

Unclassified

DAF/COMP/AR(2016)16

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

30-May-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)16
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN GREECE

--2015--

15-17 June 2016

This report is submitted by Greece to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held 15 – 17 June.

JT03396865

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

Executive summary	3
2015 Highlights	5
1. Changes to competition laws and policies	7
1.1 New Notice on the treatment of confidential information of cases and on the submission of the non-confidential version of documents	7
1.2 Updated “Point System” for the quantification of the criteria used in the prioritization of cases investigated by the Directorate-General for Competition	8
2. Enforcement of competition laws and policies	8
2.1 Anticompetitive Practices (antitrust)	9
2.1.1 Summary of Activities regarding Anticompetitive Practices	9
2.1.2 Description of Significant Antitrust Decisions	9
2.1.3 Statistics on Notified Mergers	14
2.1.4 Description of Significant Merger Cases	14
2.2 Court Judgments	15
3. Advocacy – other initiatives	15
3.1 OECD Competition Assessment Projects and Liberal Professions	15
3.2 Other outreach activities	16
4. HCC resources & administration	17
4.1 Digitalization of services	17
4.2 Annual budget	17
4.3 Human Resources	17

EXECUTIVE SUMMARY

1. 2015 was a challenging year for the Hellenic Competition Commission (HCC). Albeit a number of staffing problems regarding both the HCC Board (decision-making arm) and the Directorate-General (investigative arm), the Authority maintained a consistent level of enforcement action, while further diversifying its advocacy and market monitoring initiatives.

2. The HCC continued to pursue the strategic objectives laid out since the inception of the ongoing economic crisis, in particular:

- Maintaining a consistent level of core enforcement action (antitrust investigations and merger control work) compared to previous years, taking into account the economic downturn and the inherent challenges in pursuing a diversified agenda;
- Placing renewed emphasis on market monitoring actions, notably by making more use of sector inquiries, while further increasing cooperation with other stakeholders
- Expanding considerably the Authority's advocacy efforts in order to promote competition assessment of laws and regulations; and
- Making better use of internal management tools for prioritizing the investigation of cases, with a view to increasing the systemic effect of its action.

3. During the course of 2015, the HCC adopted infringement decisions in both Article 101 and 102 TFEU cases and imposed considerable fines, notwithstanding the ongoing financial crisis (including the highest fine ever imposed - 31.5€ million - on a single undertaking for abuse of dominance in the on-trade consumption beer market). Moreover, several pending investigations were successfully completed and brought before the HCC Board for a decision, which are likely to shape the year to come. This year was also marked by two significant developments that consolidated the Authority's practice in a broader sense:

- the streamlining of the HCC's internal prioritization system for the investigation of cases, which led to surge in rejections of complaints on both priority and substantive grounds, thus clearing to a large extent the backlog of pending cases, and
- the implementation of the HCC's Notice on Commitments (adopted in the previous year), which streamlined the procedure to be followed in such cases and resulted in a record number of commitment decisions taken by the Authority in the course of 2015.

4. Both these developments are expected to increase the systemic effect of the Authority's enforcement action.

5. As an aside, the Administrative Court of Appeals and the Supreme Administrative Court upheld the vast majority of HCC decisions reviewed during 2015, with a relatively few reductions in the amount of the fines imposed.

6. This progress was achieved against the backdrop of staffing problems (notably, two vacancies of Commissioner- Rapporteurs at the Board level and a reduction of competition experts in the Directorate-General) which overextended the ability of the Authority to perform its role in an efficient and timely manner.

7. On the institutional front, the HCC focused on increasing transparency and enhancing the effectiveness of its operations, by taking soft law initiatives, i.e. adopting a Notice on the treatment of confidential information and further updating the internal management tool in the form of a point system for the prioritization of cases¹. The Authority also sought to optimize its internal organization by introducing an integrated system of digital services in order to (a) provide citizens, competition professionals and the business community with better-quality online services for all their dealings with the HCC and (b) digitize case files and related evidential material, thereby improving the pace and quality of its work.

8. Moreover, the HCC continued to expand its consultative functions, as a result of the severe economic downturn and the sustained role of the HCC in promoting competition assessment of potentially distortive laws and regulations. Following the successful implementation of the 1st and the 2nd Joint HCC-OECD Competition Assessment Projects (see 2013 and 2014 Annual Reports), a 3rd Joint OECD-HCC Competition Assessment Project was initiated in the end of 2015, which shall review legislation to identify potential regulatory obstacles to competition and make recommendations for legislative change in 4 designated sectors of the Greek economy (e- commerce, manufacturing, wholesale trade, and media), using the methodology set out in the OECD's Competition Toolkit. The OECD Economic Surveys – Greece (March 2016) notes the strengthening of the HCC's legal framework brought about by the 2012 Competition Act, while also praising the Authority for the implementation of the new point system for case prioritization, which has been instrumental in focusing the HCC's efforts in more important and relevant cases (see p. 68, 69, 77-78 et seq).

¹ The HCC updated the “Point System” for the prioritization of pending cases by the Directorate-General for Competition, which was initially set up by HCC Decision No. 539/VII/2012, in the light of the experience gained during the past three years of its implementation (see section 1.2 below).

