESFA's abusive conduct took place from November 2009 until May 2010, when DESFA initially denied the complainant access to the pipeline entry point dedicated to its facilities (AdG) and subsequently to the liquefied natural gas (LNG) terminal in Revithousa, the sole entry point of LNG into the Greek transmission grid. As a result of DESFA's practices, the complainant was effectively denied free access to the national natural gas transmission network and, consequently, the opportunity to source natural gas from an alternative supplier competing with DEPA and to compete with DEPA on the market of natural gas supply.

According to the decision DEPA was not found liable for the above conduct of its subsidiary due to the full operational separation system between the two entities prescribed for by the Greek law. Thus DESFA was found fully liable for such a conduct.

- Decision No. 520/VII/2011 (TASTY FOODS – savory snacks)<sup>4</sup>

In this case, which represented the most intense and complex abuse of dominance investigation since the 2008 Nestle investigation in the coffee markets, the HCC concluded that TASTY FOODS, a subsidiary of Pepsico, abused its dominant position in the production and distribution of salty snacks (notably under the brand name Lay's)<sup>5</sup>.

In particular, the HCC found that TASTY had adopted and implemented a single, consistent and targeted policy in the market of savoury 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:

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<sup>4</sup> Decision adopted in end-2011, but formally notified to the parties and announced on 8/2/2011.

<sup>5</sup> Extensive economic analysis was conducted for purposes of defining the relevant product market, after the submission of economic reports and testimony by both TASTY and the complainant.

1. Exclusivity agreements on wholesale level,
2. 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,
3. Rebates conditional upon the commitment of all, or the most substantial part of available shelf/store space for its products,
4. Target rebates at wholesale level,
5. Target rebates at retail level and
6. 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 € 11.5 million for infringements of Articles 2 of Greek Law 703/77 and 102 TFEU (abuse of dominance),

In March 2013, the Court of Appeals upheld the HCC findings in the above decision. In particular, the Court upheld all 6 counts of abusive conduct of Tasty (as found in the HCC's decision) and adjusted the corresponding fine from € 11.5 million to € 8.2 million.

- Decision No. 545/VII/2012 (Products distributed via pharmacies - Interim measures)

In this case, the HCC adopted interim measures against the Pharmacists Association of Achaia and pharmaceutical warehouses–wholesalers active in the same area.

The HCC concluded that there was a *prima facie* infringement case against the above undertakings and the association of undertaking, as they collectively sought to limit and /or control the supply of infant milk formulas in their areas of activity, notably by boycotting those producers of baby milk that decided to supply their products also through the retail channel (in parallel with the pharmacy channel). Their anticompetitive conduct was prompted by the abrogation of the regulation requiring the selling of formulas for infants under the age of 6 months solely in pharmacies. The HCC further concluded that the case entails a risk of serious and irreparable damage to competition, such that interim measures were warranted.

## **2.2 Merger Enforcement**

### **2.2.1 Statistics on Notified Mergers**

25. In 2012 the HCC received 15 filings pursuant to Article 6 of the New Competition Act, of which 3 led to an in-depth review (phase II merger investigations).

26. Two of the above mergers were resolved with remedies, both in the banking sector, while one, also in the banking sector, was abandoned following the notification of the statement of objections to the parties.

27. The Authority faced in 2012 the restructuring of the banking sector which entail the examination of complex mergers in a sector further consolidating by each new merger. Its swift response to the restructuring of the banking sector set new grounds for its merger control work.

### 2.2.2 *Description of Significant Merger Cases*

- Restructuring of the banking sector

During the course of 2012, the Greek banking sector underwent a swift restructuring process, as a result of the severe economic downturn and the need for recapitalization.

In 2012, the HCC reviewed a series of mergers & acquisitions in the banking sector, notably 6 consecutive concentrations involving Greece's systemic banks (National Bank of Greece, Piraeus Bank, Alpha Bank and Eurobank). The process had to be completed in record time, in order to ensure the timely recapitalization of the systemic banks (as provided for in the context of the loan extension agreements between the EU-ECB-IMF and the Greek government). In addition, the competitive assessment of those notifications was complicated by nature, given that the underlying transactions were both contemplated and concluded in parallel (with the HCC analyzing the competitive landscape of more than 30 relevant markets under alternative scenarios).

The 2 out of the 3 mergers challenged by the HCC were resolved by structural and behavioral remedies, notably in the markets for (a) card merchant acquiring, (b) factoring, (c) mortgage loans and (d) provision of non-life insurance.

