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# ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GREECE

**-- 2010 --**

*This report is submitted by Greece to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 29-30 June 2011.*

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## Executive summary

1. During the course of 2010, the main objective of the Hellenic competition Commission ("HCC") was to maintain the level of enforcement action albeit the financial constraints posed by austerity measures, while simultaneously realigning its strategic objectives towards investigations with an anticipated horizontal impact and cumulative effect.

2. The HCC continued to prioritise investigations concerning products and services of major importance to the Greek consumer (e.g. retail food, motor fuels, dairy products, flour, energy, transportation services etc.), in an attempt to increase the systemic effect of its action, while also imposing considerable fines, where necessary and appropriate. In particular, the HCC pursued infringements in the area of liberal professions, as well as restrictive practices designed and implemented by trade associations, with a view to removing horizontal obstacles to effective competition, and is also on alert in order to identify cases of cartels or concerted practices that have the characteristics of "crisis cartels". The HCC's 2010 decision against fish farms has set important guiding principles in that area.

3. In the above context, the HCC increased its advocacy efforts concerning regulatory restrictions affecting competition, so as to assist in the promotion of competitiveness and entrepreneurship in Greece. It further issued a number of Notices and guidelines aimed at facilitating self-assessment by businesses.

## 1. Changes to competition laws and policies

### *1.1 Summary of legislative developments*

4. During 2010, no new legal provisions concerning competition law were adopted. However, pursuant to the terms of the Hellenic Economic Adjustment Programme,[1] a new legal framework concerning competition protection in Greece was considered a top priority. After a long procedure, which is described below, the Greek Parliament passed a new Competition Act for Greece (Law 3959/2011) in April 2011. The new Act entirely abolishes Law 703/1977, which governed (with consecutive amendments) the protection of competition in Greece in the last 34 years. The new Act will be presented at the 2011 Annual Report.

### *1.2 New guidelines by the Hellenic Competition Commission*

5. During 2010, the Hellenic Competition Commission ("HCC") has issued notices concerning its enforcement priorities, the handling of complaints and the adoption of new notification forms. In particular:

#### *1.2.1 Notice on Enforcement Priorities*

6. On January 12th 2010, the HCC issued a Notice on Enforcement Priorities, with a view to improving the efficiency of its enforcement action while also increasing transparency and accountability.

[1] Economic Adjustment Programme - Conditionality Requirements (Annex IV): "Government adopts a law modifying the existing institutional framework of the Hellenic Competition Commission (HCC), which abolishes the notification system for all agreements falling within the scope of Article 1 of Law 703/1977, gives the HCC the power to reject complaints, to increase the independence of HCC members, and to establish reasonable deadlines for the investigation and issuance of decisions".

7. The prioritisation of cases is generally based on the criterion of public interest; the HCC will be assessing the public interest considerations which arise from a particular case, in light of the estimated impact of a practice 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 (price-fixing, market sharing and sale or production restrictions) of national scope, especially in cases of horizontal agreements, 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.

- 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 effect (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).

8. The HCC will also be examining whether a particular case pertains to certain relevant markets or industries of strategic importance. Priority will also be given to compliance with the rulings of the Athens Administrative Court of Appeal and the Council of State, concerning prior HCC decisions. Finally, the HCC will be assessing the necessity of adopting exceptional measures of regulatory nature in certain sectors of the economy, according to the strict 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.

9. The prioritisation of a particular case will also depend on the available resources of the HCC, the possibility of establishing proof of an infringement, the necessity of providing guidance on novel issues of interest, as well as the assessment of whether the HCC is the best-placed institution to act (particularly as compared to the jurisdiction of national courts to deal with cases of private interest).

### *1.2.2 Notice on the Handling of Complaints*

10. On January 21st 2010, the HCC defined the formalities for the submission of complaints pursuant to Article 24 of Law 703/1977, concerning suspected infringements of Articles 1 and 2 of Law 703/1977, as well as of Articles 101 and 102 TFEU. For this purpose, it adopted a specific form for complaints, which essentially mirrors Form C, annex to the EU Regulation 773/2004.

11. The HCC also issued a Notice explaining the requirements applicable to complaints pursuant to Article 24 of Law 703/1977. The Notice clarifies the formalities for launching complaints before the HCC, explains the handling of submissions that do not comply with the requirements for complaints and further sets out the procedural consequences of different types of submissions (i.e. complaints, other submissions). In addition, the Notice stresses that the civil courts are also competent to apply the competition legislation, particularly with a view to safeguarding the rights of individuals. The HCC has no competence to award damages for loss incurred as a result of competition law infringements, but such claims can be pursued by interested parties before the civil courts.

### *1.3 New Legislative Proposals*

12. A Legislative Drafting Committee ("Expert Committee") was set up by the Ministry of Economy, Competitiveness and Maritime Affairs in February 2010, with the task of proposing specific amendments to the Greek Competition Act (Law 703/1977). The Expert Committee, headed by the President of the HCC Mr. Kyritsakis, mostly comprised of professors of law and economics, as well as members of the HCC and representatives of the Ministry. The Committee concluded its work on July 19th 2010 and submitted its proposals to the Ministry. The proposals aimed at increasing the effectiveness of HCC and strengthening its independence, while further promoting harmonisation with EU competition law and practice. In particular, the proposals revolve around 6 key themes:

#### *1.3.1 Institutional arrangements and strengthening of independence*

13. It was proposed that the HCC's President be elected by the Parliament's Chamber of Presidents (in line with constitutionally-recognised independent administrative authorities) and that the term in office of HCC members be extended (in order to decouple it from election cycles).

#### *1.3.2 Increasing efficiency of enforcement action*

14. The HCC's ability to set strategic goals and to prioritise important cases should be further enhanced, with a view to increasing the systemic effect of its enforcement action. In particular, it was proposed that the prioritisation of cases be generally based on the criterion of public interest. The HCC should 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. Complaints should be assessed on the same basis. It was also suggested that the deadlines for the investigation, deliberations and issuance of decisions be further extended (from 6 months to 12 months), in order to establish a more reasonable time-frame for the resolution of cases. Moreover, there were proposals regarding **(i)** the improvement of the cooperation between the HCC and sectoral regulatory agencies, **(ii)** the HCC's ability to initiate external audits and **(iii)** the HCC's discretion to issue notices and guidelines on the implementation of the law based on corresponding EU guidelines (thus facilitating self-assessment by companies).

#### *1.3.3 Judicial review of HCC decisions*

15. It was recommended that specialised competition chambers be established at the Athens Administrative Court of Appeal, the aim being to further enhance the effectiveness of judicial review. There were also suggestions for streamlining the procedure for the suspension of fines upon appeal, such that a greater proportion of the fines imposed should be paid pending the appeal process.

