



Executive Summary

sector inquiry into basic consumer goods
sold in

SuperMarkets

PRELIMINARY REPORT: SECTOR INQUIRY IN THE FIELD OF PRODUCTION, DISTRIBUTION AND MARKETING OF BASIC CONSUMER GOODS AND IN PARTICULAR FOOD PRODUCTS AS WELL AS CLEANING AND PERSONAL HYGIENE PRODUCTS

1 INTRODUCTION

1.1 BACKGROUND

- 1 The Hellenic Competition Commission (“HCC”) following relevant press coverage at the time on price variations of basic consumer goods and due to the limited response to the public consultation on “[t]he Retail of Basic Food Products for Daily Consumption” (which ended on 31.5.2011), decided to further examine the issues that were the subject matter of the public consultation.
- 2 In particular, following the public consultation and after taking into account the developments in the market, on 16.2.2012, the HCC launched a sector inquiry according to article 40 Law 3959/2011 in the production, distribution and marketing of basic consumer goods and especially food commodities (dairy, butter, pasta, cereal and coffee), as well as cleaning and personal hygiene products (personal and oral health care products and home cleaners) (hereinafter referred to collectively as the supermarket sector).
- 3 During the collection of the relevant data regarding retail sales of these products and taking into account the economic crisis as well as the ensuing changes in the supermarket sector in Greece (higher levels of concentration and vertical integration), it became evident that the sector inquiry needed to focus in more detail on the relationship between supermarket chains and other players in the sector. Therefore, the HCC decided in 2014 to investigate further specific practices, which may cause distortions of competition, and suggest optimal rules for addressing them.
- 4 In September 2019 the HCC prioritised the sector inquiry in the supermarket sector. In order not to delay the publication of the relevant results any further, the available data (for the period 2015-2016) was used and the HCC decided to update the market study every two years, thereby taking into account subsequent changes in the sector. For the present publication, the collected data was supplemented by industry data from recent studies as well as data collected in the last three months of 2019 and early 2020.
- 5 This is an Interim Report. The final Report for the sector inquiry in the supermarket sector will be updated with data collected following a public consultation. The public consultation will take place from 13.04.2020 to 10.05.2020.

1.2 SCOPE AND OBJECTIVES

- 6 The present sector inquiry aims to outline the operation of the markets for the production and distribution of basic consumer goods.
- 7 First, it discusses the structure of the super market sector (Chapter 2) and analyses the selected eleven markets for specific products (Chapter 3). It then examines the bargaining

power of buyers/ suppliers by using dedicated economic quantitative and econometric analysis (Chapter 4). The study also covers specific discount practices (Chapter 5), category management (Chapter 6), private labels (Chapter 7) and buying alliances for specific basic consumer products and in particular food items along the supply chain (Chapter 8).¹

- 8 The sector inquiry identifies and discusses possible competition law problems along every stage of the supply chain. Finally, it proposes actions and suggests measures that will improve its effectiveness for the benefit of the final consumer.
- 9 It examines the entire supermarket supply chain for the supply of daily consumer goods. In assessing the overall economic impact of the retail sector, the value of the network and its links to other economic activities are taken into account. The retail value chain includes the sectors that supply products and services, but also distribution sectors of products for final consumption.

1.2 METHODOLOGY

- 10 In order to examine in detail the supply chain for basic consumer goods, the HCC collected primary data, either through questionnaires to market participants and/or through interviews with market experts. It supplemented such data with secondary literature and insights from relevant academic commentary as well as relevant publications of the European Commission and other competition authorities. Finally, it took into account relevant findings by other research institutes such as the Institute for the Research of Retail Consumer Goods (IELKA), ICAP, Stochasis, as well as institutions such as Eurostat and the National Statistics Service of Greece.

i. Choice of products

- 11 In the first phase of data collection (April 2014), the HCC contacted eleven (11) supermarkets and the data collected covered all product categories sold in supermarkets. This was followed by a statistical data analysis of the six (6) most important supermarkets in order to draw conclusions about those product categories that are of interest for further research. From the evaluation of the data, in September 2015, 11 product categories were finally selected, which are the focus of the present sector inquiry (Chapter 3 below).
- 12 During the second phase of data collection (November 2015) the number of survey participants has increased to a total of twenty-two (22) and the requested data have focused on the specific product categories.

ii. Choice of suppliers

- 13 During the third phase of data collection (May and June 2016) data was collected from a total of 182 suppliers, in order to further examine and evaluate the selected eleven (11) product categories.
- 14 The supplier selection criteria are summarised below:

¹ Note that references to chapters are to the full version of the interim report.

- From the large and medium-sized suppliers, the HCC selected those who represented more than 3% of the purchases of at least one supermarket chain².
- From the smaller suppliers, those who met at least one of the following criteria were selected: a) they supplied their products to at least four (4) out of six (6) supermarket chains and b) their cumulative share, ie their total sales to each supermarket chain were at least 1%, as a criterion indicating their production capacity.

15 Following the rapid developments in the supermarket sector through acquisitions between large groups, the HCC updated the research with more recent data from studies and questionnaires (October 2019 to February 2020) and reached conclusions, which form the subject matter of this Interim Report and the ensuing public consultation.

² Note that in recent years there have been some major market disruptions with respect to suppliers. As a result, these shares may have changed, which subsequently impacts the interpretation of the data.

2 SUPERMARKET SECTOR

2.1 RELEVANT MARKET FOR THE SUPPLY/DISTRIBUTION OF BASIC CONSUMER GOODS

16 The European Commission (“EC”) and the HCC have concluded that the market for the distribution of food products and other consumer goods for daily consumption is considered a distinct market, which aims to meet the current needs of households. Furthermore, according to the practice of both the EC and national competition authorities, in terms of potential competitive effects, this sector may be initially divided into two markets: (a) a supermarket **distribution market**, in which supermarket retailers operate as suppliers and (b) a **procurement market** for basic groceries.

2.1.1 Distribution markets for items sold in supermarkets

17 According to the decisional practice, the distribution market is further divided in a) the retail market and b) the wholesale distribution market for products sold in supermarkets.

2.1.2 Procurement market for items sold in supermarkets

18 The procurement market concerns the immediately preceding stage of the distribution of supermarket items and includes the sale of supermarket items by producers/ suppliers to customers/ buyers, such as wholesale or retail businesses and other companies (such as those in the HO.RE.CA. sector).

2.2 RELEVANT GEOGRAPHIC MARKET FOR THE SUPPLY/DISTRIBUTION OF BASIC CONSUMER GOODS

2.3 Relevant geographic market for the distribution of supermarket items

2.3.1.1 Retail Supply

19 The geographic market for the retail supply of supermarket items is initially defined at the prefecture level, where the market participants are active (as well as, as the case may be, of the neighbouring prefectures). In the case of islands, each island is in principle a distinct geographic market, due to the difficulties in travelling for the final consumer. The geographic markets affected by a concentration in the retail supply may also be defined on a more local level, where the participating companies maintain stores.

20 Accordingly, in merger cases the HCC has defined the relevant geographic markets initially at the prefecture level and further examined the local markets of the municipalities and / or specific areas within them based on the postal code of each individual target store, examining whether competing companies of local or Pan-Hellenic scope operated in these areas.

21 In recent cases, the HCC delimited the relevant geographic market locally up to 10 minute-drive time from the target store for urban areas and up to 30 minutes-drive time for semi-urban and rural areas, criteria which were applied equally in mainland Greece as well as in large and small islands. In these catchment areas, the conditions of competition are sufficiently homogeneous, and can be distinguished from neighbouring areas.

2.3.1.2 Wholesale supply

- 22 The HCC in its decisions concerning the wholesale market has determined the whole of the Greek territory as the relevant geographic market. Based on the activity of most wholesale companies in specific areas of Greece, it may be necessary to further divide the geographic market at the level of prefectures and/ or regions, to the extent that there is a significant degree of substitution.
- 23 In this case, any prefecture of mainland Greece may be used for the purpose of defining the relevant geographic market, as a geographical boundary within which the participating wholesale companies are active under sufficiently homogeneous conditions of competition and which may be distinguished from other neighbouring geographic areas, due to different conditions of competition that prevail in them.

2.3.2 Procurement market

- 24 In accordance with EC decisions, the procurement market extends to the entire Greek territory, based on supply substitution. The strengthening of the network of a supermarket chain increases the total volume of purchases made and consequently its position and bargaining power, the ability to impose terms and possibly the creation of economic dependency relationships with its suppliers.

2.4 THE SUPERMARKET SECTOR

2.4.1 Size

- 25 There are a number of chains and individual supermarkets, usually with long-term experience in the sector. Many of the major supermarket chains also have cash & carry stores, ie wholesale stores addressed mainly to professionals that buy in bulk.
- 26 Supermarket chains account for the majority of sales. In particular, in the five year period - 2014-2018, with the exception of 2014, supermarket chains accounted for more than 50% of total stores' sales and more than 80% of the total turnover in the sector.

2.4.2 Development of the main supermarkets/Groups

- 27 After the completion of a series of acquisitions, the ten largest groups operating in the market for the sale of supermarket items in 2018 have diversified compared to 2015.

