



Final Report Executive Summary

sector inquiry into basic consumer goods
sold in
SuperMarkets

**FINAL REPORT:SECTOR INQUIRY IN THE FIELD OF PRODUCTION,
DISTRIBUTION AND MARKETING OF BASIC CONSUMER GOODS AND IN
PARTICULAR FOOD PRODUCTS AS WELL AS CLEANING AND PERSONAL
HYGIENE PRODUCTS¹**

1 INTRODUCTION

1.1 BACKGROUND

- 1 The Hellenic Competition Commission (“HCC”) following relevant press coverage at the time on price variations of basic consumer goods and due to the limited response to the public consultation on “[t]he Retail of Basic Food Products for Daily Consumption”, (which ended on 31.5.2011) decided to further examine the issues that were the subject matter of the public consultation.
- 2 In particular, following the public consultation and after taking into account the developments in the market, on 16.2.2012, the HCC launched a sector inquiry according to article 40 Law 3959/2011 in the production, distribution and marketing of basic consumer goods and especially food commodities (dairy, butter, pasta, cereal and coffee), as well as cleaning and personal hygiene products (personal and oral health careproducts and home cleaners) (hereinafter referred to collectively as “the supermarket sector”).
- 3 In the course of collecting the relevant data regarding retail sales of these products and taking into account the economic crisis as well as the ensuing changes in the supermarket sector in Greece (higher levels of concentration and vertical integration), it became evident that the sector inquiry needed to focus in more detail on the relationship between supermarket chains and other players in the sector. Therefore, the HCC decided in 2014 to investigate further specific practices, which may cause distortions of competition, and suggest optimal rules for addressing them.
- 4 In September 2019, the HCC prioritised the sector inquiry in the supermarket sector. In order not to delay the publication of the relevant results any further, the available data (for the period 2015-2016) was used and the HCC decided to update the market study every two years, thereby taking into account subsequent changes in the sector. For the present publication, the collected data was supplemented by industry data from recent studies as well as data collected in the last three months of 2019 and early 2020.
- 5 On 13.04.2020, the HCC completed and published the Interim Report of the Sectoral Inquiry². Following the publication of the Interim Report, the HCC organised a public consultation, whereby it invited any interested party to comment and report its opinion on the conditions of competition in the above mentioned product markets (supermarket sector).In

¹ The full text of the non confidential Final Report on the results of the Sector Inquiry in the field of production, distribution and marketing of basic consumer goods and in particular food products as well as cleaning and personal hygiene products, upon the basis of article 40 of Law 3959/2011, has been published in Greek on the website of the Hellenic Competition Commission.

²For the executive summary and the full text of the Final Report in Greek (non confidential version) see: <https://epant.gr/enimerosi/kladiki-erevna-sta-vasika-katanalotika-eidi.html>.

addition, the HCC invited any interested party to submit their comments and views on the problems identified as well as the proposed solutions, either by submitting a memorandum and/ or by participating in the teleconference that took place on 03.07.2020.

- 6 Following the Interim Report, the HHC's Directorate General sent questionnaires to update the data on the bargaining and buying power of suppliers and supermarkets in the product markets under investigation³.

1.2 SCOPE AND OBJECTIVES

- 7 The present sector inquiry aims to outline the operation of the markets for the production and distribution of basic consumer goods.
- 8 First, it discusses the structure of the super market sector (Chapter 2) and analyses the selected eleven markets for specific products (Chapter 3). It then examines the bargaining power of buyers/ suppliers by using dedicated economic quantitative and econometric analysis (Chapter 4). The study also covers specific discount practices (Chapter 5), category management (Chapter 6), private labels (Chapter 7) and buying alliances for specific basic consumer products and in particular food items along the supply chain (Chapter 8).⁴
- 9 The sector inquiry identifies and discusses possible competition law problems along every stage of the supply chain. Finally, it proposes actions and suggests measures that will improve its effectiveness for the benefit of the final consumer.
- 10 It examines the entire supermarket supply chain for the supply of daily consumer goods. In assessing the overall economic impact of the retail sector, the value of the network and its links to other economic activities are taken into account. The retail value chain includes the sectors that supply products and services, but also distribution sectors of products for final consumption.

1.2 METHODOLOGY

- 11 In order to examine in detail the supply chain for basic consumer goods, the HCC collected primary data, either through questionnaires to market participants and/or through interviews with market experts. It supplemented such data with secondary literature and insights from relevant academic commentary as well as relevant publications of the European Commission and other competition authorities. Finally, it took into account relevant findings by other research institutes such as the Institute for the Research of Retail Consumer Goods (IELKA), ICAP, Stochasis, as well as institutions such as Eurostat and the National Statistics Service of Greece.

i. Choice of products

- 12 In the first phase of data collection (April 2014), the HCC contacted eleven (11) supermarkets and the data collected covered all product categories sold in supermarkets. This was followed by a statistical data analysis of the six (6) most important supermarkets in order to draw conclusions about those product categories that are of interest for further research. From the

³In particular the HCC sent questionnaires to 92 suppliers, 11 supermarkets and 9 buying alliances-groups.

⁴Note that references to chapters are to the full version of the final report.

evaluation of the data, in September 2015, 11 product categories were finally selected, which are the focus of the present sector inquiry(Chapter 3 below).

13 During the second phase of data collection (November 2015) the number of survey participants has increased to a total of twenty-two (22) and the requested data have focused on the specific product categories.

ii. Choice of suppliers

14 During the third phase of data collection (May and June 2016) data was collected from a total of 182 suppliers, in order to further examine and evaluate the selected eleven (11) product categories.

15 The supplier selection criteria are summarised below:

- From the large and medium-sized suppliers, the HCC selected those who represented more than 3% of the purchases of at least one supermarket chain⁵.
- From the smaller suppliers, those who met at least one of the following criteria were selected: a) they supplied their products to at least four (4) out of six (6) supermarket chains and b) their cumulative share, ie their total sales to each supermarket chain were at least 1%, as a criterion indicating their production capacity.

16 Following the rapid developments in the supermarket sector through acquisitions between large groups, the HCC updated the research with more recent data from studies and questionnaires (October 2019 to November 2020⁶) and reached conclusions.

⁵ Note that in recent years there have been some major market disruptions with respect to suppliers. As a result, these shares may have changed, which subsequently impacts the interpretation of the data.

⁶Seeabove.

2 SUPERMARKET SECTOR

2.1 RELEVANT MARKET FOR THE SUPPLY/DISTRIBUTION OF BASIC CONSUMER GOODS

17 The European Commission (“EC”) and the HCC have concluded that the market for the distribution of food products and other consumer goods for daily consumption is considered a distinct market, which aims to meet the current needs of households. Furthermore, according to the practice of both the EC and national competition authorities, in terms of potential competitive effects, this sector may be initially divided into two markets: (a) a supermarket **distribution market**, in which supermarket retailers operate as suppliers and (b) a **procurement market** for basic groceries.

2.1.1 Distribution markets for items sold in supermarkets

18 According to the decisional practice, the distribution market is further divided in a) the retail market and b) the wholesale distribution market for products sold in supermarkets.

2.1.2 Procurement market for items sold in supermarkets

19 The procurement market concerns the immediately preceding stage of the distribution of supermarket items and includes the sale of supermarket items by producers/ suppliers to customers/ buyers, such as wholesale or retail businesses and other companies (such as those in the HO.RE.CA. sector).

2.2 RELEVANT GEOGRAPHIC MARKET FOR THE SUPPLY/DISTRIBUTION OF BASIC CONSUMER GOODS

2.3 Relevant geographic market for the distribution of supermarket items

2.3.1.1 Retail Supply

20 The geographic market for the retail supply of supermarket items is initially defined at the prefecture level, where the market participants are active (as well as, as the case may be, of the neighbouring prefectures). In the case of islands, each island is in principle a distinct geographic market, due to the difficulties in travelling for the final consumer. The geographic markets affected by a concentration in the retail supply may also be defined on a more local level, where the participating companies maintain stores.

21 Accordingly, in merger cases the HCC has defined the relevant geographic markets initially at the prefecture level and further examined the local markets of the municipalities and / or specific areas within them based on the postal code of each individual target store, examining whether competing companies of local or Pan-Hellenic scope operated in these areas.

22 In recent cases, the HCC delimited the relevant geographic market locally up to 10 minute-drive time from the target store for urban areas and up to 30 minutes-drive time for semi-urban and rural areas, criteria which were applied equally in mainland Greece as well as in large and small islands. In these catchment areas, the conditions of competition are sufficiently homogeneous, and can be distinguished from neighbouring areas.

2.3.1.2 Wholesale supply

- 23 The HCC in its decisions concerning the wholesale market, has determined the whole of the Greek territory as the relevant geographic market. Based on the activity of most wholesale companies in specific areas of Greece, it may be necessary to further divide the geographic market at the level of prefectures and/ or regions, to the extent that there is a significant degree of substitution.
- 24 In this case, any prefecture of mainland Greece may be used for the purpose of defining the relevant geographic market, as a geographical boundary within which the participating wholesale companies are active under sufficiently homogeneous conditions of competition and which may be distinguished from other neighbouring geographic areas, due to different conditions of competition that prevail in them.

2.3.2 Procurement market

- 25 In accordance with EC decisions, the procurement market extends to the entire Greek territory, based on supply substitution. The strengthening of the network of a supermarket chain increases the total volume of purchases made and consequently its position and bargaining power, the ability to impose terms and possibly the creation of economic dependency relationships with its suppliers.

2.4 THE SUPERMARKET SECTOR

2.4.1 Size

- 26 There are a number of chains and individual supermarkets, usually with long-term experience in the sector. Many of the major supermarket chains also have cash & carry stores, ie wholesale stores addressed mainly to professionals that buy in bulk.
- 27 Supermarket chains account for the majority of sales. In particular, in the five year period between 2014-2018, with the exception of 2014, supermarket chains accounted for more than 50% of total stores' sales, and more than 80% of the total turnover in the sector during the period 2014-2019.

2.4.2 Development of the main supermarkets/Groups

- 28 After the completion of a series of acquisitions, the ten largest groups operating in the market for the sale of supermarket items in 2019 have diversified compared to 2015.

Turnover (in thousand EUR) of the ten (10) largest groups for 2017 – 2019

Ten (10) Largest Groups (w/o LIDL) ⁷	2017	2018	Change 2018/2017	2019	Change 2019/2018
Group Greek Hyper-markets SKLAVENITIS	2.524.292	3.011.502	19,30%	3.279.972	8,91%
AB VASILOPOULOS ⁸	2.100.319	1.986.336	-5,43%	1.947.871	-1,94%

⁷There are no financial data available for the MARINOPOULOS Group for 2016. Based on data available to the GDA, it estimates that its share in this year does not exceed [0-5]%. Since 2017, the biggest part of the MARINOPOULOS Group has been acquired by the SKLAVENITIS Group.