#### *1.3.4 Criminalisation*

16. It was proposed that criminal penalties become stricter, with a view to increasing the overall deterrent effect of the competition rules.

#### *1.3.5 Cooperation with Ministries concerning regulatory obstacles to competition*

17. Given the negative impact of regulatory obstacles to competition and the fact that such regulatory obstacles most often fall outside the scope of application of EU and Greek competition rules, it was proposed that Ministries and government agencies request the opinion of HCC in the process of adopting new legislative and regulatory measures which may distort competition. Moreover, it was recommended that the HCC's exceptional power to take regulatory action in particular sectors of the economy be limited to the imposition of structural remedies in order to restore effective competition.

### *1.3.6 Further alignment with EU procedures and practice*

18. A number of proposed measures were intended to ensure further alignment with EU procedures and practice, notably by abolishing notification requirements and/or formalities which entail a horizontal administrative burden for both companies and the authority. These include, inter alia: (i) the abolition of the post-merger notification requirement regarding smaller merger & acquisitions (Article 4a of Law 703/1977), (ii) the abolition of the registration/notification of agreements for "mapping" purposes (Article 21 of Law 703/1977), thereby achieving full harmonisation with the "legal exception" regime established by the EU Regulation 1/2003, (iii) the streamlining of merger-review deadlines, reflecting more closely the corresponding provisions of the EU Regulation 139/2004, (iv) the further diversification of HCC's investigative powers with the introduction of the sector inquiry tool, and (v) the introduction of limitation periods for the imposition of fines (mirroring Regulation 1/2003).

19. After a period of further drafting, the Ministry of Regional Development and Competitiveness published a draft Bill in December 2010 and initiated a public consultation. The process went on for the next three months and culminated in the passing and publication of a new Competition Act (Law 3959/2011), which will be presented in next year's Annual Report.

## 2. Enforcement of competition laws and policies

### *2.1 Anticompetitive Practices*

### *2.1.1 Summary of Activities of the HCC*

20. In the period covered by the report, the HCC imposed fines of approximately € 43.5 million against companies in various sectors. In a case concerning the franchise network of a major company active in the retail market (Carrefour Marinopoulos), the HCC imposed fines of € 12.5 million. In the fish farming case, the HCC imposed fines totalling € 677,885 for violations of Articles 101 TFEU and 1 of Law 703/1977. Moreover, in the construction sector, the Technical Chamber of Greece was fined for adopting a minimum cost for construction projects, which is used for the calculation of architects' and engineers' fees. Finally, the HCC re-imposed a fine of roughly € 30 million on Nestlé Hellas S.A. after a previous decision was partially annulled by the appellate court for procedural reasons (concerning the calculation of the fine).

21. With regard to cartel detection, from January 2010 to December 2010 the HCC conducted 16 dawn raids. Then, concerning abuse of dominance cases, the HCC launched 17 investigations.

22. During the reporting period the HCC issued a total of 42 decisions, which can be classified as follows (Table I).

**Table I: Decisions issued by the HCC (2010)**

| | |
|---|---|
| Ex officio investigations | 14 |
| Complaints | 10 |
| Notification of agreements | 1 |
| Mergers | 13 |
| Interim measures | 1 |
| Application to revoke previous HCC decisions | 2 |
| Administrative decisions | 1 |
| **Total** | **42** |

23. The main focus of its 2010 decisions has been sectors of key importance for the Greek economy and of great significance for consumer welfare (i.e. food, motor fuels, energy, transportation services, dairy products, etc).

*2.1.2 Description of Significant Cases*

- Decision 495/VI/2010 (Carrefour Marinopoulos)

  Alongside its own stores within the country, Carrefour's Greek business (Carrefour Marinopoulos S.A. – "Carrefour") runs a parallel franchise network of local convenience stores under the label «5' Marinopoulos». The contractual agreement between Carrefour and its franchisees was the source of numerous complaints to the HCC.

  On July 6th 2010, the HCC adopted a Decision by which it imposed fines totalling € 12.5 million on Carrefour, for pursuing practices that restrict competition in dealing with its franchise network, and thus infringing Articles 1 and 2a of Law 703/1977, as well as Article 101 TFEU. Moreover, it asked Carrefour to refrain from the infringements and to amend (or withdraw) the restrictive contractual terms. In case of non-compliance, the HCC threatened the imposition of a periodic penalty payment of € 10,000 per day.

  The HCC concluded that during the period 2003-2008, Carrefour infringed the competition rules by (i) imposing resale price maintenance and by (ii) restricting cross-supplies between members of the franchise network, coupled with exclusive supply obligations. In particular:

  – i) Specific conditions in the franchise agreement amounted to resale price maintenance, because they restricted the franchisees' ability to determine their sale price and explicitly required them to follow Carrefour's recommended prices. The HCC also examined the effect of the said terms, by looking into the operation of a joint IT system (SRS) that the franchisees installed as part of the agreement. The HCC found that, whereas the franchisees could manually alter the prices the SRS system recommended, Carrefour had full access to any alterations made, thus closely monitoring the franchisee's pricing policy. In addition, the system's first edition (spanning from 2003 to 2006), in practice rendered manual price management by the franchisees difficult and overly time-consuming, which was mainly due to their inability to save the daily set of price alterations for the next day, whereupon a new set of prices (concerning all products) was sent by the system. Therefore, for the said time period, the franchisees *de facto* complied with the system's "suggested" prices, facilitating structural price rigidity. However, the system's second edition (spanning from 2006 to 2008) was more flexible, as it provided for franchisee discretion in terms of setting the products for which he/she did not desire daily price updates by the SRS system.

  – ii) The franchise network inherently included all the characteristics of a selective distribution system, such that the (explicitly embodied in the franchise contract) prohibition of cross-sales between the designated franchisees infringed the competition rules. Even if the network had not been operating under a selective distribution system, the competition rules would still have been violated, as the franchise agreement also contained explicit exclusive supply obligations. The latter restriction would not, in any event, bring about sufficient efficiency-enhancing effects.

- Decision 492/VI/2010 (Fish farming sector)

  This case arose as a result of a notification by the five biggest Greek fish farming undertakings of an agreement to the HCC, according to which, due to overproduction, the undertakings concerned jointly agreed to limit/control the sales and fix the selling prices of gilthead sea bream, for a limited period of six months, in order to rationalise production and to restore the prices to a level that covers the production cost. Following this notification, the HCC initiated an *ex officio* investigation.

