



ΕΠΙΤΡΟΠΗ ΑΝΤΑΓΩΝΙΣΜΟΥ

Ανεξάρτητη Διοικητική Αρχή  
Hellenic Competition Commission

## Overview of the latest case law and advocacy initiatives of the Hellenic Competition Commission concerning the decisions of associations of undertakings

Recent trends and developments in competition law and policy

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Anna Gatziou

Legal expert-Case handler

Hellenic Competition Commission

The views expressed are personal and do not necessarily reflect the views and opinions of the Hellenic Competition Commission



## General Remarks

- Small scale economies foster anticompetitive practices of associations of undertakings.
- Many collusive practices replaced regulatory barriers that have been abolished whereas others have been facilitated by the existing legal framework.
- The Hellenic Competition Commission (HCC) issued 10 decisions of
  - interim measures and
  - infringements.

# Associations of flour mills - Interim measures (505/VI/2010)

## The infringement

- Two associations of undertakings, together represent approx. 90% of flour mills in Greece, recommended to their members the immediate readjustment of prices of flour in mid-August 2010, following recent upwards trends in the wheat market.

## Commitments

- The two associations offered commitments.
- They undertook
  - to withdraw the press releases and announcements,
  - to publicise this withdrawal to their members and in the press and
  - to refrain from any similar announcement or any other action.

# Infant milk-Interim measures (545/VII/2012)

## Legislative framework

- In 2011 → abrogation of legislative provision that formulas for infants under the age of 6 months are supplied exclusively by pharmacies.

## The infringement

- Decision of Association of Pharmacists of Patra and Association of wholesalers of Western Greece to collectively limit and control the supply of infant milk formulas, notably by boycotting those producers of baby milk that decided to supply their products also through the retail channel of S/M (in parallel with the pharmacy channel).
- The first case of interim measures in which the HCC examined a collective defensive boycott.

# Infant milk-Interim measures (545/VII/2012)

## The interim measures

- The case entails a risk of serious and irreparable damage to competition, such that interim measures are warranted.
- Following the service of the Statement of Objections, the Associations complied voluntarily to the suggestions.
- However, the HCC issued a decision in order to further impose the obligation
  - to withdraw the relevant decisions,
  - to publicise the withdrawal to their web sites and to the press and
  - to refrain from any similar act in the future.
- The relevant decision aimed, among other, to prevent adoption of relevant decisions by other pharmacists' associations.
- The HCC decision was upheld by the Athens Court of Appeal.

# Technical Chamber of Greece- Infringement decision (512/VI/2010)

## Legislative provision

- The law provides for three basic elements/parameters for the calculation of the minimum fees of engineers.

## The infringement

- The governing body of the Technical Chamber of Greece (TCG) adopted two decisions setting minimum fees for engineers by application of a 'presumed minimum construction cost' per square meter for all private construction projects.

## The infringement decision

- The HCC concluded that TCG substituted the role of the State, without having any regulatory power, by adopting a "minimum cost for construction projects". In that context, TCG's conduct aimed at and resulted in raising minimum fees for the engineers.
- The HCC imposed a fine and the obligation on TCG-within a transitional period of 60 days-
  - to modify its electronic system, so that the system accepted requests for the calculation of fees, independently of the amount of the declared cost per square meter, and
  - to inform its members and the public about the decision with a publication in its Bulletin and a press release in its website.
- The decision was upheld by the Athens Court of Appeal.

# Estate agents' services-Infringement decision (518/VI/2011)

## Legislative provision

Until 1993, legislative provision for a fixed estate agents' fee → 2% on the price contract for sales and leases and 1% for loans.

## The infringement

Four Associations adopted decisions, recommendations and instructions to their members

- for imposition of a minimum fee (2% of the actual price of the contract), payable from both the seller and the buyer for the provision of estate agents' services.
- for prohibition of advertisement of a fee below the threshold of 2%.

The HCC imposed fines to the Associations and ordered

- the amendment of the Code of Ethics and Statutes of the Associations,
- the notification to their members that they are free to negotiate the fee with their clients and
- the publication of the relevant communication to the press and to their websites.

# Estate agents' services-Infringement decision (518/VI/2011)

## Commitments

- The commitments, accepted by the HCC for the Association of Estate Agents of Greece were:
  - the amendment of its Code of Ethics as per the advertisement of the estate agents' fee.
  - the insertion in its Statute of a provision for the free negotiation of the fee.

All the other commitments proposed by other Associations were rejected due to the fact that the infringements were considered as very serious and the imposition of fine, due to its deterrent nature, was considered to be a more effective measure.

# Association of Booksellers of Thessaloniki- Infringement decision (527/VI/2011)

## Legislative provision

→ the price of a book, published in Greece, is determined by the publisher and the discount on its retail price can not exceed the percentage of 10%, for the first two years of its publication. Foreign books are exempted.

## The infringement

- The Association of Booksellers of Thessaloniki determined the discount policy of the booksellers, aiming to the elimination of discounts and utterly to the determination of a unified retail price for every book.

## The decision

The HCC ordered the Association:

- to make an announcement, referring that, without prejudice to the legislation in force, the percentage of discount is free for any book published in Greece and for all imported foreign books, irrespectively of the year of their publication.
- to publicise the announcement to its members and in the press.

# Professional associations of foreign language school owners- Infringement decision (554/VII/2012)

**Legislative provision**  Until 2004 the law was determining the maximum percentage increase to the yearly fees charged to the students.

