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Annual Report on Competition Policy Developments in Greece

21-23 June 2017

This report is submitted by Greece to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.

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Executive Summary

1. 2016 was a dynamic year for the Hellenic Competition Commission, since new competences and challenges emerged from the introduction of the Settlement Procedure. The HCC (by its unanimous Decision No. 628/2016) established the terms and conditions of the settlement procedure in cartel cases, following the delegation provisions of Articles 25a and 14 par 2 of the Greek Competition Act. The new Settlement Procedure, which is essentially modeled after the EU equivalent procedure, aims at simplifying and speeding up the handling of pending cases. It would allow the Hellenic Competition Commission to achieve efficiencies through a streamlined administrative process, resulting in a relatively more expedited adoption of infringement decisions regarding Article 1 of the Greek Competition Act and/or Article 101 TFEU. In turn, this would allow a better allocation of resources, in order to deal with more cases, thereby increasing the deterrence effect of the HCC's enforcement action, while simultaneously increasing citizens' awareness in the effective and timely punishment of undertakings infringing competition law.

2. During the course of 2016, the procedure was applied in two cases, one of which is the biggest ever pursued by the HCC and concerns a bid rigging cartel in the public works construction sector. The complexity of the case, the number of the involved undertakings and the volume of the evidence to be examined combined with the procedural requirements of a newly applied procedure have demanded ground - breaking work on behalf of the case team. The Authority also issued its first infringement decision in the cosmetics sector following the settlement procedure for some of the parties involved.

3. In the context of its advocacy initiatives, and with a view to raising awareness of businesses and consumers in competition matters, the HCC has also issued a MEMO in the form of Questions and Answers (Q&As) accompanying its decision on the Settlement Procedure. The MEMO contains useful information and clarifications on different aspects of the process.

4. 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 monitoring actions, notably by making more use of sector inquiries, 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.

5. During the past year a number of pending investigations were successfully completed with several statements of objections being issued in high-profile cases, the outcome of which is expected to shape the year to come and the enforcement record of the Authority. At the same time, the HCC enhanced its practice regarding commitment decisions.

6. The HCC also adopted infringement decisions in both Article 101 and 102 TFEU cases and imposed considerable fines totaling approx. € 11.6 million, notwithstanding the ongoing financial crisis.

7. As an aside, the Administrative Court of Appeals and the Supreme Administrative Court upheld all HCC's decisions reviewed in the course of 2016, with a relatively few reductions in the amount of the fines imposed.

8. The HCC's diversified record of this year also included the imposition of procedural fines for submission of misleading data that impeded the Directorate General's investigation.

9. The successful conclusion of the 3rd Joint OECD-HCC Competition Assessment Project fully demonstrates the Authority's dedication to creating a competitive environment, notwithstanding the constraints. The 3rd OECD-HCC Competition Assessment Project on the identification of potential regulatory obstacles to competition was completed, after reviewing legislation in five designated sectors of the Greek economy (e- commerce, construction, media, wholesale trade and selected subsectors of manufacturing such as chemicals, pharmaceuticals and media). Using the methodology provided in the Competition Assessment Toolkit, the project team examined 1288 sector-relevant pieces of legislation, identified 577 possible restrictions to competition and made 356 recommendations to correct them by less restrictive policies. Moreover, the HCC continued its advocacy efforts in the liberalization of professional services by issuing a new opinion for the profession of marine chemists.

10. Overall, it was a year full of new challenges, which attested to the HCC's increased capabilities to pursue complex investigations. The HCC endeavored to pursue the strategic objectives laid out since the inception of the ongoing economic crisis 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.

11. The HCC will insist on the need to pursue diversified advocacy initiatives to enhance its role and its enforcement record, in order to raise more awareness and promote a genuine competition culture.

2016 Key Achievements

Overview

1. 2016 was marked by the introduction of the Settlement Procedure. The new Settlement Procedure, which is essentially modelled after the EU equivalent procedure, aims at simplifying and speeding up the handling of pending cases. It would allow the Hellenic Competition Commission to achieve efficiencies through a streamlined administrative process, resulting in a relatively more expedited adoption of infringement decisions regarding Article 1 of the Greek Competition Act and/or Article 101 TFEU. The procedure has been applied in two cases during the course year 2016, one of which is the largest yet pursued by the HCC (cartel investigation in the construction sector).

2. In addition a number of pending investigations were successfully completed with several statements of objections being issued in high-profile cases (likely to mark the year to come). The HCC also adopted infringement decisions in both Article

101 and 102 TFEU cases and imposed considerable fines totalling approx. € 11.6 million, notwithstanding the ongoing financial crisis.

Enforcement (antitrust & mergers)

Key decisions and interventions in 2016 included the following:

