

ANNUAL REPORT
ON
COMPETITION POLICY IN GREECE
2006

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**ANNUAL REPORT
ON COMPETITION POLICY IN GREECE
IN THE YEAR 2006**

I. CHANGES TO COMPETITION LAWS AND POLICIES, PROPOSED OR ADOPTED

In year 2006, following the amendment of national antitrust legislation i.e. Law 703/1977 in the previous year, the Hellenic Competition Commission (HCC):

- a) Adopted a decision on the terms and conditions governing immunity from fines or reduction of fines imposed to undertakings which contribute to the investigation of infringements of the provisions of the said law (“Leniency Program”)
- b) Issued Guidelines on the method of setting fines
- c) Issued a Notice on agreements of minor importance which do not appreciably restrict competition (de minimis)

In December 2006, the new Executive Regulation of Law 703/77 entered into force, which introduced provisions concerning access to file, as well as substantial changes with respect to hearing procedures before the HCC.

II. ENFORCEMENT OF COMPETITION LAW AND POLICIES

1. Summary of activities

During the reporting period, the Hellenic Competition Commission issued in total 29 decisions, which can be classified as follows:

TABLE 1	
Cases Examined by the Hellenic Competition Commission in 2006	
Mergers	13
Ex officio investigations	1
Complaints	3
Interim Measures	1
Non compliance with previous decision	1
Opinions delivered	1
Miscellaneous	9
Total	29

The majority of the cases examined by HCC in year 2006 concerned prior merger notifications. Nevertheless, examination of complaints pending from previous years, ex officio investigations, as well as sector inquiries by the Directorate General for Competition significantly increased in the reporting period¹.

2. Significant cases

2.1. Abuse of dominant position

i. Decision 318/V/2006 - Syfait and others vs. GLAXOSMITHKLINE

In 2006, the Hellenic Competition Commission issued the 318/V/2006 decision concerning the complaints of Associations of Pharmacists, wholesalers and distributors of pharmaceutical products against GLAXOWELLCOME S.A. (renamed to GLAXOSMITHKLINE), regarding an alleged infringement of art. 2 Law 703/1977 and art. 82 EC, as well as an application filed by GLAXOSMITHKLINE S.A. for negative clearance under Article 11 of Law No 703/1977 with regard to its refusal to cover more than 125% of the Greek demand².

¹ The Directorate General for Competition is the inquiring body of the Hellenic Competition Commission which conducts the investigations of the cases and issues the statements of objections. The latter are not binding for the Hellenic Competition Commission. HCC issues its decisions taking into account the argumentation of the parties on the General Directorate's statements of objections.

² The HCC had previously decided (229/III/2003) to suspend the examination of the abovementioned complaints before it and to refer the case for a preliminary ruling to the ECJ. The latter however, rejected the reference without examining the substance of the case (see C-53/2003 Synetairismos Farmakopoion Aitolias & Akarnanias (Syfait) and Others vs. Glaxosmithkline AEVE, ECJ decision delivered on 31.5.2005. See also opinion of Advocate General Jacobs delivered on 28 October 2004).

The alleged infringement concerned the abuse of dominant position by GLAXOSMITHKLINE (“Gsk”) with respect to the distribution of the pharmaceutical products *Imigran* (antimigrainous), *Lamictal* (antiepileptic) and *Serevent* (antiasthmatic) in all their forms³. According to the complainants’ allegations, “Gsk” decided unilaterally to cut back on the imports of the abovementioned medicines in Greece, to bypass the wholesalers and to undertake itself the supply of pharmacies, in order to restrain the parallel exports of the pharmaceutical products in question. More precisely, in November 2000, the subsidiary of “Gsk” in Greece stopped meeting the orders of the complainants and decided to directly supply hospitals and pharmacies. The company invoked significant shortages on the Greek market, which it attributed to re-exports by third parties, as well as its *ex lege* obligations to cover the needs of the Greek market⁴.