- Early merger implementation decision

In this case, fines were imposed on ELGEKA S.A. for implementing the acquisition of VITA PI in breach of the suspension obligation required by law (until the transaction has been declared compatible with merger control rules by the HCC). The case involved complex issues.

### 2.3 *Court Judgments*

28. The Athens Administrative Court of Appeals (AACA), which reviews all HCC's decisions on the merits, has issued eighteen (19) final judgments in 2012 following appeals filed against twelve (12) decisions of the HCC.

29. Out of those 12 HCC decisions:

- 10 HCC decisions were upheld on appeal (in 3 of those the Court confirmed the findings on the infringement, but adjusted the fine imposed);
- 2 HCC decisions were annulled (1 of those concerned the interpretation of the post-merger control notification thresholds, which has since been abolished by the new Act).

30. In March 2013, the AACA also upheld the HCC decision of February 2012 concerning Tasty Foods' (subsidiary of Pepsico) abuse of dominance in the market for savoury snacks. The Court upheld all 6 counts of abusive conduct of Tasty (as found in the HCC's decision) and adjusted the corresponding fine from € 11.5 million to € 8.2 million.

### **3. THE ROLE OF THE HCC IN THE FORMULATION AND IMPLEMENTATION OF OTHER POLICIES - ADVOCACY**

#### **3.1 *Opinions – Advisory Powers on Liberal professions***

31. Following the adoption of Law 3919/2011 on the liberalisation of regulated professions which abolished in a horizontal way the requirement of prior administrative authorisation (replacing it with a notification obligation coupled with a stand-still period of 3 months), as well as a number of restrictions with regard to access and exercise of professions (including regulated minimum fees, geographic restrictions in the exercise of a profession, “numerous clauses” restrictions, second-establishment restrictions, etc.). The HCC was called to examine<sup>6</sup> whether maintaining and/ or re-instating limited prior authorisation requirements and/ or certain restrictions for specific professions was necessary and proportional for the attainment of overriding policy objectives.

32. 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) while already at the beginning of 2011 the HCC had examined the impact of specific provisions of Law 3919/2011 on the liberalization of some key professions, such as lawyers, notaries, chartered accountants and engineers proposing further revisions of the respective regulatory regimes for each profession with the aim of further fostering competition in those economic activities.

33. In the course of 2012, the HCC’s Task Force on Liberal Professions applying the key methodology of the OECD Competition Toolkit and/or similar competition impact assessment techniques reviewed laws and regulations affecting more than 55 regulated professions. 17 Formal Opinions issued in the course of 2012 with the advocacy work accounting for approx. 30% of the HCC’s total output in 2012.

34. The exercise focused on i) mapping administration authorization proceedings including any type of examination or certification requirements that may result to quantitative barriers to entry ii) identifying restrictions resulting from the organization of professions especially through the granting of exclusive rights to associations of professionals and iii) evaluating restrictions to access and exercise of professions.

35. Depending on the results of such an assessment for each profession or economic activity under review the HCC proposed

- the abolition of prior administration authorization where public interest reasons did not justify the maintenance of such a system (e.g. regarding the professions of actuaries, accountants and tax consultants, teachers in private or foreign language schools, home instructors or tourist guides). The opposite was the case e.g. for licensed professions related to public security due to public order and security reasons, conservators of antiquities and works of art and salesmen of antiquities due to protection of cultural heritage, butchers and operators of birds forage plants due to protection of public health, licensed economic activities related to education (establishment and operation of private primary and secondary schools, tutoring and language center, private vocational training institute, post secondary educational centers, certification training centers and liberal studies workshops) due to the protection of education and vocational education, licensed professions and economic activities in the petroleum/gas sector regarding dilution, transport, supply, bottling and commerce as well as the operation of companies for the supply of gas.

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<sup>6</sup> The MoU (5<sup>th</sup> Amendment) stipulates that the HCC, being an Independent Administrative Authority, will deliver an Opinion on whether any such requests for exemption can be justified for overriding public policy reasons, subject to further review by the Ministry of Finance and the Government.