- Statement of objections addressed to more than 30 construction companies in the case of an *ex officio* investigation on alleged collusion regarding tenders for public works of infrastructure, notably road construction, rail transport, metro rail and concession projects (public-private partnerships). Practices include discussions on price ahead of tender submissions and agreeing rebate levels. This is the largest case yet pursued by the HCC and the first case, after a long period of time, that an involved undertaking contributed considerably in the substantiation of the infringement by submitting a leniency application following the dawn raids conducted by the Authority. Moreover, this is the first case where the newly introduced settlement procedure was initiated by a substantial number of the involved parties.
- Settlement decision with a total amount of fines of € 1,053,595 in a case against eight (8) companies controlled by HONDOS family members in the beauty and broader cosmetics sector regarding infringements of Articles 1 of the Greek Competition Act and 101 TFEU. The undertakings involved engaged in horizontal price-fixing regarding the retail prices of their products, thereby infringing EU and national rules. The case, an ex- officio investigation following a complaint, has not been yet ruled regarding the allegations for anti-competitive agreements between wholesalers of luxury cosmetics, aiming at the indirect fixing of reselling prices by the retailers, by setting a uniform level of discounts.
- Review of commitments decision upon DEPA that were made binding with previous HCC's decisions issued in 2012, 2014 and 2015 (551/VII/2012, 589/2014 and 596/2014 and 618/2015): in order to amend the specific terms of the system for the supply of natural gas through electronic auctions (gas release programme), access to network connection points – reservation of capacity at points of entry and terms of supply with other DEPA customers. The HCC also examined at the end of 2016 whether DEPA has complied with the commitments, as revised by the aforementioned decisions, and the decision is still pending.
- Infringement decision with fines totalling € 10,450,000 total imposed on Colgate Palmolive (C-P) and chains of super markets for anticompetitive clauses in the supply agreements that led to the prevention of importing C-P products from other Member States that constituted violation of Articles 1 and 2 of the Greek Competition Act and 101 and 102 TFEU, in an ex officio investigation in the market for detergents and cosmetics. An additional administrative fine of an amount of € 400,000 was imposed on C-P for submission of misleading data, obstructing the Directorate- General's investigation.
- Infringement decision with fines of € 88,814.62 for violation of Article 1 of the Competition Act imposed on NEOSET company for anticompetitive terms in its franchise network for selling kitchen furniture.
- Statement of objections addressed to undertakings active in the market of haemodialysis filters and arterial and venous lines for alleged infringement of competition rules (Arts. 1 of the Greek Competition Act and 101 TFEU). The ex-officio investigation focused on the procurement process and ensuing prices regarding haemodialysis filters and arterial and venous lines for the needs of

public hospitals in Greece, while further examining the evolution of prices in Greece as compared to other selected member states.

- Statement of objections re-issued (following the referral of the case by the Administrative Court of Appeals back to the HCC on procedural grounds) and addressed to four insurance undertakings and AUDATEX SA, following a complaint by an association of car body repairers. The complainant alleges that the insurance companies colluded in order to set fixed hourly rates for the repairer through the Audatex software, an electronic platform used to conduct electronic surveys in cases of motor vehicle damages, in order to control the repair estimates payable by the insurance companies.
- Statement of objections addressed to companies active in the auto sales market in a case of examination of a complaint by a car distributor against NISSAN EUROPE and its national importer appointed in Greece, for anticompetitive terms and clauses in the selective distribution system.
- Statement of objections addressed to certain undertakings active in the construction sector in Greece in relation to an alleged collusion of a tender process in the Prefecture of Pella.
- Statement of objections addressed to ROMA PIZZA for resale price maintenance and restriction of cross-supplies within its franchise distribution system for pizza delivery.
- In-depth investigation (Phase II review) of 2 notified mergers and acquisitions, one cleared with remedies.

12. The HCC's diversified record also included an obstruction of dawn raids decision with an administrative fine of 15,000 euro to an association of undertakings in the market for provision of security services.

Advocacy

- The 3rd OECD-HCC Competition Assessment Project on the identification of potential regulatory obstacles to competition was completed, after reviewing legislation in five designated sectors of the Greek economy (e- commerce, construction, media, wholesale trade and selected subsectors of manufacturing such as chemicals, pharmaceuticals and media). Using the methodology provided in the Competition Assessment Toolkit, the project team examined 1288 sector-relevant pieces of legislation, identified 577 possible restrictions to competition and made 356 recommendations to correct them by less restrictive policies.
- The HCC continued its advocacy efforts in the liberalization of professional services by issuing a new opinion for the profession of marine chemists.
- In the context of its advocacy initiatives, and with a view to raising awareness of businesses and consumers in competition matters, the HCC has also issued a MEMO in the form of Questions and Answers (Q&As) accompanying its decision on the Settlement Procedure. The MEMO contains useful information and clarifications on different aspects of the process.
- The Authority continued its cooperation with the European Public Law Organization (EPLO) and co-organized a training program seminar for National Judges in Greece on Enforcement of EU Competition Law which provided in-depth and practical training to judges and prosecutors on key issues pertaining to the enforcement of EU Competition Law in Greece, mainly regarding issues stemming from the implementation of the new Damages Directive.

- The Competition Commission organized workshops to promote its Guide on decisions of Associations of Undertakings, in partnership with SEV (the Hellenic Federation of Enterprises).

Other Activities – Institutional Issues

- The HCC (by its unanimous Decision No. 628/2016) established the terms and conditions of the settlement procedure in cartel cases, following the delegation provisions of Articles 25a and 14 par 2 of the Greek Competition Act. The new Settlement Procedure concerns cases where undertakings or associations of undertakings make a clear and unequivocal acknowledgement of participation and liability in relation to their participation in horizontal agreements (cartels) and the subsequent breach of competition law (Article 1 of the Greek Competition Act and/or Article 101 TFEU). As a result, they can obtain a reduction of the imposed fine by 15%, provided that certain conditions are fulfilled.
- Informal guidance to public bodies about the drafting of soft law pieces regarding the newly amended legislation on public procurement.
- Participation in a Working Team for consumer protection issues, which among others include the Code of Consumer Conduct.
- Favourable performance assessments of the HCC made by the OECD and the European Commission (also in the context of reviewing Greece's economic adjustment programme).

