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Expanding Advocacy Efforts and
Outreach Activities in View of
the Ongoing Financial Crisis**

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I. INTRODUCTION

In recent years, the Hellenic Competition Commission (“HCC”) has taken steps to diversify and expand considerably its advocacy efforts and overall outreach activities, both as a result of the ongoing financial crisis and the sustained role of the HCC in promoting structural reforms in the context of Greece’s Economic Adjustment Programme. For this purpose, a variety of instruments have been used by the Authority, including: formal opinions—recommendations for legislative change addressed to the government (upon request by the competent line ministries or at its own initiative); targeted screening and regulatory impact assessment initiatives in cooperation with the OECD; and publication of compliance and awareness guides.

II. THE REALIGNMENT OF HCC’S STRATEGY—INCREASED FOCUS ON ADVOCACY

In view of the ongoing financial crisis, there are three main pillars that underpin the strategy of the HCC:

1. Maintaining a consistent level of competition enforcement albeit the crisis, while adapting case allocation and focus;
2. Strengthening market monitoring actions; and
3. Diversifying and expanding considerably competition advocacy and outreach efforts in order to promote structural reforms (pledged in the context of Greece’s Economic Adjustment Programme) and increase overall competition awareness.

The HCC currently allocates a significant part of its resources to advocacy functions, focused primarily on identifying and removing regulatory obstacles to competition and promoting a genuine competition culture through outreach activities. During the period 2011 - 2012, advocacy work accounted for up to 25 percent of the HCC’s total output. Furthermore, it amounted to 15 percent of total output during the course of 2013, thus maintaining record levels compared with the OECD average.

The main reason that has prompted the Authority’s increased focus on competition advocacy has to do with the recent unprecedented economic downturn, which exposed the structural rigidities and inefficiencies of the Greek economy. In this context, the HCC realigned its strategy, so as to increase the exercise of its advisory powers in the field of identifying and removing regulatory obstacles to competition—the objective being to complement our core enforcement work with initiatives promoting structural reforms—while further promoting competition awareness in areas exhibiting a high risk of anticompetitive conduct (as indicated by

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recent enforcement action and ensuing patterns in terms of likely and/or repeated type of infringers).

Two factors contributed to this strategic re-alignment:

- First, the revision of the Greek Competition Act (Law 3959/2011), which gave the HCC the power to issue formal opinions—recommendations for draft legislation potentially affecting competition; and
- Second, specific provisions in the context of Greece’s Economic Adjustment Programme agreed between the EU-ECB-IMF and the Greek government, which gave the Authority a special role in promoting certain reforms (notably, in the area of professional services).

Since 2011, the HCC’s advocacy and outreach agenda has revolved around four key themes:

1. Liberal professions (liberalization of professional services),
2. Legislative distortions mostly affecting retail and food supply chains,
3. Greece’s Competition Assessment Project (an OECD-managed project, in partnership with the HCC, which applied the OECD’s Competition Assessment Toolkit in designated sectors of the Greek economy over a period of 10 months), and
4. The publication of competition compliance and awareness guides, primarily addressed to trade associations, as well as procurement/contract awarding public authorities.

III. LIBERALIZATION OF PROFESSIONAL SERVICES

In the context of the MoU signed between the EU-ECB-IMF and the Greek Government, the HCC (as an independent authority) was called upon to issue formal opinions—recommendations with regard to liberalizing several professions. This was an exercise that essentially comprised an extensive review of existing laws and regulations from the point of view of competition, focusing on the entry and exercise of a number of regulated professions.

This prompted the most far-reaching intervention of the HCC in the area of liberal professions (and the most far-reaching intervention ever in terms of regulatory obstacles to competition). During 2011-2012, the HCC’s task force on liberal professions reviewed laws and regulations affecting more than 55 regulated professions (ultimately issuing 17 formal opinions). The following year (2013), the HCC issued three new formal opinions aimed at identifying and removing regulatory obstacles as regards the access and exercise of a number of professional services.