- the simplification of requirements regarding periodic certification (e.g. accountants and tax consultants), examination systems for entry to the profession (in some cases with a view to ensuring sufficient state oversight and thus avoiding risks of quantitative barriers to entry e.g. regarding the profession of actuaries or sworn-in appraisers), conditions for the operation of offices (e.g. accountants and tax consultants) or requirements of prior registration to the relevant registry (e.g. infrastructures relating to health).
- the re-organisation of certain professions and the abolition of exclusive rights in the exercise of such professions with the aim of broadening the professional base of their respective associations as to include natural persons and legal entities of similar qualifications / certifications (based on transparent and objective criteria), or the parallel accreditation of similar professional bodies (e.g. sworn-in appraisers).
- the abolition of additional restrictions to access and exercise of the relevant professions such as i) numerous clausus provisions (e.g. sworn-in appraisers, educational services), ii) geographical restrictions (e.g. salesmen of antiquities), iii) regulated fixed fees (e.g. sworn-in appraisers), iv) nationality and freedom to establishment restrictions (e.g. educational services, licensed professions and infrastructures relating to health, tobacco salesmen and sworn-in valuers), v) maximum capacity restrictions relating e.g. to health infrastructures , vi) provisions establishing incompatibility between different activities e.g. between the profession of the salesman of antiquities and the capacity of collector of objects of art.

### **3.2 *Opinions – Advisory Powers on Market Regulation***

36. The HCC on July 2012 reviewed the Product and Market Regulation Code which exhaustively regulates relationships along the supply chain. The HCC with a view to assisting in the development of alternative, less restrictive, policies to improve the business environment proposed the simplification of provisions regulating the interactions among production, supply, distribution and retail companies as well as the abrogation of provisions imposing minimum prices, regulating transport fees of both persons and goods and establishing disproportionate and ineffective price monitoring mechanisms.

37. Already on March 2012 the HCC had proposed the abrogation of article 9 of Ministerial Decision 7/2009, imposing on companies the obligation to notify to the Ministry of Development their respective wholesale price lists and any change thereof.

### **3.3 *Sector inquiry on fuel – Formal Opinion***

38. By this Opinion, which was adopted in the context of the its advocacy/advisory powers, the HCC updated and supplemented its two earlier regulatory interventions (Decisions No 334/V/2007 and No 418/V/2008), highlighting structural weaknesses and persistent regulatory restraints affecting competition at all stages of the fuel sector (refining, wholesale and retail segments). Following an extensive inquiry, the HCC addressed 31 recommendations for reform to the government. In particular, the HCC proposed amongst others:

- measures enhancing transparency regarding the cost of refineries
- the creation of an “Independent Stockholding Operator for Security Stocks”, in accordance with European standards, to manage and maintain emergency oil reserves on behalf of those subject to the above obligation,
- measures to address the shortage of storage facilities for security reserves,

- the abolishment of the minimum capital requirement with regard to fuel trading licensing
- the conclusion of written contracts between fuel wholesalers and retailers (including terms with regard, in particular, to the credit policy, discounts, rebates and other benefits, the amortization of any investments made by trading companies in retail companies etc.)
- the abolishment of the mandatory storage of at least two categories of fuel products, as a condition to wholesale licensing
- the abolishment of restrictions regarding the activities of Supply Cooperatives and Consortia
- the installation of inflow-outflow systems throughout the fuel supply chain (refining, wholesale trading and retail trading of any form)
- the abolishment of the possibility to impose a minimum price on the sale of fuels to consumers.

#### 4. HCC RESOURCES

##### 4.1 *Annual budget*

39. Total expenditure for 2012 continued to decline, in accordance with Government cost-cutting measures across the board to deal with the financial crisis.

<b>COMPETITION-RELATED BUDGET (€) <sup>7</sup></b>	
<b>2011</b>	<b>2012</b>
9,788,470	8,854,386

##### 4.2 *HCC Employees-Human Resources*

40. Total number of staff is 107<sup>8</sup>, out of which 70 is non-administrative staff working on competition enforcement<sup>9</sup>.

<sup>7</sup> Excluding sums earmarked for the purchase of a new building and sums remitted to the state budget (from HCC's surplus each year).

<sup>8</sup> This figure excludes the Members of the HCC Board (the decision-making arm of the authority), the members of staff seconded from the HCC to other departments of the public administration, as well as few members of staff currently on unpaid leave.

<sup>9</sup> Four (4) senior IT experts qualify as "administrative" staff, although they have a central role in conducting dawn raids and handling the electronic data of the investigations.

<b>HCC staff working on competition enforcement</b>	
<b>Year End 2012</b>	
<b>Staff Category</b>	<b>Number of staff</b>
Competition specialists (economists)	39
Competition specialists (lawyers)	24
Competition specialists (cost analysts)	5
Competition specialists (statisticians)	2
<b>Total</b>	<b>70</b>

41. 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).