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

**Global Forum on Competition**

**Challenges Faced by Small Agencies and those in Developing Economies**

**Contribution from Greece**

**-- Session III --**

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## *Challenges Faced by Small Agencies and those in Developing Economies: Enforcement*

-- Greece --

### **1. Co-operation with public prosecutors**

1. Article 43 of Law 3959/2011 (Competition Act) stipulates that when the Hellenic Competition Commission (HCC) finds that the provisions of Articles 1, 2 and 5 to 10 of the Competition Act or obligations imposed on undertakings in accordance with Article 11 of the Competition Act have been infringed, it shall report the infringement to the competent prosecution authority within no more than ten (10) days from issuing its decision.

2. Indeed, article 44 of the Competition Act imposes criminal sanctions on individuals in the following circumstances:

*1. Any person who executes an agreement, takes a decision or applies a concerted practice in breach of Article 1 of the Competition Act or Article 101 of the TFEU shall be punished by a fine between EUR fifteen thousand (15,000) and one hundred and fifty thousand (150,000). Any person who, in the capacity of Article 25(2)(c)<sup>1</sup>, acts in breach of Articles 5 to 10 on the preventive control of concentrations between undertakings or fails to apply decisions issued in accordance with Article 11(5) and (6) for the purpose of restoring effective competition in specific economic sectors, shall be subject to the same punishment. If the behavior referred to in the first sentence pertains to undertakings which are in actual or potential competition with each other, a term of imprisonment of at least two (2) years and a fine of between EUR one hundred thousand (100,000) and one million (1,000,000) shall be imposed.*

*2. Any person who abuses a dominant market position in breach of Article 2 of the Competition Act or Article 102 of the TFEU shall be punished by a fine of between EUR thirty thousand (30,000) and three hundred thousand (300,000)<sup>2</sup>.*

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<sup>1</sup> Liable for compliance with Articles 1, 2, 5 to 10 and 11(5) and (6) of the Competition Act and also Articles 101 and 102 of the Treaty on the Functioning of the European Union shall, in the case of individual undertakings, be the owners, in the case of civil and commercial companies and joint ventures, their managers and all the general partners, and in the specific case of public limited companies, the members of the board of directors and those persons responsible for implementing the relevant decisions. Designating another person as liable for the infringement of competition rules is prohibited and invalid. Regarding decisions of collective bodies of the undertaking taken by majority, only those voting in favor shall be liable.

<sup>2</sup> Pursuant to Article 44 para 4, persons who commit or are involved in an act falling under paragraphs 1 and 2 of the same Article shall go unpunished if they report it of their own volition along with evidence, prior of being examined in connection with their act, to the Public Prosecutor, the Competition Commission or any other competent authority. In any event, the material contribution of the above persons to the discovery of involvement in such practices, by adducing evidence to the authorities, is deemed to be a mitigating circumstance in accordance with

3. A punishment of at least six (6) months' imprisonment is imposed on:

a) Whoever obstructs or hampers, in any manner, investigations carried out under the provisions of the Competition Act by the competent bodies under Article 39 thereof, in particular by posing impediments or concealing evidence.

b) Whoever refuses or prevents provision of information to the HCC requested under Article 38 of the Competition Act.

c) Anyone who knowingly provides with false information or conceals evidence to the HCC, in breach of Articles 38 and 39 of the Competition Act.

d) Whoever refuses, after having been duly summoned by an HCC's official designated under par. 1, 2 & 3 of Article 39 of the Competition Act, or other body competent for the investigation, to make a sworn or unsworn statement before it, according to the provisions of subparagraph (c) of par. 1 of Article 39, as well as anyone who, during his statement, knowingly provides false information or denies or conceals any facts.

3. In cases evidence is requested by a public prosecutor and the HCC's decision has already been issued, access shall be given to all documents in the file.

4. Access to the file is usually granted after the announcement of the infringement from the HCC to the public prosecutor and his formal decision to initiate criminal proceedings. In this regard, confidentiality claims cannot be opposed to a public prosecutor who has ordered the disclosure of evidence<sup>3</sup>. In practice, the HCC transmits all the documents to the public prosecutor and expressly marks which documents contain confidential information and provides him also with non-confidential versions thereof, if available.