In its decision, the HCC held that the above agreement constituted a hard core restriction of competition, i.e. a restriction of competition "by object" in the sense of Articles 1(1) of Law 703/1977 and 101(1) TFEU. According to the Decision, although an exemption under Articles 1(3) of Law 703/1977 and 101(3) TFEU is not theoretically excluded, price-fixing and output-limiting agreements are most unlikely to fulfil the criteria for an individual exemption. As a general rule, such agreements do not bring about objective economic advantages, nor can they be deemed indispensable for the attainment of such advantages. It is further unlikely that the restriction of competition can be counter-balanced in a proportionate manner by measurable benefits that are passed on to the consumers.

The HCC found that there was no significant drop in demand and/or output over a prolonged period of time. On the contrary, production and consumption indexes generally continued to exhibit a positive trend. Market participants did not incur substantial operating losses over a prolonged period of time. Moreover, the agreement in question was not limited to a reduction of overcapacity and did not contain a concrete restructuring plan with objective criteria for the removal of inefficient capacity. Essentially, it extended to output-limitation and price-fixing restrictions – the primary aim being to achieve the increase of selling prices in the short run (to the benefit of producers and to the detriment of consumers).

The HCC also concluded that the poor economic performance of the market under scrutiny was a result of the actions of the undertakings concerned. At their own admission, they had set over-ambitious targets, while failing to foresee that such an expansion of the market capacity may not be absorbed by demand and hence, the market price may decrease, reaching the level of the cost of production and, in some circumstances, going even below it. Market players should have taken individual steps to decrease capacity, pursue consolidation and engage in efficiency-enhancing specialization agreements or similar actions.

Overall, based on the specific circumstances at hand, the HCC concluded that the market for Mediterranean aquaculture and, in particular, the market for the production and distribution of fresh gilthead sea bream in Greece, was not in a structural crisis.

- Decision 512/VI/2010 (Technical Chamber of Greece)

Pursuant to a number of complaints by members of the Technical Chamber of Greece ("TEE"), the HCC opened proceedings against TEE for fixing minimum fees for the services of civil engineers and architects. In its Decision, the HCC found that TEE, which is an "association of undertakings" in the sense of the competition provisions, substituted the role of the State, without having any regulatory power, by adopting a "minimum cost for construction projects", which is used, according to Greek law, for the calculation of architects' and engineers' fees.

The Greek State has the right to regulate the minimum fees of civil engineers and architects for all private construction projects. According to the relevant legislation two different methods are used for the calculation of engineers' fees. Under the first method, the fees are calculated on the basis of the actual analytical cost/budget of the project, which is in turn calculated on the basis of the prices for each construction work, as set by the State. Under the second method, the budget of the project is calculated on the basis of a so-called "Common Starting Price" per square metre set by the State by Ministerial Decrees ("conventional budget").

Following two 2000 judgments of the Greek Supreme Administrative Court annulling the Ministerial Decrees setting the "Common Starting Price", the State refrained from adopting new Ministerial Decrees adjusting the "Common Starting Price". In that context, TEE adopted decisions setting a "presumed minimum construction cost" per square metre. Since the latter was used to calculate the budget of each private construction project, TEE's actions de facto replaced the above Ministerial Decrees setting the "Common Starting Price". After the adoption of the

TEE decisions in 2006 and 2007, the existing "Common Starting Price" of € 44 was increased to € 105 for 2007, € 110 for 2008, € 115 for 2009 and € 118 for 2010, thus accordingly increasing the architects' fees. Compliance with TEE's decisions was controlled through a TEE electronic system for the calculation of architects' and engineers' fees.

The HCC considered that in such a context, TEE's conduct aimed at, and resulted in, raising minimum fees for architects' and engineers' fees. The HCC considered that such actions constitute very serious infringements of the national and European competition rules in the market for services offered by architects and engineers for private projects. As a result, it imposed a € 60,000 fine on TEE. In addition, the HCC also imposed on TEE several obligations, including informing its members and the public about the HCC Decision and modifying its electronic system, so that requests for the calculation of fees are accepted by the system, independently of the amount of the declared cost per square metre.

- Decision 505/VI/2010 (Flour market)

On the occasion of two press releases of the "Greek Flour Millers' Association" (GFMA) & "Association of Flour Mills of Greece" (AFMG) and repeated public communications of the Members of the Board of those associations that price need to be adjusted upwards (by approx. 30% in the near future), the HCC initiated an *ex officio* investigation in the flour and grain market to investigate whether there has been a violation of Articles 1 and 2 of Law 703/1977 (as well as of Articles 101 and 102 TFEU) and with a view to adopting provisional measures, due to the high risk of irreparable harm to competition and thus to the public interest.

In particular, the case concerns the investigation of the competitive conditions in the purchase of wheat flour available for industrial and craft use and standardised products for household use. The relevant product markets concerned in this case were a) Flour for industrial and craft use and b) Standard flour for household use. Most mills offer their products throughout the Greek territory under conditions of homogeneous competition. Consequently, the relevant geographic market in this case can be considered the Greek territory.

According to the Statement of Objections, in this case, there was a prima facie case which entailed a risk of serious and irreparable damage to competition arising from both associations' recommendations to their members for an immediate readjustment of prices for flour in mid-August 2010.

During the hearing before the HCC, the two associations offered commitments pursuant to the Greek Competition Act. The HCC decided to accept the commitments and make them binding on the parties. According to the commitments, the two associations undertook to withdraw the press releases and announcements of mid-August 2010, to publicise this withdrawal to their members and in the press, and to refrain from any similar announcement or any other action recommending or tending to recommend price adjustments.

In case of the associations' non-compliance, the HCC may impose fines up to 10% of their members' annual turnover. The commitments decision was taken in the context of the interim measures procedure and is without prejudice to the continuing investigation undertaken by the HCC Directorate General or to the HCC final decision.

- Decision 502/VI/2010 (Oil refining industry)

Pursuant to a complaint filed with the HCC in 2007 by the Greek political party "Coalition of the Left of Movements and Ecology", the HCC opened an investigation in the markets for oil refining and for non-retail distribution and marketing of refined products. The complaint alleged inter alia that the two Greek refineries, EL.PE and Motor Oil Hellas, engaged in a concerted

practice and charged excessive prices on their customers. There were also allegations that the refineries discriminated against smaller traders of refined products and imposed certain unfair conditions.

