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Cartels 2022

Greece: Law & Practice

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Law and Practice

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1. BASIC LEGAL FRAMEWORK

1.1 Statutory Bases for Challenging Cartel Behaviour/Effects

The statutory basis for challenging cartel behaviour in Greece is enshrined in Law 3959/2011 (the “Greek Competition Act”), recently modified by Law 4886/2022. Article 1 of the Greek Competition Act essentially mirrors Article 101 of the Treaty on the Functioning of the European Union (TFEU), and it is interpreted accordingly by the Hellenic Competition Commission (HCC).

One of the major amendments in Law 4886/2022 is the insertion of a new prohibition in Article 1A (“Invitation to collude and announcement relating to communicating future pricing intentions for products and services between competitors”). The newly inserted Article 1A of the Greek Competition Act mainly addresses price signalling and other anti-competitive unilateral conduct by undertakings (see also **1.4 Definition of “Cartel Conduct”**).

Finally, Law 4529/2018 transposes into the Greek legal system the EU Antitrust Damages Directive 2014/104/EU.

1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards

Public Enforcement Agencies

HCC

The HCC is the main competent authority for the enforcement of the competition rules included in the Greek Competition Act. It is an independent authority with administrative and economic autonomy supervised by the Minister of Development and Investments.

With respect to anti-competitive agreements and concerted practices, the HCC’s main responsibilities and powers are, inter alia, to:

- investigate anti-competitive agreements and concerted practices;
- issue decisions;
- impose administrative fines and other sanctions where applicable;
- order interim measures;
- order commitments;
- conduct dawn raids; and
- conduct sector-specific inquiries.

EETT

As regards electronic telecommunications and postal services, the competent authority to enforce the competition rules in these sectors is National Telecommunications & Posts Commission (EETT).

In this guide, any references to the HCC and its investigatory and enforcement powers also apply to EETT, which enjoys the same powers as the HCC when implementing competition rules regarding the electronic telecommunication and postal sectors. Given that the HCC is the main competition authority, EETT may seek its guidance and assistance in any antitrust matter arising in the area of its competence, in accordance with the provisions of Articles 113 paras. (f) and (g) of Law 4727/2020 for electronic communications and Article 5 of Law 4053/2012 for postal services.

Scope of liabilities, penalties, and awards

The HCC, when finding an infringement of Article 1 of the Greek Competition Act or Article 101 of TFEU, may

- address recommendations to the undertakings;

- require the undertakings to bring the infringement to an end and refrain from it in the future;
- impose behavioural or structural remedies depending on the gravity of the infringement and necessity and adequacy of such remedies for the termination of the infringement; and/or
- impose fines.

The HCC may also accept commitments proposed by the undertakings in accordance with the procedure set out in HCC Decision 588/2014. This process takes place prior to HCC reaching its decision. If the HCC accepts these commitments, it adopts a commitment decision binding on the undertakings without further investigating the infringement. In case of non-compliance with the commitments undertaken, the HCC can impose a fine of up to 10% of their total national turnover on the undertakings.

With respect to fines, undertakings found to have infringed antitrust legislation are subject to administrative fines, while their representatives (natural persons) are subject to both administrative and criminal liability.

The HCC and the Greek Administrative Courts must consider the principle of proportionality when imposing a fine or agreeing to remedies or commitments. The fines should be effective, proportionate, and deterrent.

For the civil law damages imposed by the civil courts, see **5. Limitation Periods**.

Administrative fines and sanctions

The administrative fines can be up to 10% of the total worldwide turnover of the undertakings during the financial year preceding the publication of the HCC decision. In the case of a group of companies, the calculation of the fine shall take account of the total worldwide turnover of the

group. The fine imposed is calculated on the basis of the gravity, the duration, the geographical scope of the infringement, and the duration and type of participation in the infringement of the undertaking concerned. If the economic benefit enjoyed by the undertaking as a result of the infringement can be measured, then the fine cannot be less than that (even if it exceeds the threshold of 10%). For the purpose of imposing the fine, the concept of enterprise covers the parent companies within a single economic entity, the partial and total universal successors in the case of corporate transformations and the acquirers of the business after the occurrence of the infringement if the infringer is unable to pay the fine or other fine imposed at the time of their imposition.

The HCC may also impose financial penalties per day of non-compliance, which shall be determined in proportion to the average daily total global turnover of the undertaking or association of undertakings before the issuance of its decision, capped at three per cent (3%) of this turnover and calculated from the date set by the HCC decision.

The executives of the undertakings involved in the infringement are personally and jointly liable for paying all fines imposed by the HCC against the undertakings. In addition, the HCC may also impose separate administrative fines on the executives ranging from EUR200,000 to EUR2,000,000 where it is evident that they have engaged in preparatory actions or illegal business behaviour.

HCC decisions are subject to appeal before the Athens Administrative Appeal Court within 60 days of service of the decision. The appeal does not have a suspensory effect with regard to the sanctions imposed by the HCC unless the Appeal Court issues a relevant order. The judgment of the Administrative Court of Appeal

of Athens may, in turn, be appealed before the Council of State (ie, the Supreme Administrative Court of Greece).

Within 30 days from the notification of an HCC's decision, by which the infringement is established, or the probability of the infringement and its termination is ordered, the undertaking(s) concerned should inform the president of the HCC about the actions taken or to be taken to end the infringement.

The HCC has the power to impose interim measures on those undertakings where an infringement is deemed probable and there is an urgency due to the risk of serious and irreparable harm to competition. The HCC's decisions imposing interim measures can be appealed before the Administrative Court of Appeal of Athens.

Lastly, for the fines that HCC may impose for non-co-operation with its requests or for providing inaccurate or misleading information, see **2.8 Non-cooperation with Enforcement Agencies**.

Calculation of fines

The HCC has issued Guidelines for calculating fines imposed under the Greek Competition Act. In particular, the HCC adopts the following when calculating a fine to be imposed on undertakings or associations of undertakings.

First, it sets a basic amount of the fine for each undertaking or association of undertakings according to the gravity and duration of the infringement. Further, it may increase or decrease the amount, depending on aggravating or mitigating circumstances.