Turnover (in thousand EUR) of the ten (10) largest groups for 2017 and 2018

Ten (10) Largest Groups	2017	2018	Change
Group Greek Hyper-markets SKLAVENITIS	2.524.292	3.011.502	19,30%
AB VASILOPOULOS	2.100.319	1.986.336	-5,43%
METRO	1.172.126	1.190.626	1,58%
MASOUTIS	761.589	770.349	1,15%
PENTE	482.772	449.970	-6,79%
KRITIKOS Group	229.807	310.348	35,05%
Market In	251.013	284.110	13,19%

Ten (10) Largest Groups	2017	2018	Change
SIN. MELON IN.KA P.E.	175.732	175.625	-0,06%
Bazaar	162.628	168.955	3,89%
Gountsidis AE	48.765	46.903	-3,82%
Total	7.909.043	8.394.723	6,14%
% of total sales through s/m & c&c	71,5%	74,0%	

Source: PANORAMA of Greek Supermarkets, No 23 – Autumn 2019, ICAP

28 In 2018, the ten largest groups recorded an increase in their sales by 6.14% compared to 2017 (ie by 485.68 million euros), almost double compared to 2017. Their sales amounted to 8,39 billion euros, an amount that represents about 40% of the purchases by Greek households in grocery items based on ELSTAT's relevant research. Sales of the ten (10) largest groups now account for 74% of total market sales. The corresponding percentage in 2014 is estimated at 65%.

2.4.3 Market Shares

29 The table below presents the market shares of the main supermarket chains in the Greek territory for the period 2016 – 2018.

Market shares of the main supermarket chains for the period 2016 - 2018

Supermarket Chain	2016	2017	2018
SKLAVENTIS Group	[15- 25]%	[15- 25]%	[15- 25]%
GREEK HYPER-MARKETS SKLAVENTIS	-	[5- 10] %	[15- 25] %
SKLAVENTIS	[10- 15]%	[10- 15] %	-
CHALKIADAKIS	[0-5]%	[0-5]%	[0-5]%
MART CASH&CARRY	[0-5]%	[0-5]%	[0-5]%
VASILOPOULOS	[15- 25]%	[15- 25]%	[15- 25]%
LIDL	[10- 15]%	[10- 15]%	[10- 15]%
METRO	[10- 15]%	[10- 15]%	[10- 15]%
MASOUTIS	[5- 10] %	[5- 10] %	[5- 10] %
PENTE	[0- 5] %	[0- 5] %	[0- 5] %
MAPKET IN	[0- 5] %	[0- 5] %	[0- 5] %
KRITIKOS	[0- 5] %	[0- 5] %	[0- 5] %
SYNKA	[0- 5] %	[0- 5] %	[0- 5] %
BAZAAR	[0- 5] %	[0- 5] %	[0- 5] %
GOUNTSIDIS	[0- 5] %	[0- 5] %	[0- 5] %

Source: Data based on published balance sheets (ICAP) και HCC data

2.4.4 Evolution of market concentration ratio

30 Acquisitions in the supermarket sector in recent years have led, as expected, to increased concentration. The CR4, CR 10 and HHI indices follow an upward trend throughout the period 2013-2018.

CR 4, CR 10 και Herfindahl-Hirschman index for the period 2013 - 2018

INDEX	2013	2014	2015	2016	2017	2018
CR4	[45-55]%	[45-55]%	[55-65]%	[55-65]%	[65-75]%	[65-75]%
CR10	[75-85]%	[75-85]%	[75-85]%	[75-85]%	[75-85]%	[75-85]%
HHI	832,95	881,10	1.010,14	1.060,51	1.244,38	1.296,08 ₃

Source: Data based on published balance sheets (ICAP) and PANORAMA 2019

- 31 In 2018, the price levels for consumer products and services showed a large discrepancy between EU Member States. In Greece, the price level was 84% of the European average, ie 16% lower than the European average⁴. Greece has the largest index among the countries examined in the category "Food and non-alcoholic beverages", but also in the category "Alcoholic beverages and tobacco".
- 32 Of particular interest for the purposes of this sector inquiry is the price index for food and non-alcoholic beverages, which are the main products traded by supermarket retailers. The price index for food and non-alcoholic beverages in Greece in 2018 is the highest compared to other Member States with a corresponding GDP per capita volume and stood at 5.9% higher than the European average.
- 33 Especially for 2018⁵ in the food category, the price level index was 104,9% for Greece⁶. The price level index for the individual categories that fall into the "Food" category was as follows: Bread and Cereal (114.5%), Meat (91.5%), Fish (107.1%), Milk, Cheese and Eggs (134.2%), Oils & Fats (118.7%), Fruits, Vegetables, Potatoes (82.7%) and Other foods (139.1%).
- 34 Finally, although the degree of concentration in retail sales is rather modest based on the aforementioned market shares and although the market power of supermarkets is usually associated with high market shares, it is noted that there are other sources of bargaining power which cannot only be quantified by market shares. Consequently, the present study proceeded with a thorough analysis of the bargaining power, both theoretically and empirically with conventional and innovative tools.

³ The HHI index for 2018 is slightly undervalued, as the financial data of some smaller supermarket chains were not available.

⁴https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Comparative_price_levels_of_consumer_goods_and_services#Overall_price_levels.

⁵ Eurostat News Release 95/2017 of 15.6.2017, Consumer price levels in 2016. (<http://ec.europa.eu/eurostat/web/products-press-releases/-/2-15062017-BP>).

⁶ The price level index provides a comparison with the EU average. If a country's price index is above 100 (EU average), the country under consideration is relatively more expensive than the EU average, while if the index is less than 100, then the country is relatively cheaper than the EU average.

2.4.5 Comparison of main characteristics - business models of the top 10 supermarket chains

- 35 From the comparison of the basic characteristics of the main chains that are active in the sale of supermarket items, some general conclusions can be drawn about their business models.
- 36 First of all, it should be noted that all major chains determine their **pricing and discount policy**, as well as advertising spending, **centrally and uniformly** for all the stores in their network.
- 37 Those of the major chains belonging to a **buying alliance** have chosen the [SM_103]. It is interesting to note that only the three smallest chains in the table above have joined a buying alliance.
- 38 Most chains have also opted to be active in both the **retail and wholesale supply** of supermarket items having their own cash & carry stores.
- 39 **Private labels** are now an important part of the products in all major chains. For most chains, private label products account for 10% to 15% of their total turnover.
- 40 In recent years, large chains increasingly choose to develop their network through **franchising**.
- 41 Six chains have developed **loyalty programmes**, and one began using pilot loyalty cards in early 2020.
- 42 Even at the beginning of 2020, not all large supermarket chains have an **online store**, while the online stores of most chains have been developed in only the last three years.
- 43 Chains spend less than 1.5% of their turnover for **advertising**. The cost of advertising as part of the turnover varies between different chains. Based on this cost, the chains can be categorized into three broad categories: spending less than 0.5%, spending up to 1% and spending up to 1.5% of their turnover for advertising.

2.4.6 Store network

- 44 In the last decade there have been changes in the stores of the main supermarket chains, both in terms of their number and typology and in terms of their geographic coverage.

2.4.6.1 Store number and typology

- 45 At the beginning of 2019, approximately 4,777 supermarkets operated nationwide, according to PANORAMA of Hellenic Supermarkets, of which 2,492 (52%) belonged to supermarket chains. Despite the expansion of the supermarket chains' network of stores, the presence of individual supermarkets is still important, even when the franchise stores are taken into account.
- 46 The number of stores belonging to the largest supermarket chains is dynamic. It has increased both as a result of the acquisitions that have taken place as well as the operation of new stores. In early 2020, the largest supermarket chains operated a total of 2,850 stores (including franchise).
- 47 The majority of stores of the largest chains are supermarkets.
- 48 Only four chains ([SM_41], [SM_9], [SM_31] and [SM_42]) operate hypermarkets. Most hypermarkets operate in large urban areas and especially in Attica and Thessaloniki.

- 49 Large supermarket chains, except for [SM_1] and [SM_31], do not seem to place much emphasis on the operation of mini-market stores.
- 50 Finally, most of the large chains are active in the wholesale supply of supermarket items, through the operation of cash & carry stores.
- 51 Contrary to hypermarkets, cash & carry stores are spread geographically.

2.4.6.2 Geographic coverage

- 52 Greece has one of the densest supermarket chains network in the world, which creates higher costs for businesses, but also makes it easier for consumers to access supermarkets. The main networks have expanded over the last five years and now five out of the ten largest supermarket chains have stores in all regions of the country.
- 53 The majority of the 2,850 stores operated by large supermarket chains in early 2020 are located in the prefecture of Attica.
- 54 At the end of 2018, 42% of all stores operating in the territory belonged to individual supermarkets.
- 55 The penetration of large chains, in terms of the number of stores that they operate, varies region by region and as a rule does not significantly exceed 50% of the estimated total of stores. In the South Aegean, large chains operate only 25% of the stores, while in the Ionian Islands the corresponding percentage is 30%. The largest penetration of the chains is observed in Attica and amounts to 75% of the total estimated stores, followed by Crete and Central Macedonia.
- 56 It should be noted, however, that the presence of individual supermarkets does not translate into the realization of correspondingly important sales. In 2018, although the big chains own 52% of the total stores in the country, 85.7% of the total sales were made by their stores.