The HCC had investigated the above markets on numerous occasions and had also conducted a market enquiry in 2007/2008, pursuant to which it had imposed certain behavioural measures on the relevant market players. In the present Decision, the HCC rejected the complaint and found that there was no evidence to support the allegation that the two oil refineries violated Articles 1 of Law 703/1977 and 101 TFEU by conspiring to raise prices. The HCC accepted that the oil refining market was highly concentrated with EL.PE having a 75% and Motor Oil Hellas a 25% market share (3 and 1 refineries, respectively). The duopolistic nature of the market and the fact that ex-refinery prices for diesel and gasoline prices are published on a daily basis by organisations such as Platt's and Argus (transparency) helps explain why the market is characterised by an increased degree of parallelism.

The HCC investigation also showed that Greek ex-refinery prices were moving in sufficient harmony with crude oil price movements and that they were not excessively higher than average prices in other EU Member States.

The HCC then proceeded to investigate the conduct of EL.PE, which has a dominant position in the market. In particular, the HCC concentrated on three aspects: (a) on the allegation that EL.PE was charging "excessive" prices, (b) on EL.PE's discount scheme, and (c) on the alleged discriminatory treatment of small traders. The HCC rejected the complaint on all three grounds.

First, it found that the test of EU case law on what constitutes an "excessive" price was not met here. The HCC applied the standard two-step test of EU case law, i.e. (a) whether the difference between the price and the production costs – the profit margin - is "excessive" and (b) whether the prices charged are unfair, either in themselves or when compared to other markets. Because the products in question are commodities and their price is not set on a cost-plus basis but is rather dependent on the spot-market, the HCC considered that it was excessively difficult to calculate the long-term average incremental cost and proceeded directly to the examination of the second limb of the above test, which it held was not satisfied here.

Second, EL.PE's discounts were lawful, being linear and volume-based and containing no exclusionary elements. Third, the fact that different discounts applied to larger and smaller customers did not amount to discrimination. EL.PE's discount scheme was genuinely volume-based and was not tailored to apply only to some customers. It was available to all customers, in so far as they satisfied the volume criteria and there was no covert discrimination on the basis of nationality or otherwise.

- Decision 510/VI/2010 (Nestlé)

In 2009, the HCC adopted an infringement decision against Nestlé Hellas S.A. ("Nestlé"), a market leader in the Greek instant coffee market. The HCC imposed on Nestlé a fine of roughly € 30 million for abusing its dominant position through certain exclusionary practices and for concluding a number of anti-competitive agreements.

In particular, the HCC attributed to Nestlé a number of anticompetitive practices in its trading relations with supermarket chains (granting of target and fidelity rebates, impeding of parallel imports, and prohibiting of any marketing activity of competing products simultaneously with its own products). In the HO.RE.CA. instant coffee market, Nestlé was found guilty for imposing exclusive supply and contractual bundling arrangements and for granting fidelity rebates aiming at inducing customer loyalty. In addition, in its trading relations with distributors, Nestlé imposed

a covert non-compete obligation (equivalent to an "English clause"). This set of practices amounted to a violation of Articles 2 of Law 703/1977 and 102 TFEU (abuse of dominance).

Nestlé was also fined for having infringed Articles 1 of Law 703/1977 and 101 TFEU, for prohibiting/impeding parallel imports by specific supermarket chains, as well as by prohibiting passive sales (in the latter case, only a violation of Article 1 of Law 703/1977 was found).

On appeal, the Athens Administrative Court of Appeal confirmed the HCC's findings on substance (abusive practices) and concluded that Nestlé had, indeed, broken the law. Yet, it took issue with the way the HCC had calculated the fine per anticompetitive practice. According to the judgment, the HCC had erred in imposing separate fines per manifestation of the anticompetitive practices in each of the relevant markets, but should have imposed a separate sanction per legal provision violated. In other words, the HCC should have imposed a fine for the violation of Articles 2 of Law 703/1977 and 102 TFEU (abuse of dominance) and a separate fine for the violation of Articles 1 of Law 703/1977 and 101 TFEU (anti-competitive agreements). It then referred the case back to the HCC in order for the latter to exercise its discretion and impose a fine accordingly.

Further to the court's judgment, the HCC adopted a new Decision, imposing a € 22.34 million fine for the abuse of dominance and a € 7.45 million for the illicit agreements. Despite the reconfiguration of the decision, the total fine essentially remained unchanged.

- Decision 487/VI/2010 (OLP / Blue Container / Dealmar)

This case concerned a complaint by two shipping companies operating in the market of containers' maritime transport (liners) against the Piraeus Port Authority S.A. (OLP),[2] a public undertaking controlled by the Greek State for allegedly abusive behaviour. In a previous Decision (428/V/2009), the HCC had already 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 transhipment and transit of cargo, while it enjoyed privileged treatment and priority in the provision of services by OLP. OLP was fined by the HCC for having infringed the provisions of Articles 1 of Law 703/1977 and 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. Moreover, the HCC had decided that although OLP holds a dominant position in the market for stevedoring services and storage domestic cargo it did not abuse its position.[3]

With the present Decision (487/VI/2010), the HCC examined the application of the "ne bis in idem" principle to the case at hand and decided that: a) The allegations of the complainants (Blue Container Line SA and DEALMAR Enterprises Ltd) were identical with the allegations examined in the previous decision (Decision 428/V/2009), b) The complainants did not put forward any new evidence that would justify the withdrawal of the previous Decision concerning the examined practices of discriminatory pricing and the application of dissimilar conditions to equivalent transactions under Articles 2 of Law 703/1977 and 102 TFEU.

More specifically, according to the decision the allegations examined therein referred to the same facts as regards their geographic scope, subject and timing with the ones giving rise to the 428/V/2009 Decision. Moreover, the alleged offender was the same. The unity of the facts and

2 OLP has the right of exclusive exploitation of the port of Piraeus and is the sole provider of stevedoring and storage services (port services) of freight transported by sea in the area of Piraeus.

3 This HCC Decision was eventually annulled by the Athens Administrative Court of Appeal. See further below.

the identity of the offender as determined above, coupled with the fact that the previous Decision was subject to review following appeals filed by all parties, further stressed the risk of conflicting decisions being issued on the merits of the case. Finally, considerations such as efficiency (dealing in essence with the same case, engaging human and economic resources to investigate the case, etc.) were taken into consideration in view of the application of the "ne bis in idem" principle. Making reference to the national penal legislation regarding double prosecution, the HCC concluded that although Decision 428/V/2009 was not yet final the "ne bis in idem" principle was applicable to the case at hand, in the sense that no one is to be prosecuted twice for the same offense (*nemo bis vexari pro una et eadem causa*).