Overall, the professional services reviewed by the HCC in this context fell within two broad categories:

The first category included some key regulated professions, such as lawyers, accountants, and engineers, which were addressed specifically by Law 3919/2011. In particular, this legislation, which was a significant component of Greece’s action plan on structural reforms: (1) provided for the horizontal abolition of a number of restrictions affecting all liberal professions, including fixing of fees, geographic restrictions in the exercise of a profession, numerous *clausus* restrictions (admission requirements), second-establishment restrictions, restrictions on

advertising, etc.; (2) replaced the prior administrative license system (where applicable) with a simple notification and ex-post review system; and (3) included specific provisions for the liberalization of certain key regulated professions, such as lawyers, notaries, chartered accountants, and engineers. For the latter selected professional activities, the HCC issued a number of recommendations, including for example:

- For lawyers: the removal of fixed minimum fees, advertising restrictions, and also territorial restrictions on where lawyers can practice in Greece;
- For notaries: the relaxing of rules on fixed fees and the maximum number of notaries allowed to operate per prefecture;
- For architects/engineers: the removal of fixed minimum fees;
- For chartered accountants: the removal of fixed minimum fees.

The second category included all other liberal professions, where a horizontal approach was opted for by Law 3919/2011. As indicated above, for all those other professional activities, the legislation just provided, in a general way, for the abolition of certain regulatory restrictions (e.g. fixing of fees, numerous *clausus* & territorial restrictions, etc.) and for the abolition of the prior administrative license system for the entry into and exercise of each profession.

However, it also provided for the opportunity to get an exemption from full liberalization by profession, on the basis of overriding public policy considerations and subject to the principle of proportionality. In this context, the government entrusted the HCC with the task of reviewing all such exemption requests from Law 3919/2011, i.e. requests to maintain and/or re-instate prior authorization requirements and other restrictions regarding the exercise and access to those liberal professions where the horizontal liberalization approach had been applied. In this regard, the HCC applied the key methodology of the OECD Competition Toolkit and/or similar competition impact assessment techniques, notably by assessing and weighing public policy considerations in the light of the principle of proportionality. By way of example, the HCC reviewed exemption requests pertaining to the following professions:

- Chartered (sworn-in) appraisers/valuers;
- Actuaries;
- Accountants;
- Tax consultants;
- Geotechnicians (including the production and marketing of propagating material and fertilizers);
- Licensed providers of services relating to public security and public safety;
- Tourist guides;
- Licensed providers of educational services;
- Licensed providers of health-related services; and
- Licensed sellers of tobacco products

The intensity of HCC's review varied according to the conditions prevailing in each professional activity. In certain cases, the Authority's recommendations were tailored-made as to correspond to the specific exemption request made, while in other cases the HCC opted for issuing wide-ranging recommendations (essentially comprising an overhaul of the way a certain professional activity is organized and performed).

The opinion concerning chartered (sworn in) appraisers/valuers is an example of the latter approach. In their request for exemption, chartered appraisers asked to maintain: (i) the limited access to the profession (*numerus clausus*), (ii) the exclusive rights to provide certain valuation services, (iii) the prohibition in the exercise of the profession by legal entities or other EU nationals, and (iv) their fixed remuneration. In doing so they claimed overriding public policy considerations, such as the protection of consumers and the effectiveness of the tax collection system.

However, in its opinion-recommendations addressed to the government, the HCC found that these claimed public considerations were not substantiated and, in any event, did not comply with the principle of proportionality. The HCC, therefore, recommended that all such restrictions should be lifted. Furthermore, after reviewing the conditions of entry into, and exercise of, this professional activity, the HCC further proposed, *inter alia*, that the professional base of the appraisers' organization be substantially broadened based on transparent and objective criteria, either with the admission of all natural and legal entities having equivalent vocational qualifications or, alternatively, by accrediting additional (and competing) professional associations. The HCC also recommended that a registry of certified appraisers be created (by specialty).

Moving forward, the HCC will actively participate in a follow-on project coordinated by the Ministry of Economy (planned for autumn 2014), aimed at reviewing the qualifications and other requirements for entry into a number of regulated professions, with a view to lifting unnecessary restrictions and overall simplifying access.

IV. OTHER INITIATIVES REGARDING REGULATORY DISTORTIONS MOSTLY AFFECTING RETAIL AND THE FOOD SUPPLY CHAIN

Aside from the above exercise of its consultative powers under the new Competition Act, and in the context of Greece's Economic Adjustment Programme, the HCC has pursued additional initiatives to promote a genuine competition culture. These advocacy initiatives have mostly targeted regulatory distortions affecting retail and the functioning of the food supply chain, but also have had a broader educational function.