The basic amount of the fine is set as follows: a percentage of up to thirty per cent (30%) is set on the annual gross income of the undertaking

deriving from the products or services related to it for each year of the infringement, cumulatively.

Criminal sanctions

The HCC does not possess the power to impose criminal sanctions; this lies within the competence of the criminal courts. The Greek Competition Act provides an obligation for the HCC when it finds an Article 1 infringement to report it to the competent prosecution authority within no more than ten days from issuing its decision.

In this respect, the executives of the undertakings involved are subject to criminal sanctions ranging between EUR15,000 and EUR150,000.

In addition, a punishment of at least six-months imprisonment is imposed on:

- whoever obstructs or hampers, in any manner, investigations carried out by the HCC, in particular by creating impediments or concealing evidence;
- whoever refuses or prevents the provision of information;
- anyone who knowingly provides false information or conceals evidence; and
- whoever refuses, after having been duly summoned by an HCC's official, to make a sworn or unsworn statement before it and who, during their statement, knowingly provides false information or denies or conceals any facts.

Lastly, imprisonment from two to five years and fines ranging from EUR100,000 to EUR1,000,000 may be imposed by the criminal courts if the illegal collusion refers to cartel activities taking place between competitors.

1.3 Private Challenges of Cartel Behaviour/Effects

Law 4529/2018 transposed into the Greek legal system the EU Antitrust Damages Directive 2014/104/EU. Under Law 4529/2018, a claim can be brought by any natural or legal person who has suffered harm caused by an antitrust infringement, regardless of whether the harm has a direct or an indirect effect on the claimant (see **5. Private Civil Litigation Involving Alleged Cartels**).

1.4 Definition of “Cartel Conduct”

The Greek Competition Act does not define the term “cartel”. Article 1 of the Greek Competition Act, which reflects the prohibition contained in Article 101 TFEU, uses the term “prohibited agreements and concerted practices” and refers to specific practices considered as having their object or effect on the prevention, restriction, or distortion of competition, identical to those included in Article 101 TFEU. As such, the following practices, *inter alia*, can be classified as cartel behaviour:

- price fixing;
- bid rigging;
- output quotas/restrictions;
- market sharing; and
- restrictions on innovation, production, distribution, technological development, investments, etc.

As mentioned in **1.1 Statutory Bases for Challenging Cartel Behaviour/Effects**, Law 4886/2022 modified the Greek Competition Act. One of the most significant novelties is the inclusion of Article 1A, which addresses issues relating to tacit collusion and price signalling.

In particular, Article 1A targets unilateral practices, thereby rendering this form of unilateral practice as a self-standing antitrust infringement. Hence, this provision goes beyond

Article 1 of the Greek Competition Act and Article 101 TFEU, which requires an agreement or concerted practice between two or more undertakings or a decision of an association of undertakings. Thus, the unilateral announcement of future pricing intentions (“price signalling”) or the invitation, coercion or induction in any other way by one undertaking to another to engage in or contribute to a prohibited agreement between competitors are prohibited under Article 1A of the Greek Competition Act.

It is worth noting that Article 1A of the Greek Competition Act, which will come into effect as of 1 July 2022, only targets big companies, meaning that undertakings with a total turnover of less than EUR50,000,000 and less than 250 employees are excluded from its scope. This is a novel provision in that there is no similar provision in other EU jurisdictions.

Moreover, Article 1(3) of the Greek Competition Act includes an identical provision to Article 101(3) TFEU, whereby some anti-competitive practices falling under Article 1 of the Greek Competition Act are eventually not prohibited, provided that they satisfy certain cumulative conditions. This exemption also applies to Article 1A of the Greek Competition Act.

Lastly, pursuant to Article 1(4) of the Greek Competition Act, EU Regulations on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices (block exemption Regulations) shall apply *mutatis mutandis* to the implementation of Article 1(3) of the Greek Competition Act, to agreements, decisions by associations of undertakings or concerted practices which affect the Greek market but are not likely to affect trade between member states within the meaning of Article 101(1) TFEU.

1.5 Limitation Periods

The Greek Competition Act establishes a five-year limitation period for imposing penalties by the HCC. The five years commences on the date the infringement was committed or, in case of continuing infringements, on the date on which it ceased. The limitation period is interrupted by any action taken by the HCC for the investigation in relation to the specific infringement. Such actions interrupting the limitation period may include, in particular, the following:

- written requests issued by the HCC to provide information;
- inspection orders;
- the initiation of proceedings in relation to the infringement;
- the assignment of the case to a rapporteur; and
- the notification of a statement of objections.

The limitation period shall recommence following each interruption. In any event, the limitation period for the imposition of fines by the HCC cannot exceed ten years, provided that the HCC has not imposed any fines by that time. Finally, the limitation period shall be suspended for as long as the HCC's decision or a Court's decision is pending.

With respect to the action for damages, Law 4529/2018 provides that the limitation period for bringing an action for damages before civil courts is five years from the day when the claimant knew or could have reasonably known about the infringement, the damage, and the identity of the relevant undertaking. In any event, the limitation period expires 20 years from the day when the infringement of competition law has ceased.

1.6 Extent of Jurisdiction

The Greek Competition Act applies to all restrictions of competition that affect or might

affect the Greek market, even if these are due to agreements between undertakings, decisions by associations of undertakings, concerted practices between undertakings or associations or concentrations of undertakings implemented or taken outside Greece or to undertakings or associations of undertakings that have no establishment in Greece.

1.7 Principles of Comity

Principles of comity are not established and applied under Greek competition law.

1.8 COVID-19

Due to COVID-19, the HCC accepted documents submitted via email instead of physically being delivered to its premises.

In addition, in light of COVID-19, the HCC has set up a competition task force, which serves as a one-stop-shop service to collect questions raised by different institutions and businesses concerning the initiatives they intend to take and their compatibility with competition law.

The HCC has also initiated an investigation into price increases and output restrictions in healthcare materials and other related products, in particular surgical masks and disposable gloves, as well as other products such as antiseptic wipes and solutions, following numerous consumer complaints regarding significant price increases and shortcomings of these products following the COVID-19 pandemic.

