



**Computer & Communications
Industry Association**

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CCIA Response to the Sector inquiry by the Hellenic Competition Commission into e-commerce

15 May 2020

Introduction

The Computer and Communications Industry Association (CCIA) welcomes the Hellenic Competition Commission (“HCC”) e-commerce sector inquiry and the opportunity for interested parties to express their views and comment on the competitive conditions in the e-marketplace.¹ CCIA is a non-profit membership organisation representing large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services.² Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. CCIA remains committed to protecting and advancing the interests of our members, the industry as a whole, as well as society’s beneficial interest in open markets, open systems and open networks.³

As the HCC correctly recognises, “*both consumers and businesses benefit from the many and important advantages of online stores and platforms over traditional, natural distribution channels. E-commerce is undoubtedly, after all, the key driver for promoting pricing competition due to certain parameters, such as, for example, the lower operating costs of online retailers and the ease of product search and price comparison.*”⁴ In this submission, CCIA highlights and expands upon the above, offering data to quantify the welfare enhancing benefits that e-commerce services provide to (1) sellers and (2) customers. CCIA also (3) identifies ways in which the HCC could act to improve and increase these benefits by removing restrictions that distort competition in Greece.

¹ Announcement for launch of public consultation can be found here:

<https://www.epant.gr/en/enimerosi/news/item/860-launch-of-public-consultation.html>

² A complete list of CCIA’s members can be found here: <http://www.ccianet.org/about/members/>.

³ CCIA’s mission statement can be found here: <https://www.ccianet.org/about/ccias-mission/>

⁴ <https://www.epant.gr/en/enimerosi/sector-inquiry-into-e-commerce.html>

However, as a preliminary matter, CCIA notes that the phrase “online markets” should be applied carefully, as “online” is simply one channel of reaching the customer amongst others (like television, telephone, or brick & mortar). Increasingly, retailers are engaged in an “omni-channel” strategy that encompasses multiple channels (i.e. including both online and offline retail). In a recent study, ninety-one percent of large retailers and brands surveyed stated that they currently have an omnichannel strategy or are planning to invest in omnichannel technologies in the near-term.⁵ Recent surveys confirm that Greek customers are embracing this trend.⁶ This trend is accelerating due to the current crisis. Recent surveys show that purchases from online companies in Greece have doubled from 21 percent in 2019 to 44 percent in the first week of April 2020, with online food deliveries also rising from 13 percent to 25 percent since last year, and online supermarket services rising to 8 percent from only one percent in 2019.⁷ This trend is likely to continue, as surveys show that 50 percent of Greek consumers say they will continue making online purchases even after the end of the crisis.⁸ Accordingly, a forward looking study should account for the increasingly irrelevant distinction between “online” and “offline” retail.

1. Benefits to Sellers

As the HCC correctly recognises, taking advantage of digital tools *“[a]s the possibilities provided by the internet and e-commerce come to ensure the much needed access to consumers, overcoming geographical and other technical constraints, they also create the possibility for all producers – without exception – to develop and expand their activities, to invest in research and innovation, to design and create products and services that will be competitive and accessible worldwide, to promote Greek brands and, in general, to contribute to systematic productive restructuring and development of all sectors of the Greek economy.”*⁹ CCIA notes that in addition to the points raised above, digital tools lower barriers to entry and expansion, thus facilitating a more competitive marketplace.

- 64% of new European businesses (less than 5 years old) agreed that the costs of starting a business have reduced substantially because of internet tools.
- 61% of small businesses (fewer than 250 employees) in Europe agreed that online tools have made it easier for their business to compete with larger enterprises.

⁵ Brightpearl, MCM “The State of Omnichannel Retail” (2017), available [here](#), pg. 4.

⁶ GfK “Greek consumers purchase in an Omni-channel shopping reality” (21 November 2017), available [here](#); See also Google “Particularly Greek: The modern path to purchase in Greece” (January 2019), available [here](#), (“In comparison with their regional neighbours, Greek shoppers spend more time researching across touchpoints and tend to make offline purchases.”)

⁷ Greek Reporter “Greek Consumers Significantly Increase Use of E-commerce, Survey Shows” (7 April 2020), available [here](#). Retailers are responding to this increased demand. See e.g. City AM “Tesco expands online order capacity to 1m slots a week during coronavirus crisis” (28 April 2020), available [here](#).

