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

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GREECE

-- 2005 --

This report is submitted by the Greek Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 8-9 June 2006.

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

1. Law 3351/2005 was enacted in August 2005 and amended existing Law 703/77, on “The Control of Monopolies and Oligopolies and the Protection of Free Competition”. The most important amendments which aimed at aligning the national antitrust legislation with the provisions of Regulation (EC) 1/2003 are the following:

- two new types of decisions were introduced: decisions accepting commitments and decisions imposing structural measures;
- the powers of investigation of the Hellenic Competition Commission (HCC) were significantly enhanced;
- the legal basis for a leniency program was introduced¹;
- the institution of “amicus curiae” was introduced in order to enhance co-operation with national courts.

2. Further amendments include the simplification of the merger control procedure. More precisely, the market share criterion for the prior notification of a concentration was abolished. The distinction between co-operative and concentrative joint ventures was also abolished². A two phase system for the examination of the notified concentrations was introduced³.

3. In addition, a new provision (article 5) introduced the HCC’s power of regulatory intervention in sectors of the economy.

4. With regard to the composition of the HCC, Law 3351 increased the members of the Commission from 9 to 11. In addition, in order to enhance transparency, it provided that the HCC’s members’ 3-year term is only renewable once.

¹ Addition of a new par. 4 to art. 9 of law 703/77 by virtue of art.16 par. 3 of law 3373/2005, which stipulates that the HCC shall issue a decision determining the terms and conditions for immunity from fines or reduction of fines imposed to undertakings which contribute to the investigation regarding infringements of the antitrust legislation. The submission of the undertaking to the leniency program exempts the natural persons concerned from the ambit of criminal prosecution. The programme does not apply as regards undertakings abusing their dominant position.

² Thus, all full function joint ventures are considered to be concentrations subject to merger control provisions.

³ According to art. 4d para. 3, 4 and 6 as amended, notified concentrations that do not raise serious doubts as to their potential to seriously restrict competition in the individual markets concerned, the HCC issues a relevant decision allowing the concentration within 1 month from the notification. Where the notified concentration raises serious doubts as to its compatibility with the requirements of the functioning of free competition, the HCC initiates the procedure of full investigation the case. Within 90 days from the notification of the concentration, the HCC issues a clearance or prohibition decision. After the expiration of the 90 days long time-limits, if a decision prohibiting the concentration has not been issued, the concentration shall be presumed to have been approved by the HCC.

5. Finally, articles 2a (prohibited abuse of a relationship economic dependence)⁴ and 4a (post merger notification of smaller scale concentrations)⁵ were re-introduced⁶.

2. Enforcement of competition law and policies

6. During the reporting period, 21 cases were examined by the Hellenic Competition Commission, which can be classified as follows:

TABLE 1
Cases Examined in 2005
by the Hellenic Competition Commission

Mergers	14
Ex officio investigations	2
Complaints	1
Provisional Measures	3
Miscellaneous	1
Total	21

7. The HCC issued decisions concerning the sectors of retailers and car distributors, as well as liberal professions (dentists) that attracted wide media coverage and gained public support (see below, 3.2).

8. Dawn raids and ex officio investigations by the General Directorate significantly increased in the reporting period, especially in problematic sectors of the national economy.

3. Main cases

3.1 Mergers

- *Decision Nr. 276/IV/2005 (Aluminium of Greece S.A. / Mitilineos Group of Companies, Blusco Holdings Limited and Feltex Holdings Limited)*

9. The notified transaction involved the acquisition of 53% of the total equity capital of the company Aluminium of Greece S.A by the companies Mitilineos Group of Companies, Blusco Holdings Limited and Feltex Holdings Limited. The Mitilineos Group of Companies is operating in the area of international trade of non-ferocious metals, metals, ferocious construction. The company Blusco Holdings Limited is controlled by E. Mitilineos and Feltex Holdings Limited is controlled by G. Mitilineos. Both

⁴ Art. 2a governs relationships of economic dependence between one or more undertakings and a customer or supplier, where the customer or supplier has no equivalent alternative source of supply or demand of the product or service in question. Under those circumstances, it constitutes an abuse of the relationship of economic dependence to impose arbitrary trading conditions, or discriminate, or unexpectedly and unjustifiably terminate the long-lasting commercial relationship.

