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Hellenic Competition Commission accepts commitments against concerns about restriction of parallel trade and cross-supplies between authorised distributors in the cosmetic sector

By virtue of Decision no. 778/2022 the Hellenic Competition Commission ('HCC') accepted – by majority of votes – commitments offered by a cosmetic company ('the Company') to address competition concerns arising from contractual terms in its selective distribution agreements in Greece and other EU Member States. According to the HCC's preliminary assessment, there were possible violations of Article 1(1) of the Greek Law 3959/2011 and Article 101(1) TFEU in the form of (a) restrictions of cross-border sales of authorised retailers to final consumers, and (b) restrictions of cross-supplies between distributors within the Company's selective distribution system.

Relevant market

Following a complaint the HCC initiated an *ex officio* investigation in the Greek market for the production and marketing of personal care and hygiene cosmetic products of high quality and price (luxury), which are in principle available through selective distribution networks and in the case at issue, distributed mainly through pharmacies.

Commitments

The commitments offered by the Company consisted in eliminating or modifying the alleged anti-competitive terms and conditions in its selective distribution agreements within two months as from the notification of the HCC decision and in the implementation of a competition law compliance programme for its staff, including an internal competition policy, training seminars and workshops, and a manual for the Company's commercial team, within six months from said notification.

Although no resale price maintenance ('RPM') concerns were identified in the HCC's preliminary assessment, the Company also undertook to add to its agreements with Greek distributors a contractual term clarifying the non-binding nature of the retail prices suggested by the Company, to eliminate any ambiguity.

Commentary

Contrary to the HCC majority, the Chairman of the Competition Authority proposed the rejection of the above commitments based on the following reasoning:

a. The nature of the potential infringements at issue, i.e., hardcore restrictions;
b. The non-application of the *de minimis* safe harbour to hardcore restrictions, even if imposed by companies with a relatively small market share;
c. The negative effects on final consumers of restrictions on parallel trade, as proven in a series of empirical studies, since such restrictions usually lead to an increase in the price of the products concerned; and
d. The deterrent effect of fines in cases of by object restrictions of competition.

The HCC dismissed unanimously the complainant's allegations concerning RPM practices through promotional activities suggested by the Company as being unfounded and unproven.