2.4.7 Distribution networks

- 57 Supermarket chains are supplied with products from the company's storage / distribution centres and directly from suppliers.
- 58 Large supermarket chains have at least one storage / distribution centre in Attica or Viotia. Many of the large chains also have a storage centre in the prefecture of Thessaloniki.
- 59 The acquisitions in the sector industry also led to a concentration in the central storage areas.

2.5 SIZE OF ONLINE COMMERCE

- 60 The online sales channel is characterized by its very small contribution to total sales compared to other sectors of the economy. According to Convert Group's eRetail Audit service, which records the sizes and consumer trends for e-commerce, sales through online channels amounted to 28.5 million euros in 2018, an amount that represents about 0.33% of total sales⁷.
- 61 Until the beginning of 2020, the market players' predictions for the development of e-commerce were conservative. In particular, there was an increase in online sales, albeit at a slower pace, and there was no forecast that online sales would account for a significant part of total retail sales in the near future. However, recent developments with the spread of

⁷PANORAMA of Greek Supermarkets, vol. 23, Autumn 2019.

COVID-19 have changed the landscape. The increase in demand for online supermarket sales has been so rapid that supermarket chains have been unable to serve it in a reasonable amount of time with their existing infrastructure. Although the increase in demand is expected to subside after COVID-19, the change in consumer habits and the resultant adaptation of the supermarkets' infrastructure to cater for online sales may impact the development of online sales.

3 ANALYSIS OF SELECTED PRODUCT CATEGORIES

62 The sector inquiry focused on eleven (11) product categories, namely: (1) cured meat products, (2) soft drinks - ready-made tea - energy drinks - sodas, (3) powdered laundry detergents, (4) yogurt and yogurt desserts, (5) cereals for breakfast, (6) pasta, (7) coffee, (8) pulses, (9) feta cheese, (10) toilet paper and (11) sliced bread.

63 These categories comprise products characterized by relative homogeneity, products that may present certain structural characteristics in the relevant supply market (possible dominant position or oligopoly or competition), impact the Consumer Price Index and differ in terms of penetration of private label products.

3.1 KEY CONCLUSIONS FOR EACH PRODUCT CATEGORY

3.1.1 Sliced Bread

- ✓ The market for branded and private label products is uniform.
- ✓ Brands are not very important to consumers.
- ✓ Most companies claim that there are no "must-have" brands.
- ✓ There are no significant entry barriers.

3.1.2 Cereal

- ✓ The market for branded and private label products is uniform.
- ✓ Brands are not very important to consumers.
- ✓ There are no significant entry barriers.

3.1.3 Pasta

- ✓ The market for branded and private label products is uniform.
- ✓ Companies' responses on the importance of brands to consumers vary.
- ✓ There are no "must-have" brands.
- ✓ There are no significant entry barriers.

3.1.4 Cured meat

- ✓ The market for branded and private label products is uniform.
- ✓ Brand loyalty is diminishing.
- ✓ There are no "must-have" brands.
- ✓ There are no significant entry barriers.
- ✓ Private labels account for a rather large market share (>25%).
- ✓ A large percentage of sales is achieved through retail channels (>56%).

3.1.5 Yogurt and yogurt desserts

- ✓ The market for branded and private label products is uniform.
- ✓ Companies' responses on the importance of brands to consumers vary.
- ✓ There are no entry barriers.

3.1.6 Feta cheese

- ✓ The market for branded and private label products is uniform.
- ✓ Consumers place importance on brands, though in recent years brand loyalty is diminishing.
- ✓ There are no "must-have" brands according to the majority of responses.
- ✓ There are no entry barriers.

3.1.7 Pulses

- ✓ The market for branded and private label products is uniform.
- ✓ Consumers place importance on brands.
- ✓ There are no "must-have" brands.
- ✓ There are no entry barriers.
- ✓ Private labels account for a high market share.

3.1.8 Coffee

- ✓ The market for branded and private label products is uniform.
- ✓ Companies' responses on the importance of brands to consumers vary.
- ✓ There are "must-have" brands: Nescafé for instant coffee, Loumides and Bravo for Greek coffee and Jacobs for filter coffee.
- ✓ There are no entry barriers.

3.1.9 Soft drinks - ready-made tea - energy drinks - sodas

- ✓ The market for branded and private label products is uniform.
- ✓ "Must-have" brands include: COCA COLA, PEPSI, Red Bull, Gatorade, Powerade and Lucozade.
- ✓ There are no entry barriers.

3.1.10 Powdered laundry detergents

- ✓ The market for branded and private label products is uniform.
- ✓ Consumers place some importance on brands, though in recent years brand loyalty is diminishing.
- ✓ There are no "must-have" brands.
- ✓ There are no entry barriers.

3.1.11 Toilet paper

- ✓ The market for branded and private label products is uniform.
- ✓ There is no brand loyalty.
- ✓ There are no “must-have” brands.
- ✓ There are no entry barriers.
- ✓ Private labels account for a large market share (>45%).

3.2 CONCLUDING REMARKS

- 64 In all product categories, according to the majority of suppliers the result of the economic crisis was an increase in repayment time. In addition, due to the crisis there is higher concentration in the retail sector and an increase in the bargaining power of supermarket chains, both due to the increased share and the need to lower prices through more offers.
- 65 In all product categories, the majority of respondents claim that private label products are interchangeable with branded products, especially in recent years when due to the economic crisis, the majority of consumers choose products based on their price, which has led to continuous offers on branded products which in turn have led to price convergence between branded products and private label products. In addition, in recent years consumers recognise private label products as qualitatively equivalent to their respective branded labels.
- 66 The penetration of private label products is much higher, about [25-35]% and above, up to [65-75]%, for products that show uniformity, fresh products or products available in bulk, products with less built-in know-how and therefore low advertising spending, which is not able to create brand loyalty and for this reason consumers choose mainly based on price. Such product categories include pulses ([55-65]% private label product penetration), cold cuts (not likely premiums with penetration grade ([25-35]%), toilet paper ([65-75]% penetration rate) and pasta ([25-35]% penetration rate). A special case is sliced bread for which the penetration rate reached [25-35]% in 2013 and then began to decline. On the contrary, for products where there is a leading company or 1-2 more companies with very significant shares and due to the significant advertising spending that boosts brand loyalty private label products have a lower penetration rate (less than [15-25]%). In these product categories, research for the creation of new or differentiated products of high quality and usually taste differentiation (soft drinks, coffee, cereals for breakfast, packaged yogurts) that enhances brand loyalty is particularly important and seems to suspend the expansion of private labels in these markets, as evidenced by the stability of their market shares ([15-25]% in cereals, less than [10-15]% in all coffee categories except filter coffee, [5-10]% in soft drinks and [10-15]% in yogurts). For these products, contrary to voices that suggest that spending on research and development is limited with a resulting significant penetration of private labels until 2015, new products are constantly being developed (such as stevia soft drinks, new cereal flavors, more companies producing espresso capsules, new packaging and yogurt flavors). The same seems to be the case with detergents (degree of penetration of P-L products up to [10-15]%) where brands have a high technology and complexity in their chemical composition.

67 The main entry barriers according to the majority of suppliers are:

- The difficulty in establishing a distribution network nationwide, due to the lack of financially and commercially viable partners, the existence of exclusive distributors in some cases but also due to the geographical characteristics of the country (eg a large number of islands).
- The high cost of entering the supermarket shelves (listing / entrance fees) as well as the limited space on the shelf due to "must have" and P-L products.
- The high advertising cost especially for products where there are leading companies and "must have" brands.

68 In some instances, where the market is mature, it is stated that existing contracts with suppliers meet the needs of the market and make it difficult for new businesses to enter (e.g. cold cuts, soft drinks, feta). Especially in the feta cheese market, the strengthening of the bargaining power of supermarkets over suppliers comes mainly from the accumulation of large sales in supermarket chains, the creation of purchasing groups, the expansion of stores, the expansion of store networks, the strengthening of private labels and the creation of modern central warehouses in conjunction with the implementation of logistics.

69 Regarding the specialization of companies in satisfying demand through different distribution channels, it is noted that in the categories of cereal, the majority of suppliers carry out the largest percentage of their sales (over 90%) from supermarket chains. In the sausages, pasta and feta cheese categories, suppliers are either specialized in the supermarket retail channel (with shares over 80%), or have a more balanced distribution between supermarkets and wholesale. In the case of detergents and sliced bread, there are suppliers who focus on sales to wholesalers and others on sales through supermarket chains. In the case of packaged yogurts as well as cereal and especially cereal bars, it is interesting to note that some companies sell more than 50% of their sales exclusively to small outlets (mini markets and convenience stores). In the soft drink market, there are companies that focus their sales either on wholesale, retail or even on the catering industry (HO.RE.CA). In the coffee market, it seems that some companies make more than 70% of their sales through supermarkets, while there is a company that operates in the mass catering market HO.RE.CA. and in general wholesale at 90%. Finally, in the toilet paper market, the largest percentage of sellers' sales (from [70-80]% and [95-100]%) is carried out through the supermarket channel. From the above, it seems that there are a total of 4 distribution channels (supermarkets, wholesalers, catering (HO.RE.CA.) and small retail outlets) in each of which new and smaller suppliers can choose to specialize.