⁵ Post-merger filing was introduced in order to enable the HCC to acquire information on the development of market structures.

⁶ These articles had been abolished by the amendment of Law 703/77 in August 2000.

companies are operating in the area of publishing. The acquired company Aluminium of Greece S.A. belongs to the Group of Companies Alcan, which operates in the production and trade of alumina and aluminum. The Group of Companies Alcan is one of the five most important producers of aluminum in the world market with market share of 8.4%.

10. After the acquisition, the Mitilineos Group of Companies would acquire the 53% of the equity capital of the acquired company Aluminium of Greece S.A., while 47% would remain to other investors.

11. The relevant markets for this acquisition were those in which the Aluminium of Greece S.A. and its subsidiary Delphi Distomon S.A. operate i.e. bauxite, alumina, aluminum. For the acquisition, Greece was considered as the relevant geographic market, since the participating companies can sell their products under homogeneous conditions in the whole country.

12. The structure of the bauxite market in Greece is oligopolistic, as only three companies operate. Delphi Distomon S.A. channels all its production to Aluminium of Greece S.A. covering 50% of its demand. Approximately 72% of the market is covered by domestic production, while the remaining 28% is covered by imports. Considerable proportion of the production of Aluminium of Greece S.A. is channeled to cover its own demand. For aluminium in the form of pile, three companies operate which have 91% of the relevant market. For aluminium in the form of sow, the acquired company is the sole producer in the domestic relevant market. The acquired company has a small percentage of the market (3.52%) while the rest 96.5% is covered by imports.

13. The HCC cleared the notified transaction, taking mainly into consideration the following: The vast quantities of aluminum imports create competitive pressures on the domestic suppliers as far as the price and the quality of the product are concerned. In the relevant market, only big groups of companies which operate at international level, manage to enter the market. In addition, the specific markets of the pile and sow form of aluminum, are characterized by zero cost in distribution network, relevant low cost of establishment, non-existence of legal restrictions and non-existence of long term exclusive distribution contracts.

- *Decision Nr. 279/IV/2005 (Carpentras Corporation / Procter and Gamble)*

14. The Procter and Gamble Company notified the acquisition of the assets (property rights, intellectual property rights, titles, patents and applications, trade marks, clientele, advertisement and promotion brochures) of Carpentras Corporation.

15. The Procter and Gamble Company is a manufacturer of consumer goods. In the Greek market its subsidiary Procter and Gamble Hellas S.A. is the representative and sole distributor of the products of the mother company. Carpentras Corporation has been established in Panama. The company Rolco Vianil S.A. was the guarantor and its main activity was the production of detergents and hygienic products. Rolco Vianil S.A. had an agreement with Carpentras Corporation to use its trade marks in the Greek market.

16. The relevant markets in this case are those products with the trade-marks of Procter and Gamble: (a) Detergent for washing cloths by hand, (b) Detergent for washing cloths by machine, (c) Detergent for washing kitchen utensils by hand, (d) Detergent for washing kitchen utensils by machine, (e) Chlorine, (f) Cloths Softener, (g) House Detergents (h) Soaps. Greece was considered as the relevant geographic market, since the participating companies could sell their products under homogeneous conditions in the whole country.

17. The market for domestic detergents has an oligopolistic structure and the most important companies are: Unilever Hellas S.A., Henkel Hellas S.A., Colgate Palmolive Hellas S.A., Eureka Hellas S.A., Reckitt Mpenkizer Hellas Chemicals S.A. Lamda Detergents S.A.

18. The HCC cleared the notified transaction, taking mainly into consideration the following: the introduction of new products in the relevant markets, the non-stability of the competitors' market shares, the high productive capacity of competitive undertakings, the non-existence of factual or legal barriers to entry and the high countervailing buyer power of the merging undertakings' customers.