1. Changes to Competition Laws and Policies

1.1. Amendments to Law 3959/2011 (the Greek Competition Act)

13. The Greek Competition Act was amended twice (February and May 2016) during the pertinent period, by virtue of two pieces of legislation passed by majority vote in the Greek Parliament. The new provisions introduced in Law 3959/2011 substantially altered the legal framework covering the term in office and the conflicts of interest of the members of the decisive arm of the authority (the Hellenic Competition Commission Board).

14. The amendments to the Greek Competition Act are summarized below:

- An amendment to Article 12 of the Competition Act introduced an age threshold for the President and the Vice President and the Members of the Board of the Hellenic Competition Commission. In particular, the President and Vice President automatically leave the Authority when they reach 73 years of age, while the members of the Board when they reach 70 years of age. A transitional provision allows the current Board to remain in office until the end of their mandate.
- A conflict of interest has been introduced providing that a Member of the Board cannot be (among others) spouse to any Member of the Greek Parliament. The new Article 12 par.7 stipulates that the occurrence of such conflicts to automatically result in the termination of the person's term, when at the same the law requires the issuance of an administrative act (without specifying the content of this act) from the competent body initially appointing this person. The provision will enter into force one month following the publication of the new

Law in the Official Gazette and covers the Members of the Board already in the service of the HCC.

- New provisions were added which introduce a set of new disciplinary offenses for the Members of the HCC's Board. According to the new provisions, the disciplinary offences consist of a) any substantial infringement by a Board Member of the provisions of Competition Act (L.3959/2011) and of the legislation generally in force; b) the acquisition or the pursuit of a financial benefit or reward of the Board Member itself or of any third person in the course of their duties or on occasion of the performance of their duties; c) wrongful harm to the detriment of the Greek State or the Hellenic Competition Commission. Such misconduct as described above is subject to disciplinary action if committed with intent or gross negligence. Disciplinary action includes imposition of a fine that can reach up to 12 months of wages and permanent cessation (from the office), while if a member is fined twice within a period of 2 years, the member is automatically banned from office. Moreover, a Board Member may be dismissed if the disciplinary offense is a criminal offense under the Penal Code, even if the Board Member has not been condemned by a criminal court on such grounds.
- A new provision sets an annual cap on fees for outside legal counsel (€ 20,000) used by the Greek Competition Authority to defend its decisions before the administrative courts, which is put on hold until the staffing of the Legal Support Office as provided in the Greek Competition Act.
- The settlement procedure was introduced as well as provisions regarding the ability of undertakings to be absolved of criminal liability, in case of acknowledgement of guilt and payment of fine (in all kinds of procedures before the HCC).

1.2. Decision on the terms and conditions of the new Settlement Procedure

15. Based on specific enabling provisions of the Competition Act, the HCC continued its secondary legislation and soft law initiatives. By its unanimous Decision No. 628/2016, the Hellenic Competition Commission (HCC) established the terms and conditions of the settlement procedure in cartel cases, according to the provisions of Articles 25a and 14 par 2 of the Greek Competition Act.

16. The new Settlement Procedure concerns cases where undertakings or associations of undertakings make a clear and unequivocal acknowledgement of participation and liability in relation to their participation in horizontal agreements (cartels) and the subsequent breach of competition law (Article 1 of the Greek Competition Act and/or Article 101 TFEU). As a result, they can obtain a reduction of the imposed fine by 15%, provided that certain conditions are fulfilled. The new Settlement Procedure, which is essentially modeled after the EU equivalent procedure, aims at simplifying and speeding up the handling of pending cases. It would allow the HCC to achieve efficiencies through a streamlined administrative process, resulting in a relatively more expedited adoption of infringement decisions regarding Article 1 of the Greek Competition Act and/or Article 101 TFEU. In addition, the settlement procedure provides scope for a reduction in the number of appeals against the HCC's decisions before administrative courts. In turn, this would allow a better allocation of resources, in order to deal with more cases, thereby increasing the deterrence effect of the HCC's enforcement action, while simultaneously increasing citizens' awareness in the effective and timely punishment of undertakings infringing competition law.

17. The key parameters of the new Settlement Procedure are as follows:

- **Requirements for settlement**

Undertakings or associations of undertakings must unequivocally acknowledge participation to an infringement and accept their liability in relation to the infringement. In addition, the parties must confirm that, in view of the above, they do not request full access to the file or an oral hearing before the HCC's Board. When parties are convinced of the strength of the Commission's case in view of the evidence gathered during the investigation and of their own internal audit, they may be ready to admit their participation in a cartel and accept their liability for it.

- **Suitability of cases**

The HCC enjoys full discretion in determining whether a case is suitable for settlement, weighing a number of factors in that respect, inter alia:

  - The number of businesses involved in the investigation and the number of business potentially and genuinely interested in settlement
  - The number and nature of the alleged infringements
  - Whether procedural efficiencies and resource savings can be achieved
  - Any aggravating circumstances
  - Commencement of settlement procedure

Settlement discussions may commence on the parties' initiative at any stage of the investigation. However, procedural efficiencies are less likely to accrue if a statement of objections has been already addressed to the parties concerned.

- **Bilateral discussions between the parties and the HCC**

Bilateral meetings aim at presenting each business considering settlement with the necessary information regarding the case, namely the material facts of the infringement and their legal assessment, the duration and gravity of the infringement, the liability of each undertaking, evidence pointing to violation of competition law, calculation of the fine to be imposed.

Bilateral meetings are also an opportunity for each business to present its comments on the alleged infringement and its basic parameters (as outlined above).

- **Negotiations and the settlement procedure**

The settlement procedure does not imply negotiations with the Authority. The HCC will not bargain about evidence or its objections or the finding of an infringement. However, each business will also be heard effectively in the framework of the settlement procedure and parties will therefore have the opportunity to influence the HCC's objections through argument.

