

Sector inquiry by the Hellenic Competition Commission into e-commerce

Procedure

The Hellenic Competition Commission ("**HCC**") decided on 11.03.2020 to initiate a sector inquiry into e-commerce, pursuant to Article 40 of Greek Law 3959/2011. The public consultation was launched yesterday, 31.03.2020, with the publication of an invitation to all interested parties to submit their views and comments, as well as to express their interest (up to 13.04.2020, by email) to participate in the teleconference on e-commerce that will be held by the HCC on 23 & 30.04.2020. Concurrently, the interested parties are invited to submit their views in writing, in the form of a memo until 08.05.2020. The final Report is expected to be published on 30.04.2021.

Scope and objectives

The launch of the sector inquiry is intended to help the HCC determine whether and to what extent competition in the digital environment works effectively and identify any practices that are capable of harming consumer welfare, such as:

- the application of specific forms of vertical restraints that may impede the entry in the market or the development of innovative retailers (e.g. setting of minimum resale prices, MFN clauses, general ban on online sales or ban on online price comparison websites),
- the facilitation of the creation and implementation of cartels through the use of common algorithms by competitors or different interacting algorithms; and
- the possibility of creating strong platforms with a dominant position in the relevant market or ecosystem, which in turn may possibly adopt exclusionary practices against their competitors or exploit consumers through the implementation of excessive pricing policies.

Following that stage, the HCC can intervene either by means of repressive measures or by taking initiatives to promote specific competition policies or regulatory arrangements in the relevant sectors.

Sectors

Without prejudice to HCC's ability to further specify and/or restrict and/or expand the scope of the inquiry, pursuant to its case-by-case findings, as it progresses said sector inquiry will focus on the following sectors:

1. clothing and footwear (with emphasis on the relevant sportswear and footwear market);
2. electrical and electronic devices;
3. books;
4. mediation services for the provision of travel tickets;
5. mediation services for the provision of tickets for events;
6. mediation services for catering services;
7. finding and renting accommodation - AIRBNB, and
8. e-pharmacies (with emphasis on nutritional supplements and parapharmaceutical products).

Importance

The launch of the e-commerce sector inquiry coincides with a period during which the coronavirus pandemic (Covid-19) has significantly increased the dependence of Greek online retailers' activities, becoming part of HCC's wider consumer protection actions during this difficult time. In any case, e-commerce is at the center of attention of EU law and the majority of Member States, with Greece being one of the last to show interest. Already, about 3 years ago, on 10.05.2017, the European Commission published its Final report on the E-commerce Sector Inquiry COM (2017) 229 final and the Staff Working Document SWD (2017) 154 final. For the purposes of this sector inquiry, requests for information ('questionnaires') were answered by stakeholders from 28 Member States, and in total 2,605 agreements related to the distribution of consumer goods and 6,426 licensing agreements related to the distribution of digital content were submitted. Further, related issues are still at the center of attention of EU national competition authorities, such as the joint study on "Algorithms and Competition" dated 06.11.2019 prepared by the German *Bundeskartellamt* and the French *Autorité de la concurrence*.

It is worth recalling here that the EU sector inquiry has also led to the investigation of significant vertical restraint cases with significant fines, such as *Guess* and *Nike* (restrictions on cross-border sales) and *Asus*, *Denon & Marantz*, *Philips* and *Pioneer* (imposing resale prices on retailers). In addition to the competition rules for e-commerce, business should also comply with Regulation (EU) 2018/302 of the European Parliament and of the Council of 28.02.2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market (Geo-blocking Regulation), which entered into force on 3 December 2018. Finally, in February 2019, the European Commission launched a public consultation for the evaluation of Regulation (EU) No. 330/2010 (Vertical Block Exemption Regulation, VBER), which exempts from the prohibition laid down in Article 101 (1) TFEU vertical agreements that can be considered with sufficient certainty to fulfill the conditions of Article 101 (3) TFEU. The evaluation of VBER will allow the European Commission to decide whether to let the Regulation to expire, or to extend it or revise it, together with the corresponding vertical restriction guidelines.

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