

Main Developments in Competition Law and Policy 2020: Greece

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Georgia Tzifa (WilmerHale)

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2020 was a particularly busy year as regards competition law developments in Greece, despite the COVID-19 crisis.

Pushing ahead

The primary goal of the new leadership of the Greek Competition Commission ("HCC") in late 2019/early 2020 was to clear a stockpile of pending cases, many of which had been initiated prior to 2011. This was achieved through a prioritisation and reorganisation system, with more than 120 cases completed in the period between September 2019 and September 2020. The average age of pending cases was reduced from approximately 8 years in September 2019 to 2 years in September 2020. Numerous new cases were also brought before the HCC in the same period.

Last year, the HCC cleared 12 mergers in various sectors of the economy and published several infringement decisions in relation to anti-competitive agreements and abusive conduct. Settlement, commitments and compliance assessment decisions have also been issued.

COVID-19 response: Guidance to market operators and investigations

The competition law challenges posed by the COVID-19 crisis were an important area of focus for the HCC in 2020.

In particular, the HCC announced – already in early March 2020 – that it would consider, as an immediate priority, any case brought to its attention which concerned market operators taking advantage of the public health crisis to engage in anti-competitive conduct. In addition, the HCC issued guidance on the application of competition law rules to supply contracts and distribution agreements (vertical agreements), with the aim of developing actions against profiteering, especially by intermediaries. Among others, the guidance discussed the conditions under which producers or online platforms could apply maximum or recommended resale prices. This initiative was followed by other National Competition Authorities ("NCAs") and the European Competition Network.

The HCC also set up a special COVID-19 Task Force to coordinate its investigations and provide the public with information, in the form of Q&As, about the application of competition law in connection with the particular challenges posed by the pandemic.

As regards market monitoring and specific interventions, the HCC focused on sensitive sectors, such as healthcare material and basic consumer goods. It carried out a series of dawn raids, as well as further ex officio and other investigations. The HCC will now analyse the interim data in order to determine whether any anti-competitive practices have taken place and decide on appropriate sanctions.

In that context, the HCC has already stated that it is necessary to re-assess the market power of small players in light of the exceptional circumstances created by the COVID-19 crisis. Therefore, any indications of overpricing should be assessed in the light of: (i) a narrow market definition, which, in times of crisis, is based on the "breaking" of the chain of substitution in the relevant product and/or geographic market, due to the exceptional circumstances in place, and/or (ii) the transitory market power of undertakings, which is not the outcome of a different definition of the relevant markets, but results from a change of the prevailing market conditions.

Sector inquiries

The HCC was also busy on the inquiries front, both in sectors that have long attracted attention in Greece, as well as in sectors that play a crucial role in the modern economy.

An inquiry into the production, distribution and marketing of basic consumer goods, initially launched in 2012, was prioritised in September 2019; the Interim Report was published in April 2020 (see [here](#) for an executive summary). The inquiry focused on 11 product categories and examined problems identified at various stages of the supply chain, e.g. the existence of "must-have" products also in relation with entry barriers as regards supermarket shelf space, the asymmetry in the bargaining power of market operators, pass-on delays to suppliers, overdue credit payments, and other issues such as the development of buying alliances and the penetration of private label products. The Final Report is expected to come out on 30 January 2021.

Two more inquiries were launched in March 2020. The first one focuses on e-commerce, with an emphasis on goods (clothing and footwear, electronic devices, books etc.), mediation services (e.g. for the provision of travel/event tickets, catering services), accommodation and rentals / Airbnb, and e-pharmacies. The second one will look into the fintech sector, focusing on payment services (mobile wallets and P2P mobile payment, deposits and lending, asset management services, with an emphasis on comparison websites, robo-advisors and algorithmic trading; payment services via digital currencies, insurance services, etc.). The publication of the Final Reports is scheduled for April and December 2021, respectively.

Competition in the printed press distribution market: essential facilities, freedom of expression and media pluralism

The HCC's Opinion 39/2019 on the functioning of competition in the national market for press distribution was published in January 2020. This Opinion was issued in late 2019, on a request by the Ministers of Economy and Development and of Digital Policy, Telecommunications, and Information. The HCC analysed in detail, for the first time, the competition law issues raised in connection with the structure of the printed press distribution market: a *de facto* monopoly, with a single active printed press distribution agency, in which publishers with a significant stake in this market hold shares.

The HCC analysed the effects of this structure on effective competition, as well as other factors that may affect the interpretation and application of competition law to press distribution or the press in general, such as the right to freedom of expression and media pluralism – protected by the Greek Constitution and the Charter of Fundamental Rights of the European Union. Among others, the HCC examined various methodologies for incorporating these factors into competition law analysis, for example, by assessing them as an element of product quality at an empirical level or, possibly, by using a more deontological approach for the interpretation of the competition law provisions in question.