⁸In 2016 and 2017 the sales of SUPERMARKET KARAKI SUPERMARKET SA are also included, which in 2018 was absorbed by AB VASILOPOULOS

Ten (10) Largest Groups (w/o LIDL) ⁷	2017	2018	Change 2018/2017	2019	Change 2019/2018
METRO	1.172.126	1.190.626	1,58%	1.259.646	5,80%
MASOUTIS	761.589	770.349	1,15%	829.817	7,72%
PENTE	482.772	449.970	-6,79%	450.132	0,04%
KRITIKOS Group	229.807	310.348	35,05%	350.073	12,80%
MarketIn	251.013	284.110	13,19%	318.748	12,19%
SIN. MELON IN.KA P.E. ⁹	175.732	175.625	-0,06%	189.179	7,72%
Bazaar	162.628	168.955	3,89%	182.970	8,30%
Gountsidis AE	48.765	46.903	-3,82%	76.998	64,16%
Total	7.909.043	8.394.723	6,14%	8.885.406	5,85%
% of total sales through s/m &c&c	71,5%	74,0%		76,1%	

Source: PANORAMA of Greek Supermarkets, No 24 – Autumn 2020, ICAP

29 In 2019, the ten largest groups recorded an increase in their sales by 8.58% compared to 2018 (ie by 490.68 million euros), almost equal compared to 2018. Their sales amounted to 8,8 billion euros, an amount that represents about 40% of the purchases by Greek households in grocery items based on ELSTAT's relevant research. Sales of the ten (10) largest groups now account for 76% of total market sales. The corresponding percentage in 2014 is estimated at 65%.

2.4.3 Market Shares

30 The table below presents the market shares of the main supermarket chains in the Greek territory for the period between 2016 – 2019.

Market shares of the main supermarket chains for the period 2016 –2019

SupermarketChain	2016	2017	2018	2019
SKLAVENTIS Group	[15- 25]%	[15- 25]%	[15- 25]%	[25-35]%
GREEK HYPER-MARKETS	-	[5- 10] %	[15- 25] %	
SKLAVENTIS	[10- 15]%	[10- 15] %	-	
CHALKIADAKIS	[0-5]%	[0-5]%	[0-5]%	
MART CASH&CARRY	[0-5]%	[0-5]%	[0-5]%	
AB VASILOPOULOS	[15- 25]%	[15- 25]%	[15- 25]%	[15- 25]%
LIDL	[10- 15]%	[10- 15]%	[10- 15]%	[10- 15]%*
METRO	[10- 15]%	[10- 15]%	[10- 15]%	[10- 15]%
MASOUTIS	[5- 10] %	[5- 10] %	[5- 10] %	[5- 10] %
PENTE	[0-5] %	[0- 5] %	[0- 5] %	[0- 5] %
MAPKET IN	[0-5] %	[0- 5] %	[0- 5] %	[0- 5] %
KRITIKOS	[0-5] %	[0- 5] %	[0- 5] %	[0- 5] %
SYNKA	[0-5] %	[0- 5] %	[0- 5] %	[0- 5] %
BAZAAR	[0-5] %	[0- 5] %	[0- 5] %	[0- 5] %
GOUNTSIDIS	[0-5] %	[0- 5] %	[0- 5] %	[0- 5] %

Source: Data based on published balance sheets (ICAP) and HCC data) / (* estimation)

⁹ The market shares have also taken into account the sales of VIDALI, which was acquired by SYNKA on 22.12.2014.

2.4.4 Evolution of market concentration ratio

31 Acquisitions in the supermarket sector in recent years have led, as expected, to increased concentration. The CR4, CR 10 and HHI indices follow an upward trend throughout the period 2013-2019.

CR 4, CR 10 and Herfindahl-Hirschmanindexfor the period 2013 - 2019

INDEX	2013	2014	2015	2016	2017	2018	2019
CR4	[45-55]%	[45-55]%	[55-65]%	[55-65]%	[65-75]%	[65-75]%	[65-75]%
CR10	[75-85]%	[75-85]%	[75-85]%	[75-85]%	[75-85]%	[75-85]%	[75-85]%
HHI	832,95	881,10	1.010,14	1.060,51	1.244,38	1.296,08	1.450,28 ¹⁰

Source: Data based on published balance sheets (ICAP) and PANORAMA2020

- 32 In 2019, the price levels for consumer products and services showed a large discrepancy between EU Member States. The highest price level among Member States was observed in Denmark, which was 50% above the European average. On the other hand, the price level in Bulgaria was at 53% of the European average. In Greece, the price level was at 87% of the European average, i.e. 13% lower than the European average¹¹, while compared to 2018 it increased by 0.1%. Greece has the largest price index among the countries examined in the category “means of communication” (165.9%), both among countries with a corresponding GDP per capita ratio and between all EU Member States.
- 33 Of particular interest for the purposes of this sector inquiry is the price index for food and non-alcoholic beverages, which are the main products traded by supermarket retailers. The price index for food and non-alcoholic beverages in Greece in 2019 is the highest compared to other Member States with a corresponding GDP per capita volume and stood at 3.5% higher than the European average.
- 34 Especially for 2019¹² in the food category, the price level index was 102.5% for Greece¹³. The price level index for the individual categories that fall into the "Food" category was as follows: Bread and Cereal (109%), Meat (90%), Fish (102.9%), Milk, Cheese and Eggs (133%), Oils & Fats (112.4%), Fruits, Vegetables, Potatoes (82.9%) and Other foods (133.7%).
- 35 Thus, while Greece lags behind the European average in terms of per capita GDP, we observe that the level of food prices (excluding Fruits, Vegetables, Potatoes and Meat) is higher than the European average and in the case of the "Other food" category it reaches 133.7% of the European average.

¹⁰The HHI indices for 2018 and 2019 are slightly undervalued, as the financial data of some smaller supermarket chains were not available.

¹¹https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Comparative_price_levels_of_consumer_goods_and_services#Overall_price_levels.

¹² Eurostat News Release 95/2017 of 15.6.2017, Consumer price levels in 2016. (<http://ec.europa.eu/eurostat/web/products-press-releases/-/2-15062017-BP>).

¹³ The price level index provides a comparison with the EU average. If a country's price index is above 100 (EU average), the country under consideration is relatively more expensive than the EU average, while if the index is less than 100, then the country is relatively cheaper than the EU average.

36 Finally, although the degree of concentration in retail sales is rather modest based on the aforementioned market shares and although the market power of supermarkets is usually associated with high market shares, it is noted that there are other sources of bargaining power which cannot only be quantified by market shares. Consequently, the present study proceeded with a thorough analysis of the bargaining power, both theoretically and empirically with conventional and innovative tools.

2.4.5 Comparison of main characteristics - business models of the top 10 supermarket chains

37 From the comparison of the basic characteristics of the main chains that are active in the sale of supermarket items, some general conclusions can be drawn about their business models.

38 First of all, it should be noted that all major chains determine their **pricing and discount policy**, as well as advertising spending, **centrally and uniformly** for all the stores in their network.

39 Those of the major chains belonging to a **buying alliance** have chosen the [SM_103]. It is interesting to note that only the three smallest chains in the table above have joined a buying alliance.

40 Most chains have also opted to be active in both the **retail and wholesale supply** of supermarket items having their own cash & carry stores.

41 **Private labels** are now an important part of the products in all major chains. For most chains, private label products account for 10% to 15% of their total turnover.

42 In recent years, large chains increasingly choose to develop their network through **franchising**.

43 Six chains have developed **loyalty programmes**, and one began using pilot loyalty cards in early 2020.

44 Even at the beginning of 2020, not all large supermarket chains have an **online store**, while the online stores of most chains have been developed in only the last three years.

45 Chains spend less than 1.5% of their turnover for **advertising**. The cost of advertising as part of the turnover varies between different chains. Based on this cost, the chains can be categorized into three broad categories: spending less than 0.5%, spending up to 1% and spending up to 1.5% of their turnover for advertising.

2.4.6 Store network

46 In the last decade there have been changes in the stores of the main supermarket chains, both in terms of their number and typology and in terms of their geographic coverage.

2.4.6.1 Store number and typology

47 At the beginning of 2019, approximately 4,777 supermarkets operated nationwide, according to PANORAMA of Hellenic Supermarkets, of which 2,492 (52%) belonged to supermarket chains. Despite the expansion of the supermarket chains' network of stores, the presence of individual supermarkets is still important, even when the franchise stores are taken into account.

- 48 The number of stores belonging to the largest supermarket chains is dynamic. It has increased both as a result of the acquisitions that have taken place as well as the operation of new stores. In early 2020, the largest supermarket chains operated a total of 2,850 stores (including franchise).
- 49 The majority of stores of the largest chains are supermarkets.
- 50 Only four chains (SLAVENTITIS, AB VASILOPOULOS, MASOUTIS and PENTE) operate hypermarkets. Most hypermarkets operate in large urban areas and especially in Attica and Thessaloniki.
- 51 Large supermarket chains, except for BAZAAR and MASOUTIS, do not seem to place much emphasis on the operation of mini-market stores.
- 52 Finally, most of the large chains are active in the wholesale supply of supermarket items, through the operation of cash & carry stores.
- 53 Contrary to hypermarkets, cash & carry stores are spread geographically.

2.4.6.2 Geographic coverage

- 54 Greece has one of the densest supermarket chains network in the world, which creates higher costs for businesses, but also makes it easier for consumers to access supermarkets¹⁴. The main networks have expanded over the last five years and now five out of the ten largest supermarket chains have stores in all regions of the country.
- 55 The majority of the 2,850 stores operated by large supermarket chains in early 2020 are located in the prefecture of Attica.
- 56 At the end of 2018, 42% of all stores operating in the territory belonged to individual supermarkets.
- 57 The penetration of large chains, in terms of the number of stores that they operate, varies region by region and as a rule does not significantly exceed 50% of the estimated total of stores. In the South Aegean, large chains operate only 25% of the stores, while in the Ionian Islands the corresponding percentage is 30%. The largest penetration of the chains is observed in Attica and amounts to 75% of the total estimated stores, followed by Crete and Central Macedonia.
- 58 It should be noted, however, that the presence of individual supermarkets does not translate into the realization of correspondingly important sales. In 2018, although the big chains own 52% of the total stores in the country, 85.7% of the total sales were made by their stores.

2.4.7 Distribution networks

- 59 Supermarket chains are supplied with products from the company's storage / distribution centres and directly from suppliers.
- 60 Large supermarket chains have at least one storage / distribution centre in Attica or Viotia. Many of the large chains also have a storage centre in the prefecture of Thessaloniki.
- 61 The acquisitions in the sector industry also led to a concentration in the central storage areas.