2015 HIGHLIGHTS

Overview

In the course of 2015, a number of pending investigations were successfully completed and several decisions issued in high-profile cases. The Authority adopted infringement decisions in both Article 101 and 102 TFEU cases and imposed considerable fines totaling € 31.5 million, notwithstanding the ongoing financial crisis.

This year also marks the consolidation of the HCC's practice with regard to commitments. Following the adoption of the Notice on Commitments the previous year, which streamlined the procedure to be followed, there has been a considerable surge in commitment decisions taken by the Authority in the course of 2015.

Enforcement (antitrust & mergers)

- Key decisions and interventions in 2015 included the following:
 - Infringement decision with fines upon Athenian Brewery S.A, a subsidiary of Heineken N.V (€ 31.451.211), for abusing its dominant position through the adoption and implementation of a single and targeted policy aiming to exclude its competitors from the on-trade consumption beer market and to limit their growth possibilities, over a period of fifteen years.
 - Commitments decision made binding upon tobacco manufacturers (incl. Greek subsidiaries of PHILLIP MORRIS, BRITISH AMERICAN TOBACCO, IMPERIAL TOBACCO etc.) with regard to their distribution contracts.
 - Commitments decision made binding upon the Public Power Corporation S.A. (PPC S.A.), the incumbent producer and supplier of electricity in Greece, with regard to the supply of electricity to Aluminium of Greece S.A., the biggest high voltage electricity consumer (manufacturer of aluminium).
 - Commitments decision made binding upon steel producers SIDENOR, HELLENIC HALYVOURGIA and HALYVOURGIKI and their trade association, with regard to the system used through the association for exchange of information on their imports and exports.
 - Commitments decision made binding upon fuel trading companies (incl. EKO, AVIN OIL, CORAL, CYCLON, ELINOIL HELLENIC PETROLEUM, AEGEAN OIL etc.), with regard to long-term exclusive cooperation agreements concluded with independent petrol-station operators.
 - Review of commitments decision upon DEPA that were made binding with previous HCC's decisions issued in 2012 and 2014 (551/VII/2012, 589/2014 and 596/2014), in order to amend the specific terms of the system for the supply of natural gas through electronic auctions (gas release programme), also in view of the forthcoming annual action.
 - Assessment of the revised parity terms in the agreements between online travel agencies (OTAs) BOOKING.COM and EXPEDIA with their hotel partner businesses in Greece, following relevant inquiries conducted by other European Competition Authorities, and in coordination with the European Commission.
 - In-depth investigation (Phase II review) of 3 notified mergers and acquisitions.
 - Conclusion of administrative proceedings in two investigations: (a) COLGATE-PALMOLIVE's agreements allegedly restricting parallel trade in the market for detergents and cosmetics and (b) GLAXOSMITHKLINE's alleged abusive practices concerning certain medicinal products – final decisions pending.

Advocacy

The Third Joint OECD-HCC Competition Assessment Project was initiated, following the successful implementation of the 1st and the 2nd Joint Projects since 2013. The 3rd Project will review legislation to identify potential regulatory obstacles to competition and make recommendations for legislative change in 4 designated sectors of the Greece economy (e-commerce, manufacturing, wholesale trade, and media).

The HCC continued its efforts to promote awareness on issues stemming from the newly adopted EU Directive on antitrust damages actions (Damages Directive), notably by organizing a seminar and publishing a new brochure regarding the scope, key provisions and perceived benefits of the EU Directive.

The HCC issued guidelines (in the form of Q&As) with regard to the application of competition law rules in franchising agreements, in order to help franchisors and franchisees understand the types of conduct that may infringe competition law

The HCC participated as associate partner in a four day "Training Seminar for National Judges in Greece on Enforcement of EU Competition Law" organized by the European Public Law Organization (EPLO). The Seminar provided in-depth and practical training to 53 Greek judges and prosecutors on key issues pertaining to the enforcement of EU Competition Law in Greece.

The HCC co-organized two Info Days regarding its ongoing project "Digital Competition Commission Services", financed by EU funds. The Program aims at (a) providing citizens, professionals and undertakings with better quality online services in all their dealings with the HCC, (b) facilitating the decision-making process by digitizing files and related evidential material, (c) meeting all of HCC's operational requirements by increasing efficiency of its monitoring and enforcement role (pace and quality of its work and services provided thereby).

Other Activities – Institutional Issues

The HCC issued a Notice on the meaning and treatment of confidential information in antitrust and merger cases, as well as on the way in which a non-confidential versions of documents must be submitted to the Authority.

The HCC issued a new Decision updating the "Point System" for the prioritization of pending cases by the Directorate-General for Competition, which was initially set up by HCC Decision No. 539/VII/2012, in the light of the experience gained during the past three years by implementing this internal management tool.

Favorable performance assessments of the HCC's work made by the OECD (2016 Economic Survey) and the European Commission (also in the context of reviewing Greece's economic adjustment programme).