2. PROCEDURAL FRAMEWORK FOR CARTEL ENFORCEMENT – INITIAL STEPS

2.1 Initial Investigatory Steps

Investigation can be initiated:

- by HCC's own initiative (ex officio investigations);
- following a complaint by a third party; and
- following a leniency application.

The HCC is legally bound to consider all complaints legally filed. However, under HCC's prioritisation system, the HCC shall investigate pending cases according to their ranking on the basis of the point system. In practice, the HCC focuses its enforcement resources on cases with the most probability of significantly impacting competition in the market and leading to consumer harm. Low-ranking complaints can be rejected by the HCC by summary decisions, informing the complainants of the reasons for not pursuing their complaint.

As regards the complaints that satisfy the priority criteria, the Chairman of the HCC introduces the case before the HCC, and a Rapporteur is appointed, who will be in charge of the case and will prepare the statement of objections (SO).

HCC Hearing and Decision

The SO is submitted to the HCC Plenary or corresponding chamber, as appropriate, within 150 days from the assignment to the Rapporteur. The HCC President may extend this time limit to no more than 60 days. Upon the submission of the SO to the HCC, the parties are notified, together with an invitation to a hearing before the HCC. The parties are granted access to the non-confidential information of the HCC's file and have the opportunity to respond in writing and in the course of the hearing.

The HCC may issue:

- an infringement decision;
- a commitments decision;
- a decision abstaining from finding an infringement if the evidentiary threshold is not attained;

- a settlement decision.

The HCC shall issue one of the aforementioned decisions within 15 months from the Rapporteur's appointment. This deadline can be extended for up to two months if further investigation is deemed necessary.

Having regard to the limitation periods set out in **1.5 Limitation Periods**, there is no deadline within which the HCC is obliged to complete its investigation and reach a decision on a case. The duration depends on a number of factors, including the complexity of each case, the extent to which the parties concerned co-operate with the HCC and the exercise of the parties' rights of defence.

Pursuant to the data provided by the HCC, the average duration of cartel cases in 2001-15, from the initiation of the investigation until the issuing of the HCC decision, was approximately 50 months. The shortest duration is 20 months, and the longest is over 100 months.

Commitments Procedure

The HCC may accept commitments proposed by the undertakings in accordance with the procedure set out in HCC Decision 588/2014. This process takes place prior to HCC reaching its decision. If the HCC accepts these commitments, it adopts a commitment decision making them binding on the undertakings without investigating further the infringement. In case of non-compliance with the commitments undertaken, the HCC can impose on the undertakings a fine of up to 10% of their total national turnover.

2.2 Dawn Raids

The HCC has wide investigative powers, which mirror the investigative powers enjoyed by the European Commission (EC). In particular, the HCC can inspect business premises (dawn raids).

In addition, the HCC can conduct inspections of the private property of directors, managers, and other staff members of the undertaking concerned, provided that a court warrant is issued and a public prosecutor is present.

An outside counsel can be present during the dawn raid, but this is not a prerequisite for the legality of the inspection, and the HCC is not obliged to wait for the outside counsel to enter the relevant premises and commence the inspection.

Dawn raids are very common in practice, and over the last couple of years, the number of dawn raids performed by the HCC has drastically increased. For instance, in the course of 2021 and up to early June 2022, the HCC has performed 15 dawn raids. In particular, the HCC has recently carried out dawn raids at the premises of undertakings active in the sectors of:

- cosmetics and personal care;
- eyewear;
- supply and retail sale of pasta products;
- production and supply of pharmaceutical products;
- refining, wholesale and retail trade of petrol (gasoline) and diesel;
- public tenders for the provision of IT systems;
- banking and payment services sector; and
- transportation sector.

HCC's Inspector Powers

During a dawn raid, the authorised HCC officials enjoy the powers of tax auditors. More specifically, HCC officials have the power to:

- inspect books, records and other documents of the undertaking concerned, and take copies thereof;
- seize, receive, or obtain copies of books and documents;

- inspect and collect information and data from mobile terminals and portable devices and their servers and the cloud computing located inside or outside the premises of the undertaking concerned;
- seal any professional premises, books, or documents; and
- take sworn or unsworn witness statements and ask for explanations of facts or documents relating to the subject matter and purpose of the inspection and to record their respective answers.

The types of evidence deemed acceptable by the HCC include documents, oral statements, emails, whether any such messages appear to have been read or deleted, records and any other item containing information, regardless of form and the medium on which the information is stored.

At the end of the inspection, the undertaking is entitled to an electronic copy of all documents obtained by the HCC.

Limitations to HCC's Inspector Powers *Inspection order*

The HCC's inspection shall be limited to the documents related to the object of the inspection and the activities of the company related to the sectors indicated in the inspection order. Evidence taken in a context of a particular case cannot be used in another case.

Privilege against self-incrimination

HCC officials are not entitled to request an undertaking or its directors to provide statements that would amount to an admission of guilt. The Greek Competition Act expressly provides that the HCC requests should "comply with the principle of proportionality and not oblige the addressee to admit the existence of the infringement".

Attorney-client privilege

HCC officials are not entitled to request documents protected under the attorney-client privilege. The attorney-client privilege covers written communications that:

- aim to provide/request legal advice; and
- the legal advice comes from outside counsel.

For the consequences of refusing to co-operate with the HCC, see **2.8 Non-cooperation With Enforcement Agencies**.

2.3 Spoliation of Information

In order to avoid the spoliation of potentially relevant information, the HCC may seize books, documents, calendars, hard disks, electronic storage and data transfer media in relation to the business information falling under the scope of the investigation.

The undertaking under investigation must be physically present at the HCC premises when the unsealing occurs to identify any confidential data contained in the electronic files and emails, and written communications protected under the attorney-client privilege. Such data may be excluded from the HCC's file.

2.4 Role of Counsel

As described under **2.2 Dawn Raids**, an external legal counsel can be present during the dawn raid, but this is not a prerequisite for the legality of the inspection. Even in cases where an external legal counsel is present, the HCC is not obliged to wait for the former to arrive to enter the premises and commence the inspection.

In-house counsel can also be present during the inspection and participate in the interviews/witness statements. However, the role of the in-house and external counsel is limited, as they can only provide clarifications on behalf of the individuals, and they are not entitled to respond

on their behalf and/or otherwise intervene. In-house and/or external counsel may also be present during the unsealing of the evidence obtained by the HCC officials, which routinely takes place about a month after the day of the dawn raid.

