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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GREECE

-- 2009 --

*This report is submitted by Greece to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 16-17 June 2010.*

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## Executive summary <sup>1</sup>

1. 2009 has been marked with important changes for the operation of the Hellenic Competition Commission (HCC). These changes have been the outcome of the amendment of the Competition Act, namely Law 703/1977 on the control of monopolies and oligopolies and the protection of free competition<sup>2</sup>, which took effect on 7 September 2009. Most importantly in 2009 the HCC saw a change in leadership and structure.

2. The HCC's decisions issued in 2009 have focused on sectors of great importance for the Greek economy and therefore have the potential significantly to affect the Greek consumer. The total sum of cartel fines imposed in 2009 was €97,773,738.50. The 2009 rulings of the Athens Administrative Appeals Court concerning appeals of HCC decisions have confirmed that statistically the HCC's decisions are well-founded.

3. Furthermore, the HCC has made a conscious effort to promote certainty in the business and legal communities as to the treatment of cases brought before it, by issuing Notices on filing of complaints and merger notifications, as well as by elaborating on the criteria for priority setting. With a view to procedural simplification, it has also made available revised forms for complaints and merger notifications. Finally, the HCC has undertaken to publicise widely within the Greek administration the OECD's Guidelines for Fighting Bid Rigging in Public Procurement and has also been active in promoting the Competition Assessment Toolkit, which acquires particular importance in the current circumstances of crisis. Indeed, the HCC starts being heavily involved in activities aiming at the abolition of state regulatory obstacles to competition.

### 1. Changes to the Legal Framework on Competition and Resulting Changes in the Operation of the Authority

#### 1.1 Amendments to the Competition Act and changes to the HCC's structure

4. The Competition Act was amended by Law 3784/2009, which aligned Greek law to a significant extent to the requirements of Council Regulation 1/2003. The latest amendment also introduced several major modifications regarding the structure and function of the HCC. These modifications aim at:

- improving the ability of the HCC to prioritise important cases and/or to resolve more expeditiously cases of minor importance;
- enhancing its investigatory powers;
- making the working of the Board of the HCC more efficient; in particular, the Board of the HCC will now comprise 9 members, namely one chairman, four full-time Commissioners (a novelty), and four part-time Members<sup>3</sup>;

<sup>1</sup> This document is submitted by the Greek Delegation to the OECD Competition Committee for its forthcoming meeting on June 16th and 17th 2010 Period and covers the period from January 1st to December 31st 2009.

<sup>2</sup> Law 703/1977 (Official Journal Issue A' 278/26.09.1977) was amended by way of Law 3784/2009 (Official Journal Issue A' 137/07.08.2009).

<sup>3</sup> Article 8(3)(4) of Law 703/1977 - Prior to the 2009 amendment of the Competition Act, the Board consisted of the President and eleven part-time members, some of which, according to the law, were representing interest groups. For criticism of these and earlier provisions on the membership of the HCC, see Michael O. Wise, "Review of Competition Law and Policy in Greece", 3(4) *OECD Journal of Competition Law and Policy* 7 (2001), p. 27 *et seq.*

- relaxing the strict separation between the Directorate-General for Competition of the HCC (the investigative and administrative arm of the Authority) and the Board of the HCC (the decision-making body of the Authority)<sup>4</sup>. In addition to their adjudicating duties, the four full-time Commissioners will also be supervising the final stages of the investigations and will be signing the Statement of Objections (or the proposal to reject a complaint)<sup>5</sup>.

## 1.2 *Change in leadership*

5. In September 2009 Mr. Dimitrios Kyritsakis was appointed President of the HCC<sup>6</sup>. President Kyritsakis is a former Vice-president of the Supreme Court (Areios Pagos). His mandate expires in August 2012. However, his term of office may be renewed once, for another three years.

## 2. **Activities of the Hellenic Competition Commission in Promoting Effective Competition**

### 2.1 *Priority setting*

6. On January 12<sup>th</sup> 2010 the HCC issued a “**Notice on Enforcement Priorities**”<sup>7</sup> with a view to improving the efficiency of its enforcement action, while also increasing transparency and accountability<sup>8</sup>. The Notice specifies that the prioritisation of cases is generally based on the criterion of public interest. In particular, the HCC will assess the public interest considerations arising from each individual case in light of the estimated impact of the practices in question on the functioning of effective competition, and especially on consumers. In this context, priority will be given to *ex officio* investigations or complaints pertaining to:

- Hardcore restrictions of competition (price-fixing, market sharing and sales or production restrictions) of national scope, especially cartels, taking particularly into account the market position of the undertakings involved, the structure of the relevant market and the estimated number of the affected consumers.