2.5 SIZE OF ONLINE COMMERCE

- 62 The online sales channel is characterized by its very small contribution to total sales compared to other sectors of the economy. According to Convert Group's eRetail Audit service, which records the sizes and consumer trends for e-commerce, sales through online channels amounted to 28.5 million euros in 2018, an amount that represents about 0.33% of total sales¹⁵.
- 63 While in the first half of 2020, the online supermarkets in Greece recorded an impressive growth rate of 150% in the value of purchases, compared to the corresponding of 2019. The total value of online purchases amounted to 56.3 million euros, according to the semi-annual Report of Convert Group for the Greek Online Super Markets¹⁶. The company's findings demonstrate that the industry continues to grow at a high rate even after the quarantine period. It is worth noting that the sales during the first half of 2020 were 21% higher than the total sales of the whole of 2019. According to the data of the annual report of

¹⁴PANORAMA of Greek Supermarkets, vol. 23, Autumn 2019.

¹⁵ PANORAMA of Greek Supermarkets, vol. 23, Autumn 2019.

¹⁶Βλ. <https://www.kathimerini.gr/economy/business/1089125/ayxisi-150-stis-online-poliseis-ton-soyper-market/>.

ConvertGroup¹⁷, it appears that in the fourth quarter of 2020, the sales of e-super markets recorded an increase of 545%. Thus, on an annual basis, sales through electronic channels increased by 262%, exceeding 163 million euros in retail prices including VAT. Therefore, online supermarkets continued to grow at a high rate even after the quarantine period, confirming the estimates that this is a consumer habit that will be retained in the future.

- 64 Until the beginning of 2020, the market players' predictions for the development of e-commerce were conservative. In particular, there was an increase in online sales, albeit at a slower pace, and there was no forecast that online sales would account for a significant part of total retail sales in the near future. However, recent developments with the spread of COVID-19 have changed the landscape. The increase in demand for online supermarket sales has been so rapid that supermarket chains have been unable to serve it in a reasonable amount of time with their existing infrastructure. Although the increase in demand is expected to subside after COVID-19, the change in consumer habits and the resultant adaptation of the supermarkets' infrastructure to cater for online sales may impact the development of online sales.
- 65 The pandemic of Covid-19 (since March 2020) affected significantly the supermarket chains in the Greek market: throughout the year (2020) a variety of regulatory measures relating to their operation were adopted by the government while development of online stores and changes in consumer habits regarding online supermarkets continue to date.

¹⁷See:<https://convertgroup.com/insight/greek-egrocery-2020/>.

3 ANALYSIS OF SELECTED PRODUCT CATEGORIES

66 The sector inquiry focused on eleven (11) product categories, namely: (1) cured meat products, (2) soft drinks - ready-made tea - energy drinks - sodas, (3) powdered laundry detergents, (4) yogurt and yogurt desserts, (5) cereals for breakfast, (6) pasta, (7) coffee, (8) pulses, (9) feta cheese, (10) toilet paper and (11) sliced bread.

67 These categories comprise products characterized by relative homogeneity, products that may present certain structural characteristics in the relevant supply market (possible dominant position or oligopoly or competition), impact the Consumer Price Index and differ in terms of penetration of private label products.

3.1 KEY CONCLUSIONS FOR EACH PRODUCT CATEGORY

3.1.1 Sliced Bread

- ✓ The market for branded and private label products is uniform.
- ✓ Brands are not very important to consumers.
- ✓ Most companies claim that there are no "must-have" brands.
- ✓ There are no significant entry barriers.

3.1.2 Cereal

- ✓ The market for branded and private label products is uniform.
- ✓ Brands are not very important to consumers.
- ✓ There are no significant entry barriers.

3.1.3 Pasta

- ✓ The market for branded and private label products is uniform.
- ✓ Companies' responses on the importance of brands to consumers vary.
- ✓ There are no "must-have" brands.
- ✓ There are no significant entry barriers.

3.1.4 Cured meat

- ✓ The market for branded and private label products is uniform.
- ✓ Brand loyalty is diminishing.
- ✓ There are no "must-have" brands.
- ✓ There are no significant entry barriers.
- ✓ Private labels account for a rather large market share (>25%).
- ✓ A large percentage of sales is achieved through retail channels (>56%).

3.1.5 Yogurt and yogurt desserts

- ✓ The market for branded and private label products is uniform.
- ✓ Companies' responses on the importance of brands to consumers vary.
- ✓ There are no entry barriers.

3.1.6 Feta cheese

- ✓ The market for branded and private label products is uniform.
- ✓ Consumers place importance on brands, though in recent years brand loyalty is diminishing.
- ✓ There are no "must-have" brands according to the majority of responses.
- ✓ There are no entry barriers.

3.1.7 Pulses

- ✓ The market for branded and private label products is uniform.
- ✓ Consumers place importance on brands.
- ✓ There are no "must-have" brands.
- ✓ There are no entry barriers.
- ✓ Private labels account for a high market share.

3.1.8 Coffee

- ✓ The market for branded and private label products is uniform.
- ✓ Companies responses on the importance of brands to consumers vary.
- ✓ There are "must-have" brands: Nescafé for instant coffee, Loumides and Bravo for Greek coffee and Jacobs for filter coffee.
- ✓ There are no entry barriers.

3.1.9 Soft drinks - ready-made tea - energy drinks - sodas

- ✓ The market for branded and private label products is uniform.
- ✓ "Must-have" brands include: COCA COLA, PEPSI, Red Bull, Gatorade, Powerade and Lucozade.
- ✓ There are no entry barriers.

3.1.10 Powdered laundry detergents

- ✓ The market for branded and private label products is uniform.
- ✓ Consumers place some importance on brands, though in recent years brand loyalty is diminishing.
- ✓ There are no "must-have" brands.

- ✓ There are no entry barriers.

3.1.11 Toilet paper

- ✓ The market for branded and private label products is uniform.
- ✓ There is no brand loyalty.
- ✓ There are no “must-have” brands.
- ✓ There are no entry barriers.
- ✓ Private labels account for a large market share (>45%).

3.2 CONCLUDING REMARKS

- 68 In all product categories, according to the majority of suppliers, the result of the economic crisis was an increase in repayment time. In addition, due to the crisis there is higher concentration in the retail sector and an increase in the bargaining power of supermarket chains, both due to the increased share and the need to lower prices through more offers.
- 69 In all product categories, the majority of respondents claim that private label products are interchangeable with branded products, especially in recent years when due to the economic crisis, the majority of consumers choose products based on their price, which has led to continuous offers on branded products which in turn have led to price convergence between branded products and private label products. In addition, in recent years consumers recognise private label products as qualitatively equivalent to their respective branded labels.
- 70 The penetration of private label products is much higher, about [35-45]% and above, up to [75-85]%, for products that show uniformity, fresh products or products available in bulk, products with less built-in know-how and therefore low advertising spending, which is not able to create brand loyalty and for this reason consumers choose mainly based on price. Such product categories include pulses ([34-45]% private label product penetration), cold cuts (not likely premiums with penetration grade ([15-25]%), toilet paper ([75-85]% penetration rate) and pasta ([25-35]% penetration rate). A unique case is sliced bread for which the penetration rate reached [25-35]% in 2013 and then began to decline. On the contrary, for products where there is a leading company or 1-2 more companies with very significant shares and due to the significant advertising spending that boosts brand loyalty private label products have a lower penetration rate (less than [15-25]%). In these product categories, research for the creation of new or differentiated products of high quality and usually taste differentiation (soft drinks, coffee, cereals for breakfast, packaged yogurts) that enhances brand loyalty is particularly important and seems to suspend the expansion of private labels in these markets, as evidenced by the stability of their market shares ([15-25]% in cereals, less than [10-15]% in all coffee categories except filter coffee, [5-10]% in soft drinks and [5-0]% in yogurts). For these products, contrary to voices that suggest that spending on research and development is limited with a resulting significant penetration of private labels until 2015, new products are constantly being developed (such as stevia soft drinks, new cereal flavors, more companies producing espresso capsules, new packaging and yogurt flavors). The same seems to be the

case with detergents (degree of penetration of P-L products up to [10-15]%) where brands have a high technology and complexity in their chemical composition.

71 The main entry barriers according to the majority of suppliers are:

- The difficulty in establishing a distribution network nationwide, due to the lack of financially and commercially viable partners, the existence of exclusive distributors in some cases but also due to the geographical characteristics of the country (eg a large number of islands).
- The high cost of entering the supermarket shelves (listing / entrance fees) as well as the limited space on the shelf due to "must have" and P-L products.
- The high advertising cost especially for products where there are leading companies and "must have" brands.

72 In some instances, where the market is mature, it is stated that existing contracts with suppliers meet the needs of the market and make it difficult for new businesses to enter (e.g. cold cuts, soft drinks, feta cheese). Especially in the feta cheese market, the strengthening of the bargaining power of supermarkets over suppliers comes mainly from the accumulation of large sales in supermarket chains, the creation of purchasing groups, the expansion of stores, the expansion of store networks, the strengthening of private labels and the creation of modern central warehouses in conjunction with the implementation of logistics.

73 Regarding the specialization of companies in satisfying demand through different distribution channels, it is noted that in the categories of cereal, the majority of suppliers carry out the largest percentage of their sales (over 90%) from supermarket chains. In the sausages, pasta and feta cheese categories, suppliers are either specialized in the supermarket retail channel (with shares over 80%), or have a more balanced distribution between supermarkets and wholesale. In the case of detergents and sliced bread, there are suppliers who focus on sales to wholesalers and others on sales through supermarket chains. In the case of packaged yogurts as well as cereal and especially cereal bars, it is interesting to note that some companies sell more than 50% of their sales exclusively to small outlets (mini markets and convenience stores). In the soft drink market, there are companies that focus their sales either on wholesale, retail or even on the catering industry (HO.RE.CA). In the coffee market, it seems that some companies make more than 70% of their sales through supermarkets, while there is a company that operates in the mass catering market HO.RE.CA. and in general wholesale at 90%. Finally, in the toilet paper market, the largest percentage of sellers' sales (from [70-80]% and [95-100]%) is carried out through the supermarket channel. From the above, it seems that there are a total of 4 distribution channels (supermarkets, wholesalers, catering (HO.RE.CA.) and small retail outlets) in each of which new and smaller suppliers can choose to specialize.

74 In all product categories, it is stated that there are no exclusivity clauses or other restrictions on the supply, distribution and promotion of products in the contracts of suppliers-retailers, which do not usually exceed one year. No company is obliged to report on competitors' offers nor is there a commitment by the customers/ retailers not to accept a more favorable offer from a competing supplier.