The Greek Competition Act does not require individuals to obtain separate legal counsel from the counsel representing the relevant company save for any conflicts of interest concerns. However, it may often be advisable to do so, given that individuals are also personally sanctioned under the Greek Competition Act.

The initial steps that a counsel should undertake during the initial phase of an inspection are, inter alia, the following:

- examine the HCC's inspection order and identify the scope of the inspection;
- make sure the undertaking and its employees do not obstruct the HCC officials; and
- make sure the undertaking and its employees do not destroy any evidence.

2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony

The evidence examined by the inspectors may be either in printed or in digital form, ie, stored on the undertaking's server or cloud. Regarding the electronic files, the search is conducted in any way deemed appropriate by the HCC, ie, by looking into the files and texts using "keywords" or by folder/file. For more information on the HCC's officials' powers to obtain evidence during an inspection and the limitations thereof, see **2.2 Dawn Raids**.

Apart from HCC's power to obtain evidence during an inspection, the HCC may also request information from the undertakings concerned in writing. Compliance with such requests is mandatory, and the deadline to respond shall

be less than ten calendar days. The HCC may also request the submission of certain types of information, in particular through an online platform or an electronic interface.

Moreover, to establish the infringements of Articles 1 and 1A of the Greek Competition Act, and Articles 101 TFEU, the HCC may summon any representative of an undertaking to sworn or unsworn witness statements. The latter is notified at least five days before the date of the statement. During the statement, the declarant has the right to be assisted by a lawyer, who is not allowed to answer questions on behalf of his client and intervene in the course of the statement. In addition, competent employees/managerial staff members of the company can be present only to assist the declarant.

Lastly, the HCC may also call to deliberations any representative of an undertaking, as well as any other natural person via invitation, submitted at least five days before the date of the discussion.

In the event of refusal, obstruction, or delay in providing the requested information or providing inaccurate, misleading, or incomplete information, the fines and sanctions are described in **2.8 Non-cooperation With Enforcement Agencies**.

2.6 Obligation to Produce Documents/ Evidence Located in Other Jurisdictions

The undertaking and the relevant individuals are required to co-operate fully and actively with the inspectors, as well as with the HCC's requests and provide all requested information. The latter obligation extends to all information that the undertakings or the individuals have access to, including information located or available in other jurisdictions.

2.7 Attorney-Client Privilege

As described in **2.2 Dawn Raids**, attorney-client privilege covers all written communications before, during and after an investigation. The attorney-client privilege is subject to two cumulative conditions:

- the communication should be made for the purposes and in the interests of the client's rights of defence in competition proceedings; and
- the privilege only applies to communications from independent lawyers, ie, external lawyers who are not bound to the client by a relationship of employment (eg, in-house counsel).

Lastly, the external counsel should be entitled to practice his profession in any of the EU member states for the privilege to apply.

In addition to the attorney-client privilege, the privilege against self-incrimination applies in Greece (see also **2.2 Dawn Raids**).

2.8 Non-cooperation With Enforcement Agencies

Initial Requests for Information, Especially in the Context of a Cartel Investigation, Are Not Usually Resisted

Written requests for information

In the event of refusal, obstruction or delay in providing the information requested or refusal to provide oral clarifications or provision of inaccurate, misleading or incomplete information, the HCC may:

- impose on the undertaking concerned a daily fine for non-compliance, which is defined proportionally to the average daily total world turnover of the undertaking capped at 3% of turnover, and

- impose on the undertaking's employees a fine ranging from EUR15,000 to EUR30,000 per day of non-compliance.

In the case of civil servants or employees of public-law legal entities or local or regional authorities, the HCC may file an official report, so that disciplinary action can be taken.

Dawn raids

For any undertaking or natural person obstructing or hampering HCC's investigations, the HCC may impose a fine per day of non-compliance. In particular:

- with respect to the relevant undertaking, the fine is defined proportionally to their average total global turnover, capped at 3% of turnover;
- concerning the undertaking's employees, the fine ranges from EUR15,000 to EUR2,000,000;
- regarding any other natural person (apart from the employees), the fine ranges from EUR15,000 to EUR2,000,000; and
- where the infringement is committed by an association of undertakings, the fine may be up to 10% of the total global turnover of its members who were active in the market in which the infringement occurred in the year preceding the issuance of HCC's decision.

When calculating the fines, the HCC shall consider the seriousness of the case, the invalidity of the acts and their impact on the outcome of the investigation.

Lastly, the obstruction or hampering of HCC's investigations, the refusal to provide the requested information and the provision of inaccurate information constitute criminal offences punishable with imprisonment of at least six months.

The HCC has recently imposed a fine of EUR800,000 on an undertaking and its employees for hindering and destructing evidence by, eg, deleting emails during a dawn raid (HCC Decision 688/2019).

2.9 Protection of Confidential/ Proprietary Information

The undertakings concerned can protect their confidential information from being widely disclosed. For example, in the HCC decision, in so far as it relates to business secrets (eg, financial and market share data, production secrets, supply sources, etc) or to other confidential information pertaining, eg, to information that could enable the identification of third parties that wish to remain anonymous.

Confidential information is protected irrespective of whether such information was provided under a compulsory legal procedure or informal co-operation.

2.10 Procedure for Defence Counsel to Raise Arguments Against Enforcement

After the Rapporteur issues the SO, the parties are granted access to the non-confidential information of the HCC's file and have the opportunity to respond in writing and submit any supporting evidence, which they can further elaborate on at the hearing before the HCC and then submit additional arguments. This is the stage, after the issuance of the SO and before the issuance of the HCC's decision, where a defence counsel can raise legal and factual arguments to persuade the HCC not to issue an infringement decision or otherwise improve the undertaking's position.

2.11 Leniency and/or Immunity Regime

The Greek Competition Act includes a detailed leniency regime based on the EU leniency programme and provides for either full immunity or a reduction of fines (ie, partial immunity).

