

OPINION 40/2022*
OF THE HELLENIC COMPETITION COMMISSION
ADOPTED AT THE PLENARY MEETING – GRAND CHAMBER

held at the Meeting Hall of the 1st floor of its premises (Kotsika 1A str. & Patision av.), on Tuesday 25 October 25, 2022, at 11:30 a.m., with the following composition:

Chair: Ioannis Lianos (President)

Members: Hara Nikolopoulou (Vice-President)

Panagiotis Fotis

Ioannis Stefatos

Michael Polemis, as the ordinary member

Ioannis Petroglou, was prevented from attending, and

Afroditi Adamakou

Secretary: Evgenia Ntornta, and Iliana Koutra (alternate)

Subject of the meeting: “Opinion of the Hellenic Competition Commission on competition-related issues raised by the “household basket” initiative”

The Hellenic Competition Commission (HCC), acting within the framework of its advisory powers and, in particular, under Article 23(1), having taken into consideration the reply of the Minister of Development and Investments to the HCC’s request for information under ref. no. 9082/12.10.2022 (as well as the proposed legal provision forwarded to the HCC by the Minister’s letter under ref. no 101024/20.10.2022), and the existing legal framework, namely the provisions of L. 3959/2011, by a majority vote

REASONED AS FOLLOWS:

1. In principle, the regulation does not raise concerns from a competition law perspective, as long as the selection of product categories to be included in the household basket does not stem from an agreement between the State and the undertakings active in the market or from any communication or contact between competing undertakings and the initiative neither allows nor encourages undertakings

* This opinion is issued in one (1) additional edition marked with the phrase: (1) For publication in the Government Gazette. Any confidential information has been removed from the above version (where [...]), in accordance with Article 41 of Law 3959/2011 (Government Gazette 93 A’/20.4.2011), as in force, and the Regulation of Internal Operation and Management of the Hellenic Competition Commission (Government Gazette 54 B’/16.1.2013).

to exchange information or jointly agree on such products/product categories or other competition parameters. In view of the above, it is deemed positive to anticipate that the broader product categories will be determined by the Ministry without any market players being involved, while each undertaking will autonomously select its products and determine prices in this context¹. In any case, despite the distortions of competition that may be caused by this measure, it is considered proportionate, in view of the current difficult circumstances for consumers and given the temporary nature of the measure, namely its applicability until 31.3.2023.

2. The fact that supermarkets will select the products they wish to include in the household basket may offer them a leverage capacity in negotiations with suppliers of such products, especially with those with a weak bargaining power. For instance, supermarkets may demand higher charges-access fees (slotting allowances, upfront access payments, pay to stay fees or other payments/discounts) from suppliers to include their products in the household basket, especially where the latter do not have access to the retail market. Such a situation is likely to create distortions in competition between suppliers: on the one hand, those who are able to "finance" their participation in the initiative will be favored while, on the other hand, forcing small suppliers to make such benefits may negatively affect their viability. The systematic operation of the profit margin monitoring mechanism for these products and, in fact, as a priority, may alleviate that risk². The HCC will systematically monitor the markets in question in accordance with the rules of Regulation 2022/720 on vertical restraints³ and the relevant Guidelines⁴.
3. Accordingly, it is particularly important that this initiative does not lead to systematic self-preferencing practices by supermarkets for their own private label products, against branded products, which may be offered at lower prices for consumers, but the respective profit margin of supermarkets is possibly higher. Such an outcome will be detrimental to both suppliers and consumers who, consequently, do not possibly turn to the cheapest products (in terms of production costs) and will not benefit from a wider range of products. In view of the measure's implementation and actual effects on the market, it is likely, after a period of one month, to consider the possibility to assess any self-preferencing practices as well as to evaluate the need to take measures.
4. Another possible impact of the initiative is price increases on products or product categories (from the same or different suppliers) off-basket to compensate for any losses from making the in-basket products available at affordable (or possibly reduced) prices. In this regard, special emphasis should be placed on to the way and the selection criteria of the product categories to be included in the household basket

¹ See in this regard par. 2 of the Draft provision.

² Article 58 L. 4818/2021 (A' 124).

³ Commission Regulation (EU) 2022/720 of 10 May 2022 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 (Official Journal of the European Union | L 134/4, 11.5.2022, p. 4).

⁴ Guidelines on vertical restraints (Official Journal of the European Union | C 248/1, 30.6.2022, p. 1, Section 8.2.6. *et seq.*).

in order to avoid situations where the inclusion of a category increases the price of other categories targeted to the same consumer categories (vulnerable consumers). To implement this option, it is advisable to use data from an independent service (e.g. Hellenic Statistical Authority). The 7-day or 15-day renewal of the household basket is also considered as a positive arrangement, as it would significantly and permanently reduce the likelihood of price increases of off-basket products. However, it follows from the provision that this renewal is not mandatory.

5. Regarding the household basket, every business active in the retail market should be given the possibility to participate, at both national and local levels, and/or in any manner (e.g., e-shops), even if it is not active in the trading of all the product categories listed (e.g., butcher shops, fish shops, bakeries, etc.)⁵. These businesses should be able, if they so wish, to include in the household basket the product categories of their retail activity. Otherwise, it is possible to exclude firms that could exert competitive pressure on certain product categories (even locally) and/or create distortions of competition in local markets where regional undertakings or suppliers are active.
6. It is important that the relevant information is published on e-katanalotis and on the website of the Ministry or other authorized bodies, and that its type and degree of detail is specified in advance. For example, publishing only national average retail prices per product will not exert the intended pressure on businesses participating in the initiative. Instead, the information tool should be flexible enough to provide the consumer, at any time or in any case at regular intervals, with information on the actual price of a product per store (including any discounts or bundling practices directly or indirectly related to the specific products).
7. Finally, it is noted that the initiative of the household basket should in no way constitute a tool facilitating concertation between undertakings on their products and prices offered in the basket. It is further noted that the Hellenic Competition Commission will systematically monitor the behavior of businesses in implementing the household basket measure and will intervene immediately in case of any anti-competitive practices are detected, such as agreements between competitors or vertical agreements between suppliers and retailers for resale price maintenance.
8. In the opinion of the HCC's Vice-President, Ms. H. Nikolopoulou, the HCC should immediately express its position on the above initiative to the competent body, and its positive opinion and the fact that it will continue to competently monitor the market, should be made public through a press release to allow the implementation of the relevant initiative as swiftly as possible. However, in this case, the conditions of art. 23 Law 3959/2011 for opinion issuing are not met and the expression of HCC's position to the competent body shall suffice. [...]

This Opinion was issued on the **25th of October 2022**.

⁵ See in this regard par. 4 of the Draft provision.

FOR PUBLICATION
IN THE GOVERNMENT GAZETTE

This Opinion shall be published in the Government Gazette, in accordance with article 47 of Law 3959/2011

The President

Ioannis Lianos

The Secretary

Evgenia Ntornta