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Speech - closing remarks by

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Dear esteemed colleagues and guests,

By way of closing remarks, I thought it would be useful to take stock of recent developments and, most importantly, to speak about the challenges facing the Authority.

In view of the ongoing financial crisis, 3 are the main pillars that underpin our action plan:

1. Maintaining a consistent level of competition enforcement, while adapting prioritization and focus to cases with increased systemic effect
2. Strengthening our capabilities to conduct market monitoring, notably through targeted sector inquiries, AND
3. Diversifying & expanding considerably competition advocacy in order to identify and remove regulatory obstacles to competition, so as to complement our core enforcement work and support structural reforms pledged in the context of Greece's economic adjustment programme.

Allow me to share some thoughts with you on those issues

First, regarding enforcement:

Important precedents have been set in the area of **abuse of dominance** in recent years, particularly as regards exclusionary practices at both wholesale and retail level.

Admittedly, the Authority's track record on the application of Article 102 EC Treaty is higher than the EU average and is likely to remain so in the medium / long run.

We shall continue to apply rigorously the rules on abuse of dominance, the focus being on various economic incentives and rebates, shelf space and other exclusivity arrangements.

Moving to **collusive conduct**

Albeit the recent revision of the Leniency Notice in conformity with the ECN Model Leniency, it has not produced the desired outcomes. The responsiveness of companies is not satisfactory, partly due to the prevailing features linked to a small-market economy and family-run, less sophisticated businesses – characteristics also exhibited in some other Member States.

Nonetheless, by using extensively its investigative powers (notably dawn raids) and by improving its market reflexes, the HCC still managed to unveil several collusive practices spanning over a long period of time. We anticipate that the publication of new infringement decisions with fines in the near future will demonstrate again our ability to detect collusive conduct by own means, thereby enhancing the attractiveness of the Leniency Programme.

As an aside, the Authority has continued to adopt a relatively high number of infringement decisions about collusive practices committed by trade associations and other professional bodies. This is indeed a particularity as compared to most other Member States. But it comes as a direct result of the disproportionate number of self-employed professionals and of the intra-profession protectionist culture still widespread in services markets. We shall continue to pursue this type of cases, because we feel it is the only way to promote a genuine competition culture and encourage self-regulation that respects competition rules.

Moving to **commitment decisions**

We hear the criticism that the Authority has been very cautious on adopting commitment decisions and that a shift in our policy may be warranted.

However, one needs to bear in mind that – in view of several challenges mounted by parties before administrative courts – we needed first to ensure that EU jurisprudence and decisional practice is established, in particular, that the Authority enjoys wide discretion in this field and that commitments cannot be used by the parties to evade penalties for serious infringements of competition law (like cartels, vertical hardcore restrictions or serious abuses of dominance) or to frustrate the administrative process.

Following the relevant guidance provided by the Council of State and the Athens Administrative Court of Appeals, we are ready to make the next step and the recent Forthnet and DEPA commitment decisions demonstrate our willingness to do so.

We hope that the impending adoption and publication of the new Notice on Commitments will help to consolidate our practice in this field, and we anticipate the sincere cooperation of companies and legal advisors to this end.

As regards **mergers**, we expect that the ongoing consolidation in several sectors of the economy will increase the intensity of the Commission's merger review and, most likely, the complexity of ensuing remedies.

Nonetheless, there is still ample room for consolidation in most of those sectors, with considerable efficiency gains likely to accrue.

Allow me to refer specifically to the banking and retail sectors.

During the last 2 years alone, the HCC reviewed more than 12 parallel or consecutive mergers as result of the ongoing restructuring of the banking sector. This proved to be a fine balancing exercise between, on the one hand, the need to ensure financial stability and, on the other hand, the need to safeguard adequate competitive conditions in the future.

The Authority imposed tailored remedies where appropriate and also sought to ensure that the participation of the Hellenic Financial Stability Fund in the systemic banks did not become a vehicle for coordination.

The competitive landscape has changed significantly since the failed merger of NBG – Eurobank. Following the gradual disappearance of the smaller and niche banks, it is now clear that we may have reached the limit from a competition law perspective.

Moving forward, we anticipate first that at least 4 systemic banks will remain competing in the core banking markets, and second that competition will become particularly intense in asset management and other investment products and services, where a number of barriers to entry were recently abolished by law.