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<sup>4</sup> Prior to the 2009 amendment of the Competition Act, the Directorate General submitted the Statement of Objections directly to the HCC Board, without the involvement of the Board members in any stage of the investigation (with the exception of the HCC President who could order *ex officio* investigations and functioned as a link between the Directorate General and the Board). Thus, the operational separation between the investigative body, i.e. the Directorate General, and the decision-making body was clearer.

<sup>5</sup> Investigations are initially pursued by the Directorate General following a complaint filed or *ex officio*. Each case is subsequently introduced to the HCC’s Board by the President, so that the Board may decide on its degree of priority. If priority is given to a case by the Board, a Commissioner will then be assigned to the case. The Commissioner is responsible for finalising the investigation and for supervising the final drafting of the Statement of Objections (or of the proposal to reject a complaint). The Commissioners are also full members of the Board of the HCC (the decision-making body of the Authority). With the exception of cases of major importance, which are introduced to the Plenary, most cases are decided by Chambers each comprising 3 members. All members (full-time, part-time and alternates) are appointed for a three-year term, which may be renewed once.

<sup>6</sup> Article 8(4) of Law 703/1977.

<sup>7</sup> The Notice in question has replaced the HCC’s previous “Notice on Enforcement Priorities”, which had been issued on February 15<sup>th</sup> 2007.

<sup>8</sup> Article 8b (2) section 16 of Law 703/1977 grants the HCC competence in setting its priorities and determining the *ex officio* investigations to be carried out by the Directorate General.

- Products and services of major importance to the Greek consumer, where the anticompetitive practice under examination may have a significant impact on the increase of prices and/or the quality of the products/services supplied (especially as compared to Member States of the European Union).
- Anticompetitive practices with cumulative effects (i.e. practices applied by a large number of companies that are able to pass on the increased prices to intermediate undertakings or final consumers).

7. The HCC will also assess the necessity of conducting sector enquiries and adopting measures of regulatory nature, according to the terms and conditions of Article 5 of Law 703/1977, provided that such measures are absolutely necessary, suitable and proportionate for the creation of conditions of effective competition.

8. The prioritisation of a particular case will obviously also depend on the resources available to the Authority, the possibility of establishing proof of an infringement, the necessity of providing guidance on novel issues of interest, as well as on the assessment of whether the HCC is the best-placed body to act (particularly in comparison to the competence of other Authorities or national courts).

## 2.2 *Guidance*

9. In its effort to simplify procedures the HCC issued a number of Notices to serve as guidance for individuals, but most importantly for the business and legal communities. In addition to its updated “Notice on Enforcement Priorities”, the HCC also revised and simplified the procedure for post-merger notifications and adopted the corresponding notification Form (including the more specific Form for post-merger notifications in the media sector, taking into account the specific provisions of Law 3592/2007). The HCC also published a much simplified Form for notification of agreements<sup>9</sup>.

10. The HCC further adopted a new “Notice on the handling of complaints” for suspected infringements of Articles 1 and 2 of the Competition Act and of Articles 101 and 102 TFEU.

11. The revised operational plan also envisages the adoption of two further Notices:

- *A Notice on the procedure for offering commitments in antitrust investigations* (modelled after the EU system – Article 9 of Regulation 1/2003).
- *A new Leniency Programme for cartel infringements*, reforming the current Leniency Notice and ensuring alignment with the EU Model Leniency Programme.

## 2.3 *Advocacy efforts and participation in international forums*

12. The HCC has recently stepped up its advocacy activities, particularly in view of the economic crisis.

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<sup>9</sup> The latest amendment of the Greek Competition Act abolished the administrative prior authorisation and notification system, with regard to agreements, and adopted the legal exception system, thus following the EU model. However, the law still provides for the obligation to notify agreements for market-mapping purposes only. In other words, the notification is no longer connected with the application of Article 1(3) of the Act (equivalent to Article 101(3) TFEU), but is simply an autonomous obligation imposed by law and merely serves to offer knowledge to the Authority about the market (market-mapping).