70 In all product categories, it is stated that there are no exclusivity clauses or other restrictions on the supply, distribution and promotion of products in the contracts of suppliers-retailers, which do not usually exceed one year. No company is obliged to report on competitors' offers nor is there a commitment by the customers/ retailers not to accept a more favorable offer from a competing supplier.

71 In all product categories other than cold cuts and sliced bread, the majority of contracts between suppliers and supermarkets are the same for all products in the category, while in

cases where there is a difference in contracts (in a larger percentage in the categories of cold cuts and sliced bread), this usually takes place at the supermarkets' initiative.

- 72 Contracts between suppliers and supermarkets vary by customer at a different rate in the individual product categories. The majority of suppliers in the categories of cereal, pasta, coffee and toilet paper stated that their contracts do not differ per customer/ supermarket. On the contrary, the majority of suppliers in the categories of cold cuts, soft drinks, detergents, pulses, feta cheese and sliced bread stated that they differentiate contracts per customer/ supermarket and the differentiation is based on various criteria, such as the volume of the customer's total sales, the possibility of implementing promotional activities, the range of the network of stores and the way of distribution and the terms of payment. In the yogurt market, the answers are evenly distributed, with half of the suppliers reporting that they differentiate their contracts per customer/ supermarket. The above is also taken into account with the answers of the supermarkets, which accept that a percentage of [45-55]% in the categories of pasta ([45-55]%), yogurt ([55-65]%), coffee ([45-55]%), cold cuts ([55-65]%), cereal ([55-65]%) and sliced bread([45-55]%) contracts are usually predetermined by supermarkets themselves , while the same percentage is lower than [45-55]% in the categories of soft drinks ([35-45]%), detergents ([35-45]%), pulses ([35-45]%), feta ([45-55]%) and toilet paper ([45-55]%).
- 73 In all product categories, the majority of suppliers report that negotiations with buying alliances take place at a central level, while some report that agreements take place at the supermarket chain level.
- 74 Regarding the payment days of supermarkets in relation to whether or not there is a discount agreement based on early payment, what results from the answers of [SM_52], [SM_9], [SM_34], [SM_45] and [SM_119], which were the only ones that provided specific information, is that each supermarket chain at that time had a different credit policy.

4 BARGAINING AND BUYER POWER

4.1 INTRODUCTION

- 75 Buyer power connotes the ability of a buyer to influence the terms and conditions under which the contractual goods are procured⁸. It may be either the result of the buyer's strategic advantages or may result from the existence of a dominant or collective dominant position in the input market⁹. In any case, it is linked to the possession of increased bargaining power by the company operating in the upstream or downstream market, i.e. the ability of this company to impose a deviation from the price or quantity that would be available under competitive conditions¹⁰. In other words, buyer power is manifested as the buyer's ability to extract from his supplier a wholesale/ supply price (either directly or indirectly, through discounts, benefits, etc.), which is below what would prevail under competitive conditions.
- 76 In view of the subject matter of this sector inquiry, the following analysis focuses on examining the issue of buyer power in the retail market. After all, the study of buyer power and its impact on competition is particularly important for daily consumer goods markets.
- 77 It is important to clarify here the terminology used in this study. Bargaining power can be defined as the ability of a company to deviate from the price or quantity resulting from competitive conditions in the market in which the transaction takes place, whether this company is a buyer (in this case it includes the concept of “purchasing power”) or a supplier (in this case it includes the concept of “selling power”).
- 78 Bargaining power can impact both price and non-price terms¹¹. Large supermarket chains, in many cases, are able to control pricing by controlling certain issues such as commissions, discounts, advertising charges and product placement charges on shelves, promotion costs, terms of payment deadlines and settlement discounts¹². This one-sided control of commercial terms reflects the purchasing power of large supermarkets chains¹³.
- 79 The complexity of the concepts of bargaining and purchasing power is also reflected in the difficulties when developing appropriate measurement methods.

⁸ Βλ. OECD, *Buyer Power of Multiproduct Retailers*, DAF/CLP(99)21,18.

⁹ A Ezrachi και M Williams, ‘Competition Law and the Regulation of Buyer Power and Buyer Cartels in China and Hong Kong’ [2014] 9 *Asian Journal of Comparative Law* 295.

¹⁰ I Lianos και C Lombardi, ‘Superior Bargaining Power and the Global Food Value Chain: The Wuthering Heights of Competition Law?’ σε *Competition Law and Policy and the Food Value Chain* (Concurrences No 1-2016),23, I Kokkoris, ‘Buyer Power Assessment in Competition Law: A Boon or a Menace?’ [2006] 29 *World Competition* 139, RG Noll, “‘Buyer Power’ and Economic Policy’ [2005] 72 *Antitrust Law Journal* 589, WS Grimes, ‘Buyer Power and Retail Gatekeeper Power: Protecting Competition and the Atomistic Seller’ [2005] 72 *Antitrust Law Journal* 563.

¹¹ A. Choi and G. Triantis, The Effect of Bargaining Power on Contract Design (2012) *Va. L. Rev.* 1665.

¹² Reardon, T. & Gulati, A. (2008). The rise of supermarkets and their Development Implications, International Experience Relevant for India. International Food Policy Research Institute (IFPRI) and Michigan State University. IFPRI Discussion Paper 00752.

¹³ Clarke R., S. Davies, P.W. Dobson and M. Waterson, *Buyer Power and Competition in European Food Retailing* (Edward Elgar 2002).

4.2 MEASURING BARGAINING AND PURCHASING POWER: QUANTITATIVE ANALYSIS

- 80 Supermarkets are the main channel through which households buy a wide range of food products and other consumer goods. The particular importance of purchasing food products and other consumer goods for daily consumption (supermarket items) in terms of social welfare increases the interest for better understanding of how the terms and conditions of supply of firms operating supermarket chains are defined, as they relate to the formation of the final prices offered to consumers.
- 81 In this context, there exists an extensive public debate on the bargaining power (i.e. the power of supermarkets), in relation to their suppliers, in the food retail sector and many competition authorities have conducted sectoral studies for this issue¹⁴.
- 82 This sector inquiry contributes to this debate. It proposes an innovative view of the methods for measuring negotiating power and provides a (further) empirical basis for its measurement. The main issues therefore arise, whether and how the increase in concentration along the supply chain of selected products affects the conditions and what effects are associated with it. The finding of a high or increased concentration in the consumer retail supply market may, from an economic and theoretical point of view, jeopardise the competitive process.
- 83 Horizontal competition and vertical competition coexist in competition law and complement each other in the representation and implementation of the relations between the players in the relevant market. In a value chain, competition is horizontal in nature when it concerns competition between real or potential competitors at the same level of the value chain¹⁵. Vertical competition concerns different levels of the production or distribution chain, such as manufacturers and wholesalers or retailers, and arises in such cases from competition between the different parties in the value chain for the largest percentage of surplus value generated (by the value chain), in product and service markets, or on financial markets.

4.2.1 A proposition of indicator of vertical market power¹⁶

- 84 In contrast with simple or direct vertical (power) theories based on the analysis of the horizontal concentration of the market (e.g. through the use of a concentration or market share index) and thus focus on horizontal competition, vertical competition theories focus

¹⁴ For examples see, study of German competition authority (Sektoruntersuchung Lebensmitteleinzelhandel: Darstellung und Analyse der Strukturen und des Beschaffungsverhaltens auf den Märkten des Lebensmitteleinzelhandels in Deutschland, 2014), finish competition authority (Study on Trade in Groceries: How does buyer power affect the relations between the trade and industry?, 2012) and of UK (The supply of groceries in the UK market investigation, 2008).

¹⁵ See. Communication from the Commission 2011/C 11/01 Guidelines on the application of Article 101 TFEU to horizontal cooperation agreements. There are also horizontal cooperation agreements between non-competitors, e.g. between two companies operating on the same product markets but on different geographic markets without being potential competitors.

¹⁶ See in general B. Carballa Smichowski & I. Lianos, Vertical Power and Competition Law: Concept and Metrics (CLES, Research paper 3/2020), forth.). The quantitative analysis of this Study based on the data collected by HCC, was undertaken by B. Carballa Smichowski.

on vertical competition between firms belonging to different stages of the value chain, but still there does not exist a specific metric of that power.