- **Submission of the settlement proposal**

The official settlement proposal by each implicated business shall contain, as a minimum:

  - Acknowledgement of the parties' participation and liability for the infringement
  - Acceptance of the maximum amount of the fine that may be imposed by the HCC

- The parties' confirmation that they have been informed of the HCC's finding of an infringement and that they have been given the opportunity to make their views known to the authority;
- The parties' confirmation that, in view of the above, they waive their right to obtain full access to the HCC's file or to be heard in an oral hearing
- Waiver of the right to challenge HCC's jurisdiction and the validity of the procedure followed.

- **Confidentiality of cartel settlement discussions and information**

Submissions and other statements made by the settling parties in the course of settlement discussions are considered confidential and access to them is restricted. Moreover, they cannot be disclosed or used in the context of another judicial or administrative proceeding (incl. follow on damages actions). Penalties are envisaged for any breach of those access rules and of the ensuing confidentiality obligation by any party.

- **Calculation of the reduced fine imposed with the HCCs decision**

The reduction of the fine amounting to 15% due to settlement will be deducted from the fine that a company would normally have to pay according to the provisions of the current HCC's guidelines on fines.

- **Interplay of Leniency and Settlement procedures**

The leniency policy and the use of settlements are not mutually exclusive – it is possible for a leniency applicant to settle a case and benefit from both leniency and settlement discounts.

- **Calculation of fine when a company has also applied for the Leniency Programme**

When applicable, the reduction of fine given under the settlements procedure will be cumulative with the reduction of fine under the leniency programme.

- **Interplay of Commitments and Settlement procedures**

Settlement procedure is wholly distinct from the Commitments procedure. In particular, settlement decisions establish the existence of an infringement (serious cartel infringement), setting out all the relevant parameters thereof, require the termination of the infringement and impose a corresponding fine. On the contrary, commitment decisions do not establish an infringement, nor do they impose a fine, but instead bring an alleged infringement (not pertaining to cartels) to an end, by imposing on companies the commitments offered to meet the HCC's concerns.

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

19. During the course of 2016, the procedure was applied in two cases, one of which is the biggest ever pursued by the HCC and concerns a bid rigging cartel in the public works construction sector. The complexity of the case, the number of the involved undertakings and the volume of the evidence to be examined combined with the procedural requirements of a newly applied procedure have demanded ground- breaking work on behalf of the case team. The Authority also issued its first infringement decision in the cosmetics sector following the settlement procedure for some of the parties involved, as described in more detail below.

2. Enforcement of Competition Laws and Policies

20. The HCC adopted infringement decisions in both Article 101 and 102 TFEU cases and imposed considerable fines, notwithstanding the ongoing financial crisis. 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 2016, 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

21. In the area of antitrust, the HCC issued thirty three (33) 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.

22. The HCC further issued ten (10) 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),

23. The Authority conducted fifty three (53) dawn raids in total for the investigation of five (5) pending cases. The HCC's diversified record also included an obstruction of dawn raids decision with an administrative fine of 15.000 euro to an association of undertakings in the market for provision of security services.

2.1.2. Description of Significant Antitrust Decisions

Construction sector cartel (bid rigging practices)

24. A statement of objections was addressed to a large number of undertakings active in the construction sector in Greece regarding an alleged infringement of Article 1 Law 703/1977 (now article 1 Law 3959/2011) and article 101 TFEU. The case is based on an ex officio investigation which focuses on alleged collusion regarding tenders for public works of infrastructure, notably road construction, rail transport, metro rail and concession projects (public-private partnerships). According to the statement of objections, the ELLAKTOR, J&P-AVAX, GEK TERNA, AEGEK, TECHNICAL OLYMPIC and INTRAKAT groups of companies participated, with varying starting points, in bid-rigging for public construction works that spanned from 1989 to 2016. Based on the evidence gathered in the investigation, the implicated construction companies coordinated their business conduct on responses to invitations to tender, particularly by:

- Submitting cover bids and/or agreeing amongst themselves who will submit the winning bid;
- Fixing the level of bids (rebated granted);

- Suppressing bids in return for monetary compensation;
- Agreeing to execute sub-contracts before submitting their respective bids; or
- Withdrawing from bidding in return for jointly executing the respective works.

25. The collusive scheme was implemented through regular meetings of representatives of the implicated competing undertakings and/or the conclusion of compensatory contracts. TECHNICAL OLYMPIC contributed considerably in the substantiation of the infringement by submitting a leniency application following the dawn raids conducted by the HCC.

26. According to the statement of objections, undertakings within the FCC, VINCI, HOCHTIEF and SIEMENS group of companies, as well as the BIOTER, EKTER, THEMELI, THEMELIODOMI, CHR. CONSTANTINIDIS, ALSTOM TRANSPORT, IACOVOU BROTHERS, ARCHIRODON, SALINI, SELI, DOMIKH KRITIS, AGRICULTURAL BANK OF GREECE, ERETBO, ALEXANDROS TECHNIKI, NEMESIS, VAN OORD, TADEI, IMPRESA, RIZZANI and MAIRE TECNIMONT undertakings, each participated in individual anti-competitive tenders, and for varying time-periods, in the said collusive scheme. In addition, the statement of objections recommends the finding of an infringement also with respect to the MICHANIKI, ATTI-KAT, EMPEDOS, ELTER, ALTE, PROODEFTIKI, TECHNODOMI, N. KAMATAKIS, THESSALIKI, EVROPAIKI TECHNIKI, PARNON, ERGAS, GENER, ELTEK and SOMAGUE ENGENHARIA construction undertakings, as well as with respect to the SATE and STEAT associations of undertakings, although their participation in the infringement is subject to the 5-year limitation period for the imposition of penalties. As set out above, this is the first case where the newly introduced settlement procedure was initiated by a substantial number of the involved parties.

