

Unclassified

English - Or. English

29 May 2024

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

Procompetitive Industrial Policy – Note by Greece

12 June 2024

This document reproduces a written contribution from Greece submitted for Item 7 of the 143rd OECD Competition Committee meeting on 12-14 June 2024.

More documents related to this discussion can be found at
www.oecd.org/competition/pro-competitive-industrial-policy.htm

Antonio CAPOBIANCO
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

JT03544688

Greece

1. Introduction

1. The Hellenic Competition Commission has undertaken advocacy work focusing on the relationship between public policy and competition policy and following a recent legislative amendment the HCC is competent to decide in specific cases to take no action based on public interest considerations.
2. To the extent that industrial policy is part of a wider public policy which in turn is underpinned by public interest goals, this submission may contribute to the current discussion on a procompetitive industrial policy and the role that National Competition Authorities may play to support this.
3. In this context this note sets out the basic principles of advocacy work by the Hellenic Competition Commission to central government bodies and other public bodies in order to ensure the protection of competition in the context of public policy making.
4. Further, this note sets out the legislative provisions included in 2022 in national competition law whereby the Hellenic Competition Commission may issue no action letters on the basis of public interest goals, including business plans of companies focused on achieving sustainable development goals.

2. Advocacy work of the Hellenic Competition Commission

5. Industrial policy has not generally had a substantial impact on the enforcement activities of the Hellenic Competition Commission in recent years.
6. However wider public policy goals and their relationship with competition policy have been an important part of the advocacy work of our Agency.
7. This dates to the years of the First Economic Adjustment Program in Greece which included an overview of the legislation regulating the access to professions and their practice in Greece¹. Within this context of Greece's economic adjustment, the Greek Parliament voted Law 3919/2011 for the abolishment of certain restrictions on liberal professions. The HCC advocated for a broad and extensive pro-competitive reform of professional services. This extensive advocacy work highlighted the established role of the Hellenic Competition Commission in promoting the examination of effects on competition from the adoption of laws and regulations, especially within the framework of the economic adjustment programs applied in Greece during the economic crisis. Most of the proposals were adopted by the public administration and were introduced into national legislation.

¹ More on this in the written contribution from Greece submitted for the Working Party No. 2 on Competition and Regulation meeting on 10 June, 2024.

8. Further the HCC has recently issued a guide² providing information to central government bodies and other public bodies about the need to ensure the protection of competition in the context of public policy making³.

9. This advocacy work centers around the idea that since the underlying goal of State action is promoting and serving the public interest, the creation, protection and strengthening of competitive markets is part of the wider public interest as competitive markets encourage undertakings to be efficient and innovative, thereby creating more choice for consumers, reducing prices and improving the quality of goods and services and hence our country's economic performance.

10. Government authorities should therefore also consider the impact of a policy or intervention (including in this sense an industrial policy intervention) on competition and opt for the course of action that is likely to lead to an increased, rather than reduced, competition. This assessment becomes even more effective when it is carried out from the outset of public policy making, so that it is included in the early stages of policy design in order to prevent distortions of competition which are detrimental for consumer welfare as well as the economy and citizens in general.

11. In some cases, state interventions in the national economy, may affect market structure or competition between undertakings more than it is necessary to meet the public interest objectives they seek to pursue. Our advocacy work explains what the state's obligations are with regard to the enforcement of the rules on competition based on the constitutional protection of free competition, the duty of sincere cooperation between the EU and the member states and EU law and case law, presents the tools for analyzing the effects of a state measure on competition, as developed by the OECD and the EU and proposes best practices for the preparation and adoption of state measures and the conduct of consultations with market players.

12. The basic principles of this approach may apply when making industrial policy decisions and promote the complementary nature of these policies with a competition friendly policy. Naturally the policy goals that underpin industrial policy, the instruments used to realize these goals and the characteristics of the specific geographic area and economic activity concerned present a wide diversity and may include promoting the economic performance of public or private undertakings. The goals of competition law have traditionally been narrower and focus on making markets work. However both policies contribute to overall competitiveness and can complement each other : industrial policies have more chances of being successful when competition policies are successful and both policies may contribute to the competitiveness of the Hellenic economy.

