Private Antitrust Litigation

Consulting editor
Francesca Richmond

2019

GETTING THE DEAL THROUGH

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Baker McKenzie LLP

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Private Antitrust Litigation 2019

Sixteenth edition

Getting the Deal Through is delighted to publish the sixteenth edition of *Private Antitrust Litigation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, Greece and Norway.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the consulting editor, Francesca Richmond of Baker McKenzie LLP, for her continued assistance with this volume.

GETTING THE DEAL THROUGH

London
July 2018

Greece

Dimitris Loukas and Konstantinos Gloumis-Atsalakis

Potamitis Verkris Law Firm

Legislation and jurisdiction

1 How would you summarise the development of private antitrust litigation in your jurisdiction?

In Greece, private antitrust litigation, albeit still at embryonic stage, is an expanding area of legal practice that has emerged from the growing public enforcement of competition law in recent years, as well as the legislative initiatives of the European Commission in this field. Notwithstanding the fact that the Greek government and the Hellenic Competition Commission played a pivotal role in the negotiations and ensuing adoption of Directive 2014/104/EU (Damages Directive) on antitrust damages action during the Greek presidency of the European Union, Greece has only recently transposed the Damages Directive. In this vein, by virtue of Law No. 4529/2018, enacted by the Greek parliament in March 2018, a set of substantive and procedural rules were introduced aimed at facilitating the effective exercise of the rights of the injured parties to seek compensation for antitrust infringements. This specialised legal framework complements, and further exemplifies, the general rules of civil liability under the Civil Code (CC), which was, until the enactment of Law No. 4529/2018, the only applicable set of rules for antitrust damages claims. Therefore, the recently introduced provisions are systematically integrated into the general civil liability framework of the CC. The provisions of Law No. 4529/2018, being lex specialis, prevail over those of the CC, however, on issues that Law No. 4529/2018 does not address, the pertinent CC provisions are still applicable. The same applies with regard to the general rules on civil procedure.

In brief, the new provisions facilitate the disclosure of evidence, including those obtained by public authorities, the passing-on defence and the quantification of harm, thereby expected to result in a more effective and consistent application of the right to compensation.

2 Are private antitrust actions mandated by statute? If not, on what basis are they possible? Is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims?

Until recently, claims for antitrust damages were not specifically regulated by Greek legislation and could be brought before the Greek courts on the basis of the general substantive provisions of the CC and in accordance with procedural rules of the Code of Civil Procedures (CCP). In particular, according to the general legal provision on delictual or tortious liability, as laid down in article 914 of the CC, '[a]ny person who unlawfully and through his fault has caused prejudice to another shall be liable for compensation'. This provision is broad enough to cover any liability, irrespective of whether the injured party is a direct or indirect purchaser; however, in the case of an indirect purchaser, the proof of causality renders such claims more difficult to substantiate under Greek law.

That being said, following the enactment of Law No. 4529/2018 on 23 March 2018, the Greek legislator transposed the Damages Directive into statute, introducing specific provisions for actions for damages with a view of promoting an effective system of private enforcement of infringements of competition law. The new provisions are systematically integrated into the general rules of the CC, which still apply when consistent with the regulations of Law No. 4529/2018. A claim can be brought by any legal or natural person having suffered harm caused by an antitrust infringement, regardless of whether it is directly or indirectly affected.

3 If based on statute, what is the relevant legislation and which are the relevant courts and tribunals?

Relevant legislation

Apart from the general provisions of the CC and the CCP, Law No. 4529/2018, which transposed the Damages Directive, introduced specific rules of civil liability and procedure to enhance the exercise of the right to full compensation in case of harm caused by an infringement of competition law. The new law does not introduce a separate legal basis for pursuing such claims but complements and further exemplifies the general provisions on delictual or tortious liability of the CC.

Relevant courts

The general provisions of the CC and the CCP provide that the competent courts are the civil courts of the judicial district of the place of residence of the defendant or of the company's seat (general jurisdiction) or of the judicial district where the relevant agreement was concluded or where the harmful event took place (special grounds of jurisdiction).