5. When evidence is requested by a public prosecutor and the infringement procedure is still pending before the HCC, the latter may validly claim that such disclosure may harm the outcome of its investigation.

6. With respect to criminal courts' disclosure requests in the course of criminal proceedings, the obligation of the HCC to provide the relevant evidence derives from the provisions of Article 35 par. 3 and Article 44 par. 5 of the Competition Act.

7. Furthermore, article 44 par. 5 of the Competition Act provides that when a possible infringement of Article 1 of the Act or 101 TFEU and/or Article 2 of the Act or 102 TFEU is being investigated in any manner either by the HCC or by another competent authority, the public prosecutor, following the preliminary investigation of the case, shall stay any further action until the HCC or any other competent authority issues its decision.

8. It should be mentioned that until now the prosecuting authorities rarely launch criminal proceedings against the individuals holding one of the capacities set out in

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Article 84 of the Penal Code and a reduced fine is imposed in accordance with Article 83 of the Penal Code.

<sup>3</sup> Except for documents referred to in Article 261 of Code of Criminal Procedure, i.e. diplomatic or military secrets pertaining to the state security or evidence covered by professional privilege, i.e. from persons who may not be summoned as witnesses to penal procedures (article 212 of Code of Criminal Procedure).

Article 25(2)(c) of the Competition Act for infringements of competition law, even in cases of hard core cartels.

9. Noteworthy examples of co-operation between the HCC and public prosecutors/criminal courts are the following cases:

10. **Banking cartel:** In 2011, the Magistrate's Court of Athens, upon order from the Public Prosecutor, requested from the HCC to submit the assessment report provided for in Decision 408/2008 (DIAS Payment System – interchange fees)<sup>4</sup> on the compliance of the involved parties<sup>5</sup> with the commitments undertaken. The HCC informed the Court on the progress of the aforementioned report and volunteered to send a copy of the final report upon request.

11. **Security services sector:** In 2012, the assistance of the prosecuting authorities was needed in the HCC's dawn-raid at the Hellenic Association of enterprises operating in the security services sector, since the latter refused to co-operate. The prosecutor's presence was required in order for the HCC to enter the Association's premises and proceed with the dawn-raid. During the period 2013 to 2015, the HCC was called to give testimonies to the Public Prosecutor of the Court of First Instance (criminal division) regarding the progress of an on-going investigation in the security services sector by the HCC. In 2015, the General Directorate for Competition drafted an internal report regarding evidence collected during its investigation in the security services sector which included indications of illegal transactions falling outside the ambit of the Competition Act. On the basis of the above report, the HCC then informed the prosecuting authorities accordingly.

12. **Foreign Language teaching services:** In 2013, the Magistrate's Court of Athens upon urgent order from the prosecutor of the Court of First Instance asked from the HCC to be informed of the compliance of the Hellenic Federation of Foreign Language School Owners to commitments undertaken in the relevant Decision 554/2012. In addition, the HCC was asked to submit evidence regarding the substance of the aforementioned case.

13. **Bid rigging cartel regarding waste disposal infrastructure:** In 2013, the HCC was called to give testimonies to the Public Prosecutor of the Court of First Instance (criminal division) regarding the progress of the ex-officio investigation and the estimated time of closure of proceedings and issuance of a Decision. In 2016, a) the above Court requested for information on the course of the investigations regarding the relevant case and the possible outcome of the HCC's investigation and b) enquired whether the HCC was still investigating the cases or it had already issued a decision. In 2017 the HCC designated one of its employees, upon request of the Court, in order to testify as a witness regarding the abovementioned cases.

14. **Petroleum products:** In 2013 and 2014, the HCC received three Court requests, following the relevant public prosecutors' orders, regarding two pending complaints concerning the economic sector of recycling of used mineral oils. More specifically, in 2013 the Court a) requested information on the course of the investigations regarding the first case, the existing evidence and a possible decision by the HCC and asked for the assignment of an HCC employee, in order for him to testify in front of the magistrate with regards to the abovementioned matters and b) inquired whether the HCC was still

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<sup>4</sup> The case concerned price fixing agreements regarding the level of interchange fees.