1. Changes to competition laws and policies

9. No changes have been made to the organization and structure of the HCC during the pertinent period.

10. Furthermore, there have been no amendments to Law 3959/2011 (the Greek Competition Act) in 2015². However, based on specific enabling provisions of the Competition Act, the HCC continued its secondary legislation and soft law initiatives.

1.1 New Notice on the treatment of confidential information of cases and on the submission of the non-confidential version of documents

11. The HCC has issued a Notice on the meaning and treatment of confidential information of cases falling within the ambit of L.3959/2011, including merger cases, as well as on the way in which a non-confidential version must be submitted. The Notice clarifies the application of L. 3959/2011 and article 15 of the HCC Internal Rules of Procedure in this respect, taking into consideration recent national and EU legislation and jurisprudence and codifying for the future the HCC's best practices.

12. The Notice aims to improve efficiency as to the treatment of confidential information and consequently to save administrative resources, as well as to strengthen legal certainty and transparency of the procedure, to the benefit of undertakings.

13. According to the Notice the following are considered as confidential:

- Preparatory documents and internal documents of the HCC, the European Commission or National Competition Authorities of Member States.
- Correspondence between the HCC and other public authorities or services or National Competition Authorities or the European Commission or between these authorities.
- Business and professional secrets.
- Other confidential information, i.e. information that does not constitute a business secret, however its disclosure would significantly harm a person (e.g. information that would enable the parties to identify complainants or other third parties where those have a justified wish to remain anonymous).

14. Other information and documents are not normally considered to be confidential. Information may lose its confidential nature if it is available to specialist circles or is capable of being inferred from publicly available information.

15. The Notice sets out examples of information that is not considered confidential, except if sufficiently otherwise justified, and in particular: (a) corporate acts and information subject to publicity by law, (b) information relating to an undertaking which is already known outside the undertaking (c) information that has lost its commercial importance due to the passage of time (five years) (d) circulars of public organizations, publications of associations of undertakings distributed to their members, etc.

16. The Notice also contains detailed guidelines on the submission of the non-confidential versions. In case of non compliance with the procedure described in the Notice, the information, the documents and the

² Amendments introduced in January 2016, for which the HCC expressed negative views, will be addressed in next year's Annual Report.

parts of documents for which a justified request for confidential treatment has not been provided or those which have not been submitted in a separate non-confidential version, will be considered as non-confidential and it will be assumed that the undertaking has no objection to their disclosure.

17. The full text of the Notice is available on the website of the HCC: <http://www.epant.gr/nsubcategory.php?Lang=gr&id=241>

1.2 Updated “Point System” for the quantification of the criteria used in the prioritization of cases investigated by the Directorate-General for Competition

18. By its unanimous Decision No. 616/2015 (as published in the Official Journal No. 585/ B²/4.3.2016) the HCC updated the “Point System” for the prioritization of pending cases by the Directorate-General for Competition, which was initially set up by HCC Decision No. 539/VII/2012, in the light of the experience gained during the past three years of its implementation.

19. The Point System was first introduced pursuant to Law 3959/2011 (the new Competition Act) and aimed at enhancing the efficiency of handling pending cases (both complaints and ex officio investigations), based on objective criteria, the ultimate objective being to ensure a more coherent and consistent application of national and EU competition rules. The updated Point System seeks to specify further and streamline the already existing criteria, particularly those referring to the nature and scope of the infringement, the relevant product or services market, the importance of the legal issue for purposes of establishing legal certainty and cooperation with other competition authorities within the European Competition Network, the probative value of the evidence on file data, as well as the existence of a leniency application. In addition, the updates Point System weighs in factors suggesting that the HCC should not pursue further a case on priority grounds, notably as regards complaints which are subject (already at the time of their filing) to the 5-year limitation period in accordance with Article 42 of the Competition Act and which do not fall within the scope of the pertinent transitional provisions of the Act.

20. It is noted that the Point System is intended solely for internal use as a management tool for the investigation of pending cases by the Directorate-General, such that the ranking of each individual case at the investigation phase is not made public (according to Article 14 par. 2 of the Greek Competition Act). Complaints that receive a low ranking (below or equal to 3 points) can be rejected by virtue of a decision issued by the President of the HCC, following a proposal by the Directorate-General. Such decisions rejecting complaints on priority grounds must be reasoned and notified to the complainant within 30 days of issuance. Although the implementation of the point system is still ongoing and rejection decisions on priority grounds have not yet been tested in administrative courts, data so far indicate a reduction of at least 25% in the number of backlogged cases (as compared with 2011-2012).

21. The updated Point System is posted on the HCC’s site at: http://www.epant.gr/img/x2/categories/ctg348_3_1457355459.pdf

2. Enforcement of competition laws and policies

22. The HCC adopted infringement decisions in both Article 101 and 102 TFEU cases and imposed considerable fines, notwithstanding the ongoing financial crisis (including the highest fine ever imposed - 31.5€ million - on a single undertaking for abuse of dominance in the on-trade consumption beer market). Moreover, several pending investigations were successfully completed and brought before the HCC Board for a decision, which are likely to shape the year to come. The Authority pursued investigations in the area of retail supply chain, food & beverage markets, construction sector, personal care products, distribution of pharmaceuticals, energy (supply of gas), liberal professions. For an overview of the HCC’s enforcement record in the course of 2015, see executive summary above. A summary of the key investigations is provided below.

