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CHAMBERS GLOBAL PRACTICE GUIDES

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# Cartels 2024

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# GREECE



## Law and Practice

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## Contents

### 1. Basic Legal Framework p.167

- 1.1 Statutory Bases for Challenging Cartel Behaviour/Effects p.167
- 1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards p.167
- 1.3 Private Challenges to Cartel Behaviour/Effects p.169
- 1.4 Definition of “Cartel Conduct” p.169
- 1.5 Limitation Periods p.170
- 1.6 Extent of Jurisdiction p.171
- 1.7 Principles of Comity p.171
- 1.8 Changes in the Regulatory Environment Affecting Competition Regulation p.171

### 2. Procedural Framework for Cartel Enforcement – Initial Steps p.171

- 2.1 Initial Investigatory Steps p.171
- 2.2 Dawn Raids p.173
- 2.3 Spoliation of Information p.174
- 2.4 Role of Counsel p.174
- 2.5 Enforcement Agency’s Procedure for Obtaining Evidence/Testimony p.174
- 2.6 Obligation to Produce Documents/Evidence Located in Other Jurisdictions p.175
- 2.7 Attorney-Client Privilege p.175
- 2.8 Non-cooperation With Enforcement Agencies p.176
- 2.9 Protection of Confidential/Proprietary Information p.176
- 2.10 Procedure for Defence Counsel to Raise Arguments Against Enforcement p.177
- 2.11 Leniency and/or Immunity Regime p.177
- 2.12 Amnesty Regime p.178

### 3. Procedural Framework for Cartel Enforcement – When Enforcement Activity Proceeds p.178

- 3.1 Obtaining Information Directly From Employees p.178
- 3.2 Obtaining Documentary Information From the Target Company p.178
- 3.3 Obtaining Information From Entities Located Outside This Jurisdiction p.178
- 3.4 Inter-agency Co-operation/Co-ordination p.178
- 3.5 Co-operation With Foreign Enforcement Agencies p.179
- 3.6 Procedure for Issuing Complaints/Indictments in Criminal Cases p.179
- 3.7 Procedure for Issuing Complaints/Indictments in Civil Cases p.179
- 3.8 Enforcement Against Multiple Parties p.180
- 3.9 Burden of Proof p.181
- 3.10 Finders of Fact p.181
- 3.11 Use of Evidence Obtained From One Proceeding in Other Proceedings p.181

- 3.12 Rules of Evidence p.181
- 3.13 Role of Experts p.181
- 3.14 Recognition of Privileges p.181
- 3.15 Possibility for Multiple Proceedings Involving the Same Facts p.181

#### **4. Sanctions and Remedies in Government Cartel Enforcement p.182**

- 4.1 Imposition of Sanctions p.182
- 4.2 Procedure for Plea Bargaining or Settlement p.182
- 4.3 Collateral Effects of Establishing Liability/Responsibility p.183
- 4.4 Sanctions and Penalties Available in Criminal Proceedings p.184
- 4.5 Sanctions and Penalties Available in Civil Proceedings p.184
- 4.6 Relevance of "Effective Compliance Programmes" p.184
- 4.7 Mandatory Consumer Redress p.184
- 4.8 Available Forms of Judicial Review or Appeal p.184

#### **5. Private Civil Litigation Involving Alleged Cartels p.185**

- 5.1 Private Right of Action p.185
- 5.2 Collective Action p.185
- 5.3 Indirect Purchasers and "Passing-On" Defences p.185
- 5.4 Admissibility of Evidence Obtained from Governmental Investigations/ Proceedings p.185
- 5.5 Frequency of Completion of Litigation p.185
- 5.6 Compensation of Legal Representatives p.185
- 5.7 Obligation of Unsuccessful Claimants to Pay Costs/Fees p.186
- 5.8 Available Forms of Judicial Review of Appeal of Decisions Involving Private Civil Litigation p.186