- *Decision Nr. 293/IV/2005 (Petroventure Holdings Limited / Motor Oil Holdings S.A.)*

19. The HCC cleared the acquisition of the remaining 50% of the equity capital of Petroventure Holdings Limited by Motor Oil Holdings S.A.. With the acquisition, Motor Oil Holdings S.A. will control 100% of the equity of Petroventure Holdings Limited. The main activity of Motor Oil Holdings S.A. is oil refinery and processing, wholesale and retail trade. Petroventure Holdings Limited is an equity company having 51% of the equity capital of Motor Oil Hellas Refinery Corinthos S.A. The relevant markets are in this case: (a) Refinery Market (b) Wholesale Market (c) Retail Market. Greece was considered as the relevant geographic market, since the participating companies can sell their products under homogeneous conditions in the whole country. In the oil refinery market there are two main companies: Hellenic Petroleum S.A. and Motor Oil Hellas Refinery Corinthos S.A. The market share of Motor Oil Hellas Refinery Corinthos S.A for oil refinery products is 22,2%, imports (directly from wholesale companies) have share of 4%, while the remaining market share is covered by Hellenic Petroleum S.A. In the wholesale market, the share of Avin Oil Company (100% subsidiary of Motor Oil Hellas Refinery Corinthos S.A) for all products is 8,93%.

3.2 Horizontal Agreements

- *Decisions Nr. 277 and 284/IV/2005 («SESME / Super Markets»)*

20. The case concerned an ex officio investigation that involved the Greek Supermarkets' Association ("SESME") as well as the following supermarkets active in Greece: Veropoulos SA, ATLANTIC SA, Vassilopoulos SA, METRO SA, Massoutis SA, Sklavenitis SA and TROFINO SA.

21. According to the facts of the case, in 2001, the Greek government introduced a law, which prohibited retail sales below cost. In addition, the Government entered a "gentlemen's agreement" with the retailers and the suppliers that the retail prices should not be increased following the adoption of the law.

22. With a view of applying the law and the gentlemen's agreement, SESME's Managing Board decided to draw up a list in order to set the amount of discounts that should be applied by the suppliers. This fixed amount of discount, which was set for each supplier separately, was to be incorporated in the invoices that the suppliers issued for their sales to the grocery retailers.

23. SESME's managing board proceeded to the compilation of the list in which unilaterally set the discount percentage that should be provided by each supplier to all supermarkets- members of SESME. Then, SESME sent the list to all of its members and the suppliers and asked for its implementation. SESME sought the uniform application of the list, meaning that each supplier was expected to provide the same discount to all the retailers. Additionally, SESME asked its members not to accept any invoices from the suppliers that do not incorporate the fixed discount.

24. Furthermore, seven of the biggest Greek supermarkets (some of them were also members of SESME's Managing Board) arranged and participated in two meetings in February and April 2004 respectively. Major suppliers were also invited to participate in these meetings. The topics discussed in the meetings were: First, how to cope with competition from big multinational supermarkets (namely Carrefour), which according to them, sell goods below cost and second, how to cope with competition from big multinational discount stores (namely Lidl and Plus), which lately appear to gain market share in the Greek market. During the two meetings, the representatives of the seven supermarkets (with a total market share in the Greek market above 50%), took a common view asking the suppliers not to supply with goods the above-mentioned multinational supermarkets and discount stores (which were not invited to the meeting). The retailers also threatened to exclude from their selves any supplier who would not cooperate.

25. The relevant product market is that of the retailing of daily consumer goods, including fresh and dry food as well as non-food items. The relevant market is defined to be a market for "a basket of daily consumer goods sold in a supermarket environment". It is also established that branded and private label consumer products can compete with each other at the retail level and are not considered to belong to separate markets. The undertakings concerned are active in Greece, which is considered to be the directly affected market.

26. In accordance with the relevant jurisprudence of the CFI and the Court of Justice, the Hellenic Competition Commission established that the recommendation issued by SESME constitutes a decision by an association of undertakings which distorts competition within the relevant market and is therefore prohibited by article 81 para. 1 EC Treaty and by article 1 Para 1 of law 7037/1977 (national antitrust legislation).