The Cosmetics case – Settlement decision

27. A statement of objections was addressed to certain undertakings active in the wholesale and retail trade of luxury cosmetics, committed an infringement of art. 1 of Law 703/1977 (as was applicable), current art 1 of L. 3959/2011, and of art. 101 TFEU. The ex-officio investigation was initiated following complaints by NOTOS COM, the first against five luxury cosmetics wholesalers (namely, ESTEE LAUDER HELLAS S.A, P.N. GEROLYMATOS S.A, L' OREAL PRODUITS DE LUXE HELLAS S.A, GR. SARANTIS S.A. and PARFUMS CHRISTIAN DIOR HELLAS S.A.) and the second against luxury cosmetics retailers under the brand name "HONDOS CENTER". For the purposes of the above investigation, the Directorate-General for Competition conducted dawn raids at the premises of the undertakings involved, took witness statements and sent several information requests. The SO identifies, on the one hand, the anti-competitive agreements between wholesalers of luxury cosmetics, aiming at the indirect fixing of reselling prices by the retailers, by setting a uniform level of discounts and, on the other hand, the horizontal and vertical agreements between companies of Hondos Bros, examined in the light of setting uniform prices, in the relevant product market of luxury cosmetics. It is estimated that the practices identified constitute a series of actions that are part of an "overall plan" for the distortion of competition. According to the SO, the duration of the infringements covers a period between two and six years for the undertakings involved.

28. The HCC decided to settle a case against eight (8) companies controlled by HONDOS family members in the beauty and broader cosmetics sector regarding infringements of Articles 1 of the Greek Competition Act and 101 TFEU. In particular,

according to the Decision, the above-mentioned companies engaged in horizontal price-fixing regarding the retail prices of their products, thereby infringing EU and national rules. For the said violation, the HCC imposed penalties in each of the 8 companies involved, amounting to **€ 1,053,595** in total. The Decision was adopted through a simplified procedure, under the terms of the new Settlement Procedure, following an expression of interest and subsequent settlement declaration by the implicated parties. In this context, the 8 HONDOS companies acknowledged their participation and liability for the anti-competitive conduct at issue for the period June 2003-June 2006. In return, the HCC reduced the fines imposed in each of the implicated party by 15%, in accordance with the new rules.

Review of DEPA commitments (natural gas supply)

29. The HCC accepted a proposal submitted by DEPA to revise partly the commitments adopted with earlier HCC decisions (Decisions No. 551/2012, 589/2014, 596/2014 and 618/2015), as follows:

1. Increase the quantities auctioned through the gas release programme and, consequently, amend specific terms of the system for the supply of natural gas through electronic auctions, in view of the forthcoming scheduled annual auction;
2. Revise specific terms of the commitments pertaining to DEPA's reservation of capacity at the points of entry of the transmission network, pending the review of the entire sub-set of the relevant commitments in light of Regulations (EU) 984/2013 and 715/2009 (relating, respectively, to capacity allocation mechanisms in gas transmission systems and to the conditions for access to transmission networks and congestion management), as implemented. The revised set of commitments has as follows:

30. Regarding the supply of natural gas through electronic auctions (gas release programme):

- Auctioned quantities of natural gas, through the system of electronic auctions, are increased from the current threshold of 10% of DEPA's annual total quantities each preceding year gradually to: 16% in 2017, 17% in 2018, 18% in 2019 and 20% in 2020. Any additional quantities auctioned, i.e. new quantities above the current 10% threshold will only be allocated to suppliers. As regards the auctioned quantities within the current 10% share, quantitative limits to participation for each participant are increased from 15% to 20%. As regards the new share of auctioned quantities (i.e. above the 10% share, as increased gradually), there will be no quantitative limits to participation.
- Suppliers and customers of DEPA will be put on equal footing in terms of flexibility in the use of the gas purchased through electronic auctions.
- Any amendment of the gas release programme shall occur in the context of the current commitments framework, which lasts until 2022.
- Sales of natural gas outside Greece are excluded from the calculation of natural gas quantities to be auctioned.
- Following the operation of the Single Natural Gas Market (SNGM), DEPA shall continue to offer, on an annual basis through SNGM, natural gas quantities corresponding to the above set percentages under any regulatory framework to be then put in place, with no further involvement of DEPA in the auctioning process and ensuing costs. In the meantime, auction costs will be revised, in consultation

with the Regulatory Authority for Energy (RAE), as to include possible additional costs resulting from the revised auction system.

- The gas release programme shall be reviewed by the HCC, in cooperation with RAE, upon a request from DEPA, should DEPA's market share fall below 60% in the future.

31. Regarding access to network connection points – reservation of capacity at points of entry:

- Pursuant to an earlier decision (551/2012), DEPA committed to give priority to third parties (competing suppliers and customers) as regards the reservation of any future additional capacity at transmission entry points (which may result from an upgrade of capacity at such points), to offer free of charge any unused transportation capacity allocated to it at transmission entry points and also to reduce its reserved capacity per transmission entry point from 30.6.2017 onwards, subject to set quantitative limits. According to the revised commitments, the said quantitative limits for DEPA on a yearly basis are adjusted as follows: (a) at Sidirokastro (Greek-Bulgarian border): up to 67% of the current total capacity at that entry point, (b) at the remaining entry points of Kipoi (Greek-Turkish border) and Ag. Triada (LNG-Revythousa): up to 55% and 40% of the total capacity at each entry point respectively (as with earlier decisions). DEPA may reserve unused capacity exceeding those limits, assuming no third party expresses an interest, subject to a shorter notice period of 10 days. In addition, the revised commitments now cater for the possibility of reserving capacity up to 10 days for unforeseen, emergency reasons.

