



COMPETITION COMMITTEE

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

2003

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I. Changes to competition laws and policies, proposed or adopted

1. The publication of the new Organisation Chart for the Secretariat of the Hellenic Competition Commission was the most important development for the year 2003.

2. According to the new Organisation Chart the Secretariat of the HCC becomes a General Directorate divided in three (3) Directorates. One directorate is responsible for the control of mergers, one for cartels and abuses of dominance, while the third is responsible for financial and administrative issues. The Organisation Chart provides also for a Department of International and Community Affairs as well as an Office of legal service. The General Director is appointed for a 3-year mandate by the Minister of Development.

3. This new structure of the Secretariat of the HCC was necessary due to the imminent increase of the staff of the HCC. Since the number of the HCC's employees will rise significantly, it is important to relieve the President of the HCC from some of his administrative and coordinating responsibilities.

4. This amendment was also necessary in order to improve the functioning of the Hellenic Competition Commission.

II. Enforcement of competition law and policies

5. During the reporting period, thirty-nine (39) cases were examined by the Competition Commission, which can be classified as follows:

Table 1

Cases examined	2003
Complaints	8
Mergers	18
Provisional Measures-Fines-Opinions	11
Miscellaneous	2
Total	39

6. Moreover, the HCC referred one multi jurisdictional merger case to the European Commission, according to art. 22 of the Regulation 4064/89.

7. Also in six(6) merger cases a President's Act was issued according to art.4d par.2 of the law 703/77, while eight (8) cases were closed following the procedure of art. 11a of the law 703/77.

III. Main cases

Decision Nr. 229/III/2003 («Glaxosmithkline »)

8. The case concerned the complaint that was brought to the Hellenic Competition Commission by sixteen (16) Associations of Pharmacists against the pharmaceutical company “Glaxowellcome” (now “Glaxosmithkline Gsk”), according to Article 24 of the Law 703/1977, as it is currently in use.

9. The complainants are cooperatives that supply with medicines their member - pharmacies throughout the Greek territory and buy from “Glaxowellcome”, amongst other products, the medicines *Imigran* (antimigrainous), *Lamictal* (antiepileptic) and *Serevent* (antiasthmatic) in all their forms.

10. “Glaxowellcome” is a pharmaceutical company, which is the exclusive licensee for the circulation of pharmaceutical products and the agent and subsidiary of the parent company “GlaxoSmithkline gsk”, which is the trade mark licensee and producer of the abovementioned pharmaceuticals. “Gsk” is *ex lege* responsible for the regular supply of the national market, regarding the distribution and sufficiency of the parent company’s patent medicines at the pharmacies, as well as for the preservation of a three-month safety reserve.

11. In Greece, as well as in the majority of the member states, the prices of medicines are regulated by the state. Due to the fact that the prices in Greece are amongst the lowest in Europe, the drug traders have an incentive to perform exports towards those member states, where the prices are higher.

12. According to the complainants’ allegations that were accepted by the HCC, “Gsk” decided unilaterally to cut back on the imports of the abovementioned medicines in Greece, to bypass the wholesalers and to undertake itself the supply of pharmacies, in order to restrain the parallel exports of the pharmaceutical products in question.

13. The HCC has also ruled that the high market shares, in combination with the fact that certain of the abovementioned medicines are irreplaceable and the fact that “Gsk” alone supplies the entirety of the Greek market with these medicines, as well as the given economic robustness of company and the great demand of the company’s products in the European market, lead to the conclusion that “Gsk” holds a dominant position in the national market as far as the abovementioned medicines are concerned.

14. Taking into consideration the fact that the subsidiary was entirely dependent on the parent company’s business decisions, the HCC regarded the two undertakings as a single economic entity. Consequently, the dominant position of the subsidiary “Glaxowellcome” in Greece with regard to the medicines *Lamictal*, *Imigran* and *Serevent* can be attributed to the parent company.

15. The HCC ruled, at the case where the above-mentioned applicants requested interim measures (193/III/2001) against “Glaxosmithkline”, that an infringement of Articles 82 of the EC Treaty and 2 of the Act 703/77 was most probable to occur and that the continuing export restrictions of medicines that were imposed by the parent company “Gsk”, in combination with the refusal of “Gsk” to satisfy the orders of the applicants, threatened to provoke an imminent and incurable damage to the public interest, for the prevention of which there was an urgent need for the granting of interim measures. In particular, the HCC ruled that the refusal of “Gsk” to satisfy the requested quantities threatened to disrupt the regular and direct supply of pharmacies with the abovementioned medicines, as well as the supply of the patients who were treated with these medicines.

16. According to the rationale above, the Commission obliged “Gsk” to execute provisionally and until the issue of its final decision the orders of pharmacists’ associations and wholesale pharmaceutical stores for the medicines *Lamictal*, *Imigran* and *Serevent* without quantitative restrictions and expanded by

majority vote *ex officio* this interim measure to all the pharmacists' associations and wholesale pharmaceutical stores. The Commission has furthermore threatened by majority vote to impose on "Gsk" a penalty payment amounting up to Drs 1 million per each day of non-compliance with its ruling.

