

The background of the entire page is a photograph of a modern building's interior. It features a grid of large glass windows that reflect a clear blue sky. In the lower half of the image, two men are silhouetted against the glass, standing and talking. The overall aesthetic is clean, professional, and modern.

# KARATZAS & PARTNERS

Competition Law Alert

## Overview of actions taken and sector inquiries launched so far by the Hellenic Competition Commission (HCC)

The HCC, in the course of the past months, had to face significant challenges, especially due to the COVID-19 pandemic and the extraordinary economic and social conditions, which necessitated immediate and novel action to meet the requirements of consumers, businesses and the State, which included the establishment of the COVID-19 Task Force, serving as a one stop shop service gathering information on the changing circumstances in the market with a view to framing accordingly its policy response<sup>1</sup>.

At the same time, the HCC continued uninterruptedly its activities ensuring a smooth operation of the Greek market with regards to competition and proceeded with a number of merger control clearances, commenced sectoral enquiries, ex officio investigations and dawn raids and also initiated a consultation process through online questionnaires for the issuance of a code of procedures governing its operations.

Below we set out the most important actions taken by the HCC in the last months.

### ▪ Sector inquiries

The HCC announced its intention to proceed with several sector inquiries, exercising the respective powers conferred on it pursuant to Article 40 of Law 3959/2011.

#### 1. E-commerce

The HCC on 11.03.2020 decided to initiate a sector inquiry into e-commerce. The public consultation was launched on 31.03.2020, following an invitation to all interested parties to express their views on the competitive conditions in the e-marketplace and participate to the upcoming teleconference, which took place on 03.06.2020. The teleconference, which is part of the broader reform of the HCC's digital communication, followed the written submissions by many stakeholders concerned, and served as an interactive forum for exchanging views on the competitive conditions prevailing in the e-commerce sector.

In particular, the teleconference covered four key topics, namely: a) e-commerce vertical restraints, b) limitations resulting from digital platform activities, c) theories of harm related to the use of algorithms and big data, as well as d) state anti-competitive measures in the digital environment, through over-regulation of specific sectors. The findings of the teleconference together with the participants' comments will be assessed by the HCC Research Team and will be used to draft and send questionnaires to sector representatives. Phase A' of the sector inquiry will be completed with the issuance of the first draft Report by the end of 2020.

<sup>1</sup> See also in this respect, our previous Competition Newsletter which can be found [here](#)

**Read the full text of the relevant announcements on HCC's site:**

<https://www.epant.gr/enimerosi/kladiki-erevna-e-commerce.html> and  
<https://www.epant.gr/enimerosi/deltia-typou/item/940-deltio-typou-i-tilediavoylesi-tis-kladikis-gia-to-ilektroniko-emporio.html>

## **2. Basic consumer goods**

The HCC published on 13.04.2020 its Interim Report for the field of production, distribution and marketing of basic consumer goods distributed by super markets, following the relevant sector inquiry that was initiated in 2015, and was prioritized by the HCC on September 2019.

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) legumes, (9) feta cheese, (10) toilet paper and (11) sliced bread.

In particular, the following were examined:

- the structure of the supermarket supply chain for specific product categories and the regulatory framework governing its operation;
- the emerging changes with the development of e-commerce and the advent of new technologies;
- specific discount practices;
- category management;
- private labels;
- buying alliances for specific basic consumer products and in particular food products;
- as well as the bargaining power of suppliers and supermarkets.

Based on the findings of the Interim Report, the HCC invited interested parties to express their views in writing and/or take part in the public consultation held via teleconference on July 3, 2020. The final HCC report with the final findings is expected to be published on September 15, 2020.

**Read the full text of the relevant announcements on HCC's site:**

<https://www.epant.gr/enimerosi/kladiki-erevna-sta-vasika-katanalotika-eidi.html>,  
<https://www.epant.gr/enimerosi/programma-synedriaseon/tilediavoulefsi-supermarkets.html>.

### 3. Fin-tech

The HCC taking into account the increasing use of technology in the provision of financial services, as well as the ability of modern technology tools to facilitate restrictions of competition in the digital environment, has initiated by decision of 11.03.2020 a sector inquiry into financial technology services (Fintech), in collaboration with the Bank of Greece. To that effect, the HCC is organizing a fintech teleconference in September 2020, as a first step aiming at hearing the views of any interested party on the currently prevailing competitive conditions in the digital environment.

