

Unclassified

English - Or. English

21 May 2026

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

**Case Prioritisation and Prosecutorial Discretion – Note by Greece**

25 June 2026

This document reproduces a written contribution from Greece submitted for Item 6 of the 149<sup>th</sup> OECD Competition Committee meeting on 22-24 June 2026.

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**JT03587514**

## Greece

### 1. Discretionary power and Prioritisation of Cases

1. A competition authority (like any other administrative authority or agency) has discretion with regard to a certain matter, for instance, whether to investigate and pursue a suspected or alleged antitrust infringement or whether a certain practice constitutes an infringement of the antitrust prohibitions, whenever the law leaves the authority a certain freedom to choose among different possible courses of action according to the authority's own judgment<sup>1</sup>. This discretionary power in terms of pursuing certain cases and not others constitutes an inherent feature of administrative action, with the result that the administrative authority may give priority to certain complaints which genuinely require investigation, while rejecting others without having undertaken specific investigative measures. This derives from the powers entrusted to a Competition Authority in order to ensure the effective application of competition rules and to determine the direction of competition policy, and constitutes a prerequisite for the proper fulfilment of its mission.

2. In Greece, national law on competition and the functioning of the Hellenic Competition Commission (HCC) provides<sup>2</sup> that the HCC determines the criteria for the prioritisation of cases and its strategic objectives, quantifies those criteria through the application of a scoring system, and defines the details of its implementation. The rules concerning the prioritisation of cases on the basis of objective and transparent criteria were introduced for the first time in 2011<sup>3</sup> and are aimed at the more efficient management of the HCC's limited human resources, thereby enhancing its effectiveness and enabling targeted action in the investigation of cases of major importance and/or cases expected to have a systemic impact on critical sectors of the economy.

### 2. Method of Prioritisation

3. The HCC has established specific criteria for assessing case priority and has updated these criteria based on practical experience and amendments of the law (for example most recently in 2024 following the transposition of Directive 1/2019, know as

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<sup>1</sup> Wils, W.P.J (2011), Discretion and Prioritisation in Public Antitrust Enforcement, in Particular EU Antitrust Enforcement', (2011), 34, World Competition, Issue 3, pp. 353-382,

<sup>2</sup> Article 14(2)(id)(aa) and Article 14(2)(ie) of Law 3959/2011

<sup>3</sup> The first decision on the system of prioritisation of cases is available ( in Greek ) here <https://www.epant.gr/en/decisions/item/2027-decision-525-2011.html> . It is based on article 14 of L. 3959/2011.

the ECN+ Directive<sup>4</sup>). This system of prioritisation is adopted by a Commission decision<sup>5</sup> and published on the HCC website and the Government Gazette, as are all Commission decisions. The rules concerning the prioritisation of cases on the basis of objective and transparent criteria are consistent with settled EU case law, according to which Competition Authorities are indeed required to examine carefully all factual and legal elements brought to their attention by complainants, but are not obliged to investigate every complaint submitted to them.

4. In determining those criteria the HCC takes into account the public interest as provided for by the law, which specifically states<sup>6</sup> that the HCC decision setting out the criteria for prioritised examination shall take into account the public interest, the possible effects on competition, consumer protection, the limitation periods, as well as the outcome expected from its intervention in a particular case.

5. In this framework in determining the prioritisation criteria the HCC considers the need to place emphasis on the investigation and examination of cases expected to have a **systemic impact** on critical sectors of the economy. Also the potential **effects of the practices under investigation** on the functioning of effective competition (taking into account, inter alia, the nature of the alleged infringement, the products and/or services concerned and the scope of the practices under investigation). Further, the fact that, on the basis of the human resources available or potentially available to the HCC, it is objectively impossible, and indeed ineffective, for it to devote resources to the investigation of comparatively less significant cases or cases in which the likelihood of establishing an infringement appears reduced, particularly due to the low evidential value of the material contained in the file

