

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2021 – Greece

Georgia Tzifa (WilmerHale) · Monday, January 17th, 2022

2021 was another busy year regarding competition law developments in Greece, with several interesting initiatives by the Greek Competition Commission (“HCC”).

Maintaining momentum during the COVID-19 pandemic

As reported last year, the primary goal of the new leadership of the HCC for 2020 was to clear a stockpile of pending cases, many of which had been initiated prior to 2011. The significant progress made in 2020 continued in 2021, with the HCC advancing the examination of important cases, many of which were brought before the plenary session of the HCC, thus reaching the final stage of their assessment.

The HCC maintained its momentum, despite the COVID-19 pandemic: 30% more cases per month were brought before the plenary session of the HCC in April 2020 – April 2021, compared to January – September 2019.

In 2021, the HCC cleared several mergers in various sectors of the economy and published infringement decisions in relation to anti-competitive agreements and abusive conduct. Settlement and commitment decisions were also issued, in addition to several Statements of Objection in ongoing cases.

COVID-19 response: Continuation of investigations

The competition law challenges posed by the COVID-19 crisis continued to be an important area of focus for the HCC in 2021.

In particular, the HCC continued its evaluation of data collected from wholesalers of medical disposables regarding the effects of the COVID-19 pandemic in the respective market, in Greece and in other EU countries (Bulgaria, Italy, Romania), from February to August 2020. Among others, a significant fluctuation in the average cost of examinations of private hospitals and in prices/supply tests of public hospitals was observed. The supply prices for COVID-19 tests for public and private hospitals seem to be on the same level, both for antibodies and for molecular

testing.

From the analysis of the collected data, the HCC did not find any indication of anti-competitive agreements or abuse of dominant position. In spring 2021, the HCC continued its investigation by examining pricing data from August to December 2020.

The HCC also continued its ex-officio investigation in the markets for the supply of coronavirus detection tests and antibodies tests, having sent RFIs to 13 public hospitals (reference hospitals for COVID-19), universities, other relevant public entities, institutes as well as 56 private hospitals and private diagnostic centres. The HCC will next proceed with the evaluation of the collected data.

Sector inquiries: “Gatekeepers”, industry concentration, access to databases, and bargaining power

The HCC was also busy on the sector inquiries front, continuing the pending inquiries from last year and launching two new ones in 2021.

The sector inquiry into basic consumer goods (see our [blogpost](#)) was concluded with the publication of the final report in March 2021 (see [here](#) for an executive summary).

Based on the inquiry findings, the HCC did not find it necessary to launch a regulatory intervention in the sector at this stage. This possibility will be considered again after the new Supermarket Sector Inquiry, which is planned to take place in two years. The HCC will also set up a Supermarket Taskforce, which will **a)** report on the competitive situation in the sector every twelve months and; **b)** measure the bargaining power of the supermarket chains and suppliers.

The final report [noted](#) that several of the competition problems in the basic consumer goods sector relate to the exercise of bargaining power and may be resolved by a carefully designed application of Art. 101 and 102 TFEU and their corresponding articles in Greek law. In view of the above:

- When defining the geographic downstream market (i.e., the market for the sale to final consumers), the HCC will also consider the local competition.
- The application of case law criteria to companies with a dominant position should take into account the characteristics of the specific sector and, in particular, the lack of intense competition for certain premium products (“Fast Moving Consumer Goods (FMCG)”) or the central role of certain markets or electronic platforms that may have a “gatekeeper” role in some markets and may distribute private label products.

The HCC also moved forward with the other two sector inquiries launched in 2020. The interim report for the inquiry into e-commerce was published in August 2021 (see [here](#) for an executive summary). A public consultation took place from 2 August to 15 September 2021; the final report is scheduled to be published soon. As for the inquiry into the fintech sector, the interim report was published in December 2021 (the executive summary, available only in Greek for now, is available [here](#)). The public consultation is ongoing; the final report is expected to be published in mid-2022.

In addition to the pending inquiries from last year, the HCC launched two new ones in 2021. The first one focuses on the [health services](#) sector. Among others, the HCC will examine the extent to

which the concentration of the industry produces a symmetry of market shares, thus facilitating coordinated or non-coordinated effects resulting from the market structure. Other issues to be explored are the possible strong bargaining power of specific market players, the possibility of tacit coordination of health service providers in adjacent markets (e.g., technologies, pharmaceuticals, healthcare material), and the extent to which access to patient and/or physician databases can affect the above relationships and practices. The interim report is scheduled for July 2022.