HCC took into consideration the following facts: Contrary to the majority of goods whose prices are formed freely according to competition rules, the prices of prescription drugs, as those in question, are set by acts of the competent bodies of the member states (due to the need to support national health budgets, given also the fact that the prescribed medicines are covered by national insurance funds)⁵. Until November 2005, the retail prices in Greece were determined on the basis of the lowest wholesale price among the EU member states where the product circulates. From November 2005, the retail prices of the product in EU member states and Switzerland are inquired. The lack of a unified EU market for medicines has led to an intense parallel trade (also with regard to *Lamictal*) by the wholesalers of states with low prices.

As to the definition of the relevant product market, HCC adopted the criterion of the main therapeutic indication of the medicines⁶ and concluded that only *Lamictal* constitutes a separate market. HCC considered the national market in its entirety as relevant geographic

³ The subsidiary of “Gsk” in Greece is the exclusive licensee for the circulation of pharmaceutical products and the agent of the parent company “Gsk”, which is the trade mark licensee and producer. The subsidiary “Gsk” is *ex lege* responsible for the regular supply of the national market, as regards the distribution and sufficiency of the parent company’s patent medicines at the pharmacies, as well as for the preservation of a three-month safety reserve.

⁴ With its 193/III/2001 decision, following a request for interim measures, HCC ruled, that an infringement of Articles 82 EC and 2 Law 703/77 was most probable to occur: The continuing export restrictions of medicines that were imposed by the parent company “Gsk”, in combination with the refusal of “Gsk” to satisfy the orders of the complainants, threatened to provoke an imminent and incurable damage to the public interest. For this reason there was an urgent need for the granting of interim measures. According to that decision, the refusal of “Gsk” to satisfy the requested quantities threatened to disrupt the regular and direct supply of pharmacies with the abovementioned medicines, as well as the supply of the patients who were treated with *Lamictal*, *Imigran* and *Serevent*. HCC obliged “Gsk” to execute provisionally and until the issuance of its final decision the orders of pharmacists’ associations and wholesale pharmaceutical stores for these medicines without quantitative restrictions. In addition, HCC expanded *ex officio* this interim measure to all the pharmacists’ associations and wholesalers.

⁵ See also ECJ judgment of 12.7.2001, case 157/99 Suits Peerboms, ECR I – 5473.

⁶ See case IV/36.957/F3 GLAXOWELLCOME, OJ L 302/01, 17.11.2001, par. 110-111, based on the 3rd level of WHO’s «Anatomical Therapeutic Classification»

market, due to the differences in price determining mechanisms, leading to substantial price discrepancies among the member states⁷. Thus, HCC concluded that “Gsk” is dominant in the Greek market only as regards the said medicine.

As to the assessment of “Gsk” behaviour, HCC concluded that Gsk” (a) abused its dominant position, under the meaning of art. 2 Law 703/1977, for the period November 2000 - February 2001, (b) did not infringe the art. 2 Law 703/1977 for the period after February 2001 and (c) did not infringe art. 82 EC. More precisely, HCC ruled the following:

Refusal to supply is not per se abusive. If there are objective circumstances justifying such refusal, it will not be found abusive. The interest of the consumers shall be taken into account in the above considerations. The benefit of the final consumer (i.e. patient) depends also on the medicine’s availability and steady supply. Within that context, “Gsk’s” conduct was assessed to be abusive within the meaning of art. 2 of law 703/1977⁸ only for a period of three months, as the sudden and total discontinuation of the supply of drug wholesalers, caused anomalies to the market, jeopardizing the access to medicines by the final consumers.

As to the assessment of “Gsk’s” conduct for the period after February 2001, HCC took into consideration: a) the issuance of HCC’s decision in 2001, which required “Gsk” to temporarily supply the pharmacists’ associations and wholesalers without quantitative restrictions, and b) the circular of the National Organization for Medicines (issued on 27.11.2001), by virtue of which all parts of the distribution chain of prescription medicines must supply the national markets with sufficient quantities for covering the current prescribed quantities plus 25% for emergencies. The company complied with both the decision and circular. Thus, the company did not commit any actual or potential abuse of its dominant position in the sense of article 2 law 703/1977 and 82 EC after February 2001.