Pursuant to article 13 of Law No. 4529/2018, claims for antitrust damages arising across the country are to be brought before the newly established specialist section of the Athens Court of First Instance, where judges specialised in competition law and EU law shall be appointed; likewise, subsequent appeals are to be brought before the specialist section of Athens Court of Appeal. Therefore, specialist court sections in Athens will have exclusive territorial competence to adjudicate antitrust damages actions. However, under the transitional provisions of Law No. 4529/2018, it is envisaged that these specialist sections will only be established as of 16 September 2018. Until this happens, the general provisions on jurisdiction continue to apply.

4 In what types of antitrust matters are private actions available? Is a finding of infringement by a competition authority required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition authority on national courts?

The right to full compensation is conferred to any legal or natural person who has suffered harm caused by any competition law infringement (paragraph 1, article 3 of Law No. 4529/2018). The term 'competition law' covers all violations of EU or national antitrust rules and, in particular, any violation of article 101 or 102 of the Treaty on the Functioning of the European Union (TFEU) or of articles 1 and 2 of Law No. 3959/2011 on the protection of free competition (Competition Act). Therefore, private actions (injunctive relief or damages) are available in any type of antitrust matter, be it an agreement and concerted practice (cartels and other forms of collusion) or an abuse of dominance, in so far as the claimant suffers a damage that is in causal link with the pertinent violation.

A finding of infringement by a competition authority is not required to bring a claim. However, such a finding would facilitate proof of the infringement in the context of a private action and therefore increase its prospects of success. Moreover, Greek civil courts are bound by a decision of a national competition authority or the European Commission finding an antitrust infringement, which is not subject to appeal, as well as by a final decision of the competent Greek or EU court that reviewed,

on appeal, the infringement decision of a competition authority (article 9 of Law No. 4529/2018 and paragraph 1, article 35 of the Competition Act). For these purposes, a final decision of the competent Greek review court is a decision by the Athens Administrative Court of Appeal (which has exclusive competence to review on the merits all administrative decisions issued by either the Hellenic Competition Commission (HCC) or by the Hellenic Telecommunications and Post Commission (EETT) applying articles 1 and 2 of Law No. 3959/2011 and article 101 or 102 of the TFEU). Both the HCC and EETT are designated national competition authorities (EETT having jurisdiction to apply EU and national competition rules only in relation to the telecommunications and postal sectors). The said binding effect pertains to the nature of the infringement and its material, personal, temporal and territorial scope, as set out in the pertinent (final) decision.

Final infringement decisions issued in other EU member states can be used as evidence (full proof) for establishing the said infringement in a proceeding before the Greek civil courts; such evidence, however, can be refuted by putting forward counter-evidence.

Without prejudice to the above, the CCP follows the principle of the unfettered evaluation of evidence, pursuant to which all types of evidence are admissible for proving an infringement and the subsequent damaged caused. In any case, for damages claims under the current legal framework, the full burden of proof of the infringement rests on the injured party or claimant.

5 What nexus with the jurisdiction is required to found a private action? To what extent can the parties influence in which jurisdiction a claim will be heard?

In general, as regards the subject matter jurisdiction, private actions for damages can nowadays be brought before the civil courts in accordance with the general provisions of the CCP; the competent Single Member Court of First Instance has jurisdiction for claims up to €250,000 and the Multi Member Court of First Instance has jurisdiction for claims exceeding €250,000. Law No. 4529/2018 provides for the establishment of specialist sections at the Athens Court of First Instance and Athens Court of Appeal. Until these are established, the general and special grounds of jurisdiction of the CCP continue to apply (see question 3).

Furthermore, the international competence of Greek courts in private actions for damages is governed by Regulation (EU) No. 1215/2012, according to which Greek courts have jurisdiction over private actions if the defendant is domiciled in Greece or if the harmful event occurred or may have occurred in Greece (paragraph 1, article 4 and paragraph 2 of article 7 respectively).

