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

ROUNDTABLE ON CHANGES IN INSTITUTIONAL DESIGN OF COMPETITION AUTHORITIES

-- Note by Greece --

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More documents related to this discussion can be found at www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm

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1. Introduction: HCC organization and key functions

1. The Hellenic Competition Commission (HCC or Authority) is exclusively responsible for the enforcement of national and EU competition rules. The HCC is responsible for the application of Law 3959/2011 (the Greek Competition Act) and of Articles 101 and 102 TFEU.

2. The Authority has a dualist structure, essentially comprising two bodies: the Directorate General for Competition, which is conducting the investigations, and the HCC Board which is the decision-making arm of the Authority.

3. Greece's Economic Adjustment Programme,¹ included a variety of fiscal measures, as well as structural reforms aimed at enhancing the overall competitiveness of the Greek economy. Acknowledging the HCC's central role in the efforts to strengthen the functioning of the Greek economy, the Economic Adjustment Programme also included a competition-related component providing for the revision of the Greek Competition Act. Albeit the consecutive adjustments of the Greek competition law regime to EU law and practice, the proposed revision of the Greek Competition Act aimed at further consolidating the deterrent and overall systemic effect of its enforcement action, focusing notably on procedural efficiency and independence.

4. The new Greek Competition Act (Law 3959/2011), which came into effect in April 2011, was the result of a long drafting procedure, following a public consultation as well as extensive cooperation with the European Commission. It abolished Law 703/1977 which governed, with several amendments, the protection of competition in Greece for the last 34 years.

5. The following table reflects the main institutional changes HCC has undergone until the implementation of Law 3959/2011, which aimed at enhancing the Authority's procedural efficiency and independence.

LAW	Basic amendment/insertion
Law 2296/1995	The Law established HCC as an independent authority, providing expressly for its administrative autonomy.
Law 2837/2000	HCC is granted financial autonomy in addition to its administrative autonomy.
Law 3373/2005	HCC obtains distinct legal personality and is thus enabled to appear on its own right before the courts in trial/proceedings regarding the authority's act or omission.
Law 3784/2009	The Law amended the provisions regarding HCC Board Members, introducing the system of four (4) Commissioners- Rapporteurs, thus empowering the decisive body of the Authority with experts in competition-related matters. (the previous system provided that the HCC Board included representatives of trade unions, employers' associations and other business association groups)

2. Motivation and rationale behind the recent reform of the Greek Competition Act

6. The new Competition Act was implemented in the context of Greece's action plan to promote better institutions and a more competitive economy. The legislative initiative did not aim at changing substantive law provisions, which were already aligned with EU law and practice to a large extent, but at increasing the effectiveness of the HCC and strengthening its independence, in addition to promoting harmonization with EU competition law and practice.

¹ The Economic Adjustment Programme for Greece, European Economy, Occasional Papers 61, May 2010

7. The main problems that had been identified under the previous competition Act was the lack of the Authority's margin degree of discretion in setting its own strategic objectives and priorities, as well as the existence of other administrative burdens hindering procedural efficiency. In particular:

- Under Law 703/1977, the HCC enjoyed minimum discretion in setting its strategic objectives; tied by the principle of legality which entailed an obligation to investigate and rule on all complaints seized with. Thus, case selection based on the criterion of public interest was rather the exception, the rule being overburdening the scarce available human resources with complaints of minimum input for the Authority's enforcement action.
- In addition, and although the legislative reform of 2009 partially aligned the Greek regime with the self-assessment regime of the EU (by abolishing the negative exemption system), it still retained an obligation to notify all likely restrictive agreements for the sole purpose of "mapping the market", thus introducing an *ex lege* self-standing obligation, no longer linked with the benefit of exemption. Furthermore, it retained a post-merger notification requirement regarding smaller merger & acquisitions. Such notification requirements and/or formalities burdened disproportionately both the Authority and the notifying businesses.

3. Key features of the reform

8. The new Act introduced several provisions of procedural nature, which affected significantly the institutional framework and working methods of the HCC. These provisions aim at increasing the effectiveness of the HCC and strengthening its independence, while further promoting harmonisation with EU competition law and practice. The adopted revisions revolved around six (6) key themes:

- Institutional arrangements and strengthening of HCC's independence,
- Increasing efficiency of enforcement action,
- Judicial review of HCC decisions,
- Criminalisation,
- Enhanced cooperation with ministries and other agencies, notably concerning regulatory obstacles to competition, and
- Further alignment with EU procedures and practice.