⁸ *Id.*

⁹ HCC “Sector inquiry by the Hellenic Competition Commission into e-commerce” (2020), available [here](#), pg. 1; European Commission “Final report on the E-commerce Sector Inquiry” (10 May 2017), available [here](#), para. 14 (“alternative online distribution models such as online marketplaces have made it easier for retailers to access customers. Small retailers may, with limited investments and effort, become visible and sell products through third party platforms to a large customer base and in multiple Member States.”)

- Recent studies suggest the negative effects of distance on sales can be as much as 65% lower for online sales when compared to offline sales.¹⁰
- In 2019, 85 percent of online shoppers in Greece made a major part (80 percent) of their purchases at domestic online stores.¹¹ This shows that e-commerce is having a significantly positive impact on the Greek economy.

Furthermore, digital tools and the ability to interact with customers and gather data through websites leads to improved competitiveness for suppliers. As the European Commission found as part of its own e-commerce sector inquiry “[w]ith the help of the collected data they analyse customer behaviour and demand (such as the number of unique and frequent customers, the reaction to promotions), to prioritise features that may be more popular in a certain geolocation; optimise product listings and displays (as search algorithm “learns” from past history); improve marketing activity (for instance to display personalised banners); and develop the service provided as well as their website. ... they also use the data for security and fraud prevention and to comply with legal and accounting obligations.”¹²

2. Benefits to Customers

As the HCC correctly recognises, *“[t]he introduction of online shopping into our consumer habits is not surprising given the diverse benefits of digital stores: convenience, direct access, lower prices - and all this, within a few “clicks” between them. At the same time, online platforms act as intermediaries between retailers and consumers, allowing the latter to search for products and compare prices, eliminating the relative cost of research and promoting pricing competition.”*¹³

CCIA notes that Greek customers tend to pay less for products than their regional neighbours thanks to the increased transparency (facilitating price comparison) and lowered transaction costs (lowered search costs) that e-commerce provides.¹⁴ However, CCIA submits that the greater impact on consumer welfare that e-commerce provides is through fundamentally increasing the degree of competition between sellers by lowering barriers to entry and expansion and increasing the geographic scope of competition. For example, 67% of Greek consumers make purchases from sellers outside Greece.¹⁵ This increased degree of competition (from foreign sources of supply) means even lower prices and better service for Greek customers.

¹⁰ Copenhagen Economics Impact Study, pg. 12 (citing Lendle, A. et al. “There Goes Gravity: How eBay Reduces Trade Costs” 2012)

¹¹ Ecommerce News Europe “Ecommerce in Greece: €4 billion in 2019” (8 March 2019), available [here](#).

¹² European Commission “Staff Working Document Accompanying Final report on the E-commerce Sector Inquiry” (May 2017), available [here](#), para. 641-642.

¹³ HCC “Sector inquiry by the Hellenic Competition Commission into e-commerce” (2020), available [here](#), pg. 1.

¹⁴ Google “Particularly Greek: The modern path to purchase in Greece” (January 2019), available [here](#) (“All the research and careful price comparing pays off for Greek shoppers. On average, they pay less for products than their regional neighbours.”)

¹⁵ PayPal “Cross-Border Consumer Research 2018” (2018), available [here](#), pg. 6. Note that when making these purchases, the ability to rely on trusted brands like Amazon and eBay is the preference of the majority of Greek customers. *Id.*, pg. 12.

3. Addressing Restrictions to Competition

As the HCC correctly recognises “*the application of certain forms of vertical restrictions - such as setting minimum resale prices, MFN clauses, general ban on online sales or ban on selling price comparison websites - is able to prevent entry into the market or development of innovative retailers, resulting in increased price levels to the detriment of consumers.*”¹⁶ Below we discuss certain vertical restrictions, and note that in addition to business practices, there can also be certain regulatory practices that have a market distorting effect to the detriment of consumers.