32. HCC shall review this entire sub-set of commitments (i.e. commitments pertaining to access and capacity caps at transmission entry points, as described above), upon a request from DEPA, provided that the new regulatory framework set out in Regulations (EU) 984/2013 and 715/2009 (relating, respectively, to capacity allocation mechanisms in gas transmission systems and to the conditions for access to transmission networks and congestion management), is fully implemented, and provided that DEPA complies with all ensuing formalities and conditions.

33. Regarding the supply contracts with DEPA customers, the revised commitments further clarify certain aspects of an earlier decision (551/2012) concerning DEPA's conclusion of new contracts or the renewal of contracts. In this context, DEPA commits, with regard to any new contract concluded or in case of renewal of existing contracts (a) to provide its prospective customers with the possibility to opt for a one-year duration contract, and (b) to not enter into contracts of a duration longer than two years with customers that purchase more than 75% of their actual annual gas supply needs from DEPA, upon customers' declaration that their needs do not exceed such threshold.

34. As for the remainder, HCC decisions 551/2012, 589/2014, 596/2014 and 618/2015 continue to apply and the HCC shall continue to cooperate with RAE for the effective implementation of the commitments.

The Colgate- Palmolive case (detergents and cosmetics market) – infringement decision with fines

35. The case concerns an ex-officio investigation in the market for detergents and cosmetics for suspected infringement of national and EU competition law by the COLGATE - PALMOLIVE group of companies, as well as by companies active in the

retail and wholesale trade of supermarket products. The HCC issued an infringement decision with a total amount of fines of € 10,450,000 imposed on Colgate Palmolive (C-P) and chains of super markets for anticompetitive clauses in the supply agreements, that led to the prevention of importing C-P products from other Member States, therefore violating Articles 1 and 2 of the Greek Competition Act and 101 and 102 TFEU. The contractual terms between companies of the C-P group and companies active in the retail and wholesale trade (among which are the biggest super markets in the Greek market) that referred to a prohibition in parallel imports of detergents and cosmetics by its very nature has the effect of reinforcing the compartmentalisation of markets on a national basis, thereby holding up the economic interpenetration of the internal market. As a result the HCC decided that the contractual terms constituted a by object restriction of competition in the relevant markets, while revealing the existence of a centralized plan of C-P for the restriction of parallel trade, especially imports from Italy to Greece, where the prices, therefore creating a higher need for parallel imports.

36. In addition the decision found that C-P had abused its dominant position in the market for glass cleaning products, as the compliance to the contractual terms prohibiting parallel imports is inextricably linked to the granting of rebates to its consumers, having as an effect the loss of the rebate, in case the customer failed to comply with the parallel import prohibitive clause.

37. The HCC by majority vote fined companies -members of the group of C-P with an amount of € 8,671,267 for infringement of Articles 1 of the Greek Competition Act and 101 TFEU and an amount of € 747,518 for violating Articles 2 and 102 TFEU. The HCC unanimously fined companies active in the retail and wholesale trade with total fines amounting to € 1,017,207 for violating Articles 1 and 101 TFEU. An additional administrative fine of an amount of € 400,000 was imposed on C-P for submission of misleading data, obstructing the Directorate- General's investigation.

2.1.3. Description of significant investigations concluded

38. 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. It is noted that the statement of objections is not binding for the Hellenic Competition Commission. The latter will decide upon the case after it has taken into consideration all evidence, as well as the arguments put forward by all implicated parties. The most important cases are the following:

Hemodialysis filters and arterial and venous lines

39. A statement of objections was addressed to certain undertakings active in the market of hemodialysis filters and arterial and venous lines for alleged infringement of competition rules (Arts. 1 of the Greek Competition Act and 101 TFEU). The ex-officio investigation by the General Directorate for Competition was initiated in 2011 following an eponymous complaint against suppliers of filters and other hemodialysis products. In the context of the investigation, the DG conducted dawn raids at the premises of the suspected undertakings involved, took witness statements and sent several information requests. The investigation focused on the procurement process and ensuing prices regarding hemodialysis filters and arterial and venous lines for the needs of public hospitals in Greece, while further examining the evolution of prices in Greece as compared to other selected member states. According to the statement of objections, the implicated suppliers engaged in anti-competitive practices, the aim being to directly or

indirectly fix prices or other trading conditions, as well as to limit supply, in the relevant product market of hemodialysis filters and arterial and venous lines.

Audatex case- rules on rates per working hour (man-hour) of repair and maintenance services

40. A statement of objections was addressed to AUDATEX HELLAS, an association of undertakings according to the statement of objections, and its shareholders, i.e. HELLENIC GENERAL INSURANCE COMPANY S.A. 'THE ETHNIKI', AGROTIKI ASSURANCE S.A., INTERAMERICAN PROPERTY AND CASUALTY INSURANCE COMPANY S.A. and GROUPAMA PHOENIX HELLENIC INSURANCE COMPANY S.A. According to the SO the allegedly infringing parties had fixed hourly rates for repair services in the case of accidents involving insured vehicles, payable by the insurance companies using the Audatex software to create repair estimates. Moreover according to the statement of objections AUDATEX HELLAS had fixed the annual increase of hourly rates. The statement of objections also alleges that AUDATEX HELLAS had adopted binding rules and mechanisms to monitor compliance of the users of its software (i.e. insurance companies, estimators and repair shops) with the fixed rates (such as an MFN clause in agreements with repair shops coupled with the obligation to provide access to their books and records, an exclusivity clause in agreements with estimators regarding the use of the Audatex software, appointment by insurance companies exclusively of estimators using the Audatex software and redirecting damaged vehicles to repair shops using the Audatex software). Finally, according to the statement of objections alleged infringements by the Hellenic Association of Insurance Undertakings could not be substantiated to the requisite legal standard. The case was reviewed in compliance with judgments 2132/2010, 2133/2010, 2134/2010 and 2135/2010 of the Athens Administrative Court of Appeals and 3847/2013, 3848/2013, 3849/2013 and 3850/2013 of the Council of State referring back to the Hellenic Competition Commission (HCC) its decision 460/V/2009 for a new ruling.