- 85 This Section proposes a few new indicators of measuring vertical power in order to bridge the gap between these vertical power theories and more traditional horizontal market power theories for the analysis of anti-competitive practices. These indicators have their origin in the differential dependency theory of social exchange theory and the important role of a company's central position in a network or ecosystem (according to network analysis), especially with regard to both the possibility of unequal access to essential resources and the different “panopticon power” capabilities provided by the central positioning a company has in a value chain or network/ecosystem with regard to the different flows of information, which is particularly important in today's digital economy where access to data plays a dominant role in the development of competitive advantage.
- 86 Firm's differential dependency within a value chain can be a source of vertical power. In the context of this study, in order to analyse a metric for vertical power we will recur to network analysis and, in particular, to the notion of centrality to represent a firm's power, in a value chain or ecosystem. Building on the indicator of centrality that better translates the notion of resource-based differential dependency (betweenness centrality), we propose a metric that can be used to assess a firm's power within a value chain arising from this source, and not only by assessing its interdependency from resources (eg. selling/buying a good or service, licensing a patent, etc.).
- 87 Central firms are those on which the whole value chain depends more to function because they perform tasks that are more necessary to assure the overall coordination of the value chain. This is also the ultimate reason of its resource-based vertical power based on differential dependency. This form of market power is vertical in that it is exerted from suppliers to buyers or vice versa, and it is ‘fully’ vertical in that it affects the whole value chain and not only the upstream or downstream tiers directly linked to the firm exerting it (“fully vertical market power”).
- 88 Given that each firm's level of vertical power corresponds to its share of the sum of the square betweenness centralities of all of the firms (nodes) of its value chain, a simple way of assessing the level of power imbalances within a value chain would be to calculate the standard deviation of this indicator. However, the level of standard deviation is only interpretable for a given variable. This is graphically represented, as the shortest route defined as a minimum number of nodes that one must pass through to get from point A to B.
- 89 A firm's betweenness centrality relative to other firms' ('relative centrality') translates its differential dependency within the value chain. Hence, our metric of vertical power has to be able to give us two different values for two firms that belong to different value chains and have the same betweenness centrality but different relative centralities and can be measured as its share of the sum of the square betweenness centralities of each node (firm) of the value chain. However, because this metric is firm centric, it does not tell us what is the level of vertical power differentials within a value chain, a piece of

information that could be useful to do a more aggregated analysis of power (at the level of an ecosystem or value chain), especially from an antitrust perspective.

90 Hence, in order to be able to compare the level of vertical power asymmetries between several value chains, we will use an indicator to assess the level of power imbalances within a value chain, given by the following equation.

Equation: Value chain level resource-based vertical market power imbalances based on differential dependency for a node x

$$\frac{\sqrt{\frac{1}{n} \sum_{i=1}^n SSBC_i^2 - \overline{SSBC}^2}}{\overline{SSBC}}$$

where SSBC stands for “share of square betweenness centrality”

91 The indicator in the above Equation measures the level of market power in a value chain resulting from resource-based vertical power based on differential dependency. The higher the indication of the above equation is, the more imbalanced power is among market players in the value chain.

92 This sector inquiry calculates supply-chain level of vertical market power in terms of dispersion of firm-level vertical market power [which is in turn measured as the share of square betweenness centrality (SSBC)] for a given supply chain. However, given the high number of firms with close-to-zero square betweenness centralities (i.e. firms with irrelevant amounts of vertical market power) found in every supply chain, we have excluded from the sample the ones with a share of SBC lower than 1%.

93 The Table below shows the results of this calculation for the 11 product categories.

Supply-chain-level of vertical market power and percentage of vertical market power held by suppliers for 11 product categories

Product category	Standard deviation of firms' shares of SBCs with a share of SBC>1%	Percentage of vertical market power held by suppliers
Refreshments	[25-35]%	[85-95]%
Coffee	[25-35]%	[85-95]%
Detergents	[15-25]%	[75-85]%
Feta Cheese	[15-25]%	[65-75]%
Charcuterie – cold cuts	[15-25]%	[65-75]%
Pasta	[10-15]%	[65-75]%
Bread (toast)	[10-15]%	[65-75]%
Cereal	[10-15]%	[55-65]%
Pulses	[5-10]%	[55-65]%
Yogurt	[5-10]%	[55-65]%
Toilet Paper	[5-10]%	[45-55]%

94 The table above shows that the supply-chain-level vertical market power is far from being homogeneous across product categories. Indeed, it ranges from [5-10]% in the toilet

paper supply chain (a level that could be considered to be low) to [25-35]% in the refreshments supply chain, which could be considered to be high. Intermediary levels can be found within this range in other supply chains such as cold cuts or feta cheese. Note that this supply-chain-level of market power translates into firm-level vertical market power of the most powerful firms of each supply chain (either supplier's or super markets'). This will therefore be taken into account by HCC in its final report.

4.2.2 Empirical analysis of the factors affecting vertical market power (buyer power)¹⁷

95 In addition to the above analysis, this study also undertakes an econometric analysis of horizontal competition based on the data collected. The objective of the econometric analysis is to examine the interactions between companies operating supermarket chains and their suppliers in the formulation of supply conditions as a result of negotiations between them, which is linked to the supply price as a measure of bargaining power, mostly focusing on horizontal effects (horizontal competition) on specific markets.

4.3 CONDLUNDING REMARKS

96 Both empirical analyses attempt to approach the same issue from a different perspective. It is interesting that common conclusions can be drawn.

97 In particular, in the context of the econometric assessment, for the examination of the impact of the size of a supermarket size on bargaining terms, supermarkets were classified into two categories on the basis of their market share. In the category with firms possess a large market share, [SM_9] and [SM_45] were included.

98 According to the results of the empirical analysis, supermarkets with a larger market share achieve improved bargaining conditions, i.e. a lower purchasing price.

99 In addition, in the context of the econometric study, the ability of suppliers with a large market share to achieve better trading conditions was examined and confirmed in the half variants of the model where it was examined. Respectively, in the analysis based on the position/ centrality of a company in the value chain, it was found that suppliers that appear to play a central role in the purchase of products examined have a high market share (and most of them have strong brands).

100 By calculating the vertical power based on social network analysis, it emerged that the level of bargaining power is not homogeneous between the various product categories: it ranges between [5-10] %% for toilet paper (a level that could be considered low) and [25-35]% for soft drinks (a level that could be considered relatively high).

101 Regarding the distribution of vertical bargaining power in the market between suppliers and supermarkets in each of the supply chains, it is observed that in most of the above product markets the suppliers hold the first place (most) of the bargaining power in each supply chain, with the exception of pulses and toilet paper. This can be attributed to the strong presence of private label products in these markets. It is also noted that the level of bargaining power in the supply chain market is largely correlated with the share of

¹⁷ The quantitative analysis based on the data collected by HCC, was undertaken by Alexander Louka, PhD.

suppliers, which suggests that asymmetries in bargaining power are explained by the presence of strong suppliers. These suppliers have strong / recognizable brands that may influence the purchasing power of supermarkets, despite the concentration of the industry having increased in recent years.

Vertical market power distributed among central firms in the 11 aforementioned product categories.

Supplier (SUPL)& Super Market (SM) / Product Category	Firms' Position and (Share) bargaining power (SSBC)									
	Sliced bread	Bread	Pasta	Cold cuts	Yogurt	Feta cheese	Pulses	Coffee	Soft drinks	Detergents
SM_45						2 (10-15%)				
SM_9	2 (15-25%)	2 (15-25%)			2 (15-25%)	2 (10-15%)	1 (15-25%)	2 (5-10%)	2 (0-5%)	
SUPL_1			1 (45-55%)							
SUPL_12										1 (45-55%)
SUPL_18								1 (75-85%)		
SUPL_20						1 (55-65%)				
SUPL_4									1 (85-95%)	
SUPL_45										2 (25-35%)
SUPL_5		1 (35-45%)								
SUPL_52	1 (35-45%)									
SUPL_57				1 (45-55%)						
SUPL_63			2 (15-25%)							
SUPL_76							2 (15-25%)			
SUPL_8										
SUPL_84				2 (10-15%)						
SUPL_85					1 (25-35%)					

102 The analysis of the bargaining power based on the supply price demonstrates the role of a variety of factors in shaping the conditions achieved as a result of the negotiations between the companies operating supermarket chains and their suppliers. The majority of the variants of the model under consideration confirm the negative and statistically significant effect of quantity. An increase in the quantity supplied by supermarkets leads to an improvement in the terms they achieve, understood as a smaller net supply price. Negotiation terms appear to be further improved for supermarkets holding a larger market share, which further reduces the supply price, thus confirming most of the model's

variations. Examining also the ability of suppliers with a large market share to influence supply terms confirms the expected improvement in negotiation terms for these suppliers in the half variants of the model under consideration.

103 With regard to private label products, it was found that an increase in quantity has a lesser effect on the net supply price, which applies to all variants of the model. In addition, examining the impact of alternatives on supermarket companies, using the number of suppliers per category and per supermarket, it was found that the expected negative effect of an increase in the number of suppliers in trading terms is confirmed in several variants of the model. On the contrary, the expected positive effect of an increase in the size of a supplier, estimated on the basis of the total value of his products, on the net supply price paid by a supermarket business is confirmed in only a few cases.

104 In conclusion, the concept of bargaining power includes a variety of components that are not directly measurable, and the two analyses presented should be seen as complementary in approaching this complex issue.

5 DISCOUNTS - OFFERS

5.1 INTRODUCTION

105 In the context of this sector inquiry, the HCC collected relevant data in an attempt to detect different offers and discounts provided by suppliers, which can be described as "individualised" as a result of the negotiation process based on the specific commercial agreement between a supermarket and a supplier. The HCC collected data (period 2010 - 2015) from both supermarkets and their main suppliers, in order to draw conclusions regarding the benefit that supermarket chains gain from all the benefits and discounts provided by their suppliers. The HCC tried to decipher whether there is any resulting benefit for the final consumer.

5.2 Research results

106 There is no clear trend that larger supermarkets enjoy higher benefits and discounts from suppliers than medium-sized or smaller supermarkets.

107 However, in terms of the total amount of these benefits and discounts to gross purchases, this is quite high, resulting in the supermarkets' net purchases in value being significantly lower. Therefore, it is questionable whether these benefits are passed on to consumers in the form of lower retail prices, especially if we take into account that these discounts/ benefits are generally irregular, not related to the time of the pricing of the products concerned and are not directly included in the purchase cost at the time of supply.