- 75 In all product categories other than cold cuts and sliced bread, the majority of contracts between suppliers and supermarkets are the same for all products in the category, while in cases where there is a difference in contracts (in a larger percentage in the categories of cold cuts and sliced bread), this usually takes place at the supermarkets' initiative.
- 76 Contracts between suppliers and supermarkets vary by customer at a different rate in the individual product categories. The majority of suppliers in the categories of cereal, pasta, coffee and toilet paper stated that their contracts do not differ per customer/ supermarket. On the contrary, the majority of suppliers in the categories of cold cuts, soft drinks, detergents, pulses, feta cheese and sliced bread stated that they differentiate contracts per customer/ supermarket and the differentiation is based on various criteria, such as the volume of the customer's total sales, the possibility of implementing promotional activities, the range of the network of stores and the way of distribution and the terms of payment. In the yogurt market, the answers are evenly distributed, with half of the suppliers reporting that they differentiate their contracts per customer/ supermarket. The above is also taken into account with the answers of the supermarkets, which accept that a percentage of [45-55]% in the categories of pasta ([45-55]%), yogurt ([55-65]%), coffee ([45-55]%), cold cuts ([55-65]%), cereal ([55-65]%) and sliced bread ([45-55]%) contracts are usually predetermined by supermarkets themselves, while the same percentage is lower than [45-55]% in the categories of soft drinks ([35-45]%), detergents ([35-45]%), pulses ([35-45]%), feta ([45-55]%) and toilet paper ([45-55]%).
- 77 In all product categories, the majority of suppliers report that negotiations with buying alliances take place at a central level, while some report that agreements take place at the supermarket chain level.
- 78 Regarding the payment days of supermarkets in relation to whether or not there is a discount agreement based on early payment, what results from the answers of [SM_52], [SM_9], [SM_34], [SM_45] and [SM_119], which were the only ones that provided specific information, is that each supermarket chain at that time had a different credit policy.

4 BARGAINING AND BUYER POWER

4.1 INTRODUCTION

- 79 Buyer power connotes the ability of a buyer to influence the terms and conditions under which the contractual goods are procured¹⁸. It may be either the result of the buyer's strategic advantages or may result from the existence of a dominant or collective dominant position in the input market¹⁹. In any case, it is linked to the possession of increased bargaining power by the company operating in the upstream or downstream market, i.e. the ability of this company to impose a deviation from the price or quantity that would be available under competitive conditions²⁰. In other words, buyer power is manifested as the buyer's ability to extract from his supplier a wholesale/ supply price (either directly or indirectly, through discounts, benefits, etc.), which is below what would prevail under competitive conditions.
- 80 In view of the subject matter of this sector inquiry, the following analysis focuses on examining the issue of buyer power in the retail market. After all, the study of buyer power and its impact on competition is particularly important for daily consumer goods markets.
- 81 It is important to clarify here the terminology used in this study. Bargaining power can be defined as the ability of a company to deviate from the price or quantity resulting from competitive conditions in the market in which the transaction takes place, whether this company is a buyer (in this case it includes the concept of “purchasing power”) or a supplier (in this case it includes the concept of “selling power”).
- 82 Bargaining power can impact both price and non-price terms²¹. Large supermarket chains, in many cases, are able to control pricing by controlling certain issues such as commissions, discounts, advertising charges and product placement charges on shelves, promotion costs, terms of payment deadlines and settlement discounts. This one-sided control of commercial terms reflects the purchasing power of large supermarkets chains²².
- 83 The complexity of the concepts of bargaining and purchasing power is also reflected in the difficulties when developing appropriate measurement methods.

¹⁸Bλ. OECD, *Buyer Power of Multiproduct Retailers*, DAF/CLP(99)21,18.

¹⁹A.Ezrachi and M Williams, ‘Competition Law and the Regulation of Buyer Power and Buyer Cartels in China and Hong Kong’ [2014] 9 *Asian Journal of Comparative Law* 295.

²⁰I Lianos and C Lombardi, ‘Superior Bargaining Power and the Global Food Value Chain: The Wuthering Heights of Competition Law?’ σε *Competition Law and Policy and the Food Value Chain* (Concurrences No 1-2016),23, I. Kokkoris, ‘Buyer Power Assessment in Competition Law: A Boon or a Menace?’ [2006] 29 *World Competition* 139, RG Noll, “‘Buyer Power’ and Economic Policy’ [2005] 72 *Antitrust Law Journal* 589, WS Grimes, ‘Buyer Power and Retail Gatekeeper Power: Protecting Competition and the Atomistic Seller’ [2005] 72 *Antitrust Law Journal* 563.

²¹A. Choi and G. Triantis, *The Effect of Bargaining Power on Contract Design* (2012) *Va. L. Rev.* 1665.

²²Clarke R., S. Davies, P.W. Dobson and M. Waterson, *Buyer Power and Competition in European Food Retailing* (Edward Elgar 2002).

4.2 MEASURING BARGAINING AND PURCHASING POWER: QUANTITATIVE ANALYSIS

- 84 Supermarkets are the main channel through which households buy a wide range of food products and other consumer goods. The particular importance of purchasing food products and other consumer goods for daily consumption (supermarket items) in terms of social welfare increases the interest for better understanding of how the terms and conditions of supply of firms operating supermarket chains are defined, as they relate to the formation of the final prices offered to consumers.
- 85 In this context, there exists an extensive public debate on the bargaining power (i.e. the power of supermarkets), in relation to their suppliers, in the food retail sector and many competition authorities have conducted sectoral studies for this issue²³.
- 86 This sector inquiry contributes to this debate. It proposes an innovative view of the methods for measuring negotiating power and provides a (further) empirical basis for its measurement. The main issues therefore arise, whether and how the increase in concentration along the supply chain of selected products affects the conditions and what effects are associated with it. The finding of a high or increased concentration in the consumer retail supply market may, from an economic and theoretical point of view, jeopardise the competitive process.
- 87 Horizontal competition and vertical competition coexist in competition law and complement each other in the representation and implementation of the relations between the players in the relevant market. In a value chain, competition is horizontal in nature when it concerns competition between real or potential competitors at the same level of the value chain²⁴. Vertical competition concerns different levels of the production or distribution chain, such as manufacturers and wholesalers or retailers, and arises in such cases from competition between the different parties in the value chain for the largest percentage of surplus value generated (by the value chain), in product and service markets, or on financial markets²⁵.

²³ For examples see, study of German competition authority (Sektoruntersuchung Lebensmitteleinzelhandel: Darstellung und Analyse der Strukturen und des Beschaffungsverhaltens auf den Märkten des Lebensmitteleinzelhandels in Deutschland, 2014), finish competition authority (Study on Trade in Groceries: How does buyer power affect the relations between the trade and industry?, 2012) and of UK (The supply of groceries in the UK market investigation, 2008).

²⁴ See. Communication from the Commission 2011/C 11/01 Guidelines on the application of Article 101 TFEU to horizontal cooperation agreements. There are also horizontal cooperation agreements between non-competitors, e.g. between two companies operating on the same product markets but on different geographic markets without being potential competitors.

²⁵ R.L. Steiner (2008), 'Vertical competition, horizontal competition and market power', The Antitrust Bulletin 53(2) 251; I. Lianos, V. Korah, P. Siciliani, Competition Law: Analysis, Cases and Materials (OUP, 2019), 199-206.

4.2.1 A proposition of indicator of vertical market power²⁶

- 88 In contrast with simple or direct vertical (power) theories based on the analysis of the horizontal concentration of the market (e.g. through the use of a concentration or market share index) and thus focus on horizontal competition, vertical competition theories focus on vertical competition between firms belonging to different stages of the value chain, but still there does not exist a specific metric of that power.
- 89 This Section proposes a few new indicators of measuring vertical power in order to bridge the gap between these vertical power theories and more traditional horizontal market power theories for the analysis of anti-competitive practices. These indicators have their origin in the differential dependency theory of social exchange theory and the important role of a company's central position in a network or ecosystem (according to network analysis), especially with regard to both the possibility of unequal access to essential resources and the different “panopticon power” capabilities provided by the central positioning a company has in a value chain or network/ecosystem with regard to the different flows of information, which is particularly important in today's digital economy where access to data plays a dominant role in the development of competitive advantage.
- 90 Firm's differential dependency within a value chain can be a source of vertical power. In the context of this study, in order to analyse a metric for vertical power we will recur to network analysis and, in particular, to the notion of centrality to represent a firm's power, in a value chain or ecosystem. Building on the indicator of centrality that better translates the notion of resource-based differential dependency (betweenness centrality), we propose a metric that can be used to assess a firm's power within a value chain arising from this source, and not only by assessing its interdependency from resources (eg. selling/buying a good or service, licensing a patent, etc.).
- 91 Central firms are those on which the whole value chain depends more to function because they perform tasks that are more necessary to assure the overall coordination of the value chain. This is also the ultimate reason of its resource-based vertical power based on differential dependency. This form of market power is vertical in that it is exerted from suppliers to buyers or vice versa, and it is ‘fully’ vertical in that it affects the whole value chain and not only the upstream or downstream tiers directly linked to the firm exerting it (“fully vertical market power”).
- 92 Given that each firm's level of vertical power corresponds to its share of the sum of the square betweenness centralities of all of the firms (nodes) of its value chain, a simple way of assessing the level of power imbalances within a value chain would be to calculate the standard deviation of this indicator. However, the level of standard deviation is only interpretable for a given variable. This is graphically represented, as the shortest route defined as a minimum number of nodes that one must pass through to get from point A to B.

²⁶See in general I. Lianos & B. Carballa Smichowski, Expanding the dimensions of power in competition law and economics: ontology and novel metrics (CLES, Research paper 2/2021), forth). The quantitative analysis of this Study based on the data collected by HCC, was undertaken by B. Carballa Smichowski.

- 93 A firm's betweenness centrality relative to other firms' ('relative centrality') translates its differential dependency within the value chain. Hence, our metric of vertical power has to be able to give us two different values for two firms that belong to different value chains and have the same betweenness centrality but different relative centralities and can be measured as its share of the sum of the square betweenness centralities of each node (firm) of the value chain. However, because this metric is firm centric, it does not tell us what is the level of vertical power differentials within a value chain, a piece of information that could be useful to do a more aggregated analysis of power (at the level of an ecosystem or value chain), especially from an antitrust perspective.
- 94 Hence, in order to be able to compare the level of vertical power asymmetries between several value chains, we will use an indicator to assess the level of power imbalances within a value chain, given by the following equation.

Equation: Value chain level resource-based vertical market power imbalances based on differential dependency for a node x

$$\frac{\sqrt{\frac{1}{n} \sum_{i=1}^n SSBC_i^2 - \overline{SSBC}^2}}{\overline{SSBC}}$$

where SSBC stands for "share of square betweenness centrality"

- 95 The indicator in the above Equation measures the level of market power in a value chain resulting from resource-based vertical power based on differential dependency. The higher the indication of the above equation is, the more imbalanced power is among market players in the value chain.
- 96 This sector inquiry calculates supply-chain level of vertical market power in terms of dispersion of firm-level vertical market power [which is in turn measured as the share of square betweenness centrality (SSBC)] for a given supply chain. However, given the high number of firms with close-to-zero square betweenness centralities (i.e. firms with irrelevant amounts of vertical market power) found in every supply chain, we have excluded from the sample the ones with a share of SBC lower than 1%.
- 97 The above index is an indicator of vertical market power at the supply chain level. It corresponds to the HHI index for all companies (suppliers and retailers) shown as follows:

Equation: Calculation of vertical HHI index

$$VHHI = \sum_{i=1}^n \mu_i^2$$

where μ_i = vertical buying power of firm i, s_i = sales share / supplier's purchases / retailer's purchases, n = number of firms active in the value chain (suppliers + retailers)

98 The Table below shows the results of this calculation for the 11 product categories for the period 2015-2019, using VHHL.