9. Each of these themes is further addressed below:

3.1 *Institutional arrangements and strengthening of HCC's independence*

10. The new Act preserved the long-standing status of the HCC as an independent administrative authority (with administrative and financial autonomy) and maintained the dualist structure of the Authority.

11. 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. 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 are now selected by the Greek Parliament's Chamber of Presidents, thus ensuring broader parliamentary consensus. All other Members, including the 4 Commissioner-Rapporteurs, are chosen and appointed by the Minister of Development following a parliamentary hearing (before the Parliamentary Committee for Institutions and Transparency). Moreover, the term of office of the Board members was extended from 3 to 5 years, in order to decouple it from

election cycles and strengthen continuity of operations. Moreover, the introduction of a set of provisions regarding the imposition of disciplinary measures shields the role of the Board Members of the Authority.

12. The HCC is formally supervised by the Minister of Development and Competitiveness and is subject to parliamentary control and reporting. In particular, and as the relevant provisions have been interpreted thus far concerning independent administrative authorities, this type of supervision does not extend to the conduct of operations and also precludes any directions or any other influence, including by the State, in the exercise of the HCC's duties. It is narrowly defined, as prescribed by the Law, and mainly comprises of (a) addressing means of parliamentary control regarding the activities of the Authority and (b) the approval of the HCC's budget, to be annexed to the budget of the Ministry of Development and Competitiveness and (c) a limited right of information concerning priorities and administrative affairs (not extending, however, to the prioritization and handling of individual investigations, nor to other types of data processing and decision-making).

3.2 *Increasing efficiency of enforcement action*

13. The new Act also enhanced the HCC's ability to set strategic goals and to prioritize important cases, with a view to increasing the systemic effect of its enforcement action. The prioritisation of cases is firmly based on the criterion of public interest. In this regard, the new Act specified that the HCC Board shall issue a decision outlining the criteria for the prioritization of cases and the setting of strategic goals (essentially, a "Notice on Enforcement Priorities"). The new Act also introduced an internal management tool in the form of a "point-system" for the investigation of cases by the Directorate-General. More importantly, it provided for the possibility of rejecting complaints that get a low priority ranking according to this point system. This has been the first time that national competition legislation allowed explicitly for the possibility of rejecting complaints on priority grounds.

14. The new Act further established a more reasonable time-frame for the resolution of investigations, by extending the deadlines for the issuance of decisions. As an aside, it also introduced provisions regarding (a) the improvement of the cooperation between the HCC and sectoral regulatory agencies; (b) the HCC's ability to initiate external audits; (c) the application by analogy of EU block exemption regulations in the national context; and (d) the HCC's discretion to issue more notices and guidelines on the implementation of law, thus facilitating self-assessment by companies.

3.3 *Judicial review of HCC decisions*

15. The new Act provided that specialised competition chambers can be established at the Athens Administrative Court of Appeals, the aim being to further enhance the effectiveness of judicial review (not yet implemented; nonetheless, in practice, competition cases are adjudicated by specific chambers of the Court). It further introduced 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.

3.4 *Criminalisation*

16. Under the new Act, criminal penalties for cartel conduct become stricter, with a view to increasing the overall deterrent effect of the competition rules². Involvement in a cartel is punishable by an imprisonment sentence ranging from at least 2 to 5 years, as well as by a pecuniary sanction now ranging from €100,000 to €1,000,000.

² Criminal sanctions pertaining to violations of competition law can only be imposed by the criminal courts, and not the HCC (which imposes administrative sanctions)

3.5 *Opinions on regulatory measures restricting competition*

17. Given the negative impact of regulatory obstacles to competition and the fact that they most often fall outside the scope of EU and Greek competition legislation, being qualified as state measures leaving no autonomy to business undertakings, the new Act stipulated that ministries and other government agencies may request the opinion of HCC when adopting new regulatory measures which may distort competition. This was intended to enhance the tools of regulatory impact assessment available to governmental authorities, while increasing awareness of competition law matters within the broader public administration. More importantly, the Authority can also address, at its own initiative, recommendations to the government.

