

Covid-19 and Competition Law

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**KARATZAS
& PARTNERS**



Overview of actions taken and measures adopted so far by the Hellenic Competition Commission

• Creation of the Covid-19 Task Force

The HCC announced on the 27th of March 2020 that, by virtue of its decision dated 20 March 2020, it set up a **competition task force** (the **Task Force**) in light of Covid-19, which serves as a one stop shop service gathering information on the changing circumstances in the market with a view to framing accordingly its policy response.

Specifically, the Task Force is, indicatively, responsible for:

- Drawing up guidelines for undertakings and citizens on the application of competition law in the form of press releases and Q&As.
- Creating a hub for business inquiries regarding initiatives they intend to take and their compatibility with competition law.
- Gathering data on businesses that may be prone to anti-competitive practices.
- Informing the public regarding HCC's investigations into the food and beverage business, cleaning and personal hygiene products, pharmaceuticals and other health care material.
- Initiating investigations of any violations of Articles 1 and 2 of Law 3959/2011 and Articles 101 and 102 of TFEU and of the adoption of necessary measures, such as proposals for the issuance of recommendations, for the imposition of behavioral or structural measures to cease the infringement and / or for the identification of an infringement and the imposition of a fee
- Informing the public of all procedural issues relating to the operations of the HCC under the current circumstances
- Drafting of an opinion on matters related to the competence of the HCC, especially with regard to urgent legislative initiatives, in order to ensure the proper functioning of the markets, taking into account the safeguarding of public health and the public interest in general.
- Publishing the actions of the other national competition authorities and the European Competition Commission



More information on the responsibilities of the Task Force is at: https://www.epant.gr/files/2020/covid19/task_force_coronavirus26032020_fin.pdf

The aim is for the Task Force to safeguard that, although undertakings are required to adapt their operations and structure to address the significant shift in the offer and demand conditions in the market in order to preserve their financial viability in these uncertain times, such actions should not however lead to a distortion and/or breach of competition rules through practices such as, for example, exorbitant price increases, or illegal collusion between undertakings to the detriment of consumers and the public interest.

The HCC announced that it has set up the dedicated website Covid-19_Competition for its Task Force and any interested party may communicate with the Task Force at the address: covid19_competition@epant.gr and by telephone between 10.00am-12.00pm EET daily at the numbers stated in the Press Release.

In the dedicated website of the Task Force all interested parties may find information about:

1. The HCC press releases and measures taken **during the Covid-19 pandemic**;
2. The Q&A addressing all questions raised by the public;
3. All procedural matters that may affect the relevant interested parties;
4. Information about the actions and measures taken by other competition authorities on a European and international level.

Read the full text on HCC's site: <https://www.epant.gr/enimerosi/deltia-typou/item/853-deltio-typou-omada-kroysis-kata-antiantagonistikon-praktikon-logo-covid-19.html/>



Given the circumstances, the HCC has stated that it may consider taking further actions, if circumstances so require, and it closely monitors any announcements or further guidance issued by the European Commission, as well as measures taken by other national competition authorities. In this regard, see also the common declaration of the European Competition Network (ECN) of 23.03.2020: <https://www.epant.gr/enimerosi/nea/item/843-minyma-ek-merous-tou-diktyou-ton-arxon-antagonismoy-european-competition-network-ecn-pros-tis-epixeiriseis-sxetika-me-tin-pandimia-tou-koronoioy.html>

• Operation of the HCC

The HCC continues to operate on a business as usual basis. However, it has adapted its working patterns to address the Covid-19 pandemic measures taken by the Greek Government aiming at the protection of public health. On the 13th of March 2020 the Hellenic Competition Commission (HCC) issued a Press Release informing the public about the reduction of its opening hours and requesting documents to be submitted via e-mail. Following the above, on the 23rd of March 2020 the HCC issued an updated Press Release, announcing that, due to the extraordinary circumstances and the lockdown announced by the Prime Minister, it will continue to operate with security personnel until 30.04.2020 with the rest of its personnel teleworking, where this is feasible.

The HCC announced that all legally binding deadlines continue to apply, and that the HCC will continue to carry out its operations, review ongoing cases (including mergers) and issue decisions. At the same time, it will continue to monitor the timetables, providing, where permitted, extension of deadlines. Any modifications will be notified to the interested parties and will be publicly available on the HCC's website.

It was further announced that companies and citizens may now submit documents electronically, using the following e-mail addresses:

protokolo@epant.gr for the submission of documents to the HCC

mergers@epant.gr for notifications of concentrations

kataggelia@epant.gr for complaints

or via the specific form at <https://epant.gr/contact-us.html/> for submitting general inquiries or requests for information.



The public will be informed in due time in relation to the submission of the hard copies of the documents to the HCC.

Despite the fact that the majority of the HCC's staff is working remotely, the Directorate-General can be contacted via telephone and email as usual during office hours.

