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Foreword

This OECD report served as basis for the peer review of Greece carried out by the OECD Competition Committee on 7 June 2018. It describes and assesses the development of competition law and policy in Greece. The report concludes that the Hellenic Competition Commission (HCC) is equipped with powers and enforcement tools which are well in line with international practices.

The main groups of recommendations in the report concern the following:

- At an institutional level, the Competition Act would benefit from amendments to further strengthen independence and transparency. For instance, the selection and appointment procedures of the Members of the Board could be made more transparent, by advertising vacancies and introducing greater transparency in the recruitment procedure.
- The HCC should continue to prioritise cases concerning horizontal agreements. Strengthening the HCC's co-operation with public prosecutors may help improve the effectiveness of criminal charges for Competition Act violations and hence increase deterrence. Moreover, pro-actively screening public procurement data may be an additional tool to trigger cartel investigations.
- The ability to prioritise complaints has contributed to a significant reduction of the number of pending cases. Despite this improvement, delays persist in antitrust cases, where the deadlines set by the Competition Act are indicative. The HCC should continue to prioritise cases and should reduce its backlog. Going forward, it should consider how the duration of antitrust cases could be reduced.
- The authority should continue its advocacy efforts and place more emphasis in establishing formal co-operation agreements with other authorities, such as consumer protection authorities and public procurement authorities.

The report was undertaken at the request of the Hellenic Competition Commission and the Greek Ministry of Economy and Development. The lead reviewers were Ms Margarida Matos Rosa, Portugal; Mr Hyungbae Kim, Korea; Mr Felipe Irarrázabal, Chile; and Mr Rikard Jermsten, Sweden.

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Executive summary

This report was prepared to assist the Competition Committee in its peer review of Greece in June 2018. It is based on Greece's responses to the Secretariat's questionnaire, findings from the Secretariat's fact-finding missions and additional research. Particularly relevant themes for this assessment were: (1) the current situation of competition policy and enforcement; and (2) the magnitude and direction of change in competition policy over the last few years.

The Hellenic Competition Commission (HCC) is an independent authority, under the supervision of the Ministry of Economy and Development. It is responsible for enforcing the Greek Competition Act in all sectors of the economy, with the exception of the postal and electronic communications sectors, where competition enforcement falls within the mandate of the sector regulator.

Greece's competition law and enforcement has undergone significant changes in the last ten years. As a result of these changes, the HCC is equipped with powers and enforcement tools which are well in line with international practice. The authority itself has evolved into a trusted and independent institution, which has an important role in the country's ongoing reform efforts. The HCC's professional approach is recognised by stakeholders, who also acknowledge that in recent years the HCC has become more open than in the past to holding informal discussions with interested parties. In addition, stakeholders consider that the Greek Competition Act grants significant procedural safeguards to both complainants and undertakings under investigation. At an institutional level, the Competition Act would benefit from amendments to further strengthen independence and transparency. For instance, the selection of the Members of the Board should be made more open and transparent.

Many horizontal agreements cases pursued by the HCC in the last few years concern competition law violations by trade associations, at times involving professionals and small businesses. The authority has recently dealt with a very large cartel in the construction sector, which has also been the first cartel where the leniency programme was successfully applied. The HCC invests significant resources in examining complaints and conducting *ex-officio* investigations to

compensate for the lack of leniency applications. Settlement procedures for cartel offences were introduced in 2016, adding to the procedural tools already available. A fully-fledged whistleblowing programme is not available yet. Criminal enforcement is possible, although the courts rarely impose criminal sentences on individuals.

Abuse of dominance and vertical agreements cases account for a significant proportion of the HCC antitrust cases. In particular, the authority has issued a few abuse of dominance decisions concerning State-Owned Enterprises (SOEs) in the energy sector, which have contributed to opening the market. Merger review follows international standards. The HCC is increasingly applying a more economics-based analysis in its assessment of merger effects, in particular those that are subject to in-depth review.

The HCC has broad advocacy powers and has been very active in the liberalisation of the professions in Greece, as well as in competition assessment projects covering a number of important sectors of the economy. However, so far it has carried out only two sector inquiries. In addition, while there is some co-operation with other authorities, such as the public procurement authority, there are no formal agreements that could help to promote competition outside the HCC's narrow remit. The authority should continue its advocacy efforts and place more emphasis in establishing formal co-operation agreements with other authorities, such as consumer protection authorities and public procurement authorities. Building on its expertise in bid-rigging cases, the HCC should continue to train procurement officials. Moreover, the HCC should conduct more sector inquiries as another tool to increase competition and productivity in the economy.

In terms of internal organisation, the authority has a dual structure, consisting of an investigative arm (the Directorate General of Competition) and a decision-making body (the Board). The HCC is independently funded and resources have been falling during the economic crisis, raising the question of whether additional source of funding should be explored. The salary reductions across the Greek civil service, affecting also HCC staff members, threaten to undercut financial incentives for HCC staff, increasing difficulties to retain the most talented officials. However, the HCC has been able to recruit new staff members who are in the process of joining the authority. Still, it lacks staff with an IT background, especially with specialisation in forensic tools.

In 2011, the HCC was granted the ability to set strategic objectives and to select the cases to investigate. This is in contrast with the prior situation, when the authority was required to investigate all the complaints it received and hold formal

hearings. The HCC is still required to consider all the complaints it receives, but it can dismiss complaints on priority grounds. In practice, the HCC has chosen to prioritise the markets it considered most affected by the economic crisis or that could have a greater impact on consumer welfare and/or the recovery of the Greek economy. The HCC currently focuses on the food and drinks markets, on the retail and healthcare sector, as well as on the construction sector with its bid-rigging cases. The ability to prioritise has contributed to a significant reduction of the number of pending cases. Despite this improvement, delays persist in antitrust cases, where the deadlines set by the Competition Act are indicative. The HCC should continue to prioritise cases and should reduce its backlog. Going forward, it should consider how the duration of antitrust cases could be reduced.

1. Context and foundations

The Hellenic Republic (Greece) is located in South-eastern Europe and has a population of about 11 million, mostly concentrated around its capital Athens and around its second-largest city, Thessaloniki.¹ Greece shares land borders on the north with Albania, the Former Yugoslav Republic of Macedonia and Bulgaria, and on the east with Turkey. It has the longest coastline on the Mediterranean Sea, featuring a large number of islands, out of which 227 are inhabited.² Greece is a popular tourist destination and almost twenty UNESCO World Heritage Sites reflect its rich historical legacy.

After its revolution against the Ottoman Empire in 1821, Greece adopted its first constitution in 1822 and subsequently established a constitutional monarchy in 1844. Its current constitution dates back to 1975, one year after the collapse of a dictatorship which had seized power in 1967. Greece is a parliamentary democracy and is based on the separation of powers between the legislative, executive and judiciary branches.

Greece is a founding member of the Organisation for Economic Co-operation and Development (OECD). It joined the European Union (EU) in 1981 and it is part of the Eurozone since 2001.

1.1. Economic context

The Greek economy is recovering from a long and deep recession, which has resulted in GDP falling by about one quarter from 2008 to 2016. In 2016, GDP per capita, at EUR 16 200, was significantly lower than the EU average of EUR 29 200.³ During the economic crisis, the country undertook an unprecedented fiscal consolidation, totalling 13 percentage points of GDP

¹ These two regions account for almost 50% of the population, according to ELSTAT (2017).

² Greek Tourist Organisation, www.visitgreece.gr/en/greek_islands (accessed on 7 March 2018).

³ Eurostat <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00001&plugin=1> (accessed on 7 March 2018).

between 2009 and 2016 (OECD, 2018a). In 2016, Greece's budget primary balance recorded a surplus of 3.5% of GDP, exceeding targets.

Based on the OECD Better Life Index, comparing well-being across countries, Greece ranks “*above the average in health status, but below average in income and wealth, civic engagement, housing, environmental quality, subjective well-being, social connections, work-life balance, personal security, education and skills, and jobs and earnings*”.⁴ Life expectancy at birth, at 81, is slightly above the OECD average of 80 years. Unemployment spiked during the crisis and is still high, though decreasing. The employment rate remains the lowest across OECD countries: only about 52% of people aged 15 to 64 have a paid job (against 67% for the OECD). Long-term unemployment increased significantly from 2009 onwards, “peaking in 2014 at 20%, almost 4 times higher than the rate in 2005” (OECD, 2017a). Educational attainment, as measured by completion of upper secondary education, is also below the OECD average: in Greece, 72% of adults aged 25 – 64 have completed upper secondary education, compared with an OECD average of 74%.⁵ However, educational attainment among younger generations, such as in the 25-34 age bracket, compares favourably with the OECD average.⁶ Trust in national government decreased over the crisis and is lower than the OECD average. In Greece, 13% of citizens express confidence in the national government, compared with an OECD average of 42% (OECD, 2017b).

According to the latest Global Competitiveness Index by the World Economic Forum, Greece ranks 87th out of 137 countries mainly due to the negative macroeconomic environment, labour market conditions and financial market development level (World Economic Forum, 2017).

The long and deep crisis ended abruptly the strong growth the country enjoyed in the early 2000s. Low interest rates encouraged an increase in government spending and a severe deterioration of the fiscal position. From 2000 to 2009, the ratio of general government deficit to GDP increased from 4% to

⁴ www.oecdbetterlifeindex.org/countries/greece/ (accessed on 7 March 2018).

⁵ www.oecdbetterlifeindex.org/countries/greece/ (accessed on 7 March 2018).

⁶ OECD (2017), see Figure A1.2, page 44.

15%,⁷ while the ratio of gross government debt to GDP increased from 111% to 135%.⁸ In addition, unreformed health and pension systems posed a threat to the long-term sustainability of public finances (OECD, 2016).

In 2010, the authorities requested bilateral financial assistance from Euro area Member States and from the IMF. The First Economic Adjustment Programme for Greece was signed in May 2010 by the Greek Government and the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF). A comprehensive policy package for the period 2010-2013 was supported by a financial assistance package of EUR 110 billion (EC, 2010). In 2012, the programme was superseded by the Second Economic Adjustment Programme for Greece comprising the undisbursed amounts of the first programme and additional EUR 130 billion for the years 2012-2014 (EC, 2012). In August 2015, the Third Adjustment Programme was launched and a Memorandum of Understanding (MoU) was signed, detailing the conditionality attached to the financial assistance facility for the period 2015-2018.

The financial assistance received by the country is conditional on comprehensive policy packages aiming at restoring fiscal sustainability and promoting sustainable growth. Fulfilment of the conditionality is assessed at regular reviews by the creditors, i.e. the European Commission, the IMF and the ECB.

The structural reforms pursued by successive governments initially focused on reducing the cost of labour and cutting pensions. More recently reforms have broadened to improving the business environment, attracting Foreign Direct Investment (FDI) and reforming the public administration, as well as to social policy reforms (OECD, 2018a). In particular concerning the business environment, several wide-ranging initiatives have been taken over time. For instance, since 2008 Greece has been steadily reducing the barriers to competition created by product market regulation (PMR) in a systematic manner across the main sectors of the economy, including the manufacturing, retail trade, wholesale trade, tourism and construction services sectors (see Section 2.7.3). At the outset of the economic crisis, in 2010, entry into many regulated professions was eased (see Section 2.7.1). More recently, the authorities have set up a one-stop shop for starting new businesses, effectively removed minimum capital requirements for

⁷ OECD (2018), General government deficit (indicator). doi: 10.1787/77079edb-en (Accessed on 18 March 2018).

⁸ OECD (2018), General government debt (indicator). doi: 10.1787/a0528cc2-en (Accessed on 18 March 2018).

limited liability firms in order to lower barriers to entry and reviewed and simplified the licensing procedures for the establishment of a range of economic activities.

1.2. The foundations of competition law and policy

Competition law was first introduced in Greece by Law 703/1977 on the Control of Monopolies and Oligopolies and the Protection of Free Competition (the ‘1977 Competition Act’).⁹ The law was voted around the time when Greece was becoming a member of the European Economic Community (EEC) and was broadly based on the European competition rules of the time, i.e. Articles 81 and 82 of the EC Treaty and Regulation 17/1962 implementing Articles 81 and 82 of the EC Treaty. It has been noted that joining the EEC was the driver underpinning the adoption of the new legislation. At the time, many sectors were protected from foreign competition, the state had a significant role in the economy, and the promotion and protection of free competition did not seem policy makers’ main preoccupation.¹⁰

A body within the Ministry of Commerce (now part of the Ministry of Economy and Development) was originally in charge of competition law enforcement.¹¹ Only in 1995 was the Hellenic Competition Commission (HCC) established as an independent administrative authority. Law 2837/2000 granted financial autonomy to the HCC, by providing that it would be funded by a fee on the capital of newly established firms and on the capital increases of existing firms. Law 2837/2000 also removed the requirement, in force up to that point, to notify vertical agreements, as well as post-merger control notifications.¹²

In the mid-2000s, Law 3373/2005 further amended the 1977 Competition Act with the objective to bring it in line with EU legislation, specifically Council Regulation (EC) No 1/2003 on the implementation of the rules on competition

⁹ Law 146/1914 on Unfair Competition, a separate piece of legislation dealing with unfair competition, is enforced by civil courts (see Section 4.2).

¹⁰ OECD (2001); and Tzouganatos D. (2016), “Competition Introduction”, www.greeklawdigest.gr/topics/competition/item/268-competition-introduction

¹¹ The HCC was established in 1979, as “*the competent authority for the observance of the provisions*” of Law 703/1977; until 1995, it was operating as a body of the Ministry of Commerce, assisted by the Competition Directorate of the Ministry.

¹² Both obligations were lifted in 2000 and re-introduced in 2005, before being eventually abolished in 2011.

laid down in Articles 81 and 82 of the EC Treaty. The general rule set out in former Article 81(3), now Article 101(3) TFEU, is that agreements “*having as their object or effect the prevention, restriction or distortion of competition within the internal market*” are void. Article 81(3), now 101(3) TFEU, provides for conditions under which they may not be void. This is the case when an agreement “*contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.*” Prior to Regulation 1/2003, agreements had to be notified to the competition authority, which would assess whether these conditions were satisfied or not. With Regulation 1/2003, “*agreements that fulfil the conditions of Article 81(3) are legally valid and enforceable without the intervention of an administrative decision. The notification and exemption system [...] is no longer in force.*” (Gauer et al., 2004).

However, the Greek law did not adopt the regime inspired by Regulation 1/2003. On the contrary, it continued to require the compulsory notification of agreements. Absent this notification, the HCC was not able to grant an exemption to apply Art 1(3) of the 1977 Competition Act, i.e. the national equivalent of Article 101(3) of the Treaty.¹³ Moreover, even though the notification of agreements was compulsory, the HCC was not obliged to examine those notified agreements and issue a decision.¹⁴ The 2005 amendment was also a step back in that it reintroduced the requirement to notify vertical agreements to the HCC, an obligation which was abolished in 2000. As a result, both horizontal and vertical agreements had to be notified to the competition authority, and the HCC would

¹³ See Article 101(3), <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E101>

¹⁴ The HCC kept its exclusive competence to apply Art.1(3) of the Competition Act. In other words, civil courts were not allowed to apply the exceptions to the prohibition of agreements falling under the first paragraph of Article 81 of the Treaty, Article 1 of the Greek Competition Act. This led to the situation in which Greek courts were able to apply Art. 81(3) of the Treaty, but not the corresponding national provision. Komninos (2006), p. 294.

have to verify whether the conditions of Art. 1(3) of the 1977 Competition Act were fulfilled in order to grant an exemption.

The 2005 amendment also reintroduced the prohibition of abuse of a relationship of economic dependence, which had been removed in 2000.¹⁵ This provision originated from the legislation on unfair competition and was brought under the 1977 Competition Act, until it was eventually removed in 2011.¹⁶

Additional elements introduced by Law 3373/2005 were as follows:¹⁷

- The HCC was given the power to adopt a leniency programme;
- Merger control procedures were made more flexible, by introducing the possibility for the HCC to issue a clearance decision after one month since notification, in line with the European approach to Phase I. In addition, the duration of the in-depth analysis was extended from two to three months;
- The law provided for the HCC's power to carry out sector inquiries, whether *ex officio* or as requested by the Minister of Development.¹⁸ Following an inquiry, the HCC has the power to impose remedies if it finds that competition is not effective on that sector; and
- The amendment granted the authority the power to submit written comments to the Greek courts on matters of EU competition law, but not national competition law.

In 2009, an additional amendment of the 1977 Competition Act was voted. Among other changes, it required that the HCC Board “*shall comprise persons of recognised standing, distinguished by their scientific training and professional abilities in the legal and economic fields, notably in relation to matters of free competition*”. This was in contrast with the previous system, under which the HCC

¹⁵ Article 2a of law 703/1977 was introduced by Law 200/1991 and subsequently abolished by Law 2837/2000.

¹⁶ See section 4.2 for a brief description of the framework on unfair competition in Greece.

¹⁷ Komninou (2006).

¹⁸ Now Minister of Economy and Development.

Board included representatives of trade unions, employers' associations and other business groups. The new amendment also coincided with a more general attempt to professionalise the authority and shake off past mismanagement.¹⁹

The following table reflects the main institutional changes until the implementation of Law 3959/2011.

Table 1. Amendments to Law 703/1977 concerning the HCC

Law	Main change
Law 2296/1995	The Law established the HCC as an independent authority, providing expressly for its administrative autonomy.
Law 2837/2000	HCC is granted financial autonomy in addition to its administrative autonomy.
Law 3373/2005	HCC obtains distinct legal personality and is thus enabled to appear on its own right before the courts in trials / proceedings regarding the authority's act or omission.
Law 3784/2009	The Law amended the provisions regarding HCC Board Members, introducing the system of four Commissioners- Rapporteurs, empowering the decision-making body of the authority with experts in competition-related matters.

Source: HCC

Notes: The right to appear in court to defend its cases should not be confused with the issue of the legal representation of the HCC, e.g. Sections 1.2.2. and 3.1.2.

1.2.1. The Competition Act of 2011

As described above, the changes to the 1977 Competition Act gradually equipped the HCC with the tools and powers to operate more effectively as an independent enforcer. In parallel, the competition authority gained greater experience and independence. However, legislative progress was not always consistent over time, as exemplified by the removal and re-introduction of notification requirements summarised in the previous section.

The legal framework was significantly revamped in 2011, when Law 3959/2011 on the "Protection of Free Competition" was adopted. The Law followed the preparatory work by an expert committee including academics and

¹⁹ Lexology (2009), Greece introduces new Competition Act, www.lexology.com/library/detail.aspx?g=de938c7a-be67-40cb-a5a4-a67b706b349d (accessed on 8 February 2018).

representatives of both the HCC and the relevant Ministry and it involved significant co-operation with the European Commission.²⁰

The reform took place in the context of Greece's Economic Adjustment Programme and the efforts to promote structural reforms and a more competitive economy.²¹ The HCC has since taken a very active role in competition advocacy (see Section 2.7), in the context of rather lukewarm views of the benefits of competition in Greece with respect to other European countries. For instance, a Eurobarometer survey carried out in 2014 indicates that 55% of the sample, at European level, agrees that competition allows for better prices, while the corresponding percentage for Greece is 44%.²²

Arguably some of the most significant changes concerned the institutional arrangements of the authority, its efficiency and further alignment with EU practice. The new Competition Act provided for the President and the newly instituted position of Vice President to be selected by the Conference of Presidents of the Greek Parliament, i.e. a collective body comprising of representatives of the political parties.²³ This aimed at ensuring the independence of the HCC leadership from the government. However, the remaining Members of the Board continue to be selected and formally appointed by the Minister of Development (now Minister of Economy and Development), following an opinion by the Parliamentary Committee of Institutions and Transparency. In addition, the term of the Members of the Board was extended from three years to five years. The objective was to allow the Board to have a longer horizon and for its term to be

²⁰ Courtesy translation into English (version as of 2014), www.epant.gr/en/Pages/Legislations (accessed on 8 February 2018).

²¹ As noted in Greece's contribution to the Roundtable on changes in institutional design of competition authorities, see HCC (2014) and Loukas and Nteka (2011).

²² http://ec.europa.eu/competition/publications/reports/survey2014/citizens_perception_el_en.pdf (accessed on 8 February 2018).

²³ The Conference consists of the Speaker and the Deputy Speakers of the Parliament, former Speakers who are still elected MPs, the Presidents of Standing Committees and that of the Special Standing Committee on Institutions and Transparency, Parliamentary Group Presidents and a representative of independent MPs (provided there are at least five of them). See www.hellenicparliament.gr/en/Organosi-kai-Leitourgia/Diaskepsi-Proedron (accessed on 8 February 2018).

longer than the government's term. The law does not make it clear whether the Members' terms are staggered or not (see also Section 3.1.1).

The new Act addressed the main obstacles to the HCC's operation under the previous legal framework. These were "*the lack of the Authority's margin [...] of discretion in setting its own strategic objectives and priorities*" (HCC, 2014; p. 3), resulting effectively in a duty to reach a decision after a formal hearing for all complaints it received,²⁴ and the administrative burden created by the requirements to notify all potentially restrictive agreements.

Other changes introduced by the new Act were tougher sanctions on competition law violations and strengthened advocacy powers, in particular with respect to regulatory barriers to competition.

Over the same period, in parallel with institutional changes, the HCC has been developing its enforcement capabilities and quality of decisions. In the 2010 Global Competition Review Ranking, the HCC was ranked as 'fair', and its performance was considered as improving from earlier rankings (OECD, 2011). According to the same source, the HCC's performance has improved to 'good' in 2017. The practitioners interviewed by the OECD for this report have confirmed this view and have also observed that, over the same period, the HCC decisions have increasingly been upheld on appeal. For instance, in 2009 14 decisions were upheld by the Court of Appeal and three were partially annulled. By contrast, in 2016 20 decisions were upheld and in one case the Court, while confirming the HCC's findings on the merits, asked for the fine to be recalculated (HCC, 2017a).

1.2.2. The 2016 amendments of the Competition Act²⁵

In 2016, the Greek Parliament passed two amendments of Law 3959/2011, in February and in May.²⁶ A number of changes concerned the decision-making arm of the HCC and the HCC's budget (see Section 3.1 for further details). In particular, the amendments:

- Expanded the disciplinary offenses of the Members of the Board.
- Set age limits for the President, the Vice President and the Members of the Board. The limit was set at 73 years of age for the

²⁴ The HCC is still obliged, under the current system, to issue a decision (i.e. act by the President) even for the dismissal of complaints upon prioritisation.

²⁵ HCC (2017a).

²⁶ Law 4364/2016 and Law 4389/2016 respectively.

President and the Vice President, and 70 years for the Members of the Board. These new limits do not apply to current officials, as a transitional provision allows them to complete their mandate.

- Introduced a conflict of interest clause preventing Members of the Board to be relatives up to the second degree or spouses of Members of Parliament, Members of the European Parliament and Ministers.
- The February amendment also reduced the mandate of staff members holding managerial positions. The mandates of the General Director and of the heads of division were reduced from four to three years (Article 21, par. 2), with the possibility of renewal only once. The duration was restored to four years and the restriction on the renewal of the heads of division was abolished by the May amendment.²⁷
- Set a cap on the annual fees for outside legal counsel to represent the HCC in court (Art. 20, par. 6 of the Competition Act). By way of background, currently the HCC does not have an in-house Legal Support Office to represent the authority in court.²⁸ All lawyers hired as employees by the competition authority (as in other parts of the public sector) lose their right to appear in court, according to decisions of the Bar Association. Therefore the HCC has been resorting to outside legal counsels to defend its cases in court.

The amendment also introduced a settlement procedure and the possibility for undertakings to avoid criminal liability for competition law offences, provided that they admitted their guilt and paid a fine. The settlement procedure for cartels is covered in Section 3.3.7, while the other developments are described in Section 3.1 below.

²⁷ Following the intervention of the European Commission in the debate, some provisions were modified in the May 2016 amendment. See Global Competition Review, “Fresh Greek bailout contingent on competition reforms”, 2 June 2016, <https://globalcompetitionreview.com/article/1064673/fresh-greek-bailout-contingent-on-competition-reforms>

²⁸ According to the Competition Act, the number of lawyers in the unit (and hence the effective operation of the unit) is determined by a Ministerial Decision by the Ministers of Interior, of Finance and of Economy and Competitiveness, following a proposal of the Competition Commission (Article 20, paragraph 4). This decision has not been issued yet.

2. Scope and application of the Greek Competition Act

The substantive features of the Greek Competition Act are based on EU law. Articles 101 and 102 of the TFEU are directly applicable in Greece in cases with an EU dimension, while the Greek Competition Act contains equivalent provisions for national cases. Similarly, merger control is modelled on the EU Merger Regulation. The present section describes the main statutory provisions and some enforcement examples. In addition, it describes the HCC's advocacy activities, which have become more prominent since 2010 with the economic crisis.

2.1. Policy goals

According to the HCC, its primary objective in enforcing the law on the “Protection of Competition” is “to promote and protect the competitive process”. The authority sees its role more broadly as promoting a competition culture in Greece against the backdrop of a tradition of state intervention and the characteristics of a small economy, such as barriers to entry and the concentration of economic power.

The Competition Act does not further elaborate on this goal. In enforcement practice, the authority has also taken into account investment and efficiency considerations, in addition to price effects. For instance, investment in additional port capacity was one of the remedies in the 2016 Port of Piraeus merger case.²⁹ The efficiency of new distribution networks was an important factor in the assessment of vertical restraints cases, such as the cases of Duty Free Shops³⁰ and of distribution networks in the tobacco sector.³¹

²⁹ HCC Decision 627/2106, 22 September 2016, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1712.

³⁰ HCC Decision 364/V/2007, 21 November 2007, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1181.

³¹ HCC, Press release, 24 September 2015, www.epant.gr.

The protection of SMEs does not play any major role in competition policy or law enforcement. In line with EU policy,³² Greece applies a De Minimis Notice on agreements of minor importance, which do not appreciably restrict competition under Article 1(1) of Law 703/1977 (i.e. the predecessor to the current Competition Act).³³

2.2. Scope of competition law

There are no sectoral exclusions or exemptions from the Competition Act. However, the authority responsible for the enforcement of competition law in the telecommunications and postal sectors is sector regulator EETT, the Hellenic Post and Telecommunications Commission. In the media sector, the Competition Act is complemented by additional legal provisions the HCC applies to media concentrations involving media of informative content. These are the provisions of Law 3592/2007, specifically Article 3, which sets dominance thresholds ranging from 25% to 35% depending on the media markets under consideration.³⁴ These rules have the objective of preserving media diversity and do not apply to concentrations of media of non-informative content (e.g. sports or entertainment channels).

As for the application of competition law to State-owned enterprises (SOEs) and public entities, Greece follows EU case law and practice.³⁵ The

³² According to the EC De Minimis Notice (2014), the corresponding market shares are 10% (agreements between competitors) and 15% (agreements between non-competitors).

³³ HCC (2006).

³⁴ Any natural or legal entity is deemed dominant if active: 1) in media undertakings of the same type, when it obtains at least 35% market share in the relevant market of each medium in the same range; 2) in media undertakings of different types, when it obtains either 35% market share in the relevant market of each medium or at least 32% market share in the aggregate of two markets, when active in two different media undertakings in the same range; 3) at least 28% market share in the aggregate of three markets, when active in three different media undertakings in the same range; 4) at least 25% market share in the aggregate of four markets, when active in four different media undertakings in the same range.

³⁵ For instance, in *Höfner and Elser v. Macrotron* the ECJ held that “*the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the*

Competition Act applies to the commercial activities of SOEs and it does not contain any exceptions concerning its application. The previous Competition Act (Law 703/1977) contained a provision enabling the Ministers of Finance and Development, by joint decision issued following the opinion of the HCC, to exempt specific public undertakings or categories of undertakings considered of national importance. No such decision was ever issued.

The HCC has investigated a number of abuse of dominance cases in the energy sector, where incumbents are still controlled by the Greek state (Section 2.5.1).³⁶ The HCC's practice of non-discrimination between privately-owned enterprises and SOEs is also evident in merger control. For example, in the joint venture between Public Power Corporation, the state-owned incumbent, and Terna Energy, a private company,³⁷ the HCC examined the merger and cleared it with remedies. In addition, privatisation transactions are also subject to merger control (Section 2.6). In a number of cases the authority has examined the application of Article 106 TFEU,³⁸ referring to public undertakings or undertakings that have been granted special or exclusive rights, most recently in the 2012 case against the incumbent gas supplier (Δημόσια Επιχείρηση Αερίου – DEPA) and the Hellenic Gas Transmission System Operator (Διαχειριστής Εθνικού Συστήματος Φυσικού Αερίου – DESFA),³⁹ where the HCC concluded that these have to be considered undertakings for the purposes of Article 102 TFEU.

legal status of the entity or the way in which it is financed” (Case C-41/90, *Höfner and Elser v. Macrotron GmbH* [1991] ECR I-1979, paragraph 21.

³⁶ There have been also a few cases brought by EETT against the incumbent in telecommunications sector (Section 5.1.3). However, telecommunications incumbent OTE is not state-owned.

³⁷ HCC Decision 577/2013, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1419.

³⁸ The text of Article 106 TFEU is <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E106:EN:HTML>. Earlier examples include Decisions 438/2009, 428/2009 and 317/2006.

³⁹ HCC Decision 555/2012, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1384.

The treatment of the public administration is also consistent with the principles applied at EU level according to which “cases which involve the exercise of official authority for the purpose of regulating the market and not with a view to participating in it fall outside the scope of competition law”.⁴⁰ Following a 2010 complaint about a municipality granting the use of pavements to cafés and restaurants, the HCC was required to investigate whether the public authority abused its dominant position. The HCC ruled that, when a public authority is not performing an economic activity, it cannot be considered an undertaking and is not subject to competition law.⁴¹

Before 2011, the Competition Act included a provision on the abuse of economic dependence. Rules on the abuse of economic dependence concern the relationship between suppliers and clients, where one of the parties “lacks any equivalent alternative” to the commercial relationship.⁴² Truli (2017) reports that, over the 12 years in which it was responsible of enforcing the abuse of economic dependence clause, the HCC found that there was an abuse in only five cases, out of a total of 43 decisions issued on the matter. Abuse of economic dependence is now part of the legislation on unfair trading practices in business-to-business transactions, enforced by the Greek courts (see Section 4.2).

⁴⁰ As ruled, for instance, in Case T-313/02, *Meca-Medina and Majcen v. Commission* [2004] ECR II-3291, paragraph 41.

⁴¹ HCC Decision 501/V/2010, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1582. In the same decision, the HCC emphasised however that the allocation of public space should follow objective criteria and should not distort competition.

⁴² More specifically, Truli (2017) reports that Law 703/1977, Article 2a stated that “the abuse by one or more undertakings of a relationship of economic dependence connecting an undertaking having the quality of a client or supplier to the undertaking(s) mentioned above, [...], and lacking any equivalent alternative, is prohibited. This abuse of a relationship of economic dependence may particularly consist in imposing arbitrary trading terms, applying a discriminatory treatment, or suddenly and unjustifiably terminating long time commercial relations”.

2.3. Horizontal agreements

Article 1 of the Greek Competition Act is based on Article 101 of the TFEU and prohibits “*all agreements and concerted practices between undertakings and all decisions by associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition in the Hellenic Republic*”.⁴³

The distinction between restrictions “by object” and “by effect” is that the former lead to “*such a degree of harm to competition that there is no need to examine their actual or potential effect*” (EC, 2014a; page 3). The “by object” restrictions are identified in EU case law, as well as regulations, guidelines and notices, and include price fixing, output limitation and market sharing.

In line with the EU framework, as embedded in Article 1, paragraph 3, of the Greek Competition Act, restrictive agreements are not prohibited if they deliver pro-competitive benefits. These benefits are described as “*improving the production or distribution of goods or promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit*”.⁴⁴ In its enforcement practice, the HCC examines these conditions in all cases in which it applies Article 1. In the recent Audatex decision,⁴⁵ about an agreement on hourly rates for repair services between a number of Greek insurance companies, the authority found that indicative or recommended hourly rates for repair services, in combination with the number of working hours, were directly related and necessary for the implementation and application of the Audatex system, a database used to create repair estimates in the case of accidents involving insured vehicles. The HCC found that this was an ancillary restraint under the Guidelines

⁴³ The wording matches that of Article 101 TFEU, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=Celex%3A12008E101>.

⁴⁴ In addition, in order to qualify for an exemption, the agreement should not: “(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.” See Article 101, paragraph 3, TFEU.

⁴⁵ HCC Decision 640/2017, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1835, and press release available in English at www.epant.gr/en.

on the application of Article 101(3) of the Treaty and did not fall under the prohibition of Article 1 of the Competition Act.

The HCC has not issued any specific guidelines on horizontal agreements. Article 1, paragraph 4, of the Greek Competition Act states that EU Regulations on the applicability of Article 101 (3) of the TFEU are applicable also to agreements and decisions that are not likely to affect trade between EU Member States, i.e. to Greek enforcement actions without a European dimension.⁴⁶ The HCC has confirmed that it relies on European Commission substantive guidelines and other soft law in its national cases. However, there is no HCC document explicitly setting out this general practice.

Moreover, the authority relies extensively in its decisions upon the case law of the Court of Justice of the European Union (CJEU) and the General Court (together, the 'ECJ'). In addition, the HCC has issued a De Minimis Notice concerning minor agreements which, due to their small influence, cannot substantially restrict competition (HCC, 2006).

Investigations in cartel cases may be initiated by the HCC: 1) *ex officio*; 2) following a complaint;⁴⁷ or 3) as a result of a leniency application.⁴⁸ The steps the HCC follows in investigations, from the complaint to the decision, are outlined in Section 3.3. The leniency programme, the settlement procedure and the requirements and procedures for accepting commitments are also described in Section 3.3, while Section 3.4 describes sanctions, including criminal sanctions.

⁴⁶ For example, Commission Regulation No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of research and development agreements (Official Journal L 335, 18.12.2010) and Commission Regulation No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty to categories of specialisation agreements (Official Journal L 335, 18.12.2010).

⁴⁷ Complaints must be submitted to the HCC in writing and using a specific template available on the HCC's website. Among other information, the complainant has to provide substantiated views on the market and information / evidence regarding the alleged infringements that fulfil a minimum standard. If the HCC does not intend to pursue a complaint, it is obliged to inform the complainant of the reasons underpinning its decision. See Box 9.

⁴⁸ The HCC considers leniency applications to fall within the broader category of *ex officio* investigations.

The latter can only be imposed by criminal courts, not by the HCC, and include both pecuniary sanctions (from EUR 100 000 to EUR 1 million) and prison sentences from two to five years for cartel infringements.

In the period from 2012 to 2017, the HCC issued 14 decisions on horizontal agreements. These are some of the decisions with the highest impact on the market, according to conservative estimates by the HCC. For instance, in the poultry cartel,⁴⁹ described in the box below, the HCC estimates that consumer benefits could be over EUR 150 million per year.

The cosmetics case is another price-fixing case and it was the first in which the HCC issued a settlement decision, in February 2017.⁵⁰ Following a 2006 complaint, the HCC found that a group of retailers operating under the same brand co-ordinated their pricing, commercial and marketing policies. Eight retailers and the franchisor acknowledged their involvement in horizontal price-fixing and settled with the HCC. A ninth retailer did not settle. The settlement with the retailers was accompanied by significant fine reductions due to the economic crisis, *“as well as the importance of the 3,000 jobs held by employees of the companies, and accepted an exceptional reduction to the fines imposed, which preceded the 15% discount as a result of settlement”* (KG Law Firm, 2018). The fines imposed totalled EUR 1.05 million. This was part of a broader case of alleged infringements by wholesalers and retailers of luxury cosmetics initiated in 2006.⁵¹ While retailers settled, the case against the wholesalers (accused of the

⁴⁹ HCC Decision 563/2013, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1407.

⁵⁰ HCC Decision 636/2017, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1783. The HCC settled with eight independent retail companies owned by various members of the Hondos family and operating under franchise agreements with a Hondos franchisor company. The franchisor underwent standard hearing procedure for the allegations on Retail Price Maintenance (RPM).

⁵¹ The case originates from one of two complaints submitted in 2006 by Notos, a Greek retailer that is also a wholesaler of luxury cosmetics. The second complaint has led to an investigation and to a decision against five luxury cosmetics wholesalers. The case is about the discount applied by Notos to the products it exclusively distributed (60%), compared with the discount on other wholesalers' products (50%). When Notos applied these different discounts, the other wholesalers withdrew their beauty advisor from the retailer's outlets.

indirect fixing of retail prices, by setting a uniform level of discounts at retail level) led to a decision in April 2017.⁵² Six wholesalers, including the complainant, were fined almost EUR 19 million in total.

A number of other price fixing cases investigated by the HCC involve trade associations and are summarised in Section 2.3.2 below. Finally, in a recent case (for which the decision has not been issued yet) the HCC has investigated horizontal anti-competitive prices aimed at price-fixing and limiting supply in the market of haemodialysis filters and arterial and venous lines.⁵³

Box 1. Poultry meat cartel

Following an *ex-officio* investigation, the HCC found that 13 undertakings, as well as an association of such undertakings, infringed Article 1, Law 703/1977 (now Article 1, Law 3959/2011) and Article 101 TFEU, by co-ordinating their behaviour through price fixing and market-sharing.

The HCC found that the companies co-ordinated to fix the selling prices of their products (fresh and frozen poultry meat) towards downstream suppliers (wholesalers, super-markets, butchers, rotisseries). Moreover, they engaged in market-sharing by allocating customers.

The collusive scheme was implemented through regular meetings and involved exchange of information on future prices, at the premises of their trade association and elsewhere, with the support of the trade association's director. The parties claimed that earlier state intervention on the organisation and functioning of the sector led to competition rules not being followed. The HCC rejected this argument as a mitigating circumstance.

Overall, the anti-competitive conduct lasted for over a decade (from 1996 until 2010), although not all parties were involved for the entire period of the single and continuous infringement. Based on the gravity and duration of the infringement, and taking into account the particularities and economic conditions of the sector, the HCC imposed

⁵² HCC Decision 646/2017, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1825.

⁵³ HCC press release, 18.10.2016, available in English at www.epant.gr/en/.

finances totalling EUR 39.9 million, including fines both on the undertakings concerned and their trade association.*

* The Administrative Court of Appeal upheld the HCC decision in substance and procedure, but significantly reduced the fines because of the protracted fiscal and financial crisis affecting the country, the further deterioration due to capital controls, the negative financial results especially in the primary/agricultural sector, the financing difficulties faced by the parties, and the significance of the undertakings for the employment in certain rural areas and for the local economy.

Source: HCC press release of 27/06/2014 and ECN (2014).

2.3.1. Bid rigging

Bid rigging in public procurement is a priority for the HCC. In fact, the largest case handled so far by the authority is a cartel in the construction sector, uncovered following an *ex-officio* investigation on tenders for public works.⁵⁴ The HCC found in its settlement decision that 15 construction companies were involved in various bid rigging activities over the period 1981 to 2012. One of the collusive schemes run continuously from 2005 to 2012 and concerned various types of infrastructures: metro projects in 2005-2006, public-private partnerships in 2008-2009 and various infrastructure projects in 2011-2012.