2.1 *Anticompetitive Practices (antitrust)*

2.1.1 *Summary of Activities regarding Anticompetitive Practices*

23. In the area of antitrust, the HCC issued forty seven (47) decisions applying Articles 101 TFEU (1 of Greek Competition Act) and 102 TFEU (2 of the Greek Competition Act), i.e. regarding potentially anti-competitive agreements, concerted practices, decisions of associations, as well as abuse of dominance. Moreover, the Authority also issued a number of statements of objections, thereby concluding its investigations in several high-profile cases.

24. The HCC further issued seventeen (17) rejection decisions on priority grounds concerning alleged infringements of Articles 101 TFEU (1 of Greek Competition Act) and 102 TFEU (2 of the Greek Competition Act),

25. The Authority conducted twenty four (24) dawn raids in total for the investigation of eight (8) pending cases.

2.1.2 *Description of Significant Antitrust Decisions*

- **The Athenian Brewery case**

26. The investigation was initiated in 2006 when Mythos Brewery SA filed a complaint against the practices of its competitor, later combined with the authority's ex officio investigation. The HCC found that Athenian Brewery S.A., a subsidiary of Heineken N.V. active in the production and distribution of beer in Greece, abused its dominant position, thereby infringing Articles 2 of the Competition Act and 102 EU Treaty.

27. According to the decision, Athenian Brewery held a dominant position in the beer market and was also an "unavoidable trading partner" for customers trading a "must stock brand". The HCC concluded that the company's commercial practices were in violation of Article 2 of the Greek Competition Act and of 102 TFEU and mainly comprised of (a) exclusivity and loyalty rebates and discriminative practices in the instant consumption market (key accounts and other points of sale), (b) loyalty discounts in agreements with retail chains which were granted provided the company achieved a "satisfactory" shelf space level, and (c) exclusivity, loyalty and discriminatory benefits to wholesalers who excluded competitors and traded exclusively in Athenian Brewery products. In particular, The decision ruled that part of Athenian Brewery's strategy in the retail channel was to include exclusivity terms in its written agreements restricting the customers' supplies from competing undertakings; adverse financial consequences were incurred by the customer when it failed to abide by the restriction. In other instances, Athenian Brewery paid in advance individual and retrospective target rebates i.e. rebates based on the expected turnover of a reference period which was much higher than the previous one. The HCC also found that the company provided advertisement fees which were disproportionate to the service provided by the customer and could only be interpreted as fidelity discounts. With respect to the wholesale channel, the HCC concluded that Athenian Brewery provided advantageous credit for stocking arrangements, applied unfavorable credit terms to wholesalers that were selling competing products and generally provided many incentives dependent on exclusivity.

28. A fine totaling € 31.451.211 was imposed on Athenian Brewery S.A. for the above mentioned infringement. The HCC also imposed a daily penalty for non-compliance and obliged the company to enter into written agreements with all its customers (wholesalers, S/M's and final points of sale), stating clearly any services provided by customers which were remunerated by the company and including a provision stating that customers are free to trade in competing products.

- **Tobacco Manufacturers –Commitments case**

29. By a unanimous decision, the HCC accepted commitments proposed by four (4) leading producers and importers of tobacco products in Greece (i.e. Papastratos SA, the Philip Morris Int’L affiliate, British American Tobacco SA, Karelia Cigarette Manufacturing Co and Imperial Tobacco Hellas SA.) and by the local distributor of Japan Tobacco (Athanassiou SA.).

30. The tobacco companies agreed to amend certain clauses in their distribution agreements with local distributors in Athens, Thessaloniki and Patra and subsequently with distributors in the rest of Greece. The amendments addressed the HCC’s concerns of unnecessary restrictions of intra-brand competition amongst distributors and of tentative access of competing manufacturers and importers to each other’s sensitive business information, thereby possibly infringing articles 1 of the Greek Competition Act and 101 TFEU.

31. The HCC’s investigation was initiated pursuant to a complaint filed by former terminated distributors and their trade associations, alleging that the tobacco producers coordinated to alter their distribution networks simultaneously and refused illegally to supply them with tobacco products. The complainants also alleged that the new distribution systems operated by the said tobacco producers caused anti-competitive cumulative effects. With the same decision, the HCC rejected allegations of the complainants pertaining to concerted practices, abuse of sole and collective dominance, cumulative effects, resale price maintenance and a request by the complainants for the adoption of structural measures whereby they would continue being supplied by the companies under the same terms. In particular, the HCC held that the evidence on file was not sufficient to substantiate an anticompetitive horizontal agreement between the tobacco companies; instead it indicated that the restructuring of their networks at wholesale level –ranging from exclusive distribution to non-exclusive arrangements- was sufficiently justified and consistent to legitimate commercial behavior. The HCC also rejected allegations of resale price maintenance and setting of profit margins, based on the fact that tobacco companies are obliged by law to place maximum resale retail prices on tobacco products, whereas retailers are prohibited from selling tobacco products at prices below those indicated on-pack (therefore, any increase in inter- and intra-brand competition would not directly impact price at retail level). The request for the adoption of structural measures was rejected on account of the fact that their adoption would presuppose a violation but also because it would go against the principle of proportionality and the prevailing freedom of the undertakings to plan their distribution networks. The HCC also recognized the existence of strong and established players in the market, a sufficient level of intra-brand competition which counterbalanced any exclusivity arrangements and insignificant market shares tied up with multiple exclusive dealership arrangements.