**Read the full text on HCC's site:** <https://www.epant.gr/enimerosi/kladiki-erevna-stis-xrimatooikonomikes-texnologies-fintech.html>

### 4. Mobile telecommunications

In the broader context of its two recent sector Inquiries into e-commerce and Fin-tech, especially in terms of the competitiveness of the digital economy and because connectivity is a key factor of it, the HCC has approached Rewheel, an independent Finnish research and consulting firm specializing in international communications, competitiveness and economic analysis of the mobile network, with a request for an independent study on the competitiveness of the Greek mobile data market. The report, titled "Review of Mobile Data Connectivity Competitiveness in Greece Within the Wider Context of Digital Economy Competitiveness" was published on May 7, 2020 and caused a stir among many interested parties, including mobile telecommunications operators, both on the grounds of the accuracy of the findings of the report, as well as on the competence of the HCC given that in the electronic communications sector, competent authority for competition matters is the National Telecommunications and Posts Commission (NTPC).

**Read the full text of the Rewheel research study on HCC's site:**

[https://www.epant.gr/files/2020/connectivity/Greek\\_mobile\\_data\\_connectivity\\_competitiveness\\_review\\_March2020\\_PUBLIC.pdf](https://www.epant.gr/files/2020/connectivity/Greek_mobile_data_connectivity_competitiveness_review_March2020_PUBLIC.pdf)

#### ▪ *Ex officio investigations / Dawn Raids*

##### 1. Healthcare materials Market

The HCC, under the present circumstances affecting the country due to the pandemic, initiated on 20.03.2020 an investigation and sent requests for information to a large number of companies active in the production, import and marketing of healthcare products, in particular surgical masks and disposable gloves, as well as other products such as antiseptic wipes and antiseptic solutions.

This action was deemed necessary following numerous consumer complaints and media reports regarding, on the one hand, significant price increases of the products in question observed at a number of retail outlets, and shortcomings of these products, on the other, which are likely to stem from business practices in the distribution chain. Moreover, a need for data collection and database compilation to better plan the measures that eventually may need to be taken to address the impact of any eventual anti-competitive practices, was identified.

The investigation revealed an increase in the number of companies active in the retail sale of healthcare products, in particular of antiseptic solutions and gloves, as a result of the sharp rise in demand for healthcare products, which suggests a healthy market reaction.

In addition, a significant increase of the average selling prices of healthcare products, and especially of disposable surgical masks, was identified from February 2020 onwards. However, no substantial increase in the average gross profit margin from the sale of the health products at stake during the period under investigation has been confirmed.

According to the statistical and econometric processing of the available data, the increase in the retail selling price of the examined healthcare products is mainly attributed to the pass-through of the increase in wholesale prices to the retail level, which, with respect to antiseptic wipes and disposable gloves, has been higher in pharmacies than in supermarkets.

The entirety of data collected by companies active in the wholesale of healthcare products will be assessed for the identification of cases of abusive pricing by companies that have long-term nationwide and / or temporary local dominant position in the market.

**Read the full text on HCC's site:** <https://www.epant.gr/enimerosi/deltia-typou/item/839-deltio-typou-erevna-agoras-ygeionomikoy-ylikoy.html>

**Read the conclusions of the investigation on HCC's site:**

<https://www.epant.gr/enimerosi/deltia-typou/item/958-deltio-typou-to-ygeionomiko-yliko-stin-periodo-tis-pandimias-i-ektetameni-erevna-tis-epitropis-antagonismoy.html>

## **2. Press Distribution Market**

The HCC, on 08.05.2020 conducted an ex officio on-the-spot inspection at the premises of companies operating in the press distribution market, as a preliminary step in the investigation of cases in the context of which the HCC investigates the existence of anti-competitive practices that may fall under the relevant legislation. The investigation began in February 2019 and is expected to be completed in September 2020.

Moreover, the HCC is expected to convene on July 14, 2020 in order to review the compliance of the company ARGOS SA with the operative part of the HCC Decision no. 687/2019. The HCC, by its Decision no. 687/2019 had decided to order interim measures vis-a-vis the said company in view of the urgency to directly prevent an imminent threat of irreparable harm to the public interest and after having considered that an infringement consisting in an abuse of ARGOS' dominant position in the press distribution market was likely and probable.