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<sup>4</sup> Recital 23 of Directive 2019/1, which was transposed into the Greek legal order by Law 4886/2022, provides that “*National administrative competition authorities should be able to prioritise their proceedings for the enforcement of Articles 101 and 102 TFEU to make effective use of their resources, and to allow them to focus on preventing and bringing anti-competitive behaviour that distorts competition in the internal market to an end. For this purpose, they should be able to reject complaints on the grounds that they are not a priority, with the exception of complaints lodged by public authorities which share competence with a national administrative competition authority for enforcing Articles 101 and 102 TFEU and national competition law, where applicable. This should be without prejudice to the power of national administrative competition authorities to reject complaints on other grounds, such as a lack of competence, or to decide that there are no grounds for action on their part. In cases of formally filed complaints, such rejections should be subject to effective remedies in accordance with national law. The power of national administrative competition authorities to prioritise their enforcement proceedings is without prejudice to the right of a government of a Member State to issue to national administrative competition authorities general policy rules or priority guidelines that are not related to sector inquiries or specific proceedings for the enforcement of Articles 101 and 102 TFEU*”. Article 4(5) of said Directive provides that “*5. National administrative competition authorities shall have the power to set their priorities for carrying out the tasks for the application of Articles 101 and 102 TFEU as referred to in Article 5(2) of this Directive. To the extent that national administrative competition authorities are obliged to consider formal complaints, those authorities shall have the power to reject such complaints on the grounds that they do not consider such complaints to be an enforcement priority. This is without prejudice to the power of national administrative competition authorities to reject complaints on other grounds defined by national law*”

<sup>5</sup> <https://www.epant.gr/en/decisions/item/3011-decision-844-2024.html> (full text available in Greek), please refer to the full text of the decision for details on the prioritisation system.

<sup>6</sup> Article 14(2)(id)(aa) of Law 3959/2011

6. Based on the above the priority ranking of each case is determined with a combination of quantitative and qualitative criteria, considering its impact as defined by :

1. the type of infringement to be investigated (eg cartels and abuse of dominance have a higher weight than infringements in franchise or horizontal cooperation agreements)
2. the goods or services that it concerns based on their participation in GDP , taking into consideration cases concerning markets of particular interest to the State and consumers, the importance of which is not adequately reflected by their participation in GDP, i.e. food, energy, healthcare services and products, transport (land, maritime, and air transport), e-commerce and digital technologies and financial services.
3. the scope of the investigated practices (ie whether they concern practices extending to another EU Member State or covering the whole or a substantial part of the Greek territory) and
4. the significance of the legal issue i.e. where the case concerns the clarification of novel or important legal issues, where the case concerns a matter in respect of which a leniency application has been submitted that fulfils the terms and conditions for inclusion in the Leniency Programme or where the case affects cooperation with other members of the European Competition Network (ECN) and/or has been prioritised as a joint action within the framework of the ECN, in particular in order to ensure the consistent application of the relevant EU case law

7. Impact is also defined in relation to the time and resources expected to be invested on the basis of the value of the available relevant evidence. Different weighting is attributed depending on whether there is a minimum body of evidence that prima facie contributes to substantiating the investigated infringement than whether the likelihood of proving the infringement appears high.

8. Cases may also receive negative weighting if the HCC lacks the power to impose sanctions due to the expiry of the limitation period for imposing fines at the time the complaint was submitted or the ex officio investigation was initiated. Also, in case intervention by the HCC would be ineffective and the recovery of any fine imposed would be extremely difficult due to the dissolution of the undertakings or associations of undertakings under investigation, their placement into liquidation, declaration of bankruptcy or other similar procedures.

9. Negative weighting may be applied in certain cases concerning vertical agreements that do not incorporate hardcore restrictions and do not produce cumulative/multiplier effects or concerning potential infringements that had ceased at the time the complaint was submitted or the ex officio investigation was initiated, even where the HCC's power to impose sanctions has not become time-barred. Cases in respect of which any distortions of competition may, by their nature, be remedied, or have already been remedied, without intervention by the HCC, for example through legislative initiatives, or may be remedied, or have already been remedied, through opinions or regulatory interventions adopted by the HCC and cases in which the conditions of the general principle of ne bis in idem are fulfilled, may also receive negative weighting.

10. This also applied to cases concerning practices in respect of which the existence or non-existence of an infringement has already been established by an HCC decision, even where those practices relate to a different period of time and/or a different relevant market from that covered by the HCC decision, provided strictly that the undertakings involved

and, in essence, the other factual circumstances and evidence on which the finding of infringement or non-infringement was based are identical.