- It has organised training sessions on competition law & economics for officials of the Ministry of Economy, Development and Commerce, who are responsible for enforcing the rules on prohibition of below-cost selling and for monitoring prices of consumer goods.
- In an effort to raise awareness on the harmful effects of collusive tendering, the HCC undertook a joint project with the Greek Delegation to the OECD, which involved the translation into Greek of the “OECD Guidelines for Fighting Bid Rigging in Public Procurement”. The translation was concluded in July 2009. The Greek text was subsequently posted on the OECD website<sup>10</sup>. In an effort to better promote the Guidelines within the Greek business community the Greek text was also uploaded onto the HCC website<sup>11</sup>.
- The HCC intends to have a central role in the abolition and monitoring of state regulatory obstacles to competition, particularly in light of the current economic crisis. In this direction, the HCC with the collaboration of the Greek Delegation to the OECD, has engaged in efforts to highlight the importance of the OECD “Competition Assessment Toolkit” (CAT) on the occasion of its recent revision that has resulted in the publication of CAT Version 2.0. These efforts include: (i) translation into Greek of the CAT brochure<sup>12</sup>; (ii) circulation of an information note regarding the Toolkit and its incorporation into the Greek regulatory system to the Ministries involved in the Regulatory Impact Assessment (RIA) process, and also to the Secretary General of the Government as primary RIA supervisory authority; and (iii) translation into Greek of the CAT Version 2.0.
- Members of the HCC and officials of the Directorate General participated in numerous national, European and international working groups, meetings, seminars and conferences at:
  - *ECN level*: (topics included inter alia insurance services, food, co-operation issues, Article 82 of the EC Treaty (now Article 102 TFEU) guidelines, leniency convergence, Regulation 1/2003, commitments);
  - *ICN level*: Annual Conference in Zurich (June 2009) and Cartel Workshop in Cairo and completion of the relevant questionnaire (October 2009), and
  - *OECD level*: participation in all competition law related conferences (February, June and October 2009), submission of reports on the following topics: Competition and Regulation in Accountancy (OECD Working Party No. 2, June 2009), Application of Competition Law to State-Owned Enterprises (presentation in the October 2009 meeting of OECD Working Party No. 3), submission and presentation of the 2008 Annual Report on Competition Policy in Greece in the June 2009 OECD Competition Committee meeting.

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<sup>10</sup> [http://www.oecd.org/document/29/0,3343,en\\_2649\\_40381615\\_42230813\\_1\\_1\\_1\\_37463,00.html](http://www.oecd.org/document/29/0,3343,en_2649_40381615_42230813_1_1_1_37463,00.html).

<sup>11</sup> [http://www.epant.gr/img/x2/news/news244\\_1\\_1268920282.pdf](http://www.epant.gr/img/x2/news/news244_1_1268920282.pdf).

<sup>12</sup> Copies of the brochure in Greek were printed by the OECD.

### 3. Enforcement of Competition Laws and Policies

#### 3.1 Summary of activities of the Hellenic Competition Commission

13. During the reporting period the HCC issued in total 42 decisions, which can be classified as follows:

**Table 1: Cases Examined by the HCC in 2009**

Ex officio investigations	4
Complaints	11
Cases resulting from an ex officio investigation & complaint	2
Negative clearance due to non infringement of competition law provisions	4
Mergers	19
Interim measures	1
Examination of application to revoke previous HCC decision	1
<b>Total</b>	<b>42</b>

14. Although in 2009 the HCC has issued fewer decisions as compared to 2008, the main focus of its 2009 decisions has nevertheless been sectors of key importance for the Greek economy and of great significance for consumer welfare.

15. In 2009 the HCC issued 11 decisions, whereby it examined allegations of a cartel infringement. In 7 decisions it concluded that a cartel infringement had in fact been committed, while in 2 decisions it dismissed the allegations. Furthermore, it issued 2 preliminary decisions (continuation of investigation). In 10 instances the HCC examined an alleged abuse of dominance. It issued 3 decisions concluding that an abuse had been committed and 2 preliminary decisions. It dismissed the allegations in the remaining cases.

#### 3.2 Action against anticompetitive practices, including agreements and abuses of dominant position - Significant cases

##### 3.2.1 OLP - Provision of port services (€2.6 million fine)<sup>13</sup>

16. The conduct of the Piraeus Port Authority S.A. (“OLP”), a public undertaking controlled by the Greek State, came under the scrutiny of the HCC. OLP has been granted the right of exclusive exploitation of the installations of Piraeus Port (including the Container Terminal) and for the construction and maintenance of the port facilities. It is therefore the sole provider of stevedoring and storage services (port services) of freight transported by sea in the area of Piraeus.

17. The HCC examined the effects on competition of an agreement, which OLP entered into with the liner company Mediterranean Shipping Company S.A. (MSC). On the basis of this Agreement, MSC undertook the obligation to use the port of Piraeus as a hub port for transshipment and transit of cargo, while it enjoyed privileged treatment and priority in the provision of services by OLP.

