

Trade Associations and protectionist regulation as a factor facilitating collusion

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Sector – specific patterns noted in several different industries:

1. Collusion or repeated collusion systematically occurs in markets where **protectionist regulatory provisions** were in place.
2. When these legislative barriers to entry are withdrawn, the **industry Association often tries to replace** the previous protectionist measures with an equivalent collusive scheme.

Trade Associations:

- ❑ Increase **market transparency**
- ❑ May play a beneficial role (with regard, e.g., to standardization, research, formation, modernization of the sector, advocacy) but may also provide the opportunity for potentially **unlawful exchanges**
- ❑ Provide the opportunity for enhanced **market monitoring**
- ❑ Constitute a forum for the **consolidation of uniform anticompetitive conduct** of their members, often by virtue of GM decisions, internal regulations, articles of association, or simply mandatory directives, circulars or announcements (decisions by associations of undertakings) or as a cartel forum and as cartel members in their own right.

Former / withdrawn regulation: Barrier to entry forming protectionist reflexes.

To address these issues, the HCC:

- ❑ Effected competition assessment of potentially distortive regulations focusing on liberal professions
- ❑ Issued formal recommendations which led to the opening of these professions to competition
- ❑ In partnership with the OECD effected Greece's Competition Assessment Project:
1st project: review of >1,000 pieces of legislation, identified 555 problematic regulations, made > 320 recommendations to amend or repeal - 4 sectors of the economy
2nd project: review of 482 pieces of leg., identified 154 restrictions, made 88 recommendations
- ❑ Took advocacy action (publication of a Guide for Associations of Undertakings – targeted events)
- ❑ Prioritized and adopted a high number of infringement decisions on collusive practices committed by trade associations and other professional bodies

1. Infant Formula - Decision 545/VII/2012 (Products distributed via pharmacies - Interim measures)

Following the issuance of an Opinion on the abrogation of **regulatory provisions requiring the selling of infant formulas under the age of 6 months *solely* in pharmacies**, the HCC issued an interim measures decision against a Pharmacists' Association and pharmaceutical warehouses –wholesalers – who collectively sought to limit the supply of infant milk formulas in their areas of activity, notably by **boycotting those producers of baby milk that decided to supply their products also through the retail channel** (in parallel with the pharmacy channel).

2. Milk cartel - Decision 369/V/2007

The HCC sanctioned a cartel involving a very large number of industry participants, among which the association of Greek industries of dairy products, for fixing prices offered to producers and for allocation of sources of supply and other practices.

The following practices were scrutinized:

(a) an agreement between five companies to **fix prices offered to producers** of cow milk for the purchase of cow milk, which would then be processed by the dairy companies, and to obstruct the freedom of choice of producers between the aforementioned companies (**allocation of sources of supply**);

(b) decisions by the Association: i) to grant its members access to the prices which were kept by the public authority competent to communicate to the Commission the prices of raw milk paid to milk producers and ii) to fix prices offered to producers of cow milk;

(c) concerted practices between some companies through the exchange of their price lists and through meetings convened in order to coordinate their discount policy.

3. Poultry meat cartel - 563/VII/2013

Cartel with the participation of their industry trade association (for price-fixing and customer allocation arrangements).

The implicated undertakings coordinated to **fix the selling prices** of their products (fresh and frozen poultry meat) towards downstream suppliers (wholesalers, super-markets, butchers, rotisseries). Moreover, they engaged in **market-sharing**, with a view to complementing and stabilizing the agreements and/or concerted practices on prices.

The collusive scheme was implemented through regular meetings of representatives of the poultry-meat producers and exchange of information on future prices, at the **premises of their trade association and elsewhere, with the support of the trade association director.**

The parties had claimed that a **previous state intervention and participation system regarding the organization and functioning of the sector** led to competition rules not being established, however the HCC rejected this argument as a mitigating circumstance.

Infringement decision with fines addressed to 13 undertakings and the industry association.

4. Association of Greek Flour Industries Decision 505/VI/2010

In 2010, two Flour Mills Associations representing approx. 90% of flour mills in Greece were implicated because of recommendations to their members for an immediate readjustment of prices for flour (following upwards price trends in the wheat market). The HCC accepted commitments by the two associations, according to which the two associations undertook to withdraw the press releases and announcements, to publicise this withdrawal, and to refrain from any similar announcement and actions.

5. Manufacturers of Canned Agricultural Products of Greece – Decision 312/V/2006

In 2006 the Authority sanctioned the fixing, by the Association of Manufacturers of Canned Agricultural Products of Greece (AMG), of prices and of production volumes concerning factory produced peaches and pears.