As reported by the HCC, the parties co-ordinated by “agreeing amongst themselves who [would] submit the winning bid, submitting cover bids and agreeing to jointly execute the respective works before submitting their respective bids”.⁵⁵

This was the first case in which the HCC received a leniency application, by one of the construction companies, and granted full immunity. In addition, some of the parties accepted their liability and received a 15% discount on their fines under the settlement procedure. The fines imposed totalled EUR 80.7

⁵⁴ HCC Decision 642/2017, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1824.

⁵⁵ See, in English: press release on the Statement of Objections, 15 May 2016, www.epant.gr/filehandler.ashx/?filepath=/en/Wen_News/news868_1_1463547954.pdf, accessed on 16 February 2018, and press release on the decision, 4 August 2017, www.epant.gr/en/default?AspxAutoDetectCookieSupport=1, accessed on 16 February 2018.

million, which is the highest in a case in Greece so far, including the highest fine on an individual undertaking (EUR 38.5 million).

Practitioners interviewed by the OECD have expressed very positive views of how the case was handled by the HCC, in terms of speed and efficiency, without sacrificing due process and despite the complexity and large number of parties involved. The case was also widely lauded for the quality of the decision and the fact that it was based on hard evidence. It is expected that this large case will help to raise awareness on the importance of competition in public procurement, leading to more complaints and possibly more bid-rigging cases. However, a limitation is given by the fact that the HCC, at the moment, does not have direct access to full tender information (e.g. including losing bids) and therefore it cannot easily rely on the analysis of public procurement data to detect cartels.

In another *ex-officio* investigation in tenders for public works, the HCC imposed a fine of about EUR 805 000 on construction companies involved in bid-rigging in a prefecture in Northern Greece. The investigation was launched in 2011 and was concluded by a decision in 2017. According to the decision, the majority of the involved construction companies participated in a bid-rigging agreement and/or concerted practice in order to co-ordinate on responses to an invitation to tender, particularly by agreeing amongst themselves who would submit the winning bid and by engaging in cover bids or bid suppression.⁵⁶

2.3.2. Cases involving associations

The HCC has issued a few decisions involving trade associations or professional bodies. As noted by the HCC, according to “EU case-law, followed by the HCC, a professional body acts as an association of undertakings for the purposes of competition law when it is regulating the economic behaviour of the members of the profession”. This is the case regardless of the public law status of some of these bodies. The authority perceives its decisions in this area as complemented by its efforts to liberalise the liberal professions and its wider advocacy activities to spread a competition culture in the country. With these objectives in mind, in 2012 the HCC published a compliance guide for trade associations.

⁵⁶ See press release on the Statement of Objections, 16 November 2016, available in English at www.epant.gr/en/, and press release on the decision, 29 June 2017, available in Greek at www.epant.gr/en/ (accessed on 16 February 2018). HCC Decision 644/2017, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1815.

From 2012 to 2018, seven out of a total of 14 decisions on horizontal agreements concerned violations by trade associations or professional bodies. These are summarised in the table below.

Table 2. Cases involving associations

Sector	Year of decision	Infringement
Steel* ¹	2015	Exchange of information
Dental technicians in Crete* ²	2014	Fixing minimum fees for its members by (1) including provisions in the statutes of the association; (2) adopting and notifying minimum fee lists to its members
Poultry meat* ³	2013	Price-fixing and customer allocation
Driving schools* ⁴	2013	Price fixing and limitation in the provision of services
Constructors in the Athens area* ⁵	2013	Limiting construction of private works
Foreign language schools* ⁶	2012	Fixing minimum fees and/or discount terms and improve various restrictions, e.g. non-compete clauses, geographical restrictions (decision with remedies).
Concrete producers* ⁷	2012	Price-fixing, limitation of production and exchange of confidential information.

¹ HCC Decision 617/2015, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1649. In the same decision, the HCC examined the price parallelism observed between the steel producers using econometric techniques and concluded that there was no evidence of collusion.

² HCC Decision 591/2014, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1414

³ HCC Decision 563/VII/2013, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1407

⁴ HCC Decision 571/2013, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1402

⁵ HCC Decision 561/2013, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1389

⁶ HCC Decision 554/2012, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1393

⁷ HCC Decision 547/2012, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1380

Source: HCC Annual Reports to the OECD Competition Committee.

Prior to this period, the HCC pursued an important case against the Technical Chamber of Greece (Τεχνικό Επιμελητήριο Ελλάδος – TEE) for fixing the minimum fees of engineers and architects.⁵⁷ TEE provided its members with a parameter to be used when estimating the budget for private works and the budget, in turn, was used to calculate the engineers' and the architects' fees.⁵⁸ Compliance with the parameter was monitored by TEE through an electronic system for calculating the professionals' fees. In addition to imposing a fine, HCC required TEE to inform its members of the HCC decision and to amend its electronic system.

2.4. Vertical agreements

Vertical agreements, i.e. agreements between parties in different stages of supply and distribution, which restrict competition by object or effect, are generally prohibited by Article 1 of the Competition Act. However, vertical agreements also benefit from the EU block exemption regulations⁵⁹ which apply, *mutatis mutandis*, in Greece⁶⁰ -as long as they do not contain any serious restrictions of competition and also meet the other conditions laid down by the relevant Regulations.⁶¹

Thus, suppliers remain free to decide how to distribute their products, but in order to benefit from the block exemption, they should have a market share not

⁵⁷ HCC Decision 512/2010, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1597.

⁵⁸ A similar parameter was previously set by the State, until the Supreme Court annulled the relevant pieces of legislation.

⁵⁹ European Commission Regulation 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

⁶⁰ Article 1 paragraph 4 of the Competition Act.

⁶¹ The category of agreements which can be regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty includes vertical agreements for the purchase or sale of goods or services where those agreements are concluded between non-competing undertakings, between certain competitors or by certain associations of retailers of goods. It also includes vertical agreements containing ancillary provisions on the assignment or use of intellectual property rights.

exceeding 30%⁶² and their distribution or supply agreements must not contain any *hard-core* restrictions of competition, such as restraints on the buyer's ability to determine its sale price and types of resale restrictions, which are presumed to cause consumer harm.⁶³ This is a rebuttable presumption and the parties to the agreement can produce evidence that their agreement leads, or is likely to lead to efficiencies and benefits that outweigh the negative effects.

The HCC has not issued any guidelines in this enforcement area; rather it has confirmed that it applies the EC substantive guidelines, soft law and EU case law.⁶⁴ However, there is no HCC document explicitly setting out this general practice concerning guidelines and soft law. The HCC has issued a newsletter (in the form of Q&As) in relation to franchising agreements, in order to help franchisors and franchisees understand the types of conduct that may infringe competition law.⁶⁵

The HCC has regularly pursued vertical restraint cases, and it has used a combination of fines and commitments in its enforcement decisions, with the latter (which is also more frequent in the more recent decisions) perceived by the authority as a tool to illustrate its interpretation of the relevant framework.

The HCC has issued seven decisions on vertical agreements in the last five years. In 2015, the HCC fined Neoset for practices which amounted to resale price maintenance (RPM) and a restriction of cross-supplies between distributors/franchisees within its (kitchen furniture) selective distribution system,

⁶² Both at upstream and downstream levels.

⁶³ Resale price maintenance, market partitioning by territory or by customer, i.e. restrictions concerning the territory into which or the customers to whom the buyer may sell, restrictions concerning the end-users to whom selected distributors in a selective distribution system are allowed to sell, obligations to appointed distributors to purchase the contract goods exclusively from the supplier, restrictions of cross-supplies between distributors within a selective distribution system, restrictions to end-users, independent repairers and service providers from obtaining spare parts directly from the manufacturer of the spare parts.

⁶⁴ The European Commission Guidelines on Vertical Restraints (EC, 2010a); and the case law of the Court of Justice of the European Union.

⁶⁵ HCC (2016c).

as well as restriction of active sales to final consumers beyond territory.⁶⁶ The infringement was assessed during two periods. In the first period, the HCC decision was based on by object infringement findings for RPM, an export ban and contractually obliging franchisees to purchase only from Neoset and resell only at the retail level. During the second period, the agreements used a recommended retail price (RRP) instead, which was found to have had no effect. However, although the exclusive supply and export ban clauses had also been removed, franchisees were still obliged to only sell to end users and this led the HCC to find an infringement during this later period too, despite such cross-supplies having actually occurred in spite of the contractual clause. It is noteworthy that Neoset had previously been acquitted by Civil Courts for the same claims brought against it.⁶⁷

During the relevant period, the HCC has considered RPM, as well as a restriction on cross-supplies, in another two cases (i.e. in a total of three out of seven decisions on vertical restraints) resulting in a fine (contractual RPM)⁶⁸ and commitments (potential for indirect dampening of intra-brand price competition).⁶⁹ In all those cases, the HCC analysis also included an assessment of the role of the software/IT system that was in place in facilitating price rigidity within the franchise network.⁷⁰

Following its Commitments Notice issued in 2014,⁷¹ the HCC accepted commitments to remedy competition concerns in three other vertical restraints

⁶⁶ HCC Decision 622/2015, available (in Greek) at: <https://www.epant.gr/Pages/DecisionDetail?ID=1781>.

⁶⁷ For a summary and discussion of the case, also see KG Law firm (2018).

⁶⁸ HCC Decision 580/VII/2013, available (in Greek) at: <https://www.epant.gr/Pages/DecisionDetail?ID=1412>.

⁶⁹ HCC Decision 639/2017, available (in Greek) at: <https://www.epant.gr/Pages/DecisionDetail?ID=1830>.

⁷⁰ This follows the findings in the HCC Decision 495/2010, available (in Greek) at: www.epant.gr/Pages/DecisionDetail?ID=1576 that the operation of a joint IT system, which formed an integral part of the network, rendered the management of prices by the franchisees difficult and time-consuming in practice, thereby facilitating price rigidity.

⁷¹ HCC Decision 588/2014, available (in Greek) at: <https://www.epant.gr/Pages/Legislations>.

cases published in 2015. For example, the HCC found that nine fuel trading companies⁷² entered into commercial lease agreements with gas station operators and subsequently subleased the stations back to their lessors while at the same time signing exclusive commercial cooperation agreements with them for a duration exceeding the 5-year limit for non-compete clauses – with certain terms reaching up to 22 years. Fuel trading companies undertook to gradually terminate all such existing arrangements; and not to enter into any such future arrangements exceeding 5 years. In the same year, the HCC accepted commitments proposed by four leading producers and importers of tobacco products in Greece⁷³ to amend certain clauses in their distribution agreements with local distributors. The amendments addressed HCC’s concerns regarding unnecessary restrictions of intra-brand competition amongst distributors and tentative access of competing manufacturers and importers to each other’s sensitive business information. Finally, the HCC also reviewed the amended parity terms in the agreements between online travel agencies Booking.com and Expedia with their hotel partner businesses in Greece, following relevant inquiries conducted by other European Competition Authorities, and in coordination with the European Commission.⁷⁴ These amendments were designed to increase the flexibility of hoteliers concerning room reservations, room pricing and communications with their clients.⁷⁵

Finally the HCC has also issued a decision on restriction to parallel imports. More specifically, after an *ex-officio* investigation, the HCC fined Colgate-Palmolive and several supermarket chains for anticompetitive clauses in the

⁷² HCC Decision 602/2015, available in Greek at: <https://www.epant.gr/Pages/DecisionDetail?ID=1423>.

⁷³ HCC Decision 612/2015, available in Greek at: www.epant.gr/Pages/DecisionDetail?ID=1642.

⁷⁴ See HCC’s press release of 22 September 2015, available in Greek at: www.epant.gr.

⁷⁵ According to the amended (new) contractual terms, partner hotel businesses in Greece would be able to: (i) set different prices and/or offer different terms and availability between different online travel agencies; (ii) offer lower prices and/or better terms to off-line channels (such as reservations by telephone or at the hotel reception or in the framework of loyalty programs), provided that hoteliers do not publicise or advertise those lower prices online; and (iii) engage in promotional activities to all prior visitors of the hotel, regardless of the mode with which such visitors made their reservations.

supply agreements,⁷⁶ that led to the prevention of importing Colgate-Palmolive cosmetics and detergent products from other EU countries. The fines imposed totalled EUR 10.8 million. The decision reaffirmed the authority's firm stance⁷⁷ against a prohibition of parallel imports, which it regards as a by object restriction of competition.⁷⁸

In the last two years (2016-2017), a quarter of the antitrust cases opened by the HCC relate to vertical agreements (see also section 3.2.2). Whilst it is acknowledged that there are wider ('educational') benefits from the decisions on vertical restraints (for example, clauses in franchise agreements) some third parties were also of the view that many of these issues have been resolved and there should be a shift in focus towards other antitrust infringements, which have potentially larger impact on consumer welfare.⁷⁹

2.5. Abuse of dominant position

Article 2 of the Greek Competition Act prohibits the abuse of a dominant position and provides an indicative list of practices, adopting the same wording as Article 102 TFEU.⁸⁰ The abuse may consist in:

⁷⁶ HCC Decision 610/2015, available in Greek at: www.epant.gr/Pages/DecisionDetail?ID=1816. The HCC determined that the practice had been planned and organised by the European Division of CP under the instructions of headquarters in the US and the fine was imposed on the Greek subsidiaries and their parent.

⁷⁷ Prior to this period, the HCC issued another decision on the prohibition of parallel imports (HCC Decision 441/V/2009, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1521).

⁷⁸ The decision also held that Colgate-Palmolive had abused its dominant position in the market for glass cleaning products, since the contractual terms prohibiting parallel imports were linked to the granting of rebates (in other words, the rebate were lost in case the customer failed to comply with the parallel import prohibition clause). See also Zevgolis and Fotis (2014).

⁷⁹ It is further acknowledged that the mix of cases the HCC opens is influenced by the complaints it receives, which are often more and better substantiated in the case of vertical agreements.

⁸⁰ The wording matches that of Article 102 TFEU, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E102:EN:HTML>.

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

As is also the case with Article 101 TFEU, Article 102 TFEU is directly applicable in Greece in cases where trade between Member States might be affected, i.e. to Greek enforcement actions with a European dimension.⁸¹ As confirmed by the HCC,⁸² the authority follows the European Commission Notice (EC, 1997) and decisions in its approach to market definition, and defines dominance with reference to EU and Greek past cases and jurisprudence, e.g. EC (2009).⁸³ The assessment of dominance equally follows EU practice. The HCC considers market shares, complemented by other factors depending on the specificities of the market and of the case: “*the existence of competitors in the same relevant market with the same degree of vertical integration and market share; the variety of products offered by the competitors; whether access to the market is possible for competitors, taking into account existing distribution networks; the extent to which transport costs can restrict competitors’ sales and eliminate potential competitors; the financial strength and technological advance of the undertaking*”.⁸⁴

⁸¹ Article 3 par. 1 Regulation (EC) 1/2003.

⁸² As noted above, while the HCC has confirmed that it relies on European Commission substantive guidelines and other soft law in its national cases, there is no HCC document explicitly setting out this general practice.

⁸³ Dominance is defined as “*a position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition being maintained on a relevant market, by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers*”. See EC (2009), paragraph 10.

⁸⁴ Response to OECD questionnaire.

Over the period 2012-2017, the HCC issued 11 decisions on abuse of dominance. Based on the HCC's prioritisation system, founded on public interest considerations, abuse of dominance cases play an important role for the authority. Stakeholders have commended the HCC's excellent knowledge of EU case law, while noting at the same time that the analysis of abuse cases could benefit from a more thorough economic approach to establish effects. For instance, some of the practices investigated in rebates cases may have been presumed harmful to competition based on EU case law (e.g. exclusivity rebates), while others not linked to exclusivity may have deserved additional analysis.

While cases often concerned a number of abusive practices at the same time, the most important cases in recent years have arguably dealt with rebates and exclusivity clauses, on the one hand, and refusal to supply and to provide access to an essential facility, on the other (Section 2.5.1 below). Finally, in a recent decision the HCC examined a rare case of exploitative abuse. The authority considered and dismissed allegations of excessive pricing in the Thessaloniki International Airport.⁸⁵ The operator of the only parking lot within the airport was found to hold a dominant position. In order to ascertain the abuse, the HCC analysed profit margins and the difference between prices and costs. Margins were found to be low or negative over the period of the alleged abuse, leading the HCC to conclude, in line with EU case law, that excessive pricing could not be established.

Notable decisions on rebates⁸⁶ include those against Heineken's subsidiary Athenian Brewery⁸⁷ and Procter & Gamble.⁸⁸ Earlier decisions on the subject include the case against Tasty Foods⁸⁹.

⁸⁵ HCC Decision 630/2016, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1814>.

⁸⁶ See the summaries of the decisions and an overview of the HCC's approach to rebates in HCC (2016a).

⁸⁷ HCC Decision 590/2014, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1645>.

⁸⁸ HCC Decision 581/2013, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1420>.

⁸⁹ HCC Decision 520/2011, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1352>.

- In the Athenian Brewery case, the dominant company in the beer market attempted to exclude competitors from various wholesale and retail channels. In the Hotel, Restaurant, and Café (HORECA) channel and other retailers, the exclusionary strategy was carried out by “*exclusivity obligations, exclusivity rebates and other loyalty-inducing payments [...]*” (HCC, 2016a). In addition, the HCC found that Athenian Brewery provided wholesalers with incentives to promote exclusivity at the detriment of competitors’ products. In the supermarkets segment, the infringement concerned the award of fidelity rebates, conditional on supermarkets committing shelf space to the satisfaction of the dominant company. The Athenian Brewery case required the examination of a complex system of payments and the vast amount of evidence included direct evidence from dawn raids, testimonies, evidence obtained through information requests and written agreements. The HCC imposed a EUR 31.5 million fine, the highest on a single company for abuse of dominance cases, and required the company to amend its contracts, to conclude its agreements in writing and to clearly define the amounts paid by Athenian Brewery and the precise service provided by the customer for those amounts.
- In the baby diapers case, the HCC found that Procter & Gamble provided individualised target rebates, as well as rebates conditional on shelf space granted to its products (as a percentage of shelf space or of Stock-Keeping Units, SKUs). The Procter & Gamble case dealt with the novel issue of mixed bundling rebates. In the Statement of Objections, the HCC alleged that the company was dominant on one of the products, i.e. diapers, and used rebates to leverage its market power into adjacent baby-care markets. This argument was not included in the final decision (HCC, 2016a).⁹⁰ The HCC imposed on P&G fines totalling EUR 5.3 million.

⁹⁰ The HCC also found an infringement of Article 1 of the Competition Act, as the rebates conditional on the commitment of excessive shelf space were examined as non-compete clauses.

- The decision against Tasty Foods (Pepsi Co subsidiary) in the salty snacks market provides an interesting example of economic analysis of an abuse of dominance case. Both the defendant and the complainant, a Greek competitor, commissioned extensive economic analysis⁹¹ which was thoroughly examined by the HCC in the text of the decision. In addition, the HCC gathered, through its dawn raid and information requests, a significant amount of data, and “*extensive economic analysis was also conducted for the purpose of defining the relevant product market*” (HCC, 2016a). In order to establish the foreclosing effect of target rebates, the HCC primarily examined the market position of the dominant undertaking, as well as the structure and the conditions for granting the rebates (e.g. duration and amount). Moreover, the HCC reviewed the “as efficient competitor” (AEC) test submitted by the dominant undertaking and conducted its own analysis, establishing the effective price that a competitor would have to pay in order to compensate a retailer for the loss of Tasty’s rebates. The case is a rare example of economic analysis to assess effects among the HCC cases on abuse of dominance.

2.5.1. Cases involving State-owned enterprises

The Greek Competition Act applies equally to private companies and State-owned enterprises, and there are a few examples of abuse of dominance cases brought against incumbents in liberalised sectors. There have been abuse of dominance cases in the energy sector, where the HCC’s enforcement activities have contributed to the liberalisation of the sector with decisions which have led to wide-ranging commitments, especially in the gas sector. In the telecoms sector, the incumbent is a private company.

The HCC decisions in the gas sector concerned the Hellenic Gas Transmission System Operator (Διαχειριστή Εθνικού Συστήματος Φυσικού

⁹¹ Including SSNIP test, critical loss analysis, price correlation analysis, cointegration analysis submitted by Tasty (para. 95 of the decision) and analysis of market shares, seasonality analysis, price correlation, critical loss analysis, submitted by complainant (para 94, of the decision).

Αερίου – DESFA)⁹² and the incumbent gas supplier (Δημόσιας Επιχείρηση Αερίου – DEPA),⁹³ both of which were state-owned. Moreover, at the time DESFA was a wholly-owned subsidiary of DEPA and it was operationally separated from DEPA, in accordance with sector regulation. In the electricity sector, the HCC intervened against Public Power Corporation (PPC, or Δημόσιας Επιχείρηση Ηλεκτρισμού – ΔΕΗ),⁹⁴ also state-owned.

In both sectors, cases were brought by a competitor⁹⁵ complaining that it was denied access to the gas transmission network (DESFA) and refused supply of electricity (PPC). DESFA was found to have abused its dominant position by denying access to an essential facility, hence preventing the complainant both from purchasing natural gas from an upstream supplier competing with incumbent DEPA and from competing with DEPA in the downstream market. In the electricity market, incumbent PPC was alleged to refuse supply and to impose discriminatory trading conditions on the complainant, which was a competitor in electricity generation. The case was closed with commitments, without a finding of whether the infringement had occurred or not. In addition to committing to reinstate supply to the complainant, PPC was required to renegotiate electricity prices. The HCC notes that the commitments led to a price reduction, benefitting not only the complainant but also other high-voltage customers.

The DEPA case was also resolved with commitments by the incumbent. The commitments, including releasing capacity in the transmission network to facilitate more competition and a gas release programme aiming at reducing DEPA's market share, have contributed significantly to the liberalisation of the gas market. According to the HCC decision, if DEPA's market share fell below 60%, the company would be able to request a review of the gas release programme

⁹² HCC Decision 555/2012, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1384>.

⁹³ HCC Decision 551/2012, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1398>.

⁹⁴ HCC Decision 621/2015, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1646>.

⁹⁵ The complainant was an aluminium producer, also active in the markets for gas supply and for electricity production, in competition with state-owned incumbents. It is the biggest high-voltage customer, for its production plants.

by the HCC, in co-operation with sector regulator RAE. The commitments are summarised in the box below.

The case about PPC's rights for the extraction of lignite is another important case for the opening of the energy sector to competition.⁹⁶ The case was initiated following a complaint and was investigated by DG COMP, given the turnover of the company involving an EU-level dimension. Lignite accounted for the bulk of electricity production in Greece and was the cheapest source of electricity production. PPC enjoyed exclusive rights to its extraction thanks to Greek legislation and in 2008 the European Commission found that these rights allowed PPC to protect its dominance in the Greek electricity market.⁹⁷ Moreover, the Commission indicated that "*competitors would probably need to have access to a minimum of 40% of exploitable lignite resources in order to create a level playing field in the electricity market*".⁹⁸ A long legal battle followed⁹⁹ and a final commitment offer was submitted by the Greek authorities on 19 January 2018.¹⁰⁰ Based on these commitments, 40% of PPC's lignite-fired generation capacity will be divested.¹⁰¹

⁹⁶ The decisions and press releases on this case are available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_38700 (accessed on 24 March 2018).

⁹⁷ Despite formal liberalisation of the Greek market, the Commission noted that PPC was still the country's only supplier three years after liberalisation in 2001. See the press release at http://europa.eu/rapid/press-release_IP-04-436_en.htm?locale=en.

⁹⁸ The press release on the 2008 decision is available at http://europa.eu/rapid/press-release_IP-08-386_en.htm?locale=en.

⁹⁹ The decision was appealed by PPC and annulled by the General Court in 2012. In 2014, the Court of Justice referred some matters back to the General Court. The history of the case is described in the 2016 General Court's judgment, <http://curia.europa.eu/juris/liste.jsf?num=T-169/08&language=EN>.

¹⁰⁰ This is a measure Greece has committed to in the context of its Memorandum of Understanding with its international creditors (see Chapter 1 for some background on the Economic Adjustment Programme).

¹⁰¹ Initial interest in this capacity was reported positive, based on the market testing of PPC's commitments (www.naftemporiki.gr/story/1313797/dg-comp-market-test-shows-15-investors-interested-in-ppc-lignite-unit, accessed on 24 March 2018).

Box 2. Commitments in the gas sector

Following extensive consultation with DEPA, its competitors and its clients, and in co-operation with the Regulatory Authority for Energy (RAE), the HCC fine-tuned, revised and updated the commitments five times* in order to facilitate their adoption in practice. The set of the commitments revolve around four main pillars:

a) Unbundling of gas supply from gas transportation services

DEPA was obliged to unbundle the two products/services by offering to its customers a gas supply contract, not including transportation services. The price of supply of natural gas would be the same in both types of contracts.

b) Higher degree of customer mobility and introduction of fair, transparent and non-discriminatory contractual terms

Increase in customer mobility through (a) renegotiation of annual contractual gas quantities (ACQs); (b) Option for a one-year duration contract; and (c) No contracts of a duration longer than two years with customers that purchase more than 75% of their gas supply from DEPA.

c) Liquidity at the retail level

Introduction of electronic auction system (gas release programme): DEPA committed to auction each year 10% of its yearly gas supply to retailers and customers (amendment: currently 16%, 20% by 2020).

- Competitors (and large clients) obtain gas at prices approaching costs.
- Almost all of the auctions have had 100% absorption rate.

d) Encouragement of wholesale entry

- Introduction of capacity constraints at transmission entry points.
- DEPA has to offer unused capacity for free.
- Priority to third parties for reservation of any future additional capacity.

* Decisions No 589/2014, 596/2014, 618/2015, 631/2016 and 651/2017. For the latest amendment (Decision no. 651/2017), see the HCC Press Release dated 15.11.2017 at www.epant.gr

Source: HCC press releases, dated 13.11.2012 and 21.07.2014, available in English at <https://www.epant.gr/en/>.

2.6. Merger control

Merger activity in Greece is scrutinised under the relevant provisions of the Competition Act – in particular Articles 5 through 10. In most respects, these sections of the Law mirror the EU Merger Regulation. The HCC generally refers to¹⁰² and applies the principles and guidance adopted at EU level – most notably the EU Horizontal and Non-Horizontal Merger Guidelines¹⁰³ – and interprets the corresponding provisions of the Competition Act accordingly. This was confirmed by stakeholders, also in assessing the way the HCC conducts merger review in practice, although there is no document explicitly setting out this general practice.

There are no sectors of the economy excluded from merger notification and review requirements. However, in the case of transactions in the markets for electronic communications and postal services, the Hellenic Telecommunications and Post Commission (EETT) is the competent authority to apply the Competition Act. All other sectors of the economy fall within the HCC's competence.¹⁰⁴ The distinction of areas over which the two authorities (the HCC and EETT) have competence is generally considered clear and it has not been reported to have led to any uncertainty in the recent past.

In general, the view of private parties dealing with the HCC in the context of its merger reviews is positive. The HCC is perceived to have made good progress in the way it investigates potential effects of notified mergers, both in regards to its substantive analysis and its procedures.

2.6.1. Criteria and thresholds for merger notification

The Competition Act of 2011 introduced two cumulative turnover thresholds above which notification of a concentration to the HCC (or EETT) is mandatory: (a) the annual aggregate turnover of all undertakings participating in the concentration exceeds EUR 150 million in the global market; and (b) each of at least two of the undertakings concerned have an annual aggregate turnover of EUR 15 million in the national market.¹⁰⁵

¹⁰² See <https://www.epant.gr/en/Pages/LegislationsEU?type=Mergers&sub=Notices>

¹⁰³ European Commission (2004a) and European Commission (2008b).

¹⁰⁴ In the remainder of this chapter, references to the HCC are meant to apply to EETT in those cases where it falls within its competency to review a merger.

¹⁰⁵ Article 6 of Law 3959/2011.

These criteria replaced previously held ones, which included turnover and market share thresholds; and post-transaction notifications for smaller transactions and for the purposes of *mapping* the relevant markets (Table 3).¹⁰⁶ These changes have resulted in a decrease in the number of merger notifications, with fewer than 20 merger cases being reviewed by the HCC each year since 2009 (Figure 1).

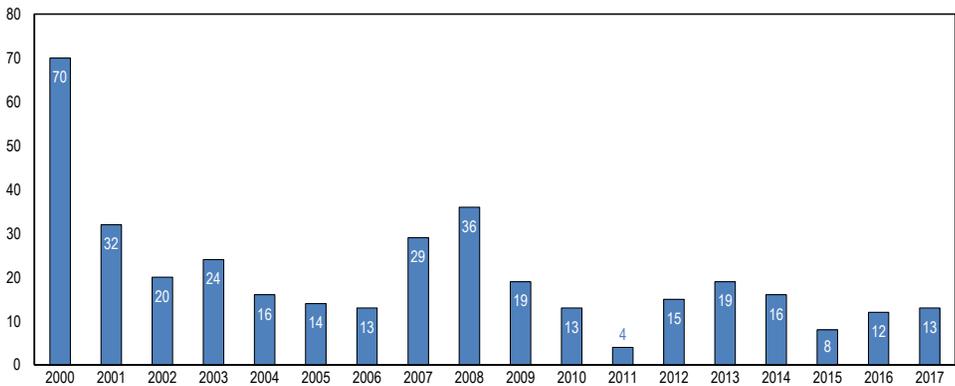
The thresholds and criteria for merger notifications can be amended by a joint decision of the Minister of Finance and the Minister of Economy and Development, on recommendation of the Competition Commission in plenum. The latter should be based on an assessment of statistics collected on the application of existing criteria and the “*state of competition*” every three years.

Table 3. Merger notification thresholds, 1991 to date

Law	Post-notification of mergers		Prior notification of mergers	
	Criteria	Deadline	Market share criterion	Turnover criteria
1934/1991	combined market share of 10% combined turnover of EUR10m		35%	combined turnover of EUR75m in national market
2000/1991	combined market share of 10% combined turnover of EUR10m		30%	combined turnover of EUR65m in national market
2296/1995	combined market share of 10% combined turnover of EUR10m	10 days	25%	combined turnover of EUR50m in national market turnover of EUR5m for two parties in national market
2741/1999	combined market share of 10% combined turnover of EUR15m	10 days	25%	combined turnover of EUR75m in national market turnover of EUR7m for two parties in national market
2837/2000	No notification	10 days	35%	combined turnover of EUR150m in national market turnover of EUR15m for two parties in national market
3373/2005	combined market share of 10% combined turnover of EUR15m	10 days	No	combined turnover of EUR150m in national market turnover of EUR15m for two parties in national market
3784/2009	combined market share of 10% combined turnover of EUR15m	10 days	No	combined turnover of EUR150m in national market turnover of EUR15m for two parties in national market
3959/2011	No notification	30 days	No	combined turnover of EUR150m in global market turnover of EUR15m for two parties in national market

Source: Competition Act provisions in force prior to 20 April 2011, available, in Greek, at www.epant.gr/pages/Legislations

¹⁰⁶ See, for example, HCC reports to the OECD Competition Committee: “Annual report on competition policy and developments in Greece – 1999” and “Annual report on competition policy and developments in Greece – 2006”.

Figure 1. Prior notifications of mergers to the HCC (2000-2017)

Note: Total number of notifications or cases examined by the HCC, as reported. Post notifications of transactions are excluded.

Source: Annual reports to the OECD Competition Committee on competition policy and developments in Greece.

Box 3. Control and Turnover for the purposes of the merger notification criteria and thresholds

Control

A concentration is deemed to have arisen when there is a change of control on a lasting basis. Control is constituted by rights, contracts or other means which either separately or in combination, and having regard to the consideration of fact or law involved, confer the possibility of exercising decisive influence on the activities of undertakings; and rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Calculation of Turnover

The aggregate turnover is calculated by adding together the respective turnovers of the following:

1. the undertaking concerned;
2. those undertakings in which the undertaking concerned, directly or indirectly:
 - i. owns more than 50% of the capital or business assets, or

- ii. has the power to exercise more than half the voting rights, or
 - iii. has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or
 - iv. has the right to manage the undertakings' affairs;
3. those undertakings which have in the undertaking concerned the rights or powers listed in (2);
 4. those undertakings in which an undertaking as referred to in (3) has the rights or powers listed in (2);
 5. those undertakings in which two or more undertakings as referred to in (1) to (4) jointly have the rights or powers listed in (2).

The Competition Act prescribes particular income items and premiums to be used instead of calculating their turnover, in the case of credit and other financial institutions, and insurance undertakings.

Source: Article 5 and Article 10 of the Competition Act.

Concentrations must be notified to the HCC within 30 calendar days of: (a) signing the agreement; (b) an offer being made public; or (c) the acquisition of a share percentage that gives the control to a participating party.¹⁰⁷ Some stakeholders have commented that – in practice – this sometimes creates perverse incentives in the merger review process. In order to comply with the time limits set in the Act, notifications may be incomplete on submission; followed by requests for additional information from the HCC to render them complete (see Figure 2).

After its notification the concentration is (a) reported in a daily financial newspaper of national coverage, and (b) posted on the HCC and EETT's websites. Any interested party may thus submit comments or provide information on the notified concentration.

¹⁰⁷ Where the concentrations consist in a merger or in the acquisition of joint control, the duty of notification lies jointly with the Parties. In all other cases, the person or undertaking acquiring control of the whole or parts of one or more undertakings is subject to a duty of notification of the transaction.

In line with EC best practices¹⁰⁸ and for reasons of adopting a more efficient process, the HCC has adopted a simplified procedure for reviewing mergers that are unlikely to give rise to competition concerns. This procedure is followed when there is no horizontal overlap or vertical relationship between the activities of the Parties to the concentration, where the Parties' combined shares are less than 15% or 25% in the case of horizontal overlaps or vertical relationships respectively, or when the transaction amounts to acquisition of control of a previously jointly owned undertaking.¹⁰⁹ More than half of the mergers filed in the last two years have been notified using the simplified procedure (6 out of 12 in 2016; 7 out of 13 in 2017).

2.6.2. Fees, sanctions and penalties

The notification of a concentration is accompanied by a fiscal stamp. The fee is set at EUR 1 100. Notifications are not admissible if the fee is not paid in full. The Competition Act foresees a number of instances when a financial or other penalty can be imposed, as detailed below.¹¹⁰

The HCC can impose a fine of at least EUR 30 000 and up to a cap of 10% of aggregate turnover for a failure to notify a concentration; or for implementing a concentration before the HCC's decision is issued (so called 'gun jumping').¹¹¹ In determining the fine the HCC takes account of the economic power of the Parties to the concentration, the number of the affected markets and the level of

¹⁰⁸ The European Commission initiates a simplified procedure when there is no horizontal overlap or vertical relationship between the activities of the Parties to the concentration, where the Parties' combined shares are less than 20% or 30% in the case of horizontal overlaps or vertical relationships respectively, when the transaction amounts to acquisition of control of a previously jointly owned undertaking, or when certain turnover thresholds are satisfied (less than EUR 100 million turnover or value of assets transferred, in the EEA) – see Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (2013/C 366/04).

¹⁰⁹ HCC Decision 558/VII/2013 issues guidelines for Mergers Notification forms: short form; form reasoned submission; and form relating to the information concerning commitments. The Decision sets out explicitly the criteria under which the short form of notification should be completed.

¹¹⁰ Article 9 of the Competition Act.

¹¹¹ Articles 6 par. 4 and 9 of the Competition Act, respectively.

competition in those, as well as the estimated impact of the concentration on competition. Moreover a fine of up to 10% of the aggregate turnover is foreseen in cases of non-compliance with commitments imposed as remedies for the clearance of a concentration.

The Act affords the HCC the power to order the dissolution of a concentration or any other restorative measures, in case this has been implemented before an HCC decision has been reached, in spite of an HCC decision not to allow it, or in contravention to conditions attached to a conditional clearance decision.¹¹² A further fine of up to 10% of the aggregate turnover of the merged entity plus a daily fine of EUR 10 000 can be imposed for the failure of an undertaking to comply with such an order. In fixing the amount of the fine the HCC shall consider the impact of the non-compliance on competition.

Finally, providing inaccurate or misleading information to the HCC in relation to a merger review is subject to sanctions under the Act, which may include revocation of a decision to approve a merger (and a new decision issued, without a time limit for the HCC to do so).

Sanctions or penalties for non-compliance with the merger rules or remedies have been imposed in one decision since 2012¹¹³ and most recently in June 2018 for gun-jumping.¹¹⁴

2.6.3. The merger review process

Merger review in Greece is divided into two investigative periods, whereby a decision on the transaction can be taken after a Phase I period or after a Phase II period, for mergers that have raised concerns during the initial review period and an in-depth investigation is warranted. The timeline for the review process is depicted in Figure 2.

¹¹² The HCC may require the undertakings concerned to dissolve the concentration through the dissolution of the merger or disposal of all the shares or assets required so as to restore the situation prevailing before the concentration.

¹¹³ See Decision 536/VI/2012 imposing penalty for non-compliance with the merger rules before 2012, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1375.

¹¹⁴ Press release of 27 June 2018, available in Greek at www.epant.gr/default.

Figure 2. Merger review timeline

Transaction	Notification	Phase I decision	Introduced at CC	Phase II Decision
	30 days	30 days	45 days	45 days
		Out of scope Approval Open in-depth investigation	Statement of Objections	Approval Conditional approval Prohibition

The merger review process is initiated when a complete notification is received by the HCC (see section 2.6.1 above). Within one month from receiving a notification, the HCC may conclude one of the following:

- **Out of scope.** The HCC concludes that the concentration notified does not satisfy the criteria and thresholds for notification. In this case, the President of the Competition Commission issues a decision that is notified to the undertaking that filed the notification.
- **Decision after a Phase I investigation.** The HCC finds that the concentration does not raise serious doubts as to its compatibility with the requirements of the functioning of competition in the individual markets it relates to. In this case, the Competition Commission issues a decision approving the concentration.
- **Decision to open a Phase II investigation.** The HCC finds that the concentration raises serious doubts as to its compatibility with the requirements of the functioning of competition in the individual markets it concerns. In this case, the President of the Competition Commission issues a decision initiating the procedure of in-depth investigation and he immediately advises the undertakings concerned of this decision. In the President's decision the preliminary competition concerns found by the HCC are briefly described.¹¹⁵

Within forty-five calendar days from the date on which the DG starts its Phase II investigation, a Commissioner-Rapporteur introduces the case before the

¹¹⁵ The Parties may also ask to arrange unofficial *state of play* meetings with the Rapporteur and the DG staff at this stage to further elaborate on the competition concerns raised by the HCC.

Competition Commission. At this stage a Statement of Objections (SO) is served to the Parties concerned.

A **final decision** on the concentration should be issued within ninety calendar days from the date on which the Phase II investigation procedure commenced. In case the merger leads to a significant impediment of competition in the national market or a significant part thereof, in particular by creating or strengthening a dominant position, the Competition Commission may prohibit the merger; in all other cases the concentration is approved (with or without conditions attached to the decision).¹¹⁶

2.6.4. Commitments

The Parties to the concentration may jointly proceed to modifications to the concentration or propose the undertaking of commitments to remedy the competition concerns raised by the HCC.¹¹⁷ The commitments may consist in behavioural or structural remedies (or both) with a view to alleviating the HCC competition concerns.¹¹⁸ Such proposals are submitted to the HCC after the initiation of the in-depth investigation but no later than twenty days after the date on which the case is introduced before the Competition Commission with the submission of the relevant report.¹¹⁹ The HCC may, *at its discretion*, market test the commitments proposed by the merging parties.

