



**HELLENIC REPUBLIC
HELLENIC COMPETITION COMMISSION**

Athens, 14 January 2020

PRESS RELEASE

Subject: Opinion of the Hellenic Competition Commission, pursuant to Article 23 (1) of Law 3959/2011, as it stands, on the request of the Minister of Economy and Development and the Minister of Digital Policy, Telecommunications and Information on the functioning of competition in the national market of Press Distribution.

SUMMARY OF MAIN FINDINGS AND CONCLUSIONS

PURPOSE AND SCOPE

The Competition Commission (hereinafter referred to as "HCC" or "Commission"), within the framework of its advisory powers, shall act in accordance with the specific legal framework referred to in Article 23 of Law 3959/2011 and, in particular, exercise its capacity to issue opinions on matters of its competence. In this context, the main responsibility of the Commission is the protection of free competition, in particular against the different restrictions of competition, as referred to in Chapter 1 (Articles 1 to 11) of Law 3959/2011. Specifically, Article 11 of Law 3959/2011 states that the Competition Commission may take all necessary measures "to create conditions of effective competition in the economic sector in question". Consequently, the protection of "free competition" can be interpreted as being conceptually analogous to the protection of "effective competition". The Commission focuses on the negative effects of restrictions of competition, whether resulting by anti-competitive practices or facilitated by market structure and the institutional framework.

The concept of "effective competition" is polysemic and can be interpreted according to the conditions (technological, economic, institutional) prevailing in the specific markets and economic sectors examined by the Commission. The concept of "effective" can refer both to the efficiency of the competitive process, namely the protection of free competition for all businesses in the sense that they have equal opportunities to access markets and to compete with each other on the basis of the competitive merit of their proposal as well as the achievement of the positive outcomes of the free competition process, which are not only limited, indicatively, to lower prices, better quality products and more innovation, but also extend to any kind

of possible positive outcome that the competitive process may bring, not only on final consumers but also on the general public.

Therefore, the concept of “effective competition” can be interpreted according to how the positive effects of the free competitive process on the specific market and/or the economy overall are assessed on a case-by-case basis. The analysis of what can be considered as a positive effect depends not only on the economic weighting of the benefits that may be gained for the overall welfare or the consumer surplus, but also on the analysis of many other factors that need to be taken into account because of the existing legal framework, both national and EU competition law. Specific reference is made to constitutionally protected rights or rights protected by the Charter of Fundamental Rights of the European Union, as well as to general guidelines on the interpretation of national and EU competition law. The Constitution also guarantees pluralism in public discourse as a precondition for the free expression of opinion and freedom of information as a constituent element of the functioning of democracy¹. Concerning the press, the Constitution empowers the state to take measures to ensure a minimum level of pluralism. The key role of media in shaping public opinion serves as a basis for specific arrangements aimed at ensuring media pluralism (the presence of a sufficient number of media representing different and independent voices) and diversity of similar media (the presence of different political and cultural views). Media pluralism and freedom of expression are supported by the European Union².

Free competition law helps to ensure pluralism by contributing in improving the conditions of economic competition in the market. This occurs either by introducing specific competition regulations in the media sector, and the press in particular, or by a congruent to these general constitutional principles and requirements interpretation and application of the general rules of competition law.

An example of such *lex specialis* competition regulation is the provisions of Law 3592/2007, which define the degree of concentration of media undertakings that can lead to the examination of a possible abuse of a dominant position.

With regard to ensuring pluralism in the interpretation and application of general competition law (Law 3959/2011), there are various methodologies for incorporating these more general constitutional and other interpretative requirements, for example by analyzing them as an element of product quality at an empirical level or, possibly, by using a more deontological approach in the interpretation of the specific provisions and rules of competition law.

Therefore, any reference to the general Union and national legal framework, such as to the need to preserve the pluralism of press, should not be regarded as an additional goal of competition law, but as an interpretative requirement which should be taken into account when the Competition Commission examines whether there are conditions for “effective competition” or not. Consequently, the Competition

¹ Article 14(9) of the Constitution provides for safeguarding pluralism and prohibits the concentration of control over more media of this or any other kind.

² See COMMISSION STAFF WORKING DOCUMENT, Media pluralism in the Member States of the European Union, Brussels, 16 January 2007 SEC(2007) 32.

Commission does not deviate from its competence when considering these general principles and values in the interpretation and application of competition law.

In this Opinion, the Commission is required to ensure free competition, in the light of the protection of a minimum level of pluralism and diversity of opinion, through the freedom of circulation, distribution and sale of printed publications.