27. In particular, the Hellenic Competition Commission took the view that the recommendation issued by SESME, which set a fixed amount of discount for each supplier amounted to a decision fixing minimum prices. Such a decision does not allow consumers to benefit from prices lower than the fixed minimum prices. Further, such a decision does not allow retailers to freely negotiate any rebates with the suppliers and to set prices on the basis of their own operating costs, profits or any other parameters of their capital structure. As a result, SESME's list leads to the "reward" of supermarkets, which are not willing to compete in the relevant market and the "punishment" of supermarkets, which would like to pass on to the consumers any benefit arising from the improvement of the capital structure of their business.

28. The Hellenic Competition Commission rejected the parties' argument that the list was drawn up in order to conform to the law that prohibited sales below cost. It did not also accept that the gentlemen's agreement with Government was binding so as to result in the unilateral fixing of prices by SESME. The retailers had the discretion to decide in which way could avoid the increase of prices following the introduction of the law without proceeding to the uniform fixing of minimum prices.

29. In addition, the Hellenic Competition Commission established that the meetings of seven retailers led to the exchange of information about their commercial policy, to the adoption of a common policy regarding the discount products and the cooperation among the participants as to the application of the above common policy. Consequently, the Hellenic Competition Commission established the existence of coordination among the participant retailers, which aimed to distort and restrict competition in the relevant market.

30. The Hellenic Competition Commission rejected parties' argument that the participants simply intended to exchange general views in relation to the relevant market, as the meetings were not organized by the respective associations of the retailers and the suppliers. In addition, CARREFOUR was not invited to participate. Furthermore, witnesses' statements (for example, testimonies by suppliers that were invited

to participate) confirm that the participants were annoyed by the growth of the discount stores such as Lidl and tried to compel suppliers not to supply discount stores.

31. The Hellenic Competition Commission took the view that the above-mentioned practices may have an effect on trade between Member States. The anticompetitive practices applied by SESME and the supermarkets that participated in the meetings concerned the whole Greek territory. In addition, the suppliers that were asked to uniformly apply the discount were also major importers in the Greek market. The Hellenic Competition Commission therefore found that the anticompetitive practices could lead to the distortion of trade patterns in the grocery retail sector.

32. Consequently, the Hellenic Competition Commission (in its first decision Nr. 277/IV/2005) concluded that SESME's recommendation constitutes a decision that infringed article 1 paragraph 1 of law 703/1977 and article 81 paragraph 1 EC Treaty. It also established the existence of a concerted practice among the participants in the two meetings and therefore the infringement of article 1 paragraph 1 of law 703/1977 and article 81 paragraph 1 EC Treaty.

33. With its second decision Nr. 284/IV/2005, the HCC assessed the gravity of the established infringements and imposed the fines, as following:

- a. The Hellenic Competition Commission considered the practice applied by SESME to be a serious infringement. In fixing the amount of the fine, the Hellenic Competition Commission took also into account the value and the size of the market in which the infringement took place as well as the duration of the infringement (the price list was applied by supermarkets for at least six months). Since the illegal practice applied by SESME related to the activities of its members and its members took advantage of the illegal practice, the Hellenic Competition Commission took into account the total turnover of each of SESME's members in order to fix the amount of fine imposed on SESME. As a result, the Hellenic Competition Commission imposed a €15 million euros fine on SESME (that is 0.28% of the total turnover of SESME's members).
- b. regarding the existence of a concerted practice established among the seven retailers, the Hellenic Competition Commission took into account the gravity of the infringement and the fact that the infringement had recently been initiated without having any actual impact on the relevant market. As a result, the Hellenic Competition Commission imposed fines which amount to 0.08% of the total turnover of each participant except for TROFINO for which the fine amounts to 0.03% of its total turnover.

34. Both decisions were upheld by the Athens Court of Appeals that only reduced the imposed fines from 15 million euros to 3 million on SESME, and to 120.000 euros on each of the 5 retailers, i.e. Veropoulos SA, ATLANTIC SA, METRO SA, Massoutis SA, Sklavenitis SA, except for TROFINO that was relieved of any fine, while the appeal of one retailer, i.e. Vassilopoulos SA, is still pending.