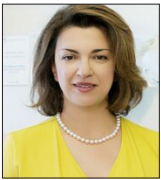
#### **6. Supplementary Information p.186**

- 6.1 Other Pertinent Information p.186
- 6.2 Guides Published by Governmental Authorities p.186

**Karatzas & Partners** was founded in 1963 and specialises in banking and finance law, capital markets law, competition law, energy law, mergers and acquisitions, privatisation, project finance law, real estate law, telecommunications law, data protection, intellectual property, employment and tax law. The firm has ten partners, six senior counsels, 42 associates, nine trainee lawyers and 22 employees in supporting functions. It has one of the best antitrust practices in Greece and is involved in all aspects of EU and Greek competition law. The firm advises

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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 as modified by Law 4886/2022 (the Greek Competition Act or GCA). Article 1 of the GCA 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). Article 1A of the GCA (“Invitation to collude and announcements relating to communicating future pricing intentions for products and services between competitors”) mainly addresses price signalling and other anti-competitive unilateral conduct by undertakings (see also 1.4 Definition of “Cartel Conduct”).

Finally, Law 4529/2018 (the “Damages Law”) 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 GCA. It is an independent authority with administrative and economic autonomy, supervised by the Minister of Development. With respect to anti-competitive agreements and concerted practices, the main responsibilities and powers of the HCC include:

- investigating anti-competitive agreements and concerted practices;
- issuing decisions;

- imposing administrative fines and other sanctions where applicable;
- ordering interim measures;
- ordering commitments;
- conducting dawn raids;
- co-operating with European Commission and other National Competition Authorities; and
- conducting market studies and sector-specific inquiries.

##### *EETT*

As regards electronic telecommunications and postal services, the competent authority to enforce the competition rules in these sectors is the National Telecommunications & Posts Commission (the “EETT”). In this guide, any references to the HCC and its investigatory and enforcement powers also apply to the EETT, which enjoys the same powers as the HCC when implementing competition rules regarding the electronic telecommunications sector and the postal sector. Given that the HCC is the main competition authority, the 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 paragraphs (f) and (g) of Law 4727/2020 for electronic communications, and Article 5 paragraphs (v) and (xa) of Law 4053/2012 for postal services.

#### Scope of Liabilities, Penalties and Awards

The HCC, when finding an infringement of Article 1 or Article 1A of the GCA or Article 101 of the 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; and/or

- impose fines.

For the commitments procedure, see **2.1 Initial Investigatory Steps**.

With respect to fines, undertakings that are 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 a deterrent.

For the civil law damages imposed by the civil courts, see **1.5. Limitation Periods**.

### *Administrative fines and sanctions*

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 will take the total worldwide turnover of the group into account. The fine imposed is calculated on the basis of the gravity, duration and 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(s) 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 another fine imposed, at the time of their imposition.

The HCC may also impose financial penalties per day of non-compliance, which are 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 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 million where it is evident that they have engaged in preparatory actions or illegal business behaviour.

For the right to appeal HCC decisions, see **4.8 Available Forms of Judicial Review or Appeal**.

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 the HCC may impose for non-cooperation 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 new guidelines for calculating fines imposed under the GCA. In particular, the HCC adopts the following when calculating a fine to be imposed on undertakings or associations of undertakings.



- First, it sets the basic amount of the fine for each undertaking or association of undertakings based on the gravity, geographic scope, duration, as well as the type of participation in the infringement of each party involved. Furthermore, it may increase or decrease the basic amount, depending on aggravating or mitigating circumstances.
- The basic amount of the fine is set as follows: a percentage of up to 30% is set on the undertaking's annual gross turnover from products or services in the markets directly or indirectly affected by the infringement, and extra is calculated for each year of the infringement, cumulatively.
- In addition, and regardless of the duration of an undertaking's participation in the infringement, the HCC will include in the basic amount of the fine an amount ranging between 15% and 25% of the undertaking's gross turnover from products or services in the markets affected by the infringement, for preventative reasons.