108 Regarding potential consumer benefits, twenty-two (22) supermarket chains were asked about the use or not of loyalty cards. It has been found that the majority of supermarket chains place particular emphasis on the importation and use of loyalty cards by their consumers.

109 According to a survey (by Focus Bari) conducted to a nationwide sample of 600 consumers in 2017¹⁸, supermarkets belong to the sectors with the greatest use of loyalty and reward programs. The penetration of these loyalty cards in supermarket chains reaches 92%, with reward programs boosting the turnover of businesses significantly, as one (1) in two (2) reward card holders spends more on companies that reward them with discounts on prices and returns.

5.3 Novel types of discounts

5.3.1 Personalised offers

110 More and more supermarket chains are increasing the use of individualized offers, ie offers based on the profile of each consumer, mainly through the utilization of new technologies¹⁹.

¹⁸ <http://newpost.gr/oikonomia/637191/me-kartes-prosforwn-kai-ekptwsewn-toy-lianemporiou-kanoyntis-agores-toys-oi-perissoteroi-katanalwtes> and <https://www.reporter.gr/Eidhseis/Oikonomia/336657-Kartes-pistofhtas-Sthrigma-ston-katanalwth-kai-thn-epicheirhsh> (in greek).

¹⁹<https://www.kathimerini.gr/958763/article/oikonomia/epixeirhseis/proswpopoihmenes-prosfores-3ekinoynta-soyper-market> and data from NIELSEN (in Greek).

Such offers are given as a reward, in the sense that they are targeted to each consumer according to the individual's profile and will be provided not indiscriminately, but based on his loyalty to the store and the brand. It is estimated that individualized offers are the antidote to "price wars" that prevailed in recent years in the food retail sector.

111 For Greek standards, AB Vasilopoulos and My Market offer more advanced offers, resembling individualised offers.

112 Recently, there has been a development in other ways of monitoring the "personalised" offers provided by supermarkets to consumers. For example, such a method of tracking personalised offers is provided by the online platform-application Pockee, where on the one hand the offers of 19 supermarket chains and 27 large suppliers are concentrated and on the other hand there are exclusive bonus coupons for money returned. Personalisation in this case exists in the sense that the user can create in the application a list of products that interest him, so that he is informed about the relevant offers. He can also specify what his favourite supermarket chains are and the branches from which he usually shops.

113 In the next phase, it is estimated, based on the strategies the supermarkets seem to be adopting, that the individualised offers from the supermarkets will be designed in such a way as to take into account demographic characteristics and consumer habits, while some will be made in real time. Such practices, as well as other falling in the "grey area" and not explored in detail in this sector inquiry (eg. bundled rebates)²⁰ will be examined by the HCC in the future.

²⁰ See <http://www.oecd.org/competition/abuse/41772877.pdf> as well as OECD Roundtable 2016,, Fidelity rebates and competition, [https://one.oecd.org/document/DAF/COMP/M\(2016\)1/ANN4/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2016)1/ANN4/FINAL/en/pdf) , <https://www.oecd.org/daf/competition/fidelity-rebates.htm> .

6 CATEGORY MANAGEMENT

114 Category management is a business technique by which retailers distribute self-space per product category, sort products on the shelves and promote them. The use of this technique began relatively recently in the supermarket sector, though it has been used for several years for various other retail products.

6.1 SUPERMARKET RESPONSES

115 A total of twenty-two (22) supermarkets were surveyed, of which twenty-one (21) responded. Most of the answers received converge, and some of the supermarkets admitted that intervention practices in the placement of the products by categories were adopted by their suppliers.

6.1.1. *Product placement by categories in supermarkets*

116 Supermarkets were asked whether suppliers were directing them on how to place products on the shelves, and if this happens, they were asked to provide the relevant plans or other documents.

117 Nineteen (19) out of the twenty-two (22) surveyed supermarket companies answered the above question. All of them ruled out this behaviour from suppliers, adding that they do not accept guidelines on how to place the products. They clarified that the placement is done either empirically or with more complex criteria.

118 As for the relevant planograms, the supermarkets replied that they do not receive such documents from their suppliers. Furthermore, some of the supermarket companies responded that they do not keep plans for the placement of products in their stores, while others replied that they do have such plans, but such plans are put together and are processed solely by them, without the suppliers' participation.

6.1.2. *The level of dependence between product placement and related benefits and / or discounts and other terms – withdrawing supplies*

119 In order to clarify the scope and degree of dependence of supermarkets upon suppliers, supermarkets were asked for any existing or previous agreements that provide for direct dependence of the agreed final product price based on the location of the product in question on the shelf.

120 Nine (9) out of the twenty-two (22) supermarket companies answered the above question. Most of them gave a negative answer, namely that there is no agreement that the final purchase price of the product depends directly on the product's shelf place, nor are there any relevant discounts/ benefits.

6.1.3. *Criteria for category management*

121 The tables below list in detail the criteria mentioned and record the corresponding percentage (%) for product classification by supermarkets, as well as the criteria for withdrawing specific product codes.

Criteria for the introduction and withdrawal of product codes in supermarkets

Criteria for introduction	Relevant percentage
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Criteria for introduction	Relevant percentage
1. Consumer demand	75,95 %
2. Profitability	47,37 %
3. Innovation	26,32 %
4. Cooperation with suppliers	26,32 %
5. Meeting consumer needs	21,05 %
6. Similar products provided by competitors	15,79 %
7. Purchase price	15,79 %
8. Quality	15,79 %
9. Marketing support	10,53 %
10. Variety	10,53 %
11. Local production	10,53 %
12. Product (brand) recognition	5,2 %

Source: Relevant questionnaires

Criteria for withdrawal	Relevant percentage
1. Consumer demand	52,63 %
2. Innovation	47,37 %
3. Cooperation with suppliers	26,32 %
4. Increase in purchase price	10,53 %
5. Withdrawal by the supplier	10,53 %
6. Reduction of a specific category in order to promote another	10,53 %
7. Product replacement	10,53 %
8. Change in quality or packaging	10,53 %

Source: Relevant questionnaires

6.1.4. Exclusivity clauses

122 Twenty-one (21) out of twenty-two (22) companies answered the question about the existence of agreements with suppliers that include exclusivity clauses in the supply, promotion or distribution of products, of which twenty (20) stated that there was no relevant condition of exclusivity in any contract or even orally by a supplier regarding the product reference categories. Finally, according to the response of one of the supermarket companies, its suppliers stopped supplying it for reasons related to its solvency and due to its inability to meet its obligations.

6.2 CONCLUDING REMARKS

123 It can be deduced from the relevant answers that suppliers generally provide advice to supermarkets on the placement of their products (as well as competitors' products), even if such advice does not require the commitment of supermarkets and/ or not directly relate to lower supply prices or benefits to them.

124 However, despite their non- binding nature, these proposals could potentially be perceived by retailers as binding due to a suppliers' individual characteristics, such as its strong market position in the relevant market (eg dominant position). In particular, the survey results suggest that the vast majority of supermarkets refuse that they make requests to suppliers to determine the position of products by category and vice versa. On the other hand, some of the

suppliers stated that they only provide advice (not binding) to supermarkets on this particular practice.

- 125 As for whether there is a correlation between the placement of products of each category on the supermarket shelf and each supplier's / brand's market share, no common trend was identified. However, it should not be overlooked that the majority of suppliers stated that the development of private labels for all product categories (with the exception of powdered laundry detergents) has reduced the available shelf space.
- 126 Finally, despite the beneficial effects of category management in some cases, this practice can ultimately have the opposite effect on competition between retailers and suppliers, especially when a supplier has increased bargaining power.

7 PRIVATE LABELS (P-L)

7.1 TRENDS

- 127 In Greece, the development of private label products (private labels/P-L) has been advanced by the particularly difficult economic situation the country experienced between 2009-2013. Many consumers, due to the significant reduction in their disposable income, have changed their consumer behaviour and turned to private labels, which are offered at lower prices than the corresponding branded products. This prompted the industry's major chains to develop and expand the range of private label products on their shelves.
- 128 At the same time, investments to upgrade their quality and packaging, as well as promotions (eg brochures, offers), strengthened their competitiveness and gave more options to consumers. The consequence of the above was the significant increase in the total value of the domestic P-L market until 2014.
- 129 In addition, the development of P-L products has acted as a competitive pressure on the suppliers of branded products, which in their efforts to deal with the effects of the rise of P-L products have sharply increased their promotional activities and offers consumers, thus seeking to reduce their losses and keep the demand for their products stable. Therefore, the main advantage of private label products, i.e. their lower price, was limited (to some extent) due to frequent offers (reduction of product prices, 1 + 1 gift, etc.).
- 130 In this context, and given the competitive pressure exerted on P-L products by branded products, but also due to the supermarket chain's malfunction [SM_29] in 2016, the overall P-L market decreased by 9.5% in the period 2014-2018²¹.
- 131 The aggressive discount policy followed by branded goods suppliers in the previous years appears to have decreased in intensity in 2018, with the result that the P-L market has a small decline on an annual basis (-0.4%). However, in 2019 it is estimated that it has increase (+1.6%). According to ICAP's assessment²², such increase is due to:
- 1) the general development of the supermarket sector in the past two years;
 - 2) the relevant rise of [SM_52] which influences the sector due to its strong presence in P-L;
 - 3) the increase in the number and range of P-L in the major supermarkets
 - 4) the entry in the Greek market by SPAR through its collaboration with the buying alliance ASTERAS.
- 132 According to IRI's research²³, a parameter that is said to strengthen private label products concerns not only the attempt to de-escalate strong offers on branded products, but also the equally apparent willingness of supermarket chains to invest more in promoting their own brands. In particular, supermarket chains are upgrading P-L codes by offering sophisticated

²¹ ICAP 2019, 83-84.