18. Since the introduction of these new advocacy powers (2011), the HCC took concrete steps to diversify and expand considerably competition advocacy and outreach efforts in order to promote structural reforms (pledged in the context of Greece's Economic Adjustment Programme) and increase overall competition awareness. The HCC allocates a significant part of its resources to advocacy functions, focused primarily on identifying and removing regulatory obstacles to competition and promoting a genuine competition culture through outreach activities. During the period 2011 - 2012, advocacy work accounted for up to 25 percent of the HCC's total output. Furthermore, it amounted to 15 percent of total output during the course of 2013, thus maintaining record levels compared with the OECD average. Since 2011, the Authority's advocacy agenda has revolved around four key themes:

- Liberal professions (liberalization of professional services),
- Legislative distortions mostly affecting retail and food supply chains,
- Greece's Competition Assessment Project (an OECD-managed project, in partnership with the HCC, which applied the OECD's Competition Assessment Toolkit in designated sectors of the Greek economy), and
- The publication of competition compliance and awareness guides, primarily addressed to trade associations, as well as procurement/contract awarding public authorities.

3.6 *Further alignment with EU procedures and practice*

19. Finally, a number of provisions in the new Act aimed at ensuring further alignment with EU procedures and practice, notably by abolishing notification requirements and/or formalities which entail horizontal burden for both companies and the Authority. As previously mentioned, the new Act adopted measures in order to ensure further alignment with EU procedures and practice, including, *inter alia*:

- the abolition of the notification requirement for "mapping" purposes, as regards all agreements which may restrict competition, thereby further promoting self-assessment by companies and attaining full harmonisation with the "legal exemption" regime established by Regulation 1/2003,
- the abolition of the notification requirements concerning smaller merger & acquisitions, i.e. mergers that do not meet the turnover thresholds triggering a prior notification requirement,
- the streamlining of the overall time-frame and corresponding deadlines for the review of mergers & acquisitions, thereby reflecting more closely the corresponding provisions of Regulation 139/2004,
- the further diversification of HCC's investigative powers with the introduction of the sector inquiry tool, mirroring Article 17 of Regulation 1/2003, and
- the introduction of limitation periods for the imposition of fines, mirroring Article 25 of Regulation 1/2003.

20. Finally, in a similar context, the new Act removed from the scope of the HCC's jurisdiction the prohibition of the abuse of a relationship of economic dependence. The latter provision is now incorporated into another body of civil legislation and will no longer be applied by the HCC.

4. Implementing measures

21. Some of the reforms required further implementation through the issuance of legislative and administrative acts (secondary legislation), issued either by the President of Democracy, the competent Ministries or the HCC, depending on the authorization given by the Law. The majority of them was issued in relatively short time following the entry into force of the Law.

22. The secondary legislative and administrative acts issued upon delegation by the Law can be summarized as following:

- The new Organisation Chart of the HCC was issued in 2012, upon opinions of a) the Ministers of Finance, Development and Competitiveness, and Interior and b) the HCC (Presidential Decree 76/13.06.2012-pursuant to Art. 21 (1), (3) of the Law). The Chart aims at increasing the effectiveness of the HCC through the proper allocation of human and financial resources.
- In 2013 the New Regulation for the Internal Operation and Management of the HCC was issued, upon opinion of the HCC (Joint Ministerial Decision 117/16.1.2013- pursuant to Art. 16 (1) of the Law). The New Regulation adapts the operational framework of the HCC to the requirements and amendments of the Law, and aims to strengthen HCC's independence and to streamline/optimize the administrative procedures before the HCC for the undertakings. The Regulation, also, describes the internal operation system and the financial management of the HCC, based on the rules of transparency and the sustainable management of its financial resources.
- The HCC adopted a Notice on Enforcement Priorities-pursuant to Art. 14 (2) of the Law- (decision no. 525/VI/2011) and defined the criteria for enforcement priorities and strategic objectives. The prioritization of cases is firmly based on the criterion of public interest which is assessed in the light of the estimated impact of a practice in the functioning of competition.
- The HCC also adopted- pursuant to Art. 14 (2) of the Law – an internal management tool in the form of a “Point System” for the investigation of cases by the Directorate-General (decision no. 539/VII/2012). In particular, the Directorate-General shall now investigate pending cases according to their ranking on the basis of a point system, which essentially exemplifies and quantifies the priority criteria set out in the abovementioned decision. The Point System aims at enhancing the efficiency of investigations, the focus being on important cases with increased estimated impact on the functioning of effective competition and/or overall systemic effect, while promoting a more coherent and targeted policy of prioritizing pending cases, whereas it provides for the possibility of rejecting complaints that get a low priority ranking. The Point System is intended solely for internal use (such that the ranking of each individual case at the investigation phase is not made public, nor notified to the complainant), in an apparent attempt to immunize the system from litigation.
- Furthermore, the HCC- pursuant to Art. 14 (2) of the Law- defined the terms, conditions and the procedure for the acceptance of commitments offered by undertakings to cease possible infringements of articles 1 and 2 of L. 3959/2011 or 101 and 102 TFEU (decision no. 588/2014). The decision aims to optimize the current administrative practice, ensures the appropriateness of the sanction and/or consequence chosen in terms of public interest and competition policy, introduces a procedure of consultation on the proposed commitments and provides guidelines to undertakings.