In any event, the maximum total fine cannot exceed 10% of the undertaking's aggregate worldwide turnover of the financial year prior to the issuance of the HCC decision.

### *Criminal sanctions*

The HCC does not have the power to impose criminal sanctions; this lies within the competence of the criminal courts. The GCA 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:

- anyone who obstructs or hampers, in any manner, investigations carried out by the HCC, in particular by creating impediments or concealing evidence;
- anyone who refuses or prevents the provision of information;
- anyone who knowingly provides false information or conceals evidence; and
- anyone who refuses, after having been duly summoned by an HCC official, to make a sworn or unsworn statement before the HCC 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 million may be imposed by the criminal courts if the illegal collusion refers to cartel activities taking place between competitors.

## 1.3 Private Challenges to Cartel Behaviour/Effects

The Damages Law transposed into the Greek legal system the EU Antitrust Damages Directive 2014/104/EU. Under the Damages Law, 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 indirect effect on the claimant (see 5. Private Civil Litigation Involving Alleged Cartels).

## 1.4 Definition of "Cartel Conduct"

The GCA does not define the term "cartel". Article 1 of the GCA, which reflects the prohibition contained in Article 101 of the TFEU, uses the term "prohibited agreements and concerted practices" and refers to specific practices con-



considered as having as their objective, or considered as having an effect on, the prevention, restriction or distortion of competition, identical to those included in Article 101 of the 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.

Furthermore, as mentioned in **1.1 Statutory Bases for Challenging Cartel Behaviour/Effects**, one of the most significant changes in the GCA, as modified, is new Article 1A, which addresses issues relating to tacit collusion and price signalling. The HCC has issued guidelines regarding the application of Article 1A.

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 GCA and Article 101 of the TFEU, which require 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 is prohibited under Article 1A of the GCA.

Article 1A of the GCA applies only to undertakings with a total turnover of at least EUR50 million and at least 250 employees.

Moreover, Article 1(3) of the GCA includes an identical provision to Article 101(3) of the TFEU stipulating that certain anti-competitive practices falling initially under Article 1 or Article 1A, as the case may be, are eventually not prohibited because of certain pro-competitive effects.

Pursuant to Article 1(4) of the GCA, EU Regulations on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices (block exemption regulations) will apply *mutatis mutandis* to the implementation of Article 1(3) of the GCA, 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) of the TFEU.

## 1.5 Limitation Periods

The GCA establishes a five-year limitation period for penalties to be imposed by the HCC. The five-year period commences on the date the infringement was committed or, in the case of continuing infringements, on the date on which they ceased. The limitation period is interrupted by any action taken by the HCC in the investigation in relation to the specific infringement. Actions that interrupt the limitation period 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 will 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 will be suspended while the HCC's decision or a court's decision is pending.

## 1.6 Extent of Jurisdiction

The GCA 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, unilateral actions 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 Changes in the Regulatory Environment Affecting Competition Regulation

There appear to have been no changes in policy or practices regarding the composition and identity of the HCC executives in charge of cartel regulatory activity. The authority is considered to be understaffed, however, which may negatively affect the cartel investigation period and HCC interventions in the market.

In 2023, the HCC issued guidelines regarding the application of Article 1A and it amended its procedural and operational regulation. The new guidelines attempt to provide practical guidance on specific actions and behaviour that are considered to fall under Article 1A. The amended regulation of the HCC introduces certain new rules governing the hearing process and the rights and obligations of the parties concerned

(including the limited use of experts and witnesses).