Furthermore, this Opinion on the Press Distribution System in Greece must also reflect the real conditions in the market and the structure of media. The market is characterised by significant downturns due to a variety of causes, such as the economic crisis and the digital transformation of the press. It is worth noting that the basis of this debate in previous years was the fact that printed press, television, radio and the forthcoming new press markets were seen as distinct markets. However, in recent years the media industry has been undergoing radical changes and restructuring as a result of the adoption of new technologies, which offer new opportunities for all market players and consumers. Any market restructuring in the light of new technology should not be considered a threat to media pluralism. The principle of media pluralism should be technologically neutral, and should be applied in a similar way to reflect new media's emerging nature. In this context, the rules of pluralism should not seek to preserve the old media structure, but rather favour the emergence of new structures and allow new technological means to coexist with traditional ones.

At the same time, in addition to these potential competitive pressures from the digital transformation of the press and, possibly, by the changes that they may bring in the medium term to the parameters of competition and market structure, the existing structure of the printed-press distribution market should be analysed and, in particular, how this is affected by the closure of one of the two existing printed-press distribution undertakings (agencies), which changed the structure of the market from a duopoly (also operating for a period as a cartel) to a *de facto* monopoly, with a single active printed-press distribution agency, ARGOS, in which publishers holding a significant stake in the printed-press/newspaper market act as its shareholders.

The Opinion was based on a thorough economic analysis of market conditions, business models of the undertakings active in it and the national legal framework for press distribution or the press in general. The institutional framework and economic conditions of the press distribution market in other EU countries were also studied in detail.

MAIN FINDINGS – SUMMARY OF CONCLUSIONS

In this context, the Printed-press distribution market is characterised by a number of structural weaknesses, such as: (a) the evolution of different conditions, in particular the condition of demand, which has been steadily declining over time for the printed-press products; (b) the legislative obligation to distribute press products throughout the Greek territory; (c) the particular importance of the sale of publications, in particular with regard to the overall cost of ARGOS, and (d) the revenue and business methods of publishing companies, the sale of publications (compared to the revenue coming from digital advertising). The above weaknesses have given the market in question the characteristics of a potential “natural monopoly” or “essential facility”, at least in the medium term. It is noted that, in theory, in market conditions with natural monopoly

characteristics, the activity of only one company is considered to be more cost-effective, in terms of the cost of providing that service, than the operation of several companies.

In addition, the participation of only certain publishing companies in the share capital and thus in the governance of the unique press distribution agency, weakens by definition the competitive neutrality between the publishing companies. In particular, the direct or indirect activity of companies in more than one level of the vertical chain (in this case, publishing companies at the level of publishing press products and distribution agencies) creates the risk that the latter companies adopt foreclosure practices against their competitors, which can also have a negative impact on citizens who, in this case, are also the end consumers in the information-products output and distribution chain.

As described above, the Commission should take into account not only quantitative but also qualitative parameters of the competitive process, and in particular the quality of products and services, based on consumer preferences. But since consumers cannot express their preferences in a monopoly market (i.e. as the press distribution market), as by definition they have no alternative and the Constitution and the relevant legislative framework emphasise the protection of pluralism, it could be estimated that any negative effects on the principle of pluralism may constitute an element of social cost which should be taken into account, together with other parameters, by the Commission when considering whether there is a negative impact on effective competition, or not.

Also, the market is characterized by a lack of potential competition due to the high switching cost of publishing companies from the distribution agency, as ARGOS is responsible for clearing the sale of publishers' titles and reimbursing the related commissions to them, which has created a relationship of dependency of the publishers towards ARGOS. This makes it particularly hard for publishers to turn to other potential means and channels for the distribution of their titles.

In conclusion, investigating the possibility of taking measures concerning (i) the legal form of the printed-press agencies, (ii) changes to the existing institutional framework and/or (iii) measures concerning intervention in the press market itself, should aim at ensuring both the benefits brought by effective competition to consumers and society, as well as to the pluralism of the press, in the sense of ensuring pluralism in media and the proper functioning of the market, not only in the present but also in the future.

It is further deemed necessary that this weighing of the various parameters at play is carried out by State institutions, which enjoy broader legitimacy in weighing the general interest, even where this does not coincide with the protection of "effective competition". In that context, the present Opinion analyses the pros and cons of various measures, which may bring about solutions to some of the problems identified above, some of which arise from the nature and characteristics of the market (i.e. from the fact that it best matches a natural monopoly or an essential facility), and some others are associated with the risk of adoption of anti-competitive practices by the participants (i.e. issues related to the shareholding structure of the distribution agency and the activation of some publishing companies also at the level of printed-press distribution).