A. Online Marketplace Bans

As recognised by the European Commission “certain brick and mortar requirements essentially aim at excluding pure online players from the selective distribution network, without enhancing competition on other parameters than price, such as the quality of distribution and/or brand image.”¹⁷ Given the growing importance of marketplaces for e-commerce, we think it is appropriate to characterize such online marketplace bans as a ‘hardcore restriction’ under Greek competition rules. In particular, CCIA notes the harm to consumer welfare caused by online marketplace bans, and restrictions having similar effect:¹⁸

- **Micro- and Small- and Medium-Sized Enterprises Suffer the Most.** For some sellers, online marketplace bans effectively amount to a general online sales ban.¹⁹ This is particularly true for sellers from remote areas who cannot offset their online income loss with sales from their physical establishment as well as for sellers who simply do not have their own website.
- **Cross-border Trade is Harder.** Online marketplaces make the Digital Single Market a reality today: they drive cross-border trade. For example, 93% of small businesses using the eBay marketplace in the EU export, reaching on average 18 countries annually.²⁰ In contrast, on average 26% of ‘traditional’ firms export. Online marketplace bans therefore significantly impede sellers’ ability to find customers beyond their home market.
- **Price Competition is Harmed to the Detriment of Consumers.** Online marketplaces are typically vibrant and highly competitive. That is because consumers are easily able to compare offers and prices. Prohibiting the sale of products through marketplaces reduces price transparency which reduces price competition.
- **European Sellers Can’t Access the ‘Mobile Consumer’.** Together with the wider trend in the digital economy, e-commerce has increasingly shifted to mobile devices. Online marketplaces that run successful and trusted apps and ensure mobile compatibility increase the reach of sellers.

¹⁶ HCC “Sector inquiry by the Hellenic Competition Commission into e-commerce” (2020), available [here](#), pg. 1.

¹⁷ European Commission “Final report on the E-commerce Sector Inquiry” (10 May 2017), available [here](#), para. 27.

¹⁸ For a more detailed explanation of these issues, please see CCIA’s submission to the European Commission’s e-commerce sector enquiry, available [here](#).

¹⁹ BKartA decision in AS/CS of 26.08.2015, B2-98/11, available [here](#), para. 559.

²⁰ eBay “Empowering People and Creating Opportunity in the Digital Single Market” (2015), available [here](#).

- **Cumulative Effects Magnify the Negative Impact.** The effect of OMBs is often intensified by the simultaneous imposition of such practices by several producers in a respective market. The purpose is to move online sales to independent websites and offline channels where pricing is less transparent and less competitive.

As the law currently stands, *per se* online marketplace bans are incompatible with EU competition rules. Provided that the characteristics of the product in question necessitate a selective distribution network in order to preserve its quality and ensure its proper use in the first place, established case law states that manufacturers' distribution criteria must not go beyond what is necessary -- i.e. they must be proportionate.²¹ It is difficult to rationalize how a general and absolute online marketplace ban would fulfil these legal requirements. The legitimate aims of a manufacturer may be satisfied by laying down conditions for the sale via third-party marketplaces that are more proportionate than a blanket ban. First and foremost, the manufacturer can still require the reseller to fulfil the *proportionate* qualitative criteria when using third-party marketplaces. Online marketplaces have significantly evolved in recent years to meet justified quality requirements.²²

Accordingly, a blanket marketplace bans cannot be regarded as a quality requirement.²³ They lack a link to concrete qualitative requirements for the manner of online distribution and are therefore excessive. Furthermore, manufacturers should not be able to rely on the 'logo clause' in the last sentence of paragraph 54 of the Commission Guidelines on Vertical Restraints to change this finding.²⁴ The logo clause needs to be read in conjunction with the preceding sentence of paragraph 54 according to which suppliers may require its distributors to "use third party platforms to distribute the contract products only in accordance with the standards and conditions agreed between the supplier and its distributors for the distributor's use of the internet." In other words, it is legitimate for a supplier to require that its authorized resellers maintain a consistent quality of online presentation of the products concerned, but if a supplier already deems such a marketplace to meet its standards for direct sales, the same consideration should apply to distributors and retailers. In our experience manufacturers excessively rely on the 'logo clause' to justify the imposition of blanket bans on authorized sellers using any online marketplace to reach customers, irrespective of the substance of their criteria for online sales or the quality of the sales experience provided.