- **Supply of electricity from PPC S.A. to Aluminium of Greece S.A. - Commitments case**

32. By a unanimous decision, the HCC accepted commitments proposed by the Public Power Corporation S.A. (PPC S.A.), the incumbent producer and supplier of electricity in Greece, so as to meet the preliminary competition concerns expressed by the HCC.

33. The HCC’s investigation in the markets for the production and trade of electricity was initiated following a complaint by Aluminium of Greece S.A. (Aluminium) and its parent group Mytilineos Holdings (group of companies also active in the energy sector) for alleged abuse of dominance by PPC (article 102 TFEU and art. 2 of the Greek Competition Act). Aluminium is the biggest high voltage electricity consumer (manufacturer of aluminium). The complainants alleged that PPC refused to supply Aluminium and imposed on the latter unfair and discriminatory trading conditions, thereby also foreclosing a competitor in the upstream electricity production market. On the basis of the commitments proposed by PPC, in summary, PPC shall:

- Immediately withdraw its request to the power transmission operator (“ADMIE”) to no longer represent Aluminium’s electricity meters, revoke the declaration of discontinuation of power supply to Aluminium and the termination of the commercial relationship for power supply with the latter and, subsequently, publicize the said retraction.
- Continue to supply Aluminium on the current terms and conditions.
- Conduct negotiations with Aluminium concerning the fees for the supply of electricity to Aluminium on the basis of the pertinent legislation and regulatory framework, to be completed within 3 months with the conclusion of a supply agreement between the parties.
- Abstain from similar actions until the conclusion of the negotiations / the resolution of the dispute, provided that Aluminium continues to pay the fees it currently pays.

34. The HCC made the above commitments binding on the undertaking concerned without concluding whether or not there has been or still is an infringement. In case of non-compliance by PPC S.A., the HCC may impose fines in accordance with the Greek Competition Act.

- **Steel Sector case – Commitments case**

35. The HCC accepted commitments by steel producers regarding the exchange of information in the context of their trade association, while further rejecting complaints about other alleged infringements in the markets for the production, distribution and accreditation of steel products.

36. In particular, in the context of an ex officio investigation in the steel sector, the HCC decided, upon majority vote, to accept and make binding – pursuant to Art. 25 para. 6 of the Greek Competition Act – the commitments proposed by the three largest steel producers in Greece, namely SIDENOR SA, HELLENIC HALYVOURGIA SA and HALYVOURGIKI SA, and by their trade association, ENHE, to address competition concerns in the market for the production of steel products. The three steel producers agreed to change the terms and conditions of their ongoing cooperation within their trade association, so as to ensure that any information exchanged in that context does not increase the prospects of them coordinating their business policy. In case of non-compliance with the said commitments, the HCC may impose considerable fines on the undertakings and the association of undertakings concerned.

37. Moreover, the HCC decided, unanimously, that there was insufficient evidence to substantiate that the three steel producers had otherwise colluded to coordinate their prices in the market (and that some degree of observed parallelism between them, in that regard, could be justified by reasons other than anti-competitive collusion). In addition, the HCC decided, unanimously, that there was no evidence suggesting that EVETAM SA had abused its dominant position in the markets for testing and accreditation of steel products. For these reasons, the HCC also rejected the complaints submitted by the Technical Chamber of Greece (TCG) and steel distributor IRON TENCO, while finally concluding that there are no grounds to pursue further an investigation in the context of Arts. 101 and 102 TFEU.

- **Fuel Trading Companies – Commitments case**

38. Following an *ex officio* investigation, the HCC by a unanimous decision accepted commitments proposed by nine (9) wholesale fuel companies, namely “HELLENIC FUELS S.A” (former BP Hellas), “EKO S.A.”, “AVIN OIL S.A.” “CORAL S.A.” (former Shell Hellas), “CYCLON HELLAS S.A.”, “ELINOIL HELLENIC PETROLEUM COMPANY S.A.”, “AEGEAN OIL”, “MAMIDOIL-JETOIL S.A” and “REVOIL S.A.”, so as to meet the competition concerns expressed to them by the HCC.

39. In its decision, the HCC examined whether the transfer of proprietary rights over land and gas station premises and the concurrent entry into long-term exclusive cooperation agreements between the owner/operator of the gas station and the trading company, gave rise to competition concerns within the meaning of Articles 101 TFEU and 1 of the Greek Competition Act. The undertakings under investigation entered into commercial lease agreements with gas station operators and subsequently subleased the stations back to their lessors or to third parties connected to them, while at the same time they signed exclusive commercial cooperation agreements with same sub-lessees for a duration exceeding 5 years or for an indefinite duration upon tacit renewal. As a result, the 5-year limit for non-compete clauses was circumvented, with certain terms reaching up to 22 years. Some commercial and sub-lease agreements also contained reciprocal termination clauses.