<sup>13</sup> HCC decision 428/V/2009.

18. OLP was fined by the HCC for having infringed the provisions of Articles 1 of the Competition Act and 81 of the EC Treaty (now 101 TFEU) and was ordered to adopt in the future all necessary measures for achieving the fair and reasonable treatment and efficient servicing of all port users.

3.2.2 *Nestlé - Instant coffee market (€30 million fine)*<sup>14</sup>

19. Nestlé HELLAS S.A., a market leader in the Greek instant coffee market, was fined for having abused its dominant position because of exclusionary practices. In its trading relations with supermarket chains, Nestlé granted target and fidelity rebates, impeded parallel imports, and prohibited any marketing activity of competing products simultaneously with its own products. In the HO.RE.CA. instant coffee market, Nestlé imposed exclusive supply and bundling contractual arrangements and granted fidelity rebates aiming at inducing customer loyalty. In addition, in its trading relations with distributors, Nestlé imposed a “hidden” non-compete obligation (equivalent to an “English clause”). Nestlé was also fined for having infringed Article 1 of the Competition Act (equivalent to Article 101 TFEU), by prohibiting/impeding parallel imports by specific supermarket chains, as well as by prohibiting passive sales.

3.2.3 *FIAT Hellas - Motor vehicle distribution (€9.5 million fine)*<sup>15</sup>

20. The HCC held that Fiat Auto Hellas S.A. had violated Articles 1 of the Competition Act and 81(1) of the EC Treaty (now 101 TFEU) for fixing resale prices of Fiat cars in Greece and man-hour rates for repair and maintenance.

3.2.4 *Major supermarket chains & Unilever - Detergent Sector (€8 million fine)*<sup>16</sup>

21. Following an *ex officio* investigation in the Greek detergent market, in order to examine possible anticompetitive practices (market segmentation) committed by major detergent manufacturer Unilever and eight supermarket chains in Greece, the HCC found that the practices in question amounted to hardcore geographical restrictions of competition. Unilever played a leading role in the adoption and implementation of the practices in question, as it was Unilever that had suggested their adoption and subsequently monitored their implementation by putting pressure on the supermarket chains and threatening to impose sanctions in case of their non-compliance. The HCC held that an infringement of Articles 1 of the Competition Act and 81 of the EC Treaty (now 101 TFEU) had been committed by Unilever and the supermarket chains under investigation and imposed fines totalling €8 million.<sup>17</sup>

3.2.5 *Distribution of foreign language educational books (€15.3 million fine)*

22. Following an *ex officio* investigation by the Directorate General, the HCC examined certain practices in the market for foreign language educational (FLE) books entered into by (a) Apollon SA, a publication and trading company for educational books, and (b) Eustathiades Group S.A., whose business activities involve distribution, publication and trade of Greek and foreign language school, literary and tourist books.

23. In particular, the HCC examined exclusive distribution agreements concluded by Apollon and Eustathiades with major publishing companies Burlington, Pearson, Hillside and Boukouvalas. The HCC

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<sup>14</sup> HCC decision 434/V/2009.

<sup>15</sup> HCC decision 437/V/2009.

<sup>16</sup> HCC decision 441/V/2009.

<sup>17</sup> The Unilever fine was €6.9 million.



found that the agreements in question restricted resale price competition and also passive sales and exports. As a result, it imposed fines, apart from Apollon and Eustathiades, also on these publishing companies.<sup>18</sup>

### 3.2.6 Major insurance companies – auto insurance market (€32.5 million fine)<sup>19</sup>

24. In this case, the HCC fined major insurance companies for jointly determining the remuneration per work-hour for the services offered by motor vehicle repair shops, by way of a co-decision mechanism and an electronic toolkit they developed through a joint venture, namely AUDATEX HELLAS S.A., which they formed in order to co-ordinate their commercial policy. The HCC also held that, through private contracts, AUDATEX unlawfully imposed a clause on collaborating motor vehicle repair shops, according to which they would not offer groups of clients more favourable terms and prices than those offered to insurance companies of the AUDATEX system, while overseeing compliance with the agreement in question.

### 3.2.7 Public Power Corporation

25. The HCC issued two decisions in 2009 concerning the state-owned electricity incumbent Public Power Corporation (PPC).