We also anticipate that the focus will now swift to the the restructuring of the loans and the ensuing re-organisation of companies in financial distress, where the banks – as creditors – will play a leading role. This restructuring exercise is necessary and – in my view – long overdue. Several distressed industries still have the potential to flourish and the timely restructuring of their loans and ensuing changes in corporate structure are necessary for them to fulfill that potential. Nonetheless, the same exercise poses certain risks from a competition perspective. On our part, we shall remain vigilant to ensure first that, depending on the distressed industry, there will be at least 4 or more sizeable poles of competition still remaining, and second that the banks do not inadvertently facilitate collusion between competing firms under restructuring.

As concerns supermarkets, the assessment will be increasingly focusing on narrowly defined local markets, again in order to ensure that at least 3 to 4 sizeable poles of competition remain at each local market and that choices for consumers are not curtailed. The Authority will also monitor rigorously any attempts by supermarket chains to circumvent merger control rules, e.g. by

acquiring individual outlets or by engaging in various types of cooperative agreements.

Market monitoring

During the last 3 years, we also took steps to strengthen our capabilities to conduct targeted sector inquiries.

I think that you agree with me that the findings of the recent fruits & vegetable inquiry represents a milestone in this regard, both in terms of the economic methodology used and in terms of the intensity of data collection and ensuing analysis.

We move forward with the supermarket sector inquiry. As you will notice from the new round of information requests to be sent out shortly, it is a far-reaching exercise focusing on various aspects of the supplier – retailer relationship and on horizontal retail practices – to name a few as entry fees, slotting and other promotional allowances, de-listing, allocation of shelf-space, category management, transfer of risk and parallel imports.

Advocacy

Our advocacy role has expanded considerably in recent years as a result of the enhanced role envisaged for the HCC in promoting structural reforms by Greece's Economic Adjustment Program.

During the last 3 years, the HCC reviewed laws and regulations affecting more than 55 regulated professional activities and recommended lifting many regulatory restrictions regarding the access to and exercise of a number of professions. Moreover, it targeted – at its own initiative – a number of regulatory obstacles to competition affecting retail and the food supply chain. Overall, the Authority issued more than 25 Formal Opinions, with advocacy work reaching up to 25% of total output – a record, I believe, amongst OECD countries.

Practitioners are not always happy when we allocate significant resources to advocacy work. However, structural reforms, particularly in the context of professional services, are a necessary precondition for overcoming the constraints imposed by the crisis, for building competitive industries that can withstand international pressure and, ultimately, for sustaining a new growth model that realizes the economy's productive potential.

We are pleased that our work in this field has been widely acknowledged and praised by the European Commission, international organizations and our peers.

In the same context, we take pride in our cooperation with the OECD regarding Greece's Competition Assessment Project. The project identified 555 problematic regulations in four designated sectors of the Greek economy (namely retail trade, food processing, building materials and tourism) and made more than 320 recommendations on legal provisions that should be amended or repealed. Overall, the work with the OECD has been a testament to the Authority's capabilities and commitment in advocacy.

The recent media coverage of only a few, isolated recommendations – and that, allow me to say, in a tainted way – did not do justice to the Project. What the Project really did, was to speak about the urgent need to change the way we legislate, the need to pursue efficient outcomes that reflect the general public interest, and not the interest of certain professional groups, and, finally, the need to implement a coherent Regulatory Impact Assessment (RIA) strategy at the level of Central Administration.

Cooperation with administrative and civil courts

It is our view that both the jurisprudence of the Council of State and of the Athens Administrative Court of Appeals, as well as the decisional practice of the HCC, demonstrates that the acquis communautaire in competition is well integrated into our legal system.

We welcome the guidance of the court on a number of procedural and substantive issues. By way of example, I refer to recent judgments on the scope of our investigative powers and access to confidential information during the administrative process.

In the coming months, and following the application of the new system for prioritizing cases, as mandated by Law 3959/2011, the Authority's ability to reject complaints for lack of sufficient public interest will be tested for the first time before the administrative courts. Guidance by the court on the scope of this newly acquired competence, will allow us to further streamline our procedure and ultimately enhance our efficiency.

Finally, civil courts will increasingly play a crucial role in the future, following the adoption of the new EU Directive on damages actions for infringements of competition law. The HCC contributed to the successful negotiations under the Greek Presidency of the EU Council and looks forward to assisting in the transposition of the Directive.

Thank you all for participating in the event and, to our panelists for honouring us with their presence.

I hope it has been a fruitful experience for all of you.