40. According to the HCC’s preliminary assessment, the above agreements might give rise to competition concerns within the meaning of Articles 101 TFEU and 1 of the Greek Competition Act, because they amount to a non-compete obligation of more than 5 years, thus excessively restricting the petrol-station operator’s contractual freedom and hindering entry and/or expansion in the retail fuel markets. In order to address the preliminary concerns expressed to them by the HCC, the 9 wholesale fuel trading companies concerned offered commitments. In summary, according to the commitments, the fuel trading companies shall:

- Refrain from entering into any such future arrangements exceeding 5 years,
- Gradually terminate all such existing arrangements, based on a specific timeframe relative to the time of their conclusion, thereby ensuring both the independence of the contracting petrol-station operators in their business decision-making and any outstanding financial requirements of the trading companies, and
- Inform the petrol-station operators concerned about the time and procedure for terminating the said contracts.

41. The HCC made the above commitments binding on the undertakings concerned, thereby finding that there are no longer grounds for further action, without such decision concluding whether or not there has been or still is an infringement. In case of non-compliance by the fuel trading companies concerned, the HCC may impose fines in accordance with the Greek Competition Act.

- **Review of DEPA commitments – natural gas supply**

42. By a unanimous decision, the HCC accepted a proposal from DEPA to revise the commitments adopted with earlier HCC’s decisions (551/VII/2012, 589/2014 and 596/2014), and in particular to amend the specific terms of the system for the supply of natural gas through electronic auctions (gas release programme), also in view of the forthcoming annual auction. This partial revision aims at promoting a more efficient functioning of electronic auctions at a transitional phase, until assessment of the effects that may result from the application of the recently enacted Law 4336/2015. In particular, according to the revised commitments undertaken by DEPA:

- The total quantity that is to be made available through the impending yearly auction increases from 50% to 60%, with a simultaneous adjustment of the quantities made available through quarterly auctions (par. 5(a) of Decision No 589/2014).
- In the event that, after the forthcoming annual auction, a quantity of natural gas is still not disposed, it will be proportionally allocated (pro rata) between the participants being awarded the maximum quantities at the auction (capped at 15% of the auctionable quantity per tenderer), if the latter intends to buy an additional quantity, with Decision No 589/2014 being partly amended to that end (par. 4). Such redistribution reserve price will be the original auction price, without any additional charges. As for the rest, earlier decisions 551/2012, 589/2014 and 596/2014 continue to apply.

43. Given the recent broadening of the “Selecting Natural Gas Customer” group and the resulting possibility thereof to be directly supplied with natural gas through auctions conducted by DEPA, as well as the change brought to the scheme of the existing three Gas Suppliers Companies (amendments that were recently adopted by Laws 4336/2015 and 4337/2015), the HCC shall revisit the matter of the natural gas disposable quantities through auctions, in collaboration with the Regulatory Authority for Energy (RAE), also taking into account the evolution of demand at the forthcoming annual auction.

- **Assessment of the BOOKING & EXPEDIA’s cooperation agreements with hotel businesses in Greece**

44. The HCC reviewed the amended parity terms in the agreements between online travel agencies (OTAs) BOOKING.COM and EXPEDIA with their hotel partner businesses in Greece, following relevant inquiries conducted by other European Competition Authorities, and in coordination with the European Commission. The said OTAs committed to amend their agreements with hotel businesses across Europe, including Greece, in order to increase the flexibility of hoteliers concerning room reservations, room pricing and communications with their clients. After examining the new amended parity clauses to be applied by these two OTAs in their cooperation agreements with hotel businesses in Greece, the HCC concluded that there are currently no grounds to investigate these agreements further.

45. According to the amended (new) contractual terms, partner hotel businesses in Greece will be able to:

- Set different prices and/or offer different terms and availability between different OTAs,
- Offer lower prices and/or better terms to off-line channels (such as reservations by telephone or at the hotel reception or in the framework of loyalty programs), provided that hoteliers do not publicize or advertise those lower prices online,
- Engage in promotional activities to all prior visitors of the hotel, regardless of the mode with which such visitors made their reservations (including reservations previously made through OTAs).

46. The implementation of the new parity terms by online travel agencies BOOKING.COM and EXPEDIA is expected to enhance competition between the online travel agencies, as well as between other marketing channels (i.e. internet, traditional travel agencies, telephone reservations or other types of reservations), to the benefit of hotel businesses and consumers alike.

- **Other significant cases**

47. During the course of 2015, the Authority also concluded the administrative proceedings in two other key investigations: (a) COLGATE-PALMOLIVE’s agreements allegedly restricting parallel trade in the market for detergents and cosmetics and (b) GLAXOSMITHKLINE’s alleged abusive practices concerning certain medicinal products. However, final decisions are pending.