Both the undertakings and the natural persons involved in an anti-competitive practice may be the beneficiaries of the leniency programme and can apply for immunity (either full or partial) to the HCC. In addition, one significant novelty that Law 4886/2022 brought is that associations of undertakings may also be the beneficiaries of the leniency program.

Full Immunity From Fines

Complete exemption from fines shall be granted to the applicant who:

- is the first to submit information and evidence, which in the HCC's view, will enable it to either:
 - (a) launch a targeted investigation with regard to the alleged violation of Article 1 of the Competition Act (and Article 101 TFEU) if the HCC did not already possess sufficient evidence; or
 - (b) find an infringement of Article 1 of the Competition Act (and Article 101 TFEU), if the HCC did possess some indications on the alleged cartel, but these were not sufficient for establishing the infringement;
- admits its participation in an anti-competitive practice;
- co-operates genuinely, fully, continuously, and expeditiously from the time it submits its application throughout the HCC's administrative procedure;
- ceased its involvement in the alleged cartel immediately following the submission of its application/evidence;
- refrains from destroying, falsifying, or withholding information or evidence of the alleged infringement;
- has not induced other companies to participate in the alleged cartel; and
- has treated its application for leniency as confidential until the issuance of the SO.

It is also worth mentioning that under the Greek leniency regime, ringleaders are not exempted from full immunity from fines.

Partial Immunity From Fines

If the applicant does not qualify for full immunity, it may receive a reduction of the fine that would otherwise have been imposed. In order to do so, the applicant must provide the HCC with evidence which has an added value to the evidence already possessed by the HCC. In addition, the general conditions described above for the full immunity, ie, admission of participation in the cartel, co-operation with the HCC, and ceasing its involvement, should be satisfied. The fine reduction is proportionate to the contribution of the undertaking/natural person/association of undertakings to establish the infringement.

It is worth noting that immunity from the fines does not entail immunity from civil law claims for damages.

Marker

Under the Greek Competition Act, applicants (ie, undertakings, natural persons, associations of undertakings) may also request a marker. The granting of a marker protects the applicant's place in the queue for leniency for a given period, thus allowing it to gather, within that period, the information and evidence necessary to meet the relevant threshold for immunity. The granting of the marker is at the discretion of the HCC. Where a marker is granted, the HCC Chairman determines the period within which the applicant must submit the information required to meet the relevant evidential threshold for immunity. The applicant should submit a minimum set of information, which, *inter alia*, includes:

- the identification of the alleged cartel members;

- the affected geographic and product market(s);
- the cartel's duration; and
- the nature of the cartel conduct and potential leniency applications submitted to other national competition authorities (NCAs) inside or outside the EU in connection with the suspected cartel.

2.12 Amnesty Regime

There is no amnesty regime under the Greek Competition Act.

3. PROCEDURAL FRAMEWORK FOR CARTEL ENFORCEMENT – WHEN ENFORCEMENT ACTIVITY PROCEEDS

3.1 Obtaining Information Directly From Employees

The HCC may seek information directly from company employees.

For exercising the powers provided in the Competition Act, authorised inspectors may request information in writing. Pursuant to Article 38 of Law 3959/2011, the Commission may request any natural person, including employees, to provide all the necessary information. The request for information addressed to a natural person/employee is formulated to respect the right of non-self-incrimination.

3.2 Obtaining Documentary Information From the Target Company

As already analysed in **3.1 Obtaining Information Directly From Employees**, the HCC may request information directly from any undertaking. The ten calendar days deadline is also applicable here.

3.3 Obtaining Information From Entities Located Outside This Jurisdiction

Any undertaking and/or natural person in Greece or another jurisdiction may be the addressee of an HCC's request for information. All undertakings located inside or outside Greece have an initial deadline of ten calendar days to respond to the HCC's request, which can be extended.

For this purpose, the HCC may seek assistance from foreign enforcement agencies (see **3.5 Co-operation With Foreign Enforcement Agencies**).

3.4 Inter-agency Co-operation/Co-ordination

It is expressly provided under the Greek Competition Act that the HCC shall co-operate with regulatory or other authorities that monitor particular sectors of the national economy. It shall assist such authorities, upon request, in the application of Articles 1 and 2 of the Greek Competition Act and Articles 101 and 102 TFEU in the relevant sectors. The HCC may also request the assistance of the above authorities in cases where the responsibility of implementing the above articles in those specific sectors lies with it.

In addition, as provided for in the Greek Competition Act, EETT may request the assistance of the HCC when enforcing competition rules in the electronic telecommunications and postal sectors.

In September 2020, the HCC and the Hellenic Regulatory Authority for Energy (RAE) entered into a memorandum of understanding (MoU), to enhance co-operation between the two authorities by combining their common experiences. Similarly, in April 2021, the HCC signed a MoU with the Regulatory Authority for Ports (RAL) with a view to consolidate and enhance the co-operation between the two

Authorities. The HCC has also signed MoUs with various consumers' organisations.

3.5 Co-operation With Foreign Enforcement Agencies

The HCC closely co-operates with the EC, the NCAs of the EU member states and the NCAs of non-EU member states with which the HCC has signed bilateral agreements (eg, with the NCAs of Albania, North Macedonia, and Armenia).

For the purpose of enforcing the competition law rules, the HCC, the EC and the NCAs of the EU member states have the power to exchange evidence, including confidential information in the context of the European Competition Network (ECN).

In addition, the HCC may request a NCA of an EU member state to take any investigative measure on its territory, on behalf of the HCC, to determine the extent to which undertakings do not comply with the investigative measures ordered or decisions issued by the HCC.

3.6 Procedure for Issuing Complaints/ Indictments in Criminal Cases

As described in **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**, the HCC does not have the power to impose criminal sanctions as the latter lies within the competence of criminal courts.

In order for a case to be brought before the Greek criminal courts, criminal proceedings should be initiated by the prosecutor. In particular, the prosecutor initiates criminal proceedings upon receiving a complaint or ex officio. The prosecutor will subsequently initiate a preliminary investigation, during which the defendant has the right to be heard by the relevant inspector officers. When the initial investigation is complete, the prosecutor may decide to:

- bring the case before the Greek criminal courts;
- dismiss the case in the event of insufficient evidence; or
- order a further investigation process in case additional evidence is deemed necessary.