As to the issue whether the effort of “Gsk” to restrict parallel trade constitutes an infringement of article 82 EC, objective reasons justifying the behavior of “Gsk” were deemed: a) the fact that in the European pharmaceutical sector the environment is not strictly competitive, due to state intervention in the formation of the price, b) the percentage at which quantities supplied by the defendant exceed national consumption, c) the influence of parallel trade on the profits of the dominant company, d) the lack of benefits of parallel trade to the final consumer, e) the general economic and regulatory framework of the case. HCC considered that “Gsk’s” conduct was attributable to its legitimate attempt to prevent reduction of its profits due to the different pricing of the product in the member states. Furthermore, pricing of medicines intended for parallel trade has not yet been regulated at EU level. Competitive distortions caused by different pricing of the product, should be dealt with either through the adoption of

⁷ See also Commission Decision IV/34279/F3-ADALAT

⁸ Article 2 of law 703/1977 restates the wording of art. 82 EC

measures at EU level which will allow the creation of a single pharmaceuticals market⁹, or through the determination of a specific price for the parallel market. Thus, “Gsk” did not infringe art. 82 EC.

Given the limited duration of the infringement and the fact that the impact of the abusive behavior on the Greek market was not proven, HCC addressed a recommendation to the company to omit similar conduct in the future. In case of repetition of the infringement, HCC threatened “Gsk” subsidiary with a fine equal to 3% of its gross revenues in the year previous to the infringement. Finally, as to “Gsk’s” request for negative clearance, HCC reserved the right to examine the issue, if needed, after the issuance of a decision by the European Commission, before which a similar application of the parent company for the entire common market is pending.

ii. Decision 309/V/2006 - Non compliance of Coca Cola HBC SA

In 2002¹⁰, Coca-Cola was found to abuse its dominant position a) by granting target discounts and fidelity rebates to wholesale dealers and retail outlets and b) by inducing retailers to take free-on-loan freezer cabinets, in which only its own soft drinks, and not those of its competitors, could be stored. Such practices were found to foreclose access of other competitors to the relevant market¹¹. HCC imposed on the company a fine amounting up to 2.934.702,86 € corresponding at the 0,59% of its gross revenues for the year 1999. HCC furthermore obliged Coca-Cola to cease all the above mentioned infringements and especially to lift the exclusivity clause concerning the use of the freezer cabinets from its free-on-loan contracts with its retailers. Finally, it threatened Coca-Cola with a pecuniary sanction of 5.869 euros for each day of non-compliance. The decision was upheld on appeal by the Athens Administrative Court of Appeals.

With its 309/V/2006 decision, HCC ascertained that Coca-Cola did not comply with its obligations to: a) withdraw the exclusivity clauses concerning the use of the freezer cabinets from its free-on-loan contracts, especially as regards final retail outlets which do not have capacity for installation of an additional competitive soft-drinks freezer, b) end any discrimination in favour of exclusive wholesale dealers and c) end any discrimination in favour of retail outlets, except for the non-exclusive ones. Thus, HCC ascertained the forfeiture of the previously threatened pecuniary sanction for a total of 1476 days (from 1.2.2002 to 16.2.2006), which amounted to 8.662.644 euros.

⁹ See Merck a.o. v. PrimeCrown Ltd., ECR 1996, I-6371, par. 47

¹⁰ HCC 207/III/2002 decision

¹¹ i.e. the market of cola soft drinks

iii. Decision 317/V/2006 - PERIANDROS S.A.

The case concerned the complaint of two shipping companies against a company called PERIANDROS S.A. for infringement of article 2 of law 703/1977. PERIANDROS has been awarded through a concession the exclusive right to manage the operation of Isthmus of Corinth, to set the tolls for the ships that sail through Isthmus and collect them. According to the complainant, the concessionaire used its exclusive rights with a view to reinforcing its operation in the market for sea excursions in the area of Isthmus of Corinth with a ship named Canal Vista. In particular, the complainants maintained that PERIANDROS had introduced an excessive increase of the tolls that complainants had to pay when sailing through Isthmus whereas Canal Vista did not pay any tolls as it belongs to PERIANDROS.