In terms of market intervention, the HCC has been engaged since 2020 in the following categories:

- conducting regulatory interventions (ie, examining specific sectors and, where it finds conditions of effective competition do not exist in that sector, taking measures to create conditions of effective competition) in the petroleum sector, the construction sector and the press distribution sector;
- performing a mapping of the conditions of competition (with the aim of defining the markets not previously examined by the HCC) in the markets for laundry detergents, fresh whole milk, baby milk, cheese and plain yoghurt from cow's milk;
- conducting sector inquiries (in particular sectors of the economy or certain types of agreements or methods of shaping commercial behaviour where prices or other circumstances give cause to suspect that competition is being restricted or distorted) in the markets for basic consumer goods, e-commerce, fintech, waste recycling management, medical services and health insurance; and
- conducting a number of dawn raids (see also **2.2 Dawn Raids**).

## 2. Procedural Framework for Cartel Enforcement – Initial Steps

### 2.1 Initial Investigatory Steps

Investigations can be initiated:

- at the HCC's own initiative (ex officio investigations);
- following a complaint by a third party; or

- following a leniency application.

The HCC is legally bound to consider all complaints legally filed. However, under the HCC's prioritisation system, the HCC must 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 president of the HCC introduces the case before the HCC, and a rapporteur is appointed, who will be in charge of the case and who 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 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 SO is served to the parties, who should submit their written arguments together with a statement that they wish to exercise their right to an oral hearing (accompanied by an outline of the argument(s) that they want to raise orally) at least 30 calendar days before the scheduled hearing of the case (which can take place by video-conference). The HCC may decide not to proceed with an oral hearing if it considers, on the basis of the undertakings' submissions, that it is adequately informed to decide on the case. The parties are granted access to the non-confidential information of the HCC file

and have the opportunity to respond in writing and in the course of the hearing.

The HCC may issue, within 15 months of the rapporteur's appointment:

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

This deadline can be extended by 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 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 was 20 months, and the longest was over 100 months.

## Commitments Procedure

The HCC may accept commitments proposed by the undertakings in accordance with the procedure set out in HCC Decision 786/2022. This process takes place prior to the HCC reaching its decision. If the HCC accepts these commitments, it will adopt a commitment decision making them binding on the undertakings with-

out investigating the infringement further. In the case of non-compliance with the commitments undertaken, the HCC can impose a fine on the undertakings 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 before it enters the relevant premises and commences 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 2023 and up to the end of April 2024, the HCC performed nine dawn raids. In particular, the HCC has recently carried out dawn raids at the premises of undertakings active in the following sectors:

- pharmaceuticals;
- alcoholic beverages;
- children's toys;
- the collection, processing and sale of cur-rants;
- medical equipment;
- products for babies and toddlers;

- equipment for electricity distribution net-works;
- information technology (IT), and
- travel sector.

## Powers of HCC Inspectors

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

- inspect books, records and other documents of the undertaking concerned, and make cop-ies 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 under-taking concerned;
- seal any professional premises, books or documents; and
- take sworn or unsworn witness statements and ask for explanations of facts or docu-ments relating to the subject matter of the inspection, and to record the respective answers.

The types of evidence deemed acceptable by the HCC include documents, oral statements, emails (even if these are deleted or unread), records and any other item containing informa-tion, regardless of the 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 the Powers of HCC Inspectors

### *Inspection order*

The HCC inspection must 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 the context of a particular case cannot be used in another case.

### *Privilege against self-incrimination*

HCC officials are not entitled to request that an undertaking or its directors provide statements that would amount to an admission of guilt. The GCA 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 attorney-client privilege. See **2.7 Attorney-Client Privilege**.

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 that relate 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 attorney-client privilege. Such data may be excluded from the HCC 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.

In-house counsel can also be present during the inspection and participate in the interviews/witness statements. However, the role of in-house and external counsel is limited, as they can only provide clarifications on behalf of individuals, but may not 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 usually takes place about a month after the date of the dawn raid.

The GCA does not require individuals to obtain separate legal counsel from the counsel representing the relevant company, save for any conflict-of-interest concerns. However, it is often advisable to obtain separate legal counsel, given that individuals are also personally sanctioned under the GCA.