The timing for submission of commitments to the HCC has been raised by stakeholders as one of the few remaining discrepancies between the merger review framework in Greece and the EU. In particular, the Competition Act does not explicitly allow or forbid commitments during the initial 30-day period of review. Article 8, paragraph 4, of the Competition Act refers to the possibility for the

¹¹⁶ If the period of ninety days lapses and a decision prohibiting the concentration has not been issued, it shall be construed as approval of the concentration by the Competition Commission, which must issue the relevant declaratory act.

¹¹⁷ The corresponding Commitments form is set out in the HCC Decision 524/VI/2011.

¹¹⁸ In case of a divestiture, a trustee must be appointed by the notifying parties and approved by the HCC for monitoring the implementation of the remedy.

¹¹⁹ The HCC may, in exceptional cases, accept commitments once the above deadline has expired, in which case the deadline of ninety days for the HCC to issue its decision may be extended by fifteen days

Parties to offer commitments “[f]ollowing the notification to the undertakings concerned of the initiation of proceedings for a full investigation”. Indeed, there have been no mergers cleared with commitments after a Phase I investigation by the HCC (see Table 5).

An example of an in-depth investigation leading to the merger being approved with commitments is the merger of Delta and Mevgal in the dairy sector. The HCC approved the transaction(s) subject to structural and behavioural commitments, in 2014 and in 2016 (the first transaction was subsequently abandoned).¹²⁰ In 2014, the merged entity undertook to divest Delta’s chocolate milk business to remove horizontal overlaps between the parties; and grant potential buyers with access to its distribution network and production for a transitional period (to ensure the viability of the operations).¹²¹ The merged entity also committed to continue to procure raw milk, under (then) current volumes and general trading terms, from producers located in regions of Northern Greece for a transitional period. This commitment was accepted as a remedy to the potential for lessening of competition in the market for raw milk, in light of the merged entity’s share and market power as a buyer. In 2017, when the new agreement regarding the merger was notified, the merging parties agreed to operate independently with regard to chocolate milk and commit not to exchange confidential information about these activities; remove exclusivity terms regarding chocolate milk in the freezers granted to small outlets; and offer a minimum guaranteed purchase price (determined on the basis of a pricing formula) to milk producers/farmers in certain regions of Greece, concerning the procurement of raw cow’s milk.¹²² A Monitoring Trustee has been appointed to ensure compliance with the commitments.¹²³

¹²⁰ The merger was notified in 2010 for the first time and cleared by the HCC in January 2011 with remedies similar to those of the 2014 decision.

¹²¹ HCC Decision 598/2014, available in Greek at: <https://www.epant.gr/pages/DecisionDetail?ID=1818>.

¹²² HCC Press Release of 20 October 2017, available in Greek at www.epant.gr.

¹²³ HCC Press Release of 18 January 2018, available in Greek at www.epant.gr.

2.6.5. Review period

The merger review timeline suggests that a Phase I decision is issued by the HCC within one month from notification of the concentration (or two months from the transaction). A Phase II decision is issued¹²⁴ within four months from notification of the concentration (or five months from the date of the transaction) – a maximum period that may be extended by 15 days.

The merger review period may be further extended in the case of Requests for Information (RFI) by the HCC not being addressed in an adequate and timely manner by the Parties to the merger. More specifically:

- Upon notification of the concentration, the HCC identifies any missing or incorrect data within seven working days; and may ask the notifying parties to amend the notification. The review process starts only when the notification is deemed complete by the HCC.
- Furthermore, the HCC may request information from the Parties to the concentration. When it does so, it sets a deadline of at least five days for a response. In case the undertakings fail to respond to the HCC request adequately, the HCC may ask – within two working days – the Parties to provide all missing information. In such cases, the statutory deadlines are suspended (*‘the clock is stopped’*) until full and accurate information has been provided to the HCC, per its requests.

There were divergent views from stakeholders on the scope and use of RFIs by the HCC in the context of its merger reviews. Whilst some stakeholders considered that RFIs for merger investigations can generally be considered substantial but proportionate, others have cited cases where they were sometimes lengthy and/or unfocused in terms of the relevance of information and data requested. It was believed that this may reflect a desire on the part of the authority to be more cautious and diligent in its review, or a strategic use of RFIs to extend the review period.

The HCC estimates that the average length of an in-depth merger review over the last years has been three (the maximum period foreseen in the Law, without extensions) to four months. Private parties who deal with the HCC believe that whilst delays are less prominent in merger cases compared to other antitrust

¹²⁴ This relates to the outcome of the investigation being communicated to the merging parties and not the full text of the decision, which may be served (much) later.

investigations, there are cases where the review period is longer than is warranted; and cases where there is a gap between the decision and the full text being issued.

The results of an OECD's review of those HCC decisions on concentrations that are published on the HCC website are shown below. In the case of Phase I investigations, the Decision is issued on average one month after the notification is deemed complete (although this date often comes much later than the initial notification of the concentration) – extensions are typically agreed with the merging Parties when this is needed for the HCC to review all available data. In the case of Phase II reviews, while the average duration of the investigation is three months (up to four months), the respective period is longer (up to half a year) if the initial notification date is considered.

Table 4. Duration of Phase I and Phase II investigations in HCC merger reviews

Decisions issued after 1 January 2014				
	Number of Decisions	Average (months)	Minimum (months)	Maximum (months)
Phase I	22	1.1	0.4	2.5
<i>from first notification date</i>		2.0	0.8	5.1
Phase II	7	3.0	2.3	4.0
<i>from first notification date</i>		4.2	3.3	6.3

Note: A Decision to approve the concentration with reference to either Art. 8.6 or Art. 8.8 of the Competition Act follows a Phase II investigation; whereas a Decision based on Art. 8.3 follows a Phase I investigation. Duration has been calculated using the difference (in days) between the notification (or the date when the notification is deemed complete) and the date of the Decision. The date on which the notification is complete is missing in the case of one Decision: in this case this has been inferred from the date of the Decision to open a Phase II investigation.

Source: Decisions published on HCC website, <https://www.epant.gr/Pages/DecisionsOpinions> (accessed on 16 March 2018).

2.6.6. Pre-notification procedure

There is no formal pre-notification procedure in place. At the initiative of the notifying parties, the HCC may occasionally engage in pre-notification contacts with the parties, but this does not occur as standard practice. Stakeholders have commended the HCC on being more open about discussing the facts and

findings of the case with the notifying Parties, including informal pre-notification discussions.¹²⁵

2.6.7. Substantive issues

The Competition Act stipulates that the HCC prohibits any concentration that “*may significantly impede competition in the national market or in a substantial part of it [...] especially by creating or strengthening a dominant position*”,¹²⁶ following the standard used in the EU Merger Regulation (the so-called SIEC test). In the substantive assessment of mergers, the HCC generally applies the principles and guidance adopted at EU level and interprets the corresponding provisions of the Competition Act accordingly.

The competitive assessment of the HCC takes account of a number of factors,¹²⁷ namely: the structure of all the relevant markets, actual or potential competition from domestic or foreign competitors, barriers to entry, the market position of the merging Parties and their economic and financial power, alternatives available to suppliers and users, supply and demand trends for the relevant goods and services, the interests of intermediate and ultimate consumers and the contribution to technical and economic progress and to improving economic efficiency (provided that it is to consumer’s advantage and does not form an obstacle to competition).

In practice, the HCC considers theories of harm regarding unilateral, co-ordinated, vertical and conglomerate effects subject to the concentration. The definition of the relevant markets remains of crucial importance for setting the scope of the analysis on the effects of the concentration; as well as an assessment of market shares, cost structure, pricing, switching costs, bargaining power of suppliers or customers.

The HCC is increasingly applying a more economics-based analysis in its assessment of merger effects, those that are subject to in-depth review in particular. This has been praised by a number of stakeholders. The HCC has

¹²⁵ Also see note 115 above.

¹²⁶ Article 7 paragraph 1 of the Competition Act.

¹²⁷ Article 7 paragraph 2 of the Competition Act.

recently used more sophisticated analysis to inform its market definition exercise and its assessment of merger effects.

For example, in the Mythos/Olympic merger¹²⁸ in the beer market, the HCC made use of diversion ratios and switching analysis (submitted by the Parties) to establish the extent to which the two parties can be considered close(r) competitors, given their product portfolio. Whilst the two companies held the second and third largest market share in the beer market, which initially indicated a loss of competition within the sector, the HCC's assessment found that the merging entities could not be considered as direct competitors in sub-segments of the relevant market and that Olympic did not exert a particular competitive pressure vis-à-vis Mythos. Coupled with findings, *inter alia*, that the beer market was rather mature, barriers to entry and price transparency were low, whereas demand-side elasticity was relatively high, the HCC concluded that no competition concerns arose and approved the transaction without commitments.

Economic tools were used by the HCC for the analysis of large volumes of data in the review of acquisitions in the context of the restructuring of the banking sector. For example, in assessing the potential unilateral effects as a result of Piraeus Bank's acquisition of the Cyprus Banks,¹²⁹ Gross Upward Pricing Pressure Indexes (GUPPI) and Illustrative Price Rise (IPR) indexes were calculated in individual retail banking markets. Similarly, a Coordinated Pricing Pressure Index (CPPI) was calculated to assess the potential coordinated effects on price post-merger.

Other tools were also used in the competition assessment of cases – such as correlation tests, co-integration analysis and critical loss analysis in the case of

¹²⁸ HCC Decision 606/2015, available in Greek at: <https://www.epant.gr/pages/DecisionDetail?ID=1644>.

¹²⁹ HCC Decision 574/VII/2013, available (in Greek) at: <https://www.epant.gr/pages/DecisionDetail?ID=1397>.

OPAP/National Lottery;¹³⁰ and local market overlap analysis assessed in the case of grocery retail mergers.¹³¹

For cases involving economic analysis the HCC has not issued or adopted any guidelines/procedures/best practices on submissions by the parties. Instead, according to the HCC, it applies the EC's guidance¹³² on the submission of economic evidence and data, even though this guidance is not explicitly referenced in the HCC guidelines or on its website. The notifying Parties can be granted access to the information and estimations the HCC relies on.¹³³ Conversely, when submissions by the Parties rely on quantitative data, the HCC requests that they provide the data and underlying methodology (codes).

Public interest considerations

As outlined above, mergers are assessed on the basis of the SIEC test. No other policy consideration is taken into account.¹³⁴ This is in contrast to the previous regime under which an otherwise prohibited merger could have been allowed by the Minister of Development if it was “*regarded as being indispensable for the public interest, especially where it contributes to the modernisation and rationalisation of production and economy, the attraction of*

¹³⁰ HCC Decision 573/VII/2013, available in Greek at: <https://www.epant.gr/pages/DecisionDetail?ID=1410>.

¹³¹ HCC Decision 637/2017, available in Greek at: <https://www.epant.gr/Pages/DecisionDetail?ID=1791>.

¹³² EC DG COMP, “Best practices for the submission of economic evidence and data collection in cases concerning the application of Articles 101 and 102 TFEU and in Merger cases”, http://ec.europa.eu/competition/consultations/2010_best_practices/best_practice_submissions.pdf.

¹³³ HCC (2015). In practice, no party has so far requested the estimated procedure (i.e. code) used by the HCC.

¹³⁴ For a discussion of different approaches and institutional designs, see OECD (2016) “Public interest considerations in merger control – Background paper by the Secretariat”, [https://one.oecd.org/document/DAF/COMP/WP3\(2016\)3/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2016)3/en/pdf).

investments, the strengthening of competitiveness in the European and International market and the creation of new employment positions”.¹³⁵

It has been commented that removing the public interest criterion from the merger review process has increased the risk that other policy considerations are inevitably mixed with competition considerations. This is particularly pertinent during the period of the financial crisis in Greece, when consolidation and privatisation may play a stabilising or restructuring role and the scope of assessing their impact extends beyond the boundaries of competition policy.¹³⁶

In the aftermath of the crisis in Greece, there have been a number of cases of previously State-owned entities being privatised and/or sectors being consolidated/restructured. The HCC has had to review and eventually approved some of those transactions that were “*crucial to Greece’s current bailout program*”¹³⁷ in 2016. For example, the acquisition by Cosco of sole control of the Piraeus Port Authority¹³⁸ was cleared subject to behavioural commitments. The HCC also took into account the prevailing conditions and the counterfactual in the relevant market, and the efficiencies (economies of scale) accrued as a result of the acquisition.

¹³⁵ Article 4c paragraph 3 of Law 3373/2005 “Replacing and amending Law 703/1977 on the control of monopolies and oligopolies and the protection of free competition”.

¹³⁶ For example, see Tzouganatos (2016): “*The acquisition of majority shareholdings in the Greek banks by the Hellenic Financial Stability Fund, necessary in order to ensure the banks’ recapitalization, has raised questions on the application of competition law which have not been dealt with by the HCC in a satisfactory way. More important is the evaluation of mergers between undertakings in difficulty (directly or indirectly) required by banks as a prerequisite for their further financing. Such market conditions, quite often in today’s practice, cannot be taken into account in mergers expected to significantly impede competition, as the assessment criteria within the merger control may only be competitive. [...] By abolishing the possibility of authorizing mergers by ministerial decisions, the legislator deprived Greek competition law enforcement of a useful tool, which could offer balanced answers to questions arising from the economic crisis.*”

¹³⁷ KG Law firm (2017).

¹³⁸ HCC Decision 627/2016, available in Greek at <https://www.epant.gr/pages/DecisionDetail?ID=1712>.

In the same year, the HCC also approved the notified acquisition by Fraport of 14 Greek regional airports (through Concession Agreements) for the upgrade, maintenance, management and operation of those airports.¹³⁹ According to the decision, the transaction did not raise serious doubts as to its compatibility with merger control rules in the relevant markets, notably the markets for the granting of airport management and operation concessions through tenders, for the management and operation of airport infrastructures, and the provision of airport IT software (upstream market).

2.6.8. Merger notifications and outcomes

The HCC's review of mergers may lead to three outcomes (for those transactions that are found to fall within scope for review by the HCC): approval (after a Phase I or after an in-depth Phase II investigation); approval with commitments or a prohibition of the concentration (after a Phase II investigation).

The outcomes of the review of mergers notified to the HCC are shown in the table below. In most cases the review results in unconditional clearance. However if serious competition concerns are raised, the Parties might need to undertake commitments. Prohibition of a merger is of rare occasion; indeed, no prohibition decision has been taken in 2012 – 2017.¹⁴⁰

In addition to the mergers reviewed by the HCC in the period 2012-2017, EETT has also reviewed one transaction in the market for telecommunications in 2014, which was approved.¹⁴¹

¹³⁹ HCC Decisions 626/2016, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1809>.

¹⁴⁰ The last prohibition was HCC Decision 40/1996, available in Greek at <https://www.epant.gr/pages/DecisionDetail?ID=740>.

¹⁴¹ EETT Decision 737-047/2014. The merger was also notified to the HCC as it concerned the pay TV market, see HCC Decision 593/2014, <https://www.epant.gr/Pages/DecisionDetail?ID=1640>.

Table 5. Merger notifications and HCC decisions

	2012	2013	2014	2015	2016	2017
Merger notifications	15	19	16	8	12	13 *
Mergers cleared at Phase I	12 (80%)	13 (68%)	8 (50%)	5 (63%)	6 (50%)	4 (31%)
Mergers abandoned at Phase I	0	0	0	0	0	1 (8%)
Mergers investigated at Phase II	3	6	8	3	6	2
Merger prohibitions	0	0	0	0	0	0
Mergers cleared at Phase II - no remedies	0	2 (33%)	7 (88%)	2 (67%)	4 (67%)	0
Mergers cleared at Phase II - with remedies	2 (67%)	3 (50%)	1 (13%)	0 (0%)	1 (17%)	2 (100%)
Merger abandoned at Phase II	1 (33%)	1 (17%)	0	1 (33%)	1 (17%)	0

Note: Mergers filed during the corresponding calendar year. Outcome of each of those filings is traced in the matrix of outcomes.

* 6 merger filings are pending at the time this review is completed, so that the outcome of only 7 of the 13 notified transactions is recorded in the table.

Source: HCC.

The HCC has also made use of the provisions in the EC Merger Regulation to refer a case for review by the European Commission. More specifically, in 2012 the HCC unanimously decided to accept an invitation by the European Commission and make a referral request to it with regard to the proposed acquisition of Olympic Air by Aegean Airlines.¹⁴²

¹⁴² The HCC found that the conditions for a case referral under Article 22 of the EC Merger Regulation are met, given that the concentration was liable to have a discernible influence on the pattern of trade between Member States and to affect significantly competition in relation to distinct product markets in Greece and in another Member State. Furthermore, the HCC found that such a referral was warranted in the specific circumstances of this case, notably due to the fact that the European Commission had previously reviewed the Parties' attempted merger in 2010 and possessed specific expertise concerning the restructuring of the airline industry at EU level. See Press release of 7 November 2012 available at www.epant.gr/en/

In the last 20 years, around 25 merger cases have been appealed to the Greek courts¹⁴³ regarding the imposition of procedural fines (for gun-jumping, failure to notify etc.), as well as complaints by third parties for clearance decisions by the HCC. The HCC's decisions have been upheld in the majority of cases – 22 out of 25 cases.¹⁴⁴

The HCC does not routinely conduct an *ex-post* assessment of the impact of its merger decisions; nor has it commissioned any such analysis to date. The Box below outlines the HCC's account of the impact of its involvement in the restructuring of the banking sector in Greece, following a series of transactions in this sector.

Box 4. The consolidation of the Greek banking sector and HCC's role

Over the past decade, on account of the global financial crisis, but mainly due to the Greek crisis, an in-depth restructuring of the domestic banking system has taken place, resulting in the drastic decline in the number of banks operating in Greece.

The HCC has played a prominent role in reviewing the restructuring of the banking sector on a very tight timetable, ensuring both the early recapitalisation of systemically important banks and the financial sustainability of the industry in general.

During 2013, the HCC reviewed a series of mergers and acquisitions in the banking sector, notably six consecutive concentrations involving Greece's systemically important banks (National Bank of Greece, Piraeus Bank, Alpha Bank and Eurobank). The process had to be completed in a very timely manner, in order to ensure the timely recapitalisation of the systemically important banks (as provided for in the context of the loan extension agreements between the EU-ECB-IMF and the Greek government). In 2014, the authority continued the review of mergers and acquisitions in the banking sector, in the context of the ongoing consolidation of the industry. Two of those concentrations involved

¹⁴³ HCC Decisions 40/1996, 43/1996, 52/1997, 105/1998, 110/1998, 120/1998, 36/1999, 76/1999, 102/1999, 186/2001, 201/2001, 279/2005, 279/2006, 300/2006, 330/2007, 366/2007, 424/2008, 427/2009, 210/2002, 461/2009, 465/2009, 491/VI/2010, 513/VI/2011, 515/VI/2011, 536/VI/2012.

¹⁴⁴ Only one decision taken by the HCC in the period 2012-2017 has been appealed and the court upheld the HCC decision (HCC Decision 536/VI/2012).

Greece's systemically important banks. Since 2012, the HCC has reviewed more than 14 parallel banking mergers and acquisitions.

During the investigations, the HCC co-operated with the European Commission, which reviewed the state-aid aspects of the transactions. In addition, although the two authorities did not have a formal memorandum of understanding, the HCC invited the Central Bank of Greece (BoG) to provide information and data on the banking and insurance sectors, in the course of its investigations. The BoG also considered the financial aspects of the transactions, in its supervisory and regulatory capacity.

From December 2007 to December 2016 the banks operating in Greece have been reduced by means of mergers, acquisitions and resolutions from 64 to 39, whilst almost all foreign banks with customer service networks have exited, with the exception of HSBC. Today, the four systemically important banks and Attica Bank cumulatively account for more than 95% of the Greek banking system (in terms of assets), compared with 67.7% at the end of 2007.

Source: HCC.

2.7. Advocacy

In the last few years, the HCC has played an important role in regulatory reform in Greece and, more broadly, has invested into raising awareness on competition policy in the country. The authority's focus on advocacy was mainly motivated by the need for structural reform in Greece, which was exposed by the economic crisis. The HCC's contribution was acknowledged by the European Commission and by the IMF in their reviews of the country's economic adjustment programme.¹⁴⁵ In addition, the HCC achieved further recognition in the 2014-2015 Competition Advocacy Contest, the result of collaboration between the World Bank Group and the International Competition Network (ICN). Greece received an honourable mention under Theme 2: Promoting awareness of benefits of competition in a time of crisis (World Bank, 2016).

The HCC points to two factors contributing to its "strategic realignment" towards advocacy:¹⁴⁶

¹⁴⁵ European Commission (2013), IMF (2013).

¹⁴⁶ HCC response to the OECD questionnaire, see also Loukas (2014)

“The revision of the Greek Competition Act (Law 3959/2011), which gave the HCC the power to issue formal opinions-recommendations for draft legislation potentially affecting competition; and

Specific provisions in the context of Greece’s Economic Adjustment Programme agreed between the EU-ECB-IMF and the Greek government, which gave the Authority a special role in promoting certain reforms (notably, in the area of professional services).”

Based on the Competition Act, the HCC has the following powers:

- According to Article 23, it may issue opinions on matters of its competence on its own initiative or if requested by the Minister of Economy and Development, or by other Minister, it provides its opinion in case of amendments to the Competition Act and it gives its opinion on draft legislation and regulatory acts that may create obstacles to competition (such opinion may be requested by the government body responsible for issuing the relevant acts);
- According to Article 11, it may investigate specific sectors of the economy on its own initiative or if requested by the Minister of Economy and Development. If it finds that its enforcement powers are not sufficient to create effective competition, the HCC may impose remedies, which may be behavioural or structural; and
- According to Article 40, it can conduct sector inquiries or investigations into types of agreements.

The Competition Act does not mention explicitly more general outreach activities, apart from those set out in the articles listed above. However, the Presidential Decree on the internal organisation of the HCC provides for these activities (see section 3.1).

Building on the newly-acquired powers, since 2011 the authority has organised its advocacy efforts around four pillars:

- Opinions on the liberalisation of professional services (Section 2.7.1);
- Sector inquiries and identification of legal distortions (Section 2.7.2);
- Greece’s Competition Assessment Projects (in partnership with the OECD), which identified legal and regulatory barriers in many sectors of the economy (Section 2.7.3); and

- The publication of guides and the organisation of events, addressed to trade associations, procurement authorities and other stakeholders/undertakings (Section 2.7.4).

While no budget is allocated specifically to advocacy, the HCC estimates that about 5% of its resources are devoted to advocacy-related activities. Moreover, the authority has invested significant human resources in the three Competition Assessment projects, in co-operation with the OECD, which ran in 2013, 2014 and 2016.

2.7.1. Opinions

Liberalisation of the professions

Since 2011, the HCC has issued almost 30 opinions on the regulation of access and exercise of the liberal professions. Within the Economic Adjustment Programme, the Greek Parliament voted Law 3919/2011 lifting a number of restrictions concerning all liberal professions, e.g. fixed fees, geographic restrictions preventing professionals from exercising outside the geographic area where they were licensed, restrictions on advertising.¹⁴⁷ The law also replaced the system of prior licensing with a notification requirement. According to this framework, the licensing of specific professions could be re-instated, subject to an HCC opinion. The HCC has since reviewed the exemption requests arising from the law.

The task has required significant efforts and resources. For instance, in 2011 alone the HCC's task force on liberal professions reviewed laws and regulations on more than 45 professions (HCC, 2012). This demanding review included the liberalisation of lawyers, notaries and engineers. In 2012, the HCC reviewed the regulation applicable to 55 regulated professions. The investment was so significant that the HCC estimated that advocacy work accounted for about 30% of the authority's output for that year (HCC, 2013). Overall, the HCC issued 18 formal opinions in the period 2011-2012 (HCC, 2014a), three in 2013, one in 2014, one in 2016 and two in 2017. According to the 2013 OECD Economic Survey for Greece, around 75% of nearly 350 regulated professions are thought to have been opened to competition, following the HCC recommendations.

¹⁴⁷ In the case of some important professions, such as lawyers, notaries and engineers, the law dealt specifically with some restrictions, e.g. minimum tariffs, which were lifted.

Box 5. Overview of HCC recommendations on liberal professions

The main principles guiding the recommendations are as follows:

- Abolition of prior administration authorisation where not justified by public interest considerations, such as for the professions of actuaries, accountants and tax consultants, teachers in private schools, teachers in foreign language schools, tourist guides. The system of prior authorisation was maintained for other professions, e.g. those related to security.
- Simplification of requirements on regular certification (e.g. accountants and tax consultants), and on examinations to enter the profession (e.g. actuaries, sworn-in appraisers).
- Re-organisation of certain professions and the abolition of exclusive rights, so that professionals and legal entities with similar qualifications could also exercise the profession.
- Abolition of additional restrictions to access and exercise the professions, such as (1) *numerus clausus* (e.g. sworn-in appraisers, education services); (2) geographic restrictions (e.g. antiquities traders); (3) regulated fixed fees (e.g. sworn-in appraisers); (4) nationality and freedom of establishment restrictions (e.g. education services); (5) incompatibility between different activities (e.g. trading antiquities and collector of objects of art).

Source: Adapted from the HCC 2013 Annual Report to the OECD Competition Committee, Section 3.1. (HCC, 2013), see also Loukas (2014).

The liberalisation of the professions is still a focus for the HCC in more recent years. The authority has issued opinions on engineers (2014), marine chemists (2016), roadside assistance (2017) and schools for dramatic art, cinema, dancing and music (2017), following requests by the competent ministries. The HCC found the legislation on the engineering profession restrictive and highlighted the different treatment of the profession, depending on whether engineers were involved in public works or private works.¹⁴⁸ In relation to access to the profession, the HCC recommended amending the criteria so that access depends on objective criteria of expertise and actual experience, and not merely by reference to academic

¹⁴⁸ HCC Opinion 34/2014, available in Greek at www.epant.gr/Pages/DecisionsOpinions

titles granted by specific institutions and the number of years since graduation. The HCC identified access restrictions also in the opinion on private art schools, where the requirements for the founder or legal representative (education and extensive teaching or dancing experience) were found to be excessive and not justified for the protection of the public interest.¹⁴⁹ On the contrary, the HCC did not find the requirements for marine chemists restrictive. In particular, the professional qualifications (i.e. education, experience and examinations) and the other requirements (i.e. possession of adequate equipment) were considered to be proportionate.¹⁵⁰ The opinion on roadside assistance, which the Greek government adopted, is described in the following box.

Box 6. Opinion on the professional activity of roadside assistance

The HCC was asked by the Ministry of Transport to issue a formal opinion on whether and how this activity should be regulated. The legal framework reviewed by the HCC included the following requirements for those operating in the sector: minimum number of trucks (geographic allocation); minimum number of technical personnel; minimum number of employees by shift; at least one rest area-service station on each prefecture or island; basic information technology (PC, telephone) for the rest areas-service stations; annual submission to the Ministry, of all related documents, to review whether all legal requirements were met. While no licence was required, firms notified the authorities of their intention to offer services and approval was assumed, unless the authorities objected within three months.

The HCC's opinion made the following points:

1. Although the minimum requirements for exercising the activity of roadside assistance established by Law No. 3651/2008 and especially the range and intensity of the requirements are associated with the reasons of public interest, the requirements do not seem to be proportionate to the public policy objective of ensuring safety. This conclusion was reached by taking also into consideration similar regulatory provisions in other Member States, as well as the lack of evidence on why those minimum standards were adopted.

¹⁴⁹ HCC Opinion 37/2017, available in Greek at www.epant.gr/Pages/DecisionsOpinions

¹⁵⁰ HCC Opinion 35/2016, available in Greek at www.epant.gr/Pages/DecisionsOpinions

2. The HCC proposed to ease the restrictions identified, in accordance with some principles:
 - The aim of ensuring the sufficient and uninterrupted provision of roadside assistance service can be achieved sufficiently and effectively by the existing qualitative criteria set by law, as well as by setting additional qualitative criteria related to the terms and response speed of the roadside assistance companies.
 - If the adoption of the qualitative criteria is objectively insufficient to ensure the necessary level of the service provision, the adoption of additional quantitative requirements for pursuing the same aim in relation to remote areas, where the concept of universal service is also relevant, cannot be excluded in advance (taking particular account of the large number of the Greek islands), under the condition that the relevant reasons are stated (especially in relation to the actual needs of these areas) and provided that the quantitative criteria in question are reasonably proportionate with the public interest.
3. The HCC also proposed abolishing the requirement to resubmit each year all the relevant supporting documents.

Source: Adapted from the HCC response to the OECD questionnaire.

Other opinions

In other fields, the HCC has made important recommendations that have had an impact on consumers and companies. For instance, in 2012 the HCC recommended the abolition of an outdated requirement on companies to notify to the Ministry of Economy and Development their wholesale prices lists, and any variations.¹⁵¹ The HCC contributed to the review of a large piece of legislation, the Product and Market Regulation Code, which regulates the retail and wholesale trade sectors. The HCC's involvement contributed to the removal of the

¹⁵¹ HCC Opinion 21/2012, available in Greek at www.epant.gr/pages/DecisionsOpinions

government's power to set minimum and/or fixed prices, to determine the fees for road freight transportation and to impose export bans and/or export restrictions.¹⁵²

The authority's opinion was instrumental in allowing the sale of infant milk formula (for infants below six months) in supermarkets and other food stores after 2011.¹⁵³ While the liberalisation was provisionally stopped by a legal challenge brought by the Hellenic Pharmaceutical Association (Πανελλήνιος Φαρμακευτικός Σύλλογος), it was allowed by law in 2012 and infant milk can still be sold in supermarkets. Independent estimates suggest that the sale in supermarkets has led to lower prices compared to those before the liberalisation.¹⁵⁴

In a 2013 opinion,¹⁵⁵ the HCC sought to lower the regulatory barriers in the cement market, by making entry and imports easier, while ensuring that quality requirements were maintained (e.g. the cement was transported by suitable ships or other means of transport). Most recommendations were adopted and implemented by the Greek government.

In addition to formal opinions, the HCC provides informal advice to ministries and other public authorities when requested. It co-operates with other authorities more generally, e.g. it participated in a working group on consumer protection issues, including reviewing the Code of Consumer Conduct. In this context, it could strengthen its co-operation with the rest of the public sector, for instance the Better Regulation unit which is responsible for reviewing draft legislation and the Ministry of Economy and Development, given its horizontal competence on competition-related legislation.

¹⁵² HCC Opinion 24/2012, available in Greek at www.epant.gr/pages/DecisionsOpinions

¹⁵³ HCC Opinion 12/2011 which proposed the abrogation of paragraph 2 of Article 2 of Ministerial Decision Y1/G.P. 47815/2008-Government Gazette 1478/B/28.07.2008. Law 4093/2012 expressly authorised the sale of infant formulas in food stores, groceries and retail stores for consumer goods. The opinion is available in Greek at <https://www.epant.gr/pages/DecisionsOpinions>

¹⁵⁴ See IELKA Research Institute, "Significant savings for consumers from the liberalisation of the retail channels for baby milk", 27 January 2017, available in Greek at www.ielka.gr/?p=2148 (accessed on 14 March 2018).

¹⁵⁵ HCC Opinion 32/2013, available in Greek at <https://www.epant.gr/pages/DecisionsOpinions>

2.7.2. Sector inquiries

Over the period 2012 to 2017, the HCC published two inquiries, and launched a third in March 2014 on supermarkets, whose results are expected to be published in mid-2018.¹⁵⁶ The two inquiries concerned sectors of great importance for consumers, as well as recurrent subjects in the public debate on the level of retail prices and their relationship with underlying costs and market structure.

In December 2013 the HCC published a sector inquiry into the agricultural food sector. The report covered the period 2005 to 2011 and dealt with the structure of the supply chain, the regulatory framework, the formation and variation of prices, costs and profit margins along the supply chain, and the degree and speed of price transmission from producers to final consumers. The inquiry was motivated by concerns expressed by consumer associations and representatives of agricultural producers that some parts of the food value chain were not efficient, questioning the relationship between the upstream price (paid to producers) and final consumer prices.

The inquiry reported the gradual decrease in production over the last 20 years and noted some structural factors that hinder economies of scale in Greece, compared with other EU Member States, such as the fragmentation of land, the lack of efficient co-operative structures and/or producers' organisations and a large number of relatively small wholesalers. The HCC found that prices, at both retail and producers' level, had increased between 2005 and 2010, and declined afterwards. Production costs were also found to have increased between 2009 and 2011. The economic analysis (see box below for a very brief description) *“confirms the relatively weak position of agricultural producers with regard to most products concerned. The analysis also confirms that wholesalers are generally the most favoured group in the supply chain.”*

The HCC made a number of recommendations to simplify the regulatory framework for agricultural products, including updating the regulation of leases in wholesale central markets (to facilitate entry and exit of wholesalers), promoting farmers' markets and reviewing the legislation on outdoor markets to improve access to retail channels, allowing for more flexible market structures (e-market, agricultural co-operatives, etc.).

¹⁵⁶ For this inquiry, the HCC sent questionnaires to about 220 companies active both at the production and the retail level (mostly supermarkets) in order to (1) understand the state and development of competition and (2) map distribution clauses (such as entry fees/slotting allowances etc.) that may distort competition in the relevant product markets.

Box 7. Methodology of the fruit and vegetables inquiry

The study focused on seven fruits and vegetables, for which price data were collected at producer, wholesale and retail level over the period 2005-2011. In addition, data on cost and profit margin of wholesalers, supermarket chains, Central Vegetable Markets and auctions were collected.

The sector inquiry included extensive time series analysis trying to identify price transmission mechanisms across the vertical value chain. The methodology involved the estimation of dynamic models for each of the selected fruits and vegetables. These models permitted the identification of whether, and to what extent, price changes (positive or negative) at the different levels of the supply chain were reflected along the chain. Moreover, the report presents impulse response analysis diagrams to examine how long and to what extent a change in price had an effect on the other prices in the supply chain.

The findings vary across the individual products, but in general the study shows that producers tend to (1) respond more quickly to price decreases at other levels of the supply chain, compared with retailers and wholesalers, on some products; or (2) respond symmetrically to price changes on other products. On the contrary, wholesalers are found to react more quickly to prices increases, by corresponding increases in wholesale prices.

Source: Executive Summary of the Sector inquiry, Press Release 4 December 2013.

The HCC has devoted significant efforts to the fuel sector over time, with a sector inquiry published in 2012 and two earlier decisions addressing regulatory restrictions at retail, wholesale and production/refining level.¹⁵⁷ As noted in HCC (2013), the market structure at refinery level was very concentrated, with two companies accounting for 90% of total oil demand in the country, and the rest was imported by wholesalers. In addition, refineries could “*sell gasoline and other petroleum products (diesel, heating oil) directly to “large final consumers” such*

¹⁵⁷ HCC Opinion 29/2012, available in Greek at <https://www.epant.gr/pages/DecisionsOpinions>, HCC Decision 418/2008, available in Greek at <https://www.epant.gr/pages/DecisionDetail?ID=1214>, and HCC Decision 334/2007, available in Greek at <https://www.epant.gr/Pages/DecisionDetail?ID=1154>.

as trucking firms, industrial manufacturers and utilities or to independent retailers (non-branded petrol stations). However, the majority of refiners' gasoline sales are made to oil companies (wholesalers)”. In addition to the significant sunk costs involved at the refinery level, the most important regulatory barrier identified by the HCC was the strategic stockholding obligation system. This is the requirement to stock fuel, in proportion to each company's production level, to ensure the country's security of supply. In Greece, unlike in many other EU Member States, security of supply is not ensured by the State, but by producers and wholesalers.

The HCC submitted 31 recommendations to the government and most were implemented. Indicative recommendations included the following:

- Production level (i.e. refining): set up an independent stockholding operator to maintain and manage oil reserves, funded by all industry players subject to the obligation, or establish an alternative mechanism to reduce costs (e.g. allow third-party access to the certified facilities already existing in Greece, at regulated prices); impose on refineries the obligation of notifying to the authorities the cost of the stockholding obligation that is passed on to wholesalers and final customers;
- Wholesale level: abolish minimum capital requirements and the mandatory storage of at least two types of fuel products, as a requirement to obtain a licence;
- Retail level: lift restrictions on the transport vehicles used by petrol stations; install electronic panels along national highways displaying the prices of the three subsequent petrol stations and their distances; abolish the possibility to impose a minimum price on the sale of fuels to consumers.

Sector inquiries are widely used by competition authorities to gain a detailed understanding of certain markets or certain practices. They can be valuable tools to detect inefficiencies arising from weak competition, even if they do not identify practices violating competition laws. The HCC should conduct further sector inquiries to complement its enforcement activity.

2.7.3. Competition assessment projects

Since 2013, the HCC, in co-operation with the OECD, has conducted high-profile and wide-ranging reviews of legislation in several sectors of the Greek economy. The sectors reviewed were retail trade, wholesale trade, manufacturing,

tourism, construction services, e-commerce and media. The HCC committed significant resources to these joint projects, by seconding personnel to work in the core project team for long periods of time, demonstrating its commitment to its advocacy role. The first project lasted from January to November 2013, the second from September to December 2014 and the third from February to November 2016. In the course of the three projects, the joint OECD-HCC teams reviewed more than 2 800 pieces of legislation and made more than 700 recommendations on specific legal provisions to change or repeal.

The projects followed a similar structure, consisting of the following phases: (1) identify and collect all sector-relevant laws and pieces of legislation; (2) review the legislation using the checklist of the OECD Competition Assessment Toolkit; (3) for those provisions answering positively to any of the questions in the checklist, identify the policy maker's objective and analyse their potential to harm competition; (4) develop recommendations. The projects involved extensive consultations with policy makers and stakeholders.

By way of example, the recommendations included revising ownership restrictions for pharmacies (so that non-pharmacists can also obtain licences), the removal of minimum distances between pharmacies, the liberalisation of the retail channels for vitamins and Over-The-Counter (OTC) medicines, the liberalisation of Sunday trading, the abolition of barriers to entry in the building materials sector (such as minimum requirements on storage or minimum capital requirements), the elimination of barriers to investment in touristic infrastructure (e.g. distance from airports or roads) and many other minimum requirements across the manufacturing sector.

The vast majority of the recommendations were implemented by the Greek government and implementation was monitored within the framework of the country's Economic Adjustment Programme. The HCC was involved in the implementation process by providing informal comments on the draft legislation, with the objective of bringing it as closely as possible in line with the recommendations. A first *ex-post* assessment of the impact of the first set of recommendations, submitted at the end of 2013, was conducted in 2016 by an independent entity, hired by the Ministry of Economy (KEPE, 2017). The study reviewed selected recommendations that were implemented. For instance, the review of the changes in sales and promotions for the retail sector came to the conclusion that (1) prices seemed to have fallen; (2) turnover seemed to have increased, particularly during the winter sales; and (3) employment seemed to have been either steady or in some subsectors negatively affected. However, the authors noted the difficulty of building a counterfactual scenario and identifying the specific contribution of the recommendations, given the severe recession

affecting the economy. Another reform that was assessed by KEPE (2017) was the liberalisation of retail channels for vitamins and dietary supplements. By comparing prices in pharmacies, e-pharmacies and supermarkets, the study found that prices in supermarkets were significantly lower, followed by e-pharmacies and then by pharmacies. However, they also noted that most brands continued to distribute their vitamins only through pharmacies. An independent *ex-post* impact assessment of the 2013 recommendations in the tourism sector is currently underway.