In the minutes of the General Meetings of AMG (the association of manufacturers who canned the produce), evidence was found concerning the **setting of prices to the producers, as well as of the selling price**. The parties invoked the **role of the state in the negotiations of the prices, which was, however, not proven to be mandatory**.

The Association had attempted to substitute the phasing-out of the **price support provisions of the Common Agricultural Policy**.

6. SESME / Super Markets - Decisions 277 and 284/IV/2005

Investigation involving the Greek Supermarkets' Association ('SESME') as well as several retail companies active on the Greek market. The defendants invoked compliance with a **gentlemen's agreement** entered into between the Greek government and the retailers and suppliers, concluding that the retail prices should not be increased **following the adoption of a law which prohibited retail sales below cost**. SESME alleged that it had decided to draw up a list in order to set the amount of discounts that should be applied by the suppliers with a view of applying the law and the gentlemen's agreement. However, it appeared that the participants were annoyed by the growth of the discount stores and tried to compel suppliers not to supply discount stores and that they also attempted to coordinate prices.

SESME managing board proceeded to the compilation of the list in which it unilaterally set the discount percentage that should be provided by each supplier to all supermarkets - members of SESME.

SESME sought the uniform application of the list and SESME asked its members not to accept any invoices from the suppliers that do not incorporate the fixed discount.

The investigation led to the adoption of a decision with fines.

7-8. Retail trade: Parallel trade cases / cosmetics' & detergents' sector

- ❑ Such cases typically involve retail distribution sectors such as the markets for toiletries, detergents and cosmetics and concern the levels of suppliers, wholesalers and supermarket chains.
- ❑ In that sector labeling requirements might be invoked as a legislative barrier to entry.
- ❑ Separate ex officio investigations of the HCC in the detergents' sector established **contractual clauses prohibiting parallel imports which had been concluded between a number of manufacturers and super market chains.**

9. Thessaloniki Booksellers Association a.o. - 527/VI/2011

- ❑ Individual booksellers and their association were found to have adopted agreements and decisions to restrict the provision of rebates, **invoking the fixed book price set by the law** (and attempting to extend its outreach) in an anticompetitive manner.

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10. Estate agents - Decision No. 518/VI/2011



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The HCC found that four major associations of estate agents throughout Greece:

- fixed the minimum fees for estate agents' services and
- imposed several other restrictions regarding the exercise of the profession.

In particular, the real estate trade associations adopted decisions *fixing the minimum fees of real estate agents at 2% of the value of each sale, while also prohibiting the advertising of fees below that threshold.*

The conduct in question followed the **abolition of price-fixing regulations which were in place for a number of years.**

The associations sought to neutralize in practice the efficiency gains of the liberalization by engaging in the collusive conduct in question.

Fines were imposed on the trade associations concerned. The HCC also ordered them to comply with several publicity requirements (newspapers listings and press releases), with a view to informing the general public that no minimum fees applied.

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11. Technical Chamber of Greece (TEE) – Decision 512/VI/2010



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Pursuant to a number of complaints by members of the Technical Chamber of Greece, the HCC opened proceedings against it for fixing minimum fees for the services of civil engineers and architects.

The Greek State has the right to regulate the minimum fees of civil engineers and architects for all private construction projects on the basis of, inter alia, a “Common Starting Price”. The State refrained from adopting new Ministerial Decrees adjusting the “Common Starting Price” and *TEE adopted decisions setting a “presumed minimum construction cost” per sq.m.*, de facto replacing the said Ministerial Decrees. After the adoption of the TEE decisions in question, the existing “Common Starting Price”, as well as architects’ fees increased (from € 44 to € 105 for 2007, € 110 for 2008, € 115 for 2009 and € 118 for 2010). TEE monitored compliance with its decisions through an electronic system for the calculation of architects’ and engineers’ fees. The HCC found that TEE’s conduct aimed at, and resulted in raising minimum fees for architects’ and engineers’ fees. As a result, it imposed a fine and several obligations, including TEE informing its members about the decision and modifying its electronic system, so that requests for the calculation of fees are accepted by the system, independently of the amount of the declared cost per square metre.

13. Professional association of building constructors – Decision 561/VII/2013

Infringement decision for imposing output limitations in construction of private projects (in connection, allegedly, to the modification of the tax regime).