#### i) Lignite deposits<sup>20</sup>

The HCC required that the PPC withdraw from any future (direct or indirect) exploitation of Vevi and Vegora lignite deposits for as long as it owns more than 60% of Greece's licensed exploitable lignite deposits, unless there are no other reliable offers for the exploitation of the sites in question. The above requirement was set by the HCC as a condition for clearing the exclusive supply agreement concluded between PPC and "Achlada Lignite Mines S.A." (ALM), according to which PPC would absorb via its Carbon Capture & Storage (CCS) plant in Meliti of the Florina prefecture the entire production of the lignite mine operated by ALM in the Achlada area.

The above decision was issued in accordance with the European Commission's Decision of 5 March 2008<sup>21</sup>, which found that Greece had infringed Article 86(1) in conjunction with Article 82 of the EC Treaty (now Articles 106(1) and 102 TFEU, respectively), by maintaining rights giving PPC privileged access to lignite. According to the European Commission's Decision, Greece had allowed PPC to maintain or reinforce its dominant position on the Greek wholesale electricity market by excluding or hindering competitors from entering the market.

#### ii) Thermoelectric plant<sup>22</sup>

The HCC examined an agreement notified in 2008 between PPC and Iron Thermoilektriki S.A. (Iron), according to which PPC would receive compensation for the preservation of the Iron thermoelectric plant in Thiva of the Voiotia prefecture. The HCC exempted the agreement, but raised concerns about a clause, which provided that, in the event of a successful bid by Iron in a

<sup>18</sup> HCC decision 455/V/2009.

<sup>19</sup> HCC decision 460/V/2009.

<sup>20</sup> HCC decision 457/V/2009.

<sup>21</sup> See European Commission Press Release IP/09/1226 of 06.08.2009 and European Commission Press Release IP/08/386 of 05.03.2008.

<sup>22</sup> HCC decision 458/V/2009.

potential call for tender by DESMIE S.A.<sup>23</sup> for the conclusion of an agreement to implement a reserve system and for as long as the PPC-Iron contract remains in force, Iron would have to enter the agreement via a joint venture with the PPC (PPC: 40% – Iron: 60%). The specific clause was deemed a restriction “beyond the measures absolutely necessary” for the realisation of the main PPC-Iron agreement and the HCC exempted the notified agreement and required that the clause be struck out.

### 3.2.8 *Central fruit and vegetable markets*<sup>24</sup>

26. Following the examination of the conditions for the provision of services by the Stevedore and Fresh Goods Transporters Unions of the Athens and the Thessaloniki central vegetable markets, the HCC proposed the amendment of the existing legal framework for the provision of the services in question, as it led to an abuse of dominance by the Athens Union. In particular, the existing legal framework on stevedoring services, as implemented by the competent authority, namely the Regulatory Commission on Land Stevedoring Services (ERFXA), grants Unions the exclusive right to organise stevedoring in the Athens and Thessaloniki central vegetable markets. ERFXA has supervision authority over the Unions and also issues a price list for the relevant services. During the last fifty years ERFXA has in fact always accepted the Unions’ proposals concerning price increases and has never made amendments to the relevant price list (of the year 1949) in order to take into consideration the modern methods of loading.

27. Furthermore, the price list for these services has been irrational as it is based not on the actual weight of these goods but on the kind of goods and their packaging (i.e. the loading of a bag of five kilos of chestnuts costs more than the loading of sack of 30 kilos of potatoes). It should be noted that, according to Greek law, the merchants of the central markets are obliged to use these services and are hence charged by the Unions according to this price-list also for services not rendered (namely when the loading has actually been rendered by their employees or other third parties).

28. The HCC held that the Athens Union infringed Article 2 of the Competition Act by abusing its dominant position through irrational billing and billing for services not rendered (inefficient and irrational monopoly) and ordered it to cease committing the infringement and refrain therefrom in the future<sup>25</sup>. The HCC did not impose a fine on the Union, as its actions were the result of the existing legal framework. However, it noted the need for amendment of the legal framework within a reasonable time, so that it become compatible with national and EU competition law.

## 3.3 *Mergers - Significant cases*

### 3.3.1 *BP / Hellenic Petroleum - Retail markets for petrol and diesel*<sup>26</sup>

29. In August 2009, the HCC initiated Phase II proceedings with reference to the proposed purchase of BP Hellas S.A. Oil Trading’s entire share capital by Hellenic Petroleum S.A. In particular, the investigation focused on the retail markets for petrol and diesel in certain prefectures of Greece, where the new entity would obtain considerably high market shares (notably islands of Greece exhibiting particular market characteristics, such as Crete, Dodecanese and Lesbos), as well as on issues of access of third

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<sup>23</sup> DESMIE S.A. is the Hellenic Transmission System Operator S.A. – HTSO.