<sup>5</sup> The majority of banks established in the Greek territory and the Hellenic Bank Association.

investigating the second case or it had already published a decision. In 2014, the Court requested the transmission of any HCC decisions issued on the abovementioned cases.

15. **Medical Equipment:** During the period 2013-2017 there have been requests by public prosecutors for the provision of information concerning an ongoing ex-officio investigation in the market of haemodialysis filters as well as the estimated timeframe for the HCC's decision.

16. **Infrastructure sector:** In 2014, several public prosecutors requested the disclosure of documents collected by the HCC in its ex-officio investigation in the market of tenders for consulting services, engineering and management of projects in the infrastructure sector.

17. **Driving schools:** In 2014 and 2015, the HCC received three Court requests, following the relevant public prosecutors' orders, regarding a case, on which a decision had been previously issued by the HCC (Decision 571/2013). The first request concerned the provision of information on the participation of a specific trade association in the infringement, whereas the other two requests concerned the provision of copies of documents of the case file.

18. **Beer Market:** In 2016, the Magistrate's Court of Athens upon urgent order from the prosecutor of the Court of First Instance required from the HCC to submit evidence that was used in the case which led to the adoption of Decision 590/2014 (abuse of dominance in the beer distribution market). Subsequently, the HCC was asked to provide clarifications to the prosecutor of the Court of First Instance on issues related with the substance of the aforementioned case.

19. **Cruise services market:** In 2016, the HCC received a Court request, following the relevant public prosecutor's order, concerning the provision of information on the course of the investigations regarding a pending complaint regarding the cruise services market.

20. **Baby milk sector:** In 2012, the assistance of the prosecuting authorities was requested in the HCC's dawn-raid at the Pharmacists Association of Achaia<sup>6</sup>, operating in the pharmacists sector, since the latter refused to co-operate. The prosecutor's presence was required in order for the HCC to proceed with the dawn-raid at the Association's premises. The HCC requested the assistance of the Prosecutor of Patras because the President of the Pharmacists Association obstructed the investigation claiming that the Association was not an undertaking under competition law but a trade union.

21. **Food retail sector:** In 2016 and 2017 the HCC received Court requests, following the relevant public prosecutors' orders, regarding pending complaints in the food retail sector. In particular, in 2016, the Court a) requested for information on the course of the investigations regarding the relevant case and the possible outcome of the HCC's

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<sup>6</sup> The case concerned the efforts of the Association together with pharmaceutical warehouses – wholesalers active in the area of Western Greece to collectively limit and /or control the supply of infant milk formulas in their areas of activity, notably by boycotting those producers of baby milk that decided – following the recent abrogation of the Ministerial Decision Y1-47815/2008 requiring the selling of formulas for infants under the age of 6 months solely in pharmacies – to supply their products also through the retail channel (in parallel with the pharmacy channel). By its Opinion 12/2011, the HCC had unanimously proposed the abrogation of paragraph 2 of Article 2 of the above Ministerial Decision, and in particular for those of such products which are available without prescription.

investigation and b) inquired whether the HCC was still investigating the cases or had already issued a decision. In 2017, the HCC designated one of its employees, upon request of the Court, in order to testify on the abovementioned matters.

22. **Cement market:** In 2014 and 2015 the HCC received Court requests for information, following the relevant public prosecutors' orders, concerning the HCC's then pending Opinion on the production, certification, distribution and sale of cement (bulk and packaged). The HCC informed the Court on the case progress and in 2015 transmitted a copy of the published Opinion.

23. **Book sector:** In 2015 the Magistrate's Court of Athens, pursuant to an urgent order by the Public Prosecutor, requested that the HCC submit evidence from its file concerning Decision 455/2009 (collective abuse of dominance in the book distribution wholesale and retail market). Furthermore, the HCC designated one of its employees, upon request of the Court, in order to testify on the abovementioned case.

## 2. CO-OPERATION WITH SECTORAL REGULATORS

24. According to Article 24 of the Competition Act, the HCC co-operates with regulatory or other authorities, which monitor specific sectors of the national economy and assists such authorities, upon request, on matters of application of Articles 1 and 2 of the Competition Act and Articles 101 and 102 of the TFEU in the relevant sectors. The HCC may also request the assistance of the above authorities in cases where it retains authority to implement the above provisions in such specific sectors.