Jurisdiction and arbitration clauses agreed between the parties to an agreement are, in principle, valid, to the extent not deemed to be contrary to the principle of effective enforcement of EU competition law. In this regard, according to the case law of the Court of Justice of the European Union (see judgment of 21 May 2015, C-352/13), jurisdiction clauses are not valid if '[t]he undertaking which suffered the loss could not reasonably foresee such litigation at the time that it agreed to the jurisdiction clause and that that undertaking had no knowledge of the unlawful cartel at that time', because they cannot be deemed to stem from a contractual relationship.

6 Can private actions be brought against both corporations and individuals, including those from other jurisdictions?

Yes. The CCP provides that both corporations and individuals have passive legal standing in damages claims. Natural and legal persons from other jurisdictions are not excluded, pursuant to the provisions on special jurisdiction of Regulation (EU) No. 1215/2012 (articles 7 to 9). Nonetheless, in practice, private litigation cases are commonly brought against corporations.

Private action procedure

7 May litigation be funded by third parties? Are contingency fees available?

There are no specific rules regarding third-party funding of private actions in Greece; albeit uncommon, third-party funding agreements can be permissible under the general contract law provisions of the CC (by way of example, third-party funding is rather common in insurance contracts for vehicles, where insurance companies offer litigation insurance and cover the litigations expenses of their counterparties).

Contingency fees are permissible under Greek legislation. In particular, under article 60 of the Lawyer's Code of Conduct, success fee arrangements are permitted, if conducted in writing and up to the amount of 20 per cent or 30 per cent of the value of the subject matter of the dispute and depending on the number of lawyers involved.

8 Are jury trials available?

No. There are no jury trials in actions for damages available under Greek legislation.

9 What pretrial discovery procedures are available?

In Greece, there is no pretrial discovery procedure available in civil litigation proceedings.

10 What evidence is admissible?

According to article 339 of the CCP, evidence admissible in civil proceedings is the following:

- admission;
- documentary evidence (contracts, email correspondence, attendance notes etc);
- evidence by inspection;
- expert reports;
- witness testimony;
- judicial documents; and
- certified statements.

The evidence value assessment is left to the discretion of the court, pursuant to the principle of the unfettered evaluation of evidence (article 340 of the CCP). In case of admission, the latter, if made before the court, constitutes full proof against the person that made the admission. In general, preference is given to documentary evidence over witness testimonies. Final decisions of competition authorities or of the competent review court are binding upon civil courts trying a damage action (see question 4).

In order to further facilitate damages actions, Law No. 4529/2018, transposing the Damages Directive, introduced special provisions on the disclosure of evidence. More specifically, article 4 of that Law (broadly corresponding to article 5 of the Damages Directive) provides that the claimant may request the civil court to order the disclosure of evidence that is in the control of the defendant or a third party, if the claimant has already presented before the court facts and evidence sufficient to support the plausibility of its claim. In this regard, the party requesting disclosure does not need to specify each individual item of evidence but suffices to indicate categories of pertinent evidence (as precisely and narrowly as possible on the basis of reasonably available facts). Therefore, the new law attempts to bypass the stringent requirements for the disclosure of evidence under the general provisions of the CCP (articles 450 to 452).

Access to evidence in the file of the competition authority is subject to certain additional safeguards (again broadly corresponding to those envisaged in the Damages Directive) and can only be granted as a last-resort (ie, if not reasonable available by the parties or a third party). More specifically, evidence in the form of information prepared specifically for the proceedings of a competition authority (eg, replies to information requests), information that the competition authority has drawn up and sent to the parties (eg, statement of objections), as well as settlement submissions that have been withdrawn, can only be disclosed after the competition authority has closed its administrative proceedings. Moreover, leniency statements, settlement submissions and pertinent documents containing extracts thereof, which are included in the file of the competition authority, are not accessible at any time and are inadmissible in actions for damages, while their disclosure before civil courts is also subject to financial penalties amounting to €100,000.