The Opinion found that the printed press distribution market is characterised by a number of structural weaknesses, which result in a *de facto* "natural monopoly" or "essential facility", at least in the medium term. In addition, the participation of only some publishing companies in the share capital and, thus, in the governance of the sole press distribution agency, weakens the competitive neutrality between publishing companies. The market is also characterised by a lack of potential competition.

In that context, the Opinion analysed the pros and cons of potential solutions. While the systematic application of competition law could partially resolve some problems, it is not enough, according to the Opinion, to address the structural market weaknesses. These weaknesses can be effectively dealt with only through State measures, some of which involve a greater degree of intervention than others.

Apart from this Opinion, the HCC has also carried out ex officio investigations in the press distribution market, which resulted in a Statement of Objections to the sole distribution agency, issued in November 2020.

Competition Law & Sustainability Initiative

Taking account of the increased global and EU focus on sustainable development, the HCC has launched a dialogue in order to find and integrate methods and tools of valuation, analysis and assessment of business practices in the field of economics and competition law, taking into account the extent to which they favour or not sustainable solutions. In September 2020, the HCC published a [Staff Discussion Paper on Sustainability Issues and Competition Law](#), which analyses convergence areas and conflicts.

According to the Staff Discussion Paper, competition law can address sustainability issues. Key issues to consider include:

1. the extent to which agreements between competitors or companies through the value chain could be approved to enhance environmental sustainability and sustainable development objectives, either as not falling under the Article 101 (1) or exempted under Article 101 (3) TFEU;
2. whether the concept of "abuse" under Article 102 TFEU may include anti-competitive practices which also constitute breaches of environmental law or which restrict sustainable development; or, in exceptional cases, sustainability protection as a defence to conduct that could otherwise be described as an abuse of dominant position, provided that the structure of competition in the market is not affected; and
3. the extent to which sustainability issues could be considered in the assessment of mergers and acquisitions.

The Paper also sets out various recommendations, focusing on the role of NCAs. A teleconference followed on 28 September 2020, attended by more than 1,500 stakeholders from all over Europe.

The HCC has set as its next goals the adoption of further sustainability guidance in competition law enforcement and the establishment of a competition sustainability sandbox, following a process of public consultation with the industry and other stakeholders, in collaboration with the European Commission and the European Competition Network.

Case law: competition law and adjacent areas

Greek courts have also been quite busy with competition law questions, often ruling on issues intersecting competition law and other areas, such as telecommunications and public procurement law. For example:

- In a public procurement case, the Council of State distinguished between the notions of "undertaking" under EU and Greek competition law and of "economic operator" under Directive 2014/23/EU and its national transposition measures. Therefore, the contracting authority correctly found that it could not exclude an economic operator from the tendering process on the basis that a subsidiary had concluded anti-competitive agreements with other companies. The HCC, in that case, had already issued a decision which did not attribute liability to the parent company. Consequently, the contracting authority could not overrule it by subsequently applying the same competition law provisions. The Council of State also confirmed that mere participation in a settlement process does not mean that an undertaking has accepted liability for competition law infringements (cases 72/2020 and 1819/2020).
- In a telecommunications case, the Council of State confirmed that the imposition of penalties for both

telecommunications and competition law infringements does not violate the principle of *ne bis in idem*. The Council of State stressed that competition law and telecommunications are two distinct legal frameworks, with different aims (case 849/2020; see also C-280/08 P, *Deutsche Telekom AG*, para. 92).

Draft amendments to the Greek Competition Act: new proposals on dominance and financing of the HCC?

A Legislative Committee was set up on 15 January 2020, entrusted with the review and proposal of legislative amendments to the Greek Competition Act (Law 3959/2011), in order to:

1. transpose Directives (EU) 2019/1 (ECN+ Directive) and (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain;
2. modernise competition rules in the digital age and protect of competition in product and service markets in the telecommunications and post services sector. This modernisation process also aims at introducing structural changes in Greek competition legislation and as regards the powers of the HCC.

The Legislative Committee has already submitted a draft bill on these points to the competent Ministries. Given that this draft bill is still a work in progress, it has not yet published. However, some of its provisions have been discussed in HCC publications and in media outlets:

1. One of the key features of the digital space is the presence, in various vertical and diagonal markets, of companies which can act independently of their competitors or suppliers without necessarily being dominant in each separate market, because of their key position in the entire ecosystem. In that context, the draft bill includes a provision on the abuse of dominance in an ecosystem of structural importance for competition in Greece. This provision would be applicable only where the aggregate worldwide turnover of the company in question amounts to at least EUR 300 million.
2. The draft bill also includes provisions on the HCC's financing. Under the current system, each time a public limited company is formed or increases its capital, 0.1% of the share capital or its increase is paid into the HCC budget. The draft bill provides that if the HCC budget falls below 0.00004% of the Greek GDP, the shortfall is made up out of the State budget. Apart from that, an independent advisory expert group will evaluate the HCC's work every 2 years: if the HCC attains its objectives, it will be possible for it to receive an additional 0.00001% of GDP.

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