The relevant market was found to be the market for sea excursions around the area of Isthmus of Corinth. The General Directorate of Competition established that Isthmus of Corinth is an essential facility and suggested that the concessionaire had imposed discriminatory access conditions on the complainants without objective justification. Moreover, according to the General Directorate of Competition, the rights awarded to the company and related to managing of Isthmus placed it in a situation of conflict of interest since it was also competing complainants in the market for sea excursions around the area of Isthmus of Corinth. Therefore, PERIANDROS was empowered to distort in its favour equality between competitors in the market for sea excursions.

HCC agreed with the findings of the General Directorate of Competition and concluded that the concessionaire should terminate the abovementioned infringement. It also ruled that it should reduce tolls imposed on ships offering sea excursions in the area of Isthmus and should not impose increases exceeding the average increase for all kinds of ships sailing through Isthmus so that access to Isthmus is not discriminatory nor onerous for the complainants.

2.2 Horizontal Agreements

i. Decision 312/V/2006 - Association of Manufacturers of Canned Agricultural Products of Greece

In September 2005, the Directorate General for Competition of the HCC conducted an ex officio investigation into the books and materials of the Association of Manufacturers of Canned Agricultural Products of Greece (AMG). The incentive for the investigation were the public protests and complaints of producers of peaches.

According to the evidence gathered during the investigation, i.e. a series of minutes of the General Assembly of AMG, the members of AMG agreed in offering a common buying price

to the producers for the provision of peaches. They also agreed on the selling price of the canned products.

HCC ruled that the abovementioned price fixing agreements amounted to a prohibited decision of an association of undertakings, in breach of art.1 par. 1 of law 703/77. Due to the special character of the agricultural sector, the Competition Commission imposed a symbolic fine of 1.000 euros on AMG and on each of its members.

ii. Statement of objections regarding the provision of security services

HCC convened in July 2006 to discuss the complaint of the company “SECURITY FORCES LTD” against the company “GROUP 4 SECURITAS S.A.” concerning an infringement of article 1 par. 1 of law 703/1977.

The complainant claimed that “GROUP 4 SECURITAS S.A.” had made an agreement with its competitor “WACKENHUT S.A.”, which concerned a tender of EMPORIKI BANK for the provision of security services, infringing article 1 of law 703/1977.

According to the findings of the General Directorate for Competition, the infringement covers not only to the abovementioned tender of EMPORIKI BANK, but also other tenders. The gravity of the infringement arises from the sharing of the market between undertakings who participate to such tenders. The General Directorate proposed that the companies GROUP 4 and WACKENHUT should terminate the abovementioned infringement. It also proposed that a fine of 712.567 and 288.021 euros should be imposed on the companies WACKENHUT and GROUP 4 respectively, which amounted to 20% of their revenues from the provision of security services in the year of the infringement (1998).

2.3 Vertical Agreements

Statement of objections regarding motor vehicle distribution

HCC convened in September 2006 to examine the complaint of an independent distributor against a company called MAVA S.A. (exclusive importer of RENAULT SA in Greece) concerning an infringement of article 1 par. 1 of law 703/1977 and EC Regulation 1475/1995.

According to the complainant, the accused MAVA S.A. infringed competition rules on car distribution by imposing to its distributors among others, fixed resale prices for new motor vehicles RENAULT, a requirement of financing car sales through its subsidiary financial organization FIREN, as well as annual, monthly and quarterly sales targets etc.

According to the General Directorate for Competition, the agreements concluded between MAVA S.A. and its distributors had as an object the direct and indirect price fixing and

therefore infringed articles 1 par. 1 of law 703/1977 and 81 par. 1 of EC Treaty. The General Directorate applied HCC's new guidelines on the method of setting fines and proposed that a fine of 15.300.000 euros should be imposed on MAV A S.A.