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

- to examine the HCC inspection order and identify the scope of the inspection;
- to make sure the undertaking and its employees do not obstruct the HCC officials; and
- to 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

electronic files, the search is conducted in any way deemed appropriate by the HCC, that is, by looking into the files and texts using “keywords” or by folder/file. For more information on the power of HCC officials to obtain evidence during an inspection and the limitations thereof, see **2.2 Dawn Raids**.

Apart from the HCC’s power to obtain evidence during an inspection, the HCC may also request the submission of certain types of information from the undertakings concerned, in writing or through an online platform or an electronic interface. Compliance with such requests is mandatory, and the deadline to respond is less than ten calendar days.

Moreover, to establish infringements of Articles 1 and 1A of the GCA, and Article 101 of the TFEU, the HCC may summon any representative of an undertaking to sworn or unsworn witness statements. During the statement, the declarant has the right to be assisted by a lawyer, who is not allowed to answer questions on behalf of their client or intervene in the course of the statement.

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 in the event of 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 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

Attorney-client privilege covers all written communications before, during and after an investigation.

Attorney-client privilege is subject to two cumulative conditions:

- the communication should aim to provide/request legal advice, not necessarily 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 their profession in any of the EU member states for the privilege to apply.

In addition to 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

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 the 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 investigations, the HCC may impose a daily fine for non-compliance. In particular:

- with respect to the relevant undertaking, the fine is defined proportionally to its average total global turnover, capped at 3% of turnover;
- concerning the undertaking's employees, the fine ranges from EUR5,000 to EUR2 million;

- regarding any other natural person (apart from the employees), the fine ranges from EUR15,000 to EUR2 million; 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 the HCC decision.

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

In this context, the HCC imposed a fine of EUR1 million on a physical person and a fine of EUR200,000 on the relevant undertaking for obstructing the on-site inspection and for hindering evidence by, inter alia, deleting emails during a dawn raid (HCC Decision ALTER EGO MEDIA S.A. 745/2021).

## 2.9 Protection of Confidential/Proprietary Information

The undertakings concerned can protect their confidential information from being widely disclosed and request redaction from the HCC decision of any business-sensitive information (financial and market-share data, production secrets, supply sources, etc) or other information that could, for example, 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 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, if any, and where they can submit additional arguments. This is the stage, after the issuance of the SO and before the issuance of the HCC decision, where a defence counsel can raise legal and factual arguments to persuade the HCC not to issue an infringement decision or where a defence counsel can otherwise improve the undertaking's position.

## 2.11 Leniency and/or Immunity Regime

The GCA 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). Undertakings, associations of undertakings, as well as natural persons involved in an anti-competitive practice may be the beneficiaries of the leniency programme and can apply to the HCC for immunity (either full or partial).

### Full Immunity From Fines

Complete exemption from fines will be granted to the applicant that:

- 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 GCA (and Article 101 of the TFEU), if the HCC did not already have sufficient evidence; or
  - (b) find an infringement of Article 1 of the GCA (and Article 101 of the TFEU), if the

HCC did have some indications of the alleged cartel, but these were not sufficient to establish an 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 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 may qualify for 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 adds value to the evidence already in the possession of the HCC. In addition, the general conditions described above for full immunity; ie, admission of participation in the cartel, co-operation with the HCC, and ceasing to be involved, should be satisfied. The fine reduction is proportionate to the contribution of the applicant in establishing the infringement. In any case, the fine reduction cannot exceed 50% of the fine that would otherwise have been imposed on undertakings/associations of undertakings, and 70% regarding natural persons. It is worth noting that immunity from fines does

not include immunity from civil law claims for damages.

## Markers

Applicants 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 a marker is at the discretion of the HCC. Where a marker is granted, the HCC president 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 geographical 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 GCA.

## 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.

To exercise the powers provided in the GCA, authorised inspectors may request information in writing. Pursuant to Article 38 of the GCA, the HCC 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 not to incriminate oneself.