The competent criminal court, where cartel cases are heard consists of three judges who examine all arguments and evidence raised by the defendant.

From the initiation until the end of the criminal proceedings, the defendant has access to the prosecutor's file against him.

3.7 Procedure for Issuing Complaints/ Indictments in Civil Cases

As previously described, Law 4529/2018 transposes into the Greek legal system the EU Antitrust Damages Directive 2014/104/EU. In particular, claims for antitrust damages are brought before the specialist section of the Athens Court of First Instance, consisting of three judges specialising in competition law. Likewise, subsequent appeals are also heard before the Athens Court of Appeal.

A prior HCC decision finding a cartel infringement is not a prerequisite for a third party to bring a damage claim before civil courts.

In terms of procedure, once the damages claim is filed, it must be served to the counterparty within 30 calendar days from its submission. Once the counterparty gets served, each party should file its pleadings and evidence within 90 calendar days. Furthermore, the parties have an additional 15 calendar days to submit their counter-pleadings. Subsequently, a hearing before the competent court is scheduled.

Before submitting their pleadings, the parties must attend an obligatory initial mediation

session. In case the latter is successful, the agreement resulting from the mediation is ratified by the civil court and serves as an enforcement title. If the mediation is unsuccessful, the case is brought before the competent court as described above.

As far as access to evidence is concerned, Law 4529/2018 provides that the claimant may request the civil court to order the disclosure of evidence that is in the control of the defendant or third party if the claimant has already presented it before the court sufficient facts and evidence to support the plausibility of its claim.

Access to HCC's File

Moreover, access to HCC's file is subject to certain conditions and can only be granted as a last resort. More specifically, evidence in the form of information prepared particularly for the HCC proceedings (eg, replies to HCC's information requests), information that the HCC has drawn up and sent to the parties (eg, SO), as well as settlement submissions that have been withdrawn, can only be disclosed after the HCC has closed the administrative proceedings before it.

Leniency statements and settlement submissions are strictly confidential, and they are inadmissible in actions for damages.

Nevertheless, documents obtained during HCC's investigation can be disclosed in the context of pending civil proceedings, following a petition from any party to the trial, insofar as the petition is justified, and this solution is viewed as the last resort.

Criminal Court's Findings

Lastly, findings of the criminal court may only be presented as evidence of a cartel infringement before the civil court, only once the criminal case is closed.

3.8 Enforcement Against Multiple Parties

The HCC may initiate enforcement actions against multiple parties in a single proceeding.

For instance, in 2016, the HCC initiated enforcement actions against several undertakings active in the construction sector in Greece for allegedly participating in collusive schemes regarding tenders for public works of infrastructure. Some of these undertakings have opted for the settlement procedure (for the notion of "hybrid settlement", see **4.2 Procedure for Plea Bargaining or Settlement**). The HCC had issued two separate decisions:

- decision 642/2017 for those undertakings that settled, which found that the relevant undertakings have infringed Articles 1 of the Greek Competition Act and 101 TFEU and imposed fines of approximately EUR81,000,000, while it also granted full immunity from the fines to the leniency applicant; and
- decision 647/2017 for those undertakings that did not settle, by which the HCC imposed fines of approximately EUR34,214,196, while it found that some undertakings did not infringe Articles 1 of the Greek Competition Act and 101 TFEU due to insufficient evidence. It is also worth noting that HCC Decision 642/2017 depicted the first settlement in cartel proceedings.

3.9 Burden of Proof

As far as proceedings before the HCC and civil courts are concerned, each party bears the burden of proof of its allegations. On the contrary, in proceedings before the criminal courts, the public prosecutor bears the burden to establish the defendant's guilt.

3.10 Finders of Fact

As far as proceedings before the HCC and civil courts are concerned, each party bears the burden of proof of its allegations. On the contrary, in proceedings before the criminal courts, the public prosecutor bears the burden to establish the defendant's guilt.

3.11 Use of Evidence Obtained From One Proceeding in Other Proceedings

On whether evidence obtained in one proceeding can be used in other proceedings, refer to the response under **3.7 Procedure for Issuing Complaints/Indictments in Civil Cases**.

3.12 Rules of Evidence

As regards proceedings brought before civil and criminal courts, the assessment of the submitted evidence is left to the discretion of the courts. In general, preference is given to documentary evidence over witness testimonies. Overall, the following means may, inter alia, constitute admissible evidence:

- documentary evidence (eg, contracts, email correspondence, notes);
- expert reports;
- witness statements;
- judicial documents; and
- certified documents.

3.13 Role of Experts

Expert opinions may constitute admissible evidence before the Greek administrative, civil and/or criminal courts. In addition, the civil and/or criminal court itself may order the appointment of experts when the case requires specific knowledge or experience.

In addition, regarding proceedings before the HCC, the parties may consult experts, such as economists, and submit their opinion as part of their argument.

Lastly, the Greek Competition Act expressly provides that the HCC may consult experts and specialists, natural or legal persons, on particular issues and problems if necessary and appropriate.

3.14 Recognition of Privileges

In addition to the attorney-client privilege and the privilege against self-incrimination described under **2.2 Dawn Raids**, the presumption of innocence is also applicable regarding criminal court proceedings.

3.15 Possibility for Multiple Proceedings Involving the Same Facts

In principle, having simultaneous enforcement proceedings between the parties involving the same facts is prohibited.

However, it is possible to have multiple proceedings running simultaneously before different courts and authorities. For instance, in the context of the same cartel infringement, the HCC proceedings, as well as the proceedings before the civil and criminal courts may occur simultaneously. Yet, although, for instance, a prior HCC decision is not a precondition for applying for damages before the civil courts, an HCC decision establishing a cartel infringement would facilitate the claimant's position. In addition, following the finding of an infringement, the HCC sends the relevant information to the prosecutor so that the latter can investigate criminal liability; it often happens in practice that criminal proceedings are initiated following the HCC's decision establishing an infringement.

4. SANCTIONS AND REMEDIES IN GOVERNMENT CARTEL ENFORCEMENT

4.1 Imposition of Sanctions

The HCC has the power to impose administrative fines and sanctions on undertakings or natural persons. For the administrative fines and sanctions that the HCC may impose, see **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards** and **2.8 Non-cooperation With Enforcement Agencies**. The fines and sanctions are assessed in case of an appeal by the competent appellate administrative courts.

