Greece: The Competition Commission imposes Fine for Infringements of Articles 1 and 2 of Law 703/1977 as well as of Articles 101 and 102 TFEU in Salty Snacks Market

In its Decision No. 520/IV/2011 (published on 14 February 2012), the Grand Chamber of the Hellenic Competition Commission (HCC) found that Tasty Foods (Tasty), a subsidiary of Pepsico, mainly active in the production and distribution of salty snacks (notably under the brand name Lay’s), has infringed Articles 1 and 2 of the Greek Law 703/77 as well as Articles 101 and 102 TFEU from 2000 to at least 2008. On this basis, it imposed a total fine of € 16 177 514 on Tasty.

The case was initiated following two complaints filed by a competitor “Tsakiris Food & Snacks Company”, alleging that Tasty had implemented a targeted policy on a systematic basis, seeking to exclude its competitors from the market by means of exclusivity and discrimination. In the course of the ensuing investigation, the HCC gathered an extensive set of data from the dawn raid which took place at Tasty’s premises and from several information requests addressed to competitors and customers, with a view to establishing whether Tasty held a dominant position on the market and whether it had engaged in anti-competitive practices. Extensive economic analysis was also conducted for the purpose of defining the relevant product market, after the submission of economic reports and testimony by both Tasty and the complainant.

Following the oral hearing and the exchange of written observations, the HCC concluded that Tasty held a dominant position in the market for the production and distribution of salty snacks (mainly comprising potato chips, corn chips and extruded snacks), with market shares ranging from 70% to 85% (consistently over the last decade). The HCC also found that Tasty had adopted and implemented a single, consistent and targeted policy in the market of salty snacks that sought to exclude its competitors from the distribution channel of smaller retailer outlets (notably kiosks, grocery stores and traditional food stores & mini markets) and to limit their growth possibilities. To achieve this objective, Tasty employed various abusive practices throughout the period from 2000 until at least 2008, some of which exhibited extraordinary intensity, including: (1) exclusivity agreements at the wholesale level, (2) agreements for the provision of cabinets on the basis of exclusivity, aimed at capturing the available space in smaller retailer shops (e.g. kiosks) and raising entry/expansion barriers with the view to exclude competitors, (3) rebates conditional upon the attribution of all, or the most substantial part of available shelf/store space to its products, (4) target rebates at both wholesale and retail level and (5) coordinated and targeted acts of replacing and removing, by unorthodox means, the products and cabinets of competitors from those outlets.

In view of the above, the HCC imposed a total fine of € 16 177 514 on Tasty, i.e. € 11 739 387 for infringements of Articles 2 of Greek Law 703/77 and 102 TFEU (abuse of dominance) and € 4 438 127 for infringements of Article 1 of Greek Law 703/77 and 101 TFEU (restrictive agreements). In fixing the fine, the HCC took into account the gravity of the abusive practices, some of which were of extraordinary intensity, and their extensive duration. The HCC further ordered Tasty to discontinue the violation of the abovementioned competition rules and to refrain from that conduct in the future.

See press release of 8 February 2012 (in English) and HCC decision of 14 February 2012 (in Greek).