In conclusion, blanket online marketplace bans should be considered a hardcore restriction of competition by restricting the customers to whom a reseller may sell the contract goods and by restricting passive sales to end users. Distribution restrictions in selective distribution systems must be based on criteria that are qualitative, objective, non-discriminatory, reasonable and necessary. The benefits of these systems must also outweigh the restriction of intra-brand competition. Blanket OMBs affecting all marketplaces are incompatible with these principles.

²¹ Case C-439/09 *Pierre Fabre*. Judgment of 13.10.2011, para. 41.

²² Likewise, the aim to avoid an alleged risk of consumer confusion about his contractual partner's identity (i.e. the authorized reseller or the digital intermediary) may not serve as a justification for an absolute ban because such intention would neither aim at *preserving the quality* of the contract goods nor at *ensuring their proper use*.

²³ See BKartA decision in *ASICS* of 26.08.2015, B2-98/11, paras. 46 & 577 et seq.

²⁴ European Commission "Guidelines on Vertical Restraints" (2010), available [here](#).

B. Selective Distribution Aimed to Maintain a Luxury Image

Selective distribution systems and absolute online marketplace bans are often imposed to achieve the aim of restricting competition between retailers. The aim of maintaining luxury image does not justify such a restriction. In the *Pierre Fabre* ruling, the CJEU held that the “aim of maintaining a prestigious image is not a legitimate aim for restricting competition and cannot therefore justify a finding that a contractual clause pursuing such an aim does not fall within Article 101(1) TFEU”.²⁵

Further, selective distribution systems are increasingly used by manufacturers and brands for everyday products, clearly with a view to avoid price competition rather than to protect a ‘luxury image’.

C. Other Restrictions

As explained above, e-commerce and digital distribution channels more broadly, have generated significant welfare enhancing benefits for both consumers and sellers in Greece. However, in addition to the contractual restrictions listed above that limit these benefits, there are also several regulatory impediments in Greece that also limit the achievement of these benefits, in particular with regards to digital mobility services.

In recent years, ride-hailing and micro-mobility intermediary platforms considerably transformed the way people move around thanks to innovative intermediation tools using the latest technology up to date. Ridesharing has been recognised as a disruptive innovation globally, shaking up local transportation and competing with incumbent local monopolies the world over. The innovation is in the technology, efficiency and speed of the matching service, providing positive efficiencies for consumers, offering more choices, cheaper prices and innovative ancillary services for Greek consumers.

On 30 March 2018, the Law 4530/2018 came into effect in Greece, amending the regulatory framework for the legal entities engaged in online or phone intermediation services for taxis (“public transport vehicles”) or private hire vehicles (“private transport vehicles with a driver”). Law 4530/2018 provides that companies which offer online or phone intermediation services for transportation services must comply with stricter requirements if they influence prices or critical aspects of the transportation service for certain requirements as compared to other mobility companies. It also sets forth a presumption that online or phone intermediation companies that satisfy these criteria are deemed “transportation service providers”, which imposes certain requirements that make it harder for private hire vehicle operators to use ride-hailing apps efficiently. These requirements reduce the availability of services to Greek customers, thereby decreasing competition, increasing prices, and reducing service. These measures also impact the availability of driving opportunities for workers. For example, after the entry into force of this Law 4530/2018, Uber suspended its UberX product in April 2018

²⁵ Case C-439/09 *Pierre Fabre*. Judgment of 13.10.2011, para. 46.

when more than 100.000 local users were using UberX services in Athens, and 200 SMEs employing 1.300 drivers were active on the platform.²⁶

By differentiating between traditional service models and digitally facilitated services, the Greek law appears to restrict competition for the supply of mobility services.²⁷ We note that the OECD has raised similar concerns with other similar restrictions in the past.²⁸ CCIA submits therefore that the HCC should also consider the impact of regulatory restrictions to competition and their effect on consumers in Greece.

Respectfully submitted,

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²⁶ 600 SMEs and 4.500 drivers were expected by the end of 2018.

²⁷ See e.g. A. Ferti "Taxi-Hailing Services: The Recent Law Concerning Online Transportation Platforms and the Interplay with Competition Rules" (2019), available [here](#).

²⁸ OECD "OECD Competition Assessment Reviews: Greece" (2013), available [here](#), pgs. 193-195.