2.1 Merger Enforcement

2.1.3 Statistics on Notified Mergers

48. In 2014 the HCC reviewed eight (8) merger filings pursuant to the Greek Competition Act, of which three (3) led to an in-depth review (phase II merger investigations) and were unconditionally cleared.

2.1.4 Description of Significant Merger Cases

- **Consolidation in the retail sector**

49. As a result of the severe economic downturn and the ensuing need for recapitalization a wave of merger and acquisitions in the retail sector has emerged, involving several super market chains. In 2015, the HCC was mostly concerned with the consolidation of the super market retail sector, notably through acquisitions of regionally based super-market chains by some of the country's largest industry players. The HCC conducted the substantive assessment of these mergers, by analyzing competitive conditions in local markets (defined as a radius from each retail store). In all cases, the HCC held that competition is not significantly impeded by the notified transactions.

- **MYTHOS Brewery - OLYMPIC Brewery merger in the beer sector**

50. In 2015, the HCC challenged, but ultimately cleared without remedies, the acquisition of the country's third largest beer distributor (Olympic Brewery) by the Carlsberg Group. MYTHOS Brewery, owned by CARLSBERG (fourth largest brewery worldwide) distributed several beers in the Greek market, including Mythos, Kaiser, Corona Extra, and Guinness, while OLYMPIC Brewery owned the historic Fix trademark. As per the merger, MYTHOS would be absorbed by OLYMPIC, and the latter would be controlled by CARLSBERG. MYTHOS and OLYMPIC held the second and third largest market share in the beer market respectively, which initially indicated a loss of competition within the sector.

51. Athenian Brewery (market leader), Vergina (4th largest) and EZA Brewery (5th largest) were allowed to participate in the procedure opposing the proposed merger. They both submitted that the merger would render market entry of potential competitors harder and that the merged entity would enjoy increased negotiating power over its customers thereby compromising sales of minor competitors. They also estimated that consumers would suffer from price increases as a result of the proposed merger.

52. However, the HCC found that the merged entity would still hold a market share considerably lower than the one enjoyed by dominant Athenian Brewery and took into account that OLYMPIC faced certain economic problems capable of intercepting its further development. Moreover, the HCC made considerable use of economic evidence, using surveys, reports, as well as answers submitted by super-market chains which were called to comment on the proposed merger. It concluded that the beer market was rather mature, barriers to entry and price transparency were low, whereas demand-side elasticity was relatively high, with consumers being responsive to possible price increases. In addition, a general consumer tendency towards low-price brands, enhanced by the competitive pressures put by private label products, constituted clear pro-clearance indicators. The investigation also indicated that the merging entities could not be considered as direct competitors in sub-segments of the relevant market and that OLYMPIC did not exert a particular competitive pressure vis-à-vis the acquiring entity.

53. Finally, in examining possible coordinated effects, the HCC's concerns were centered to the risk of the merger creating or strengthening a collective dominant position between the merged entity and Athenian Brewery. However, it rejected the likelihood of such a development (and cleared the merger) due to the evidenced low price transparency, high demand-side elasticity, as well as the longstanding rivalry of MYTHOS with Athenian Brewery, which climaxed due to the aforementioned abuse of dominance case.

2.2 *Court Judgments*

54. The Athens Administrative Court of Appeals (AACAA), which reviews all HCC's decisions on the merits, issued nineteen (19) final judgments in 2015. Out of those decisions:

- Sixteen (16) were upheld on appeal (in 7 of those the Court confirmed the HCC's findings on substance, but adjusted the fine imposed, and in 1 further decision the Court altered the type of sanction ultimately imposed);
- Three (3) decisions were annulled (in 1 of those the Court referred back the case to the HCC, in 1 the Court concluded that the case and ensuing fines imposed was subject to prescription and in 1 the Court found that the merger case at issue was not notifiable) .

55. In addition, the Council of the State (Supreme Administrative Court) which reviews AACAA decisions on legal grounds only, issued and notified to the Authority sixteen (16) judgments in the course of 2015 regarding HCC infringement decisions. The HCC prevailed in 15 out of those 16 proceedings.

3. **Advocacy – other initiatives**

3.1 *OECD Competition Assessment Projects and Liberal Professions*

56. In recent years, the HCC has taken steps to diversify and expand considerably its advocacy efforts and overall outreach activities, both as a result of the ongoing financial crisis and the sustained role of the HCC in promoting structural reforms in the context of Greece's Economic Adjustment Programme. For this purpose, a variety of instruments have been used by the Authority, including:

- formal opinions – recommendations for legislative change addressed to the government (upon request by the competent line ministries or at its own initiative);
- targeted screening and regulatory impact assessment initiatives in cooperation with the OECD; and
- publication of compliance and awareness guides. As regards specific and/or quantifiable deliverables:

57. Following the successful implementation of the 1st and the 2nd Joint Competition Assessment Projects, led by the OECD in cooperation with the HCC (see previous Annual Reports), a 3rd Joint Competition Assessment Project was initiated in the end of 2015, the aim being to review legislation to identify potential regulatory obstacles to competition and make recommendations for legislative change in 4 designated sectors of the Greek economy (e- commerce, manufacturing, wholesale trade, and media), using the methodology set out in the OECD's Competition Toolkit.