### 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 request for information. All undertakings located inside or outside Greece have an initial deadline of ten calendar days to respond to the HCC 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

Pursuant to the GCA, the HCC must co-operate with regulatory or other authorities that monitor particular sectors of the national economy in relation to matters concerning the application of Article 1 and Article 1A of the GCA and Article 101 of the TFEU in the relevant sectors.

In addition, as provided for in the GCA, the EETT may request the assistance of the HCC when

enforcing competition rules in the electronic telecommunications sector and the postal sector.

Since 2020 the HCC has entered into several memoranda of understanding (MoU), with the Hellenic Regulatory Authority for Energy (RAE) (September 2020), the Regulatory Authority for Ports (“RAL”) (April 2021), the Hellenic Capital Market Commission (July 2022) and the Hellenic Data Protection Authority (August 2022) to enhance co-operation between the HCC and other authorities. The HCC has also signed MoU with various consumer 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 memoranda of co-operation (eg, with the NCAs of Albania, North Macedonia, Morocco, South Africa, Israel, Egypt 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.

In addition, the HCC may request an NCA of an EU member state to take any investigative measure on its territory, on behalf of 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 this lies within the competence of the criminal courts.

In order for a case to be brought before the Greek criminal courts, criminal proceedings should be initiated by the prosecutor. 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 inspecting 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 where additional evidence is deemed necessary.

The competent criminal court that hears cartel cases consists of three judges who examine all the arguments and evidence raised by the defendants.

From the initiation until the end of the criminal proceedings, the defendants have access to the prosecutor’s files against them.

### 3.7 Procedure for Issuing Complaints/Indictments in Civil Cases

The Damages Law transposed into the Greek legal system the EU Antitrust Damages Directive 2014/104/EU. In particular, claims for anti-trust 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 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 damages claim before the civil courts.

In terms of procedure, once the damages claim is filed, it must be served to the counterparty within 30 calendar days of its submission. Once the counterparty is 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. Where 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, the Damages Law 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 sufficient facts and evidence before the court to support the plausibility of its claim.

### Access to HCC Files

Access to HCC files 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 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 the HCC investigation can be disclosed in the context of pending civil proceedings, following a petition from any party to the trial, in so far as the petition is justified, and this solution is viewed as a last resort.

### Criminal Court's Findings

Findings of the criminal court may 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 infrastructure work. 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 has therefore issued two separate decisions:

- Decision 642/2017 for those undertakings that settled, which found that the relevant undertakings infringed Articles 1 of the GCA and 101 of the TFEU, and imposed fines of approximately EUR81 million, while it also granted full immunity from fines to the leniency applicant; and
- Decision 647/2017 for those undertakings that did not settle, on which the HCC imposed fines of approximately EUR34,214,196, while it found that some undertakings did not infringe Articles 1 of the GCA and 101 of the 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. In proceedings before the criminal courts, however, the public prosecutor bears the burden to establish the defendant's guilt.

### 3.10 Finders of Fact

With respect to civil proceedings, the competent court establishes the facts of the case, following review of the submissions by the parties. Subsequently, the competent court also applies the law to those facts.

As far as criminal proceedings are concerned, the public prosecutor establishes the facts of the case, while the court tribunal applies the law to those facts.

### 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 **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 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.

Regarding proceedings before the HCC, the parties may consult experts, such as economists, and submit their opinion to support their argument.

Lastly, the GCA 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 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 simulta-

neously. However, 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 an HCC 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 the case of an appeal to the competent appellate administrative courts.

On the other hand, the HCC does not have the power to impose criminal sanctions, as this lies within the competence of the criminal courts.

In addition, the 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 GCA provides for a settlement procedure. This 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 on 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 Board, and they should waive their right to appeal the HCC decision concerning inter alia the validity of the procedure and the HCC jurisdiction.

Some undertakings settle in the context of hybrid decisions possible under the GCA 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.

With the amendments to the GCA, a significant addition is Article 29A extending the settlement procedure to, inter alia, associations of undertakings and unilateral conduct under Article 1A.