## *2.2 Merger Enforcement*

### *2.2.1 Statistics on Notified Mergers*

24. The HCC examines the notified mergers as soon as the relevant notifications are submitted. If it is established that the notified concentration does not fall within the scope of application of Article 4b(1) of Law 703/1977, within 1 month from the notification, the HCC President issues an act that is notified to the undertakings concerned. If it is established that the notified concentration, although falling within the scope of application of Article 4b(1), does not raise serious doubts about its ability to restrict competition in the markets concerned, the HCC, by decision issued within a month from the notification, allows the concentration (Phase I). If it is established that the notified concentration falls within the scope of application of law and raises serious doubts about its ability substantially to lessen competition or to create or reinforce a dominant position in the markets concerned, the HCC President, by decision issued within a month from the notification, initiates the procedure of thorough investigation of the notified concentration and informs without delay the participating undertakings with regard to his decision (Phase II).

25. In 2010, 108 mergers were notified to the HCC. 13 of these mergers were notified under Article 4b of Law 703/1977. 7 of these mergers were subject to an in-depth investigation (Phase II). The number of notifications under Article 4b in 2010 showed a decrease compared to the previous level of 19 in 2009. In the period covered by this report, the HCC cleared three mergers subject to conditions and obligations (remedies).

### *2.2.2 Description of Significant Cases*

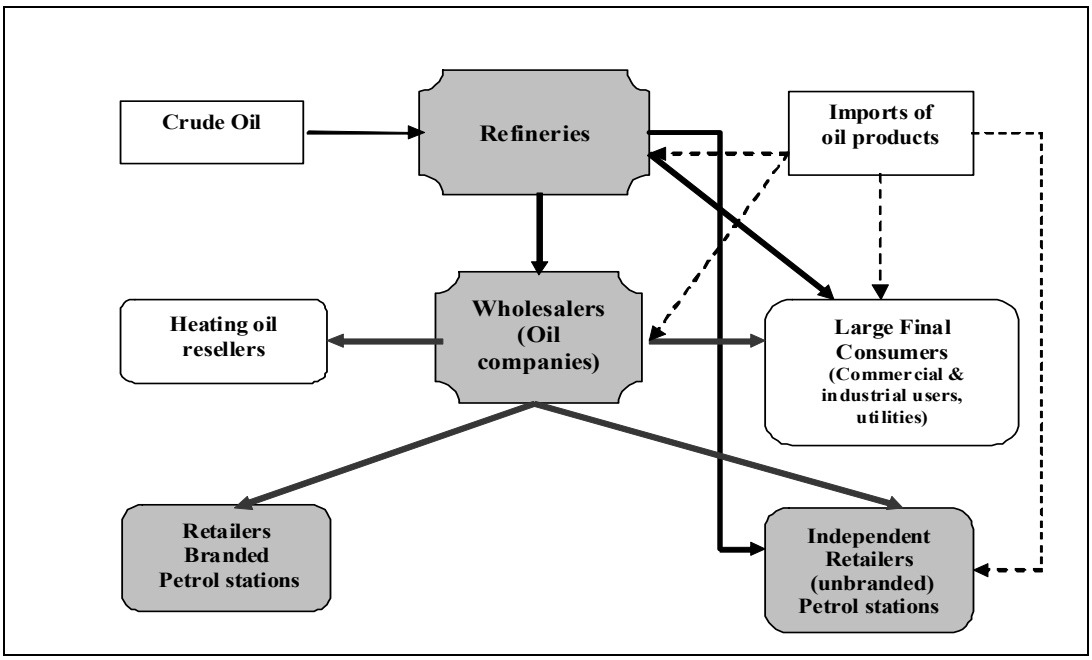
- Decision 491/VI/2010 (MOH / SHELL)

  In contrast to other EU countries (like Germany, France, and the United Kingdom), the Greek downstream oil industry is divided into three distinct market segments, that is refining, wholesale and retail market (Figure I). In the refining segment, only two established companies operate Hellenic Petroleum S.A. (EL.PE) and Motor Oil Hellas S.A. (MOH). These refiners cover approximately 90% of the total Greek oil demand while the remaining 10% is imported by a few wholesalers, like BP Hellas S.A. and Shell Hellas S.A. Refiners are allowed to sell gasoline and other petroleum products (e.g. diesel and heating oil) directly to "large final consumers", such as trucking firms, industrial manufacturers and utilities or to independent retailers (unbranded petrol stations). The majority of the refiners' petroleum products' are however sold to wholesalers (i.e. the oil companies).

  The oil companies (e.g. Shell Hellas, BP Hellas, EKO, AVINOIL, and Jetoil), which operate in the Greek wholesale segment, are legally separated from the refining operations and are allowed to import and export oil products. In turn, they can sell these products to large final consumers and filling station operators (retailers). As regards the situation in the Greek retail segment, there is a relatively large number of petrol filling stations in relation to the total population of the

country. It is estimated that approximately 7 filling stations correspond to 10,000 inhabitants, while, for example, in Germany the ratio is only 2 stations per 10,000 inhabitants. In particular, across the Greek territory there are around 8,500 petrol filling station operators (nearly 600 are unbranded). Given the above, it becomes apparent that the Greek oil companies cannot easily control the retail segment of the market by decreasing the pump prices of their network as a response to increased local competition. Further, it is noteworthy that most of the petrol stations are located close to the Attica region and account for half of the total turnover of the relevant retail market. Beyond the filling station operators, there is a small number of traders, approximately 2,000 (the so-called "resellers") that sell heating oil directly to small final consumers.

**Figure I: Structure of the Greek oil industry**




On January 27th 2010, the European Commission received a notification whereby MOH would acquire sole control over the Greek-based "Shell Gas Commercial and Industrial" and over "Shell Hellas" from the Royal Dutch Shell Group.

At the same time, MOH and Shell Overseas Holdings Limited, a subsidiary of Royal Dutch Shell, would create a joint venture to be active in the supply of aviation fuel at Greek airports. On February 18th 2010 the HCC requested the European Commission that the case be referred to the former, pointing out that the planned operation would threaten significantly to affect competition, because it would result in high market shares in various retail markets in Greece, as well as in various non retail markets for fuels and bitumen. The HCC argued that various affected markets were local in nature and that it was better-placed to appreciate the competitive impact of the operations. The European Commission found that the HCC's request was in line with Article 9 of the EU Merger Regulation and that the HCC would indeed be best-placed to assess the impact of the proposed transaction on the Greek markets.