It is noted that these inspections, as well as the completion of the compliance review of the company Argos SA with the operative part of the HCC Decision no. 687/2019, are considered first priority by the HCC, taking into account the viability issues faced by all companies in the press industry, which have been intensified during the period of the COVID-19 pandemic.

**Read the full text on HCC's site:** <https://www.epant.gr/enimerosi/deltia-typou/item/910-deltio-typou-aifnidiastikoi-elegxoi-tis-epitropis-antagonismoy-agera-dianomis-entypou-typou.html> **and on** <https://epant.gr/enimerosi/deltia-typou/item/932-deltio-typou-elegxos-symmorfosis-argos.html>

### 3. Basic Consumer Goods

On June 23, 2020, the HCC carried out dawn raids at the premises of 38 undertakings active throughout Greece in the food and beverage markets in the context the *ex officio* investigation into the sector and following a complaint. **Read the full text on HCC's site:** <https://www.epant.gr/enimerosi/deltia-typou/item/954-deltio-typou-aifnidiastikoi-elegxoi-tis-epitropis-antagonismoy.html>

### 4. Food products (citrus)

The HCC, in the context of the enforcement of competition rules in special economic and social conditions, and in the light of information on possible horizontal agreements or concerted practices between companies (actual or potential competitors in relevant markets) and / or decisions of business associations in which actual or potential competitors participate, carried out on April 22, 2020, dawn raids, with the assistance of local authorities throughout Greece, at undertakings active in the food products sector and, particularly, in the production of citrus products.

The dawn raids, carried out in the context of the Covid-19 pandemic, follow up previous investigative activities of the HCC in sensitive sectors of the economy, and were instructed following press releases regarding significant price increases of specific citrus products and/or restrictions of their distribution in the domestic market, both of which are being investigated under the provisions of Articles 1 and/or 2 of National Competition Law 3959/2011 and the equivalent articles 101 and 102 of TFEU.

**Read the full text on HCC's site:** <https://www.epant.gr/enimerosi/nea/item/884-epitopioi-elegxoi.html> and <https://www.epant.gr/enimerosi/deltia-typou/item/890-deltio-typou-aifnidiastikoi-elegxoi-ston-klado-trofimon.html>

#### ▪ Guidelines to companies on actions and collaborations in the Covid-19 era

On 15.06.2020, the Association of SA & Limited Liability Companies organized a teleconference with the participation of the Chairman and other officials of the HCC who gave an overview of the measures taken so far by the HCC and those that are in the pipeline, including the establishment of the COVID-19 Task Force, and summarized the guidelines to companies on permissible actions and collaborations aiming at the economic recovery, in the context of the market problems caused due to the impact of Covid-19, such as uncertainty of demand, shortage of production and liquidity problems. The HCC officials stressed the following measures and initiatives in particular:

#### 1. The “digital evolution” of the HCC

The Chairman of the HCC stressed the need for the digitalization of businesses as well as of the digital transformation of the national economy and highlighted the necessary contribution of the HCC to this end. In this respect, the HCC has prioritized the digital economy and has initiated sectoral inquiries in the fintech and e-commerce sector.

In addition, the HCC is gradually getting digitalized. The digitalization planning has been initiated with the repair and upgrade of the electronic document management system, as well as the launch of e-Protocol and e-Services for citizens. Also, the HCC's website has been redesigned and technologically upgraded, while an overall HCC digital communication plan was drawn up, with direct on-line communication with the media, the creation of a Twitter account and the planning of a competition for innovation and creativity on competition issues that is particularly focused on young people and will be announced in the coming weeks.

At the same time, the HCC has been supplied with new generation software that facilitates the electronic analysis of large files. The Commission is also investing in the creation of a data analytics platform using various databases to which it has gained access, often at almost real time. Therefore, the HCC's market monitoring capacity is expected to significantly improve.

Moreover, the technological evolution of the HCC made the organization of public consultations by teleconference possible by using an advanced system which was run for the first time during the on-line consultation organized by the HCC in the context of the e-commerce sector inquiry.

The HCC is also expected to participate in Big Data utilization programmes, in collaboration with the European Bank for Reconstruction and Development and the Hellenic Single Public Procurement Authority (HSPPA) and, with the Directorate-General for Consumer Protection. The HCC has formed a group of experts and econometricians from Greece and abroad, supporting HSPPA in the implementation of data analytics in various aspects of its work.