² The Guide is partly based on the European Commission's guidelines, "Better regulation toolbox 2021, Chapter 3 - Identifying impacts in evaluations, fitness checks and impact assessments" and the respective OECD guidelines, "The OECD Competition Assessment Toolkit".

³ Guide issued in 2023 and available at <https://www.epant.gr/en/enimerosi/publications/guides/item/2688-odigos-gia-dimosies-politikes-en.html>

3. Public Interest Considerations when applying Competition Law⁴

13. Public interest considerations, which underpin industrial policy decisions, come into play when applying competition law based on a legislative amendment introduced in 2022, through the possibility that the HCC may issue a “no action letter”.

14. The no-action letter is an instrument for assessing business plans of undertakings operating in the Greek territory on grounds of public interest, particularly focused on achieving the sustainable development goals. According to the provisions of Article 37A of Law 3959/2011, one or more undertakings may submit a request for issuance of a no-action letter by the President of the HCC, stating that no action will be taken against a horizontal or vertical agreement for violation of Article 1 of Law 3959/2011 or article 101 TFEU or against a practice for violation of Article 2 of Law 3959/2011 and Article 102 TFEU.

15. Undertakings can submit a relevant request on public interest grounds, especially with regard to implementation of the sustainable development goals. The reference to the attainment of sustainable development goals is indicative and does not preclude the adoption of no-action letters in cases where other reasons of public interest are present.

16. In order to consider a submitted no-action letter request, the requesting undertakings must invoke and sufficiently substantiate the overriding grounds of public interest in the particular case, that genuine uncertainty arises due to a novel or difficult issue within the scope of competition law. A typical case is where an agreement or practice raises issues that have not previously been dealt with by the Hellenic Competition Commission, the European Commission, national or EU Courts. The parties may further claim that the agreement/practice is of major importance for the requesting undertakings, and the national economy, in general.

17. The sustainable development goals that the HCC intends to consider include, inter alia:

1. Environmental protection and limiting the negative effects of climate change, by reducing greenhouse gas emissions.
2. Achieving technological innovation aimed at meeting sustainable development goals (e.g., smart cities).
3. Protecting and enhancing the green transition of Small and medium-sized enterprises (SMEs).

18. Reasons relating to the public interest means further mean the reasons recognized as such in the case-law of national and EU Courts, including : public order; public security; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the health of animals; intellectual property; preservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

⁴ See further Article 37 A of L.3959/2011 “1. *The President of Competition Commission, following proposal of the Directorate General for Competition and at the request of the person concerned, may decide by letter on taking no-action with respect to article 1 of this law and/or article 101 of the Treaty of the Functioning of the European Union (TFEU) either because the conditions of article 1(1) of this law or article 101 TFEU are not met, or because the conditions of article 1(3) of this law or article 101 TFEU are met, on public interest grounds, such as the implementation of sustainable development objectives*” and Decision No. 789/2022 of the Hellenic Competition Commission, in relation to the provision of no-action letter.

19. Indicatively, reasons of public interest for the purposes of article 37A, apart from those mentioned above, may be:

1. ensuring the supply and appropriate distribution of essential products and services and security of supply chains, especially in times of crisis;
2. protection of public health;
3. achieving or advocating the objectives of the Common Agricultural Policy, especially so far as sustainable development is concerned;
4. strengthening regional sustainable development;
5. reaching/defending energy self-sufficiency within the framework of the National Energy and Climate Plan and the Long-term Strategy 2050;
6. ensuring employment opportunities and decent working conditions for citizens and vulnerable groups of the population
7. putting to effect or protecting social cohesion.

20. The HCC has also created a protected environment (sandbox) that will encourage businesses to adopt innovative business ideas in favor of sustainable development. Businesses can apply to the HCC through the Sandbox for the evaluation and approval of their business proposal⁵.

21. These public interest goals that may be considered for the application of the rule on issuing a no action letter, include goals directly related to addressing climate change, rapid technological developments and risks associated with economic interdependency especially following COVID-19 disruptions and increasing geopolitical tensions and may be linked to industrial policy goals.

⁵ The sandbox website is available at <https://sandbox.epant.gr/en/>