### 2.1. Co-operation with the Hellenic Telecommunications & Post Commission (EETT)

25. EETT is the competent national regulatory authority which enforces articles 101 and 102 TFEU (as well as their equivalent provisions of the Competition Act, articles 1 and 2 of Law 3959/2011) in the telecoms sector.

26. Since 2014, more than 70 letters of complaint, originally addressed to the HCC, were forwarded to EETT, as they referred to matters that fell under the authority of the latter.

27. In 2016, a series of informal meetings took place concerning an ongoing infringement investigation by EETT, in which the HCC's staff offered their expertise by indicating the investigative measures that EETT should undertake in order to gather the necessary evidence.

### 2.2. Co-operation with the Regulatory Authority for Energy (RAE)

28. In the energy sector, the HCC is the competent authority to impose sanctions for cartels and abuse of dominance, whereas RAE is competent for all regulatory matters, the granting of operation licenses and the imposition of fines for violation of regulatory obligations by undertakings active in the above sector.

29. In an abuse of dominance case (Decision 551/2012), DEPA, the state-owned dominant gas supplier, was charged of infringing art 2 of the Competition Act and 102 TFEU, by way of foreclosing its clients and competitors from accessing the gas network and imposing de facto exclusivity contracts, thus preventing clients from purchasing gas

from other suppliers. DEPA offered commitments that were accepted by the HCC. These commitments aimed to speed up the liberalisation of the Greek gas supply market and included the unbundling of gas supply and gas transportation services, as well as provisions to increase customer mobility, encourage wholesaler entry and increase liquidity in the retail level.

30. In this context, a gas release - electronic auction system was introduced, whereby DEPA committed to auction each year 10% of its yearly gas supply to retailers and customers (amendment: currently 16%, 20% by 2020). Since the above gas release program was an innovation for the Greek gas supply market, several reviews and renewals<sup>7</sup> were needed, in order to promote a more efficient functioning of the electronic auctions. In a constantly changing regulatory framework, the abovementioned reviews and renewals were always an outcome of market tests and close collaboration and opinions exchange between HCC and RAE, in the form of meetings, teleconferences and the participation of RAE representatives in the HCC's plenary sessions. The commitments are still in place until 2022, therefore the HCC shall continue to co-operate closely with RAE for their effective implementation.

### **2.3. Co-operation with the National Audiovisual Council (ESR)**

31. Under the Competition Act the HCC is the competent authority to impose sanctions for cartels and abuse of dominance in the media sector and also under Law 3592/2007 to examine mergers in the same sector, whereas the ESR is the competent authority to grant operation licenses to undertakings active in the above sector.

32. Since their competences are clearly distinct, the HCC and the ESR did not have the occasion to co-operate officially on any cases, until very recently. More specifically, the HCC has requested the opinion of ESR regarding the definition of "information media" in order to define the relevant services market for the purpose of approving a merger in the audiovisual sector (acquisition of a TV channel).

### **2.4. Co-operation with the National Independent Authority for Public Contracts (EAADHSY)**

33. The HCC has, on several occasions, transmitted complaints concerning alleged infringements of bidding procedures in public tenders to the EAADHSY, which is the competent authority for the enforcement of the relevant national and EU legislation on public contracts.

34. In 2014 the HCC was officially consulted by EAADHSY on the drafting of standard contracts for electronic tenders concerning the supply of pharmaceuticals to public hospitals.

### **2.5. Co-operation with the Hellenic Consumers' Ombudsman**

35. The Hellenic Consumers' Ombudsman was established by Law 3297/2004 and is competent for the enforcement of consumer protection law and the out-of-court dispute resolution of consumer related claims.

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<sup>7</sup> HCC has accepted revised commitments proposed by DEPA with its Decisions 589/2014, 596/2014 and 618/2015, 631/2016 (referring also to other commitments).

36. Since their competences are clearly distinct, the HCC and the Consumers' Ombudsman do co-operate officially on specific cases. However, on many occasions, letters of complaint originally addressed to the HCC are forwarded to the Consumers' Ombudsman, since they concern consumer claims.