In addition to the direct involvement of HCC staff in the three projects, the work of the HCC, especially its sector inquiries and opinions, contributed to the understanding of the sectors and of their barriers, and therefore were important sources for the competition assessment projects.

2.7.4. Outreach activities

The HCC has published a number of guides to improve the understanding of competition law and compliance, and regularly organises and participates in seminars and conferences. The main guides available on the HCC website are as follows:¹⁵⁸

- **Guide for procurement authorities (2014):** the “Guide for Public Procurement Authorities: Detection and Prevention of Collusive Practices in Procurement Tenders” is targeted at a non-specialist audience and provides examples and references to case law to help procurement professionals to detect suspected cartel behaviour in public tenders. In particular, it includes:
 - An introduction to the concept of anti-competitive conduct in public tenders and the benefits deriving from competition;
 - A detailed explanation of anti-competitive practices in public procurement, with examples;
 - A description of the main characteristics that may facilitate collusion in tenders, i.e. number of bidders, standardised products, familiarity among competitors;

¹⁵⁸ The material referred to in this Section is available in Greek at <https://www.epant.gr/pages/Publications>.

- Suggestions on the factors that should alert public procurement officials, e.g. dubious bids and bidding patterns, suspicious pricing and market sharing practices; and
- Practical tips for public officials to reduce the likelihood of bid rigging in public procurement tenders.

The guide was presented at two large events in 2014 in Athens, one organised by the OECD alongside international experts and one held for the Ministry of Economy and Development.

- **Guide for trade associations (2012):** the HCC issued a compliance guide, in consideration of the high number of cases against associations in previous years. This initiative was complemented by speeches and workshops organised in co-operation with professional associations, in order to promote awareness of competition law and of the benefits of effective competition. For instance, the HCC organised workshops in co-operation with the Hellenic Federation of Enterprises (SEV). However, despite the HCC's best efforts, more infringement decisions concerning trade associations have followed the publication of the guide and the other outreach activities.

In addition, the authority has published guidance, in the form of Questions and Answers, on a number of topics, including the Settlement Procedure (2016), franchise agreements (2016) and the EU Damages Directive (2015).

In the context of Greece's rotating Presidency of the EU Council (1st semester of 2014), the HCC co-chaired the Council's negotiating team that managed to complete all negotiations with the Parliament and the European Commission, both at technical and at formal level, leading to the enactment of the Damages Directive 2014/104/EU.

The HCC is also active in organising events to raise awareness and provide technical knowledge in competition law. The main initiatives are as follows:

- **Judge training:** in the last three years, in co-operation with the European Public Law Organization (EPLO) and the Greek Council of State, the HCC has organised seminars for national judges on Enforcement of EU Competition Law. The training programmes provided hands-on training to judges and prosecutors on key enforcement issues in Greece and on the developments resulting from the new Damages Directive;

- **Conference on “Trends and developments in competition law”**: in March 2018, the HCC co-organised a conference on recent developments in a wide range of competition topics.
- **Conference on “Cartels and Law”**: in 2017 the HCC co-organised a conference on cartel enforcement, leniency and settlement procedures and criminal aspects of competition law.
- **Conference on “Business and Competition in Greece in the context of the digital single market”**: in 2017 the HCC co-organised with the American Chamber of Greece a conference to inform the legal and business community on the European Commission’s sector enquiry on e-commerce and on other developments in the digital economy sector.
- **Seminar on Damages Directive**: the HCC organised a seminar complementing its brochure on the subject and discussed the scope, main provisions and expected benefits of the new EU Directive.
- **European Competition Day (2014)**: during Greece’s Presidency of the EU Council, the HCC organised a two-day international conference on competition and state aid law. In the first day, the conference dealt with vertical issues in the retail sector, the interplay between procedural guarantees and the effectiveness of enforcement and the use of economic tools to detect and assess collusive conduct. The second day of the event, co-hosted by the Greek Ministry of Finance, focused on developments in the area of state aid, including the use of state aid to promote economic growth and the modernisation of state aid rules.

2.7.5. Public interaction by the HCC

The table below shows the number of information requests received by the HCC in the last few years, broken down by source of request.

Table 6. Information requests / communications received from the HCC

	2016	2015	2014	2013	2012
Total received, of which:	220	325	277	240	264
- Members of Parliament	41	30	51	66	25
- Public bodies	51	46	26	39	38
- Citizens (from webpage)	40	61	79	60	81
- Firms	35	100	82	44	82
- Not classified	53	88	39	31	38
Total addressed	211	309	256	227	231

Note: The requests received from other competition authorities and international authorities are covered in Section 3.7. The requests addressed during the year include only requests received in the same year and not prior years.

Source: HCC Annual Reports.

3. Institutional setting for the enforcement of the Greek Competition Act

With the exception of the electronic communications sector and the postal sector, where competition law is enforced by regulator EETT, the HCC is the state body in Greece designated to enforce national and EU competition rules.¹⁵⁹ The Ministry of Economy is responsible for “ensuring the smooth operation of the market and of competition”,¹⁶⁰ including the introduction of legislative measures to address competition issues. The HCC can propose amendments to the Competition Act and can issue opinions on proposed amendments of the Act.¹⁶¹ Through its decisional practice, the HCC illustrates and shapes competition policy.

The Minister of Economy and Development is in charge of the HCC supervision. This includes a “limited right of information concerning priorities and administrative” matters (HCC, 2014; p. 4). In particular, according to Article 14 of the Competition Act, the HCC shall “[p]rovide the Minister of Economy, Competitiveness and Shipping, upon written request, with any information of a general nature in its possession, without prejudice to business secrets and

¹⁵⁹ It is designated according to Article 35 of Regulation 1/2003 as the Authority responsible for the application of Articles 101 and 102 TFEU in Greece.

¹⁶⁰ Presidential Decree 116/2014, Official Gazette 185A of 3 September 2014, Article 1.

¹⁶¹ Competition Act, Article 23.

provided that the information requested does not include information on ongoing investigations or leniency programme applications [...].” This requirement does not include providing information on the prioritisation and the details of individual investigations. Crucially, in practice supervision does not involve any directions or other influence on the HCC’s investigations and decisions. However, the Competition Act is not explicit on this point, while the legislation applicable to other Greek independent authorities includes clauses stating that the Members of the Board (or equivalent, given their structure) do not request or accept guidance from the government or other public or private entities in the performance of their duties.¹⁶² A similar clause is also included in the European Commission Proposal for an ECN+ Directive.¹⁶³ In practice, both the HCC and the Ministry of Economy confirm that no such influence is exercised on the HCC.

The Minister of Economy and Development has the competence of overseeing certain HCC’s administrative functions, as set out in specific articles of the Greek Competition Act. This supervision mainly involves approving the HCC’s budget, to be annexed to the budget of the Ministry of Economy and Development. Moreover, the Minister responds to any questions by Members of Parliament on the activities of the competition authority.¹⁶⁴

The rest of this section describes the structure, functions and resources of the competition authority (Section 3.1), how it defines and communicates its priorities (Section 3.2), its powers and how it conducts investigations (Section 3.3) and its fining guidelines and practice (Section 3.4). Moreover, Section 3.5 deals with the judicial review of the HCC’s decisions, Section 3.6 provides an overview of private actions and Section 3.7 outlines the international aspects of competition law and policy.

The HCC does not have competence on consumer protection (Section 4.1), State Aid (Section 4.3) and public procurement (Section 4.4). Similarly, the HCC

¹⁶² See Law 4408/2016 (Article 55) concerning the railway authority, Law 4389/2016 (Article 3) concerning the public revenue authority and Law 3864/2010 (Article 16A) concerning the Hellenic Financial Stability Fund.

¹⁶³ Article 4, par. 2, stating that *“The staff and the members of the decision-making body of national administrative competition authorities neither seek nor take any instructions from any government or other public or private entity when carrying out their duties and exercising their powers for the application of Articles 101 and 102 TFEU”*.

¹⁶⁴ In addition, the HCC submits its Annual Report to Parliament and presents it in a formal hearing.

has no involvement in enforcing the legislation on unfair trading practices in business-to-business transactions (Section 4.2). Competence for the enforcement and application of the latter lies only with civil and, in certain cases, criminal courts. Moreover, as already mentioned, the HCC does not enforce competition law in the post and electronic communications sectors (see Section 5.1).

3.1. Functions, organisation and resources of the HCC

The HCC is an independent administrative authority, enjoying both administrative and financial autonomy. It has distinct legal personality and may appear in court as a witness or as a party in judicial proceedings. In accordance with Article 29 of the Competition Act, the HCC sets its own strategic goals and implements the case-prioritisation criteria (Section 3.2.1 below). In line with the Competition Act (Article 22), the HCC has to undergo regular reviews about “*its functioning, the effectiveness of implementation of the provisions of Greek and European law, and also the conditions of protection of free competition in general*”.

The authority’s main statutory responsibilities are the following:

- Investigate anti-competitive agreements and abuses of a dominant position and establish whether an infringement has taken place;
- Screen and approve concentrations;
- Conduct sector inquiries and regulatory interventions;
- Issue opinions on regulatory measures restricting competition; and
- Co-operate with sector regulators.

More generally, other advocacy activities do not seem to be among the statutory duties of the authority listed in the Competition Act. The Presidential Decree on the internal organisation of the HCC assigns the duties of raising awareness and promoting competition to the Advocacy Unit (see Figure 3).¹⁶⁵

¹⁶⁵ Presidential Decree 76/2012, Article 11.

The HCC publishes on its websites its decisions¹⁶⁶ and opinions, the court decisions concerning its decisions and its opinions, as well as an Annual Report. The latter is also presented at a Parliamentary hearing every year.

3.1.1. Organisation

The HCC has a dual structure, consisting of the Directorate General for Competition (“Directorate General”), its investigative arm, and the HCC Board, which is the decision-making arm of the authority. The Board consists of a total of eight members: the authority’s President and Vice President (the latter role was established in 2011), four full-time Commissioners-Rapporteurs, two part-time Members and their alternates. In addition to being members of the Board, the Commissioners-Rapporteurs supervise the preparation of the “proposals” about the cases submitted to the Board for a decision (e.g. Statements of Objections, rejection of a complaint, recommendation of no further action). Commissioners-Rapporteurs cannot vote on cases supervised by them. The activities and functions of the investigative arm are carried out by competition enforcement staff, under the day-to-day supervision of the Director General (see more information on the internal organisation below).

Appointment and dismissal of Board Members

According to the Greek Competition Act, HCC Board Members shall be “individuals of recognised standing, as well as of scientific formation and professional ability in law and in economics, particularly as regards competition-related matters”.¹⁶⁷ They can be employees of the HCC or external experts. At the moment, the President of the authority is a former Supreme Court judge and the Vice President is a lawyer, as are three out of the four Commissioners-Rapporteurs, while the remaining Member is an economist.

¹⁶⁶ According to Article 27 of the Greek Competition Act, “[t]he decisions of the Competition Commission, being of individual nature and provided for under the present Law, must be specifically reasoned, published in the Government Gazette and posted on the Internet pursuant to the provisions of L. 3861/2010 (A 112)”. As a result, some decisions are not published.

¹⁶⁷ See Section 1.2 for a short description of the previous system.

Commissioners-Rapporteurs are selected and appointed by the Minister of Economy and Development, following an opinion by the Parliamentary Committee of Institutions and Transparency. According to the Competition Act, the President and the Vice President instead should be selected by the Conference of Presidents of the Greek Parliament, i.e. a collective body comprising of representatives of the political parties, and formally appointed by the Minister.¹⁶⁸ The latter provision is aimed at ensuring the independence of the HCC leadership from the Government. However, this procedure has not been implemented in practice yet, pending an amendment to the rules on the functioning of Parliament, and the President and Vice President have been so far selected by the Government.¹⁶⁹ In general, there does not appear to be a transparent procedure in place for the selection of Board Members (e.g., publication of vacancy), in contrast for instance with the Greek Public Revenue Authority.¹⁷⁰

The Competition Act does not regulate explicitly whether the appointment of the HCC Board Members should be staggered or if Members are appointed simultaneously.¹⁷¹ In practice, there are at the moment two groups of Board

¹⁶⁸ According to Article 12, par. 3, of the Competition Act they are selected by the Parliament following the procedure set out in Article 101A, par. 2, of the Constitution. The Conference consists of the Speaker and the Deputy Speakers of the Parliament, former Speakers who are still elected MPs, the Presidents of Standing Committees and that of the Special Standing Committee on Institutions and Transparency, Parliamentary Group Presidents and a representative of independent MPs (provided there are at least five of them). See www.hellenicparliament.gr/en/Organosi-kai-Leitourgia/Diaskepsi-Proedron.

¹⁶⁹ Article 12, par. 3 of the Competition Act, covers the transitional period until the amendment of the Parliament's regulation. At the moment, the President and the Vice President are selected by the Council of Ministers, following an opinion by the Parliamentary Committee of Institutions and Transparency.

¹⁷⁰ Law 4389/2016, Article 10, providing for an open procedure for the selection of the members of the board.

¹⁷¹ A transitional provision (Article 50, par. 3, of the Competition Act) is considered by the HCC as complementing the provisions described below. It states the following: *“The members of the HCC Board employed on a full-time and exclusive basis remain in their position until the end of their mandate. The rest of the members remain in their position until appointment of Vice-President and new members according to the provisions of the present law, where their mandate is automatically terminated. The above members may*

Members appointed at different times. According to the HCC, the Act ensures a smooth transition while Members are being replaced, to preserve expertise in between renewals, and it contains safeguards so that the HCC Board does not suspend its operation during this process. In particular:

- The appointment procedure of the Commission's Members shall be initiated two months before the expiry of the former Members' term of office;
- The term of office of Board Members shall be extended automatically until new Members are appointed;
- In the event of death, resignation or removal from post of the President, the Vice President or a Member of the Competition Commission, a new President, Vice President or Member shall be appointed for the remainder of the term of office. In addition, until the appointment of a new President, Vice President or Member/Members, the operation of the Commission shall not be suspended.

According to Article 15 paragraph 7 of the Greek Competition Act, the Board lawfully holds plenary sessions provided that the President, Vice President, the Commissioner-Rapporteur designated for the case concerned and at least two other Members, regardless of whether they are full-time, part-time or alternate, participate in the session. Despite these safeguards for a smooth transition when appointments are renewed, there may be periods in which the HCC does not have four full-time Commissioners-Rapporteurs, and this may create a bottleneck for the drafting of Statements of Objections and decisions. This was the case in the course of 2015, when new Commissioners were not appointed upon the expiry of the previous Commissioners' mandates.

The Members of the Board lose their eligibility to hold their post if they do not inform the Minister of prior work (see below) or if they are found guilty of an

be re-appointed, without their current mandate being taken into account for the application of the third subparagraph of article 12 (3). The Commission, retaining its composition, continues to carry out its duties until the appointment of the Vice-President and the new members according to the provisions of the present law, while the Rapporteurs retain their voting right".

offence which disqualifies them from holding a civil service position.¹⁷² The law is not clear on whether these two cases are the only ones in which Members of the Board are disqualified.

Moreover, the Members of the Board are subject to disciplinary action,¹⁷³ following a proposal by the Minister of Economy and Development, for any breach of their obligations deriving from the Competition Act and related regulations. In 2016, a new article was added setting out disciplinary offences, as follows:¹⁷⁴ *“a) any substantial infringement [...] of the Competition Act and of the legislation generally in force; b) the acquisition or the pursuit of a financial benefit or reward of the Board Member [...] or of any third person in the course of their duties or on occasion of the performance of their duties; c) wrongful harm to the detriment of the Greek State or the Hellenic Competition Commission.”*¹⁷⁵ In the event that a disciplinary offense is a criminal offense, Board Members may be dismissed, following a decision issued by the Minister of Economy and Development, even if they have not been condemned by a criminal court for that offense. While public officials in Greece are generally subject to disciplinary offences, stakeholders feel that those set for the HCC Board Members are not very specific.

The Competition Act sets out some conflict of interest clauses, covering professional activities performed before, during and after a Board Member’s mandate. According to Article 12 of the Act, Board Members are required to inform the Minister of Economy and Development of any work or project they

¹⁷² Article 12, paragraph 10, Competition Act.

¹⁷³ Article 13, Competition Act. These proceedings take place before a Disciplinary Council, consisting of a Supreme Court judge, a member of the Council of State (the supreme administrative court) and a professor of law or economics.

¹⁷⁴ HCC (2017a).

¹⁷⁵ An initial version of the amendment, among other provisions, defined non-compliance with the instructions of the supervising Minister as a disciplinary offence. This draft provision was seen as limiting the authority’s independence and was withdrawn by the Government, following the reaction of the HCC (press release dated 29 January 2016) and in consultation with the European Commission, see Global Competition Review, “Fresh Greek bailout contingent on competition reforms”, 2 June 2016, <https://globalcompetitionreview.com/article/1064673/fresh-greek-bailout-contingent-on-competition-reforms>.

carried out in the five years before the start of their term. If any of the prior work was carried out for “an undertaking directly or indirectly involved in a case under consideration” they cannot participate in hearings and decisions concerning that undertaking. During their term, those Board Members who are not employed on a full-time and exclusive basis cannot carry out any paid or unpaid work that is incompatible with their role and duties.¹⁷⁶ Moreover, when leaving the authority, Board Members cannot provide services to an undertaking regarding cases they handled or they decided upon. More generally, they cannot support cases against the HCC for three years after leaving office (so-called cooling off period).

Conflict of interest clauses were also amended in 2016, preventing Members of the Board to be relatives up to the second degree or spouses of Members of Parliament, Members of the European Parliament and Government members. For this clause to be applied, the law requires a formal decision to be issued by the competent authority that appointed the member.¹⁷⁷ At the time the law was amended, the decision was not issued by the competent authority, i.e. the Minister of Economy, and therefore the clause was not applied to serving members.¹⁷⁸ The HCC reacted to the amendment with a press release, issued with one of its members’ minority vote, which objected to the conflict of interest clauses and to other provisions included in the amendment.¹⁷⁹ Following this change in the Competition Act, the government subsequently introduced similar amendments in the legislation of three other independent authorities, i.e. the ports regulator, the post and telecommunications regulator and the public revenue

¹⁷⁶ University professors can continue their activities as academic staff.

¹⁷⁷ Article 12 paragraph 7, Law 3959/2011 as amended by Article 282, paragraph 1, Law 4364/2016.

¹⁷⁸ The European Commission also participated in the discussion, see for instance Global Competition Review, “Fresh Greek bailout contingent on competition reforms”, 2 June 2016, <https://globalcompetitionreview.com/article/1064673/fresh-greek-bailout-contingent-on-competition-reforms> Global Competition Review, “Greek minister summoned by Vestager”, 1 March 2016, <https://globalcompetitionreview.com/article/1064119/greek-minister-summoned-by-vestager>.

¹⁷⁹ Press release dated 29 January 2016. The statement referred also to changes in the disciplinary offences, the introduction of age limits, changes in the terms of the Director General and the Directors.

authority.¹⁸⁰ Finally, the MoU between Greece and the Institutions contains a paragraph stating that, among other issues, the Greek authorities will bring in line with best practices “*the principles of future legislation, [...] including on issues relating to the conflict of interest of HCC’s Board members*”.¹⁸¹

Internal organisation

The Director General is responsible for the operation of the investigative and administrative structure of the HCC. The Director General is appointed by the plenary of the HCC Board, following a public announcement and selection process (Article 21, Competition Act). The successful candidate may be internal

¹⁸⁰ Article 8, par. 10, of Law 4389/2016 (Government Gazette A94 of 27.05.2016) concerns the public revenue authority. In this case, the conflict of interest clause states that a candidate for the positions of President, member of the managing board or specialised personnel (called “scientific” personnel in Greek) cannot be (or have been in the previous legislature) an MP, a candidate MP, an MEP, a member of the government or of the executive bodies of political parties.

Article 109, par. 6, of Law 4389/2016 (Government Gazette A94 of 27.05.2016) concerns the ports regulator (Πορθμιστική Αρχή Λιμένων – ΠΑΛ) and is similar to the provision applicable to the HCC.

Article 6, par. 1 of Law 4070/2012 as amended by Article 100, par. 4β, of Law 4530/2018 (Government Gazette A59 of 30.03.2018) concerns the post and telecommunications authority and is similar to the provision applicable to the HCC, with the difference that it does not apply to serving members.

¹⁸¹ The document reads as follows: “*the government commits to safeguard the independence and the effectiveness of the Hellenic Competition Commission in line with EU requirements. As a prior action, the authorities will agree with the institutions the principles of future legislation, included detailed drafting where possible so as to bring these in line with best practices, including on issues relating to the conflicts of interest of the HCC’s Board members and the staffing of the HCC’s internal legal office, consistent with the general framework for the appointment of legal staff of the entities of the public sector, as defined by law. The advocacy unit of the Hellenic Competition Commission will be strengthened by twelve additional posts and a review will be conducted with the support of the European Commission and international expertise to ensure that the competition law is in line with EU best practice.*” See the Draft Supplemental MoU (June 2018), https://ec.europa.eu/info/sites/info/files/economy-finance/draft_smou_4th_review_to_eg_2018.06.20.pdf, page 40.

or from outside the authority, including on secondment from another public body. The same holds for Directors' positions. The terms of the Director General, as well as those of Directors and Heads of Units, last for four years and can be renewed (for the Director General it can be renewed twice). In 2016, the government reduced the duration of these terms to three years, but this was later reversed by a subsequent amendment in May 2016.¹⁸²

Cases are dealt with by the two Economics Directorates (A and B) and the Legal Services Directorate, which report to the Director General. The Advocacy Unit is a separate unit, also reporting to the Director General. The legal and economic Directorates are organised by sectors, while there are no specific units dealing only on specific types of cases (e.g. there is no merger-specific unit or directorate). As a result, all staff works on all areas of competition enforcement and on advocacy matters, if necessary. The Director General, with the agreement of the President, allocates staff to the units. However, the internal organisation of the authority is set by a Presidential Decree, according to Article 21, paragraph 3, of the Competition Act.¹⁸³ Therefore the HCC cannot set its own internal organisation autonomously.

Case teams are normally multi-disciplinary, including both lawyers and economists. In order to ensure quality control, the work of each team is reviewed by two Heads of Units (one lawyer, one economist) and two Directors (one lawyer, one economist). Based on the views of practitioners, the system is designed to enhance due process and ensure that all the facts of a case are broadly reviewed by the Directorate General. However, observers note that it can also be a source of delays and that this system of extensive review is probably not required for all types of cases. In fact, according to the HCC, the authority already adapts the team structure in cases where fewer reviewers are possibly necessary (e.g. in Phase I merger cases).

The staff of the HCC falls under the general rules applicable to civil servants even though the lawyers retain in part the status of liberal professional "in a period of suspension". This deviation is based on an opinion of the Athens

¹⁸² The HCC issued a press release dated 29.1.2016. See also Global Competition Review, "Fresh Greek bailout contingent on competition reforms", 2 June 2016, <https://globalcompetitionreview.com/article/1064673/fresh-greek-bailout-contingent-on-competition-reforms>.

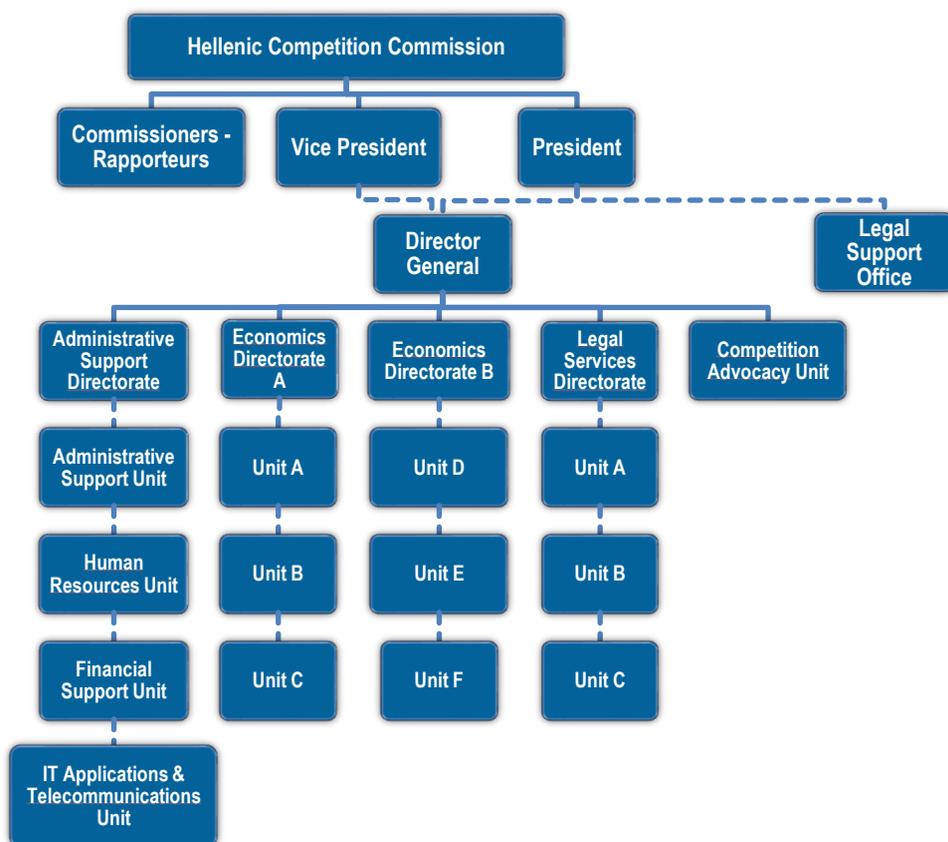
¹⁸³ Following the opinions of: (1) the Ministers of Finance, of Economy and Development and of Interior and (2) the HCC.

Bar Association stating that lawyers cannot be fully assimilated to employees. The remuneration of the staff is based on the unified salary scales applicable to every public sector employee. HCC staff, as is the case in other parts of the civil service, retains to some extent its past salary differences with respect to minimum salaries. Therefore HCC salaries for existing employees are somewhat higher than what envisaged by the unified salary scales. This will not be the case for new joiners, including those that have already been selected by the HCC and are due to join in the next few months. According to the Competition Act, the salary of the competition professionals working for the HCC can be set by a Ministerial Decision (Article 12, paragraph 13, Competition Act). This act has not been issued.

Similarly, the performance assessment of staff members follows the general rules for the civil service and the same template. At the moment, the HCC does not have the power to design its own performance assessment system or to adapt the standard template for the civil service to its own needs, e.g. at least for competition staff.¹⁸⁴

¹⁸⁴ An example of an authority that can set its own performance assessment rules for specialised personnel is given by the Greek Ombudsman, dealing with citizens' complaints against the public administration (Law 3094/2003, Article 5).

Figure 3. Organisational chart



Note: The sectors covered by Economics Directorate A include construction and building materials, healthcare, chemicals, pharmaceuticals, food and beverages. Economics Directorate B covers sectors such as banking, insurance, energy, transport, tourism and media. The Legal Services Directorate is also organised by sector: each unit of the legal services directorate co-operates with two units from the Economics Directorates.
 Source: HCC.

3.1.2. Resources

According to the Greek Competition Act, the HCC enjoys financial autonomy (Article 17). It estimates and sets its own budget, which is separate from the central state budget, subject to review by the Court of Auditors and approval by the Minister of Economy and Development. It is funded from a duty of 1/1 000 on the amount of the initial share capital and of each capital increase by limited

liability companies established in Greece. Other sources of revenues include donations, payments from the European Union and subsidies from the public budget. The HCC does not have the power to impose additional fees and does not receive any share of the fines it imposes. In fact, all fines imposed by the HCC are collected by the tax authorities and are considered public revenue. According to the Competition Act, the HCC must annually return to the Central Treasury up to 80% of its budget surplus based on the results of the two previous fiscal years.¹⁸⁵ The surplus is the difference between the fees and the other revenues, on the one hand, and expenses, such as salaries and procurement of goods and services, on the other hand. Given the way the HCC is funded, the economic crisis has had a negative impact on revenues raising the question of whether additional source of funding, still independent from State budget, should be identified and whether the requirement to return its budget surplus to the Central Treasury should be relaxed.

A Presidential Decree¹⁸⁶ and a Regulation¹⁸⁷ describe the HCC's financial management and procedures. The President is responsible for managing the allocated budget and for supervising the financial management of the authority and the allocation of funds. The HCC is subject to strict *ex-ante* approval of its expenses above EUR 10 000 by the Court of Auditors, which also performs *ex-post* checks. The approval of the Minister of Economy and Development is necessary for some expenses, even though these were included in the budget approved by the Minister in the first place, are subject to *ex-post* control, and sometimes to *ex-ante* approval, by the Court of Auditors. Expenses that were not initially budgeted cannot be funded by an increase in the approved budget. However, it is possible to re-allocate funds from other expense categories if there are excess funds. In general, the HCC finds that the strict controls are justified, especially in light of the country's economic conditions.

¹⁸⁵ The HCC returned 75% of the budget surplus achieved during fiscal years 2013 and 2014, i.e. EUR 8 302 701 in total.

¹⁸⁶ Presidential Decree 76/2012.

¹⁸⁷ Issued as Joint Ministerial Decision 117/2013.

Table 7. Staffing levels and budget (EUR)

	Person years	Budget expenditure (salaries)	Competition-related budget*
2017	83	4 230 000	5 477 000
2016	86	3 731 829	6 353 000
2015	94	3 734 000	7 738 500
2014	100	4 232 000	n.a.
2013	112	4 552 867	n.a.
2012	110	3 970 920	n.a.

Note: *Excluding sums earmarked for the purchase of a new building and sums remitted to the state budget (from HCC's surplus each year).

Source: HCC

According to the latest data (2017), 58 out of 83 staff members focus on competition enforcement. The non-administrative staff consists of 53 professionals, including 18 lawyers, 30 economists and five having other background. The HCC seems to be lacking staff with an IT background and with specialised training in forensic tools. It also lacks administrative staff to support everyday operations. Despite the hiring freeze in the public sector, the Memorandum of Understanding between Greece and the international creditors allows the authority to recruit 12 professionals, mostly lawyers. The procedure was launched at the end of 2016 and the decision selecting the successful lawyers was finalised in April 2018 by the independent authority in charge of recruitment across the civil service (Ανώτατο Συμβούλιο Επιλογής Προσωπικού – ΑΣΕΠ).¹⁸⁸

In the first years of the financial crisis, the HCC benefitted from a budget increase allowing for 38 new recruits since 2011. This resulted in about a 35% increase in the overall number of competition staff. Subsequently, the increase was more than offset by a salary reduction affecting all the civil service in the context of the Economic Adjustment Programme. However, the HCC did not fill all the positions envisaged initially by the Competition Act (Article 21, paragraph 30) and horizontal legislation voted in the context of the country's Economic

¹⁸⁸ One economist joined the HCC at the end of February 2018 and the procedures for a second economist as being finalised as of end of April 2018. The final decision on the lawyers was published on ASEP's website on 17 April 2018.

Adjustment Programme led to the permanent reduction of the number of staff provided for in the Competition Act.¹⁸⁹

The HCC has been losing trained staff since 2013, mostly as a result of salary reductions across the Greek civil service. According to HCC data, as of December 2017, a total of 23 staff members were seconded from the HCC to other public bodies. Out of these, five lawyers, four economists, one IT specialist and one other enforcement staff have left, including professionals that had been trained on forensic techniques within an EU project. Conversely, as of the same date only eight staff members were seconded to the HCC from other bodies and, except for one economist, these were mostly administrative staff. The HCC is still required to pay the salaries of three-quarters of the seconded staff members.

The 2016 amendment of the Greek Competition Act introduced new provisions concerning the fees for outside legal counsel representing the HCC in court. By way of background, the Greek Competition Act provides for the establishment of a Legal Support Office to represent the HCC in court. However, the Legal Support Office is not operational yet and the authority resorts to external legal representation.¹⁹⁰ These fees are subject to *ex-ante* control by the Court of Auditors and require approval from the Minister of Economy and the Minister of Finance. In its initial form, the cap on the fees for outside legal counsel was set at EUR 20 000 for annual fees to external lawyers, in total. Following the HCC's arguments that this would not be sufficient, given the number of its decisions appealed every year and the need for specialised competition lawyers to defend

¹⁸⁹ According to Law 4024/2011, Article 33, paragraph 1, vacant civil service posts at the time the law was adopted would be abolished. As a result, 67 permanent staff posts were abolished at the HCC.

¹⁹⁰ In its reply to the OECD questionnaire, the HCC described the process for the appointment of external counsel as follows: *"The President of the Authority, following the opinion of a Member of the State Legal Service (acting as Head of the Legal Support Office, as provided in the transitional provision of Article 50 par.8 of the Competition Act) assigns each case to outside legal counsel and in addition the HCC, in plenum, decides on the amount of the fee. The fees are subject to scrutiny by the Court of Auditors and the competent Ministers of Development and of Finance have the final say in setting the fee to be paid."*

its cases, the cap was modified and now applies to the annual fees paid to a specific lawyer or law firm, not in total.¹⁹¹

It appears that the fees paid by the HCC for each case are much lower than current market rates. The HCC also reports that “*the HCC endeavours to limit the expenses to a reasonable amount, notwithstanding the fact that high profile and well respected legal counsels are reluctant to undertake HCC’s cases, due to low fees*”. The law provides for conflict of interest clauses and confidentiality requirements. Practitioners working for the HCC on a case and their partners, if the practitioners are members of a law firm,¹⁹² are conflicted from working against the HCC on that same case. In addition, the legislation imposes confidentiality requirements and Chinese walls if, within the same law firm, one practitioner is working for the HCC and another practitioner is working – on an unrelated competition case – for a private client pending before the HCC.

The HCC has provided information on the legal fees paid in the last few years, and they range from EUR 33 350.84 in 2011 to EUR 95 362.11 in 2012.¹⁹³ In addition, it has estimated that staffing the internal Legal Support Office with three lawyers would be more expensive than hiring external counsel.¹⁹⁴ Moreover,

¹⁹¹ The MoU between Greece and its international lenders provides for further action on this point. The document reads as follows: “*As a prior action, the authorities will agree with the institutions the principles of future legislation, included detailed drafting where possible so as to bring these in line with best practices, including on issues relating to the conflicts of interest of the HCC’s Board members and the staffing of the HCC’s internal legal office, consistent with the general framework for the appointment of legal staff of the entities of the public sector, as defined by law.*” See the Draft Supplemental MoU (June 2018), https://ec.europa.eu/info/sites/info/files/economy-finance/draft_smou_4th_review_to_eg_2018.06.20.pdf, page 40.

¹⁹² Article 20, paragraph 6, spells out the subjects to which the conflict applies.

¹⁹³ The fees for outside counsel in the period 2010–2016 were as follows (years in brackets): EUR 55 774.60 (2010), EUR 33 350.84 (2011), EUR 95 362.11 (2012), EUR 66 979.98 (2013), EUR 46 780.59 (2014), EUR 52 416.00 (2015) and EUR 38 544.50 (2016). According to information from the Ministry of Economy, the Ministerial Decision approving the expenditure was for a higher amount, of EUR 82 600.

¹⁹⁴ The HCC estimates that “[f]or example hiring 3 lawyers (one acting as Head of the Office) with the prerequisite experience would cost the HCC from €79 441.08 to €107 377.92 annually (for salaries and employers social security contributions).”

according to the HCC there may also be quality concerns with an internal Legal Support Office, for two main reasons: (1) the HCC requires expertise in a number of legal fields and this can be achieved by hiring different external counsels, based on need and qualifications; and (2) according to the Lawyers' Code of Conduct, a committee including representatives of the Athens Bar Association, one representative of the State Legal Council (i.e. the legal services of the Greek State) and one representative of the HCC would select the lawyers of the HCC's Legal Support Service, therefore the HCC would not have a determining vote on its staffing.

3.2. Priorities and impact of the authority's activities

With the 2011 Competition Act, in line with international practice, the HCC was granted the ability to set strategic objectives and to select the cases to investigate.¹⁹⁵ This is in contrast with the situation prior to 2011, when the authority was required to fully investigate all the complaints it received.¹⁹⁶ Article 14 of the Greek Competition Act provides for the HCC to issue a decision, following public consultation, on "*the criteria for priority consideration of cases and strategic objectives*". The same article also states that the HCC's decision should "*take account of the public interest, likely impact on competition, consumer protection, the limitation periods under Article 42 of this Law, as well as the anticipated outcome of its intervention in a specific case*". In its Annual Report to Parliament, the HCC is also required to present information "*on the application of the criteria set for priority examination of cases and the pursuit of strategic objectives, its decisions and its assessments regarding the situation and developments in the area of its competence*" (Article 29 of the Greek Competition Act).

The HCC sets priorities at two levels:

- Strategic goals, which concern overarching objectives and focus on economic sectors; and

¹⁹⁵ The ability to prioritise was also among the recommendations in the 2011 OECD Economic Survey, see OECD (2011).

¹⁹⁶ The HCC is still required to consider all the complaints it receives, but it can dismiss complaints on priority grounds.

- Case-level, according to a Notice on enforcement priorities, issued by the HCC in 2011,¹⁹⁷ and a Notice on the quantification of priority criteria on the basis of a point system.¹⁹⁸

The HCC's aims are the protection of the competitive structure of the market, the protection and improvement of competition and the promotion of a competition culture in Greece (HCC, 2018). The objectives and priorities of an independent authority should be clear in order to improve transparency and accountability, and ultimately enhance trust in the authority (OECD, 2014a). The HCC has published its key objectives in its latest Annual Report (HCC, 2018; pages 75-76), even though they are not specific and seem to cover many of the authority's activities. The published objectives are as follows:

- Effective implementation of competition law, using all available tools. The settlement procedure and the commitment procedure, along with the correct prioritisation of cases using the HCC's point system, are part of the tools to achieve this goal;
- Optimise its resources, through its prioritisation system, to focus on cases with greater impact for the Greek economy and its consumers, and to be able to keep up with market developments (e.g. digital platforms and e-commerce, use of personal data);
- Promotion of competition through activities such as (1) the publication of information material, the organisation of seminars and training events; (2) the establishment of a compliance programme; and (3) guidelines of good regulatory practice to ensure that competition is taken into account in legislative changes;
- Creation of competitive markets, through the assessment of regulatory barriers using the authority's advocacy powers; and
- Evaluation of the impact of the HCC's interventions, in order to show the tangible benefits of competition for consumers.

¹⁹⁷ Decision 525/2011, available in Greek at www.epant.gr/Pages/DecisionsOpinions, and press release of 18 May 2011, available in English at www.epant.gr/en.

¹⁹⁸ Decision 616/2015, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1647, and press release of 10 March 2016, available in English at www.epant.gr/en.

This Section describes how the HCC prioritises its antitrust cases, the resulting types of cases (also reflecting the complaints it receives) and some estimates of the impact of its activities on the Greek market.

