

NEWS | 28 July 2023

Hellenic Competition Commission fines a cosmetic company for preventing effective use of the internet through a total ban on the use of price comparison services following a settlement procedure*

Relevant market

Prompted by certain findings of its e-commerce sector inquiry, the Hellenic Competition Commission (the Greek Competition Authority, 'HCC') conducted an *ex officio* investigation into the Greek market for the production and commercialisation of high-quality and high-priced cosmetic products, which are brought to market through selective distribution networks and, in the case at issue, distributed mainly through pharmacies.

Detected infringement and settlement procedure

Following an on-site inspection at the premises of a cosmetic company (the 'Company') and administering a number of questionnaires to online price comparison platforms and/or dual-function online platforms**, the HCC found that the Company engaged in an anti-competitive practice of prohibiting its selective distributors from using an entire online advertising channel, i.e., online price comparison platforms and price comparison tools of dual-function online platforms, between March 2021 and March 2023. Conversely, the alleged infringement of the prohibition of the use of online marketplaces was ultimately abandoned during the settlement procedure.

According to the HCC, this practice, with which the Company's distributors largely complied, constituted a restriction on the effective use of the internet (hardcore restriction) in breach of Articles 1(1) of the Greek Competition Act (Greek Law 3959/2011) and 101(1) TFEU.

The Company participated in settlement discussions with the HCC, resulting in the imposition of a reduced fine of 111,521.13 EUR. In calculating the fine, account was taken, *inter alia*, of the short duration of the infringement, the low market share of the Company in the relevant market, the absence of relevant precedent due to novelty of the infringement, and the fact that the above amount of fine was in line with recent settlement cases before the HCC in the context of vertical infringements.

Commentary

It is worth noting that this is the first HCC case in which the Authority established the vertical infringement of the prevention of the effective use of the internet through the prohibition of the use of an entire online advertising channel, which constitutes a hardcore restriction of competition pursuant to Article 4(e) of Regulation (EU) 2022/720 (the 'new VBER').

As this type of infringement was neither explicitly considered a hardcore restriction under the previous regime (Regulation (EU) 330/2010) nor had it been adjudicated as such by the HCC, the Authority was responsive to the Company's settlement proposal, admitting the novel nature of such an infringement.

Given the extensive use of price comparison tools by Greek consumers and the significant role of such tools in raising awareness of companies' online sales activities, it remains to be seen whether the HCC will intensify the monitoring of their unhindered operation and to what extent quality-related justifications of online advertising restrictions will be accepted by the HCC.

*The issuance of the settlement decision is pending.

**Dual-function online platforms means platforms providing both a direct purchasing functionality (marketplace) and a price comparison tool.