The second sector inquiry will look into the [waste management](#) sector. The inquiry aims to clarify any potential competition issues in markets of this industry, such as:

- the bargaining power that develops in each ecosystem of alternative management of a specific stream, where the Collective Alternative Management System (CMS)/ Individual Alternative Management System can function as a bilateral or multilateral platform;
- the structural links, both vertical and horizontal, between players in waste management and recycling and the extent to which they can influence competition variables; as well as
- the extent to which specific practices can be justified due to effectiveness and public interest objectives, such as sustainable development, and how this can be justified based on different competition law instruments.

The interim report for this sector inquiry is expected to be published in February 2022.

Regulatory interventions (market investigations): Remedies for the press distribution sector and focus on common ownership

The HCC also launched two regulatory interventions (market investigations) in late 2020/2021.

Taking into account the conclusions in its Opinion 39/2019 on the functioning of competition in the national market for press distribution (which we presented [last year](#)), the HCC initiated a market investigation into this sector in late 2020.

According to the [first interim report](#), the structure of the single press distribution agency in Greece, with the participation of publishers-shareholders in its share capital, may create incentives for potential coordination and possible unilateral behaviour benefiting the publishers-shareholders over rival shareholders. Following a public consultation, the HCC issued a [second interim report](#), which proposed remedies to restore effective competition in the sector. The remedies examined in the report include changes in the corporate governance of the sole press distribution agency, Chinese walls, policies to avoid conflicts of interests, collective bargaining between publishers and/or kiosks and the press distribution agency, and natural monopoly regulation.

A second public consultation ended in early November 2021. Taking account of the results of this consultation, the HCC will issue its Final Report.

In addition, the HCC launched a market investigation into the construction sector in January 2021. Key triggering factors for this intervention were:

- the importance of the construction sector for the Greek economy;
- the interconnection of construction activity with other industrial sectors and commercial activities; as well as

- the recent structural change of the sector due to the gradual entry of investment vehicles through the simultaneous acquisition of minority holdings in large competing construction companies.

The HCC [interim report](#) found a significant concentration of the construction industry over the last decade, with increasing barriers to entry in some of its sub-markets. In addition, it considered that the common ownership of the same fund in the two largest competing construction companies might lead to non-coordinated unilateral effects (reducing competition incentives), as well as coordinated effects (concerted practices).

Working in close cooperation with academic experts on common ownership issues, the HCC conducted a quantitative analysis to assess the effects on effective competition that may have been caused by the common participation in/ownership of the share capital of the two largest construction companies by the same investment fund in the public works market.

The public consultation on the first interim report ended in May 2021; the publication of the second interim report is pending.

Competition Law & Sustainability Initiative

Following the HCC's publication of a Staff Discussion Paper on Sustainability Issues and Competition Law and the organisation of a successful international research conference on this subject last year, the HCC and the Netherlands Authority for Consumers and Markets jointly commissioned a technical report to clarify the methodological issues raised by the introduction of sustainable development-related indicators and analyses into competition law and economics.

The [Technical Report on Sustainability and Competition](#) was published in January 2021, a month before the European Commission's conference on Competition Policy Contributing to the European Green Deal. The Technical Report focuses on concepts and tools mainly drawn from environmental economics in order to quantify the broader social benefits from environmental sustainability to a green and circular economy in the context of promoting effective competition.

The Technical Report examines a theoretical cartel case between rival companies aiming at promoting environmentally friendly practices. It also discusses various methods to measure consumer welfare changes associated with reduced environmental sustainability/environmental damages under the concept of total economic value, which encompasses the overall welfare gains attributable to improvements in environmental quality.

In addition, the HCC and the Netherlands Authority for Consumers and Markets are jointly leading a related initiative of the Horizontals and Abuse Working Group of the European Competition Network ("ECN"). This involves the coordination of a group of EU Member States, including France, Germany, Finland, Hungary, Luxembourg and Ireland and representatives of the European Commission, "with a view to drafting an outline of the participants' views on a range of issues raised by the integration of the sustainability concept in economics and competition law", as noted in the HCC's last [newsletter](#).

Sustainability Sandbox

In the context of its Competition Law & Sustainability Initiative, the HCC is in the process of setting up a [Sustainability Sandbox](#). This will be a supervised environment where businesses can experiment with innovative products, services, business models, and delivery mechanisms that contribute significantly to sustainable development goals, without immediately incurring all the normal regulatory consequences of engaging in such activity.

Although the operation of sandboxes is well-established in other sectors (e.g., in fintech), this is an innovative project for competition policy and enforcement. For that reason, no direct comparison with actions in other jurisdictions is possible; it is expected that the Sustainability Sandbox will undergo a sui generis development and evaluation.