For example, the HCC issued recommendations focusing on:

- The reform of the so-called Product and Market Regulation Code, in particular by (a) abolishing all delegation powers concerning minimum and/or fixed prices, export bans and/or export restrictions, as well as transportation fees, and (b) retaining certain delegation powers to regulate the conditions for the sale and marketing of certain products only to the extent they are in conformity with EU regulations;
- The abolition of a regulation obliging that all types of milk (formulas) for babies under the age of six months be sold exclusively through pharmacies;

- The abolition of an obligation imposed on companies to notify regularly their wholesale price lists to the competent line ministry; and
- The removal of regulatory obstacles impeding effective competition in the fuel and the cement sectors.

Most of these recommendations were ultimately adopted and implemented by the Greek government.

V. GREECE'S OECD COMPETITION ASSESSMENT PROJECT

2013 also saw the successful completion of the most intense advocacy project in recent years, Greece's OECD Competition Assessment Project. During the course of 10 months, a core project team comprising competition experts from both the OECD and the HCC undertook an assessment of the costs and benefits of regulations potentially restricting competition in four designated sectors of the Greek economy, namely:

- Retail trade,
- Food processing,
- Building materials, and
- Tourism.

The objective of the project was to evaluate existing regulations and propose alternative (less restrictive) regulations, in order to increase competition and bring about longer-term gains to productivity and economic growth.

Using the methodology set out in the OECD's Competition Toolkit, the team of experts reviewed more than 1,000 pieces of legislation, ultimately identifying 555 problematic regulations and making more than 320 recommendations on legal provisions that should be amended or repealed.²

The HCC's partnership with the OECD on this project is a testament to the Authority's capabilities and commitment in further strengthening its advocacy role.

Following the successful completion of the project, a new round is envisaged to commence in autumn 2014, focusing on four additional sectors of the Greek economy. The HCC will also contribute to this follow-on project, in cooperation with the OECD.

VI. COMPETITION COMPLIANCE AND AWARENESS GUIDES & OTHER OUTREACH ACTIVITIES

In the course of 2012, the HCC also undertook the initiative of publishing a new competition compliance guide specifically addressed to trade associations. This initiative is currently being complemented by a series of speeches and workshops undertaken by the Authority in cooperation with interested professional associations, the aim being to promote awareness of competition law and of the benefits of effective competition as a whole.

² See <http://www.oecd.org/greece/greececompetitionassessment.htm>.

The HCC's advocacy focus on trade associations follows a relatively high number of infringement decisions issued in recent years concerning collusive practices by trade associations and other professional bodies. This appears to be a Greek particularity as compared to most other EU Member States. It comes, however, as a direct result of the disproportionate number of self-employed professionals and of the intra-profession protectionist culture still widespread in services markets. The Authority's outreach efforts in this regard aim to promote a genuine competition culture and encourage self-regulation that respects competition rules.

A new guide specifically addressed to public procurement/contract awarding entities is currently under preparation, particularly focusing on practical examples and methods to detect and/or avert bid-rigging. As indicated by recent enforcement action and ensuing patterns, this is an area that increasingly exhibits a high risk of anticompetitive conduct, thus the need to engage in focused outreach activities by the Authority.

Moving forward, the HCC plans to cooperate closely with the Secretariat of the Government in an attempt to promote a coherent Regulatory Impact Assessment ("RIA") strategy at the central administration level. In this context, the Authority will be publishing competition-specific guidelines for the assessment of laws and regulation by the competent line ministries—competition being a significant component of RIA.

VII. CONCLUDING REMARKS

Practitioners are not always happy when we allocate a significant amount of our scarce resources to advocacy and outreach work. However, one needs to recall that the HCC's efforts in this regard have taken place against a backdrop of the longest and steepest recession in the history of the European Union, with the Greek economy contracting for the sixth consecutive year in 2013 (a cumulative drop in real GDP of more than 20 percent since the inception of the crisis, coupled with record levels on unemployment). Several studies suggest that economic recovery in Greece has been partly hampered by the prevailing situation in product and services markets, which remain among the most strictly regulated in the OECD area. Therefore, structural reforms, particularly in the context of professional services, are—in the Authority's view—a necessary precondition for overcoming the constraints imposed by the crisis, for building competitive industries that can withstand international pressure, and, ultimately, for sustaining a new growth model that realizes the economy's productive potential.

The HCC's recent experience from advocacy and other outreach efforts speaks plainly about the urgent need to change the way we legislate, the need to pursue efficient outcomes that reflect the general public interest, and the need to move away from favoring the interests of certain professional groups and other vested interests. Finally, it also speaks plainly about the need to implement a coherent RIA strategy at the level of central administration to sustain the significant progress made thus far in promoting reforms.