17. The HCC suspended the issuance of a decision on the abovementioned complaints and submitted to the European Court of Justice a preliminary ruling, requesting to know whether the refusal of "Gsk" to satisfy all the orders of the complainants in order to restrain the parallel exports of the pharmaceutical products in question, is contrary to the prohibition of article 82b EC as abusive, due to the fact that it involves a cut down on the economic activity of the pharmacists, even though the cutting down on the economic activity of the pharmacists aims to protect the reasonable business interests of the suppliers and besides the fact that parallel trade benefits mainly the traders and secondarily the insurance funds but not the consumer. Following the previous thought, the HCC also asked whether the partial refusal to supply the pharmacists could be considered justified and if yes, on which terms.

Decision Nr. 242/III/2003 (Hellenic Petroleum S.A.)

18. The case concerned the investigation, that the Secretariat of the Hellenic Competition Commission commenced on its own initiative, on the commercial policy of the company Hellenic Petroleum S.A. (ELPE) and its compatibility with articles 1 and 2 of the law 703/77.

19. In particular, the HCC investigated a decision of the Board of Directors of ELPE, which brought about certain amendments in the contracts between ELPE and the petroleum trade companies, under the prerequisite that the contracts would be valid for three years and would not create overdue obligations to the contracting parties during the time period that they would be applied.

20. ELPE implemented that decision by amending the contracts that were in force between ELPE and the companies that didn't object to these amendments.

21. The facts of the investigation showed that the only company that accepted the amendments of the contracts, that were already in force, was EKO/ELDA, which belongs to the group of companies of ELPE.

22. According to the facts of the investigation, the HCC decided that the company ELPE in this case did not prove to be able to act independently of its competitors, its customers, its suppliers and the consumers and so ELPE was not found to have a dominant position in the relevant markets at the time period under investigation.

23. The HCC also decided that the company's rebate contracts did not fall under article 1 of the law 703/77, because they were not exclusive contracts, and even if they were, they didn't cause substantial lessening of competition in the relevant markets in question.

Decision Nr. 245/III/2003 («AEPI»)

24. The case concerned the complaint, according to article 24 par. 1 of the law 703/77, of six composers and the "Hellenic Composers' Union" against the copyright society AEPI, for abuse of dominant position in the relevant market of the management of intellectual property rights of Greek and foreign composers, contrary to article 2 of the abovementioned law.

25. AEPI was founded by a decision of the Minister of National Economy, and was approved by a decision of the Minister of Culture as the Hellenic copyright society that aims to protect the intellectual property rights of the creators of musical plays (composers, lyric writers etc).

26. The Hellenic Competition Commission found a number of its restrictive rules and practices to constitute an abuse of its dominant position. Since AEPI acted as licensor not only of performing rights, but also of the mechanical right to record music, it required a transfer of exclusive rights of all aspects of copyright in the territories in which AEPI operates. This obligatory total assignment of both the performing and the mechanical rights was found to be an abusive rule, in breach of article 2 of the law 703/77. The fees on the mechanical rights were also characterised as being extremely high and therefore abusive.

27. In view of the above, the HCC by its ruling obliged AEPI to modify both its existing and its future contracts with its members, in order to make clear that the members (composers etc) are not obliged to assign to AEPI all of their rights, but have the choice to assign only some categories of their rights, which are recited in the case “GEMA II” of the European Commission, while AEPI may only deny this partial assignment by providing full and specific justification.

28. The HCC also fixed AEPI’s maximum fee to 15% calculated on the amount collected by AEPI for the mechanical rights of its members and recommended AEPI to publish in its website all kinds of fees that it imposes on its members.

29. AEPI received a fine of 500.000 Euro for the infringement of article 2 of law 703/77 and in particular for its unjustified refusal to accept the assignment only of some intellectual property rights. The HCC has furthermore threatened to impose on AEPI a penalty payment amounting up to 5.000 Euro per each day of non-compliance with its ruling.

Opinion Nr. 8/III/2003

30. Following the request of the “Union of repairers of vehicles- motorcycles”, regarding the repairs under warranty, free servicing etc. that the car manufacturers provide to the end users for a certain time period after the sale of a new car, the HCC issued an opinion according to article 8e par.1 of the law 703/77.

31. In particular the request concerned the term included in the sale contracts of new vehicles according to which in order for an authorised dealer to honour the warranty that is being granted by the car manufacturer, it is required for the buyer of the vehicle to purchase only original spare parts and to make sure that the repairs are performed by authorised repairers only. The Union’s view was that the abovementioned term was invalid, according to Regulation No. 1475/95 of the European Commission.

32. The HCC examined the issue taking into consideration the scope of the new regulation 1400/2002, already in force, and came to the conclusion that a general obligation to have the car maintained or repaired only within the authorised network during the warranty period would deprive consumers of their right to choose to have their vehicle maintained or repaired by an independent repairer, preventing independent repairers especially in cases of ‘extended warranties’ from competing effectively with the authorised network.

33. The warranty may be lost only if the work carried out by the independent repairer is faulty, the burden of proof falling on the authorised dealer.

IV. Resources of the Hellenic competition commission

a) Annual Budget

- Year 2003: 4.320.720,00 €

b) *Number of employees, year 2003: 32*

Secretariat of the Hellenic Competition Commission

Economists: 5

Lawyers: 11

Other professionals: 8

Support staff: 8

All staff combined: 32