<sup>24</sup> HCC decision 438/V/2009.

<sup>25</sup> The HCC dismissed the case in reference to the Thessaloniki Union, due to lack of adequate evidence to substantiate the plaintiffs’ claim.

<sup>26</sup> HCC decision 465/VI/2009.

parties to the storage facilities of Hellenic Petroleum. The potential impact of the concentration in the wholesale trade markets for petrol and diesel was also examined.

30. Hellenic Petroleum subsequently submitted commitments and in October 2009 the HCC approved the notified concentration, while attaching conditions corresponding to the parties' commitments. In particular, as regards the above retail markets for petrol and diesel, Hellenic Petroleum should free from its network a number of service stations, equivalent to a reduction of market share below 55% (based on volume sales). The process, which remains subject to HCC approval were to be completed within a few-months period, prior to the upcoming summer season. Hellenic Petroleum cannot re-acquire the released service stations for a period of six (6) years thereafter. Hellenic Petroleum further committed to grant access to third parties to its storage facilities/depots in Crete, under fair and non-discriminatory terms.

### 3.3.2 *Maritime Transport (€3.7 million fine)*<sup>27</sup>

31. In October 2006 the Directorate General launched an *ex officio* investigation in the relevant markets for the provision of maritime services (transport of persons or vehicles via conventional vessels or speedboats)<sup>28</sup>. In this context, it investigated the non-notification of the concentration between undertakings "Sea Star Capital Plc" (Sea Star), which controls Hellenic Sea Ways (HSW), and "Crete Shipping Company S.A." (ANEK)<sup>29</sup>. More specifically, Sea Star acquired 36.5% of HSW's shareholding and 15.90% of ANEK's shareholding in 2007. Sea Star alleged that the acquisition of the percentage of shares mentioned above did not affect competition in the specific market. Subsequently, it informed the HCC of the acquisition of a further 16.6% of ANEK's shareholding, which occurred in the beginning of 2008; Sea Star suggested that this last agreement with ANEK was of minor importance. Following the analysis conducted by the Directorate General, the HCC concluded that Sea Star had acquired control of both HSW and ANEK and imposed a fine for failure to notify the concentration.

### 3.3.3 *PPC / Halysourgiki - Joint venture for CCGT units*<sup>30</sup>

32. The HCC initiated Phase II proceedings for the examination of a notified concentration concerning the formation of a joint venture by the PPC and Halysourgiki S.A., which would undertake the construction and operation of two Combined Cycle Gas Turbine (CCGT) units with a total capacity of 880MW, in a plot of land within the facilities of Halysourgiki. In particular, the investigation focused on the wholesale market for electricity, where the new entity would obtain considerably high market shares, as well as on issues of third party access.

33. The HCC cleared the notified concentration, while accepting commitments and imposing corresponding conditions, intended to safeguard the conditions of effective competition. The most important of these conditions was that PPC and its subsidiaries are not entitled to hold (directly or indirectly) stocks exceeding 49% of the share capital of the joint venture<sup>31</sup>.

<sup>27</sup> HCC decision 427/V/2009, as amended by 461/V/2009.

<sup>28</sup> For this purpose, a working group was appointed within the Directorate General in accordance with article 12 of Presidential Decree 31/2006 (Official Journal Issue A'29/14.02.2006).

<sup>29</sup> The obligation for notification of the concentration in question arises from article 4b of Law 703/1977.

<sup>30</sup> HCC decision 446/V/2009.

<sup>31</sup> The HCC also imposed the following conditions: (i) The board of directors of the new company will consist of seven members. Four members will be appointed by Halysourgiki S.A, while three members with non executive powers will be appointed by the PPC. The Chief Executive Officer (CEO) will be appointed by the members of the Board, who represent Halysourgiki S.A.; (ii) The joint venture is obliged to inform the HCC of any relevant amendment to its shareholder structure.

### 3.4 Court judgments – summary

34. The vast majority of HCC decisions have been upheld on appeal before the Athens Administrative Court of Appeal, albeit with a reduction of fines (i.e. partial annulments limited to the calculation of fines and/or duration of the infringement committed by each participating undertaking). In almost all cases, the court agreed with the HCC's findings regarding the establishment of an infringement. Overall, seventeen (17) judgments were rendered by the court. Fourteen (14) decisions were upheld, out of which six (6) were entirely positive for the HCC (appeals dismissed in their entirety) and eight (8) were confirmed with a reduction of fines for certain undertakings. In the remaining three (3) cases, there was a partial annulment as regards parts of the infringement findings.