Vertical market power (vertical HHI index) in the supply-chain-level for 11 product categories, 2015-2019

	Bread (toast)	Cereals	Pasta	Charcuterie – coldcuts	Yogurt etc	Feta cheese	Pulses	Coffee	Refreshments	Detergernts (powdered)	Toiletpaper
2015	6 185	2 791	3 321	2 299	1 990	5 647	6 856	6 996	6 320	2 791	1 929
2016	5 749	2 578	3 339	2 117	1 991	5 057	6 873	6 187	3 427	2 452	2 271
2017	5 229	2 417	3 302	2 232	1 642	2 466	6 656	5 921	4 446	3 868	1 909
2018	5 346	2 360	3 617	2 330	1 360	2 276	6 425	5 757	3 258	4 014	1 960
2019	5 454	2 464	3 720	2 053	1 396	2 191	6 248	5 803	5 764	6 231	2 152

Source: Data collected by the HCC

Note: *The color of the cells does not represent a specific threshold. However, it aims to depict the supply chains where there is significant vertical purchasing power (in red) and those (in green) where there is limited vertical purchasing power, while the other colors (yellow and orange) represent cases of moderate bargaining power.*

- 99 The above table draws two important conclusions, apart from the distribution of vertical bargaining power in the market between suppliers and supermarkets in each of the supply chains. First, while some markets are characterised by relatively stable and low²⁷ levels of vertical bargaining power between 2015 and 2019 (i.e. breakfast cereals, cold cuts, yogurt and yogurt desserts and toilet paper), others (such as toast, pulses and coffee) are characterised by relatively high levels of vertical market power for the same (time) period. While, respectively, the pasta market consistently showed a medium-low level of vertical power in the market between 2015 and 2019.
- 100 Second, some markets show significant variations in the level of vertical market power during the above years (2015-2019). Thus, the feta cheese market showed a medium-high level of vertical purchasing power in 2015 and 2016; however, in 2017 it decreased by almost 50% to stabilize at a low level since then. Respectively, for the detergent powdered washing machine products, in 2017 the bargaining power in the market started to increase from low levels to achieve one of the highest prices in 2019. Finally, the soft drink industry showed a differentiation in the level of vertical bargaining power. Specifically, it started at a high level in 2015 and then the level alternates between significant increases and decreases from year to year. In 2019, it reached a rather high level.
- 101 The table below shows the two "central" companies as they result from the calculation of the (vertical) bargaining power in the supply chain of the 11, under investigation, product categories.

Vertical market power distributed among central firms in the 11 aforementioned product categories

²⁷ The use of terms such as "low", "medium" or "high" is based solely on the comparison of the VHHL index of the above 11 product categories for the years 2015 to 2019.

Supplier (SUPL)&Super Market (SM) / Product Category	Positionand (Share) of vertical market power (SSBC)										
	Bread (toast)	Cereal	Pasta	Cold cuts	Yogurt etc	Feta cheese	Pulses	Coffee	Refreshments	Detergents	Toilet paper
SM_45				1 (25-35)%	1 (25-35)%			2 (15-25%)	2 (5-10%)		2 (15-25%)
SM_9	2 (10-15%)	2 (15-25%)					2 (5-10%)				
SUPL_1			2 (15-25%)								
SUPL_25						1 (35-45%)					
SUPL_12										2 (0-5%)	
SUPL_18								1 (75-85%)			
SUPL_20						2 (15-25%)					
SUPL_4									1 (75-85%)		
SUPL_78										1 (75-85%)	
SUPL_5		1 (35-45%)									
SUPL_52	1 (65-75%)										
SUPL_32							1 (75-85%)				
SUPL_63			1 (55-65%)								
SUPL_98											1 (35-45%)
SUPL_84				2 (25-35%)							
SUPL_85					2 (15-25%)						

102 The table above shows that the supply-chain-level vertical market power is far from being homogeneous across several product categories. Regarding the distribution of vertical market power between suppliers and supermarkets in each of the supply chains, it is observed that in most of the above product markets suppliers hold the first place (most) of the bargaining power in the market in each supply chain, with the exception of cold cuts and yogurt. This could be explained by the strong presence of private label products (especially in cold cuts [15-25]%) and the large dispersion of suppliers' market shares respectively in the second market (yogurt, etc.). It is also pointed out that the level of bargaining power in the supply chain market is highly correlated with the share of suppliers, as shown in the following detailed charts. This indicates, as mentioned above, that the asymmetries in bargaining power are explained by the presence of strong suppliers.

103 Furthermore, it is noted that some supermarkets are part of a supermarket group / chain or buying group / alliance. Each market group / alliance negotiates with suppliers the purchase prices for all its members. Therefore, buying groups / alliances are a means for some supermarkets to offset the bargaining power of suppliers in product markets.

4.2.2 Empirical analysis of the factors affecting vertical market power (buyer power)²⁸

104 In addition to the above analysis, this study also undertakes an econometric analysis of horizontal competition based on the data collected. The objective of the econometric analysis is to examine the interactions between companies operating supermarket chains and their suppliers in the formulation of supply conditions as a result of negotiations between them, which is linked to the supply price as a measure of bargaining power, mostly focusing on horizontal effects (horizontal competition) on specific markets.

4.3 CONDLUNDING REMARKS

105 Both empirical analyses attempt to approach the same issue from a different perspective. It is interesting that common conclusions can be drawn.

106 In particular, in the context of the econometric assessment, for the examination of the impact of the size of a supermarket size on bargaining terms, supermarkets were classified into two categories on the basis of their market share. In the category with firms possess a large market share, [SM_9] and [SM_45] were included.

107 According to the results of the empirical analysis, supermarkets with a larger market share achieve improved bargaining conditions, i.e. a lower purchasing price.

108 In addition, in the context of the econometric study, the ability of suppliers with a large market share to achieve better trading conditions was examined and confirmed in the half variants of the model where it was examined. Respectively, in the analysis based on the position/ centrality of a company in the value chain, it was found that suppliers that appear to play a central role in the purchase of products examined have a high market share (and most of them have strong brands).

109 By calculating the vertical power based on social network analysis, it emerged that the level of bargaining power is not homogeneous between the various product categories.

110 Regarding the distribution of vertical bargaining power in the market between suppliers and supermarkets in each of the supply chains, it is observed that in most of the above product markets the suppliers hold the first place (most) of the bargaining power in each supply chain, with the exception of pulses and toilet paper. This can be attributed to the strong presence of private label products in these markets. It is also noted that the level of bargaining power in the supply chain market is largely correlated with the share of suppliers, which suggests that asymmetries in bargaining power are explained by the presence of strong suppliers. These suppliers have strong / recognizable brands that may influence the purchasing power of supermarkets, despite the concentration of the industry having increased in recent years.

111 The analysis of the bargaining power based on the supply price demonstrates the role of a variety of factors in shaping the conditions achieved as a result of the negotiations between the companies operating supermarket chains and their suppliers. The majority of the variants of the model under consideration confirm the negative and statistically

²⁸ The quantitative analysis based on the data collected by HCC, was undertaken by Alexander Louka, PhD.

significant effect of quantity. An increase in the quantity supplied by supermarkets leads to an improvement in the terms they achieve, understood as a smaller net supply price. Negotiation terms appear to be further improved for supermarkets holding a larger market share, which further reduces the supply price, thus confirming most of the model's variations. Examining also the ability of suppliers with a large market share to influence supply terms confirms the expected improvement in negotiation terms for these suppliers in the half variants of the model under consideration.

- 112 With regard to private label products, it was found that an increase in quantity has a lesser effect on the net supply price, which applies to all variants of the model. In addition, examining the impact of alternatives on supermarket companies, using the number of suppliers per category and per supermarket, it was found that the expected negative effect of an increase in the number of suppliers in trading terms is confirmed in several variants of the model. On the contrary, the expected positive effect of an increase in the size of a supplier, estimated on the basis of the total value of his products, on the net supply price paid by a supermarket business is confirmed in only a few cases.
- 113 In conclusion, the concept of bargaining power includes a variety of components that are not directly measurable, and the two analyses presented should be seen as complementary in approaching this complex issue.

5 DISCOUNTS - OFFERS

5.1 INTRODUCTION

114 In the context of this sector inquiry, the HCC collected relevant data in an attempt to detect different offers and discounts provided by suppliers, which can be described as "individualised" as a result of the negotiation process based on the specific commercial agreement between a supermarket and a supplier. The HCC collected data (period 2010 - 2015) from both supermarkets and their main suppliers, in order to draw conclusions regarding the benefit that supermarket chains gain from all the benefits and discounts provided by their suppliers. The HCC tried to decipher whether there is any resulting benefit for the final consumer.

5.2 Research results

- 115 There is no clear trend that larger supermarkets enjoy higher benefits and discounts from suppliers than medium-sized or smaller supermarkets.
- 116 However, in terms of the total amount of these benefits and discounts to gross purchases, this is quite high, resulting in the supermarkets' net purchases in value being significantly lower. Thus, in the final report it was investigated whether these benefits are passed on to consumers in the form of lower retail prices, especially if these discounts / benefits are generally non-systematic and delayed in time (i.e. not relevant with the time of pricing of the products concerned) and are not included directly in the purchase cost at the time of supply.
- 117 The econometric analysis showed that the degree of pass-through of a price increase at which supermarkets buy their products from suppliers to the final price paid by consumers to buy them from them is moderate (less than 50%), when examining a total of 11 product categories. However, the results seem to vary for each product categories. Studying the degree of pass-through per product category appears to cover a wide range, being low in categories 5 (yogurt and yogurt desserts) and 6 (soft drinks), but significantly higher in categories 8 (coffee) and 10 (laundry detergents). In general, it appears higher in product categories where the presence of private label products is smaller and where there are strong suppliers with must have products [e.g. coffee (PL product market share in 2019 <10%, in most categories of coffee, except filter coffee)] and powdered laundry detergents ([0-5]%, PL product market share in 2019)]²⁹. In these product categories, the bargaining power of suppliers vis-a-vis supermarkets is increasing³⁰.
- 118 Furthermore, with regard to supermarkets, the two largest supermarkets, in terms of market share, show the lowest degree of cost pass-through to final consumers. These results show that large supermarkets have, to a greater extent than smaller supermarkets on the market, the ability to mitigate the increase in the supply price of suppliers through the various discounts and benefits they offer to final consumers. In other words, the flow of discounts and benefits to final consumers is higher for large supermarkets compared to smaller ones, resulting in

²⁹See for example HCC decisions 434/2009, 441/2008 and 610/2015 in these markets.