14. Driving schools trade associations and individual undertakings - Decision 571/VII/2013

Driving schools' sector trade associations and undertakings throughout Greece engaged in collusive practices, notably price-fixing and limitation in the provision of services, for a significant time period.

The HCC also found an infringement committed by a regional Cooperative Bank for **facilitating** the above anticompetitive practices.

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12. Professional associations of foreign language school owners - Decision 554/VII/2012



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- ❑ The HCC fined a large number of professional associations of foreign language school owners for price-fixing and other restrictions in the exercise of professional activities of their members.
- ❑ The associations of FLS owners – by virtue of a series of decisions/recommendations, internal regulations etc.– sought either to **fix the fees charged to students by their members** (minimum fees, discount terms and restrictions) 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**).
- ❑ For the above infringements of the Greek Competition Act, the Commission imposed fines totaling € 855.356 to several professional associations. According to the Greek Competition Act, if a fine is imposed on an association of undertakings, taking account of the total turnover of its members, and the association is not solvent, the association shall be required to call for contributions from its members to cover the amount of the fine.

15. Hellenic Dentists' Federation and Dentists' Associations - Decision Nr. 292/IV/2005

The Hellenic Dentists' Federation and regional Dentists' Associations fixed minimum fees for the provision of dental services, replacing the state and *invoking as justification the fact that the state had not raised the minimum fees for the provision of dentists' services since 1993.*

16. Cretan Association of Dental Technicians - HCC Decision 591/2014

A regional Association of Dental Technicians adopted decisions to fix minimum fees of its members (anticompetitive clause in articles of association as well as publication of minimum fees lists).

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17. Central fruit and vegetable markets – Decision 438/V/2009



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The HCC examined the conditions for the provision of services by the Stevedore and Fresh Goods Transporters Unions of the Athens and the Thessaloniki central vegetable markets and proposed the amendment of the existing legal framework, as it led to an abuse of dominance by the Athens Union:

The existing legal framework on stevedoring services, as implemented by the competent authority (the Regulatory Commission on Land Stevedoring Services - ERFXA), granted **Unions the exclusive right to organize stevedoring in the Athens and Thessaloniki** central vegetable markets. ERFXA had supervision authority over the Unions and also issued a price list for the relevant services.

During the last fifty years **ERFXA has in fact always accepted the Unions' proposals concerning price increases and has never made amendments** to the relevant price list (of 1949) in order to take into consideration the modern methods of loading.

The price list was based not on the actual weight of these goods but on the kind of goods and their packaging. The merchants of the central markets were **obliged to use these services and were charged by the Unions according to this price-list also for services not rendered.**

Paris, 30.10.2015

18. Opinion No 32/VII/2013

In the context of regulatory restrictions in the cement market, the HCC examined the regulation of the production, testing, certification and marketing of cement and, inter alia, identified as unnecessary restriction the requirement that the distribution of cement, either produced in EU member states and distributed by intermediaries or produced in third countries, should take place through dispatching centres located in Greece. The Opinion proposed the simplification of prior administrative authorisation requirements for establishing a dispatching centre.

19. Cretan concrete producers cartel - Decision 547/VII/2012

In an antitrust case, the Authority issued a Decision concerning antitrust infringements in the market for the production and distribution of concrete in Crete, which also involved the local association of ready-mix concrete which had an active role in the setting of the cartel.

Collusion patterns involving the professional body or trade association of the sector concerned and / or some form of a state intervention as a cross-sector characteristic are consistent with:

- ❑ considerable barriers to entry,
- ❑ oligopolistic structures with high transparency,
- ❑ a protectionist business culture,
- ❑ strong industrial families or contacts between industrialists, etc. and
- ❑ a tradition of protectionist regulation.

Apart from maintaining a high enforcement level, our work's efficiency could be maximized through the enhancement of the regulatory framework, and the removal of unnecessary, anticompetitive regulations.

HCC global action-plan for enhanced deterrence and change in the culture of doing business, encompasses:

- ❑ Enforcement
- ❑ Prioritization (cases of repeated offenses are prioritized higher according to the Authorities guidelines)
- ❑ Leniency policy (recidivists are now –since 2011– allowed to apply for leniency),
- ❑ Fining: repeated offenses constitute an aggravating factor in the HCC fining policy; par. 14 of HCC Notice of 12.05.2006 “Guidelines on the method of setting fines”: where an undertaking has committed in the past the same or a similar infringement, the basic amount will be increased by up to 100 % for each such infringement established
- ❑ Advocacy actions and guidance, legal opinions on regulatory review etc.

Thank you for you attention!