



Athens, May 18, 2011

PUBLIC CONSULTATION

**CRITERIA SETTING FOR
ENFORCEMENT PRIORITIES AND STRATEGIC OBJECTIVES
OF THE COMPETITION COMMISSION**

MAY 2011

Within the framework of prioritisation of cases and strategic objectives of the Competition Commission, established by Law 3959/2011 “On Free Competition” [Article 14(2)(n)(i)], the Competition Commission launches a public consultation on the following text and invites all the interested stakeholders and undertakings or persons to submit their relevant views.

**COMMISSION NOTICE
ON ENFORCEMENT PRIORITIES**

The Competition Commission (hereinafter referred to as C.C.),
within the framework of its discretionary power as an Independent Authority in prioritising its work, and taking into account:

- ✓ The need for definition of a strategy and work plan with a view to improving the reliability and the efficiency of its enforcement action.
- ✓ The need for targeted action based on preset priorities, in order to allow swifter and more effective action in tackling severe market distortions, through a coherent and efficient enforcement of the rules on free competition.
- ✓ The possibility of checking the results of the enforcement action of the C.C. and the evaluation of its work, thus enhancing transparency

and accountability with a view to allowing its continuous improvement (Article 22 of Law 3959/2011).

- ✓ The fact that within the framework of the above mentioned activities, the Competition Commission is not bound to apply the same degree of priority to the complaints brought before it, but it has the possibility to give precedence to the public interest as principle criterion for the prioritisation of a case.
- ✓ The fact that the plenary assembly of the Competition Commission, following a relevant recommendation by the Directorate-General for Competition, decides if a case shall be prioritised, taking particularly into account the public interest, the possible effect on competition, the protection of consumers, the time-limits provided for in Article 42 of the above mentioned law, as well as the impact of the case under investigation on the functioning of effective competition in accordance with the provisions of Article 14(2)(g)(i) of Law 3959/2011.
- ✓ The fact of the large number of the complaints brought before the Commission, as well as their difference in terms of gravity.
- ✓ The fact that the available human resources of the Commission, which are also taken into account [Article 15(1)], are necessarily limited and it is practically impossible, and also ineffective, for the Commission to spend its efforts in cases of minor importance (*de minimis*).

sets the following criteria to be applied in the prioritisation of a case¹:

1. The basic criterion in the enforcement action of C.C. is to serve the public interest, which will be assessed in light of the estimated impact of a practice on the functioning of effective competition, and especially on consumers, with priority given to ex officio investigations or complaints pertaining, in particular, to:

¹ It is noted that the purpose of the citation of the above mentioned criteria is not to prejudice the addressees of the notice but to present, by way of example, some basic criteria on the basis of which the C.C. shall decide on the eventual prioritised consideration of a case. It is understood that each case has its own individual character and must be assessed depending on its specific nature.

- Hardcore restrictions (price-fixing, market sharing and sale or production restrictions) of national scope, especially in cases of horizontal agreements (cartels), taking particularly into account the market position of the undertakings involved, the structure of the relevant market and the estimated number of the affected consumers.
 - Products and services which are essential or of major importance to the Greek consumer, where the anticompetitive practice under examination may have a significant impact on the increase of prices and/or the quality of services (especially as compared to Member States of the European Union).
 - Anticompetitive practices with cumulative effect (i.e. practices applied by a large number of companies that are able to pass on the increased prices to intermediate undertakings or final consumers).
2. The submission of a relevant application for leniency, if all the criteria of the leniency programme are met.
 3. The compliance with the rulings of the Athens Administrative Court of Appeal and the Council of State, issued in appeal proceedings concerning prior decisions of or actions against the C.C.
 4. The necessity of adopting exceptional measures of regulatory nature in certain sectors of the economy, according to the strict terms and conditions of article 11 of Law 3959/2011, provided that such measures are absolutely necessary, suitable and in tune with the principle of proportionality for the creation of conditions of effective competition.

The prioritisation between many cases must necessarily take also into account:

1. The available resources (both human and financial) of the C.C. in relation to the requirements of other pending current cases or investigations carried out by C.C. with a view to allowing their most effective allocation in order to meet operational requirements, as well as the possibility of establishing proof of an infringement.
2. The need for clarification of novel or key legal issues in order to ensure legal certainty, as well as a consistent and coherent interpretation of national legislation on the protection of free competition, being also in tune with the

European legislation, even in cases of anti-competitive practices with local effect.

3. The view that the C.C., compared to other authorities or courts, is the best-placed institution to act for the elimination of distortions of competition in a particular case, and that the civil courts are respectively the most competent authorities to solve private disputes pertaining to eventual infringements of the rules on free competition, since the rights of the affected parties can be safeguarded by the exercise of the right to file applications for interim measures and civil suits (damages actions being included).
4. The estimated result of the Commission's intervention, especially if an immediate improvement in the functioning of competition is discerned.
5. The degree of completeness of the submitted information with each complaint.

The addressees are kindly requested to include in their intervention the name and full contact details of the body/undertaking/natural person (telephone and fax numbers, postal and e-mail addresses) as well as the market sector of production or/and marketing in which they are actively involved.

For better information management, it is preferable for the participants to send their views to the following e-mail address of the Competition Commission: diavoulefsi@epant.gr, with the subject reference "**Criteria Setting**".

Final date for the submission of views: 7th June 2011.