## The infringement

Five Professional Associations— based on a series of decisions/recommendations, provisions in their statutes, internal regulations and other rules of conduct – sought, depending on each individual case,

- either to fix the fees charged to students by their members (e.g. minimum fees, discount terms) and/or
- to coordinate other important parameters of their member's commercial activity (e.g. non-compete clauses, exclusionary clauses regarding students' participation in foreign language examinations, excessive advertising restrictions).

## Professional associations of foreign language school owners- Infringement decision (554/VII/2012)

One Association, specifically, had established a fully standardised procedure for its members, practically eliminating the competition among them, through

- imposition of minimum fees and maximum discounts,
- age restrictions for each class,
- geographical restrictions for the establishment of a foreign language school
- imposition of minimum schools years per foreign language.

# Professional associations of foreign language school owners- Infringement decision (554/VII/2012)

## The infringement decision and the commitments

### The HCC

- imposed fines to five Associations and
- accepted commitments proposed by the Pan Hellenic Confederation of foreign language school owners (PALSO), i.e. the amendment of the non-competition clauses of its Statute which restricted the ability of their members to engage and/or participate in foreign language exams organized by competing organizations.

# Trade Associations of Driving Schools- Infringement decision (571/VII/2013)

## Legislative provisions

- Provision of a minimum number of theoretical or practical driving lessons and notification of price lists to the Ministry and tax authorities.
- Geographical restrictions-each instructor could operate only within the Prefecture of the seat of his driving school or of his branch.

## The infringement

Ten Trade Associations engaged in collusive practices restricting competition, notably through

- price-fixing (fix minimum price per hour for a driving lesson) and, occasionally,
- limitation in the provision of services (interruption of driving lessons during summer, Christmas period).

The HCC imposed fines to six Trade Associations and to seven individual driving schools.

# Trade Associations of Driving Schools- Infringement decision (571/VII/2013)

## **Establishment of a common banking system**

- Two Associations organised a system through which they aimed to safeguard the implementation of the fixed price.
- Opening of a common bank account for all their members. Each client made a deposit indicating the code number which corresponded to a driving school and the total amount was being distributed by the Association to each driving school based on the amount of deposits.

## **The banks' role as cartel facilitators**

- The HCC concluded that one bank acted as cartel facilitator and was imposed a fine.

Two conditions were accumulatively fulfilled:

- 1) the objective condition, i.e. the contribution of the bank to the implementation of the collusion through the opening of the bank account
- 2) the subjective condition, i.e. the knowledge and will of the bank to facilitate the collusion. (A bank's employee was at the same time President of an Association. The bank is liable for the acts of its employees even if it is not aware of them).

## Trade Associations of Driving Schools- Infringement decision (571/VII/2013)

- With reference to the second bank, the HCC concluded that:
  - It did not act as a cartel facilitator because, although the objective condition of opening a common bank account was fulfilled, the subjective condition of knowledge was not fulfilled.
  - Based on the elements of the case, the bank could not know that through the opening of a common bank account the Association aimed to ensure the implementation of the fixed prices.
  - The knowledge of the opening of a common account for the payment of fees can not entail by itself knowledge for setting fixed prices and establish the bank's will to facilitate the collusion.

# The Advocacy Role of the HCC

Greece faces a strong economic crisis which exacerbates the phenomena of collusion.

Within this framework, HCC enhances its advocacy role through

## 1. Issuance of an announcement (2011)

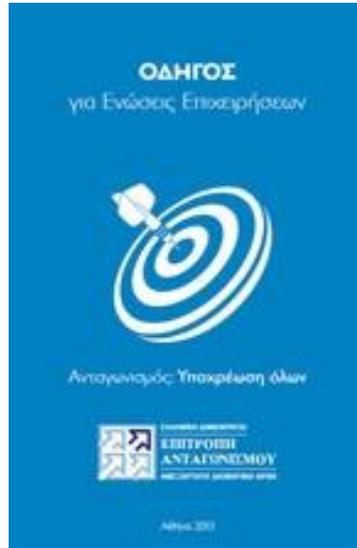
Occasion: announcements or actions taken by associations of undertakings, which, in order to protect their professional interests, allege the unfavorable economic situation or the more specific economic conditions prevailing in their respective industry (rise in raw material prices, reform of tax regime, etc.),

The HCC notes that:

*“The competition law, enforced both at Community and national level, imposes on undertakings to face economic situations framing an autonomous trading policy independently of each other and with means which neither distort nor disrupt free competition. Therefore, any possible pursuit of increase or maintenance of profits of undertakings or shifting of financial burdens to the consumer by way of cartels, decisions by associations of undertakings or unilateral abusive practices, puts the public interest at risk and harms the consumer, without any offset for society”.*

# The Advocacy Role of the HCC

## 2. Publication of a Guide for the Associations of Undertakings (2014)



The Guide underlines the important role and the dynamic of Associations in Greece and provides guidelines for their self assessment in relation to compliance of their actions and decisions with the competition legislation.

The Guide has been sent to all Chambers of Commerce and the majority of the Associations of Undertakings and has been presented by the President of the HCC to many of them.

## Conclusion

Whereas the large scale economies may “withstand” to tolerate anticompetitive practices by remaining at the same time effective, the same practices in small scale economies may be broadly expanded and have a serious impact on competition, consumer’s welfare and the economy.

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Thank you for your attention