- *Decision Nr. 292/IV/2005 (Hellenic Dentists' Federation and Dentists' Associations)*

35. The case concerned an ex officio investigation of an alleged infringement of article 1 para. 1 of Law 703/77, by the Hellenic Dentists' Federation (HDF) and the Dentists' Associations of Attica, Piraeus, Achaia, Heraklion, Serres, Magnesia and Thessalonica and in particular the fixing of minimum fees for the provision of dental services.

36. The Dentists' Associations are public law legal entities. Members of the Dentists' Associations are all dentists who have their office location and provide their services within the jurisdiction of each of

the above associations. The Dentists' Associations are supervised and coordinated by HDF. According to national legislation (Law 1565/1939), the Minister of Health is competent for fixing the minimum dentists' fees. The table of minimum fees for the provision of dental services is approved by virtue of Presidential Decree upon the opinion of the Central Health Council and HDF (P.D. 98/1993).

37. Relevant market is the market for the provision of dental services. With regard to the dentists' associations, the relevant geographic market covers each association's region of jurisdiction. As far as the HDF is concerned the relevant geographic market covers entire the Greek state.

38. The HCC concluded that the dentists are undertakings within the meaning of article 1 of Law 703/77. It furthermore ruled that a professional body acts as an association of undertakings within the meaning of art. 1 of Law 703/77, when it adopts measures concerning the business (economic) behavior of its members, regardless of whether or not it is governed by public law provisions (see also, ECJ judgment Wouters).

39. More precisely the HCC ruled that HDF and the Dentists' Associations constitute associations of undertakings within the meaning of art. 1 of law 703/77, whereas by deciding, fixing and issuing tables of minimum fees for their members, they adopted measures that concern their members' business behavior. The fact that the Greek public administration has not raised the minimum fees for the provision of dentists' services since 1993, does not constitute an adequate legal basis for the Dentists' Associations, so that the latter fix on a regular basis and on their own initiative the minimum fees of their members. Furthermore, the public administration hasn't delegated this regulatory competence to the Dentists' Associations.

40. In view thereof, the HCC obliged the accused parties to put an end to the infringement and to refrain from committing it in the future, to inform their members about the HCC's decision in writing, to erase the respective minimum fees tables in their websites, as well as to withdraw any printed material concerning the pricing policy of their members. The HCC also threatened to impose a penalty payment of 3.000 euros in case of continuation of the offence.

3.3 Vertical Agreements

- *Decision Nr. 288/IV/2005 («HYUNDAI Hellas» and «AUTODEAL Hellas»)*

41. The case concerned the complaints, according to article 24 para. 1 of the law 703/77, of a dealer against the Greek importers of Hyundai and KIA vehicles and of spare parts and accessories for those vehicles, «HYUNDAI Hellas» and «AUTODEAL Hellas» respectively, for restrictive practices in the relevant market of sales of Hyundai and KIA passenger cars in Greece contrary to article 1 of the above-mentioned law and article 81 EEC.

42. «HYUNDAI Hellas» and «AUTODEAL Hellas» have been appointed as sole importers in Greece for Hyundai and KIA vehicles respectively and distributed those vehicles through exclusive and selective delivery networks. They concluded oral distribution agreements with the dealers in the network.

43. The Hellenic Competition Commission found a number of measures and practices adopted by «HYUNDAI Hellas» and «AUTODEAL Hellas» to infringe article 1 of the above-mentioned law and article 81. The HCC found that the agency agreements concluded with the dealers are non-genuine agency agreements and consequently fall under articles 1 and 81, since the agents bear significant risks in relations to the oral contracts concluded on behalf of the importers and in relation to market-specific investments for that field of activity. Moreover the measures and practices adopted by «HYUNDAI Hellas» and «AUTODEAL Hellas» do not constitute unilateral conduct, that falls outside the scope of the prohibition contained in articles 1 para. 1 and 81 para. 1: on the contrary they form part of the contractual relations

which the importers maintain with the dealers in their selective distribution networks, since they were adopted by mutual agreement for the practical application of the oral dealership contracts.