Subject to the above considerations and limitations as to access to the competition authority's file, as set out in article 6 of Law No. 4529/2018, documents obtained during the investigation of a competition authority can be disclosed within the context of a pending civil proceeding following a petition from any party of the trial, by virtue of the general provisions of the CCP (in particular, articles 232 and 450 et seq of the CCP, possibly in combination with articles 901 to 903 of the CC).

11 What evidence is protected by legal privilege?

According to paragraph 6, article 4 of Law No. 4529/2018, national courts should give full effect to the applicable legal professional privilege under EU or national law, when ordering the disclosure of evidence. The pertinent recital to the new law further specifies that the disjunctive use of 'EU or national law' is intended to ensure maximum protection of legal privilege.

This is important because legal privilege under Greek law has been interpreted as having a broader scope as compared to the EU equivalent notion. In particular, all documents and information linked to the lawyer's activity are arguably privileged (including, in accordance with article 38 of the Lawyers' Code of Conduct, all information entrusted to lawyers by their clients at the time of their engagement, as well as in the course of the execution of their clients' mandate or whatever comes to their knowledge while dealing with their clients' cases, even after the termination of the lawyer-client relationship). More importantly, the Lawyers' Code of Conduct does not distinguish between in-house lawyers and independent lawyers. It could, therefore, be argued that the legal privilege applies equally to in-house lawyers. Indeed, both the prevailing doctrine and the case law of the Greek courts support the uncommitted exercise of the profession of in-house lawyer, therefore adopting the view that the lawyer-client relationship is one of an agency contract rather than a dependent work contract (see Council of State 1809/1973, 1218/1992, Supreme Court 241/1948, 204/1958, 168/1977 and 1217/1983). This would be in contrast with EU law and practice, whereby legal professional privilege does not cover communications (to and from) in-house lawyers, as they are not deemed sufficiently independent from their employers.

Despite the above-referenced provisions of the new law, it remains to be seen how legal privilege will be interpreted by the courts (and whether, for example, in-house communications will still be protected, if the case at hand involves the parallel application of EU competition rules or if the case originates and, or is being pursued by the European Commission, instead of the national competition authority).

As regards trade secrets, civil courts are required to ensure the protection of confidential information and for this purpose they can mandate the production of summaries in an aggregated form or non-confidential versions of documents.

12 Are private actions available where there has been a criminal conviction in respect of the same matter?

Under the Competition Act, horizontal cartel-type offences and abuses of dominance are punishable with a financial penalty or a prison sentence. Following the finding of an infringement, the HCC sends the pertinent information to the competent prosecuting authority, in order to investigate potential criminal liability and pursue criminal charges.

The imposition of criminal sanctions does not exclude the possibility to raise claims for damages before the civil courts in respect of the same matter. Private claims for damages can be brought before civil courts against both natural and legal persons; however, criminal proceedings are only possible against natural persons.

13 Can the evidence or findings in criminal proceedings be relied on by plaintiffs in parallel private actions? Are leniency applicants protected from follow-on litigation? Do the competition authorities routinely disclose documents obtained in their investigations to private claimants?

Evidence in criminal proceedings cannot be relied on by plaintiffs in parallel private actions, while the case is pending, because criminal investigations are secret (article 241 of the Code of Criminal Procedure). However, once the criminal case is closed, the findings of a criminal court may be presented as evidence of an infringement before civil courts in parallel damages actions and will be evaluated freely by the court.

According to paragraph 3, article 44 of the Competition Act, immunity recipients (entitled to a full exemption from the imposition of an administrative fine by decision of the competition authority) are absolved from criminal liability; other leniency recipients (entitled to a fine reduction) shall have their criminal sentences reduced pursuant to article 83 of the Criminal Code, because their conduct is considered as a mitigating circumstance. Furthermore, the offender or participant in acts that are sanctioned with criminal charges, as indicated in question 12, remain unpunished if they report their acts to the prosecuting attorney, HCC or any other competent authority at their own initiative and before they are being investigated, while simultaneously adducing evidence.