3.2.1. *The prioritisation of cases*

According to the Notice on enforcement priorities, the selection of cases is based on a public interest criterion and the authority will consider “*the estimated impact of a practice on the functioning of effective competition, and especially on consumers*” (HCC, 2012). Therefore the HCC assigns priority to complaints and *ex-officio* investigations concerning the following markets and practices: (1) hard-core restrictions, such as price fixing or market sharing, in horizontal agreements (also taking into account the market position of the companies involved and the number of consumers affected by the practice); (2) products and services that are important to consumers; (3) practices concerning many companies, with the potential of passing through increased prices to downstream or final consumers.

In addition to these key criteria, the HCC will consider whether a particular case falls under the strategic goals of the HCC with respect to markets or practices. It will attach priority to complaints and investigations related to compliance with the rulings of the Courts of Appeals and the Council of State concerning prior HCC decisions. Finally, the HCC prioritises the use of its advocacy powers on draft legislation and regulations. Additional relevant factors include the following (see HCC, 2012): “*the available resources of the Authority, 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 authority to act (particularly as compared to the jurisdiction of national courts to deal with cases of private interest).*”

In 2012, the HCC adopted a system which attaches points, based on pre-defined criteria, to complaints and pending cases. The Directorate General investigates pending cases according to their ranking. The ranking depends on the nature of the infringement, its anticipated impact and the economic importance of the products under investigation. Any cases awarded three points or fewer will not be investigated by the HCC and will be closed with a decision by the President.

The system was updated in 2015. The table below shows the differences, in bold, in the last four rows of the table. In particular:

- Complaints are assigned negative points when, at the time they are filed, they are already subject to the five-year limitation period (see Section 3.4.2).

- Complaints are assigned negative points when they concern an alleged infringement that follows an earlier one already been dealt with by the HCC, in two cases: (1) the infringement has ceased; and/or (2) the parties are taking steps towards compliance with the HCC decision.
- Complaints against recidivists are no longer attached points.

Table 8. Changes in the HCC's point system

	Points in 539/2011	Points in 616/2015
Horizontal agreements	2	2
Abuse of dominance	2	2
Vertical restraints	1	1
Practices affecting markets of consumer goods and services of greater social importance	1	1
Practices affecting the whole country	2	2
Leniency application	2	2
Sufficient evidence	1	1
Practice pending / Recidivism	1	0
Important legal issue / legal certainty	1	2
Complain subject to time limitation*	0	-3
Case already handled and/or issue is being dealt with	0	-3

Note: * According to the updated Point System, the HCC should not prioritise “complaints which are subject (already at the time of their filing) to the 5-year limitation period in accordance with Article 42 of the Competition Act and which do not fall within the scope of the pertinent transitional provisions of the Act” (HCC response).

Source: KG Law (2017).

The point system is meant for internal use only, as a management tool for the investigation of pending cases by the Directorate General. According to national provisions,¹⁹⁹ the ranking of individual cases is not made public nor is it notified to the complainant or other parties. Complaints that receive low ranking (below or equal to three points) can be rejected by a decision of the President of the HCC, following a proposal by the Directorate General. Decisions rejecting complaints on priority grounds must be reasoned and notified to the complainant within 30 days of date when they are issued. Rejection decisions on priority grounds have not yet been tested in administrative courts, but the first two appeals against such decisions are pending.

¹⁹⁹ Article 14(2ni) and (2o) of the Competition Act.

The ability to prioritise cases and to dismiss complaints on priority grounds is pivotal for the efficiency of the authority and allows it to free resources to devote to new cases and to advocacy efforts (see box below). The practitioners interviewed by the OECD are supportive of the HCC's use of prioritisation. In addition, they would favour focusing on more recent alleged violations and are critical of cases concerning behaviour or contractual clauses dating to years back, as in the cosmetics case (see Section 2.3).

Box 8. Benefits of prioritisation system

Indications regarding the effectiveness of the new prioritisation system are so far positive. It led initially to a wide-range internal assessment exercise of backlogged cases, in order to identify and process those cases that are obviously unfounded and are thus to be rejected by expedited decision on those grounds (cases excluded from prioritisation). As a result of this exercise, the number of expedited rejection decisions for obviously unfounded cases in 2012 and 2013 tripled as compared with 2011. This is a significant improvement in terms of streamlining procedures and dealing with backlogged cases.

Furthermore, backlogged cases have been reduced by the end of 2016 by at least 30% compared with 2010, while it is estimated that the combined implementation of the enhanced powers of the HCC (including the "prioritisation point-system" and the identification and processing of obviously unfounded cases in a simplified process, coupled with the abolition of the notification requirement for "mapping purposes") will result by the end of 2017 in the reduction of the total number of backlogged cases by more than 50%.

As of 31 May 2018, the HCC had 164 pending cases, out of which 47 have been investigated and are expected to be closed soon by summary dismissal decision or because of low prioritisation.

Moreover, the reduction of backlogged cases and the ability to reject complaints enabled the authority to free resources to be devoted to pursue more enforcement cases and increase advocacy efforts.

Source: HCC response to OECD questionnaire and follow-up questions.

3.2.2. Sector and case mix in antitrust enforcement

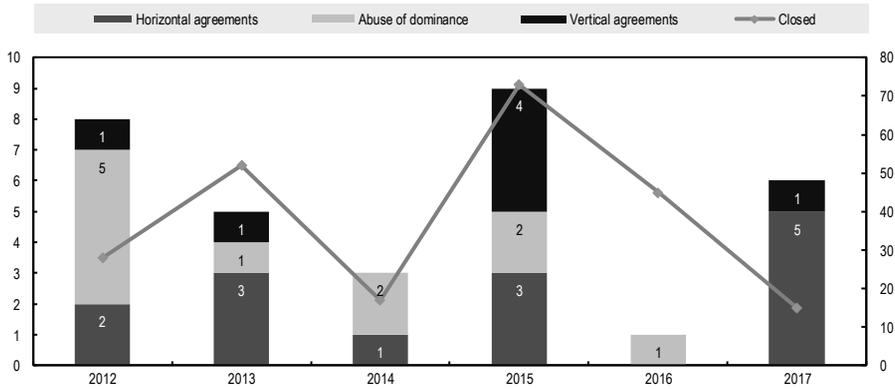
In practice, the HCC has chosen to prioritise the markets it considered most affected by the economic crisis or that could have a greater impact on consumer welfare and/or the recovery of the Greek economy. In its antitrust enforcement,

the authority has prioritised the food sector and the food supply chain, other consumer goods and the energy sector. The HCC currently focuses on the food and drinks markets, on the retail and healthcare sector, as well as on the construction sector with its bid-rigging cases (GCR, 2018).²⁰⁰

Following the same rationale, the HCC has addressed regulatory obstacles in many sectors of the economy (i.e. liberal professions, cement market, fuel sector, supply chain for fresh fruits and vegetables), as described in Section 2.7 above. In addition, the HCC has intensified its efforts on markets with perceived rigidities, such as former monopolies and public procurement markets. Importantly, it has addressed cases of anti-competitive practices that recur in many economy sectors, such as collusive practices of associations and vertical restraints, especially in franchise distribution networks, through a number of cases in those markets and practices. As also mentioned in Section 2.7, these efforts have been complemented by targeted advocacy activities.

Over the period 2012-2017, the HCC issued 30 infringement decisions on horizontal agreements, abuse of dominance and vertical agreements. On average over this period, almost half of the decisions concern horizontal agreements, followed by abuse of dominance cases (about one third) and finally by vertical agreements (almost a quarter). The breakdown by year is shown in the chart below.

²⁰⁰ For 2017, the HCC declared its priorities in the areas of the retail supply chain, food and beverage markets, pharmaceuticals, energy and waste management services (GCR, 2017). In 2016, the HCC's sector priorities were construction (public works), retail supply chain, food and beverage, energy, healthcare, banking and insurance.

Figure 4. Number of infringement decisions and of closed cases by year

Note: On the right axis - closed cases are those where the HCC examined allegedly infringements, but concluded that no infringement was committed or substantiated and therefore issued summary dismissal/or of low prioritisation/or withdrawals. On the left axis – issued infringement decisions.

Source: HCC.

While there is no one-to-one correspondence between the number of new cases opened and the infringement decisions that the HCC will eventually adopt, in 2016-2017 about half of the new cases opened by the HCC concern alleged abuse of dominance.²⁰¹ The proportion of new horizontal agreements cases in the same period is around one quarter, which is below the share of cases in the past few years.

In terms of international comparisons concerning the total number of infringement decisions, the ECN publishes statistics for the European competition authorities, based on the draft decisions they notify to the European Commission.²⁰² The data show the number of envisaged decisions, by country,

²⁰¹ Out of a total of 20 new cases opened in 2017, 11 are for abuse of dominance, five for vertical agreements and four for horizontal agreements. In 2016, out of 38 new cases, 19 concern abuse of dominance, ten horizontal agreements and nine vertical agreements.

²⁰² <http://ec.europa.eu/competition/ecn/statistics.html> (accessed on 5 April 2018).

over the period 2004-2016. Based on this information, Greece is ranked seventh among European competition authorities for the number of envisaged decisions.

3.2.3. Impact of HCC's activities

In 2016, the HCC carried out an impact assessment of its activity on consumers, following the methodology set out in an OECD Guide,²⁰³ and published the results of that impact assessment in its Annual Report. The consumer benefit from the HCC's decisions from 2002 to 2016 was estimated conservatively at EUR 1.947 billion, resulting from 28 decisions.²⁰⁴ The amount is divided into EUR 1.603 billion, arising from 11 horizontal and four vertical agreements decisions, and EUR 344 million resulting from 12 decisions on abuses of a dominant position. The Annex provides more details on the impact of individual decisions. The authority has not yet carried out *ex-post* evaluation studies of any of its decisions.

3.3. Enforcement powers and procedures

This section describes the main investigative powers granted to the HCC by the Competition Act, as well as the procedural tools to grant leniency, settle cases, accept commitments and impose interim measures. The power to impose sanctions and the HCC's fining guidelines are covered in Section 3.4 below, which also describes the criminal sanctions for competition law infringements.

In order to provide the framework in which the powers and the procedures operate, Section 3.3.1 outlines the process and the timeline followed by the HCC in antitrust cases. The merger control procedure was outlined in Section 2.6 above.

²⁰³ OECD (2014), Guide for helping competition authorities assess the expected impact of their activities, www.oecd.org/daf/competition/Guide-competition-impact-assessment-EN.pdf.

²⁰⁴ See HCC's 2016 Annual Report, chapter 3.

3.3.1. Overview of process in antitrust cases

The HCC has broad enforcement powers.²⁰⁵ Its investigative arm, the Directorate General of Competition (see Section 3.1.1), performs all the necessary investigative actions (e.g. collection of information, dawn-raids, depositions, etc.) in all types of cases and in sector inquiries. Cases can be opened *ex officio* or following a complaint, as described in Box 9 below. The Directorate General analyses the information and evidence collected for an initial assessment of the case. If the complaint does not fall within the remit of the HCC, is without merit or manifestly unfounded, the case is closed. If the case is still pursued after this initial investigation, the Directorate General continues to examine the case and can use various investigative measures, such as Requests for Information (RFIs) or inspections.

Prioritisation follows a recommendation by the Directorate General based on the initial investigative measures (see Figure 5). If a case is prioritised, it is assigned (by random draw) to one of the Commissioners-Rapporteurs, assisted by the Directorate General in the preparation of the Statement of Objections (SO). The SO sets out the HCC's competition concerns in relation to certain practices and is sent to the parties to inform them of the alleged infringements.

In the stages prior to the notification of the SO, the undertakings under investigation may learn about the investigation when they receive an RFI or when they are subject to inspections. The inspection mandate and the RFIs include information on the alleged infringement. However, if the HCC does not take any such investigative measures, the parties may not be aware that they are being investigated. According to the HCC Procedural Regulation, the entities under investigation may have access to a copy of the non-confidential version of the complaint in order to be able to rebut the complaint prior to the notification of the SO.

²⁰⁵ See also OECD Roundtable on “Institutional and Procedural Aspects of the Relationship between Competition Authorities and Courts, and Update on Developments in Procedural Fairness and Transparency” - Greece www.oecd.org/daf/competition/ProceduralFairnessCompetition%20AuthoritiesCourtsandRecentDevelopments2011.pdf

After the SO is served to the parties (i.e. to the complainants and to the accused undertakings),²⁰⁶ an oral hearing is held before the HCC Board in its capacity as a decision-making authority. After the hearing, the HCC issues a decision on whether an infringement of competition law provisions has been committed. If the Board finds that there has been an infringement, the HCC may impose a fine, issue a cease-and-desist order, impose behavioural or structural remedies, accept commitments,²⁰⁷ propose remedies, or make recommendations. This procedure is followed also in the case of interim measures, when there is imminent risk of serious and irreparable damage to competition. Figure 5 below sketches this process, including the prior step of prioritisation according to the criteria described in Section 3.2.1.

As for the timeline of antitrust cases, the Competition Act and the HCC Procedural Regulation set indicative deadlines for some of the stages, as follows:

- Cases are prioritised within three months of the submission of the (fully completed) complaint or the assessment of the initial investigative measure for *ex-officio* investigations.
- After a case is (randomly) assigned to a Commissioner-Rapporteur, the SO has to be submitted to the HCC Board within 120 days. This deadline can be extended by a maximum of 60 days by the President, following a request by the Commissioner-Rapporteur;
- Following the oral hearing, the parties may request to make additional written submissions and, if their request is accepted, the submission has to take place within three days from the date the minutes of the hearing are circulated to the parties (unless otherwise set by the President or the Vice President);
- Following the oral hearing, the HCC Board has to deliberate no later than 30 days since the parties' post-hearing submissions;

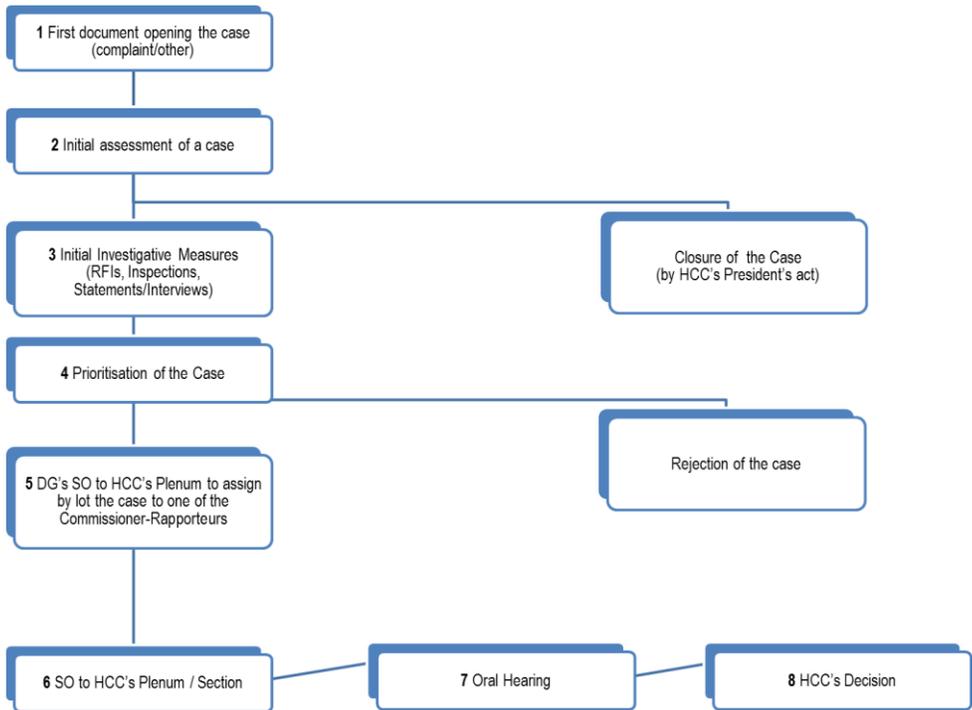
²⁰⁶ The Notice on the Submission of Complaints (following HCC decision 546/VII/2012) explicitly refers to the notification of the complainant and its participation as a party to the procedure (see www.epant.gr/pages/Complaints).

²⁰⁷ As explained in Section 3.3.5, under a commitment procedure the parties are not required to acknowledge an infringement.

- The HCC Board will take a decision within 12 months from the date a case is assigned to a Commissioner-Rapporteur. The deadline can be extended by a maximum of two months if further investigation is necessary; and
- The HCC decision shall be issued within 30 days since the last meeting of the HCC Board.

Time limits do not seem to cover fully the investigation stage, they are indicative and at times exceeded in practice. The stakeholders interviewed by the OECD have flagged delays in antitrust cases and especially in the publication of the decision, while at the same time recognising the resource constraints faced by the HCC. In this respect, the HCC has noted that additional evidence and arguments may be submitted by the parties late in the procedure, and this additional information has to be analysed and reflected in the text of the HCC decision.²⁰⁸ Moreover, as further explained below, the Greek system has additional levels of procedural safeguards and this may also lead to some delay.

²⁰⁸ Based on comparative information from Global Competition Review for the period 2012-2016, the average duration of the HCC's cartel investigations (36 months) and abuse of dominance cases (43 months) is longer than for some of the other authorities of comparable size or smaller (i.e. Belgium, Lithuania, Portugal and Switzerland). The average duration of cartel investigations and of abuse of dominance cases in these countries are 28 months and 29 months, respectively. However, this is a rough measure and does not take account of other factors that can affect duration, such as the number and complexity of cases each authority investigates simultaneously, procedural differences and time private parties require to provide fully responsive submissions.

Figure 5. Steps in the investigative and decision process

Source: HCC.

As noted in proceedings in front of EU courts, some components of the HCC's decision-making process (such as the hearing proceedings, the three rounds of pleadings before and after the hearing, access to the other parties' (non-confidential) submissions, the cross-examination of witnesses and the consideration of evidence and of all the allegations of the parties to the procedure), make the HCC more akin to a judicial body than an administrative agency. Both complainants and respondents may be legally represented before the Board of the HCC and are granted certain procedural rights which are in line with court-type proceedings.²⁰⁹ While the HCC does not have a hearing officer, with the

²⁰⁹ See, Opinion of Advocate General Jacobs delivered on 28 October 2004 (not followed by the court), paragraphs 31 - 32 in Case C-53/03, *Synetairismos Farmakopoion Aitolias*

responsibility of guaranteeing the procedural rights of the parties, the President of the authority has this role and is called on to resolve disputes about the exercise of procedural rights between the parties and the General Directorate (e.g. disclosure of confidential information).

As for the rights of third parties, according to the HCC Procedural Regulation they “*may submit written observations before the oral hearing takes place, irrespective of whether they have a legitimate interest or not. Such observations form part of the case file and are notified to the parties to the proceedings by the third party that has submitted the observations. Any third party that substantiates legitimate interest may request by its observations to participate in the oral hearing. At the beginning of the oral hearing the HCC decides whether there is sufficient interest for such a third party to be heard and in the affirmative which procedural rights may be granted to such a party*”.

The practitioners interviewed by the OECD for this report have expressed great appreciation for the procedural standards held by the HCC. In addition, they consider that the Greek Competition Act provides for significant procedural safeguards.

& Akarnanias (Syfait) et al. v. GlaxoSmithKline plc. and GlaxoSmithKline AEBE, Judgment of 31.5.2005, [2005] ECR I-4609.: “[...] the status of the Greek Competition Commission is in my view finely balanced. That body appears to me to be situated very close to the border line between a judicial authority and an administrative authority having certain judicial characteristics. 32. On balance, however, I consider that it is sufficiently judicial in character to qualify as a court or tribunal for the purposes of Article 234 EC”. See also Opinion, paragraph 21: “More distinctive of a court or tribunal is the hearing before the Competition Commission, at which both complainants and respondents may be legally represented and are accorded procedural rights similar to those enjoyed by parties to ordinary court proceedings. Such guarantees go some way to supplying the necessary inter partes element to the Competition Commission’s decision-making process”.

Box 9. Complaints

The procedure for the submission of complaints was defined by the HCC in 2010 and revised in 2012 (Decision 546/2012). Before 2010, the authority used to receive a significant number of submissions that contained little or no evidence to support the claims made. The authority therefore adopted a specific form for complaints, which requires the provision of substantiated views on the functioning of the market and information/evidence regarding the alleged infringements that fulfil a minimum standard.^{*1} Only complaints that are filed in compliance with the form are handled as official complaints, while the rest are considered market information.

Complaints can be filed by anyone, i.e. a legitimate interest is not required. The HCC reports that the introduction of formal requirements in 2010 has led to more substantiated complaints and therefore it considers that a legitimate interest criterion is not required. Most complaints are submitted by persons that are close to the facts of a case, such as competitors or customers, since they have to prove a minimum level of information/evidence about the alleged infringements.

If complaints either do not fall within the HCC's competences or are manifestly unfounded, they are rejected by a decision by the President of the HCC. Complaints with a low score under the prioritisation system (see Section 3.2.1) are equally rejected by a decision by the President of the HCC. Finally, complaints that are withdrawn are closed with a similar procedure. Formal complaints that have already been assigned to a Commissioner-Rapporteur are closed by a decision of the HCC Board. These are administrative decisions that can be appealed before the Athens Administrative Court of Appeals.

Complaints are filed by the HCC's protocol and this system enables complainants to track the status of their submission. In addition, if complainants are not satisfied with the handling of their case, they can seek the intervention of the General Inspector of Public Administration, a separate entity dealing with complaints across the public sector.^{1,2}

Notes:

¹ The form is available in Greek at www.epant.gr/Pages/Complaints

² See the authority's mission at www.gedd.gr/index.php?lang=en

Source: HCC response to the OECD questionnaire.

3.3.2. Investigative powers

The HCC has an extensive set of investigative powers granted by the Greek Competition Act:

- According to Article 39, the authority can conduct inspections at business premises and also at private premises, if there are reasons to believe that evidence necessary to the investigation may be located there. If the parties refuse or obstruct an inspection, the HCC may request the assistance of judicial authorities (which may take the form of a court warrant), e.g. see an example in Section 3.4.4. A judge or a prosecutor should attend any inspection of non-business premises. Moreover, only Greek officials may participate in inspections, with the exception of European Commission officials who are also allowed to participate (Article 28 of the Competition Act). The table below shows the number of cases on which the HCC conducted inspections, as well as the number of companies or associations inspected, suggesting significant variation year on year;
- The HCC can request information to undertakings, associations of undertakings, other legal entities, individuals and public authorities (Article 38).
- HCC officials can request testimonies, either sworn or not, from representatives or staff members of any undertaking or association of undertaking. Interviews can take place at the HCC premises, following written invitation indicating the subject of the investigation conducted by the authority, or during on-site inspections. In both cases, the interviewee can be accompanied by a legal counsel and the record of the interview is signed both by the HCC and by the interviewee.

The information collected can only be used for the specific purpose for which it was requested.

The HCC reports that interviews are frequently used, and that they are particularly useful when the Directorate General requires clarifications on documents. Since the accuracy of oral statements can be difficult to confirm, the HCC reviews written evidence first in order to be better prepared to conduct interviews and verify the accuracy of information provided orally. Interviews are conducted by the case handlers, who do not receive specialised training in interviewing techniques.

The HCC can impose procedural fines for non-compliance with requests for information, lack of co-operation during inspections, refusal to submit to an interview or delays in submitting information. In the case of public bodies or authorities, the HCC may file an official report leading to the possibility of disciplinary action against the civil servants or the employees of public-law entities not co-operating with the HCC. For instance, the HCC issued a EUR 400 000 fine for non-compliance in 2015²¹⁰ and two fines totalling EUR 87 000 in 2013.²¹¹

Table 9. Number of inspections

	2012	2013	2014	2015	2016	2017
N. of cases	25	14	22	8	5	4
N. of companies / associations inspected	123	60	32	24	53	25

Source: HCC

The treatment of confidential information by the HCC and the submission of confidential information by the parties are set out by an HCC Notice issued in 2015.²¹² The document covers only the treatment of confidential information “during the period that the case is pending before the Commission and until the conclusion of the procedure by adoption of a decision or otherwise” (Paragraph 5). The Notice provides that certain documents and information are considered confidential and not accessible to the parties (or to third parties). These include any drafts and any documents destined for internal use, such as working papers or communications, of the HCC, the European Commission or other national Competition Authorities. Business and professional secrets are also considered

²¹⁰ The 2015 decision concerned the case against Colgate-Palmolive for submission of misleading data, obstructing the Directorate- General’s investigation (HCC Decision 610/2015, available in Greek at <https://www.epant.gr/pages/DecisionDetail?ID=1816>).

²¹¹ The 2013 decisions concerned a case of alleged bid rigging in tenders for public works in two Greek provinces (HCC Decision 559/2013, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1383) and a case against a trade association (HCC Decision 570/2013, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1711).

²¹² The Notice is available at <https://www.epant.gr/en/Pages/Legislations>.

confidential information. The HCC redacts confidential information in the SO and the decision, as well as in all file documents for the purposes of access to file.

According to the Notice, inculpatory or exculpatory documents are included in the SO. Moreover, if access to documents containing confidential information is absolutely necessary for the exercise of the rights of defence of a party, the President of the HCC, following a request, issues a reasoned decision and grants access in whole or in part to these documents. However, the disclosure applies only to the person for whom the access has been considered as absolutely necessary.

3.3.3. *Decision-making powers*

Following an investigation, if the HCC Board finds an infringement of Article 1 or 2 of the Competition Act (or if using its powers of regulatory intervention, see section 2.7), it may issue a decision to take one or more of the following actions (Article 25 of the Competition Act):

- Order the undertaking or association of undertakings to terminate an infringement and to desist from it in the future;
- *“Impose behavioural or structural remedies, which must be necessary and appropriate for cessation of the infringement and proportionate to its nature and gravity. Structural remedies shall be allowed only where no equally effective behavioural remedies exist or where any equally effective behavioural remedies are liable to be more burdensome than structural remedies”* (Article 25, paragraph 1 of the Competition Act);
- Impose a fine on undertakings or associations that have committed a competition law infringement;
- Impose a fine on undertakings or associations that do not comply with a commitment they submitted and that was made binding on them by an HCC decision (see an overview of the commitment procedure in Section 3.3.5);
- Threaten a fine if an infringement is continued or repeated; and
- Impose the threatened fine if the infringement is continued or repeated.

According to Article 25 of the Competition Act, the HCC has also the power to impose interim measures (paragraph 5) and to accept commitments (paragraph 6). In addition, Article 25, paragraph 8, provides for the HCC’s power

to grant leniency in the context of investigations into horizontal agreements and Article 25a, introduced in 2016, provides for a settlement procedure. These topics are described in the four sections below. The power to impose fines is discussed in greater detail in Section 3.4.

3.3.4. *Interim measures*

When the HCC suspects a violation of Articles 1, 2 or 11 (regulatory powers, see section 2.7), or of Article 101 and 102 of the TFEU, it has the power of taking interim (or precautionary) measures of its own initiative or if requested by the Minister of Economy and Development. However, the authority can adopt interim measures only when “*there is an urgent need to prevent an imminent risk of irreparable harm to the public interest*” (Article 25, paragraph 5, of the Competition Act). The HCC cannot impose interim measures for the protection of *individual* interests, while these can be ordered by civil courts if necessary. Interim decisions may be appealed.

The authority may threaten the undertakings or associations of undertakings with a fine up to EUR 10 000 for each day of non-compliance with its interim decision.

The HCC has issued three interim decisions since 2012. The latest case was in December 2017, when the HCC acted urgently to stop a local association of agricultural producers from restricting the sale of their members’ products in the period before Christmas in the area of one of the main producers of potatoes in Greece.²¹³ The HCC conducted a dawn raid in the premises of the association, following a phone call from a producer. It found that the association obliged producers not to sell the new crop of potatoes before Christmas. Moreover, the association would adopt penalties on any producer violating this order, by threatening them with a lower price for the raw milk they would sell to the association in 2018. The HCC acted within ten days (from the dawn raid), during which it sent a Statement of Objections to the association, held a hearing and drafted the interim decision.

Earlier cases concern the electricity sector (2015) and the boycott of the wholesale sale of infant milk (2012). These cases combined interim measures and a commitment procedure. Incumbent electricity supplier PPC declared that it

²¹³ See HCC press release of 22.12.2017, available in Greek at www.epant.gr/

would terminate its contract with the largest high-voltage electricity consumer in Greece. Following a complaint by the latter, the HCC intervened and PPC offered commitments (see Section 2.5.1).²¹⁴ The 2012 decision concerned the boycott by the pharmacists and the warehouses/wholesalers of the Achaia region of those suppliers of baby milk that were selling to supermarkets.²¹⁵ The boycott followed the liberalisation of the sale of infant milk, for babies below six months, which was previously sold only in pharmacies.

3.3.5. Commitment procedures

When an investigation reveals possible infringements of Articles 1 and/or 2 of the Competition Act, or of Article 101 and/or 102 TFEU, the HCC has the power to accept commitments from the parties that they will terminate the alleged infringement. An HCC decision is required to make the commitments binding on the parties, but it is not necessary to establish whether a competition law violation has occurred or not. For this reason, commitment procedures are considered relatively “*fast and flexible means to address antitrust concerns compared to full-fledged investigations*” (OECD, 2016).

In 2014, the HCC issued a decision setting out the conditions and the procedure for the submission of commitments (the ‘Commitments Notice’).²¹⁶ In particular, according to these guidelines, the HCC considers commitments suitable in the following cases: (1) when competition concerns are easy to identify; (2) the competition concerns are addressed in full by the commitments; and (3) the competition concerns can be resolved efficiently and quickly by the commitments.

The HCC has broad discretion on whether to accept commitments. The Notice clarifies that the authority will usually not accept commitments if the alleged infringements concern price fixing, bid rigging, output limitation, quota

²¹⁴ HCC Decision 621/2015, available in Greek at www.epant.gr/pages/DecisionDetail?ID=1646. See also press release of 03.08.2015, available in English at www.epant.gr/en.

²¹⁵ HCC Decision 545/2012, available in Greek at <https://www.epant.gr/pages/DecisionDetail?ID=1369>.

²¹⁶ HCC Decision 588/2014, available in Greek at <https://www.epant.gr/pages/DecisionDetail?ID=1405>.

arrangements or market sharing. This applies also to serious abuses of dominant position and there have been past cases in which the HCC did not accept commitments.²¹⁷ The HCC will normally not accept commitments when it has reasons to believe that they are not genuine, i.e. they are part of a delaying tactic, when they are vague or when they do not contribute to the effectiveness of the procedure. In addition, horizontal agreements are excluded if they already benefit from the application of the leniency programme.

When the HCC decides to initiate a commitment procedure, the Commissioner-Rapporteur in charge of the case contacts the parties and invites them to submit, within 30 days, a commitments proposal. Based on the Commitments Notice, the parties may submit a commitments proposal at any stage of the investigation procedure up to 20 days prior to the hearing. The HCC would rarely accept commitments after the Statement of Objections has been notified to the parties since, at that stage of the procedure, commitments are deemed not to help the effectiveness of the procedure.

According to the Commitments Notice, the HCC can conduct a market test of the commitments at any point during the proceedings. The HCC can decide the most suitable format, such as the publication of the summary of preliminary findings or summoning third parties.

The HCC may decide, of its own initiative or following a request by a party, to re-open the case if one or more of the following events take place: (1) one of the facts on which the decision was based has changed significantly; (2) the undertaking does not abide by the commitments; or (3) the undertakings provided incomplete, incorrect or misleading information.

The commitment procedure has been extensively used in vertical agreements cases (Section 2.4) and, notably, in abuse of dominance cases in the energy sector (Section 2.5.1), where the HCC devotes significant resources to the monitoring of the commitments by the incumbent in the gas sector.²¹⁸

²¹⁷ This has been the case, for instance, in the following cases: Nestlé (Decision 434/2009), Tasty Foods (Decision 520/2011) and Athenian Brewery (Decision 590/2014).

²¹⁸ Commitment decisions in antitrust cases, Note by Greece, [https://one.oecd.org/document/DAF/COMP/WD\(2016\)28/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2016)28/en/pdf).

3.3.6. *Leniency programme*

The HCC adopted a revised leniency programme in 2011, building on an earlier programme adopted in 2006 and following the ECN Model Leniency Programme.²¹⁹ The new programme covers both undertakings and natural persons who help the HCC to detect cartels, and it provides for both full and partial leniency.²²⁰

The HCC can grant full immunity from fines under the following conditions: 1) the party is the first to share information that, according to the HCC, will enable it to launch a “targeted investigation” on the alleged violations or to establish an infringement; 2) it co-operates “genuinely, fully, continuously and expeditiously” with the HCC; 3) it interrupted its involvement in the alleged cartel when it submitted its leniency application, unless instructed otherwise by the HCC in order to preserve the investigation;²²¹ and 4) the party does not disclose its leniency application until the Directorate General of the HCC issues the Statement of Objections.²²²

Partial immunity is available to subsequent applicants, subject to the requirement that the evidence provided adds value to the information already held by the HCC and that the applicant stops its involvement in the alleged infringement when submitting a leniency application unless instructed otherwise by the HCC in order to preserve the investigation.

²¹⁹ HCC (2011), issued on the basis of Articles 14, par. 2n(i), and 25, par. 8, of the Greek Competition Act.

²²⁰ Applications may be submitted in writing or orally, and the HCC leniency programme sets a specific procedure to follow. Moreover, prior to submitting an application, it is possible to discuss with the HCC whether a leniency application would be hypothetically possible in a specific case, under the cover of anonymity. Once the application is formally submitted, the President of the HCC provides written confirmation that it has been accepted, pending the formal confirmation by the HCC Board, or communicates to the applicant that the request does not satisfy the leniency requirements.

²²¹ See page 9, HCC (2011).

²²² In the 2006 leniency programme, recidivists and ring-leaders were excluded from immunity. For instance, see the account in the 2011 HCC Annual Report to the OECD Competition Committee.

In the case of natural persons,²²³ full immunity also translates into removing their criminal liability for the cartel since the 2016 amendment of the Competition Act. This holds whether the leniency application has been filed by the natural person or the legal person employing the natural person. When the leniency application is submitted by a natural person, it is this person who benefits from full immunity. When the leniency application is submitted by a legal person, full immunity applies to specific persons as per the Competition Act.²²⁴ While the law does not specify whether this extends beyond competition law, the HCC notes that during the Parliamentary hearing (on 21 and 22 May 2016) leading to the vote of the amendment, the Minister of Justice clarified that the scope included only competition law offenses as provided for in paragraphs 1 and 2 of Article 44 of the Competition Act. However, this interpretation by the Minister is not set out in a legal text and therefore the law remains unclear in this respect. When a natural person or a legal person is granted a fine reduction, this is considered a mitigating circumstance in the application of the Criminal Code.

The 2011 leniency programme introduced a marker system enabling an applicant to reserve a “place in the queue”, provided that it submits some minimum information (e.g. cartel members, market and duration). However, this has been used only once so far, in the construction cartel case (Section 2.3.1).

When an application for full immunity has been submitted to the European Commission or another National Competition Authority, the HCC may accept a simplified immunity application. In the last few years the HCC has received numerous summary applications, following leniency applications submitted to DG COMP.

While there are no specific rules to protect leniency material from disclosure to parties (HCC, 2017), the general guidelines on confidential

²²³ The 2011 leniency programme extends to individuals the possibility to apply for leniency, which was precluded in the 2006 programme. Article 106 of Law 4389/2016 amends the Competition Act by providing for immunity from criminal prosecution to natural persons being granted immunity by the HCC. According to the Competition Act, natural persons can incur fines ranging from EUR 200,000 to EUR 2 million. Penalties are covered more in detail in Section 3.4.

²²⁴ According to Article 44, paragraph 3, of the Competition Act. The specific individuals are “whoever concludes an agreement, takes a decision or implements a concerted practice” (Article 44, paragraph 1).

information and access to file apply until the case is closed (see Section 3.3.2).²²⁵ In particular, the leniency application is recorded in a confidential registry, dedicated exclusively to leniency applications. The filing of the leniency application and the identity of the applicant are kept confidential.²²⁶ No access to the leniency application (and the supporting evidence) will be granted before the HCC has notified its Statement of Objections to the parties. Access to file is granted following the notification of the Statement of Objections, if requested by the parties, before the hearing of the case. This is in order to enable undertakings to exercise their rights of defence and reply fully and effectively.²²⁷ However, complainants will not be granted access to confidential information, even following the notification of the Statement of Objections.

Confidentiality is also protected if an HCC decision is appealed, as confidential information is submitted to the Athens Administrative Court of Appeal and the Council of State in a separate section of the administrative case file marked “confidential information”.²²⁸ The Court shall ensure that the parties cannot access the parts of the file that are confidential for them, unless access is deemed necessary in order to defend their overriding interest and the adjudicating court grants them respective permission, to the necessary extent, at their request.

As for access to case information requested by civil courts, before the Damages Directive was transposed the matter was regulated by the Code of Civil Proceedings. As a result, civil courts could order the disclosure of the documents held by the HCC, subject to certain conditions.²²⁹ This gap has now been

²²⁵ In addition, the provisions of Article 41 of the Competition Act and Article 15 of Joint Ministerial Decision 117/2013.

²²⁶ Paragraph 21 of the Leniency Notice states that the Director General is in charge of the confidential protocol book of leniency applications.

²²⁷ In accordance with Joint Ministerial Decision 117/2013, Article 15(7), first two paragraphs.

²²⁸ According to Article 41, paragraph 2 of the Competition Act.

²²⁹ However the Competition Act does contain some additional safeguards. In particular, Article 41(1) provides that the information collected may only be used for the purpose of the request for information, the inspection or the hearing in question, while Article 15(14) of the Procedural Regulation provides that information obtained through access to file

addressed in the legislation, as the Directive was recently implemented into Greek legislation (Section 3.6.1). However, the safeguards on the disclosure of information contained in Articles 6 and 7 of the Directive have not yet been incorporated into the leniency notice (or the settlement procedure notice).

The leniency programme has been slow to deliver results, with the first application in the 2016 bid rigging cartel case (see Section 2.3.1).²³⁰ There may be a number of reasons explaining the limited success of the leniency programme in Greece, including cultural factors and the small size of the market and the concern with criminal sanctions (on non-competition offences). As a result, the HCC invests significant resources in examining complaints and conducting *ex-officio* investigations, compared with other competition authorities that are able to rely on leniency applications.

Finally, a (non-leniency) whistleblower programme is not available in Greece. Complainants can submit official complaints or simple information to the authority and request that their identity is not disclosed to third parties (HCC, 2012; paras. 15-16). However, there is not a fully-fledged (nor clearly visible to the public/third parties) whistleblower tool or system, which would allow someone to submit information while safeguarding anonymity from the outset, e.g. using encryption or another method to protect the sender's identity. As reported in OECD (2017c), several jurisdictions have introduced these tools, in order to enable “*to allow individuals to report the existence of cartels, or any useful knowledge, in an anonymous way*”. However, the feasibility and effectiveness of whistleblower programmes depend on a number of factors, such as the protection granted by legislation (not only competition law).

3.3.7. Settlement procedure

The settlement procedure applicable to cases of anti-competitive horizontal agreements was introduced by the HCC in 2016 with Decision 628/2016,

may only be used for the purposes of judicial or administrative proceedings for the application of national or EU competition rules.