11. Other issues that may give rise to negative weighting concern cases where infringements have been established, the facts under examination reasonably allow the HCC to consider that the conduct of the undertakings concerned has ceased or is changing in a manner that resolves the potential competition concerns, complaints that primarily concern disputes governed by private law, rather than the protection of the public interest and finally complaints in cases where it is impossible to identify the complainant(s) (for example due to changes in their declared contact details), despite the HCC's documented efforts to do so.

12. Essentially the priority ranking is defined as the ratio of impact to resources. The impact of the potential infringement on the market and the consumer constitutes the numerator of a fraction, while the saving in time and human resources required for establishing the infringement is the denominator. The higher the numerator (impact) and the lower the denominator (saving in time and human resources) of the above fraction for a given case, the higher the priority ranking of the case. Conversely, the ranking decreases as the numerator (impact) decreases and the denominator (saving in time and human resources) increases. Prioritisation may be reduced through the application of the above mentioned negative weighting factors.

13. The prioritisation system also has an additional weighting coefficient in cases where the limitation period is imminent ("Imminent Limitation Coefficient").

### 3. Accountability for prioritisation decisions

14. The HCC decision on the system of prioritisation is published on the HCC website and the Government Gazette<sup>7</sup>. The prioritisation system is used for the internal handling of cases by the HCC, and the results of the ranking are neither published nor communicated to the complainant or to any third party<sup>8</sup>. Accordingly, the parties involved have no access to this procedure or to the individual documents in which it is reflected.

15. The maximum priority that a case may receive is 14, or 28 in case the limitation coefficient applies. Where the Case Priority Rating exceeds 3 it is examined in accordance with its ranking. Where the Case Priority Rating is equal to or lower than 3, the case shall be filed based on low priority ranking.

16. This decision to file the case based on its priority ranking is subject to judicial review with an action for annulment before the Council of State. In practice various decisions have been challenged and the Commission has so far been successful in defending them. The Council of State has ruled that the decision on the dismissal of a complaint on the basis of prioritisation is not subject to appeal on substance, which in any case as the Court has said, in view of the nature and subject matter of the administrative decision, would not lead to an expansion of the judicial review beyond points of law and that amending the priority score would constitute an unacceptable substitution of the administration.

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<sup>7</sup> As above see <https://www.epant.gr/en/decisions/item/3011-decision-844-2024.html> (full text available in Greek)

<sup>8</sup> as provided for in Article 14(2)(ie) of Law 3959/2011

17. It should be noted that decisions to reject complaints not on the basis of prioritisation but on other basis provided for by national law (such as lack of competence or when a complaint is profoundly not founded)<sup>9</sup>, are in principle subject to a different procedure and to judicial review on matters of substance by the Administrative Court of Appeals.

#### 4. Other discretionary powers in terms of prioritisation

18. The HCC issued a two-year strategic plan in 2024 and a three-year plan in 2026. The Authority, as well as other administrative bodies, are obliged by law<sup>10</sup> to send this plan to the Ministry of Internal Affairs and publish it<sup>11</sup>, but no other stakeholders outside the Authority are involved in its drafting.

19. The Strategic Plan does not refer to specific cases or sectors but sets the general goals of the Commission for the period it refers to. The Strategic Plan assesses (a) the external operating environment of the Authority, such as changing market conditions and increased complexity of cases, developments in the regulatory and legislative framework and technological developments and digital transformation of the economy and (b) internal factors such as the need to improve the efficiency and speed of procedures, make the most of internal skills and resources and identify new opportunities for development, innovation and organisational improvement in the Authority's operation. It evolves around four strategic goals including immediate, targeted, and effective competition law enforcement which in turn is measured by targeted prioritisation of cases and actions based on their impact on competition. Therefore, prioritisation of cases based on their impact is incorporated in the strategic plan of the Authority for the years to come.

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<sup>9</sup> For example based on article 37 of L. 3959/2011 , full text available in English here <https://www.epant.gr/en/legislation/protection-of-free-competition.html>

<sup>10</sup> Law 4940/2022 “System of target-setting, evaluation and reward mechanisms for enhancing the effectiveness of the public administration, regulations concerning the human resources of the public sector, and other provisions.”

<sup>11</sup> Available in English <https://www.epant.gr/en/ea/strategic-plan.html>