#### 3.4.1 *The Syfait / GlaxoSmithKline case*

35. There was one case where the Athens Administrative Court of Appeal reversed the HCC decision. The HCC had taken a decision back in 2006 following a complaint against GLAXOWELLCOME S.A. (now known as GLAXOSMITHKLINE - GSK). The case concerned an alleged infringement of Articles 2 of the Greek Competition Act and 102 TFEU (ex Article 82 of the EC Treaty). GSK had sought to restrict parallel exports of three pharmaceutical products: Imigran (antimigrainous), Lamictal (antiepileptic) and Serevent (antiasthmatic).

36. This case has received attention outside Greece because it reached twice the European Court of Justice (ECJ) on a preliminary reference pursuant to Article 267 TFEU (ex Article 234 of the EC Treaty). The first reference by the HCC in *Syfait* was deemed inadmissible, because the HCC did not have standing to send such a reference to the ECJ, since the former was not considered a “court or tribunal”<sup>32</sup>. The second reference by the Athens Civil Court of Appeal in *Lelos* led to an ECJ ruling on the matter<sup>33</sup>.

37. Following, the ECJ ruling in *Syfait*, the HCC proceeded to a final decision on the matter in 2006. In its decision<sup>34</sup>, it examined only the restriction of parallel exports for the Lamictal product because this was the only of the three products where dominance was certain. It held that there was no violation of Article 102 TFEU (ex Article 82 of the EC Treaty) and that GSK's restriction of parallel exports was legitimate. However, it did find an infringement of the equivalent Greek provision, Article 2 of the Competition Act, because GSK's conduct had caused some disruptions in the distribution of the medicine in Greece. No fine was imposed.

38. On appeal, the HCC's decision was partially annulled. The court held that the HCC should have proceeded to establish whether there was a dominant position of GSK also with regard to the remaining two medicines, Imigran and Serevent. The HCC, according to the court, was bound to examine the complaint and reach a conclusion as to the question of dominance. The court also disagreed with the HCC's finding that there was no abuse of Article 102 TFEU (ex Article 82 of the EC treaty) and read the *Lelos* ruling so as to find an infringement of that provision by GSK. The court, therefore, remanded the case to the HCC with instructions to impose a fine on GSK because of the Lamictal-related violation and to examine GSK's abuse of dominance with respect to Imigran and Severent. In the same case, the court upheld the HCC's finding of violation of Article 2 of the Greek Competition Act and dismissed GSK's appeal. A further appeal to the Council of State is now pending.

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<sup>32</sup> Case C-53/03, *Synetairismos Farmakopoion Aitolias & Akarnanias (Syfait) and Others v. GlaxoSmithKline plc and GlaxoSmithKline AEVE*, [2005] ECR I-4609.

<sup>33</sup> Joined Cases C-468/06 to C-478/06, *Sot. Lelos kai Sia EE v. GlaxoSmithKline AEVE Farmakeftikon Proionton, formerly Glaxowellcome AEVE*, [2008] ECR I-7139.

<sup>34</sup> HCC decision 318/V/2006.

#### 4. Resources of the Hellenic Competition Commission

##### 4.1 Resources overall

##### 4.1.1 Annual Budget, Year 2009

<b>Budget<sup>35</sup>, Year 2009</b>	
<b>€</b>	<b>US\$</b>
21,516,333.00 <sup>36</sup>	26,554,201.09
<b>Competition-related Budget<sup>37</sup>, Year 2009</b>	
<b>€</b>	<b>US\$</b>
11,516,333.00	14,219,378.70

##### 4.1.2 Number of employees

**Table 2: Directorate General of the Hellenic Competition Commission  
(Number of Employees - Year 2009)**

Economists	33 <sup>38</sup>
Lawyers	15 <sup>39</sup>
Other Professionals	6 <sup>40</sup>
Support Staff	34 <sup>41</sup>
<b>All Staff Combined</b>	<b>88<sup>42</sup></b>

<sup>35</sup> This section includes initial projections. It should be noted that the HCC meets its needs (salaries, electronic equipment, cleaning expenses, supplies, expenses for dawn raids) on its own revenue. The surplus at up to 80% is remitted to the State budget every two (2) years.

<sup>36</sup> The budget increase in 2009 (as compared to 2008) is due to increased projections for the purposes of remittance to the State budget, recruitment of new staff and purchase of a new building for the relocation of the Authority. However, neither the recruitment of new staff, nor the purchase of real estate materialised in 2009, therefore the relevant expenses were budgeted again in 2010.