Finally, it shall be noted that the HCC was one of the first public services in Greece to apply teleworking as early as March 7, 2020, and all the operational directorates' staff members have been teleworking, via direct access to a special teleworking software application, also being able to use special digital hubs for team working and advanced teleconferencing systems, acquired by the HCC over the last months.

## **2. Assistance to Distressed Undertakings**

### **A. "Failing Firm" defense**

Under the current circumstances, a merger or an acquisition may be approved by the HCC based on the "Failing Firm" defense, provided that the acquiring undertaking can demonstrate that, regardless of potential competitive concerns, the only alternative of the target business would be bankruptcy, which would have a more adverse impact to competition in the market than the proposed concentration. In other words, the concentration is presented as a 'rescue merger' and is considered the least adverse outcome when compared to the counterfactual.

### **B. "Crisis Cartels"**

By way of exemption of the prohibition of anticompetitive practices, agreements or concerted practices between competitors may be permitted under certain circumstances in periods of recession. In particular, the characteristics of a market which may lead to the permission of a crisis cartel are the following: significant drop of consumer demand, reduction of prices, existence of surplus productive potential and the companies' need for restructuring.

The agreements at issue may refer to price fixing, market allocation, output restrictions etc. with a view to ensuring protection of distressed undertakings.

### **C. Reduction of fines**

The HCC may also proceed with the reduction of fines imposed on an undertaking that is arguing and is able to prove inability to pay. For the assessment of the financial conditions of the undertaking, the HCC is taking into account the financial statements of the undertaking concerned, the financial condition of the shareholders, as well as the existence of a restructuring plan.

### **3. Vertical Agreements**

The HCC issued a special Guidance, on 16th March 2020, on the application of competition rules to supply and distribution contracts in the context of the Covid-19 pandemic ensuring legal certainty for the development of a range of actions against profiteering, especially from intermediaries. In particular, it was announced that the HCC will not take action against practices which relate to the imposition of maximum resale prices or recommended prices on supply contracts and distribution agreements.

### **4. Horizontal Agreements**

- The HCC announced that information exchange between actual or potential competitors may be exceptionally permitted, provided that the information exchange results in efficiency gains and consumer benefits, and it does not distort competition in the relevant market. Moreover, the information at issue shall not be of sensitive nature, ie it shall not relate to current and future prices, sales, promotions, costs, and customers.
- In addition, the HCC stated that research & development (R&D), supply and distribution agreements between competitors may be concluded, provided that certain conditions are met. These agreements shall, by no means, result in customer allocation, price fixing and quality degradation.
- In particular, supply and distribution agreements between competitors are not expected to distort competition, provided that they entail certain investments for distribution, advertising, or the entry of a new product in the market.
- Likewise, R&D agreements may be concluded, unless all parties are dominant or the agreement makes it difficult for new companies to enter the market.

### **5. Dominant position**

The HCC, with respect to companies having a dominant position in the market, pointed out that excessive pricing is now in the spotlight, although the difficulties in proving such anticompetitive practices were highlighted.

**Read also the COVID-19 Task Force Q&As on HCC's site:**

<https://www.epant.gr/enimerosi/covid-19-task-force.html#qa>



- **Code of HCC procedures**

The HCC is in the process of completing a Code of Procedures, with a view to enhancing transparency and its procedural effectiveness. The provisions of the Code provide for basic principles of ethics, in order to ensure, within the framework of current legislation and regulations, the maintenance of the legitimacy and impartiality of the work of the HCC and its organizational units and businesses' confidence. In the context of improving its procedures, the HCC sent online questionnaires to interested stakeholders ("users of its services"), with respect to the following areas: a) transparency and procedural effectiveness and b) communication and competition advocacy policy.

After the completion of the Code of Procedures in July 2020, the HCC intends to publish an edition with the main chapters of the Code, in order to provide greater transparency regarding competition enforcement procedures. The Code of HCC Procedures will also be used as "input" for the artificial intelligence learning process in the robo-advising service, which will be incorporated into its new platform addressed to users of its services and citizens, expected to be available on the HCC's website in the fall of 2020.

**Read the full text on HCC's site:** <https://www.epant.gr/enimerosi/deltia-typou/item/935-deltio-typou-kodikas-diadikasion-tis-epitropis-antagonismoy.html>

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