Consequently, with its decision of March 15th 2010 (Case No COMP/M.5637) pursuant to Article 9 of the Merger Regulation (Regulation 139/2004), the European Commission referred to the HCC the examination of the proposed acquisition. On June 6th 2010, the HCC approved the

notified concentration, while attaching conditions intended to ensure that the undertakings concerned comply with the commitments they entered into vis-à-vis the HCC. In particular:

- As regards the petrol and diesel retail markets in the prefecture of Ioannina and the heating oil retail market in the prefecture of Cephalonia, MOH would dispose of a number of service stations from its network, equivalent to a reduction of volume-based market share below 55% (a condition which essentially corresponds to the release of approximately 94 service stations in the relevant geographic areas, based on the average volumes sold by service station and prefecture in 2009). The loss of these stations would be achieved either by the non-renewal or termination of contracts with petrol station owners.

- MOH would submit to the HCC a list and map of the location of the retail stations, which it intends gradually to dispose of in the prefectures in question, while making reference to the annual (based on 2009 data) consumption of each retail station, so that it may be possible for the HCC to approve the intended release of the retail stations and to monitor compliance with the commitments assumed.

- It was further envisaged that the process should be completed within a few months period, i.e. prior to the 2011 summer season. MOH would re-acquire the released service stations for a period of 6 years thereafter. Furthermore, the HCC would be cooperating with the Regulatory Authority for Energy (RAE) in the context of the exercise by the latter of its powers to regulate access of third parties to storage depots for petroleum products, as well as with the newly-established Committee for Monitoring the Petroleum Markets.

- Decision 494/VI/2010 (TOPAZ / TIGER)

  On April 8th 2010, TOPAZ notified to the HCC the acquisition of 100% of TIGER. The companies are both active in the markets for fertilizers. In the course of its Phase II proceedings, which were initiated in May 2010, in view of the oligopolistic nature of the relevant markets, the HCC conducted a wide-range investigation focussing on the likely horizontal, vertical and conglomerate effects of the merger. Notwithstanding the combined entity's resulting high market shares in certain distinct sub-markets for fertilizers, the HCC ultimately concluded that the notified acquisition would be unlikely significantly to impede effective competition.

- Decision 496/VI/2010 (CARREFOUR MARINOPOULOS / DIA HELLAS)

  The HCC cleared the acquisition of joint control by supermarket groups Carrefour of France and Marinopoulos of Greece over Dia Hellas, following the submission of commitments by the parties (July 2010). To obtain the HCC's clearance, the parties promised that stores released from franchise agreements would be free to compete with the new joint venture entity. In clarifying how this would be made possible, Carrefour and Marinopoulos promised they would not enforce non-compete clauses that would otherwise have kicked in upon termination of the franchise agreements.

  The promise has been accepted as an "amendment" to the notification, and appears procedurally similar to the public promises made by Oracle in relation to its Sun Microsystems buyout, which was reviewed by the European Commission. Non-compliance with the promise would entitle the HCC to revoke its clearance decision. It should be noted that the Greek merger control rules do not provide for the submission of commitments in the course of Phase I proceedings, so the acceptance of the above promise and its acceptance by the HCC helped avoid the initiation of Phase II proceedings.

### *2.3 Court Judgments*

26. HCC decisions can be appealed to the Athens Administrative Court of Appeal, which exercises a full review of their merits. A further appeal on points of law (cassation) can be filed with the Council of State. In 2010, the Athens Administrative Court of Appeal has rendered a number of interesting judgments, the most important of which are summarised below.

- Nestlé – exclusionary practices – recalculation of the fine

  In 2009, the HCC adopted an infringement decision against Nestlé Hellas S.A. ("Nestlé"), a market leader in the Greek instant coffee market. The HCC imposed on Nestlé a fine of roughly €30 million for abusing its dominant position through certain exclusionary practices and for concluding a number of anti-competitive agreements.

  In particular, the HCC attributed to Nestlé a number of anticompetitive practices in its trading relations with supermarket chains (granting of target and fidelity rebates, impeding of parallel imports, and prohibition of any marketing activity of competing products simultaneously with its own products). In the HO.RE.CA. instant coffee market, Nestlé was found guilty for imposing exclusive supply and contractual bundling arrangements and for granting fidelity rebates aiming at inducing customer loyalty. In addition, in its trading relations with distributors, Nestlé imposed a covert non-compete obligation (equivalent to an "English clause"). This set of practices amounted to a violation of Articles 2 of Law 703/1977 and 102 TFEU (abuse of dominance).

  Nestlé was also fined for having infringed Articles 1 Law 703/1977 and 101 TFEU, for prohibiting/impeding parallel imports by specific supermarket chains, as well as by prohibiting passive sales (in the latter case, only a violation of Article 1 Law 703/1977 was found).

  Nestlé filed an appeal against the HCC's decision before the Athens Administrative Court of Appeal. The Court followed existing case-law, according to which it is not necessary to prove the specific effect of an alleged abuse of dominance on the relevant market, in order to ascertain market foreclosure. The Athens Administrative Court of Appeal held that the abuse of dominance constitutes an objective notion. Such conduct may affect the structure of a market, where competition has already been weakened, hindering the preservation of existing competition or of its growth, by recourse to means not corresponding to competition on the merits.

  On the issue of the agreements concluded by the appellant granting a) target and b) fidelity rebates to supermarket chains, the Court found that Nestlé did in fact abuse its dominant position by way of the agreements in question, thus confirming the conclusion reached in the contested HCC decision. The Court held that the infringements attributed to Nestlé by the HCC were in fact substantiated, regardless of the anticompetitive effects of the rebates in question. Using similar reasoning the Athens Administrative Court of Appeal upheld the HCC findings regarding the abuse of dominance by Nestlé due the impediment of parallel imports and the inclusion of unreasonable terms in the contested agreements.

  Nestlé also claimed that the HCC had wrongfully attributed an infringement of Articles 1 of Law 703/1977 and 101 TFEU to Nestlé for prohibition of passive sales, due to the fact that the HCC had based its decision on the same facts, by way of which it had also ascertained an abuse of dominance by Nestlé. The Court found no error in the conclusion reached by the HCC, due to the fact that the confirmation of the infringements in question is based on different conditions and the sanction imposed per infringement serves a different purpose.

  The appellate Court also examined allegations of Nestlé that the HCC had unlawfully dismissed its offer of commitments. Nestlé alleged that the HCC had misapplied the Competition Act provisions on commitments by reaching the decision that Nestlé had committed hardcore

infringements of competition law and deemed the commitments offered as insufficient. The Court dismissed the allegations by Nestlé as unfounded and determined that the Competition Act provisions cited by Nestlé grant the HCC discretion in the adoption of commitments offered. Therefore a decision by the HCC may be reviewed only on the grounds that it has exceeded the margins of its discretion, which was not the case here.

Furthermore, the Athens Administrative Court of Appeal held that proceedings before the HCC are not criminal in nature. Then, it examined and dismissed allegations by the appellant that its rights of defence had been violated by the fact that the transcribed minutes of the hearing before the HCC were not made available in time for the submission of its supplementary memorandum.