<sup>37</sup> This figure reflects the initial projections, minus: a) the amount budgeted for purchase of real estate and b) the 80% surplus to be remitted to the State budget, as they are non competition-related expenses.

<sup>38</sup> This figure includes 2 economists on maternity leave and 1 economist on sabbatical leave.

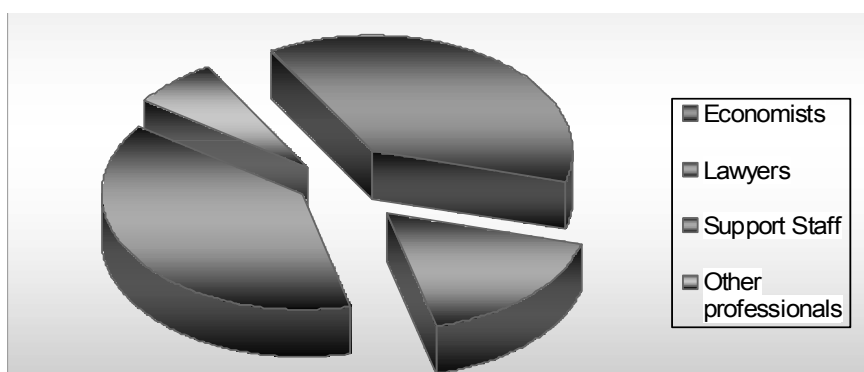
<sup>39</sup> This figure includes 2 lawyers on maternity leave, 1 lawyer on secondment and 1 lawyer on sabbatical leave, as well as 1 jurist-member of the Legal Council of the State, who is in charge of coordinating the representation of the HCC before the Athens Administrative Court of Appeal and the Council of State.

<sup>40</sup> Information Technology experts.

<sup>41</sup> This figure includes 3 staff members (secretaries), who provide secretarial support to the HCC for competition enforcement purposes. The remaining staff members constitute the Directorate General's administrative staff that does not work on competition enforcement.

<sup>42</sup> This figure refers to all staff with permanent posts, including staff currently on leave (parental, sabbatical etc), but excludes temporary staff, i.e. stagiaires.

**Personnel by categories  
Directorate General, HCC (Year 2009)**

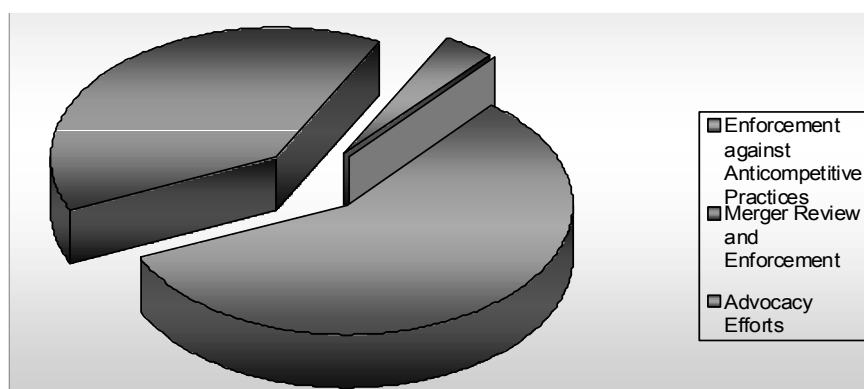


**4.2 Human resources per area of engagement**

**Table 3: HCC Directorate General - Human Resources per Area of Engagement<sup>43</sup> (2009)**

Enforcement against Anticompetitive Practices	48
Merger Review and Enforcement	33
Advocacy Efforts	3

**Human Resources per area of Engagement  
Directorate General, HCC (Year 2009)**



<sup>43</sup>

In general, there is no separation of personnel based on type of infringement (e.g. there is no cartel-specific or merger-specific unit). There are, nonetheless, sector-specific units focusing on specific markets. Within those units, all non-administrative staff contributes to all areas of competition enforcement (mergers, anti-cartel/collusion, dominance-related issues, advocacy etc), according to their individual field of expertise and depending on the actual needs of the Authority (on a case-by-case basis). The following Units of the Directorate General work on competition enforcement: (i) Economic Directorates A' and B', each of which has been assigned the assessment of the various sectors of the economy; (ii) Legal Services Directorate; (iii) Media Sector Unit; and (iii) Research and Processing of Information Unit. Merger review is generally conducted by the Economists of the DG. Nevertheless, in situations, where enforcement issues arise, the Legal Department also becomes involved.