³⁰See final report, sub section 6.5.

lower purchasing prices of products from consumers compared to the corresponding prices of smaller supermarkets³¹.

- 119 Regarding potential consumer benefits, twenty-two (22) supermarket chains were asked about the use or not of loyalty cards. It has been found that the majority of supermarket chains place particular emphasis on the importation and use of loyalty cards by their consumers.
- 120 According to a survey (by Focus Bari) conducted to a nationwide sample of 600 consumers in 2017³², supermarkets belong to the sectors with the greatest use of loyalty and reward programs. The penetration of these loyalty cards in supermarket chains reaches 92%, with reward programs boosting the turnover of businesses significantly, as one (1) in two (2) reward card holders spends more on companies that reward them with discounts on prices and returns.

5.3 Novel types of discounts

5.3.1 Personalised offers

- 121 More and more supermarket chains are increasing the use of individualized offers, ie offers based on the profile of each consumer, mainly through the utilization of new technologies³³. Such offers are given as a reward, in the sense that they are targeted to each consumer according to the individual's profile and will be provided not indiscriminately, but based on his loyalty to the store and the brand. It is estimated that individualized offers are the antidote to "price wars" that prevailed in recent years in the food retail sector.
- 122 For Greek standards, AB Vasilopoulos and My Market offer more advanced offers, resembling individualised offers.
- 123 Recently, there has been a development in other ways of monitoring the "personalised" offers provided by supermarkets to consumers. For example, such a method of tracking personalised offers is provided by the online platform-application Pockee, where on the one hand the offers of 19 supermarket chains and 27 large suppliers are concentrated and on the other hand there are exclusive bonus coupons for money returned. Personalisation in this case exists in the sense that the user can create in the application a list of products that interest him/ her, so that they is informed about the relevant offers. He/she can also specify what their favourite supermarket chains are and the branches from which they usually shops.
- 124 In the next phase, it is estimated, based on the strategies the supermarkets seem to be adopting, that the individualised offers from the supermarkets will be designed in such a way as to take into account demographic characteristics and consumer habits, while some will be made in real time. Such practices, as well as other falling in the "grey area" and not explored

³¹See, final reports subsection 5.5, regarding bargaining power with regard the relevant products.

³²<http://newpost.gr/oikonomia/637191/me-kartes-prosforwn-kai-ekptwsewn-toy-lianemporioy-kanoyntis-agores-toys-oi-perissoteroi-katanalwtesand>
<https://www.reporter.gr/Eidhseis/Oikonomia/336657-Kartes-pistohtas-Sthigma-ston-katanalwth-kai-thn-epicheirhsh>(in greek).

³³<https://www.kathimerini.gr/958763/article/oikonomia/epixeirhseis/proswpopoihmenes-prosfores-3ekinoynta-soyper-market>and data from NIELSEN (in Greek).

in detail in this sector inquiry (eg. bundled rebates)³⁴ will be examined by the HCC in the future.

³⁴See <http://www.oecd.org/competition/abuse/41772877.pdf> as well as OECD Roundtable 2016, „Fidelity rebates and competition“, [https://one.oecd.org/document/DAF/COMP/M\(2016\)1/ANN4/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2016)1/ANN4/FINAL/en/pdf), <https://www.oecd.org/daf/competition/fidelity-rebates.htm> .

6 CATEGORYMANAGEMENT

125 Category management is a business technique by which retailers distribute self-space per product category, sort products on the shelves and promote them³⁵. The use of this technique began relatively recently in the supermarket sector, though it has been used for several years for various other retail products.

6.1 SUPERMARKET RESPONSES

126 A total of twenty-two (22) supermarkets were surveyed, of which twenty-one (21) responded. Most of the answers received converge, and some of the supermarkets admitted that intervention practices in the placement of the products by categories were adopted by their suppliers.

6.1.1. *Productplacementbycategoriesinsupermarkets*

127 Supermarkets were asked whether suppliers were directing them on how to place products on the shelves, and if this happens, they were asked to provide the relevant plans or other documents.

128 Nineteen (19) out of the twenty-two (22) surveyed supermarket companies answered the above question. All of them ruled out this behaviour from suppliers, adding that they do not accept guidelines on how to place the products. They clarified that the placement is done either empirically or with more complex criteria.

129 As for the relevantplanograms, the supermarkets replied that they do not receive such documents from their suppliers. Furthermore, some of the supermarket companies responded that they do not keep plans for the placement of products in their stores, while others replied that they do have such plans, but such plans are put together and are processed solely by them, without the suppliers' participation.

6.1.2. *The level of dependence between product placement and related benefits and / or discounts and other terms – withdrawing supplies*

130 In order to clarify the scope and degree of dependence of supermarkets upon suppliers, supermarkets were asked for any existing or previous agreements that provide for direct dependence of the agreed final product price based on the location of the product in question on the shelf.

131 Nine (9) out of the twenty-two (22) supermarket companies answered the above question. Most of them gave a negative answer, namely that there is no agreement that the final purchase price of the product depends directly on the product's shelf place, nor are there any relevant discounts/ benefits.

³⁵See B. Klein και J Wright, 'The Antitrust Law and Economics of Category Management' (American Law & Economics Association Annual Meetings 2004, paper 55), p. 1.

6.1.3. Criteria for category management

132 The tables below list in detail the criteria mentioned and record the corresponding percentage (%) for product classification by supermarkets, as well as the criteria for withdrawing specific product codes.

Criteria for the introduction and withdrawal of product codes in supermarkets

Criteria for introduction	Relevant percentage
1. Consumer demand	75,95 %
2. Profitability	47,37 %
3. Innovation	26,32 %
4. Cooperation with suppliers	26,32 %
5. Meeting consumer needs	21,05 %
6. Similar products provided by competitors	15,79 %
7. Purchase price	15,79 %
8. Quality	15,79 %
9. Marketing support	10,53 %
10. Variety	10,53 %
11. Local production	10,53 %
12. Product (brand) recognition	5,2 %

Source: Relevant questionnaires

Criteria for withdrawal	Relevant percentage
1. Consumer demand	52,63 %
2. Innovation	47,37 %
3. Cooperation with suppliers	26,32 %
4. Increase in purchase price	10,53 %
5. Withdrawal by the supplier	10,53 %
6. Reduction of a specific category in order to promote another	10,53 %
7. Product replacement	10,53 %
8. Change in quality or packaging	10,53 %

Source: Relevant questionnaires

6.1.4. Exclusivity clauses

133 Twenty-one (21) out of twenty-two (22) companies answered the question about the existence of agreements with suppliers that include exclusivity clauses in the supply, promotion or distribution of products, of which twenty (20) stated that there was no relevant condition of exclusivity in any contract or even orally by a supplier regarding the product reference categories. Finally, according to the response of one of the supermarket companies, its suppliers stopped supplying it for reasons related to its solvency and due to its inability to meet its obligations.

6.2 CONCLUDING REMARKS

134 It can be deduced from the relevant answers that suppliers generally provide advice to supermarkets on the placement of their products (as well as competitors' products), even if

such advice does not require the commitment of supermarkets and/ or not directly relate to lower supply prices or benefits to them.

- 135 However, despite their non- binding nature, these proposals could potentially be perceived by retailers as binding due to a suppliers' individual characteristics, such as its strong market position in the relevant market (eg dominant position).In particular, the survey results suggest that the vast majority of supermarkets refuse that they make requests to suppliers to determine the position of products by category and vice versa. On the other hand, some of the suppliers stated that they only provide advice (not binding) to supermarkets on this particular practice.
- 136 As for whether there is a correlation between the placement of products of each category on the supermarket shelf and each supplier's / brand's market share, no common trend was identified. However, it should not be overlooked that the majority of suppliers stated that the development of private labels for all product categories (with the exception of powdered laundry detergents) has reduced the available shelf space.
- 137 Finally, despite the beneficial effects of category management in some cases, this practice can ultimately have the opposite effect on competition between retailers and suppliers, especially when a supplier has increased bargaining power.

7 PRIVATE LABELS (P-L)

7.1 TRENDS

- 138 In Greece, the development of private label products (private labels/P-L) has been advanced by the particularly difficult economic situation the country experienced between 2009-2013. Many consumers, due to the significant reduction in their disposable income, have changed their consumer behaviour and turned to private labels, which are offered at lower prices than the corresponding branded products. This prompted the industry's major chains to develop and expand the range of private label products on their shelves.
- 139 At the same time, investments to upgrade their quality and packaging, as well as promotions (eg brochures, offers), strengthened their competitiveness and gave more options to consumers. The consequence of the above was the significant increase in the total value of the domestic P-L market until 2014.
- 140 In addition, the development of P-L products has acted as a competitive pressure on the suppliers of branded products, which in their efforts to deal with the effects of the rise of P-L products have sharply increased their promotional activities and offers consumers, thus seeking to reduce their losses and keep the demand for their products stable. Therefore, the main advantage of private label products, i.e. their lower price, was limited (to some extent) due to frequent offers (reduction of product prices, 1 + 1 gift, etc.).
- 141 In this context, and given the competitive pressure exerted on P-L products by branded products, but also due to the supermarket chain's malfunction [SM_29] in 2016, the overall P-L market decreased by 9.5% in the period 2014-2018³⁶.
- 142 The aggressive discount policy followed by branded goods suppliers in the previous years appears to have decreased in intensity in 2018, with the result that the P-L market has a small decline on an annual basis (-0.4%). However, in 2019 it is estimated that it has increase (+ 1.6%). According to ICAP's assessment³⁷, such increase is due to:
- 1) the general development of the supermarket sector in the past two years;
 - 2) the relevant rise of [SM_52] which influences the sector due to its strong presence in P-L;
 - 3) the increase in the number and range of P-L in the major supermarkets
 - 4) the entry in the Greek market by SPAR through its collaboration with the buying alliance ASTERAS.
- 143 According to IRI's research³⁸, a parameter that is said to strengthen private label products concerns not only the attempt to de-escalate strong offers on branded products, but also the equally apparent willingness of supermarket chains to invest more in promoting their own brands. In particular, supermarket chains are upgrading P-L codes by offering sophisticated product lines, such as those produced by exclusive partnerships between these chains and small producers³⁹.

³⁶ ICAP 2019, pp 83-84.

³⁷ ICAP 2019, p 84.

³⁸ Βλ. <https://m.naftemporiki.gr/story/1507688/kerdizoun-simantiko-edafos-ta-proionta-idiotikis-etiketas> (in greek).

³⁹ IRI, 2019.