The HCC's Plenary will hold meetings and conferences as scheduled via a teleconference platform after user authentication

Finally, the HCC stated that it will continue to exercise its enforcement powers by conducting investigation measures (including on-site inspections) wherever and whenever necessary, to safeguard public interest and effective competition. Teleworking staff will be able to participate in such investigation measures, where necessary, as provided for in the specific protocol established by the President of the HCC.

Read the full text on HCC's site:

<https://www.epant.gr/en/enimerosi/press-releases/item/846-press-release-teleworking-and-readjustment-of-opening-hours.html>, published also on the Government Gazette no. 863/15.03.2020.

• **Application of Merger Control**

As regards merger control and as per the general announcement of the HCC of the 23rd March 2020, all legally binding deadlines continue to apply, and the HCC will continue to carry out its operations, review ongoing merger control cases and issue decisions. At the same time, it will continue to monitor the timetables, providing, where permitted, extension of deadlines. Any modifications will be notified to the interested parties and will be publicly available on the HCC's website.

In light of the lockdown declared as of the 23rd March, merger review timetables for some notifications or ongoing cases may be subject to extension where conducting and completing the necessary inquiries with parties and market participants proves challenging.



- **Application of competition rules to supply contracts and distribution agreements (vertical agreements)**

On the 7th of March 2020 the HCC issued a Press Release highlighting that the Authority will be increasingly vigilant of possible anticompetitive practices in light of the COVID-19 outbreak, and in order to safeguard competitive market conditions, to protect consumer interests and economic growth and aiming at ensuring that the current situation will not give rise to any distortions of competition and consumer exploitation.

Read the full text on HCC's site:

<https://www.epant.gr/en/enimerosi/press-releases/item/838-press-release-competition-law-enforcement-and-covid-19-pandemic.html>

Following up on the above, on the 16th of March 2020, the HCC issued a new Press Release clarifying a number of issues relating to the application of competition rules to anticompetitive practices between undertakings operating at different levels of the production or distribution chain ('Vertical Agreements').

The HCC, reiterated the provisions of the Regulation (EU) No 330/2010 "Block Exemption Regulation" (hereinafter referred to as the "**BER**") stressing that the BER **does not apply**, irrespective of the market share held by an undertaking, where the agreement contains hardcore vertical restrictions, such as resale price maintenance.

The BER permits –subject to conditions- the imposition of maximum resale prices or recommended resale prices, where this does not amount to a minimum or fixed selling price.

The HCC further provided four (4) indicative examples, that would constitute compliant practices, during the present social and economic conditions:

- The manufacturer of personal hygiene products may set the maximum resale prices of his products that may applied by his buyers / customers retailers.
- In a food distribution network, the producer may set recommended resale prices for these products.
- If a new product is introduced, even the setting of a resale price may be justified for short periods of time (e.g. in relation to promotions / campaigns from 2 to 6 weeks).
- An internet platform / marketplace can set a price cap on the products available through it.

The HCC further referred to other exemptions under the BER and the EU Commission's Vertical Restriction Guidelines that could apply provided that such practices do not constitute an abuse of a dominant position in which case, the HCC may intervene by applying Article 2 of Law 3959/2011 and/or Article 102 TFEU.

In view of the above, the HCC stated that it will not take action against practices which relate to the imposition of maximum resale prices or recommended prices on supply contracts and distribution agreements, provided that the conditions set out in the Press Release are fulfilled. The HCC will continue to examine hardcore vertical restraints which are brought to its attention, such as resale price maintenance (establishing a fixed or minimum resale price or level), and will impose on undertakings that apply such practices, if found anticompetitive, the penalties laid down by the law.

Read the full text on HCC's site:

<https://www.epant.gr/en/enimerosi/press-releases/item/837-press-release-application-of-competition-rules.html>



- **Investigation of the HCC into price increases and output restrictions in healthcare materials and other related products**

On the 21st of March 2020 the HCC announced that it **has initiated an investigation into price increases and output restrictions in healthcare materials and other related products**, in particular surgical masks and disposable gloves, as well as other products such as antiseptic wipes and antiseptic solutions. The opening of the investigation was triggered by numerous consumer complaints and media reports regarding, on the one hand, significant price increases of the products at issue 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 that may fall under the provisions of Law 3959/2011.

It is noteworthy that the HCC, for the first time to date, adopted an innovative way for conducting its investigations. In particular, the HCC sent a number of questionnaires via an online program to a large number of companies active in the production, import and marketing of healthcare products with a view to swiftly analyzing the data collected through data analytics tools and decide further action. Recipients are required to respond to the HCC's queries within 10 days by completing a special online questionnaire form according to the instructions in the related video <https://youtu.be/1FVladH4krk/>

In addition, for the purpose of investigating the whole value chain for a number of healthcare materials and related products a page/info service was constituted by the HCC for all enterprises wishing to submit complaints for alleged competition law infringements or for getting guidance as to what is permitted under competition law.

Read the full text on HCC's site:

<https://www.epant.gr/enimerosi/deltia-typou/item/839-deltio-typou-erevna-agoras-ygeionomikoy-ylikoy.html/>

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