



HELLENIC REPUBLIC  
HELLENIC COMPETITION COMMISSION

Athens, 12 February 2009

## PRESS RELEASE

**Publication of the Competition Commission’s Decision concerning the ex officio investigation of the Directorate General for Competition regarding alleged infringements of articles 1 and 2 of law 703/77, as in force and 81 and 82 of the EC Treaty by “NESTLE HELLAS S.A.”**

Following complaints, the Directorate General for Competition conducted an ex officio investigation in the coffee products market regarding alleged infringements of articles 1 and 2 of law 703/77, as in force and 81 and 82 of the EC treaty by “NESTLE HELLAS S.A”.

The Competition Commission, having considered the evidence of the case file under examination, the Report of the Directorate General for Competition, the views presented orally and in writing by the parties concerned in their submissions, as well as the testimonies of the witnesses examined during the oral hearing and the aspects of the case before it, concluded in its decision no **434/V/2009** that:

1) “NESTLE HELLAS S.A.” has infringed articles 2 of law 703/77 and 82 of the EC Treaty by abusing its dominant position in the instant coffee market. In particular:

- in the retail instant coffee market regarding its trading relations with super market chains, by granting target and fidelity rebates, prohibiting/ impeding parallel imports, as well as by prohibiting any simultaneous marketing activities of its products and competitive products;
- in the HO.RE.CA. instant coffee market, by imposing exclusive supply and bundling contract arrangements, as well as by granting fidelity rebates aiming at inducing customer loyalty ; and
- regarding its trading relations with its distributors, by imposing a “hidden” non compete obligation (equivalent to an “English clause”).

2) Moreover “NESTLE HELLAS S.A.” has infringed articles 1 of law 703/77 and 81 of the EC Treaty, by prohibiting/ impeding parallel imports by specific super market chains. “NESTLE HELLAS S.A.” has infringed article 1 of law 703/77 also by prohibiting passive sales by its distributors.

In accordance with the operative part of the Decision:

The Competition Commission’s Plenary Session unanimously decided in an open vote:

**A. WITH RESPECT TO THE ESTABLISHED INFRINGEMENTS IN THE RETAIL INSTANT COFFEE MARKET**

- a) to require **NESTLE HELLAS S.A.** to cease the above infringements and refrain from committing them in the future;
- b) to threaten to impose to the above undertaking a fine or penalty payment of five thousand Euros (€5,000) for each day of non compliance, should the Commission confirm by virtue of a decision the continuation or repetition of the infringements; ,
- c) to impose on **NESTLE HELLAS S.A.** a fine for each infringement year (2002, 2003, 2004, 2005, 2006), i.e. of a total amount of **€ 29,786,764** for all the above infringements.

#### **B. WITH RESPECT TO THE ESTABLISHED INFRINGEMENTS IN THE HO.RE.CA. INSTANT COFFEE MARKET**

- a) to require **NESTLE HELLAS S.A.** to refrain from the above infringements in future;
- b) in the event of non compliance with the above obligation, to threaten to impose to **NESTLE HELLAS S.A.** a fine of five thousand Euros (€5,000) for each day of non compliance,
- c) to impose on **NESTLE HELLAS S.A.** a fine for each infringement year (2002, 2003, 2004, 2005, 2006) amounting to **€149,901**

#### **C. WITH RESPECT TO THE ESTABLISHED INFRINGEMENTS REGARDING NESTLE'S TRADING RELATIONS WITH ITS DISTRIBUTORS**

- a) to require **NESTLE HELLAS S.A.** to cease the above infringements and refrain from committing them in the future;
- b) to threaten to impose on the above undertaking a fine or penalty payment of ten thousand Euros (€10,000) for each day of non compliance, should the Commission confirm by virtue of a decision the continuation or repetition of the infringements; ,
- c) to declare void the aforementioned "English clause" and to impose on **NESTLE HELLAS S.A.** the obligations firstly to delete the aforementioned clause from the agreements concluded between it and its distributors and secondly to inform respectively the Competition Commission within one month after the notification of the decision. In case of non-compliance with the above obligations within the period specified, the above fine under b) shall be imposed.

#### **D. WITH RESPECT TO THE FAILURE TO NOTIFY**

To impose on **NESTLE HELLAS S.A.** a fine of fifteen thousand Euros (**€15,000**) for failing to notify the agreements concluded between it and on the one hand super market chains and on the other hand HO.RE.CA. outlets, as well as the agreements concluded after 02-08-2005 between it and its distributors.