The Athens Administrative Court of Appeal also confirmed that the HCC enjoys broad powers, when collecting evidence and undertaking investigations, limited only by provisions on the sanctuary of residence, when performing dawn raids, on bank secrecy, when collecting evidence, and on professional secrecy with reference to persons examined as witnesses.

Nestlé also claimed that its right against self-incrimination had been violated by the fact that it had been required to make available documents during the course of a dawn raid. The Court dismissed this allegation and specified that the alleged "self-incrimination" may not be deduced from the obligation by law of an undertaking to submit all evidence contained in the documents relevant to the HCC's investigation.

In conclusion, the Athens Administrative Court of Appeal found that Nestlé had, indeed, broken the law, yet it took issue with the way the HCC had calculated the fine per anticompetitive practice. According to the judgment, the HCC had erred in imposing separate fines per manifestation of the anticompetitive practices in each of the relevant markets, but should have imposed a separate sanction per legal provision violated. In other words, the HCC should have imposed a fine for the violation of Articles 2 of Law 703/1977 and 102 TFEU (abuse of dominance) and a separate fine for the violation of Articles 1 of Law 703/1977 and 101 TFEU (anti-competitive agreements). It then referred the case back to the HCC in order for the latter to exercise its discretion and impose a fine accordingly.

Further to the court's judgment, the HCC adopted a new Decision, imposing a €22.34 million fine for the abuse of dominance and a €7.45 million for the illicit agreements. Despite the reconfiguration of the decision, the total fine essentially remained unchanged.

- <u>OLP - Provision of port services</u>

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 in 2009. OLP has been granted the right of exclusive exploitation of the installations of Piraeus Port (including the Container Terminal) and of 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.

The HCC examined the effects on competition of an agreement, which OLP had entered into with the liner company Mediterranean Shipping Company S.A. (MSC). The HCC found that on the basis of this agreement, MSC enjoyed privileged treatment and priority in the provision of services by OLP, while having undertaken the obligation to use the port of Piraeus as a hub port for transhipment and transit of cargo. The HCC imposed a €1.3 million fine on OLP for having infringed the provisions of Articles 1 of Law 703/1977 and 101 TFEU and ordered it to adopt in the future all necessary measures for achieving fair and reasonable treatment and efficient servicing of all port users. A €1.3 million fine was also imposed on MSC for having infringed the provisions of Articles 1 of Law 703/1977 and 101 TFEU.

The Athens Administrative Court of Appeal rendered three judgments concerning this case. In these judgments, the Court adopted a broader definition of the relevant geographic market (the Mediterranean) than that adopted by the HCC and therefore contested the dominance of OLP in the first place. However, it ruled that in any case (i.e. even based on the relevant market definition by the HCC), the terms of OLP's agreement with MSC did not lead to the undue privileged treatment of the latter, as the obligations assumed by OLP (e.g. priority service provided to MSC ships, award of discounts, where OLP fails to comply with its obligations etc) are counterbalanced by obligations assumed by MSC (e.g. minimum freight guarantee, long-term commitments etc). Furthermore the benefits offered to OLP by other smaller users of the Piraeus port are not equivalent, but inferior to the contractual obligations assumed by MSC, therefore the treatment of MSC by OLP did not amount to unequal treatment.

As a result, the Court annulled the HCC decision in question.

- Hellenic Duty Free Shops

In 2007, the HCC examined a complaint filed by Milopoulos & Co. Ltd, importer and trader of snacks and other products, which claimed that Hellenic Duty Free Shops S.A. ("Duty Free Shops"), the holder of exclusive rights in the sector of duty free stores in Greece, had abused its dominant position by discontinuing its cooperation with intermediate retailers such as the complainant and starting getting supplied directly from the producers through its shareholder Germanos A.E.B.E. ("Germanos"). The complainant alleged that the above decision of Duty Free Shops resulted in the termination in 2004 of agreements between the former (reseller) and Masterfoods Veghel BV (producer), by way of which the complainant was the exclusive trader and distributor of the latter in the market for tax free chocolate products and confectionery. The HCC found that in discontinuing its cooperation with all intermediaries in a uniform manner, Duty Free Shops had reached a sound business decision, which ultimately benefited the end consumer due to the reduction of retail prices of the products in question and which was objectively justified. According to the HCC, an entrepreneur may not be denied the opportunity to streamline its distribution system. The HCC also stressed that the complainant was not discriminated against.

In its appeal before the Athens Administrative Court of Appeal Milopoulos did not contest the HCC's definition of the relevant market,[4] however it criticised the fact that the HCC had not examined the possession of a dominant position by Duty Free Shops in the relevant market, having examined only its alleged abuse of dominance. The Court acknowledged that the HCC did not expressly determine whether Duty free Shops held a dominant position on the relevant market, but dismissed the appellant's complaint and deemed the point in question to be legally irrelevant in this particular case, due to the fact that Articles 2 of Law 703/1977 and 102 TFEU do not prohibit the possession of a dominant position by an undertaking in a certain relevant market, but the abuse thereof, which was not substantiated.

In this context the Athens Administrative Court of Appeal dismissed the appellant's allegations that the decision of Duty Free Shops to vertically integrate constituted an abuse of dominance and an "objectively unjustifiable conduct". The Court stressed the sound efficiency reasons behind the dominant company's decision and referred, in particular, to: a) the price reduction on the sale of chocolate products; b) the improved conditions of product distribution; c) the

[4] According to the HCC the relevant product market is composed of the retail market for tax free and taxed products and the corresponding wholesale markets, while the relevant geographic market was defined as the Greek travel market. Duty Free Shops was also in accordance with the HCC's definition of the relevant market.

implementation of the decision in an objective manner without discrimination against any intermediary or wholesaler and with care regarding their interests; d) no objections voiced by any other distributor, wholesaler or intermediary apart from the appellant; e) the fact that Duty free Shops did not itself bring about the termination of agreements between the appellant (nor any other intermediary) and chocolate product producers nor did it hinder the appellant from supplying chocolate products to any third party.

The Athens Administrative Court of Appeal therefore upheld the HCC's decision noting that no factual or legal errors were committed.

- Central fruit and vegetable markets

Following the examination of the conditions for the provision of services by the 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 authorities, 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 is the supervisory authority of 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.

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).

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 in the future. 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 may become compatible with national and EU competition law.