Ex-officio investigation regarding construction tender processes in the Pella Prefecture

41. A statement of objections was addressed to certain undertakings active in the construction sector in Greece, which allegedly committed an infringement of Art. 1 of the Greek Competition Act. The ex-officio investigation by the General Directorate for Competition was initiated in 2011, following an anonymous complaint against certain construction undertakings in relation to an alleged collusion of a tender process in the Prefecture of Pella. For the purposes of the above investigation, DG conducted dawn raids at the premises of the undertakings involved, took witness statements and sent several information requests. According to the SO, the said construction companies participated in a bid-rigging agreement and/or concerted practice in relation to a tender for the rehabilitation of landfills during 2010 and 2011 (i.e. they coordinated their business conduct on responses to invitations to tender, particularly by agreeing amongst themselves who will submit the winning bid and by engaging in cover bids or bid suppression).

Other significant cases

42. The HCC issued an infringement decision with fines of an amount of € 88,814,62 for violation of Article 1 of the Competition Act imposed on NEOSET company for anticompetitive terms in its franchise network for selling kitchen furniture.

43. A statement of objections was addressed to companies active in the auto sales market in a case of examination of a complaint by a car distributor against NISSAN EUROPE and its national importer appointed in Greece, for anticompetitive terms and clauses in the selective distribution system.

44. A statement of objections was addressed to ROMA PIZZA for resale price maintenance and restriction of cross-supplies within its franchise distribution system for pizza delivery.

2.2. Merger Control

2.2.1. Statistics on Notified Mergers

45. In 2016 the HCC reviewed twelve (12) merger filings pursuant to the Greek Competition Act, of which six (6) led to an in-depth review (phase II merger investigations). In one case the challenged merger was resolved with remedies, while one was abandoned by the interested parties and the rest were cleared unconditionally.

2.2.2. Description of Significant Merger Cases

Consolidation in the retail sector

46. 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 2016, 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. In addition important mergers came under the scrutiny of the Competition Authority in markets relevant to infrastructure, such as ports and airports.

47. 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, with the exception of one case, which was cleared with imposed conditions. Two of the most important merger cases that came under the scrutiny of the Competition Authority are the following:

Acquisition by Fraport of 14 Greek regional airports

48. By its unanimous Decision No 626/2016, the Hellenic Competition Commission (HCC) cleared the notified acquisition by Fraport AG of 14 Greek regional airports through Concession Agreements for the upgrade, maintenance, management and operation of Cretan, Continental Greece and Ionian Sea regional airports, namely 1. Thessaloniki, 2. Kerkyra, 3. Chania, 4. Zakinthos, 5. Kefallinia, 6. Aktion, and 7. Kavala [Cluster A], and of Aegean Sea regional airports, namely 1. Rodos, 2. Kos, 3. Santorini, 4. Mikonos, 5. Mitilini, 6. Samos and 7. Skiathos [Cluster B]. The Hellenic Republic Asset Development Fund SA (HRADF) launched a public tender procedure for the award of a concession for the exploitation and provision of services in relation to the operation

and maintenance of the Cluster A Regional Airports and of the Cluster B Regional Airports. The Consortium consisting of Fraport AG and Slentel Limited was awarded as the preferred investor by the HRADF. According to the decision, the notified transaction does not raise serious doubts as to its compatibility with merger control rules in the relevant markets concerned by the concentration, notably the markets for the granting of airport management and operation concessions through tenders, for the management and operation of airport infrastructures (including the provision of airport infrastructure services, the provision of ground-handling services, and the provision of associated commercial services), and the provision of airport IT software (upstream market).

Acquisition by COSCO (HONG KONG) GROUP LIMITED of sole control over PIRAEUS PORT AUTHORITY S.A. (clearance with commitments)

49. The HCC cleared the notified concentration between PIRAEUS PORT AUTHORITY S.A. (PPA S.A.) and COSCO (HONG KONG) GROUP LIMITED, whereby the latter acquires sole control over the former. The concentration was cleared, under the provisions of L. 3959/2011, with the following conditions, which correspond to specific commitments undertaken by COSCO and accepted by the HCC:

- COSCO HK shall withdraw any exclusivity terms and refrain in future from concluding or imposing any exclusivity conditions on the market for the provision of stevedoring and storage of domestic containerized cargo services.
- COSCO HK shall maintain PPA's currently applicable tariffs for any stevedoring and storage of domestic containerized cargo services to be provided on quay 1 by PPA S.A. until 31.12.2017, with the possibility to announce any tariff increase also before the second half of 2017.

50. The HCC, after taking into account the prevailing conditions and the counterfactual in the relevant market, the efficiencies accrued as a result of the acquisition, as well as the commitments undertaken by the notifying party, concluded that the above concentration does not raise serious doubts as to its compatibility with merger control rules in the relevant markets concerned.