²³⁰ Greece is not the only country with few leniency applications, see OECD (2017c).

following changes in the Competition Act.²³¹ The procedure is modelled on the corresponding EC's settlement procedure.²³²

Under this procedure, an undertaking or an association of undertakings admits its participation and accepts liability for an infringement of Article 1 of the Competition Act. As further requirements to qualify for settlement, the party gives up its rights to have full access to the file and to hold an oral hearing with the HCC Board. Moreover, it accepts the maximum amount of fine that may be imposed by the HCC and waives its right to appeal the HCC's decision with respect to specific aspects, such as the validity of the procedure. For the undertakings to make an informed decision, the HCC and the parties hold bilateral meetings in which information about the case is disclosed. This includes the facts known to the authority, the specific evidence indicating an infringement and the range of fines that would be imposed on the business. During this phase, the parties make statements and written submissions to present their arguments. These are treated as confidential and cannot be used in other proceedings, such as follow-on damage claims.

The HCC can grant a 15% reduction of the fine in the context of settlements. As in the European equivalent procedure, the reduction due to settlement can be added to any reduction resulting from a leniency application. Persons that successfully conclude a settlement procedure are absolved of criminal liability in relation to offences committed with the same actions. While the law does not specify whether this extends beyond competition law, the HCC notes that during the Parliamentary hearing (on 21 and 22 May 2016) leading to the vote of the amendment, the Minister of Justice clarified that the scope included only competition law offenses as provided for in paragraphs 1 and 2 of Article 44 of the Competition Act. However, this interpretation by the Minister is not set out in a legal text and therefore the law remains unclear in this respect.

²³¹ In particular, Article 105 of Law 4389/2016 introduced the settlement procedure for horizontal agreements cases in the Competition Act, Articles 25a and 14, paragraph 2. Article 106 of the same law provides for immunity from criminal prosecution for those who successfully conclude a settlement agreement.

²³² At European level, a settlement procedure was introduced in 2008 and amended in 2016.

The objective of the settlement procedure is to deliver efficiencies in terms of faster adoption of infringement decisions²³³ and potential reduction in the number of appeals,²³⁴ freeing up resources to deal with more cases (HCC Annual Report to the OECD Competition Committee for 2016; page 8). In order to raise awareness on the new procedure, the HCC has also published Questions and Answers on its website.

The settlement procedure has already been adopted in two important cases in Greece, one in the construction sector and one in the cosmetics sector (described in Section 2.3). Both were hybrid cases, in which some of the defendants settled while others followed the standard procedure. More settlement procedures are under way, as reported by the HCC. The procedure does not apply to abuse of dominance cases, at the moment, contrary to some other EU Member States which have expanded its scope.

Based on initial experience, it appears that the efficiency gains from settlements have resulted mostly from the acceptance of liability as well as from streamlining the activities following the issuance of the Statement of Objections, such as providing access to the file, redacting information to prepare non-confidential versions of the file and holding oral hearings. However, there may be a question of the interaction between the settlement procedure and the leniency programme, specifically whether the introduction of the settlement procedure may undermine the incentives to apply for leniency.

²³³ At EU level, Hüschelrath and Laitenberger (2015) estimate that the introduction of a cartels settlement procedure by DG COMP has contributed to the reduction of the time elapsing between the Statement of Objection and the decision on a case. In particular, “settled cases are found to be closed about 8.7 months earlier than non-settled cases” on average (Hüschelrath and Laitenberger, 2015; p. 18). The time spent on the investigation of the case up to the Statement of Objections does not change significantly.

²³⁴ In terms of appeals, Hellwig, Hüschelrath and Laitenberger (2018) study cartels decisions by DG COMP and find that the settlement procedure reduces the likelihood that the decision will be appealed. Specifically, estimates indicate that settlements have led to a 53% reduction in the number of appeals, compared to the period before the procedure was introduced at EU level.

3.4. Sanctions

According to the Greek Competition Act, the HCC can impose fines on undertakings and on associations of undertakings for violations of Articles 1 (anti-competitive agreements), 2 (abuse of dominance) and 11 (remedies imposed as a result of an intervention into a sector the economy) of the Competition Act and for Articles 101 and 102 of the TFEU (Article 25, paragraph 1d). The HCC can also impose fines if the undertakings or the associations of undertakings fail to fulfil a commitment. Moreover, it can threaten with a fine (and, if necessary, impose it) when an infringement is not brought to an end.²³⁵

The Competition Act sets out the principles for the determination of a fine, further clarified by the guidelines issued by the HCC (see below). The criteria include the gravity and the duration of the infringement, its geographical scope, as well as the extent and duration of the participation by the specific undertaking in the infringement. In addition, if it is possible to quantify the economic benefit arising for the undertaking, the fine should not be less than the benefit. The latter provision has not been used in practice so far.

According to the Competition Act, “*finest may be up to ten percent of the total turnover of the undertaking for the financial year in which the infringement ceased or, if it continues until issuing of the decision, the year preceding the issuing of the decision*” (Article 25, paragraph 2). This general rule is also applied when the infringement is committed by a group of companies or by an association of undertakings. In the former case, the calculation of the fine is based on the total turnover of the group. In the latter, the HCC can impose a fine not only based on the turnover of the association but also on the turnover of the members. This is the case when the infringement is “linked to the activities of its members”.²³⁶ However, members may not be fined in certain cases, namely when they can prove one of the following: (1) they were not aware of the infringing decision of the association; (2) they did not implement the decision; or (3) they actively distanced themselves from the decision before the opening of the procedure by the HCC.

²³⁵ When an undertaking (or an association) does not discontinue or repeats an infringement, or if it does not comply with a commitment, the HCC can impose a fine of up to EUR 10 000 for each day of delay.

²³⁶ The Competition Act also provides for the case in which an association is not solvent. According to Article 25, paragraph 3, in this event the association will have to request contributions from its members in order to pay the fine.

In addition to undertakings and association of undertakings, natural persons (individuals) are obliged to comply with the provisions of the Competition Act and of Articles 101 and 102 TFEU. The law specifies who the liable individuals are, depending on the type of the company. Following a hearing the HCC may impose a fine on the above natural persons, ranging from EUR 200 000 to EUR 2 million, where they “*demonstrably participated in preparatory acts, the organisation or implementation of the unlawful behaviour of the undertaking*” (Article 25, paragraph 2). In determining the fine, the HCC takes into account their position in the undertaking and the extent of their participation in the conduct.

In 2006, the HCC issued fine-setting guidelines²³⁷ which describe a two-stage procedure, as follows.

In the first phase, the HCC sets a basic amount for each undertaking or association of undertakings. This amount is set as a share of the *relevant* turnover, depending on the gravity of the infringement, multiplied by the duration of the infringement itself. The relevant turnover is the turnover of the product(s) or service(s) the infringement relates to. According to the guidelines, the basic amount of the fine is set at up to 30% of the turnover in the relevant market. When setting this percentage, the HCC takes into account a number of factors, including the nature of the infringement, the combined market share of the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented. As a matter of policy, the guidelines clarify that the most harmful restrictions of competition, such as horizontal price fixing, market sharing and output-limitation agreements, will be fined at the upper end of the range, i.e. 30% of the relevant turnover (paragraph 11 of the guidelines).

In the second phase, the HCC adjusts the basic amount upwards or downwards depending on the circumstances of the case, as follows.

- **Aggravating circumstances.** These include: (1) continuous or repeated infringement (when the repeated infringement is the same or similar as in the past, the fine can be increased by 100%); (2) refusal to co-operate with or obstruction of the HCC in carrying out its investigations; and (3) role of leader in, or instigator of, the infringement, including forcing others to participate in the infringement and/or taking any retaliatory measures to enforce the infringing practices. In order to promote deterrence, the HCC may

²³⁷ The text, dated 12 May 2006, is available at <https://www.epant.gr/pages/Legislations>

increase the fine imposed on undertakings which have a particularly large turnover beyond the value of the relevant sales, but this clause has not been used so far.

- **Mitigating circumstances.** These include: (1) where the undertaking provides evidence that it terminated the infringement as soon as the HCC intervened;²³⁸ (2) the infringement was the result of negligence; (3) where the undertaking can prove that its involvement was particularly limited and that, during the period in which it was party to the infringing agreement, it avoided applying it; and 4) where the undertaking has co-operated with the HCC outside the scope of the Leniency Notice and beyond its legal obligation.

Following these two steps, the HCC verifies that the fine does not exceed 10% of the total turnover of the undertaking in the last year of the infringement, as described above.

In exceptional cases the HCC may, following an undertaking's request, take account of the undertaking's inability to pay. The HCC would grant a fine reduction on this basis of evidence that the fine would "*irreparably jeopardise the economic viability of the undertaking concerned*" (paragraph 22 of the guidelines). This clause was used for the first time in 2017, in the construction cartel (Section 2.3.1), when two of the undertakings invoked their inability to pay the fine. The HCC assessed the applications on the basis of evidence including the companies' financial statements for previous years, projections for the current and coming years, ratios measuring profitability, solvency and liquidity. Based on these factors, it granted fine reductions to the two applicants.

²³⁸ This is not applicable to cartels and collusive practices.

Table 10. Fines imposed by the HCC (EUR)

	2012	2013	2014	2015	2016	2017
Horizontal agreements	949 978.47	40 133 172.80	218.00	355 577.82	-	101 553 980.58
Vertical agreements	-	11 313 548.00	-	9 777 288.62	-	-
Abuse of dominance	4 299 163.99	4 250 700.00	31 451 211.00	747 518.00	-	-
Procedural fines	90 000	87 000.00	-	400 000.00	-	-

Note: The 2014 fine for horizontal agreements refers to the case of the association of dental technicians of Crete (591/2014). The fine was based only on the Association's turnover, consisting of members' fees, and was capped at 10% of turnover.

Source: HCC.

The collection of the fines imposed by the HCC is the responsibility of the Tax Authorities. The HCC informs the authorities whenever it imposes a fine and also when a Court decision annuls, reduces or suspends the fine imposed by the HCC.

3.4.1. Fines on procedural grounds²³⁹

According to Article 38, paragraph 3 of the Competition Act, the HCC can impose fines if undertakings, associations of undertakings or individuals do not co-operate with the HCC's requests for information. This is the case in the event of refusal, obstruction or delay in providing the information requested or if the information provided is inaccurate or incomplete. The HCC can impose a fine of

²³⁹ Fines in relation to merger control procedures are covered in Section 2.6.

EUR 15 000. The fine is capped so it does not exceed 1% of turnover on each person,²⁴⁰ for each infringement.²⁴¹

The HCC can also impose sanctions for obstructing or hampering inspections or requests for oral statements (Article 39, paragraph 5). In this case, the HCC can impose a fine of *at least* fifteen thousand EUR 15 000, capped at 1% of turnover for each infringement. In determining the amount of the fine, the HCC considers the gravity of the case under investigation, the acts in question and their effect on the outcome of the case.

Since 2012, the HCC has imposed procedural fines in four cases. The most recent was in 2015, when the HCC issued a EUR 400 000 fine against Colgate-Palmolive for submission of misleading data.²⁴²

3.4.2. Statute of limitations for the imposition of fines

In 2011, a limitation period was introduced in the Competition Act. According to Article 42, the HCC's power to impose penalties is subject to a five-year limitation period. This period "*shall commence on the date on which the infringement was committed. However, in the case of continuing or repeated infringements, the period of limitation shall commence on the date on which the infringement ceased.*" The Competition Act provides for interruptions to the limitation period, however "*the period of limitation shall finish on the date on which a time limit equal to twice the period of limitation expires, provided that the Competition Commission has not imposed a fine*" (i.e. a ten-year ultimate limitation period). In addition, the transitional provisions²⁴³ clarify that the limitation period also applies to infringements committed before the 2011 Act entered into force, provided that they did not constitute the "*object of a complaint*"

²⁴⁰ Turnover is calculated in line with Article 10, about concentrations, and is defined as follows: "*Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of legal discounts on sales and of value added tax and other taxes directly related to turnover.*"

²⁴¹ In the case of civil servants or employees of public-law legal entities, the HCC may file an official report for disciplinary action to be taken.

²⁴² HCC Decision 610/2015, <https://www.epant.gr/pages/DecisionDetail?ID=1816>

²⁴³ Article 50, paragraph 6.

or ex officio investigation or request for investigation by the Minister of Economy, Competitiveness and Shipping”.

In 2015, the 2nd Chamber of the Supreme Administrative Court (Council of State) held that the absence in domestic legislation of a limitation period for competition law infringements and the consequent imposition of penalties was contrary to the general Constitutional principles of legal certainty, clarity, foreseeability and proportionality.²⁴⁴ Therefore, the limitations periods postulated in EU legislation would apply by analogy.²⁴⁵ This held irrespective of the fact that the Competition Act, as it was in force at the time (i.e. Law 703/1977), was silent on the subject.

The interpretation of the transitional provision has led to a legal challenge in the context of the cosmetics case (see Section 2.3) in relation to the authority’s right to impose, in 2017, sanctions for an alleged infringement ending in 2006. The authority again maintained that “*no limitation period was provided for in the Greek law applicable at the time of the infringements*” (KG Law Firm, 2018). In June 2018, the Court of Appeal ruled in favour of one of the companies that appealed the HCC cosmetics decision.²⁴⁶

The HCC is concerned about the potential impact of these decisions²⁴⁷ not only on the cosmetics case, but also on some ongoing investigations.

3.4.3. Criminal sanctions

Article 44 of the Greek Competition Act contains rules on criminal sanctions on individuals who, acting individually or as representatives of a legal entity, infringe provisions of the Act. The infringements are as follows: anti-competitive agreements (Article 1 of the Competition Act or Article 101 TFEU), abuse of dominance (Article 2 of the Competition Act or Article 102 TFEU),

²⁴⁴ HCC Decision 517/2011, available in Greek at <https://www.epant.gr/pages/DecisionDetail?ID=1619>.

²⁴⁵ Regulation 2988/1974 (now Regulation 1/2003).

²⁴⁶ <https://globalcompetitionreview.com/article/1171066/greek-court-overturns-estee-lauder-fine>.

²⁴⁷ This legal issue was examined by the Council of State in another case (HCC Decision 441/2009), which was heard in November 2016. As the decision is still pending, it remains to be seen whether the Council of State will confirm or qualify its 2015 decision (see end of section 3.4.2).

breaches of merger control provisions (Article 5 to 10 of the Competition Act), and for failure to comply with remedies imposed by the HCC using the its regulatory powers (Article 11, paragraphs 5 and 6).

Criminal sanctions include both fines and imprisonment, and vary depending on the infringement. In particular:

- The fines for anti-competitive agreements, breaches of merger control rules and requirements imposed under regulatory powers can vary from EUR 15 000 to EUR 1 500 000.
- However, the fines for anti-competitive agreements between actual or potential competitors are much higher and range from EUR 100 000 to EUR 1 000 000. These violations can also result in prison sentences, from a minimum of two years up to five years.
- The fines for abuse of dominance range from EUR 30 000 to EUR 300 000.

The power to impose criminal sanctions lies with the criminal courts. The HCC has no criminal enforcement powers, but it is required to report competition infringements to the prosecutor within no more than ten days of issuing an infringement decision (Article 43 of the Competition Act) (see Section 3.4.4 on the co-operation between the HCC and public prosecutors).

Individuals benefit from annulment, or reduction, of criminal sanctions when undertakings obtain leniency or successfully conclude a settlement procedure (see sections 3.3.6 and 3.3.7). In addition, according to Article 44, paragraph 4, of the Competition Act persons who commit or are involved in a breach of the competition rules “*shall be unpunished if they report it of their own will together with the evidence, prior to being examined for their act, to the Public Prosecutor, the HCC or any other competent authority*”. Moreover, the HCC can consider co-operation, including the submission of evidence, as a mitigating circumstance, in accordance with Article 84 of the Criminal Code, leading to a reduced fine in line with Article 83 of the Criminal Code.

Imprisonment of at least six months may also be imposed on procedural grounds (i.e. breach of Articles 38 and 39 of the Competition Act), such as obstructing inspections, refusing to provide information, providing false information and refusing to provide oral testimony.

With the 2011 amendment of the Competition Act, criminal penalties on cartels and abuse of dominance became stricter, with a view to increasing the overall deterrent effect of the competition rules. In practice, criminal sanctions

have been imposed in only two cases, as far as HCC is aware, and have involved both imprisonment and a pecuniary sanction.²⁴⁸ The practitioners interviewed by the OECD note that establishing the responsibility of individuals is not straightforward and this contributes to the limited use of criminal sanctions.

3.4.4. Co-operation between the HCC and public prosecutors

The co-operation between the HCC and the public prosecutor is provided for in the Competition Act, as mentioned above. There are no MoUs setting out in more detail the terms of co-operation between the HCC and public prosecutors. Moreover, prosecutors have rarely launched criminal cases against individuals, even in cases of hardcore cartels, and no need for greater standardisation of procedures has emerged.

As mentioned above, according to the Competition Act (Article 43) if the HCC finds an infringement subject to criminal sanctions it informs the public prosecutor within ten days. When a prosecutor requests evidence from the HCC, and the authority has already issued the decision on the case, the HCC grants the prosecutor access to the file. The HCC cannot oppose confidentiality claims to the prosecutor that has ordered the disclosure.²⁴⁹ However, the HCC marks which documents contain confidential information and provides the prosecutor also with non-confidential versions, if available.

When a case is still open the HCC may claim that access to the file by the prosecutor may damage the investigation. In order to protect competition investigations, Article 44, paragraph 5 of the Competition Act provides that *“when a possible infringement of Article 1 of the Act or 101 TFEU and/or Article 2 of the Act or 102 TFEU is being investigated in any manner either by the HCC or by another competent authority, the public prosecutor, following the preliminary investigation of the case, shall stay any further action until the HCC or any other competent authority issues its decision”*.

HCC officials might be summoned as witnesses before criminal courts. When they are, the HCC has direct information of the sanctions imposed. When

²⁴⁸ These are the recent bid-rigging case in the Pella prefecture and an old book cartel case.

²⁴⁹ The HCC notes the following exception “documents referred to in Article 261 of Code of Criminal Procedure, i.e. diplomatic or military secrets pertaining to the state security or evidence covered by professional privilege, i.e. from persons who may not be summoned as witnesses to penal procedures (article 212 of Code of Criminal Procedure)”.

HCC staff are not involved in criminal cases as witnesses, the public prosecutor or the criminal courts are not required to inform the HCC of the outcome of the criminal proceedings.

The box below provides examples of co-operation in the context of criminal investigations, including a case in which the HCC requested the assistance of the prosecutor in the context of an inspection.

Box 10. Examples of co-operation between the HCC and public prosecutors in horizontal agreements cases

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

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

Construction cartel case: Already in the early stages of the investigation the public prosecutor requested access to the HCC's file. Following communication between the two services, the HCC transmitted to the public prosecutor the evidence in its possession and explained in detail the confidentiality provisions stipulated in Law 3959/2011 (article 41 par. 1 and 3) and Regulation 1/2003 (article 28), as well as restrictions imposed on the use of such evidence under the above provisions. The file

contained electronic documents of 454.1 gigabytes and hundreds of pages of documents in hard copy. In the course of the proceedings, following requests, the HCC advised in detail the prosecutor's Office on the stage and progress of its proceedings. As provided for in Article 43, when issued the settlement decision was submitted to the prosecutor's office.

Source: Reproduced from the HCC reply to the OECD questionnaire.

3.5. Judicial review

HCC decisions are subject to appeal, within 60 days from their notification, before the Administrative Court of Appeal of Athens, which acts as a court of first instance. In addition to the party/parties to the proceeding, including association of undertakings, the right of appeal is also granted to the complainant, the Government, through the Minister of Economy and Development, and to any third party with a legitimate interest (Article 30, paragraph 3, Competition Act).

The parties can appeal the decisions of the court of first instance before the Council of State, the supreme administrative court which is a second and final instance court for competition cases. The decision of the Court of Appeal is subject to appeal for legality only (wrong application of the law, assuming as correct the factual basis) (Yannikas, 2017). The law also allows the suspension of the contested decision by the Council of State.

The appeal does not suspend the enforcement of the decision, including the payment of the fine imposed or other conditions or remedies imposed by the decision. However, the Court of Appeal, "*if there is sufficient cause, may suspend the enforcement of the decision at appeal in whole or in part or conditionally, following a request of the interested party*" (Article 30, paragraph 2, Competition Act). In case of decisions imposing a fine, the suspension of a fine cannot exceed 80% of the amount.²⁵⁰

The court of first instance examines the case on the merits. In other words, the court reviews the case on the basis of the law (i.e. legality) and of the facts

²⁵⁰ However, according to Article 30 of the Competition Act, "*If the court finds that the appeal is manifestly well-founded, it may issue a specially reasoned decision accepting the petition for suspension, even for the whole amount of the fine and even if the damage to the applicant from immediate execution of the contested action is not deemed to be irreparable or difficult to repair.*"

(substance). HCC decisions can be upheld or annulled. The Court may also uphold the decision, while reducing the amount of the fine imposed or referring the case back to the HCC to recalculate the fine imposed.

With the aim of further enhancing the effectiveness of judicial review, the Competition Act envisages the establishment of special divisions (i.e. specialised competition chambers) at the court of first instance (Athens Administrative Court of Appeal). Although this provision has not been implemented, competition cases are adjudicated by specific chambers of the Court. The practitioners interviewed by the OECD note that the volume of competition cases is probably not sufficient to justify the establishment of specialised competition chambers. They also comment that the timing of court judgements has improved greatly compared with few years ago, but there is still a backlog of cases. Many observers also think that appeal judges in some cases focus on procedural matters, to the detriment of addressing the substance of a case.

The table below shows that, in the last few years, most HCC decisions have been upheld, at both review levels. This is consistent with the observation by the stakeholders interviewed by the OECD that the quality of the HCC decisions has improved in the last ten years. Stakeholders have also noted that the courts frequently lower the quantum of the fine. This is thought to happen partly when the courts are not fully persuaded of the robustness of the case and, partly, because the courts apply “proportionality” considerations to reflect concerns about the economic crisis and the undertakings’ difficulty to pay. Out of the total decisions upheld by the courts of first instance, the proportion of cases in which the courts reduce the fine varies significantly over the relevant period, ranging from 30% of cases in 2012-2013 to 70% in 2016.²⁵¹

²⁵¹ This percentage reflects one specific case (the poultry cartel) where the Court reduced the fines significantly in light of the economic crisis and the firms’ financial situation (see Box 1).

Table 11. Number of court rulings on HCC decisions

		2012	2013	2014	2015	2016	2017
First instance	Nr of court rulings	12	13	16	19	20	17
	<i>upheld</i>	10	13	13	16	20	17
	<i>annulled</i>	2	-	3	3	-	-
Second instance	Nr of court rulings	n.a.	n.a.	27	16	6	3
	<i>upheld</i>	n.a.	n.a.	26	15	6	3
	<i>annulled</i>	n.a.	n.a.	1	1	-	-

Source: HCC.

External legal representatives are appointed on a case-by-case basis to defend the HCC in court (see Section 3.1.2 above). However, case handlers – lawyers and economists– are actively involved in the preparation of the case and co-operate closely with the appointed legal counsels. Moreover, the President of the HCC overviews the authority’s written submissions to Courts.

3.6. Private actions

Competition enforcement in Greece rests primarily with the HCC (and EETT, when it implements the Competition Act). The Competition Act does not include provisions specifically concerned with private enforcement; however, it grants civil and criminal courts jurisdiction to apply Articles 101 and 102 of the TFEU and the equivalent Articles 1 and 2 of the Greek Competition Act.²⁵²

The Greek civil law allows individuals to bring private actions for damages from illegal conduct before the Greek civil courts; this includes competition law infringements.²⁵³ An action for damages may thus be lodged with the civil courts

²⁵² Article 35 paragraph 2 of the Competition Act and Article 6 of Council Regulation (EC) No 1/2003. Also see Tzouganatos Dimitris (2016) “Competition Introduction”, Greek Law Digest: “[the Act] grants civil courts jurisdiction not only on follow-on claims but also on claims seeking damages as well as cease and desist orders for the infringement of articles 1 and 2 Act 3959/2011”, www.greeklawdigest.gr/topics/competition/item/268-competition-introduction.

²⁵³ Articles 914 *et fol.* of the Greek Civil Code. There is a five-year statute of limitation for damages claims, which commences from when the claimant became aware of the

even if the HCC (or EETT) has not investigated or issued a decision on a particular matter. There are no provisions regarding class actions nor is there any established mechanism designed to settle damages actions relating to competition law infringements out of court.²⁵⁴

The courts are obliged to notify relevant rulings to the HCC.²⁵⁵ However, the number of individual damages cases that have been filed is not known. The HCC is aware of only one court decision awarding moral damage for an infringement of competition law.²⁵⁶ It is the HCC's view that the level of private enforcement in Greece is very low, due to difficulties related to access to evidence, burden of proof, indirect purchase standing, calculation of damages etc.

The courts may request that the European Commission sends them information in its possession or that it formulates an opinion on matters pertaining to the application of EU competition law. Similarly they may also request that the HCC opines on those same matters or those relating to Articles 1 and 2 of the Greek Competition Act.²⁵⁷

Until the adoption of Law 4529/2018 transposing the EU Damages Directive²⁵⁸, the provisions of the Code of Civil Proceedings applied to the requirement for the HCC to disclose case materials:²⁵⁹ the courts could order the

infringement, unless the violation is also subject to criminal law in which case a longer limitation period may apply (Article 937 of the Greek Civil Code)

²⁵⁴ All civil and commercial disputes may be resolved through mediation – see Article 180 of Law 4512/18.

²⁵⁵ The HCC is responsible for communicating those rulings to the European Commission.

²⁵⁶ Supreme Court judgement AII 387/2016.

²⁵⁷ Article 15 paragraph 3 of EC Regulation 1/2003 and Article 35 paragraph 3 of the Competition Act.

²⁵⁸ Directive 2014/104/EU on rules governing actions for damages for infringements of competition law provisions.

²⁵⁹ Art. 450 and following.

disclosure of any document in the possession of a public authority with certain exceptions, including overriding reasons justifying non-disclosure.²⁶⁰

There has been no jurisprudence on the interaction between the above provisions of the Code of Civil Proceedings and the specific rules governing access to documents in the files of the HCC, which are laid down in the Competition Act and the HCC Procedural Regulation²⁶¹ and the scope of the exceptions provided for by either Act. The issue of whether the HCC is obliged to disclose leniency documents in the course of civil proceedings is not dealt with by the Competition Act or by the HCC Procedural Regulation. Moreover, no civil court has requested the disclosure of leniency documents to date, so the interpretation of the relevant provisions and exceptions is yet to be clarified. The HCC believes that it would be in a position to support the non-disclosure of leniency statements for overriding reasons (for example, the effectiveness of leniency programmes and protection of the investigation), but there is currently no explicit provision in the Competition Act or jurisprudence to that effect.²⁶²

3.6.1. The EU Damages Directive

The law transposing Directive 2014/104/EU on rules governing actions for damages for infringements of competition law provisions (the “EU Damages Directive”)²⁶³ was voted in the Greek Parliament on 14 March 2018 and is effective 27 December 2017. In anticipation of the new legal framework around

²⁶⁰ Exceptions are also foreseen for reasons of state secrets, national security or international relations.

²⁶¹ Article 41 of the Competition Act and Article 15 of the HCC Procedural Regulation.

²⁶² The law transposing the EU Damages Directive (see further below) provides that courts cannot order the disclosure of evidence included in the HCC’s file in the context of leniency statements or settlement submission – Article 6 paragraph 5 of Law 4529/2018.

²⁶³ Directive 2014/104/EU of the European Parliament and the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of competition law provisions of the Member States and of the European Union; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0104&from=EN>. The EU Damages Directive was transposed with Law 4529/2018 (Government Gazette ΦΕΚ Α’56 - 23.03.2018).

damages for antitrust violations, the HCC published guidance on the scope, key provisions and benefits of the EU Directive.²⁶⁴

The HCC participated in the Legislative Committee, set up by the Minister of Economy, which was responsible for the transposition of the EU Damages Directive into Greek law. Prior to that, and in the context of the Greek Presidency of the EU Council, the HCC: (a) participated in the works of the Council regarding the adoption of the Directive (second semester of 2013); and (b) co-chaired the technical team that finalised the drafting of the Directive (first semester 2014).

Box 11. The EU Damages Directive

Main changes brought by the Directive

The Directive removes practical obstacles to compensation for all victims of infringements of EU antitrust law. The Directive applies to all damages actions, whether individual or collective, which are available in the Member States.

Further, the Directive fine-tunes the interplay between private damages actions and public enforcement of the EU antitrust rules by the Commission and national competition authorities.

Main changes:

- Parties will have **easier access to evidence** they need in actions for damages in the antitrust field. In particular, if a party needs documents that are in the hands of other parties or third parties to prove a claim or a defence, it may obtain a court order for the disclosure of those documents. Disclosure of categories of evidence, described as precisely and narrowly as possible, will also be possible. The judge will have to ensure that disclosure orders are proportionate and that confidential information is duly protected.
- Similarly as a Commission infringement decision, **a final infringement decision of a national competition authority will constitute full proof before civil courts in the same Member State** that the infringement occurred. Before courts of other Member States, it will constitute **at least prima facie evidence of the infringement**.

²⁶⁴ HCC Newsletter “Directive 2014/104/EE on actions for damages for infringements of competition law. Useful information – Questions and answers”, available in Greek at: <https://www.epant.gr/pages/Publications>.

- **Clear limitation period rules are established** so that victims have sufficient time to bring an action. In particular, victims will have at least five years to bring damages claims, starting from the moment when they had the possibility to discover that they suffered harm from an infringement. This period will be suspended or interrupted if a competition authority starts infringement proceedings, so that victims can decide to wait until the public proceedings are over. Once a competition authority's infringement decision becomes final, victims will have at least one year to bring damages actions.
- The Directive clarifies the **legal consequences of 'passing on'**. Direct customers of an infringer sometimes offset the increased price they paid by raising the prices they charge to their own customers (indirect customers). When this occurs, the infringer can reduce compensation to direct customers by the amount they passed on to indirect customers. Compensation for that amount is in fact owed to indirect customers, who in the end suffered from the price increase. However, since it is difficult for indirect customers to prove that they suffered this pass-on, the Directive facilitates their claims by establishing a rebuttable presumption that they suffered some level of overcharge harm, to be estimated by the judge. The Directive contains provisions to avoid that claims by both direct and indirect purchasers lead to overcompensation. Claims concerning harm resulting from loss of profit are not affected by the Directive's passing-on rules.
- The Directive clarifies that victims are entitled to **full compensation** for the harm suffered, which covers compensation for **actual loss** and for **loss of profit**, plus payment of **interest** from the time the harm occurred until compensation is paid.
- The Directive establishes a **rebuttable presumption that cartels cause harm**. This will facilitate compensation, given that victims often have difficulty in proving the harm they have suffered. The presumption is based on the finding that more than 90% of cartels cause a price increase (as found by a study). In the very rare cases where a cartel does not cause price increases, infringers can still prove that their cartel did not cause harm.
- Any participant in an infringement will be responsible towards the victims for the whole harm caused by the infringement (joint and several liability), with the possibility of obtaining a contribution from other infringers for their share of responsibility. However, to safeguard the effectiveness of leniency programmes, this will not apply to infringers which obtained immunity from fines in return for their voluntary co-operation with a competition authority during an investigation; these

immunity recipients will normally be obliged to compensate only their (direct and indirect) customers. Furthermore, a narrow exception from joint and several liability is foreseen under restrictive conditions for SMEs that would go bankrupt as a consequence of the normal rules on joint and several liability.

Source: http://ec.europa.eu/competition/antitrust/actionsdamages/directive_en.html.

The OECD has not been made aware of any concerns relating to the way the EU Damages Directive has been transposed into Greek Law. The HCC expects that it will allow for more private enforcement in Greece, given that *inter alia*, it facilitates:

- **Access to evidence.** The new law makes it easier for claimants to file access requests. It provides for the disclosure to the claimant²⁶⁵ of *categories of evidence defined as precisely as possible*. In contrast, the previous interpretation of the Code of Civil Proceedings required that a request for the production of documents include a *precise description of the contents of such documents*.²⁶⁶
- **Proving “illegal conduct”, one of the requirements of tort liability.** The new law makes final decisions of the HCC and that of competition authorities of other EU member states binding on civil courts as regards the finding of an infringement.²⁶⁷ Before the transposition of the Directive, the general provisions of the Code of Civil Proceedings²⁶⁸ applied to private damages actions. As a result of those general rules, in the absence of a judgment of an

²⁶⁵ Article 4 of Law 4529/2018 and Explanatory Memorandum of the draft law on Article 4.

²⁶⁶ Articles 450 *et fol.* of the Code of Civil Proceedings. The level of detail demanded by civil courts to date, in order to find the request clear and precise, has been high (for example, date, author, description of the contents of each document, identification numbers of invoices etc.,) rendering disclosure excessively difficult. This jurisprudence has been changing recently, but not yet to such an extent that would render the exercise of the right to disclosure most effective.

²⁶⁷ Article 9 of Law 4529/2018 and Explanatory Memorandum of the draft law on Article 9.

²⁶⁸ Articles 2, 312, 321-324 of the Code of Civil Proceedings.

administrative court, the civil courts could examine the validity of HCC decisions if the issue was necessary for the determination of the main dispute.²⁶⁹ In addition, the status of the decisions of competition authorities of other EU Member States was previously not clear.²⁷⁰

- **The calculation of damages.** The law provides that the courts may estimate the amount of the damages incurred,²⁷¹ contrary to the general rule of the Code of Civil Proceedings, which has been interpreted to require that the claimant calculate and prove the exact amount of damages incurred.²⁷²

Collective redress, allowing groups of victims of competition law infringements to request compensation jointly, is not covered by the Directive and has not been provided for in national legislation either.²⁷³ Allowing individuals and firms who have been damaged by competition law infringements to submit claims collectively, therefore pooling resources, can contribute to more effective private enforcement. A survey conducted by the OECD indicated that 61% of respondent jurisdictions allowed class actions or other mechanisms for damages resulting from hard core cartels.²⁷⁴ In Greece, the limited size and funding of consumer associations, which could be one of the drivers behind collective actions, is seen by the authorities as a potential barrier to their success, if they are introduced in Greek legislation.

²⁶⁹ See also Article 18 paragraph 1 of Law 703/1977.

²⁷⁰ Article 2 of the Code of Civil Proceedings cannot apply to the decisions of competition authorities of other EU Member States, since these decisions are not subject to the jurisdiction of domestic courts (directly or incidentally).

²⁷¹ Article 14 of Law 4529/2018 and Explanatory Memorandum of the draft law on Article 14.

²⁷² Article 216 of the Code of Civil Proceedings provides that pleadings must contain a clear and precise exposition of the subject matter of the dispute, the facts on which the claim for relief is based and the legal grounds that justify it.

²⁷³ However, the European Commission has issued a Recommendation on collective redress (2013/396/EU).

²⁷⁴ 25 out of 41 respondents, see OECD (2017c), page 19.

3.7. International issues

The Competition Act designates the HCC as the competent authority to cooperate with the European Commission and EU Member States, as well as other countries, in the application of competition law.²⁷⁵ The HCC observes its duties of notification on matters involving a community dimension; and of assistance with EU Commission inspections in Greece.

Since 2012, the HCC has assisted the European Commission in two cases where the Commission conducted inspections in Greece:²⁷⁶

- A case concerning companies active in cargo train transport services to South Eastern Europe that may have engaged in anti-competitive practices such as price-fixing and customer allocation;²⁷⁷ and

²⁷⁵ Article 14 paragraph 2(q): “[The HCC shall] [c]ooperate with the European Commission and the Competition Authorities of the other Member States of the European Union for the application of the European competition law, pursuant to the relevant provisions of this Law and of Regulation (EC) 1/2003” and Article 28 paragraph 1: “The Competition Commission, as the National Competition Authority, is responsible for cooperation: (a) with the competition authorities of the Commission of the European Union and for providing its designated bodies with the necessary assistance to undertake the controls provided for under European law, and (b) with the competition authorities of other countries.”

²⁷⁶ Following a request on the basis of Article 20(5) and 20(6) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, which provide that “Officials of as well as those authorised or appointed by the competition authority of the Member State in whose territory the inspection [of the European Commission] is to be conducted shall, at the request of that authority or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. [...] Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.”

²⁷⁷ See [http://europa.eu/rapid/press-release MEMO-13-586 en.htm](http://europa.eu/rapid/press-release_MEMO-13-586_en.htm).

- A case concerning companies active in the generation, transmission and supply of electricity in Greece that may have engaged in anti-competitive practices in abusing a dominant position.²⁷⁸

Moreover, in 2012, the HCC has made use of the provisions in the EC Merger Regulation to refer a case for review by the European Commission (see Section 2.6.8).

Finally, in the last four years, the HCC has actively participated in legislative initiatives undertaken by European institutions. The most important legislative initiatives to which the HCC participated are:

- The EU Damages Directive, for which the HCC co-chaired the corresponding group (see Section 3.6 above);
- The ECN+ initiative, i.e. the proposal for a Directive to empower Member States' competition authorities to be more effective enforcers;
- The proposal for an EU Regulation to address geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment; and
- The proposal to amend the EU Regulation²⁷⁹ on the application of the block exemption to certain categories of agreements, decisions and concerted practices in the insurance sector.

The HCC is involved in the European Competition Network (ECN) – including the working group on co-operation issues and due process, and sending and receiving requests for information (RFI) in the context of co-operation and exchange of information among ECN members. It does not maintain records of all requests for information (RFI) it receives; only those requests by other ECN members for the HCC to conduct an inspection or other fact-finding measure on their behalf.²⁸⁰ Since 2012, the HCC has received three such requests concerning:

²⁷⁸ See http://europa.eu/rapid/press-release_STATEMENT-17-285_en.htm.

²⁷⁹ Regulation (EU) No 267/2010.

²⁸⁰ Article 22(1) of Council Regulation (EC) No 1/2003 *ibid.*: “*The competition authority of a Member State may in its own territory carry out any inspection or other fact-finding*

1. Vertical agreements – restriction of passive sales, exclusive distribution contract in the services of maintenance as well as spare parts replacement for navigation, communication and surveillance systems (complaint);
2. Collusion and/or concerted practices involving price fixing and bid rigging in the relevant market of tourism/travel agency, tour operator and other reservation service and related activities (*ex-officio* investigation); and
3. Price discrimination in the relevant market of passenger ground handling services of airports/service activities incidental to air transportation (*ex-officio* investigation).

The HCC is also a member of the OECD Competition Committee and actively contributes to its discussions. It is also an active member of the International Competition Network (ICN), participating in several of its workgroups.

Outside its participation in multinational organisations and networks, the HCC has not participated in any twinning programs in the past few years, nor has it unilaterally provided technical assistance to other authorities due to its limited human resources.²⁸¹ However, it has co-operated closely with EU and non-EU competition authorities and other public bodies to provide technical assistance and organise training workshops and meetings, both on enforcement and on competition policy issues. Such co-operation has taken place with Moldova, Albania, Russian Federation, Germany and other countries.

Finally, the HCC has signed two co-operation agreements with competition authorities. The first, signed in 2010, concerns the Mechanism of the Exchange of Information among Competition Authorities of the Participating States of the

measure under its national law on behalf and for the account of the competition authority of another Member State in order to establish whether there has been an infringement of Article 81 or Article 82 of the Treaty [...]"