In the context of this analysis, it has been found that the systematic application of competition law against behaviors that lead to the exclusion of certain publishing

companies may partially address some of the problems but, as mentioned above, is not a solution to the structural problems existing in the press distribution market, because of its specific characteristics. In these cases, the *ad hoc* application of competition law cannot eliminate the source of anti-competitive effects and in any case the implementation cost (in human and material resources) is high and is borne by all capital companies and ultimately by the final consumer. Therefore, the State must turn to other, more effective tools both in terms of cost effectiveness and in terms of overall economic efficiency in dealing with anti-competitive effects on the printed-press distribution market, some of which involve greater degree of state intervention than others.

The Opinion first considers the possibility of adopting measures pertaining to the legal form of the distribution agency. In this context, it examines, however without proposing them as the most appropriate, the solution of the nationalisation of the press distribution company or the solution of the creation of a public-private partnership, for reasons relating to the fiscal costs of these options and to certain competition concerns they may give rise. In this regard, it is proposed to investigate the functioning of distribution agencies in the legal form of a cooperative, which would potentially guarantee competitive neutrality between publishers at the distribution stage. This solution appears to be the most appropriate to ensure equal treatment for all publishing companies involved in the distribution of titles, thereby safeguarding the pluralism of the press. However, it must be taken into account that the creation of a cooperative also entails certain drawbacks, primarily related to the difficulty of making business decisions, as such an arrangement might not be flexible enough. The legislator may also create a new special legal form of a hybrid non-profit (although capital based) press distribution organisation (which could also be a form adopted by publishing companies), starting from the premise that information is a public good and that both its production and distribution require considerable investments. The capital of this organisation should be open not only to all publishers, but also to the employees (journalists), the readers and the general public through the possibility of crowdfunding. It would also be based on specific governance rules that will enhance the participation of stakeholders, limiting voting rights for capital contributions up from a specific capital shares' threshold.

The Opinion then explores the possibility of enhancing the negotiating position of publishing companies, which have to deal with the press agency's strong bargaining power because of its control over an essential facility in the press distribution value chain. This could be achieved through the creation of a countervailing bargaining power and, in particular, the ability of publishers to collectively, rather than individually, negotiate with the distribution agency, the terms of their cooperation. This could limit the anti-competitive effects arising out of the monopolistic structure of the printed-press distribution market. However, it is noted that the implementation of this solution may not be compatible with other aspects of EU law.

Some of the aforementioned problems could possibly be resolved through the enactment of a Code of Conduct, which could be imposed by the Competition Commission as a remedy and implemented by the Press Distribution Agency, including rules with regard to the non-adoption of any practices that may be contrary to the principle of competitive neutrality. The Code of Conduct can provide a solution to any conflict of interest between the various stages of a (even partially) vertically integrated

business, mainly because publishing companies have a decisive influence (due to the shareholding arrangement and voting rights) in shaping the printed-press distribution agency's policy.

Should this be considered necessary, given the importance of the printed press, as explained above, more State intervention measures may be adequate in order to enhance the competitive process, insofar as the specific conditions in the industry allow it. In this context, the (conditional) granting of a state aid/subsidy for the distribution of publications (for instance, remote or outermost areas in order to cover increased transport costs) could play a key role in the proper and efficient functioning of the press distribution market. This might also allow some competitors to enter the press distribution market and to -at least artificially- maintain more than one competitor, even under conditions that are similar to those of a natural monopoly.

Furthermore, the competent Ministry (i.e. the Ministry of Finance) might explore the possibility of establishing an appropriate legal framework regarding the classification of press distribution services as Services of General Economic Interest (SGEIs), which allow State aid being granted to the Press Distribution Agency in return for a limited pricing policy in order to reduce as far as possible the impact on the financial situation of publishing companies. However, it cannot be overlooked that the disadvantages of this option package are similar to those of nationalisation - the use of scarce public resources to strengthen press distribution, a sector characterised by a predictable decline and is currently in phase of technological transformation.

In addition, given that the market is characterised by quasi-natural monopoly elements, another option might be to promote competition for the market. The possibility of providing a Printed-press distribution service to companies through auction processes could thus be considered. This may also take the form of exclusive rights acquired by the company, which will be bound at the lowest possible tariff to provide the service to the parties (thus ensuring, for instance, the viability of the publishing companies while protecting pluralism). In any case, adopting this approach requires from the outset a careful planning of the auction mechanism. These auctions, which could be conducted by the subsequently proposed Supervisory and Regulatory Authority for Press Distribution, could also allow the participation of companies that have been active in similar markets to date.

To that end, a Supervisory and Regulatory Authority for Press Distribution could be established by law, the responsibilities of which would include the control, supervision and regulation of the market concerned as well as ensuring transparency in press distribution, while publishing companies could have recourse to it in case they consider that press distribution is not properly functioning and/or it is likely to harm their interests. Alternatively, the above powers could be included in the competences of the Hellenic Telecommunications and Post Commission (EETT), following the example of other Member States, such as France, on the basis of a recent legislative amendment to this effect.