In particular, the Sustainability Sandbox entails the creation of a mechanism for the submission to the HCC of business proposals aimed at creating or enhancing conditions for sustainable development and which, in order to materialise, necessitate greater legal certainty in relation to competition law enforcement. These proposals will need to comply with certain specifications and guidelines. The HCC will then examine them based on the existing competition law framework and certain Key Performance Indicators (“KPIs”) related to sustainable development.

Following this examination, the HCC may issue, in certain cases, a “no-enforcement action letter” to interested parties. Depending on the possible anti-competitive effects, a market test and/or specific commitments by the parties will also be possible. On the basis of this letter, parties will be able to implement their proposal under the supervision of the HCC within a specific time frame. As [noted](#) by the HCC, this process is similar to the [mechanism](#) used by the European Commission for accepting cooperation for reasons of public health due to the COVID-19 pandemic.

The Sustainability Sandbox will operate as a digital platform connected to the HCC website. Companies will exit the supervised sandbox environment when the proposal’s implementation is completed, in accordance with the HCC’s directions.

Computational Competition Law and Economics

The increasing use of computational tools (big data, artificial intelligence, machine learning/deep learning) in competition law enforcement has been a major recent development. Several competition authorities already use these tools for investigating collusive conduct. As noted by the HCC, important [efforts](#) have also been made to develop operational screening tools for other anti-competitive practices, such as excessive and exclusionary pricing.

In that context, the HCC designed and developed its own innovative data collection tool, the “HCC Data Analytics and Economic Intelligence Platform”. The new platform aims at easy and efficient data collection, processing, display and analysis, and at developing screens for multiple market sectors. Its main advantage is that it creates a permanent infrastructure for future HCC investigations, as it permanently connects existing databases, updated in real-time, with a central platform, which is also configured to detect anti-competitive practices through advanced screening. The platform was [presented](#) to the public in April 2021 and has already been used by the HCC for various investigations.

The platform has also served as a basis for the HCC’s subsequent scientific work on computational methods and computational economics in competition law enforcement. In that context, the HCC

published an inception report on “[Computational Competition Law and Economics](#)”. This report, directed by the President of the HCC, is the result of the cooperation of a team of scientists acting as external experts for the HCC and a team of the BRICS Competition Law and Policy Centre. It examines the impact of the use of big data, artificial intelligence, machine learning and deep learning in competition law enforcement.

The publication of this report was followed by an international [conference](#) in May 2021, which discussed related legal and policy issues.

New whistleblowing system

In March 2021, the HCC [introduced](#) a secure digital environment for the reporting/submission of anonymous information. This new digital service offers complete security for those who want to anonymously report information regarding anti-competitive practices, through an accredited company located abroad. The information is stored in a secure environment without the registration of the user ID, and the HCC receives only the text of the submission. This follows the standards of the respective digital tools (whistleblowing) used by the European Commission, as well as other competition authorities in the EU (e.g., Germany, Sweden, Denmark).

Draft amendments to the Greek Competition Act: new bill to be introduced in Parliament

As [reported](#) last year, a Legislative Committee was set up in early 2020, entrusted with the review and proposal of legislative amendments to the Greek Competition Act (Law 3959/2011), in order to transpose Directives (EU) 2019/1 (ECN+ Directive) and (EU) 2019/633 and modernise Greek competition law.

The draft bill prepared by the Committee was published for public consultation on 6 August 2021. An updated version, taking account of the feedback provided in the context of the consultation, is expected to be introduced in Parliament soon.

To make sure you do not miss out on regular updates from the Kluwer Competition Law Blog, please subscribe [here](#).

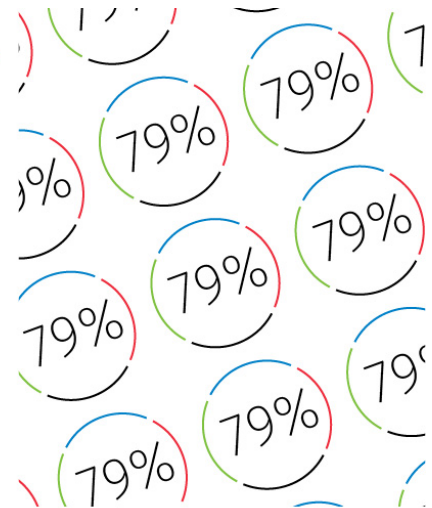
Kluwer Competition Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers are coping with increased volume & complexity of information. Kluwer Competition Law enables you to make more informed decisions, more quickly from every preferred location. Are you, as a competition lawyer, ready for the future?

Learn how **Kluwer Competition Law** can support you.

79% of the lawyers experience significant impact on their work as they are coping with increased volume & complexity of information.

Discover how Kluwer Competition Law can help you.
Speed, Accuracy & Superior advice all in one.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Monday, January 17th, 2022 at 8:00 am and is filed under [Competition Law 2021, Greece](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.