- Additionally, the HCC- pursuant to Art. 36 (2) of the Law- issued an updated decision as per the form and the procedure for the submission of complaints from the undertakings (decision no. 546/VII/2012). The decision elaborates the procedure for the submission of complaints and aims to safeguard the procedural rights of the complainants.
- Finally, the HCC- pursuant to Art. 14 (2) and 25 (8) of the Law- introduced a revised leniency program, promoting full alignment with current EU standards (decision no. 526/VI/2011). With a view to serving public interest, the HCC adopted a modern incentive framework to reward companies or individuals who are willing to put an end to their participation in the cartel and cooperate with the HCC.

23. The abovementioned acts were issued either following an opinion of the HCC or through public consultation, with a view to obtaining the broadest consensus possible.

Secondary legislation issued				
	Type	No.	Subject	Authorization Provision
1.	Presidential Decree	76/13.06.2012	Organisation Chart of the HCC	Art. 21 (1) and (3) of the Law
2.	Joint Ministerial Decision	117/16.1.2013	New Regulation for the Internal Operation and Management of the HCC	Art. 16 (1) of the Law
3.	HCC Decision	525/VI/2011	Notice on Enforcement Priorities	Art. 14 (2) of the Law
4.	HCC Decision	539/VII/2012	Point System for the investigation of cases	Art. 14 (2) of the Law
5.	HCC Decision	588/2014	Commitments	Art. 14 (2) of the Law
6.	HCC Decision	546/VII/2012	Revised procedure and for of Complaints	Art. 36 (2) of the Law
7.	HCC Decision	526/VI/2011	Revised Leniency Program	Art. 14 (2) and 25 (8) of the Law

5. Evaluation and prospects

24. Implementation of the new regime is generally deemed to have had a positive effect on various aspects of HCC operation and status, notably on procedural efficiency and independence thereof. The enhancement of Greece's competition regime along the line described above, and in particular the strengthening of the HCC, is acknowledged in the recent European Commission's Communication to the European Parliament and the Council regarding the 10-year review of Regulation (EC) 1/2003³.

25. As regards the new prioritization procedures in particular (see aforementioned HCC Decisions No. 525/VI/2011 and 539/VII/2012), the new internal management tool in the form of a "point-system" allowed for 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. It may still be premature to assess fully the effectiveness of the new prioritization system, particularly given that the implementation of the project is ongoing and that rejection decisions on priority grounds have not yet been tested in administrative courts⁴. However, preliminary indications are positive for the following reasons:

³ See EC Communication "Ten years of antitrust enforcement under Regulation 1/2003: achievements and future prospective", COM(2014) 453

⁴ Several other EU competition authorities that are attempting to implement prioritization strategies are facing similar challenges. This actually prompted the European Commission and the National Competition Authorities to examine ways to address the issue possibly at EU level (through soft-law recommendations within the European Competition Network and/or other means).

- The project was preceded by a wide-range internal assessment exercise of backlogged cases, in order to identify and process those cases that are obviously unfounded and are thus to be rejected by expedited decision on those grounds (cases excluded from prioritization). As a result of this exercise, the number of expedited rejection decisions for obviously unfounded cases in 2012 tripled as compared with 2011. This pace has been maintained during the course of 2013. This signifies a significant improvement in terms of streamlining procedures and dealing with backlogged cases.
- The testing phase of the “point system” in specific, i.e. the classification of pending (backlogged) cases on the basis of the point system (each case awarded points on a scale from 1 to 10), indicated that up to 15-20% of pending cases, depending on Directorate and/or Unit, is likely to be eligible for rejection on priority grounds (given their particularly small significance and the ensuing award of 3 or less points out of 10).
- The two (2) Notices on prioritization have already enabled the Authority to boost significantly its advocacy efforts, in order to promote structural reforms, with total output of opinions/recommendations maintained at record levels compared with the past (see above).
- Overall, it is now estimated that the combined implementation of the project (including the “point-system”, but also the identification & processing of obviously unfounded cases, and coupled with the abolition of the notification requirement for “mapping purposes”) will result in the reduction of the total number of backlogged cases/files by more than 50%.

26. Finally, the project increased discipline and awareness internally (within the organisation) on the need to streamline procedures and strive to pursue cases with increased systemic effect on the marketplace.