- 144 Finally, in terms of concentration, this is particularly high, because the five largest supermarket chains cover [85-95]% of the P-L market. The percentage of domestic suppliers of private label products is estimated at [85-95]%.
- 145 The P-L in the following product categories, i.e. pasta, cold cuts, toilet paper and pulses generally show an upward trend in their market share from 2010 to 2015.
- 146 P-L in the sliced bread product category generally shows a downward trend in their market share from 2010 to 2015.
- 147 P-L in the coffee, yogurt and laundry detergent product categories show stable market shares from 2010 to 2015.
- 148 P-L products for cereal, feta cheese and soft drinks - ready-made tea – and energy drinks offer inconclusive results.
- 149 According to the data of the annual pan-Hellenic survey of the Institute for the Research of Retail Consumer Goods (IELKA) in 2017/2018⁴⁰ and based on a sample of 2,000 consumers from all over Greece, it appears that Greek consumers have matured significantly in relation to the use and selection of P-L, but continue to choose mainly branded products. The majority of consumers, according to a survey (about 2 in 3 consumers), consider branded products to be better in terms of quality, with 1 in 2 consumers stating that it is always better to buy branded products. The offers recorded in recent years in the Greek market have also played an important role in this development. 57% of Greek consumers stated that they prefer more offers (ie indirectly lower prices) - something in which branded products invest - rather than low prices (eg as recorded on the packaging of products) - something in which P-L have an advantage. According to IELKA research data, consumers save on average 12% of the value of their purchases from the supermarket through offers and discounts on branded products.
- 150 At the same time, the majority of consumers still increase the number of private label products they try-choose, but at a declining rate. This fact shows that over time, even slowly, the penetration of these products in the consumer basket increases, and also that there is room for further increase of this existing penetration.
- 151 However, the degree of penetration of P-L products is reflected in other research data, with consumers saying more strongly [35-45]% that the availability of private label products is a major factor when choosing a supermarket chain. This data shows that P-L are now part of the corporate identity and image of the supermarket chains.
- 152 Finally, it is noted that the quality image of these products has improved in recent years and the majority of respondents (58%) consider that private label products are of equal quality compared to the corresponding branded products. This is a result of the long-term investment of large supermarket chains in partnerships with local producers, which has led many retail companies to present their own product lines with a distinct identity and quality of local Greek products.
- 153 Based on the low share of PL products relative to the brand value of branded products and especially premium Fast Moving Consumer Goods (FMCG), the low retail market concentration index and the relatively limited bargaining power of supermarkets in most

⁴⁰ Annual pan-Hellenic survey of the Consumer Retail Research Institute (IELKA) 2017/2018, available on the website (in Greek): <http://www.ielka.gr/?p=2421>.

product categories examined, the HCC notes that, at the current stage of development of PL products in Greece, there is relatively little possibility of abusive practices against suppliers. However, it cannot be excluded that in some product categories where there are small or medium-sized suppliers of branded products and a low concentration of on the part of suppliers, an intervention might be needed against foreclosure practices.

8 BUYING / PURCHASING ALLIANCES

8.1 OVERVIEW

- 154 The vast majority of the stores of the members of buying alliances (84% of the stores) are located outside the areas of Athens and Thessaloniki.
- 155 The largest volume of stores is located in the region of Central Greece (19% of stores), followed by the regions of Central Macedonia (16% of stores), the Peloponnese (14% of stores) and the Aegean islands (14% of stores).
- 156 It should be noted that, in general, the existing buying alliances in Greece are domestic alliances between companies of approximately the same size (individual stores and small or medium supermarket chains), which were created with the main purpose of addressing competition by domestic large supermarket chains (especially due to their recent concentration trend) as well as foreign supermarket chains abroad. In other words, there is no "new generation" alliance, which includes a large retailer (national chain) and some of its smaller competitors.
- 157 On the other hand, the second largest company in the market (AB VASILOPOULOS) is controlled by the foreign Delhaize Group and is therefore a member of that international group.

8.2 ANALYSIS

- 158 Developments in recent years at European level show that the attention of competition authorities has shifted to buying alliances and the important role they play in the value chains in which they operate.
- 159 The creation of buying alliances is facing the need on the one hand to balance the bargaining power of buyers' vis-vis-vis large producers. In the Greek market, the creation of such alliances so far, seems to be related to the ability of small and medium retailers outside large urban areas to compensate for the strong pressure from the large supermarket chains of pan-Hellenic scope. Therefore, the main provincial alliances offer a local competitive solution to consumers but also offer market access to other producers who could not have achieved access to large chains.
- 160 On the other hand, the need to eliminate (and/or significantly reduce) bottlenecks, but also the possibility for an alliance to essentially serve as a platform for the exchange of information and coordination gives a different perspective to the treatment of buying alliances in competition law enforcement (especially in concentrated market settings).
- 161 In light of current developments at European level (through the simultaneous investigations into buying alliances), there has been a shift in interest and there might be a stricter review of such alliances and additional measures might be taken – but this is justified by the concentration of bargaining power in supermarkets. Therefore, it is not considered necessary for Greece to turn to a stricter application of national competition law in cases of buying alliances.
- 162 Eventually, other more targeted measures could be adopted to address possible abuses of purchasing power and asymmetries between the parties (through, for example, threats to cancel cooperation), but also to deal with non-compete clauses. Factors that exacerbate these

phenomena such as seasonality could be further regulated, e.g. the conclusion of central agreements for the following year to take place before the end of this year. Finally, with respect to competition law enforcement in retail markets, it is necessary to strengthen the competent authorities, to impose deterrent sanctions, but also incentives to provide information by affected producers to address the fear of possible retaliation.

- 163 Several of these suggestions will be implemented through the Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which although not specifically and exclusively refers to purchasing alliances, occupies and regulates their relations with producers. However, restrictions on turnover thresholds limit its application to strong purchasing alliances..

9 CONCLUSIONS AND PROPOSALS

9.1 POTENTIAL PROBLEMS IDENTIFIED

- 164 The HCC may intervene by applying Articles 1, 2 and 5 to 10 of Law 3959/2011 (Article 101 and 102 TFEU and EU merger control equivalent), as well as Articles 101 and 102 TFEU, in order to address problems that harm the effective functioning of competition. In addition, when these tools are not adequate, it may, with a reasoned opinion, take all necessary measures to create conditions for effective competition in this sector of the economy (Article 11 of Law 3959/2011).
- 165 Following the public consultation⁴¹ and the analysis of the updated data collected in 2020, the HCC decided (unanimously) on the following measures and solutions:
- 166 Due to the significant changes in consumer habits in recent months and the possible entry of new business models in the market, with the entry of new players, both via the internet and in traditional distribution channels, a process which has not yet crystallized, but also in view of the restriction of the scope of the present Inquiry on certain product categories, it is not considered necessary at this stage to begin regulatory intervention in the sector. In particular, it is not deemed necessary at this stage to appoint an Ombudsman or Trustee who will negotiate with retailers or suppliers for a Code of Conduct or Good Practice guide that will only apply to them, as proposed by the Intermediate Report. This possibility will be considered after the conclusions of the new Supermarket Sector Inquiry, which is planned in the medium term in two years and which will cover more, and possibly different, product categories, a choice that will be made based on the systematic processing of data collected by the HCC Economic Intelligence Platform already since January 2020.
- 167 It is necessary that the HCC continuously monitors the sector, both for the specific consumer products examined in this Inquiry, as well as for other products, food or other consumer goods. This will be carried out by a Supermarket “Taskforce” which will be set up in HCC’s DG⁴². The Taskforce team will prepare a report on the competitive situation in the retail sector to be presented to the HCC’s President every twelve months, and will measure the bargaining power of the supermarket chains and suppliers based on the methodology applied by this Study (Chapter 5). The final selection of the supply markets to be examined by the Sector in the medium term will be based on the findings of these periodic studies of the Taskforce team. The Taskforce team should also, in cooperation with other HCC’s directorates and units, develop specific Guidelines, to be drafted in the

⁴¹ See: <https://www.epant.gr/enimerosi/dimosieyseis/media/item/963-to-vinteo-tis-tilediavoylefsis-kladikis-supermarkets.html>.

⁴² The Taskforce team will be comprised by personnel from the two competent Sector Directorates of the HCC, Directorate A (for consumer products) and Directorate C (Food). The latter is responsible for food markets and will be also HCC’s Directorate that will undertake the implementation of Directive 2019/633 in case the proposals of the Legislative Draft Committee are adopted and the HCC will assume responsibility for the implementation of certain provisions of the Directive, as well as by the Departments of Digital Evidence which operates the HCC Economic Intelligence Platform and Research and Economic Documentation.

first half of 2022, on the application of competition rules in the supermarket sector. These Guidelines will analyse the way in which the bargaining power and the specific methodology developed in this Study by the HCC will be taken into account in the investigation of dominant position cases in the market (including in relation to the definition of a relevant market), as well as commercial practices, which may involve unfair commercial practices, and which may constitute an abuse of a dominant position of an exploitative nature.

- 168 It is noted that several of the competition problems referred to in the previous Section and which relate to the exercise of bargaining power may be resolved by a carefully designed application of Articles 1, 2 of Law 3959/2011 and 101, 102 TFEU. In view of the above the following should be noted:
- 169 When defining the geographical downstream market (ie the market for the sale to final consumers), the HCC's geographical circle centered on each individual target store and developed within a radius of distance about 10 or 30 minutes by car, depending on the characterization of the municipal unit, in order to determine the real competitive pressures exerted on each target store in terms of alternative sources of consumer supply, taking into account the various methodologies presented in Chapter 3.3. The definition of product and geographic markets will be included in the issues to be addressed through the above-mentioned Guidelines.
- 170 The application of case law criteria to a company with dominant position should take into account the characteristics of the specific sector and in particular the lack of intense competition for certain premium products ("Fast Moving Consumer Goods (FMCG)") or the central role of certain markets or electronic platforms that may have a "gatekeeper" role in some markets and may distribute private label products. Therefore, market shares that in other sectors may be likely to be considered relatively low, in the supermarket sector could establish a dominant position, when combined with the bargaining power, (as defined by the methodology presented in Chapter 5 of this Inquiry). The specific criteria, and the way in which this methodology will be applied to substantiate a dominant position, will be developed in the above-mentioned HCC's Guidelines.
- 171 The HCC acknowledges that the exploitation of trading partners can take various forms and is not limited to charging higher prices. For example, under EU competition law, the imposition of "Unfair Trading Conditions / (UTC)" or "Unfair Commercial Practices" (UCP) may constitute an abuse of a dominant position⁴³, even if there is a case of parallel application of the law of unfair competition or contract law.
- 172 The concepts of "unfair trading terms" (UTC) and "unfair trading practices" (UCP) are quite broad and vague, giving competition authorities discretion and to the courts the room to interpret the scope of these practices the way they deem appropriate. Provisions prohibiting the abuse of a dominant position could also cover behavior that imposes unreasonable conditions on final consumers, as it would lead to a reduction in the quality

⁴³ See for example article 102(a) TFEU, "Such abuse may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions".

of services provided and other exploitative results, such as the extraction of personal data without the user's consent. This raises, however, the question of what type of UTC or UCP may constitute under EU and national competition law and how this type of abusive behavior may involve theories of harm which are non-price-related or which are privacy-related..