The Athens Union filed an appeal against the HCC's decision basically claiming that the provisions of Articles 2 of Law 703/1977 and 102 TFEU were not applicable in its case, as the Union does not constitute an undertaking. The appellant justified its claim by noting that it does not engage in business activity and it may not operate for profit according to the legal provisions on professional associations. Furthermore, it maintained that it does not determine the price lists for the remuneration of its members and that it merely mediates as representative of its members during the recruitment procedure, drafts the employment contract for each, and sees to the collection of its members' remuneration and payment for services rendered.

The Court confirmed the HCC's ruling, according to which the Athens Union is the only professional association established in relation to the Athens central fruit and vegetable market, and therefore constitutes a monopoly, as it may unilaterally impose the terms of remuneration of its members and may also unilaterally shape the relevant professional and financial environment, not as a result of its efficiency, but as the outcome of outdated legal provisions, at the same time being in a position to hinder the development of a competitive environment with alternative

solutions. Moreover, the Athens Administrative Court of Appeal held that the Athens Union has undertaken broader roles than those of a 1st tier workers' union provided for by its statutory objectives, by functioning as an organized cooperative and performing duties including but not limited to selecting the workers to perform each task and their supervisor and coordinating the shifts, without involving the employers/merchants in that choice, collecting the workers' salaries and making payment of insurance contributions, determining the remuneration of its members through its representatives within the ERFXA, purchasing machinery on its own behalf and enjoying extensive disciplinary control over its members.

Based on the above arguments the Athens Administrative Court of Appeal concluded that the Athens Union does in fact constitute an "undertaking" noting that its operation as a non-profit organisation, the means of its financing and the nature of the employment contracts between its members and the merchants of the Athens central market, as well as the setting of the fees by administrative act, are irrelevant from the point of view of competition law. On these grounds, the Athens Administrative Court of Appeal upheld the HCC's decision and ascertained that the practices of the Athens Union, which has in fact substituted the ERFXA in the exercise of its powers, due to the latter's tolerance of a legal regime contrary to the requirements of competition, constitutes an abuse of dominance.

## 3. The role of the HCC in the formulation and implementation of other policies - Advocacy

27. In the current context of the huge effort for structural changes in Greece, the HCC's role appears pivotal, particularly with regard to regulatory objects to competition, created by state measures. Indeed, this is recognised in the November 2010 revised Memorandum of Understanding, signed between Greece, the IMF, the ECB and the European Commission. The MoU provides that, when preparing legislation aimed at removing restrictions to competition, business and trade in the regulated professions, the government will seek and take into account the opinion of the HCC. As a result, the HCC commenced at the end of 2010 a review of the then applicable restrictive measures to the regulated professions, with a view to publishing an Opinion. The Opinion was eventually published at the beginning of 2011 and will be reported in next year's report.

28. Furthermore, the HCC has increased its broader advocacy efforts by liaising with other administrative authorities and parts of the government on matters pertaining to competition and economic policy in Greece.

29. With regard to the establishment of a competition culture, the HCC has stepped up its efforts to publicise basic concepts and principles of competition law through the publication of press releases. In 2010, the HCC also introduced for the first time a competition prize for the best article written by young authors on competition law and policy. This attracted a lot of interest.

## 4. HCC Resources

### *4.1 Resources overall*

#### *4.1.1 Annual Budget*

30. The initial projections for the HCC 2010 annual budget are depicted in Table II below, alongside the ones for 2009. It should be noted that up to 80% of the budget surplus is remitted to the State budget every two (2) years: the next payment will be budgeted in 2011 and will refer to surplus incurred over the years 2009-2010.

**Table II: HCC Annual Budget**

| | Total Budget | | Competition-related Budget | |
|---|---|---|---|---|
| | € | US$[5] | € | US$ |
| **2009** | 21,516,333.00 | 30,598,836.30 | 11,516,333.00 | 16,382,047.99 |
| **2010** | 24,373,929.53 | 34,672,050.85 | 10,373,929.53 | 14,744,405.80 |

31. The difference between "Total Budget" and "Competition-related Budget" reflects the amount specifically-budgeted for the purchase of a new building to house the HCC's growing needs (€14,000,000). This purchase did not materialise in 2010, therefore the relevant expenses were budgeted again in 2011.

*4.1.2 HCC Employees*

32. The table presented below (Table III) refers to all staff with permanent posts within the HCC at the end 2010. It excludes staff currently on parental and sabbatical leave, as well as those on secondment. It also excludes the HCC President and the four full-time Commissioners, who are Members of the HCC Board, one jurist-member of the Legal Council of the State, in charge of coordinating the representation of the HCC before the Athens Administrative Court of Appeal and the Council of State, and temporary staff (e.g. stagiaires).

**Table III: HCC Employees**

| HCC Staff - Year End 2010 | | | |
|---|---|---|---|
| **Staff Category** | **Current Staff** | **Yearly Change** | **Average Time Employed (yrs)** |
| **Economists** | 21[a] | -3[b] | 5 years 10 months |
| **Lawyers** | 8[c] | 0 | 4 years 6 months |
| **Statisticians** | 2 | 0 | 3 years |
| **IT Experts** | 5 | -1 | 4 years 3 months |
| **Support staff[d]** | 27[e] | +2 | 5 years 10 months |
| **Total** | **63** | **-2** | **5 years 3 months[f]** |

**a.** Total number of economists employed: 28. However, 3 employees are on sabbatical leave and are not expected to return within the year; and 4 employees are on maternity/paternity leaves, 3 of which are expected to return within 2011. Also, please note that last year's report included statisticians to the economists' list, whereas this year's contains a separate employee category to cater for them.

**b.** 1 economist left the HCC and 2 economists were transferred to the Administrative Directorate and are calculated under "Support Staff". The "yearly change" column reflects this placement within the HCC.

**c.** Total number of lawyers employed: 15. However, 4 employees are on secondment and are not expected to return within the year; and 3 employees are on maternity/paternity leaves, 2 of which are expected to return within 2011.

**d.** "Support Staff" includes 3 staff members who provide secretarial support to the HCC for competition enforcement purposes. The remaining staff members constitute the Directorate General's administrative staff and do not work on competition enforcement.

**e.** Total number of support staff employed: 36. However, 4 employees are on secondment and are not expected to return within the year; 4 employees are on maternity/paternity leave, 2 of which are expected to return within 2011 and 1 employee is on sabbatical leave and is not expected to return within the year.

**f.** Weighted average.

## *4.2 Human Resources*

33. There is no separation of personnel based on types of cases; for example there are no cartel or merger-specific units. Instead, there are sector-specific units in which non-administrative staff (economists, lawyers, and statisticians) contribute to all areas of competition enforcement.

5 Benchmark: 1 EUR = 1.42053 USD, exchange rate on April 18th 2011.