²⁸¹ On the back of the Authority's experience with the Competition Assessment projects in Greece, the HCC has seconded one of its staff to the Competition Authority of Portugal to provide one-week training workshops in the context of the Competition Assessment project in Portugal, carried out jointly by the OECD and the Portuguese Authority.

South-East European Cooperation Process (SEECP).²⁸² The agreement provides for regular exchanges of information concerning competition law and policy.²⁸³ The second, signed in 2014, is a Memorandum of Co-operation with the Cypriot Competition Authority, whereby the two authorities committed to enhance their existing co-operation within the ECN, exchange experience and knowledge, and share expertise through seminars, exchange programmes and study visits.²⁸⁴

3.7.1. *Trans-national effects and analysis*

The Greek Competition Act applies to all restrictions of competition that affect or might affect the Greek territory, i.e. both domestic conduct and foreign conduct that produces domestic effects.²⁸⁵ Most cases that the HCC has investigated concerned players with a domestic presence; but there have been also many cases in which the ability of the Competition Act to reach conduct by foreign firms was an issue.

One recent decision by the HCC concerned anti-competitive practices by the Colgate-Palmolive group of companies, including not only the Greek subsidiaries but also their parent company in the U.S.²⁸⁶ Although the relevant market in this case was limited to Greece and the parties directly involved were the Greek subsidiaries of the Colgate-Palmolive group, the HCC determined that

²⁸² SEECP includes Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM and Turkey.

²⁸³ The parties to the agreement may refuse to provide information concerning safeguarding of commercial and other secrets according to national law, or on the grounds of confidentiality.

²⁸⁴ The Memorandum also lays down key principles for exchanging information regarding activities of businesses/undertakings in each geographical territory.

²⁸⁵ Article 46 of the Competition Act provides: “*The present law shall apply to all restrictions of competition which affect or might affect Greece, even if these are due to agreements between undertakings, decisions by associations of undertakings, concerted practices between undertakings or associations of undertakings or concentrations of undertakings implemented or taken outside Greece or to undertakings or associations of undertakings which have no establishment in Greece. The same shall apply with regard to abuse of a dominant position manifesting in Greece*”.

²⁸⁶ See Section 2.4 above.

the practice had been planned and organised by the European Division of the Colgate-Palmolive group, under instruction of the parent company in the U.S.²⁸⁷

The Competition Act applies to domestic and foreign firms alike; and the HCC does not employ different processes when implementing competition policy in cases involving foreign firms and conduct. There have been no indications that the HCC has treated foreign firms or their local subsidiaries less favourably than their domestic counterparts.

4. Related competition regimes

This Section describes some elements of the Greek competition regime that are not covered in the Competition Act and are not enforced by the HCC. When applicable, the text describes the HCC's activities and its co-operation with other authorities, namely in the areas of consumer protection (Section 4.1.1) and public procurement (Section 4.4). The HCC has no involvement in business-to-business unfair trading practices (under the Unfair Competition Act) or State Aid matters.

4.1. Consumer protection

Consumer protection legislation²⁸⁸ transposes EU legislation²⁸⁹ in a number of areas, including general contractual terms, distance selling, liability of suppliers for defective products, class actions, misleading and comparative advertising, and

²⁸⁷ In terms of procedure, the HCC used diplomatic channels, sending the SO through the Greek Ministry of Foreign Affairs and its counterpart in U.S.

²⁸⁸ Law 2251/1994, as amended and in force and the related secondary legislation. For a description of legal amendments approved by Parliament in January 2018, see (in English) www.greeklawdigest.gr/topics/consumer-protection/item/291-the-new-legal-framework-on-consumer-protection (accessed on 3 April 2018). A number of changes were made following the OECD recommendations in a recent competition assessment project (OECD, 2017).

²⁸⁹ Including Directive 84/450/EEC as amended by Directive 97/55/EC on misleading advertising and comparative advertising and Directive 2005/29/EC on unfair commercial practices.

unfair commercial practices.²⁹⁰ The legislation on unfair commercial practices (e.g. untruthful information to consumers or aggressive marketing techniques aimed at affecting consumers' choices) covers all the phases of business-to-consumer transactions,²⁹¹ ranging from the marketing and advertising of a product or service, to its post-sale service when applicable.

Unfair commercial practices legislation, as incorporated in the consumer protection legislation in Greece, does not cover business-to-business transactions. The latter fall under the Unfair Competition Act, dealing with unfair trading practices in business transactions (Section 4.2).²⁹² The three legislative frameworks on free competition, unfair trading practices in business-to-business transactions and consumer protection run in parallel in the Greek legal system, with different but complementary aims (e.g. competition policy aiming at protecting effective competition and consumers, consumer protection rules aiming at safeguarding specific rights recognised to consumers), but are enforced independently. As a result, the authorities competent for the each set of provisions are completely separate.

Consumer protection competences are spread across different authorities, as described below. The General Secretariat of Commerce and Consumer Protection of the Ministry of Economy and Development ("GSC"),²⁹³ and notably its General Directorate for Consumer Protection and Market Supervision,²⁹⁴ is the lead administrative authority in the design and enforcement of consumer protection legislation. In addition, the GSC receives complaints by consumers and

²⁹⁰ See Article 9 of law 2251/1994 on misleading and comparative advertising and Articles 9a to 9i of the same law, on unfair commercial practices..

²⁹¹ In some other EU Member States, the Directive has been transposed into national legislation differently and it can also apply to business-to-business transactions.

²⁹² Law 146/1914 as amended and in force.

²⁹³ Established with Presidential Decree 116/2014; see Article 13A, Law 2251/1994.

²⁹⁴ The Secretariat of Consumer Protection used to be an independent General Secretariat within the Ministry of Economy, but was merged with the General Secretariat of Commerce and is now a General Directorate (see PD 116/2014 for its detailed competences and directorates).

consumer associations,²⁹⁵ conducts the necessary market inspections, issues administrative decisions to cease and desist illegal practices and/or imposes administrative fines or even businesses' suspension of operation in cases of repeatedly infringing behaviour.²⁹⁶ In 2017, the authority received 8 545 complaints, of which 40% concerned consumer products (e.g. unfair commercial practices, legal and commercial guarantees and defective products) and approximately the same share concerned services, such as energy, water and telecommunications. In the same year, it issued 30 decisions, out of which 27 imposed fines for a total of EUR 277 500.

The Consumer Ombudsman is an independent authority set up in 2004²⁹⁷ and supervised by the Ministry of Economy and Development. It is the main Alternative Dispute Resolution (ADR) organisation²⁹⁸ in Greece: it employs highly-specialised personnel and its decisions (called 'recommendations'), although non-binding, are enforced at impressively high rates by businesses.²⁹⁹

Civil courts are competent to enforce consumer protection legislation, including unfair commercial practices provisions.³⁰⁰ Case law resulting from

²⁹⁵ Consumer associations are voluntary associations and may be set up, operate, and be funded in accordance with the terms provided in Greek consumer protection law (Article 10 of Law 2251/1994).

²⁹⁶ The GSC is also the Unique Contact Point for all the Greek authorities competent for the enforcement of consumer protection legislation. The identification of a Unique Contact Point is required by Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws. See the list of Greek authorities at www.efpolis.gr/el/library2.html?func=fileinfo&id=420 (accessed on 27 March 2018).

²⁹⁷ By Law 3297/2004 as amended and in force; see also Operation Regulation PD 55/2014-Government Gazette /A/91/14.04.2014.

²⁹⁸ It is also the Online Dispute Resolution (ODR) contact for Greece.

²⁹⁹ 94% according to the CO's 2016 Annual Report; www.synigoroskatanaloti.gr/docs/StK-Annual-Report-2016-Summary.pdf.

³⁰⁰ Art. 90 Law 2251/1994.

significant class actions of wider interest to consumers has occasionally led to the adoption of legislation.³⁰¹

As in other Member States, advertising in Greece is ruled by a self-regulatory body. The Greek Advertising Self-Regulation Council (“SEE”)³⁰² is an independent, non-profit making entity. SEE is competent for the monitoring and implementation of the provisions of the Greek Code of Advertising and Communications. Complaints concerning any type of unlawful advertisement/communication (TV, radio, press, internet, product packaging etc.) may be filed before the competent committees of SEE by consumers, advertisers, advertising media and businesses. Informal cooperation between SEE and the Consumer Ombudsman has been reported, with the latter referring cases of sector specific nature to the SEE.

Box 12. National Council of Consumer and Market (ESKA)¹

ESKA is an advisory body to the Minister of Economy and Development² and the only institutional body including representatives of all competition-related authorities, representatives of consumers and business associations. ESKA consists of representatives of the Ministry of Economy and Development, the Consumer Ombudsman, the HCC, consumer associations, many Commercial Chambers, selected industry associations and other government authorities such as EOT (Tourism Organisation) and EFET (Food Inspection Authority). In addition, any organisation or third party involved in specific issues of ESKA’s concern may be called to participate in ESKA meetings upon the Minister’s discretion.

ESKA issues non-binding opinions to the Minister on issues related to the operation of the market, initiates discussions on issues of concern for consumer associations, market players, and participates in consultations relevant to consumer protection and market regulations.³ According to the law, ESKA convenes at least twice a year, but in practice

³⁰¹ See Ministerial Decisions Z1-798/2008 and Z1-21/2011 on prohibition of inclusion of General Transaction Terms that have been ruled out as abusive by virtue of irrevocable court decisions following lawsuits of consumer associations.

³⁰² www.see.gr (accessed on 27 March 2018).

it remained inactive for a long period and only annual meetings have taken place for some years now.

Consumer associations, industry associations and the Consumer Ombudsman have described ESKA's functions as a consultation forum on consumer protection issues, but with limited results so far.

¹ Εθνικό Συμβούλιο Καταναλωτή και Αγοράς (ΕΣΚΑ).

² ESKA is set up according to the Art. 12, Law 2251/1994

³ Upon the initiative of the CO, ESKA recently discussed and agreed on the adoption of the Code of Consumer's Ethics (PD 10/2017); see www.synigoroskatanaloti.gr/docs/press/2017-03-02.ΔΤ-κωδικας-δεοντολογιας.pdf

4.1.1. Co-operation with the HCC

With the exception of ESKA, no other institutional co-operation between the HCC and the competent authorities for the enforcement of consumer protection legislation is foreseen either in the legislation or the regulatory framework that lays down rules for the operation of those authorities.

Limited informal co-operation between the HCC and the Consumer Ombudsman has been reported by both authorities, mostly in cases of referrals of complaints related to consumer protection that have been erroneously submitted to the HCC. The Consumer Ombudsman informally shares information gathered from cases that might be within the HCC's competence.

When the Consumer Ombudsman finds that suppliers' behaviour violates consumer protection laws, and possibly needs further investigation for potential infringements of the Competition Act, it notifies its recommendations to the HCC or EETT (in the case of post and telecommunications).³⁰³ The OECD has not been

³⁰³ For instance, the Consumer Ombudsman recently informed the telecommunications regulator EETT of illegal commercial practices. CO's Recommendations on illegal aggressive commercial practices of Providers of Multimedia Information Services ("EPA") notified to EETT; www.synigoroskatanaloti.gr/docs/announce/2018-02-09.Epistoli-EETT.pdf.

made aware of example of competition enforcement following a notification by the Consumer Ombudsman.

In other cases, regulatory action has been undertaken by the competent authorities following recommendations by the Consumer Ombudsman. This was the case of the recent amendment by EETT of the Regulation of General Licensing of electronic communication operators, following several decisions by the Consumer Ombudsman on the unilateral amendment of general contractual terms of consumers' contracts by electronic communications operators.³⁰⁴

Lastly, consumer associations have reported limited informal co-operation with the HCC and the sector specific regulatory authorities, such as EETT and RAE. More specifically, consumer associations have shared information with the HCC in a few cases of unfair practices undertaken uniformly by competitors but, lacking the necessary evidence and substantiation given their limited resources, the associations did not file formal complaints.³⁰⁵

4.2. Unfair trading practices in business-to-business transactions

According to Law 146/1914 on Unfair Competition (“Unfair Competition Act”), any behaviour within all commercial, industrial and agricultural transactions, contrary to moral principles (*contra bonos mores*), is considered unfair and, thus, prohibited. The law lists examples of such behaviour. Unfair practices include misleading advertising, illicit solicitation of customers, exploitation of competitor’s intellectual property, labour, fame and organisational structure, practices preventing a company from entering the market or from competing (e.g. boycotting or predatory pricing), defamation of competitors, etc.

Competence for the enforcement and application of this legislation lies only with civil and, in certain cases, criminal courts. The offender may be sued and ordered by the courts to cease and desist from the unfair behaviour and pay damages to the offended competitor. The Unfair Competition Act is also very

³⁰⁴ See www.synigoroskatanaloti.gr/docs/announce/2015-03-24-Epistoli-EETT-unilateral.pdf; www.synigoroskatanaloti.gr/docs/announce/2018-02-09.Epistoli-EETT.pdf ; Regulation of General Licenses EETT 834/2 /2017 (Government Gazette 4262/B’/06.12.2017)

³⁰⁵ As reported by EKPOIZO in relation to commissions uniformly charged by banks.

often used as a subsidiary legal base for legal actions concerning the infringements of IPR (copyright, trademark, patent, trade names' infringements etc.).

The HCC's powers are limited to the Competition Act and the authority has no involvement in unfair trading practices in business-to-business transactions. As mentioned in Section 1.2 above, the abuse of economic dependence used to be treated within the scope of the Competition Act (art. 2a of the previous Competition Law 703/1977) whereas presently it falls under the Unfair Competition Act.³⁰⁶

4.3. State Aid

In Greece, EU State Aid applications are handled by the Central State Aid Unit – CSAU (Κεντρική Μονάδα Κρατικών Ενισχύσεων – ΚΕΜΚΕ), in the Ministry of Finance.³⁰⁷ The unit reviews and assesses draft State Aid measures and notifies them to the European Commission. ΚΕΜΚΕ is the only authority acting as a liaison between the Greek State and the European Commission on State Aid matters.³⁰⁸

In addition, ΚΕΜΚΕ co-ordinates the authorities granting State Aid and is supported by a network of officials in other ministries who are involved in drafting State Aid measures, the so-called Decentralised Units of State Aid (Αποκεντρωμένες Μονάδες Κρατικών Ενισχύσεων –ΑΜΚΕ). These units

³⁰⁶ Law 146/1914, Art. 18A, amended by Law 3784/2009 (Art. 29); see Tzouganatos (2013).

³⁰⁷ The unit was established by Law 4152/2013, see www.minfin.gr/web/kentrike-monada-kratikon-enischyseon/home and www.greeklawdigest.gr/topics/competition/item/63-state-aid (accessed on 21 February 2018).

³⁰⁸ As required by Article 108, paragraph 3, TFEU, Member States have to inform the Commission of “any plans to grant or alter State Aid”. Any such measure cannot be implemented until a final decision is reached. See the text at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E108&from=EN>.

identify State Aid measures in draft laws and other administrative decisions issued by their ministries.³⁰⁹

The opinion of KEMKE is required also for draft State aid measures which are exempted from the notification procedure to the European Commission. According to Law 4152/2013, KEMKE provides guidance to the AMKE for State Aid measures exempted from the notification procedure (because they fall under the *de minimis* Regulation³¹⁰ or the General Block Exemptions Regulation³¹¹) prior to their adoption.

KEMKE reviews on average 100 applications per year. There are no available statistics on the proportion of cases that constitute State Aid versus the rest. In the biennium 2016-2017, Greece notified a total of 121 cases of State Aid to the European Commission. After excluding the draft measures for damage caused by natural disasters, 55 cases remain and almost half target specific regions of the country. In Greece, State Aid expenditure (notified to the European

³⁰⁹ <https://globalcompetitionreview.com/jurisdiction/1004482/greece>, prepared by Anastasia Dritsa and Konstantinos Sakellaris of KG Law Firm (accessed on 8 March 2018).

³¹⁰ Under EU rules, small amounts of up to EUR 200 000 per undertaking over a three year period do not require notification to the European Commission. See Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, L 352/1.

³¹¹ An EC Regulation exempts some state aid measures from prior notification to the Commission, based on criteria such as the beneficiary and the proportion of a project's costs which benefit from state aid. In 2017, the Commission widened the scope of the Block Exemption Regulation to cover small airports and ports. The conditions are summarised at http://europa.eu/rapid/press-release_MEMO-17-1342_en.htm (accessed on 3 April 2018).

Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs.

Commission) accounted for 0.41% of GDP in 2016,³¹² less than the EU-wide average of 0.69% of GDP.³¹³

Examples of measures adopted by Greece include the so-called Investment Incentives Law, i.e. Law 4399/2016 on “Regulatory framework for the establishment of state aid schemes for private investments for the regional and economic growth of the country”. This law introduces a range of financial incentives covering tangible and intangible capital with the aim of attracting FDI, encourage entrepreneurs and innovative small and medium enterprises (SMEs).

Privatisations, such as the sale of regional airports to Fraport,³¹⁴ are also notified to the European Commission under the State Aid regime, and approved.

In the event of disagreements between the opinions by KEMKE and the granting authorities, there is a provision for the setting up of an Inter-ministerial Committee, whose opinion is binding. These disagreements are not frequent according to information from KEMKE.

Apart from Law 4152/2013, establishing KEMKE and setting out its functions and procedures, there are no specific national provisions on the application of EU State Aid rules, except for procedural rules for the recovery of state aid.³¹⁵ The authorities apply directly EU legislation and guidelines.

KEMKE also co-ordinates the administration’s activities when illegal State Aid needs recovering. According to information shared with the OECD, since

³¹² One of the main reasons for the difference between Greece and the EU average is the fact that, after the first MoU between Greece and its creditors, the Greek State is not allowed to provide new State guarantees, with very few exemptions for specific reasons and under strict conditions, for example natural disasters.

³¹³ Information retrieved from http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html (accessed on 3 April 2018). “*Expenditure refers to all active aid measures to industries, services, agriculture and fisheries, for which the Commission adopted a formal decision or received an information sheet from the Member States in relation to measures qualifying for exemption under the General Block Exemption Regulation. In practice, the figures below do not include most of the aid to railways and services of general economic interest that are dealt with separately due to different specific reporting obligations.*”

³¹⁴ SA44259/2016 notified on 21 January 2016, decision issued on 17 March 2017.

³¹⁵ Article 22 of Law 4002/2011.

2014 there have been four negative decisions with a recovery injunction against Greece. On the basis of the available data, KEMKE estimates that the amount of recovered aid in the last three years was approximately EUR 24 million.

Law 4152/2013 provides for all State Aid measures and individual aid awards (both notified and exempted from notification procedure to European Commission) to be registered to the Central Information System for State Aid (CISSA), which will be connected to the State Aid information systems of other ministries. KEMKE and the General Secretariat of Information Systems of the Ministry of Finance co-operate on developing this system and are currently at the stage of specifying the functional requirements of the CISSA.

The HCC has advocacy powers with respect to regulations that may restrict competition, but this mandate does not extend to aid or support schemes.

4.4. Public procurement

The main legal text regulating public procurement is Law 4412/2016,³¹⁶ which transposes the EU Directives on public procurement³¹⁷ and aims to codify the existing national provisions on public procurement scattered in various legal texts. The provisions implementing EU legislation apply to larger tenders, i.e. those above the minimum thresholds set by the Directives.³¹⁸ In addition, Law

³¹⁶ Law 4412/2016 entered into force on 1 August 2016.

³¹⁷ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014. Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014. Law 4413/2016 transposes Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014.

³¹⁸ According to this framework, contracts above a certain threshold fall under the EU rules. The thresholds vary depending on whether the contract concerns goods and services (where the threshold is EUR 144 000), or works, where the threshold exceeds EUR 5.5 million. Member States can establish national rules, in compliance with the principles of transparency and non-discrimination, for contracts below the thresholds. All the thresholds can be found at https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en.

4412/2016 contains specific provisions applicable only to national tenders below the minimum thresholds (e.g. choice of procurement procedure).³¹⁹

Under EU and Greek legislation, while authorities can choose to run open tenders in which any undertaking may submit an offer, they may also have the flexibility to use procedures with more limited participation if certain requirements are met. For instance, when the product or service is not already available off-the-shelf or when the authorities' requirements call for innovative solutions, procurement authorities can use negotiation procedures involving a small number of bidders.³²⁰

For tenders below the minimum thresholds for the application of EU rules, procurement authorities can select simplified bidding procedures. This is the case if the value of the contract is less than EUR 60 000 (Article 117, Law 4412/2016). For tenders below EUR 20 000, procurement authorities can resort to direct assignment according to Article 118 of the same law.

Electronic systems are used both to run tender procedures and as document repositories. The portal to these systems is called Promitheus³²¹ and provides access to the two platforms:

- The Centralised Electronic Register of Public Contracts (Κεντρικό Ηλεκτρονικό Μητρώο Δημοσίων Συμβάσεων – ΚΗΜΔΗΣ). Public contracts below the EU thresholds, contract notices and relevant information notices are published in this system. Similarly, documents concerning public tenders for contracts above community thresholds are submitted to the Publications Office of the European Union and are also published in the Centralised Electronic Register.
- The National Electronic Public Procurement System (Εθνικού Συστήματος Ηλεκτρονικών Δημοσίων Συμβάσεων – ΕΣΗΔΗΣ). With the entry into force of the new procurement law, all tenders

³¹⁹ <https://gettingthedealthrough.com/area/33/jurisdiction/12/public-procurement-greece/> (accessed on 29 March 2018).

³²⁰ Procurement authorities can also select other types of procedures, see https://europa.eu/youreurope/business/public-tenders/rules-procedures/index_en.htm.

³²¹ Accessible in Greek at www.promitheus.gov.gr.

above EUR 60 000 are to be conducted online, using this platform. This rule initially applied to goods and services only, and was expanded to cover, to some extent, public works after 25 July 2017.³²²

The electronic systems are developed and maintained by the Secretariat General of Commerce and Consumer Protection of the Ministry of Economy, and specifically by the Directorate General of Public Procurement.³²³ The Directorate General is also the Central Purchasing Body for the Greek administration. In this role, it is responsible for collecting purchasing needs and it consolidates procurements for purchases over EUR 60 000 (under the so-called Unified Procurement Programme). Moreover, based on the needs identified in the Unified Procurement Programme, the Directorate General of Public Procurement conducts tenders of public contracts on goods and services.

The activities of the Ministry of Economy are complemented by the Single Public Procurement Authority (SPPA). This is an independent authority³²⁴ established in 2011 with the mission of developing and promoting the national strategy of public procurement. It has the following main duties:

- Issuing opinions on the compatibility of draft legislation and regulation with European public procurement legislation; advising public procurement authorities;
- Co-ordinating the national public procurement policy: ensuring compliance with the rule and principles of European and national legislation; the evaluation of the public procurement system and the submission of proposals to address identified problems; strengthening the administrative capabilities of procurement authorities;

³²² www.promitheus.gov.gr/webcenter/files/publicworks/anakoinvsh_dhmosiaerga_25-07-2017.pdf

³²³ The responsibilities of the Directorate General of Public Procurement are described (in Greek) at http://gge.gov.gr/?page_id=6 (accessed on 29 March 2018).

³²⁴ SPPA was established by Law 4013/2011 and became operational in June 2012, see www.eaadhsy.gr/images/docs/2016_Ekthesi_Pepragmenon_EAADHSY.pdf (accessed on 29 March 2018).

- Supervision and monitoring: sample controls on ongoing tenders and execution of public contracts; monitoring and assessing the effectiveness of public procurement authorities.

In addition, the Remedies Review Body (Αρχή Εξέτασης Προδικαστικών Προσφυγών - Α.Ε.Π.Π.) has been established with the task of reviewing remedy applications in public tender procedures, including public contracts and concessions. The new independent body was established in 2017.³²⁵

4.4.1. The role of the HCC

In addition to pursuing the bid-rigging cases described in Section 2, the HCC conducts advocacy activities in the area of public procurement. These include the following:

- The publication of a “Guide for Public Procurement Authorities: Detection and Prevention of Collusive Practices in Procurement Tenders” (see Section 2.7.4). The publication is meant to raise awareness by public procurement officials and help them to detect collusion in tender procedures;
- Participating in events to raise awareness on bid rigging in public procurement;
- Providing support to procurement authorities requesting assistance from the HCC. The advocacy powers of the HCC do not enable it to issue opinions on calls for tender, therefore it cannot provide case-specific advice to procurement authorities on how to design tenders to promote competition. However, following a number of requests for such advice, the HCC drafted a standard response including some suggestions on drafting the tender announcement. According to the HCC, this process contributed to increased co-operation between the HCC and many procurement authorities. As a result, when the latter are concerned about possible collusive behaviour, they tend to approach the HCC and come forward with evidence.

Additional co-operation with procurement authorities concerns access to tender information. The HCC can use its investigative powers (Section 3.3.2) to request access to tender information (by way of Article 38 of the Competition Act

³²⁵ European Commission (2018), page 12.

on requests of information and the duty of public bodies to co-operate with the authority), and it has successfully co-operated with many procurement authorities in the context of its last two bid-rigging cases. However, the HCC needs to submit requests of information to the individual authorities, at least for past tenders which were not run electronically, which is a slower process than if the HCC had direct access to the database containing tender information.

The HCC considers communication and co-operation with the Single Public Procurement Authority (SPPA) to be of great importance. The HCC has, on several occasions, transmitted complaints concerning alleged infringements of bidding procedures in public tenders to the SPPA. In 2014, the HCC was officially consulted by the SPPA on the drafting of standard contracts for electronic tenders concerning the supply of pharmaceuticals to public hospitals. The HCC was not consulted on the transposition of the Public Procurement Directive, but it provided (unofficial) guidance to the SPPA, which was responsible for publicly consulting on its implementation. This guidance was based on the HCC's experience in detecting anti-competitive behaviour in public procurement.

5. Sectorial regimes

This section describes briefly the institutional arrangement in selected regulated sectors, i.e. electronic communications, post, electricity and gas. These sectors provide examples of different ways of allocating responsibilities between the sector regulators and the competition authority. In the post and electronic communications sectors, the Competition Act is enforced by the sector regulator, while in electricity and gas sectors it is the HCC that is responsible for its enforcement. The HCC has the power to carry out industry-specific sector investigations and inquiries and to publish analyses and recommendations concerning competition in those sectors (Section 2.7.2). So far none of the HCC's inquiries have concerned sectors overseen by independent regulators.³²⁶ In the sectors regulated by EETT, the latter is responsible for conducting sector investigations and inquiries while the HCC has a purely advisory role,³²⁷ as

³²⁶ The HCC has conducted an inquiry into the fuel sector (see Section 2.7.2), which is subject to significant oversight by the Ministry of Energy and Environment.

³²⁷ EETT, if necessary and in its own judgement, might seek the HCC's assistance on a particular case.

described below. When applicable, the HCC's activities in these sectors and its co-operation with sector regulators are also described.

5.1. Electronic communications and post

5.1.1. Sector institutions

The Ministry of Digital Policy, Telecommunications and Media, which was set up in 2016 from departments previously spread under different authorities, is responsible for overall sector policy. The ministry's mission includes the development of the legal framework on electronic communications, postal services and media and the co-ordination of the government's work in these sectors. In addition, the ministry develops policies to enhance infrastructure development to improve access to information and communication, strengthen the economy and promote social cohesion.³²⁸

Sector regulation and oversight are the responsibilities of the Hellenic Telecommunications and Post Commission ('EETT'), which also acts as competition authority in these sectors.³²⁹ EETT also has the power to issue Regulations on consumer protection issues in the electronic communications and postal sectors. In addition, EETT co-operates on consumer issues with the General Secretariat of Commerce and Consumer Protection (Ministry of Economy and Development) and the Consumer Ombudsman. EETT's role is to monitor the specific issues on consumer protection in the electronic communications sector that relate with the implementation of the EETT's legislation. In the postal sector,

³²⁸ Presidential Decree 82/2017, Government Gazette A117, Article 1 setting out the mission of the ministry.

³²⁹ According to the Electronic Communications Law 4070/2012 "*Regulations on Electronic Communications, Transport, Public Works and other provisions*" (Official Government Gazette A82 of 10.04.2012), Article 12, par.st, EETT supervises the application of the electronic communications legislation, applies Competition Law 3959/2011 as it stands and Articles 101 and 102 of the EU Treaty as well as EU Regulation 1/2003/EK (L 001).

According to Law 4053/2012 (Official Government Gazette 44/A/2012), Article 5 par. kda , EETT is responsible to apply Competition Law 3959/2011 for the postal services sector and Articles 101 and 102 of the EU Treaty as well as EU Regulation 1/2003/EK (L 001).

EETT examines users' complaints concerning the provision of postal services and proposes measures or sanctions in this direction, where applicable.

EETT is an independent authority that was established in 1992 and began operating in 1995. It was originally named Hellenic Telecommunications Committee. In 1998, it was assigned the responsibility of supervising and regulating the postal services market and was renamed Hellenic Telecommunications and Post Commission.

The EETT Board is composed of nine members, including one President and two Vice Presidents. The President and the Vice Presidents are selected and appointed by the Council of Ministers, on a proposal by the competent Minister, following an opinion of the Committee on Institutions and Transparency of the Parliament. The other members of EETT are appointed by the competent Minister. The term of office of all the Members of the Board, including the President and the Vice Presidents, is four years. The appointment of EETT's members is not allowed for more than two terms, regardless of whether they are consecutive or not.

The authority had 213 staff members at the end of 2016, excluding the Members of the Board.³³⁰ As confirmed by EETT, specialised staff handles competition enforcement cases.

5.1.2. Key aspects of sector regulation

The legal framework for electronic communications markets is largely defined by the EU Directives and Regulations.³³¹ The regulator's tasks include, among others, issuing code of conducts, assessing competition in electronic communications markets,³³² designating operators with significant market power

³³⁰ EETT (2016), page 18.

³³¹ The current EU Directives and Regulations are listed at <https://ec.europa.eu/digital-single-market/en/telecoms-rules>. The applicable legal framework has been transposed into Greek legislation.

³³² As set out in the European Commission's Recommendation on relevant markets susceptible to ex-ante regulation, these are all wholesale markets, i.e. call termination on fixed networks, call termination on mobile networks, wholesale local access on fixed networks and wholesale high-quality access on fixed networks (see <https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-relevant-product-and-service-markets-within-electronic-communications>).

(SMP) on the relevant market, imposing obligations (such as access, transparency, non-discrimination, accounting separation and price control regulation) on operators with significant market power and supervising electronic communications operators. The regulator has imposed a number of obligations on fixed incumbent OTE for the provision of wholesale services to competitors.³³³ In the mobile market, operators are also subject to *ex-ante* regulation in the market of call termination on mobile networks.³³⁴ EETT monitors operators' compliance and enforces regulatory obligations (access, transparency, non-discrimination, accounting separation and price control). When the SMP operator is subject to a cost orientation obligation, it also has to prove that its prices are indeed cost oriented on the basis of a pre-defined methodology. In the context of the price control obligation, EETT may develop its own cost models to verify that this is indeed the case.³³⁵

In line with the EU telecommunications rules, electronic communications markets are periodically reviewed to assess the need for *ex-ante* regulation. For instance, in 2016 EETT reviewed the retail access market at a fixed location, found it effectively competitive and therefore lifted *ex-ante* regulation.

EETT ensures the provision of a minimum set of services, at affordable prices, to all users (the so-called Universal Service Obligation, USO), including access to the fixed telephone network, directory services and public telephones.³³⁶ In 2016, the regulator ran a tender to select the operator which would supply the universal service in Greece. Two operators were selected: incumbent OTE was

³³³ OTE, which has been privatised and is controlled by German incumbent Deutsche Telekom, accounted for about 60% of retail revenues from fixed telephony and fixed Internet in Greece in 2016 (EETT, 2016 Market Review; page 28).

³³⁴ In the mobile market, the mobile arm of the incumbent was the largest mobile operator, with 45% market share in terms of connections at the end of 2016, followed by Vodafone and by Wind (EETT, 2016 Market Review; page 33). Cyta Hellas, a mobile virtual network operator (MVNO), accounted for less than 1% of mobile connections at the end of 2016.

³³⁵ Under conditions specified by law, EETT can also use adequate benchmarking taking into consideration prices available in comparable competitive markets of other EU Member States.

³³⁶ The services included in the universal service are listed in Law 4070/2012, Article 55.

selected to provide directory services and public telephone services, while Forthnet was selected for the access to the fixed telephone network.³³⁷

In addition, EETT manages the commercial radio frequencies, assigns the rights of use for radio frequencies and sets the fees for their use. For instance, in 2017 a spectrum rights auction for radio frequencies in the 1800 MHz band (e.g. suitable for mobile communications) raised EUR 201.5 million.

As provided for by EU legislation,³³⁸ postal services were fully liberalised in Greece on 1st January 2013.³³⁹ EU and national legislation require that a minimum set of services of specified quality must be provided to users at affordable prices, irrespective of their geographic location. In Greece this set of services, i.e. the so-called Universal Service Obligation (USO), includes the handling of letters, direct mail, newspapers, books and catalogues up to two kilogrammes, as well as parcels up to kg 20. The universal service provider (USP), appointed by law until 2028, is state-owned Hellenic Post (Ελληνικά Ταχυδρομεία – ELTA).³⁴⁰ One of the key objectives of the regulator is to ensure the availability

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[www.eett.gr/opencms/opencms/EETT_EN/Electronic_Communications/Telecoms/Aggragate Service](http://www.eett.gr/opencms/opencms/EETT_EN/Electronic_Communications/Telecoms/Aggragate_Service) (accessed on 16 April 2018).

³³⁸ The Postal Services Directive (Directive 97/67/EC), as amended, is available at https://ec.europa.eu/growth/sectors/postal-services/legislation_en. The European Commission referred Greece to the European Court of Justice over legislation imposing additional obligations on courier companies (http://europa.eu/rapid/press-release_IP-09-1477_en.htm?locale=en).

³³⁹ Greece was among a group of 11 countries allowed to liberalise after the 31 December 2010 deadline applicable throughout the European Union.

³⁴⁰ Law 4053/2012 “Regulation for the operation of the postal market, e-telecommunication issues and other rules”, Government Gazette 44/A/2012.

The state-owned shares of ELTA have been transferred to the Hellenic Corporation of Assets and Participations S.A., which is a company holding a variety of state assets. As a result, 90% of ELTA’s share capital is held by the Hellenic Corporation of Assets and Participations S.A.

of the US at affordable prices throughout the country.³⁴¹ EETT monitors quality of service parameters, reviews and approves the prices submitted by the USP for services within the scope of the USO.

The incumbent's overall revenue share in the postal services market (including courier and express services) has declined from 58% in 2011 to 38% in 2016. While its market share in the letters market was still extremely high at the end of 2016, it only accounted for 7% of the parcels market.³⁴²

EETT regularly collects market information, through questionnaires submitted to operators in the post and the electronic communications markets. In addition to its annual report, the regulator publishes every year a report presenting market data, including revenues, number of licensed operators, volumes (such as the number of subscribers and traffic for electronic communications markets) and market shares.³⁴³

In 2016, EETT launched a price-comparison tool, the so-called Price Observatory for Telecommunications and Postal Services (Pricescope).³⁴⁴ The Pricescope is a platform, provided by EETT, through which users can compare prices across suppliers, for a variety of services.³⁴⁵

5.1.3. Competition enforcement

As a general rule, cases brought before EETT may cover both *ex-ante* regulation and violations of competition law. EETT notes that this “dual approach” of EETT “*being, at the same time, sector regulator and Competition*

³⁴¹ www.eett.gr/opencms/opencms/EETT_EN/PostalServices/EETT_post (accessed on 16 April 2018).

³⁴² The USP accounted for 92% in terms of volume and 67% in terms of revenue. Source: EETT, 2016 Market Review, page 99.

³⁴³ The annual market reviews are available in English, at www.eett.gr/opencms/opencms/EETT_EN/Journalists/MarketAnalysis/MarketReview.

³⁴⁴ The price comparison tool is available, in Greek, at www.pricescope.gr/home.

³⁴⁵ By way of example, with reference to courier products the price comparison tool covers about 240 postal services and 2 450 delivery zones in Greece and abroad, and it is based on information provided by 11 postal providers, see www.pricescope.gr/statistics (accessed on 16 April 2018).

*Authority on telecom/post sector, favours the more substantial evaluation of the merits of the case and the absence of contradictory decisions, but increase the time frame for the conclusion of the cases”.*³⁴⁶ Over the period 2012-2017, investigations in the electronic communications sector have led to one infringement decision in 2017³⁴⁷ and one in 2013.³⁴⁸ In the same period, the regulator issued one decision concerning the postal services market in 2015,³⁴⁹ one in 2014³⁵⁰ and one in 2012³⁵¹ (see below).

EETT issued a decision in September 2017, imposing a fine on telecoms incumbent OTE for abuse of dominance in the provision of wholesale services, specifically local loop unbundling (LLU), to its competitors. The investigation was initiated following a complaint by four operators³⁵² claiming that, over the period from 2012 to 2014, OTE favoured its own retail services, placing competitors at a disadvantage. EETT imposed an administrative fine of EUR 6.3 million, out of which EUR 3.5 million was for violation of the Competition Act and the remainder for violating its regulatory obligations of non-discrimination.³⁵³

In an earlier decision, in August 2013, EETT fined OTE for abuse of dominance in the provision of LLU to competitors, in particular concerning delays in delivering LLU services and failure handling services. Out of a total fine of

³⁴⁶ EETT’s submission to the OECD.

³⁴⁷ EETT Decision 826/04 of 14 September 2017, published in the Government Gazette 3540/B/10.10.2017. See the press release (in Greek) at www.eett.gr/opencms/opencms/admin/News_new/news_0694.html.

³⁴⁸ EETT Decision 700/019 of 29 August 2013.

³⁴⁹ EETT 2015 Annual Report (in Greek), page 89.

³⁵⁰ ETT 2014 Annual Report (in Greek), page 111. In the same year, EETT examined also another complaint but did not find an infringement.

³⁵¹ EETT 2012 Annual Report (in English), page 85.

³⁵² Wind, Hellas on Line, Cyta Hellas and Forthnet.

³⁵³ The regulatory obligation was imposed following regular reviews of electronic communications market. The review of the local loop unbundling market led EETT to the conclusion that the incumbent held Significant Market Power (SMP) and consequently to the imposition of *ex-ante* obligations, such as a non-discrimination requirement.

EUR 1 million, EUR 700 000 concerned abuse of dominance and the remainder concerned violations of the electronic communications legislation.³⁵⁴

All the additional complaints in the electronic communications markets concern abuse of dominance allegations. In all cases, EETT has already gathered evidence and held hearings with the parties. By way of example, EETT is investigating the following complaints:³⁵⁵

- Complaint submitted in 2012 by Vodafone Hellas against leading mobile operator Cosmote for alleged abuse of dominance (margin squeeze, predatory pricing, price discrimination) in the pre-paid mobile telephony market.
- Complaint submitted by Wind against incumbent OTE for applying, in the provision of LLU services, different deadlines for line repairs to its own retail arm and to its downstream competitors.
- Complaint submitted at the end of 2015 against the OTE Group by all other operators, concerning the bundles offered by incumbent OTE jointly with its mobile arm Cosmote (including fixed, mobile and TV services). The alleged abuse of dominance concerns fidelity rebates, margin squeeze and predatory prices.