- 173 The case law does not provide clear guidance for articulating a corresponding theory of harm. Some recent preparatory documents regarding the adoption of the Directive on unfair business-to-consumer commercial practices⁴⁴, the Unfair Commercial Practices Directive in the Food Supply Chain⁴⁵ or the recent EU regulation on business-to-platform relations (platform to business Regulation)⁴⁶, may lead to the development of relevant case law. Of course, it is necessary to distinguish carefully between the interpretation of Article 2 of Article 3959/2011 and / or Article 102 TFEU and the European legislation which may constitute European law on unfair practices.
- 174 There is a particular interest in exploitative abusive practices, which consist of the imposition of unfair or burdensome terms by a dominant undertaking. The HCC will explore the possibilities offered by the European framework and national case law in order to address the problems arising through the exercise of bargaining power and include them in the guidelines it will prepare for the application of competition rules in retail markets of basic consumer products. In order to deal with unfair commercial practices by undertakings with significant bargaining power, it is necessary to strengthen the HCC's control mechanisms, especially through the use of digital technologies that will allow HCC to be informed directly through complaints or through systematic market monitoring.
- 175 A major problem that undertakings without bargaining power face and which may affect their incentives to provide information on any anti-competitive practices to the HCC is the fear of retaliation by firms with bargaining power, especially if there are relations of economic dependence and it is therefore necessary to continue their commercial cooperation with them. Directive 2019/633 on unfair commercial practices in business

⁴⁴Directive 2005/29 / EC on unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450 / EEC, Directives 97/7 / EC, 98/27 / EC, 2002/65 / EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Directive on Unfair Commercial Practices").

⁴⁵European Commission, Green Paper on Unfair Commercial Practices in the Supply Chain of Food and Other Consumer Products in Europe, COM (2013) 37 final, 31.1.2013; European Commission, Communication - Tackling Unfair Commercial Practices (TRA) in the food supply chain from business to business, COM(2014) 472 final; European Commission, 'Staff Working Document, Impact Assessment, Initiative to improve the food supply chain (unfair trading practices), Accompanying the document, Proposal for a Directive on unfair trading practices in business-to-business relationships in the food supply chain' SWD(2018) 92 final; Directive (EU) 2019/633 on unfair commercial practices in business-to-business relations in the agri-food supply chain, OJ L111/59.

⁴⁶European Commission, 'Staff Working Document, Impact Assessment, Annexes, Accompanying the document, Proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services' (2018) SWD(2018) 138 final; Proposal for a Regulation of the European Parliament and of the Council promoting fair treatment and transparency for business users of online mediation services, COM (2018) 238 final; Regulation (EU) 2019/1150 on promoting fair treatment and transparency for business users of online mediation services, [2019] OJ L 186/57.

relations in the agri-food supply chain recognizes that "Member States should take appropriate measures"⁴⁷. However, the scope of the Directive is limited to unfair commercial practices in the supply chain of agricultural products and foodstuffs. The possibility of providing anonymous information to the HCC on anti-competitive practices already exists, but the unilateral direction of communication between the HCC and the anonymous complainant limits the practical effectiveness of this solution. Until now, the ability to collect such critical information required the disclosure of information of the informant, either by sending correspondence details via post or email or in person. Disclosure of personal (even limited) information of the potential informant obviously reduces its incentive and increases the fear that some information may be leaked, exposing thus the informant. Subsequently, the fact that a completely secure "communication zone" is not provided preserves the reluctance to provide information and generally maintains a culture of silence on various anti-competitive phenomena in the Greek market. The provision of information by anonymous whistleblowers can provide the HCC with critical information on anti-competitive practices, whether they are on cases already under investigation or on launching new and targeted investigations, which can have significant deterrent effects on anti-competitive practices and create uncertainty / fear among offenders that their practice can be exposed. Following the example of other competition authorities⁴⁸, the HCC is in the course of creating a whistleblowing system that will enable information provision without fear of being identified in any way. This system will be operational before the end of March 2021 and will allow the effective and immediate collection of information needed for launching—mainly— ex-officio investigations.

- 176 Systematic market monitoring through specially designed platforms and algorithms (screening tools) will also enable the HCC to investigate more effectively anti-competitive practices that may restrict competition. As part of this market monitoring, the HCC has secured access to price data collected by the e-Consumer platform of the General Secretariat for Trade and Consumer Protection of the Ministry of Development and Investment and the Central Markets and Fisheries Organization SA.
- 177 In the context of the HCC's digital transformation program and especially in order to address the challenges of continuous market monitoring during the Covid-19 pandemic, the HCC has designed and developed the HCC Data Analytics and Economic Intelligence platform, an innovative tool for collecting and processing financial data (e.g. prices) in real time for thousands of products in various markets in Greece. The new HCC Data Analytics and Economic Intelligence platform has as its main functions the collection and analysis of real-time market data, optimized market monitoring dashboards with direct analysis and reporting; while the machine-learning algorithms will utilize experience and knowledge - as well as and the indicators used by the HCC. A screening mechanism has also been integrated to allow the HCC to prioritise cases quickly and based on their real impact on the economy. The main data sources that will 'feed' the algorithm/platform

⁴⁷Recital 28 of Directive 2019/633.

⁴⁸Such as DG Comp, Bundeskartellamt and Danish CA.

include data from the e-consumer price observatory. The monitoring of retail prices' trend and other competition related parameters, at the same time with the analysis of the bargaining power of the supermarket chains and the suppliers, according to the methodology presented in section 5 of the Report, provides the HCC with an important market mapping tool and facilitates the drafting of periodic reports that will be prepared by the supermarket Taskforce, as mentioned above. It is therefore necessary to continue the collection of prices and other data from the e-Consumer database, and to extend this obligation to all supermarket chains - buyers with an annual turnover of more than EUR 50 000 000, possibly moving on to interoperability between this database and the platform of unfair commercial practices foreseen to be set up by the draft Law incorporating the Directive 2019/633 on the supply chain of agricultural products and food, to which the HCC will also have access. It is also necessary for the database to include the sales quantities of the various products per code. It is therefore proposed to extend the measure for at least a period of 12 months, due to the significant benefits for both final consumers through the use of the e-Consumer database and price comparison tools per supermarket and product code, as well as for the HCC due to systematic market monitoring, in order to mitigate the potential impact of further market transparency caused by the price comparison app on facilitating any concerted practices⁴⁹.

178 It is also crucial to examine in detail the effects on competition of the restrictive measures applied on retail markets as a result of the COVID-19 pandemic. At the present time, in view of the periodic application of restrictive measures, the conditions of competition are constantly changing and it is likely that the prolongation of this period of uncertainty will also have a significant impact on the viability of many retailers, possibly by strengthening the market concentration index, both at retail and procurement level. It should be noted that any measure of state intervention adopted by the executive and the legislative bodies should take into account the legal framework of the European Treaties and ensure that it safeguards the competitive structure of the market, the protection of consumer interests and a sustainable economic development. Indeed, COVID-19 should not, at least in the long term, constitute a reason for permanent distortion of the conditions of healthy competition and exploitation of consumers in the medium and long term.

179 It is necessary for State bodies to systematically weigh the measures they take to protect public health at periodic intervals so as to reduce possible problems and disproportionate negative distortions in the competition process. A proportionality test⁵⁰ may be used to carry out this weighting and to find the most proportionate application of the measures, with parameters and criteria (i.e. sub-tests) which will include the feasibility of the measures (finality test), i.e. the purpose of protection of public health according to the epidemiological data, the necessity of the measures (necessity test) due to the predictions

⁴⁹ See: I. Ater & O. Rigbi .The Effects of Mandatory Disclosure of Supermarket Prices, DP12381(October 2017).

⁵⁰ Moreover, according to settled case-law, the principle of proportionality, which is a general principle of Union law, requires that the means provided for in the provision be appropriate for the attainment of the objective pursued by the provision concerned and do not go beyond what is necessary to achieve that objective [see Annex II]. Judgment of 6 December 2005, Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04, ABNA and Others, paragraph 68 and the case-law cited).

for the evolution of the pandemic, as well as the less onerous alternative test (Least Restrictive to Competition), which will take into account how effectively this level of public health protection can be achieved, which is particularly important in the epidemiological conditions due to the risk of further expansion of the pandemic. This weighting also takes account of consumers' interest in supplying various goods. In addition, in assessing the possible measures to be taken, it is necessary to examine whether the objectives pursued by this measure can justify the negative economic consequences, which may be significant, for certain companies⁵¹. At this point it should be noted that the continued use of the absolute prohibition of the distribution of product categories may – on the face of it – be incompatible with competition law as a distribution ban acts as a production restriction and therefore has anti-competitive consequences, ultimately causing price increases, and possibly the creation of unlawful cartels and the direct exploitation of consumers⁵².

- 180 However, the adoption of a system of proportionality weighting of measures may allow the selection of horizontal general measures on the basis of specific public health rules, which could allow – where appropriate – the distribution of products to all natural (*'brick n' mortar'*) distribution points which comply with specific measures (*'standards'*) for the protection of public health, weighing, of course, the costs of monitoring these measures in the various stores (for public health reasons). If, of course, this weighting shows that the cost does not allow this option, then in some specific cases, and for a short time, due to the magnitude of the problem created by the pandemic, the absolute prohibition can be justified (i.e. of physical stores, as e-shops can operate as such).
- 181 This weighting should be updated, as should all restrictive measures, on the basis of the new epidemiological data obtained, so that the restrictive nature of the measures adopted is compatible with the competition rules and the objective of protecting the interests of consumers; and ultimately the overall objective of their welfare (i.e. the protection of their health). Within the framework of its responsibilities, the HCC may also assist in the analysis and evaluation of applicable measures and regulations, based on the aforementioned implementation of a proportionality test, in terms of their results in the market and in the competition within it, as well as in providing proposals for their improvement, in cases where there exist issues of absence of conditions of effective competition within it, if this is deemed necessary.

⁵¹ Decision C58/08, Vodafone (Roaming Regulation), para. 51

⁵²We should also keep in mind that under European legislation (see Articles 4(3) and 101, 102, 106 SLEEs) and competition case-law, measures taken by the Member States themselves may be regarded as anti-competitive, e.g. Article 101 in conjunction with Article 4(3) requires Member States not to take or maintain measures, even of a legislative or regulatory nature, capable of eliminating the practical effectiveness of the competition rules applicable to undertakings. This is the case, for example, where a Member State either imposes or favours the conclusion of cartels contrary to Article 101 OF the EUSCE.