44. «HYUNDAI Hellas» and «AUTODEAL Hellas» imposed on their dealers excessive quantitative sales targets on a monthly, bimonthly or tri-monthly basis, thus restricting appreciably inter-brand competition and cross supplies. These sales targets were not agreed on by the dealers and were not of indicative nature.

45. «HYUNDAI Hellas» and its dealers extended the dealership agreements to services other than motor vehicles and spare parts: the sale of motor vehicles was tied together with loans by banks which finance the purchase of a vehicle by an end-user. Sales targets of a non-indicative nature were imposed on dealers to that effect. «AUTODEAL Hellas» imposed accessories' resale prices on the dealers thus restricting their freedom to determine prices in accessories. Both «HYUNDAI Hellas» and «AUTODEAL Hellas» determined the fees charged by the dealers to end-users for the placement of accessories in motor vehicles. Finally «AUTODEAL Hellas» determined the fees charged by the dealers to end-users for all maintenance and repair services.

46. The HCC found that the agreements concluded by «HYUNDAI Hellas» and «AUTODEAL Hellas» with their dealers could affect trade between Member States since they cover the territory of a single Member State, Greece. Therefore article 81 is applicable.

47. In view of the above, the HCC by its ruling held that the abovementioned dealership agreements could not be exempted under Commission Regulation (EC) No 1475/1995 of 28 June 1995 on the application of Article 85 para. 3 of the Treaty to certain categories of motor vehicle distribution and servicing agreements and that the distribution networks of «HYUNDAI Hellas» and «AUTODEAL Hellas» are contrary to articles 1 and 81.

48. «HYUNDAI Hellas» received a fine of 1.025.515 Euro and «AUTODEAL Hellas» received a fine of 190.533 Euro for the infringement of article 1 of law 703/77 and of article 81 EEC.

4. Resources of the Hellenic Competition Commission

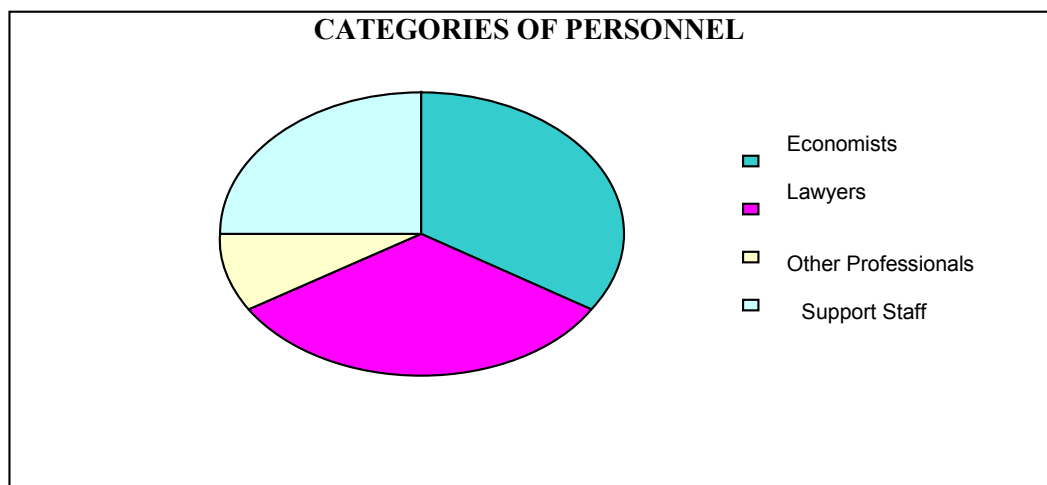
i) Annual Budget, Year 2005: 11 862 633,00 €

ii)

TABLE 2

**Directorate General of the Hellenic Competition Commission
Number of Employees, Year 2005**

Economists:	23
Lawyers:	22
Other Professionals:	6
Support Staff:	17
All Staff Combined:	68



(iii)

TABLE 3

**Directorate of the Hellenic Competition Commission
Human Resources Employed By Category, Year 2005**

Enforcement Against Anticompetitive Practices:	40
Merger Review and Enforcement:	5
Advocacy Efforts:	2