²² ICAP 2019, 84.

²³ Βλ. <https://m.naftemporiki.gr/story/1507688/kerdizoun-simantiko-edafos-ta-proionta-idiotikis-etiketas> (in greek).

product lines, such as those produced by exclusive partnerships between these chains and small producers²⁴.

- 133 Finally, in terms of concentration, this is particularly high, because the five largest supermarket chains cover [85-95]% of the P-L market. The percentage of domestic suppliers of private label products is estimated at [85-95]%.
- 134 The P-L in the following product categories, i.e. pasta, cold cuts, toilet paper and pulses generally show an upward trend in their market share from 2010 to 2015.
- 135 P-L in the sliced bread product category generally show a downward trend in their market share from 2010 to 2015.
- 136 P-L in the coffee, yogurt and laundry detergent product categories show stable market shares from 2010 to 2015.
- 137 P-L products for cereal, feta cheese and soft drinks - ready-made tea – and energy drinks offer inconclusive results.
- 138 According to the data of the annual pan-Hellenic survey of the Institute for the Research of Retail Consumer Goods (IELKA) in 2017/2018 and based on a sample of 2,000 consumers from all over Greece, it appears that Greek consumers have matured significantly in relation to the use and selection of P-L, but continue to choose mainly branded products. The majority of consumers, according to a survey (about 2 in 3 consumers), consider branded products to be better in terms of quality, with 1 in 2 consumers stating that it is always better to buy branded products. The offers recorded in recent years in the Greek market have also played an important role in this development. 57% of Greek consumers stated that they prefer more offers (ie indirectly lower prices) - something in which branded products invest - rather than low prices (eg as recorded on the packaging of products) - something in which P-L have an advantage. According to IELKA research data, consumers save on average 12% of the value of their purchases from the supermarket through offers and discounts on branded products.
- 139 At the same time, the majority of consumers still increase the number of private label products they try-choose, but at a declining rate. This fact shows that over time, even slowly, the penetration of these products in the consumer basket increases, and also that there is room for further increase of this existing penetration.
- 140 However, the degree of penetration of P-L products is reflected in other research data, with consumers saying more strongly [35-45]% that the availability of private label products is a major factor when choosing a supermarket chain. This data shows that P-L are now part of the corporate identity and image of the supermarket chains.
- 141 Finally, it is noted that the quality image of these products has improved in recent years and the majority of respondents (58%) consider that private label products are of equal quality compared to the corresponding branded products. This is a result of the long-term investment of large supermarket chains in partnerships with local producers, which has led many retail companies to present their own product lines with a distinct identity and quality of local Greek products.

²⁴ IRI, 2019.

8 BUYING / PURCHASING ALLIANCES

8.1 OVERVIEW

142 The vast majority of the stores of the members of buying alliances (84% of the stores) are located outside the areas of Athens and Thessaloniki. The largest volume of stores is located in the region of Central Greece (19% of stores), followed by the regions of Central Macedonia (16% of stores), the Peloponnese (14% of stores) and the Aegean islands (14% of stores).

143 It should be noted that, in general, the existing buying alliances in Greece are domestic alliances between companies of approximately the same size (individual stores and small or medium supermarket chains), which were created with the main purpose of addressing competition by domestic large supermarket chains (especially due to their recent concentration trend) as well as foreign supermarket chains abroad. In other words, there is no "new generation" alliance, which includes a large retailer (national chain) and some of its smaller competitors.

144 On the other hand, the second largest company in the market (AB VASILOPOULOS) is controlled by the foreign Delhaize Group and is therefore a member of that international group.

8.2 ANALYSIS

145 Developments in recent years at European level show that the attention of competition authorities has shifted to buying alliances and the important role they play in the value chains in which they operate.

146 The creation of buying alliances is facing the need on the one hand to balance the bargaining power of buyers vis-vis large producers. In the Greek market, the creation of such alliances so far, seems to be related to the ability of small and medium retailers outside large urban areas to compensate for the strong pressure from the large supermarket chains of pan-Hellenic scope. Therefore, the main provincial alliances offer a local competitive solution to consumers but also offer market access to other producers who could not have achieved access to large chains.

147 On the other hand, the need to eliminate (and/or significantly reduce) bottlenecks, but also the possibility for an alliance to essentially serve as a platform for the exchange of information and coordination gives a different perspective to the treatment of buying alliances in competition law enforcement (especially in concentrated market settings).

148 The potential beneficial effects by the operation of a purchasing alliance need to be counter weighed against potential negative effects on competition, especially in an environment such as the Greek market, but also taking into account recent negative phenomena at European level. In any case, the emphasis must be on creating competitive structures and strengthening competition.

149 In the Greek retail market, which has experienced significant pressures and structural changes in recent years (in strengthening the concentration trend), constant vigilance is required in order avoid possible unilateral and coordinated effect of buying alliances.

- 150 Therefore, it should always be borne in mind that the ability of alliances to coordinate their behaviour always conceals the risk that this relationship may develop into a cartel (or already include such features). It further includes, within the Greek market, the possibility that the concentration of this purchasing power will lead to the marginalization of smaller competitors, as well as to the ultimate exploitation of both small and medium sized producers and consumers. Subsequently, supporting efforts maximizing the effectiveness or enhancing buyers' bargaining power may not be judged favourably if those factors are present, which create problems for the competitive process and consumers.
- 151 Additional measures may also be adopted to target those trade practices that may be pursued by a purchasing alliance that exploits its (concentrated) bargaining power over small producers (see the recent legislation in France termed "Egalim" law and EU rules introduced with Directive 2019/633).
- 152 In addition to merger control rules, there could be room for exploring the possibility of intervention in this sector to create better conditions for competition. For example, there could be a strengthening of control of the discount framework, the correlation with the costs of agricultural production, industrial prices, etc., ie a mapping of the agri-food chain, the existence of a special regulatory framework for trade practices of alliances as well as transparency obligations.
- 153 Eventually, other more targeted measures could be adopted to address possible abuses of purchasing power and asymmetries between the parties (through, for example, threats to cancel cooperation), but also to deal with non-compete clauses. Factors that exacerbate these phenomena such as seasonality could be further regulated, e.g. the conclusion of central agreements for the following year to take place before the end of this year.
- 154 Finally, with respect to competition law enforcement in retail markets, it is necessary to strengthen the competent authorities, to impose deterrent sanctions, but also incentives to provide information by affected producers to address the fear of possible retaliation.
- 155 Several of these suggestions will be implemented through the Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which although not specifically and exclusively refers to purchasing alliances, occupies and regulates their relations with producers. The new Directive is an important development aimed at regulating these practices (and their economic results) of the strongest parties in this chain, in order to address problems that may arise from the accumulation of purchasing power at the relevant level of the chain, therefore, relates directly to the commercial activities and relationships of the purchasing parties towards their suppliers.
- 156 However, the Directive only applies to food supply chains and therefore will not address these issues in other (non-food related) markets. Therefore, further regulation is necessary, either in the form of soft law, through the introduction of a Code of Conduct or a Best Practices Guide between the parties involved, or through the appointment of an Ombudsman or Commissioner, who will be appointed by the HCC, and who will systematically monitor the markets where significant bargaining power of suppliers or buyers is observed (see section 9 below).

9 CONCLUSIONS AND PROPOSALS

9.1 POTENTIAL PROBLEMS IDENTIFIED

157 The HCC may intervene by applying Articles 1, 2 and 5 to 10 of Law 3959/2011 (Article 101 and 102 TFEU and EU merger control equivalent), as well as Articles 101 and 102 TFEU, in order to address problems that harm the effective functioning of competition. In addition, when these tools are not adequate, it may, with a reasoned opinion, take all necessary measures to create conditions for effective competition in this sector of the economy (Article 11 of Law 3959/2011).

158 The following table provides a summary of the possible problems and the possible solutions/ reaction by the HCC and market players.