III. ADVOCACY POLICY IN THE FIELD OF PROFESSIONAL SERVICES

A working party on seven liberal professions (lawyers, notaries, engineers, architects, pharmacists, accountants and dentists) was set up in April 2006 within the Directorate General for Competition of the Hellenic Competition Commission.

Its aim is to: a) identify the existing restrictions to competition relating to rates (recommended, maximum, minimum); territorial restrictions; obstacles to admission; b) make an initial assessment as to whether those restrictions are justified for reasons of public interest or from an economic point of view, taking account of competition conditions prevailing in each profession; c) get in touch with all the competent bodies (government and professional). HCC considers that the issues need to be broached with great care and that account should be taken of the special conditions existing in Greece for the exercise of those professions. HCC feels the attention should be focused on reasons of public interest justifying restrictions in each case. The aim is to achieve maximum consensus at national level with all the bodies involved.

HCC cannot deliver ex officio opinions but coordinating its activities with the country's strategic objectives is one of the aims of the contacts the liberal professions working party has initiated with the bodies involved.

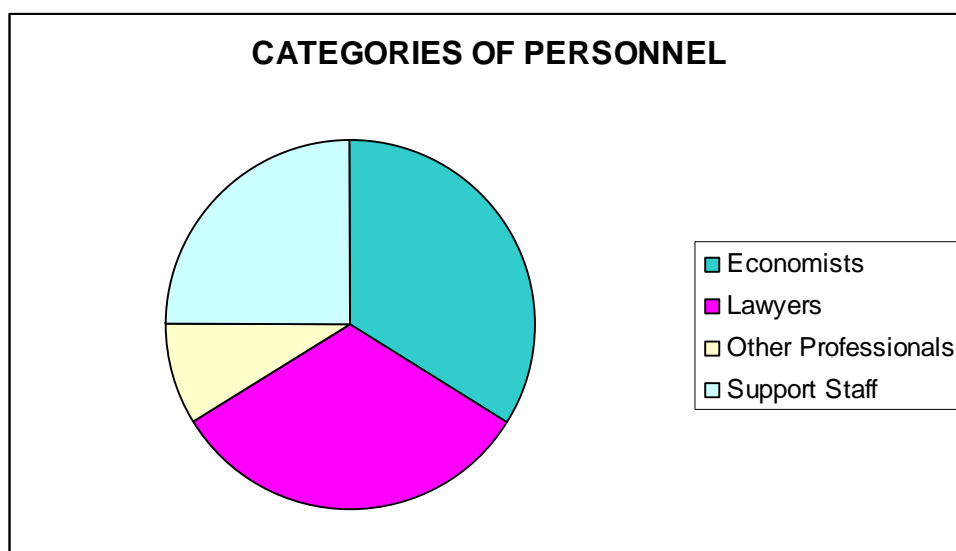
HCC also reports that the European Commission's visit to Greece in June 2006 was a significant opportunity to promote the dialogue between the HCC, the professional bodies and the ministries involved. During the visit, meetings were held with the HCC and the Lawyers Bar Association, the Chamber of Auditors, the Economic Chamber of Greece, the Chamber of Engineers/Architects, the Chamber of Notaries and the Hellenic Pharmacists Association, as well as with ministries responsible for regulating the various professions. HCC considers that this common action helped to raise awareness of all stakeholders and encouraged them to consider to amend disproportionate restrictions to competition.

IV. RESOURCES OF THE HELLENIC COMPETITION COMMISSION

(i) Annual Budget, Year 2006: €11.177.260,00

(ii)

TABLE 2	
Directorate General of the Hellenic Competition Commission	
Number of Employees, Year 2006	
Economists:	23
Lawyers:	22
Other Professionals:	6
Support Staff:	17
All Staff Combined:	68



(iii)

TABLE 3	
Directorate of the Hellenic Competition Commission	
Human Resources Employed By Category, Year 2006	
Enforcement Against Anticompetitive Practices:	40
Merger Review and Enforcement:	5
Advocacy Efforts:	2

HUMAN RESOURCES EMPLOYED BY CATEGORY

