



HELLENIC REPUBLIC

HELLENIC COMPETITION COMMISSION

Athens, 8 October 2020

PRESS RELEASE

Subject: Decision of the Hellenic Competition Commission regarding the complaints of the company "SERKO LTD SCIENTIFIC - ELECTRONIC MACHINERY (Imports - Representations - Service)" concerning alleged infringements of articles 1 and 2 of Greek Laws 703/1977 and 3959/2011, as well as articles 101 and 102 TFEU by the companies "Gambro Lundia AB", "Medical Products Ltd." and "BAXTER HELLAS LTD" in the market of artificial kidney machines, and in particular in the primary market of machines for artificial kidneys (HD), together with the associated secondary market of related repair and maintenance of such machines (including spare parts).

Following complaints by the company "SERKO LTD SCIENTIFIC - ELECTRONIC MACHINERY (Imports - Representations - Service)" (hereinafter SERKO), in the market of artificial kidney machines, ie the primary market of HD and the secondary market of the related repair and maintenance of these machines (including spare parts), the Plenary Session of the Hellenic Competition Commission (hereinafter HCC), with its Decision no. 689/2019, decided unanimously that two of the defendants, namely the companies "Gambro Lundia AB" and "Medical Products Ltd." violated article 1 of Greek law 703/77, as in force (now article 1 of Greek law 3959/2011), as well as article 101 TFEU through their participation in a prohibited vertical anti-competitive agreement, which mainly consisted in prohibiting parallel imports. More specifically, taking into account both the contractual terms prohibiting parallel imports as well as those prohibiting passive sales contained in the agreement between GAMBRO and MEDICAL PRODUCTS, which had been concluded for the period from October 2003 to December 2015, the HCC considered that the specific clauses created an exclusive sourcing for SERKO that was anti-competitive; SERKO, due to the abovementioned agreement between GAMBRO and MEDICAL PRODUCTS, was obliged to buy the necessary spare

parts only by the company MEDICAL PRODUCTS, which was its main competitor in tenders conducted by public hospitals for repair and maintenance of GAMBRO artificial kidney equipment. The HCC concluded that the clause prohibiting parallel imports – the impact of which exists *per se* – is exacerbated in the present case, by the contractual terms identified in certain GAMBRO contracts with other distributors (either exclusive or not) in other Member States (it is noted that if those terms were considered independently were not considered problematic *per se*). However, the same terms evaluated in relation to and combination with the explicit prohibition of parallel imports identified in above contractual agreements, they eventually acquired anti-competitive nature for the period 2003 (Oct) – 2015, establishing a systematic ban of parallel imports/exports for more than 10 years in the Greek territory, having as a consequence the segmentation of the Greek market regarding in particular the repair and maintenance of artificial kidney machines of the GAMBRO brand.

By the same decision, the HCC unanimously a) obliged the companies "Gambro Lundia AB" and "Medical Products Ltd." to put an end to the above-mentioned violation, as long as it continues and to omit it in the future; b) dismissed as unfounded the complaint of SERKO against the company "BAXTER HELLAS LTD", for violation of article 1 of law 3959/2011 for the reasons extensively referred to in the reasoning of the decision. At the same time, the HCC ruled that the prohibition requirements for the application of Article 101 TFEU are not met for BAXTER and therefore there is no reason for the HCC to take further action in this case against the specific company; c) rejected as unfounded the complaints of SERKO against the companies "Gambro Lundia AB", "Medical Products Ltd." and "BAXTER HELLAS LTD" for violation of article 2 of law 3959/2011 for the reasons extensively referred to in the reasoning of the decision. At the same time, the HCC ruled that the prohibition requirements for the application of Article 102 TFEU are not met and therefore there is no reason for the HCC to take further action in this case against the specific companies; d) imposed a fine on the company "Gambro Lundia AB" for the above mentioned prohibition for the period from October 2003 to December 2015, based on the reasoning of the decision, for violation of article 1 of law 703/77, as in force (now article 1 of Law 3959/2011), as well as Article 101 TFEU, amounting to one million one hundred three thousand four hundred seventy-nine euro and ninety cents (1,103,479.90); e) imposed a fine on the company "Medical Products Ltd" for the above mentioned prohibition for the same period, based on the reasoning of the decision, for violation of article 1 of law 703/77, as in force (now article 1 of Law 3959/2011), as well as Article 101 TFEU, amounting to one hundred sixty five thousand eight hundred ten (165,810.00) euro; and f) threatened each of the aforementioned companies ("Gambro Lundia AB" and Medical Products Ltd") with a fine in the amount of ten thousand (10,000) euro for each day of delay in compliance with the above decision, from the day

of its publication, ie for each day of repetition of the above violation, if found such with a new HCC's decision.