On the other hand, the HCC does not have the power to impose criminal sanctions, which lies within the competences of the criminal courts.

In addition, civil courts are authorised to examine civil claims for damages for infringements of competition law and award compensation to the claimants.

4.2 Procedure for Plea Bargaining or Settlement

The Greek Competition Act provides for a settlement procedure. The settlement procedure concerns cases where undertakings make an unequivocal acknowledgement of liability in relation to their participation in conduct that violates competition law. As a result, undertakings can benefit from a fine reduction of 15%. The settlement procedure is essentially modelled upon the EU settlement procedure and aims at simplifying and expediting the handling of pending cases.

On top of the unequivocal acknowledgement of the undertaking's participation and liability in relation to the infringement, the parties should not request full access to the HCC file or an oral

hearing before the HCC's Board. In addition, undertakings subject to a settlement procedure should waive their right to appeal the HCC's decision concerning specific aspects, such as the validity of the procedure.

Some undertakings settle in the context of hybrid decisions possible under the Greek Competition Act and adopted by the HCC, while others follow the standard procedure (see **3.8 Enforcement Against Multiple Parties**).

Settlements are not incompatible with leniency. More specifically, when settled cases also involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.

Lastly, a significant modification to the Greek Competition Act brought by Law n. 4886/2022 is the addition of a provision (ie, Article 29A), which extends the settlement procedure to vertical restraints, abuse of dominant position, and unilateral conduct under the newly inserted Article 1A of the Greek Competition Act (for a description of Article 1A of the Greek Competition Act, see **1.4 Definition of "Cartel Conduct"**).

Initiation of the Settlement Procedure

Undertakings may, at any stage before the HCC notifies its SO, and no later than 35 calendar days before the hearing of the case if the SO is already notified, express their interest in engaging in settlement discussions. The decision to initiate or not the settlement proceedings, as well as the adoption of a final settlement decision, lies within the discretion of the HCC. In particular, to determine whether a case is suitable for settlement, the HCC will weigh a number of factors, such as:

- the number of businesses involved in the investigation and the number of businesses

- potentially and genuinely interested in settlement;
- the number and the nature of the alleged infringements;
 - whether procedural efficiencies and resource savings can be achieved; and
 - any aggravating circumstances.

Proceedings Following the Initiation of the Settlement Procedure

If the HCC decides to commence the settlement procedure, the HCC and the parties will get into bilateral discussions. In particular, for the undertakings to make an informed decision, bilateral meetings are held between the HCC and relevant undertakings, in which information about the case is disclosed. This information includes the facts known to the HCC, the specific evidence indicating that an infringement exists and the range of fines that would be imposed. Bilateral meetings are also an opportunity for the parties to make statements and written submissions to present their arguments. These are confidential and cannot be used in other proceedings, such as follow-on damage claims.

Upon conclusion of the bilateral discussions, the interested party shall, within a set deadline, submit a settlement proposal accepting liability for the infringement and the maximum amount of fine. The HCC may accept or reject the Settlement Proposal. If one or more of the alleged participants use their right to opt out of the procedure, the HCC may settle with the remaining alleged participants (ie, resulting in hybrid settlements).

Outcome of the Settlement Procedure

If the HCC accepts the settlement proposal, it issues a settlement decision, confirming the infringement and granting a 15% reduction of the administrative fine. HCC's settlement decision is subject to judicial review by the national courts.

In addition, provided that the fine imposed by the HCC is paid in full, criminal and administrative liability (including fines imposed in non-criminal judicial proceedings), as well as exclusion from public tenders or concession contracts, except in the case of repeated infringement/recidivism, is waived. However, the parties may be subject to civil claims for damages.

HCC's Precedent

Since 2021, the HCC has issued four settlement decisions. The HCC issued its first settlement decision in a major cartel case in the construction sector (HCC Decision 642/2017).

4.3 Collateral Effects of Establishing Liability/Responsibility

The establishment of participation and liability in an infringement strengthens the claimant's position in the application for cartel damages before the civil courts. In particular, an HCC's finding of an infringement would facilitate proof of it in the context of private action.

As regards the collateral damages, if an undertaking is found liable or responsible for competition law infringement, it may be banned from accessing public funds (also known as debarment).

4.4 Sanctions and Penalties Available in Criminal Proceedings

With respect to the applicable criminal fines and sanctions, see **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**. It is worth noting that the HCC does not have the power to impose criminal sanctions, while these lies within the competences of the criminal courts. The Greek Competition Act provides a frame within which the fine and the duration of the imprisonment may lie. The criminal court determines the exact amount of the fine to be imposed and the duration of the imprisonment on a case-by-case basis.

4.5 Sanctions and Penalties Available in Civil Proceedings

As described in **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**, any natural or legal person who has suffered harm caused by any competition law infringement (eg, infringement of Articles 1 and 1A of the Greek Competition Act) is entitled to full compensation.

In particular, damages are awarded on the basis of the restorative principle, meaning that the compensation covers both actual loss and loss of profit (plus the payment of interest). Compensation for moral damage may also be awarded.

The amount of compensation to be awarded by the civil courts is not pre-determined by law; rather, it is the outcome of the adversarial proceedings before the civil court.

There is no civil court decision up to date awarding damages for a competition law infringement.

4.6 Relevance of “Effective Compliance Programmes”

A company’s “effective compliance programme” is not recognised as a mitigating factor for the sanctions and penalties imposed under the Greek Competition Act.

4.7 Mandatory Consumer Redress

Collective consumer redress mechanisms are only applicable for violations of the consumer law legislation.

4.8 Available Forms of Judicial Review or Appeal

HCC’s decisions may be appealed before the Administrative Court of Appeal of Athens. The appeal does not have a suspensory effect with regard to the sanctions imposed by the HCC

unless the Appeal Court issues a relevant order. The judgment of the Administrative Court of Appeal of Athens may, in turn, be appealed before the Council of State (ie, the Supreme Administrative Court of Greece).