2.3. Court Judgments

51. The Athens Administrative Court of Appeals (AACA), which reviews all HCC's decisions on the merits, issued twenty (20) final judgments in 2016. Out of those decisions:

- All 20 were upheld on appeal (in 14 of those the Court confirmed the HCC's findings on substance, but adjusted the fine imposed)
- In 1 decision the Court upheld the case on its merits but referred it back to the HCC in order to recalculate the fine imposed based on the type of the established infringement.

52. In addition, the Council of the State (Supreme Administrative Court) which reviews AACA decisions on legal grounds only, issued and notified to the Authority 6 judgments in the course of 2016, regarding infringement decisions. The HCC's decisions prevailed in all those cases. Additionally in one case the undertaking involved withdrew its further appeal against the relevant AACA decision, therefore leading to the confirmation of the HCC's decision.

3. Advocacy – Other Initiatives

3.1. OECD Competition Assessment Projects and Liberal Professions

53. 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 (a) formal opinions—recommendations for legislative change addressed to the government (upon request by the competent line ministries or at its own initiative); (b) targeted screening and regulatory impact assessment initiatives in cooperation with the OECD; and (c) publication of compliance and awareness guides.

54. As regards specific and/or quantifiable results:

- Following the successful implementation of the 1st and the 2nd Joint HCC-OECD Competition Assessment Projects, a **3rd Joint OECD-HCC Competition Assessment Project** was concluded after reviewing legislation in five designated sectors of the Greek economy (e- commerce, construction, media, wholesale trade and selected subsectors of manufacturing such as chemicals, pharmaceuticals and media). Using the methodology provided in the Competition Assessment Toolkit, the project team examined 1288 sector- relevant pieces of legislation, identified 577 possible restrictions to competition and made 356 recommendations to correct them by less restrictive policies.

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

- **1st Joint OECD-HCC Competition Assessment Project**: A team of HCC & OECD experts 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 tourism[1]. It is estimated that approx. 80% of the 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:** The team of HCC & OECD experts 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. The report will be published shortly and implementation is pending.

56. **Liberal professions**: During the last 4 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

[1] See http://www.oecd.org/greece/greececompetitionassessment.htm.

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)[2].

57. **Opinion on the profession of marine chemists**: In the course of 2016, the HCC continued its work on further liberalization of professions and issued one opinion, in the liberalization of marine chemists while reviewing other professions, for which the HCC shall issue its formal opinion in the upcoming months. Following a formal request from the competent Ministry (Ministry of Finance), the HCC examined whether the prerequisites for the profession of marine chemists is compatible with competition law, since the introduction of L.3919/2011 (the liberal professions law) and the abolition of the previous system of prior licensing. The prior licensing system was replaced with the notifications system, with the exception of the professions that the HCC issued an opinion setting the reasons that urged for the maintenance of a prior authorization procedure mainly for public interest purposes. The issues that came under the scrutiny of the Competition Authority concerned the essential qualifications that a marine chemist ought to possess as well as the followed procedure and the supporting documents. The HCC found that the professional qualifications (diploma education, experience and successful participation in examinations) and the possession of adequate equipment are conditions compatible with the principles of proportionality while aligned with the public interest scope, therefore not implementing restrictions to competition in the context of this profession.

3.2. Other initiatives and outreach activities

58. As previously mentioned, the HCC established the terms and conditions of the settlement procedure in cartel cases, according to the provisions of Articles 25a and 14 par 2 of the Greek Competition Act. In the context of its advocacy initiatives, and with a view to raising awareness of businesses and consumers in competition matters, the HCC has also issued a MEMO in the form of Questions and Answers (Q&As) accompanying its decision on the Settlement Procedure. The MEMO contains useful information and clarifications on different aspects of the process.

59. The Authority continued its cooperation with the European Public Law Organization (EPLO) and co-organized a training program seminar for National Judges in Greece on Enforcement of EU Competition Law which provided in-depth and practical training to judges and prosecutors on key issues pertaining to the enforcement of EU Competition Law in Greece, mainly regarding issues stemming from the implementation of the new Damages Directive.

60. The Competition Commission organized workshops to promote its Guide on decisions of Associations of Undertakings, in partnership with SEV (the Hellenic Federation of Enterprises).

61. The Authority provided informal guidance to public bodies about the drafting of soft law pieces regarding the newly amended legislation on public procurement.

62. Representatives of the Directorate General Participation in a Working Team for consumer protection issues, which among others include the Code of Consumer Conduct.

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

4. HCC RESOURCES & ADMINISTRATION

4.1. Digitalization of services

63. 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 during the previous year and the Authority is fully committed to expand its use by all affected stakeholders, in order to raise awareness of competition law and the HCC's enforcement record.

4.2. Annual budget

HCC BUDGET (€)*		
2015	2016	2017
7,738,500	6,353,000	5,477,000

*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

64. During 2016, there has been a decline in the total number of the Authority's employees, with a significant number of experts being seconded to other departments of the public sector. The reduction of the personnel and the public sector recruitment restrictions, currently in force due to the current financial status of the country, had an inevitable consequence on the ability of the HCC to perform its role in an efficient and timely manner.

65. 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 2016, total number of staff is 86[3], out of which 57 is non-administrative staff working on competition enforcement[4].

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

[4] Four (4) 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.

HCC staff (year end 2016)	
Staff Category	**Number of staff**
Competition experts (lawyers)	18
Competition experts (economists)	34
Competition experts (other)	5
Total (competition enforcement)	57
Administrative support staff (excluding employees on secondment to other public sector entities or on unpaid leave)	29
Total	**86**