- **1st Joint OECD-HCC Competition Assessment Project**

58. A team of OECD & HCC competition experts, led by the OECD, reviewed more than 1,000 pieces of legislation, ultimately identifying 555 problematic regulations and making more than 320 recommendations on legal provisions that should be amended or repealed in 4 sectors Greek economy: food processing, retail trade, building materials and tourism³. It is estimated that approx. 80% of the

³ See <http://www.oecd.org/greece/greececompetitionassessment.htm>.

project's recommendations were adopted and enacted into law by the Greek government in the course of 2014.

- **2nd Joint OECD-HCC Competition Assessment Project**

59. A team of OECD & HCC competition experts, led by the OECD, reviewed 482 pieces of legislation, identified 154 potential restrictions and made 88 recommendations for change, following a 5-month in-depth review of legislation to identify potential regulatory obstacles to competition in 4 additional sectors of the economy: manufacture of coke and refined petroleum products; manufacture of textiles, wearing apparel, leather and related products; manufacture of beverages and manufacture of machinery and equipment.

60. The HCC's partnership with the OECD on both projects is a testament to the authority's capabilities and commitment in further strengthening its advocacy role.

61. During the last 3 years, the HCC's task force on liberal professions reviewed laws and regulations affecting a number of regulated professions, ultimately issuing more than 25 formal opinions aimed at identifying and removing regulatory obstacles as regards the access and exercise of a number of professional services. According to the OECD Economic Survey for Greece (November 2013), it is estimated that around 75% of nearly 350 regulated professions had been opened to competition, in line with the Hellenic Competition Commission recommendations (opinions issued by the HCC in the context of its enhanced advocacy role)⁴.

3.2 Other outreach activities

62. The HCC continued its efforts to promote awareness on issues stemming from the newly adopted EU Directive on antitrust damages actions (Damages Directive), notably by organizing a seminar and publishing a new brochure regarding the scope, key provisions and perceived benefits of the EU Directive.

63. The HCC issued guidelines (in the form of Q&As) with regard to the application of competition law rules in franchising agreements, in order to help franchisors and franchisees understand the types of conduct that may infringe competition law.

64. Moreover, the HCC participated as an associate partner in a four-day "Training Seminar for National Judges in Greece on Enforcement of EU Competition Law" organized by the European Public Law Organization (EPLO). The Seminar provided in-depth and practical training to 53 Greek judges and prosecutors on key issues pertaining to the enforcement of EU Competition Law in Greece.

65. Finally, the HCC co-organized two Info Days regarding its ongoing project "Digital Competition Commission Services", financed by EU funds. The Program aimed at (a) providing citizens, professionals and undertakings with better quality online services in all their dealings with the HCC, (b) facilitating the decision-making process by digitizing files and related evidential material, (c) meeting all of HCC's operational requirements by increasing efficiency of its monitoring and enforcement role (pace and quality of its work and services provided thereby).

⁴ See e.g. OECD Economic Surveys – Greece, November 2013, p. 30 et seq.

4. HCC resources & administration

4.1 Digitalization of services

66. The HCC successfully proceeded in digitalizing its services, including case management and other internal procedures. As previously reported, by implementing this project, the HCC aims at providing enhanced digital services to citizens and enterprises, thereby reducing costs, burdensome procedures and bureaucracy as a whole. The new technologies infrastructure will further contribute to the upgrade and streamlining of all HCC's databases, while rendering case management more effective. The project, which is financed by EU funds, was substantially completed at the end of 2015.

4.2 Annual budget

BUDGET (€)*		
2014	2015	2016
9,632,150	7,738,500	6,353,000

*Excluding sums earmarked for the purchase of a new building and sums remitted to the state budget (from HCC's surplus each year).

4.3 Human Resources

67. During 2015, there has been a decline in the total number of competition experts working at the Directorate-General (investigative arm of the Authority), while there have also been two vacancies of Commissioner- Rapporteurs at the Board level (decision-making arm of the Authority). Both factors overextended the ability of the HCC to perform its role in an efficient and timely manner.

68. The Directorate-General of the HCC is organized in Units by reference to sectors of the economy (as this is considered to be optimal in the circumstances of the Authority). Within those Units, all non-administrative staff contributes to all areas of competition enforcement (mergers, anti-cartel, anti-competitive agreements, dominance-related issues, advocacy etc), according to their individual field of sectoral expertise and depending on the actual needs of the Authority and overall resources available (on a case-by-case basis). In 2015, total number of staff is 94⁵, out of which 57 is non-administrative staff working on competition enforcement⁶.

HCC staff (year end 2015)	
Staff Category	Number of staff
Competition experts (lawyers)	18
Competition experts (economists)	34
Competition experts (other)	5
Total (competition enforcement)	57
Administrative support staff (including IT experts, staff on secondment to other public sector entities or on unpaid leave)	37
Total	94

⁵ This figure excludes the Members of the HCC Board (the decision-making arm of the authority).

⁶ Five (5) senior IT experts qualify as "administrative" staff, although they have a central role in conducting dawn raids and handling the electronic data of the investigations.