### 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 has already been notified, express their interest in engaging in settlement discussions. The decision whether to initiate settlement proceedings, as well as the adoption of a final settlement



decision, lie within the discretion of the HCC. In particular, the HCC will weigh a number of factors to determine whether a case is suitable for settlement, such as:

- the number of businesses involved in the investigation and the number of businesses potentially and genuinely interested in settlement;
- the number of settlement requests for the same case;
- the number and 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 enter into bilateral discussions. In particular, for the undertakings to make an informed decision, bilateral meetings are held between the HCC and the 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 damages claims.

Upon conclusion of the bilateral discussions, the interested party must, within 30 calendar days, 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. The HCC settlement decision is subject to judicial review by the national courts.

Provided that the fine imposed by the HCC is paid in full and there is no repeat infringement/recidivism, then criminal and administrative liability (including fines imposed in non-criminal judicial proceedings), as well as exclusion from public tenders or concession contracts, will be waived.

### HCC Precedent

Since 2021, the HCC has issued 18 settlement decisions. The HCC issued its first settlement decision in a major cartel case in the construction sector in 2017. Since 2022, the HCC has also issued seven settlement decisions in the context of vertical agreements.

### 4.3 Collateral Effects of Establishing Liability/Responsibility

The establishment of the defendant's 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 finding of an infringement would facilitate proof of this in the context of private action.

As regards 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**. The GCA provides a framework within which the fine and the duration of the imprisonment 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 GCA) 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 damages may also be awarded.

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

However, there has, to date, been no civil court decision 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 in the sanctions and penalties imposed under the GCA.

## 4.7 Mandatory Consumer Redress

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

## 4.8 Available Forms of Judicial Review or Appeal

HCC 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 have a right of appeal:

- undertakings or associations of undertakings against which the decision was issued;
- the person who filed the complaint about the competition law infringement;
- the government, through the Minister of Development; and
- any third party with a legitimate interest.

Judicial appeals against HCC decisions are common. Based on a study, 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. Of these, 70% of the HCC infringement decisions were upheld by the court. However, there are instances where, although the courts have upheld the HCC 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 full compensation, see **4.5 Sanctions and Penalties Available in Civil Proceedings**.

There has been no civil court decision to date (April 2024) awarding damages for a competition law infringement.

### 5.2 Collective Action

Neither the Damages Law nor the GCA include specific provisions on collective actions in competition law matters. In addition, as explained in **4.7 Mandatory Consumer Redress**, collective consumer redress mechanisms are only applicable for violations of consumer law legislation.

Nonetheless, following the general rules of 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

The Damages Law 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 (April 2024) 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 appeal 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 Whistle-Blowing System

In 2021, the HCC launched a secure digital environment for reporting/submitting anonymous information to eliminate the “fear factor” of citizens and small and medium-sized producers to report anti-competitive practices.

This platform has had a sizeable impact, with more than 204 pieces of anonymous information being submitted so far.

### Digitalisation of the HCC

In 2021, the HCC launched its Data Analytics and Economic Intelligence Platform, which is an innovative tool for collecting and processing the economic data (ie, prices) of thousands of products in various markets in Greece in real time. This platform is expected to 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 GCA](#) (available in Greek only);
- [Interpretative guidelines on the method of setting fines](#) (available in Greek only);
- [Notice of handling complaints for competition law infringements](#) (English version);
- [HCC decision on the terms, conditions and relevant procedure for the acceptance of commitments](#) (English version);
- [HCC decision on leniency programme](#) (available in Greek only);
- [HCC decision on settlement procedure](#) (available in Greek only);
- [Guidelines for the application of Article 1A of the GCA](#) (available in Greek only);
- [Guide for associations of undertakings on competition law](#) (available in Greek only);
- [Guide for promoting and enhancing competition in public policy planning](#) (available in Greek only); and
- [Guide with respect to competition in the Agricultural Sector](#) (available in Greek only).

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