Non-concentrated market (at the moment) but existence of possible entry barriers	<ul style="list-style-type: none"> • Encourage entry to boost innovation • Vigilance regarding possible strategies to eliminate new players by players with significant bargaining power through vertical integration and other practices that may impede the competitive potential of e-commerce
Assymetry in the bargaining power of market players	<ul style="list-style-type: none"> • Monitoring the development of retailers' and suppliers' bargaining power, through detailed examination of vertical competition and quantitative data, especially for undertakings with a central role in the value chain
Entry barriers in supermarkets' shelf space/ "must" have products	<ul style="list-style-type: none"> • Monitoring the development of retailers' and suppliers' bargaining power
Penetration of private labels and increase in retailers' bargaining power	<ul style="list-style-type: none"> • Monitoring the development of retailers' and suppliers' bargaining power (with respect to the impact on private labels) • HCC vigilance regarding potential competition law problems, (with respect to payments and credit, especially if the retailer also has PL, e.g. delaying payments to certain suppliers)
Delaying pass on to suppliers	<ul style="list-style-type: none"> • Proposals on certain credit days– homogeneity • Proposal on a hybrid market regulation
Higher than the EU average prices	<ul style="list-style-type: none"> • Prices observatory for individual consumers (website, app) • Implementation of 'e-consumer' (already available)
Overdue credit payment	<ul style="list-style-type: none"> • Proposal on hybrid market regulation
Development of buying alliances	<ul style="list-style-type: none"> • Monitoring of the bargaining power of buying alliances • <i>Ex ante</i> control of the creation and modification of existing buying alliances • Implementation of Directive 2019/633

159 In the context of this sector inquiry, the HCC examined the evolution of retail in Greece, the trends that will emerge in the future and potential problems that may arise. In this context, the proposed solutions could aim not only to protect the consumer immediate surplus by boosting horizontal competition, but also promote indirectly consumer surplus

in the medium term by protecting efficient or potentially efficient suppliers by strengthening vertical competition.

160 It should also be noted that in the context of the rapid changes that have taken place in the market as a result of the COVID-19 pandemic, the HCC acknowledges that possible cooperation agreements between suppliers or retailers to ensure uninterrupted supply and fair distribution of products is not expected to lead to a reduction in competition. Even if such practices temporarily restrict competition, the HCC will assess the extent to which the effectiveness of uninterrupted and fair distribution is achieved, as well as their temporary nature and whether they are proportionate and absolutely necessary to achieve the above objectives.

161 Such agreements, depending of course on their legal and economic context, may first not fall under Article 1 (1) of Law 3959/2011 (and / or Article 101 (1) TFEU) and may not constitute restrictions of competition, based on the relevant *Wouters* type case law.²⁵ Also, possible cooperation agreements may, depending on their legal and economic context fall under Article 1 (3) of Law 3959/2011 (and / or Article 101 (3) TFEU), if they improve the quality dimension, economic efficiency and consumer surplus ensuring security of supply.²⁶

162 In addition, the HCC recognises that the exploitation of trading partners may not only take the form of higher prices. In some competition law regimes, the imposition of ‘unfair trading conditions’ (UTC) or ‘unfair commercial practices’ (UCP) may also constitute an abuse of a dominant position,²⁷ and this even if other areas of law, such as unfair competition or contract law may also apply in this occasion. The concepts of UTC and UCP are quite broad, and fuzzy, thus offering an important policy discretion to competition authorities and a high margin of interpretation to the courts to frame the scope of this legal category in the way they find appropriate.

163 The HCC will explore the possibilities offered by EU and domestic law to tackle most of the problems resulting from the exercise of superior bargaining power²⁸. However, Greek law offers more possibilities for intervention, even beyond the confines of EU law, in

²⁵ See case C-309/99 *Wouters*, ECLI:EU:C:2002:98; see also C-519/04P *Meca-Medina and Majcen v Commission*, ECLI:EU:C:2006:492. Contra Case T-90/11 *Ordre national des pharmaciens (ONP)*, ECLI:EU:T:2014:1049.

²⁶ See Commission (EU), “Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)” (COM(2006) 851 final), para 10; See also K Talus, “Long-term natural gas contracts and antitrust law in the European Union and the United States” (2011) 4 *Journal of World Energy Law and Business* 260.

²⁷ See, for instance, Article 102(a) providing as an example of abuse ‘directly or indirectly imposing [...] unfair trading conditions.’

²⁸ See, for instance, Article 102(a) providing as an example of abuse ‘directly or indirectly imposing [...] unfair trading conditions’; Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, [2019] OJ L111/59; European Commission, ‘Staff Working Document, Impact Assessment, Annexes, Accompanying the document, Proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services’ (2018) SWD(2018) 138 final; Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, [2019] OJ L 186/57.

particular by using the instrument of Article 11 of Law 3959/11 for firms with superior bargaining power. This option will be explored further in the Final Report.

9.2 PROPOSALS FOR PUBLIC CONSULTATION

164 Following the key findings and considerations regarding competition at various levels of the value chain, solutions are proposed. These solutions aim not only to protect consumer surplus in the short term by boosting horizontal competition, but also indirectly increase consumer surplus and economic efficiency in the medium term through the development of innovation, competitiveness and resilience of the supply chain. In the long run, the suggested solutions also aim at strengthening vertical competition in the affected value chains. The suggested solutions are:

- a. Adoption of soft law instruments through a hybrid approach to cases of significant bargaining power. Such non-binding legislation can be enacted, for example, through a Code of Conduct or a Good Practice Guide between the parties involved, with respect to the identified problematic practices, which may affect end consumers and/or suppliers. The development and adoption of such best practices can address more effectively and in accordance with the rules of fair competition external costs and supply side problems, especially under the current market conditions created by COVID-19;
- b. Possible legislative changes, e.g. amendment to the Rules for the Distribution of Products and the Provision of Services and;
- c. Possible introduction of new institutions, such as that of an Ombudsman, appointed by the HCC, which will systematically monitor those markets where significant power of suppliers or buyers is observed. Such new institutions can act as a hub for communication and information on relevant issues affecting the industry and will contribute in general to the audit work of the HCC.

165 With regard to the first proposal (Code of Conduct), it is proposed that a new Code will be introduced only for retail and supply chain practices, following consultation with the companies involved and relevant public institutions. As a flexible tool, this Code will be able to incorporate the potential problems, keep pace with the digital age and incorporate new challenges through e-commerce, e-commerce via mobile phones and targeted personalized offers and supermarket loyalty programs.

166 In the same vein, a Good Practice Guide, would involve all market participants through public consultation, and could be a dynamic and flexible tool for business relationships at every level of the value chain (as it will constantly be updated). This guide should be a complete guide for businesses and consumers alike and create a comprehensive framework for setting up best practices among businesses operating in the respective value chain as well as avoiding unfair or misleading practices. This Guide should also be a practical guide for informing consumers, especially in the digital environment where it is possible to extract available information/ data, compare, evaluate and select a supplier.

- 167 At the second level, the interim report suggests legislative changes for the modification of the existing institutional framework, such as the reform of the Rules for the Distribution of Products and the Provision of Services, through, for example, improving the respective monitoring services and abolishing overlapping responsibilities between various Ministries, which will help to remove the obstacles that distort the market.
- 168 The existing Code of Conduct for consumer protection during tenders, discounts and promotions (YA 56885/2014, Government Gazette B' 31/07/2014), which was adopted six years ago, does not appear to be sufficient and could also be amended and updated. In the first phase, it would be useful to have an official assessment of its compliance and the consequences of its implementation, followed by the scope of its revision. The fact that this Code of Conduct is accompanied by sanctions does not classify it as a tool for self-regulation but as compulsory law, so we need to weigh which reforms are necessary and which could be regulated in another context, which is also more flexible for change.
- 169 Thirdly, following the UK and Irish model the appointment of an Ombudsman is proposed, who will be overseeing the observance of the Code of Conduct or Good Practice Guide, both in terms of protecting consumers, especially in e-commerce, as well as protecting weaker parties in terms of bargaining power, when the exercise of bargaining power can have a negative impact on competition and innovation. The Ombudsman will be appointed by the HCC for the period of application of the Code and will be a person with significant experience in the industry and/ or in the law and economics of competition. The operating costs of the institution of the Ombudsman, which must be reasonable, are proposed to be borne by the companies that will be subject to the obligations of the Code.
- 170 The responsibilities of the Ombudsman should include the negotiation of the Code of Conduct or the Good Practice Guide with the companies subject to it, in accordance with the guidelines to be included in the HCC's Final Report, the drafting of the Code of Conduct for public consultation and subsequent adoption by the HCC (following Article 11 Law 3959/2011), the monitoring of enterprises' behaviour, the possibility to issue instructions or clarifications regarding the implementation of the Code, the supervision of compliance with the Code, and if necessary, the referral of cases to the HCC or other competent public bodies as the case may be (e.g. the General Secretariat for Consumer Affairs). Also, in the difficult and extraordinary conditions that the country is facing (Covid-19), the Ombudsman, with the responsibilities for continuous supervision of the market, could provide information to the HCC for the market situation and for the objective needs of companies in these special economic and social conditions, so that the HCC can provide guidance for practices that, despite the potential for restricting competition, may be necessary for the security of procurement and distribution networks and general reasons of public interest, thus having a positive effect on economic efficiency and the resilience of the supply chain, and which may possibly outweigh potential anti-competitive effects.
- 171 The Code may be applicable to companies with significant bargaining power in the value chain/ecosystem, despite such power not reaching the level of dominance. The

delimitation of the existence of significant bargaining power will combine the weighting of the conditions of both horizontal and vertical competition, using and evolving the methodology developed in this sector inquiry. The list of companies subject to the Code is proposed to be updated every 12 months, taking into account the new data in the market. Due to rather old data on which the empirical analysis of this sector inquiry is based as well as the developments in the supermarket sector, the delimitation of companies, suppliers or supermarkets, with significant bargaining power in some sub-sectors/ markets herein discussed is only indicative and will be updated in the Final Report following the results of the public consultation and in any event prior to the drafting of the Code of Conduct by the Ombudsman.