The Administrative Court of Appeal of Athens acts as a court of first instance and performs a full review of the case by examining both the factual and legal aspects. The Council of State only reviews the case on points of law.

The timeframe for filing an appeal against an HCC decision is 60 calendar days from its publication or, in the absence thereof, of its notification to the parties.

The following shall have a right of appeal:

- undertakings or associations of undertakings against which the decision was issued;
- the person who filed the complaint of the competition law infringement;
- the Government, through the Minister of Economic Affairs, Competitiveness and Shipping; and
- any third party with a legitimate interest.

Judicial appeals against HCC decisions are common. Based on a recent study (*“Kelly Benetatou & Yannis Katsoulacos, 2020, “Legal Standards and Economic Analysis in Antitrust Enforcement: An Empirical Investigation for the Case of Greece,” GreeSE – Hellenic Observatory Papers on Greece and Southeast Europe 144, Hellenic Observatory, LSE, page 19-20”*), out of the 148 infringement decisions issued by the HCC from 2012 to 2017, 71 decisions were challenged before the Administrative Court of Appeal of Athens. Seventy per cent of the HCC’s infringement decisions were upheld by the court. However, there are instances where, although the courts have upheld the HCC’s decision, they have, nevertheless, reduced the amount of

the fine imposed by the HCC. The proportion of cases in which the courts reduced the fine varied significantly over the relevant period when the decision was adopted, ranging from 30% of the cases decided in 2012–13 to 70% of the cases decided in 2016 (due mainly to the financial crisis).

5. PRIVATE CIVIL LITIGATION INVOLVING ALLEGED CARTELS

5.1 Private Right of Action

Any legal or natural person who has suffered harm caused by a competition law infringement has the right to claim full compensation for the harm caused by the anti-competitive behaviour of an undertaking or an association of undertakings. With respect to what is covered under the full compensation, see **4.5 Sanctions and Penalties Available in Civil Proceedings**.

There is no civil court decision to date awarding damages for a competition law infringement.

5.2 Collective Action

Neither Law n. 4529/2018 nor the Greek Competition Act include specific provisions on collective actions on competition law matters. In addition, as explained in **4.7 Mandatory Consumer Redress**, collective consumer redress mechanisms are only applicable for violations of the consumer law legislation.

Nonetheless, following the general rules of the civil procedure, more claimants can file collective actions when the conditions described in **3.8 Enforcement Against Multiple Parties** are met.

5.3 Indirect Purchasers and “Passing-On” Defences

Law 4529/2018 expressly provides that defendants may invoke the “passing-on”

defence. More specifically, defendants in claims for antitrust damages can invoke as a defence that the claimant passed on the whole or part of the overcharge resulting from the competition law infringement and the claimant is thus not entitled to full compensation. In this respect, the civil court may quantify the amount of the overcharge on the basis of probability (reduced standard of proof).

5.4 Admissibility of Evidence Obtained From Governmental Investigations/ Proceedings

See **3.7 Procedure for Issuing Complaints/ Indictments in Civil Cases**.

5.5 Frequency of Completion of Litigation

Private antitrust litigation is still in an early stage in Greece, given that the relevant EU Damages Directive was transposed in 2018.

There is no civil court decision to date awarding damages for a competition law infringement.

5.6 Compensation of Legal Representatives

Unsuccessful parties to court proceedings bear the legal costs associated with the court proceedings, including the attorneys’ fees.

5.7 Obligation of Unsuccessful Claimants to Pay Costs/Fees

See **5.6 Compensation of Legal Representatives**.

5.8 Available Forms of Judicial Review of Appeal of Decisions Involving Private Civil Litigation

Decisions involving private civil litigation issued by the Athens Court of First Instance are subject to appeals before the Athens Court of Appeal. The review performed by the Court of Appeal covers both factual and legal points.

In turn, the decision of the appellate court may also be appealed before the Greek Supreme Court, which only examines points of law.

6. SUPPLEMENTARY INFORMATION

6.1 Other Pertinent Information

Whistleblowing System

The HCC has recently launched a secure digital environment for reporting/submitting of anonymous information to eliminate the “fear factor” of citizens and small and medium-sized producers to report anti-competitive practices.

This platform had a sizeable impact, with more than 55 anonymous information being submitted in the course of January 2022.

Digitalisation of the HCC

The HCC has in 2021 implemented its “Data Analytics and Economic Intelligence Platform”, which is an innovative tool for collecting and processing economic data (ie, prices) of thousands of products in various markets in Greece in real time. This new platform will be an effective tool for the identification of anti-competitive practices.

6.2 Guides Published by Governmental Authorities

The HCC has published the following written guidelines relating to cartel conduct:

- [Practical guidance concerning the application of the Greek Competition Act](#) (available in Greek only);
- [Interpretative guidelines on the method of setting fines](#) (available in Greek only);
- [Notice of handling complaints for competition law infringements](#) (available also in English);
- [HCC’s Decision on the terms, conditions and relevant procedure for the acceptance of commitments](#) (available also in English);
- [Guide on the legal framework for the leniency programme](#) (available also in English); and
- [HCC’s decision on the terms and conditions for the settlement procedure](#) (available also in English).

Karatzas & Partners was founded in 1963 and specialises in banking and finance, capital markets, competition law, energy law, M&A, privatisation, project finance, real estate, tax and telecommunications law. The firm holds Tier 1 rankings in most of the significant sectors. The firm has nine partners, five senior counsel, 37 associates, nine trainee lawyers and 21 employees in supporting functions (marketing, HR, accounting, IT, administrative staff, etc). The firm has one of the best antitrust practices in Greece and is involved in all aspects of EU and Greek competition law. The firm advises and represents domestic and international clients on cartel investigations before the Hellenic

Competition Commission and infringements of Articles 1 and 2 of Law 3959/2011 and Articles 101 and 102, TFEU vertical agreements, sectoral inquiries, and market investigations. In this context, it supports undertakings in relation to day-to-day antitrust compliance matters, dawn raids, compiling and implementing competition law compliance programmes and training of employees. It is known for providing sophisticated analysis and advice in numerous sectors, including construction companies, shipping containers, telecommunications, financial services and banking, security services, retail, automotive parts, food and drink products, and consumer products.

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