In addition to abuse of dominance cases, between 2012 and 2017 EETT has handled one merger in the electronic communications market. In 2014, EETT approved the acquisition of Greek operator Hellas on Line by Vodafone.³⁵⁶ The acquisition was notified on 5 September 2014 and was cleared on 18 September 2014. The regulator is in the process of reviewing another merger, notified at the

³⁵⁴ EETT 2013 Annual Report (in English), page 80.

³⁵⁵ In addition, EETT is investigating an alleged margin squeeze case, involving the Albanian subsidiaries of Cosmote and Vodafone, and an alleged foreclosure case against OTE and Cosmote.

³⁵⁶ EETT Decision 733/047 of 18 September 2014, published in the Government Gazette 2680/B/08.10.2014. See also EETT 2014 Annual Report (in Greek), page 74. The concentration was also notified to the HCC, as it also concerned the pay TV market, HCC Decision 593/2014, www.epant.gr/Pages/DecisionDetail?ID=1640.

end of February 2018, between Vodafone and Cyta Hellas.³⁵⁷ This recent merger was notified to both EETT and the HCC, given that it concerns electronic communications markets as well as media content. The HCC has cleared the notified transaction, with regards to the subject-matters falling within its competence, i.e. the acquisition of audio-visual TV content, including rights of transmission of other TV channels, and on the market for the provision of Pay-Tv services.³⁵⁸

In the postal services sector, in 2015 EETT issued a decision about abuse of dominance by incumbent ELTA in a tender for the provision of bulk mail services to the Athens water company. Following a complaint by competitor ACS, which was unsuccessful in the 2013 tender, EETT found that ELTA had engaged in predatory pricing. As a result of the decision, the result of the tender was annulled. An earlier decision, issued in 2012, followed a 2009 complaint by ACS for abuse of dominance. The complainant had requested access to ELTA's postal network to provide courier services similar to those provided by ELTA's own subsidiary. ACS alleged that the incumbent applied discriminatory prices and quality of service conditions, in favour of its subsidiary. EETT imposed a fine on the incumbent for competition law infringements and also required it to submit a cost study underpinning the pricing between ELTA and its subsidiary.³⁵⁹

At EU level, State Aid to ELTA has been examined in two cases by the European Commission, one concerning the funding of the net cost of universal service by the State and one about restructuring aid. The European Commission approved compensation by the State (for a limited period of time), as has been the case for universal service in other Member States (European Commission, 2015;

³⁵⁷ On 22 February 2018, telecoms operator Vodafone notified to both EETT and HCC the acquisition of a smaller operator in Greece (Cyta Hellas). See the announcement in Greek (Ανακοινώσεις Συγκεντρώσεων, dated 14 March 2018) at www.epant.gr/ and in English at www.eett.gr/opencms/opencms/admin_EN/News/news_0483.html.

³⁵⁸ With regard to the provision of multiple play services (bundled telecommunication services which include Pay-Tv services), the issue shall, according to the HCC decision, be examined by EETT, in the context of the co-operation between the two authorities. See www.epant.gr/ Press release dated 23 April 2018.

³⁵⁹ EGRP (2012), pages 25 – 26.

page 25).³⁶⁰ In a separate case, the Commission authorised state funding to support the modernisation of the incumbent’s infrastructure.³⁶¹

While the legal basis for EETT’s competition enforcement activities is the same as for the HCC, each authority may have its own procedural rules. In particular, EETT does not issue Statements of Objections (SOs) to the parties under investigation but informs parties officially about the opening of a case by an “Act of Holding a Hearing”, which it considers as serving the same purpose as an SO. This act is served to the parties five days before the hearing and includes a description of the facts of the case, the alleged infringement, the duration of the infringement and the legal framework under which the behaviour is alleged to be anti-competitive. If the case is opened following a complaint, the Complaint Document, in a non-confidential version, is also notified to the undertaking concerned. In the phase prior to the hearing, the parties can also request access to the non-confidential file of the case to exercise their rights of defence. At the hearing, the parties, their lawyers and the witnesses indicated by the parties or summoned by EETT appear in front of a Hearing Committee. The parties may submit their final memoranda to EETT, as well as any information requested by the authority. Minutes of each session are provided to the parties. As is the case with HCC decisions, EETT’s decisions can be appealed to the Athens Administrative Court of Appeal and, in second and final degree, to the Council of State.

In the case of merger control, EETT implements the provisions and the timetable of the Competition Act, as well as HCC Decision 558/2013, in line with the HCC’s procedures.³⁶² In the area of horizontal agreements, EETT issued its

³⁶⁰ Case SA.35608, decision http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_35608.

³⁶¹ Case SA.32562, decision http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_32562.

³⁶² HCC Decision 558/2013, available in Greek at www.epant.gr/Pages/DecisionDetail?ID=1376.

own leniency programme in 2010.³⁶³ According to EETT, the decision was issued on the basis of the previous competition act and is no longer in force.

5.2. Energy

5.2.1. Sector institutions

The Ministry of Environment and Energy is responsible for sector policy and for developing the primary regulatory framework for the energy sector. Its objectives include ensuring energy security and promoting healthy competition with the objective of reducing energy costs for users and consumers.³⁶⁴

Sector regulator RAE (Ρυθμιστική Αρχή Ενέργειας – PAE) is an independent authority, established by Law 2773/1999 with an advisory role and the task of monitoring the market.³⁶⁵ Its mandate and powers were significantly expanded following legislative changes in 2010-2011, when RAE became responsible for issuing licences and acquired regulatory powers, such as issuing network codes governing the conditions for accessing and using networks and approving the prices of regulated services. RAE has also a consumer protection mandate for complaints related to violations of regulatory obligations.³⁶⁶ Within its overall mandate to supervise the energy market, RAE conducts regular market reviews and publishes comprehensive market information on the energy sector every year.³⁶⁷

Even though it does not enforce competition law, RAE has the promotion of competition among its objectives (Article 3, paragraph 4ε, Law 4011/2011).³⁶⁸ In practice, this objective is mostly pursued through RAE's regulatory and market

³⁶³ EETT Decision 563/026 of 27 April 2010, available in Greek at www.eett.gr/opencms/export/sites/default/admin/downloads/Decisions/Administrative/AP563-026_2010.pdf.

³⁶⁴ Article 3, Law 2773/1999, Official Gazette A286 of 22 December 1999.

³⁶⁵ Law 2773/1999, Official Gazette A286 of 22 December 1999.

³⁶⁶ See www.rae.gr/site/el_GR/categories_new/about_raelintro.csp# (accessed on 20 April 2018).

³⁶⁷ These annual studies are available in English at www.ceer.eu/national-report-2017.

³⁶⁸ Law 4011/2011, Official Gazette A179 of 22 August 2011.

monitoring activities (such as ensuring third-party access to networks, monitoring the wholesale and retail markets). The HCC is responsible for enforcing competition law in the gas and electricity sectors and its cases are covered in Section 2.5.1 above.

The authority's board consists of seven members.³⁶⁹ Vacancies at Board level have to be advertised in at least four national newspapers. The Members are appointed by the Minister of Environment and Energy, following a favourable opinion by the Committee on Institutions and Transparency of the Parliament. The President and two Vice Presidents (among the seven members) are appointed by the Council of Ministers, following a proposal by the Minister of Environment and Energy and a favourable opinion by the Committee on Institutions and Transparency of the Parliament. As of December 2016, RAE had 111 staff members, out of the total 211 which are provided for by the legislation (RAE, 2017).

5.2.2. Key aspects of sector regulation

Greece has transposed the EU legislative packages into its national framework, leading to liberalisation and sector reform, including the unbundling of the vertically integrated incumbents.³⁷⁰

In the electricity sector, the market was fully liberalised in 2007 and retail price controls were lifted on 1 September 2013.³⁷¹ At the end of 2016, 17 suppliers were active but the incumbent's retail market share was still 88% (IEA, 2017; page 67). Within Greece's Economic Adjustment Programme (see Section 1.1), the government has committed to reduce PPC's share further through a system of auctions, in which competitors can buy electricity produced by PPC in order to resell it at retail level. The regulator RAE is responsible for setting the amount of electricity that PPC is required to auction every year.

³⁶⁹ See www.rae.gr/site/categories_new/about_rae/organization/plenum.csp (accessed on 20 April 2018).

³⁷⁰ The EU Directives and Regulations about market liberalisation are available at <https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation>.

³⁷¹ With the exception of certain categories of vulnerable consumers (IEA, 2017; page 66).

In terms of market structure, PPC still accounted for almost 70% of the power generation capacity installed in Greece in 2016 (IEA, 2017) and owned the distribution network operator. Greece initially adopted the Independent Transmission Operator model, i.e. one of the options envisaged by EU legislation, whereby energy supply companies may still own or operate the transmission network, through a separate company. ADMIE (Ανεξάρτητος Διαχειριστής Μεταφοράς Ηλεκτρικής Ενέργειας – ΑΔΜΗΕ) was owned by state-owned incumbent PPC.³⁷² In the context of the country’s Economic Adjustment Programme, the government committed to full ownership unbundling in the electricity sector.³⁷³

The regulatory framework in electricity provides for Public Service Obligations (PSOs). These mostly concern special tariffs for vulnerable consumers and subsidies to consumers on most islands (i.e. islands not interconnected to the electricity transmission network, where there are local generators).

In the gas sector, the retail market was fully liberalised on 1 January 2018. In Greece, natural gas consumption is not widespread in the residential sector³⁷⁴ but consumption has been increasing over time. The incumbent is subject to similar auction requirements as those applicable to PPC in order to encourage greater competition (the gas release programme introduced by the HCC is described in Section 2.5.1).

As in the electricity sector, Greece chose to introduce a model of independent transmission system operator (DESFA), with the same ownership as the state-owned incumbent gas supplier (DEPA), in line with the options provided by the EU energy market legislation. Within Greece’s Economic Adjustment

³⁷² “ADMIE owns and operates the electricity transmission system, conducts real-time dispatch, and clears the imbalances and the settlement of all other charges or payments.” (IEA, 2017; page 70).

³⁷³ The government transferred 51% to a holding company, which was floated on the stock exchange, and sold 24% of ADMIE’s capital to the State Grid of China in 2017. The remaining 25% of the shares is held by a company controlled by the Greek State (IEA, 2017; page 70).

³⁷⁴ IEA (2017), on page 45, reports that “natural gas represents only 8% of the total energy consumption in the residential and commercial sectors”.

Programme, the government has committed to ownership unbundling and the privatisation of the gas transmission operator. In a recent tender procedure for 66% of DESFA's shares, the State accepted a bid submitted by a consortium of foreign bidders.³⁷⁵ At distribution level, DEPA owns the distribution grid, but this is operated by regional companies. The latter are jointly owned by DEPA and other investors (IEA, 2017; page 49).

5.3. Co-operation between the HCC and sector regulators

According to Article 24 of the Competition Act, the HCC co-operates with regulatory authorities which monitor specific sectors of the national economy. The HCC and these authorities assist each other, if requested. Moreover, the HCC can request their assistance in gathering information, conducting inspections, etc. (Article 39, Competition Act). Similar provisions on co-operation are also included in the legal frameworks for the operation of EETT and RAE. According to the Electronic Communications Law (Article 12, par. st, Law 4070/2012) and the Law on the Regulation of Postal Services (Article 5, par. kda, Law 4053/2012), EETT may request assistance from the HCC.

Co-operation is also envisaged in the energy sector between RAE and the HCC (Article 26, Law 4011/2011). Specifically "*RAE may propose that the Competition Commission institute, in order of priority, an investigation to establish if general competition law has been infringed, where investigations by the RAE [...] give cause to suspect that the provisions of general competition law are not being applied.*" According to the same article, the HCC and RAE can appoint an employee who can participate in the other authority's inspections. In particular, the provision on RAE's power to conduct inspections refers to the power as defined in the Competition Act (Article 39) (Section 3.3.2.). Any evidence collected during these inspections can be used by both authorities.

These general provisions are the legal basis for the existing co-operation between the HCC and other authorities and no Memoranda of Understanding are in place. Despite this lack of detailed rules or formally agreed procedures, so far

³⁷⁵ Hellenic Republic Asset Fund, press release dated 19.04.2018, www.hradf.com/storage/files/uploads/hradf-desfa-preferredinvestor190418.pdf (accessed on 26 April 2018).

there have not been any controversies or court cases on the allocation of responsibilities between the HCC and sector regulators.

In the postal and telecommunication sectors, the responsibilities of the two authorities are rather distinct. A recently notified merger, spanning through the electronic communications sector (under EETT's responsibility) and the media content sector (under HCC's responsibility), will provide a pertinent example of co-operation in practice.³⁷⁶ Various examples of informal co-operation between the HCC and EETT have been reported to the OECD. According to EETT, more than 40 letters of complaint, originally addressed to the HCC, have been forwarded to EETT since 2014 for potential investigation within EETT's competence. A recent example of co-operation between the authorities concerns a 2016 investigation by EETT. In this context, the HCC and EETT held informal meetings and the HCC provided suggestions on the investigative measures that EETT could undertake to gather the necessary evidence.

In the electricity and gas sectors, the HCC has been active in imposing fines and remedies on State-owned enterprises (Section 2.5.1). RAE reported that the initial complaints about DEPA and DESFA were originally submitted to RAE, which forwarded them to the HCC. Both the HCC and RAE have confirmed their close co-operation and the complementarity of their areas of expertise. This co-operation has taken the form of meetings, teleconferences, submission of views and participation of RAE representatives in HCC's plenary sessions. RAE also contributes to monitoring DEPA's commitments, specifically the reserve price of the gas release programme.

6. Policy options for consideration

Overall, the legislative framework of the Greek competition regime is in line with international standards. It is well grounded in European competition law policies, enforcement standards and practices. This section identifies areas in which steps to further strengthen the performance of the competition regime

³⁷⁶ On 22 February 2018, telecoms operator Vodafone notified to both EETT and HCC the acquisition of a smaller operator in Greece (Cyta Hellas). See the announcement in Greek (Ανακοινώσεις Συγκεντρώσεων, dated 14 March 2018) at www.epant.gr/ and in English at www.eett.gr/opencms/opencms/admin_EN/News/news_0483.html. See also footnote 357.

should be considered. The areas identified below follow broadly the structure of the report.

6.1. Antitrust and merger control

Over the period 2012 to 2016, almost half of the decisions issued by the HCC concerned horizontal agreements and practices. Most cases were opened following complaints or own initiative investigations. Despite having a leniency programme in line with European best practice, the HCC uncovered only one bid-rigging cartel following a leniency application, in 2016, and there have not been leniency applications in subsequent cases. The authority does not have a fully-fledged (nor clearly visible to the public/third parties) whistleblower tool or system, which would allow someone to submit information while safeguarding anonymity from the outset, e.g. using encryption or another method to protect the sender's identity at the point of submission. Strengthening the HCC's cooperation with public prosecutors may help improve the effectiveness of criminal charges for Competition Act violations and hence increase deterrence. Moreover, pro-actively screening public procurement data may be an additional tool to trigger cartel investigations. In order to clarify the protection granted to leniency applications, the HCC should review its leniency notice to introduce the safeguards on access to leniency statements introduced by the Damages Directive.³⁷⁷

In 2016 the Competition Act was amended to allow for settlements in horizontal agreements cases, and this tool was immediately used in two cases. The settlement procedure should be revised to introduce the safeguards on access to settlement submissions granted by the Damages Directive.³⁷⁸ Moreover, policy makers may wish to consider whether the settlement procedure could be usefully extended beyond cartels.

Decisions on vertical agreements account for almost one quarter of total antitrust decisions in the last few years. The HCC has relied on commitment decisions in a number of vertical restraints cases. These cases are seen also as an opportunity to illustrate the authority's interpretation of the relevant framework

³⁷⁷ Including Article 6, par. 6 stating that "Member States shall ensure that, for the purpose of actions for damages, national courts cannot at any time order a party or a third party to disclose any of the following categories of evidence: (a) leniency statements; and (b) settlement submissions.

³⁷⁸ See footnote 377.

and for broader “educational” purposes. When dealing with infringements that have lower impact on competition, the HCC should continue to issue commitment decisions, in order to free resources to deal with high priority areas of activity.

In the abuse of dominance area, notable cases in the last few years have concerned SOEs in the energy sector and have contributed to market liberalisation. In terms of practices, cases often concerned a number of abusive practices at the same time, but the most important cases have arguably dealt with rebates and exclusivity clauses, on the one hand, and refusal to supply and to provide access to an essential facility, on the other. In line with international best practice, the HCC should conduct more economic analysis in assessing the effects of a certain practice, in addition to the analysis conducted when defining markets and establishing dominance. For instance, some of the practices investigated in rebates cases may have been presumed harmful to competition based on EU case law (e.g. exclusivity rebates), while others not linked to exclusivity may have deserved additional analysis.³⁷⁹

The Competition Act does not include provisions specifically concerned with private enforcement; however, it grants civil and criminal courts jurisdiction to apply Articles 101 and 102 of the TFEU and the equivalent Articles 1 and 2 of the Greek Competition Act. Collective actions by individuals or firms harmed by violations of competition law are currently not envisaged, possibly limiting the potential for private enforcement in Greece.

Given the above, it is recommended that the authorities consider the following suggested action points:

- The HCC should continue to prioritise investigations on horizontal agreements, compatibly with the complaints it receives and the leniency applications.
- The HCC should continue to use commitments to deal with less serious vertical agreements cases.
- The HCC should consider placing more emphasis on economic analysis when establishing effects in abuse of dominance cases, to improve the narrative of the case and the overall persuasiveness of the argument.

³⁷⁹ For instance, see the HCC submission to the OECD Roundtable on fidelity rebates, [https://one.oecd.org/document/DAF/COMP/WD\(2016\)45/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2016)45/en/pdf).

- The policy makers should consider amending the Competition Act to expand the settlement procedure beyond horizontal agreements cases.
- The HCC should consider the introduction of a whistleblower tool fully protecting the anonymity of informants vis-à-vis both the HCC and third parties.
- Public prosecutors and the HCC should continue to co-operate closely to enhance the number of criminal cases for violations of the Competition Act. In the context of this co-operation, prosecutors should inform the HCC when they bring criminal cases and about the outcome of these cases.
- The HCC should review the leniency notice and the settlement notice to ensure consistency with the new Damages Directive, recently transposed into Greek legislation, concerning safeguards on the disclosure of information.
- The policy maker should consider introducing legislation on collective action for antitrust damages.
- The HCC should engage in pro-active detection of cartels by analysing information on past tenders to identify potential bid-rigging patterns. In order to facilitate access to tender information, the following actions could be considered:
- The HCC, in co-operation with the relevant authorities, should gain access to past tender information available electronically on the e-procurement platform (including losing bids).
- For information on past tenders which were not run electronically (e.g. prior to August 2017, in the case of public works), the HCC and procurement authorities could sign MoUs in order to speed up HCC's access to full information on past tenders.

In the last five years, the HCC has received between 8 and 19 merger notifications per year. It is perceived to have made good progress in the way it investigates potential effects of notified mergers, both in regards of its substantive analysis and its procedures. In terms of process, the law firms interviewed for this report have noted that the deadline for merger notification set in the Competition Act (30 calendar days from the date of the agreement to proceed with a merger) is not sufficient to prepare a complete notification and therefore tends to be extended in practice. However, pre-notification meetings are available to discuss matters and alleviate this issue. Moreover, the deadline for submitting a Statement of

Objections in the case of Phase II investigations (45 calendar days) may be challenging for more complex transactions.

A simplified procedure for certain straightforward transactions was introduced, in line with international practice, leading to a more efficient process. More than half of the mergers filed in the last two years have been notified using the simplified procedure. A minor discrepancy between the Greek regime and the EU framework remains, in that the Greek Competition Act is not clear about whether commitments are allowed before Phase II, i.e. the in-depth review phase. In fact, in the last few years no merger case has been closed in Phase I with remedies. Moreover, Greek legislation and regulations do not require explicitly that commitments be market tested before being accepted.

Given the above, it is recommended that the authorities consider the following suggested action points:

- The policy makers should consider reviewing the relevant provisions so that:
- The requirement for merger notification is relaxed, by removing the 30-day deadline, also in light of the OECD Merger Recommendation (OECD, 2005),³⁸⁰
- Phase I remedies are explicitly allowed by the Competition Act; and
- The deadline for submitting a Statement of Objections following the opening of a Phase II investigation is extended (acknowledging that this may require reconsidering the deadlines foreseen for the Board decision).
- In addition, in light of the low number of merger notifications per year, the HCC and the policy makers should assess whether the current notification criteria are set too high and not allowing for the scrutiny of a sufficient number of mergers, of which some could potentially lead to a significant impediment to competition.

³⁸⁰ According to OECD (2005), member countries should “*provide, without compromising effective and timely review, merging parties with a reasonable degree of flexibility in determining when they can notify a proposed merger*”.

- The authorities could consider introduce explicit provisions, either in the Competition Act or in HCC documents, for the market testing of commitments.

6.2. Advocacy and co-operation with other public bodies

Since the HCC's advocacy powers were strengthened in 2011, the authority has played an important role in Greece's reform efforts, in an attempt to reduce regulatory barriers to competition and growth. Notably, the HCC was tasked with reviewing the conditions for access to the liberal professions. Its opinion was also instrumental in allowing the sale of infant milk formula (for infants below six months) in supermarkets and other food stores. In addition, the authority seconded staff members to work with the OECD on three competition assessment projects, in 2013, 2014 and 2016.

While the HCC has successfully co-operated with a number of other Greek authorities, this co-operation usually takes place on an informal basis, building on the legal provisions allowing for such co-operation. This raises the question of whether a more formal and standardised approach (e.g. to set out the procedure for exchanging information on complaints that seem to span the remit of more than one authority) should be followed.

Given the above, the HCC should consider the following suggestions on how advocacy could be made more effective.

- The HCC should continue to issue opinions on restrictive legislation / regulation.
- The HCC should consider carrying out more sector inquiries, as complementary tools to its enforcement action.
- In order to spread good practices on the competition assessment of legislation, the HCC could co-operate with the relevant units screening draft legislation across the public sector (e.g. within the Ministry of Economy and the Better Regulation Office).
- The HCC should consider advocacy initiatives to help consumer protection authorities to understand the scope of competition policy and its overlaps with consumer protection. Following this action point, the HCC and consumer protection authorities could sign MoUs to facilitate co-operation in practice.
- Building on the experience gained in bid-rigging cases, the HCC should organise more training events for public procurement

officials (on how to help to prevent and detect bid-rigging and how to co-operate with/report cases to the competition authority).

- While co-operation with the energy regulator (RAE) and the post and electronic communications regulator (EETT) is reported to be good, the HCC and the sector regulators should establish formal MoUs. Specifically in the post and electronic communications sectors, where the regulator is also in charge of enforcing the Greek Competition Act, the HCC and EETT could co-operate to improve convergence of procedures and approaches.

6.3. Guidelines and notices

The HCC's enforcement practice is grounded on EU legislation and case law. The Competition Act provides for the applicability of EU Regulations also to agreements and decisions that affect only the Greek market and do not have a European dimension. In addition to EU Regulations, the HCC has confirmed that it relies on European Commission guidelines and other soft law (e.g. notice on the submission of economic evidence) in its national cases. However, there is no HCC document setting out this general practice. Given this:

- The HCC should issue guidance, stating under which circumstances it will follow the European Commission guidelines and notices, e.g. in cases subject to Greek law and as regards its own procedures.

6.4. Institutional set-up

The HCC has become a respected institution in Greece and the stakeholders interviewed for this report appreciate its independence and expertise. The authority has also built a good track record in the courts, where the HCC's decisions tend to be upheld, even though the fines may be at times reduced. Some improvements could be made to better equip the institution with a suitable framework to strengthen independence. For instance, the selection and appointment procedures of the Members of the Board could be made more transparent, e.g. by advertising vacancies and introducing greater transparency in the recruitment procedure. Moreover, the procedure established by the Competition Act for the appointment of the President and of the Vice President

by a Parliamentary body³⁸¹ has not been applied in practice, pending an amendment of the regulations governing the functioning of the Greek Parliament. For the smooth operation of the HCC, it is important that the mandates of the Members of the Board, especially the Commissioners-Rapporteurs, do not expire all at the same time. In practice, Board Members have been appointed at different points in time, hence preserving the continuity of knowledge and experience of the Board, and the Competition Act contains certain safeguards to help a smooth transition. Finally, while both the HCC and the Ministry of Economy confirm that no influence is being exercised on the authority in its investigations, the Competition Act does not explicitly rule out the possibility for the HCC to request or accept instructions from the government or other entities.

A second set of considerations relate to the accountability of the authority. With the 2011 Competition Act, the HCC was granted the ability to set strategic objectives in performing its mandate. Ideally these strategic objectives should be communicated in a publicly available document, so that stakeholders are aware of the authority's objectives and can consider whether it has achieved them or not (OECD, 2014a). While the HCC does publish its objectives, they are not specific and seem to cover many of the authority's activities. Moreover, in order to improve the understanding of the impact of HCC's activities, as well as to enhance the HCC's accountability, the authority should consider (if budget is available) conducting *ex-post* evaluation studies (OECD, 2014). Evaluation studies attempt to assess the impact of competition authorities' decisions on the market. They can help to understand if an intervention achieved its objectives and, if this is not the case, to investigate the reasons why it did not.

Given the above, some measures could be considered to improve the governance of the institution and ensure independence, as follows:

- The relevant authorities could consider selecting all the Members of the Board following a clear and transparent procedure, involving a formal recruitment process and the submission of CVs by candidates.
- The authorities should maintain the staggered appointment of Board Members, as it occurs in practice, to maintain the expertise of the Board and ensure a smooth transition during renewals.
- Policy makers should consider amending the necessary Parliament regulations so that the Competition Act provisions about the

³⁸¹ Specifically the Conference of Presidents, see footnote 23.

selection of the President and the Vice President by Parliament (i.e. the Conference of Presidents) could be applied.

- Policy makers should consider amending the legislation so that the HCC could have the power to change its internal organisation, without the need for a Presidential Decree.
- Policy makers should consider specifying in the Competition Act that the HCC does not request or accept guidance from the government or other public or private entities in the performance of their duties, in line with the European Commission Proposal for an ECN+ Directive.
- The HCC should publish clear priorities in its Annual Report, or in another format, setting out its strategy for the following year.
- Depending on budget availability, the HCC should consider conducting *ex-post* evaluation studies of enforcement decisions.

6.5. Resources

The level and the source of funding of an independent authority will affect its operations and, ultimately, its effectiveness. The HCC is funded independently of the State budget, through a fee imposed on initial share capital and of each capital increase by limited liability companies in Greece. During the crisis, revenues have fallen and this puts pressure on the authority in its operations, e.g. covering expenses to conduct inspections.

A system of multiple approvals and controls is in place. The HCC is subject to *ex-ante* controls on expenses above a certain threshold and on *ex-post* controls on all expenses by the Court of Auditors. The Minister of Economy and Development has the responsibility of approving the HCC's budget, as well certain individual expenses. Within this framework, some of the controls may negatively affect the HCC's activities, specifically its ability to defend its decisions in court. The Greek Competition Act sets a maximum EUR 20 000 threshold (i.e. per law firm or lawyer, per year) for the fees for outside legal counsel representing the HCC in court, which in some cases appears to be lower than market rates.

The system of relying on outside legal counsels is applicable, as long as an internal HCC Legal Support Office is not operational yet. The Greek Competition Act provides for the establishment of a Legal Support Office to represent the HCC in court. According to the Competition Act, this department is staffed following a

proposal by the HCC to the relevant ministers.³⁸² If this unit was established, the general rules from the Code of Lawyers would apply to the selection of the lawyers working in the Legal Support Office, leading to the Bar Association playing a decisive role in the choice of the lawyers working for the HCC.³⁸³

Given the above, some measures could be considered to ensure that the authority is a well-funded institution and that it has sufficient flexibility within its approved budget, as follows:

- Policy makers should consider additional sources of revenues for the HCC budget (e.g. increasing merger filing fees), still independent of the State budget.
- Policy makers could consider lowering the maximum percentage of the authority's budget surplus to be submitted to the Central Treasury, from the current 80% level.
- Policy makers should consider removing the cap on outside legal counsel (EUR 20 000 per law firm or lawyer, per year).
- If the internal Legal Support Office becomes operational, policy makers should consider actions that would give the HCC, and not the Athens Bar Association, the ability to effectively select the experts to staff the Legal Support Office.

6.6. Efficiency of operations

Prior to the 2011 Competition Act, the HCC was required to reach a decision after a formal hearing on all complaints it received, creating significant administrative burden. With the 2011 Competition Act, the HCC was granted the power to prioritise cases and to dismiss complaints on prioritisation grounds with

³⁸² Article 20, paragraph 4, of the Competition Act.

³⁸³ This rule applies more generally across the public sector. As mentioned in Section 3, according to the supplemental MoU between Greece and the Institutions, “*the authorities will agree with the institutions the principles of future legislation, included detailed drafting where possible so as to bring these in line with best practices, including on issues relating to the conflicts of interest of the HCC's Board members and the staffing of the HCC's internal legal office, consistent with the general framework for the appointment of legal staff of the entities of the public sector, as defined by law*”.

a decision, but without a formal hearing.³⁸⁴ Following this change in the law, the HCC managed to reduce its backlog, compared with 2010, by more than 30% by end of 2016. As of 31 May 2018, the HCC had 164 pending cases, out of which 47 had been investigated and were expected to be closed soon by summary dismissal decision or because of low prioritisation.

However, the HCC could take further steps to clear its backlog of cases and to reduce their duration. Regarding the first issue, the HCC sometimes investigates and issues decisions on old alleged violations, while it could attach greater priority to more recent practices and agreements. Regarding case duration, observers have noted that the HCC could reduce the gap between the date in which the Board takes a decision and the date in which the decision is published. More generally, the HCC's internal organisation and processes are designed to ensure due process and ensure that all the facts of a case are broadly reviewed by more than one Directorate (i.e. the Legal Directorate and one of the Economic Directorates). This system of extensive review is probably not required for all types of cases. The HCC has confirmed that, depending on the case, teams may be leaner, i.e. without having the full hierarchy both from the Legal and the Economic Directorate. This approach should be encouraged and expanded, in the interest of efficiency.

Given the above, the following actions could be considered:

- The HCC should continue to engage in the prioritisation of new cases by the Directorate General and to take steps to reduce its backlog, e.g. by rejecting more old cases on priority grounds.
- The HCC should consider how to reduce case duration for antitrust decisions and follow more closely the indicative deadlines set in the legislation, e.g. by expanding the categories of cases dealt with by leaner teams.
- In order to improve the effectiveness of the investigation phase, the HCC should consider recruiting more staff with an IT background and providing training in forensic tools.

³⁸⁴ The HCC is still obliged, under the current system, to issue a decision (i.e. an act by the President) even for the dismissal of complaints upon prioritisation.

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Annex. Estimated consumer benefits from the HCC's interventions from 2002 to 2016

Sector	Case	Description	Impact
Food	Coca Cola-3E	Deduction system for sales targets, discrimination by wholesalers and retailers on the basis of exclusive co-operation with the company and contracts for the use of its refrigerators only for the company's own products.	Fall in market share ³⁸⁵
Food	TASTY FOODS SA	Multiple practices and methods, some of which with strong intensity and targeting, in the context of a single and long-term strategy of foreclosing its competitors and limiting their growth potential, from the most important channel of distribution of small sales outlets (kiosks, convenience stores, bakeries, mini-markets etc.)	Retained its leading position in the relevant market, but lost more than ten percentage points, due ³⁸⁶ to the elimination of its anti-competitive practices. Savings for consumers from that intervention could be above EUR 30 million.
Food	Baby milk	Legal restriction on the sale of baby milk exclusively from pharmacies.	Price drops following availability of alternative distribution channels. Households save EUR 120 on average per semester or EUR 3 million a year aggregate (IELKA) ³⁸⁷

³⁸⁵ According to reports (Self Service Retail Journal, issue January 2017, available in Greek at www.selfservice.gr/default.asp?pid=9&la=1&cID=20&arId=6958), the market share of Greek producer Loux have reached about 10% of the total beverage market, while in the category of soft drinks (non-cola products) it has reached about 30%.

³⁸⁶ According to Kathimerini newspaper (issue 11/2/2015) - www.kathimerini.gr/803141/article/oikonomia/epixeirhseis/diathrei-thn-hgetikh--8esh-sthn-agera-almrwn-snak-h-tasty .

³⁸⁷ www.ielka.gr/?p=2148. As shown by the study of the Consumer Goods Research Institute, (IELKA) which calculated the results of price research in Greece up to December on the markets of infant milk (0-6 months old), households with infants save the amount EUR 120 on average per semester or EUR 3 million a year aggregate compared to 2011 corresponding to an estimated saving of 15 million euro in consumer expenditure from 2012 to 2016. The survey shows that infant milk is on average available

Sector	Case	Description	Impact
Food	Domestic poultry-meat production	Illegal practices of horizontal pricing and customer allocation in order to coordinate their pricing policy and market sharing.	Reduction in the price of chicken Conservative assumption of 10% price drop ³⁸⁸ leading to EUR 150 million
Food	Athenian Brewery SA	Dominated by a single producer, Athenian Brewery SA, with a market share above 90% for many years. Athenian Brewery SA exploited its dominant position in the market by adopting and implementing a targeted commercial policy to foreclose and limit the growth potential of its competitors.	Rapid decline of the market share of Athenian Brewery SA which the HCC calculated at just over 50% for year 2015 ³⁸⁹ .
Food	Fruit and Vegetables	Abolition of market codes, abolition of obligatory notification of price lists, simplification of relevant regulations with regard to the relations between supply chain actors.	Significant retail price reductions, 6 to 9 percent on average, corresponding to an estimated

at 24.74 euros per kilogram and 9.40 percent cheaper through large supermarket chains compared to 2011 and at 26.78 euros per kilogram and 1.94 percent cheaper from online stores compared to 2011 when baby milk was sold only through pharmacies.

³⁸⁸ According to a report, based on data from the Greek Confederation of Trade and Entrepreneurship (ESEE), the reduction in the price of chicken in 2015 compared to 2014 is estimated at 17.39% (in contrast with the price of lamb that showed an increase at the time) and was attributed as the immediate effect of the decision of the HCC coming into force. The HCC estimated that with a more conservative assumption of a price drop by 10%, the consumer benefit could be over 150 million euros, since many companies of the sector were involved in that cartel with an aggregate turnover of above half a million euro at the year the decision was issued.

³⁸⁹ According to a January 2016 report from the Brewers of Europe on the contribution of the beer market to the European Economy in Greece, consumption, consumer spending and prices decreased somewhat in 2014, while an increase in production from microbreweries was observed. Beer drinkers have become receptive to new brands, but there is also a preference for Greek brands and for affordability, including a willingness to shift brands in search of promotions. The 2017 findings indicate that the number of active breweries have increased to 28. <https://brewersofeurope.org/uploads/mycms-files/images/2016/publications/economic-report-countries/greece.pdf>

Sector	Case	Description	Impact
		Regulation also included maximum wholesale and retail margins on (almost) all fruits and vegetables and was imposed on both locally produced and imported products. Also, according to the Hellenic Competition Commission sectoral study on fruit and vegetables in 2013, an exclusivity clause, which allowed only one central market to exercise organised wholesale trade within a specific prefecture, together with inefficient quality-control management and producers' limited negotiating power towards wholesalers had led to higher production costs in comparison with other countries in Southern Europe.	€256 million decrease in consumer expenditure ³⁹⁰ .
Electric Energy	Public Power Corporation	In the context of controlling the competition behavior of the Public Power Corporation, among others, the company, in the case of ex-officio interim measures, offered remedies to achieve the uninterrupted supply of electricity for all consumers, while ensuring the conditions for effective competition in the market.	Public Power Corporation's competitors are growing rapidly, having achieved a share of about 12% over a short period of time, according to LAGIE data (October 2016), despite the drop in demand ³⁹¹ .

³⁹⁰ On the effect of the abolition of the rules on the maximum selling price for certain fruit and vegetables according to Genakos, Koutroumpis and Pagliero (2014) were significant retail price reductions, 6 to 9 percent on average, corresponding to an estimated €256 million decrease in consumer expenditure.

³⁹¹ According to Article 2 (Part B, subsection B.2 of Law 4663/2015) from 1.1.2020 onwards, no undertaking which operates in the electricity markets of Greece's interconnected system and network is not allowed to produce or import, directly or indirectly, an amount of electricity exceeding 50% of total electricity output from domestic production units and imports, on an annual basis. Until 2019, the Hellenic Competition Commission will assess the feasibility of the above target and if failure to reach those levels is detected, appropriate measures will be proposed.

Sector	Case	Description	Impact
Gas	DESFA (Hellenic Gas Transmission System Operator S.A.) and DEPA (the incumbent gas supplier):	<p>Access to DESFA facilities/infrastructure was liberalized</p> <p>The supply of natural gas market and the secondary market of providing gas transmission service were liberalized, by enabling the Selected Customers and Users of the National System of Natural Gas - ESFA (which constitute competitors of DEPA) to obtain natural gas supplies from suppliers other than DEPA, for their own use or for resale and transmission;</p> <p>Separating the activities of supply and transmission of natural gas was introduced.</p>	<p>Greater flexibility for the customers concerning their contracts with DEPA was achieved</p> <p>Greater liquidity was achieved in the market with the creation of gas release program through online auctions (for the moment, 20% of the total quantity imported by DEPA);</p> <p>The capacity bound by DEPA at the network entry points was reduced, achieving more effective access of competitors in the market.</p> <p>DEPA's competitors developed at the market for wholesale supply of gas. Two of DEPA's competitors at the primary market imported gas from the existing pipelines.</p> <p>The industrial clients enjoy lower prices, having the opportunity to cover part of their needs with supplies straight from the auction program and the rest from the increased competition between suppliers.</p> <p>Similar effects are expected for the domestic clients when the monopoly of EPA in Attica, Thessaloniki and Thessaly is lifted.</p>

Sector	Case	Description	Impact
Professions		<p>Principle of professional freedom established, eliminating unjustified restrictions to the access and exercise of professions.</p> <p>The legislative changes abolished fixed prices or compulsory minimum fees and the requirement for an administrative license to practice a profession, replacing it by a simple notification accompanied by the necessary supporting credentials.</p> <p>Under the above framework legislation the HCC issued formal opinions to further liberalise restrictions in closed professions such as accountants and solicitors.³⁹²</p>	<p>Lower prices for consumers of services of real estate agents, legal professions, accountants, tax consultants and physiotherapists³⁹³.</p> <p>Positive effects on employment for the regulated professions as a whole</p> <p>The number of new entrants as a result of the reforms for notaries, auditors, tourist guides and chartered surveyors more than doubled in 2014 compared with the yearly average before liberalisation.</p> <p>HCC's decision on the amount of real estate agent fees set at 2% of the value and the restrictions on advertising as a substitution of the abolished relevant ministerial decision had a positive effect on the brokerage fees, resulting to lower levels, up to 0.5% on the value of the property for sale.</p>

Source: HCC replies to OECD questionnaire.

³⁹² Regulatory barriers on professional services were among the highest in the EU and OECD countries as shown by the published OECD PMR indicator in 2013.

³⁹³ According to Athanassiou, Kanellopoulos, Karagiannis and Kotsi (2015).

www.oecd.org/competition