Nonetheless, immunity applicants are protected to a limited extent against follow-on private litigation. In this vein, article 10 of Law No. 4529/2018 provides for exemptions from the principle of joint and several liability in favour of immunity recipients in line with the article 11 of the Damages Directive.

Given the incipient state of private litigation in Greece, there is still no practice of the HCC or EETT routinely disclosing documents obtained in their investigations to private claimants. Following the adoption of Law No. 4529/2018, access to evidence in the file of the competition authority will in any event be subject to certain additional safeguards in line with the Damages Directive (see question 10).

14 In which circumstances can a defendant petition the court for a stay of proceedings in a private antitrust action?

Pursuant to article 249 of the CC, if the substantiation of a dispute is closely related to the subject of another trial pending before the civil or administrative jurisdiction or before an administrative authority, the court may of its own motion or following a petition by any of the parties order the stay of proceedings, until a final judgment on the other case is delivered. As a result, civil courts can stay a follow-on damages action if the infringement decision of the competition authority is appealed against by the defendants. A stay of proceedings is most commonly ordered in case the court seeks to avoid contradictory rulings between different jurisdictions. However, it is at the court's full and sole discretion whether to order the stay of proceedings (see Supreme Court 1628/1988, 2056/1984 and 141/1977).

15 What is the applicable standard of proof for claimants? Is passing on a matter for the claimant or defendant to prove? What is the applicable standard of proof?

Evidence in the civil trial is governed by the principle of the unfettered evaluation of evidence (article 340 of the CCP). This provision assigns to the judge the task to deliver a rational judgment in a twofold manner; by freely assessing any evidence put forward by the parties and by freely weighing the probative value they have. As far as the burden of proof is concerned, the adversarial character of the civil trial implies that each party must be able to prove the facts that are necessary to support its allegations (article 338 of the CCP). Therefore, in a claim for damages the burden of invoking and proving the conditions of tort (ie, the fault, the damage and the causal link between the fault and the damage) lies with the injured party, the claimant. The defendant bears the burden of proof of the facts that he or she invokes as objections or counter-arguments to the allegations of the claimant.

As a general rule regarding the requisite standard of proof, the court has to be convinced that the facts put forward by the claimant are true. No absolute certainty is necessary in this regard, but it is required that the judge does not have any reasonable doubts concerning the truth of the facts (ie, it suffices that the court forms such a high degree of probability that any reasonable and experienced person would not seriously doubt the truth of the evidence).

In this context, as already mentioned under question 4, article 9 of Law No. 4529/2018 provides that an infringement of competition law found by a final decision of the national competition authority (HCC or EETT) or by a decision of the review court (Athens Administrative Court of Appeals) is deemed to be irrefutably established for the purposes of a pertinent action for damages brought before a civil court. Article 14 of Law No. 4529/2018 introduces a rebuttable presumption of harm in case of cartel infringements, also in line with the Damages Directive. Finally, article 11 of Law No. 4529/2018 recognises that the defendant can raise the passing-on defence (bearing the relevant burden of proof), while also introducing a rebuttable presumption as the passing-on of a cartel overcharge in favour of indirect purchasers, again in line with the Damages Directive.

In addition, the requisite standard of proof is effectively reduced with respect to the quantification of harm, by virtue of article 14 of Law No. 4529/2018, which empowers civil courts to estimate the amount of harm (if it is established that a claimant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available), on the basis of probability. The same reduced standard (probability) also applies with regard

to quantifying the overcharge in the context of the passing-on defence (paragraph 3, article 11 of Law No. 4529/2018).

Finally, the probability standard suffices also in the context of interim measures (articles 347 and 690 of the CCP).

16 What is the typical timetable for collective and single party proceedings? Is it possible to accelerate proceedings?

Following radical amendments of the CCP in the course of 2015, aimed at accelerating the administration of justice in civil disputes, the average time period from the filing of an action to a judgment has been reduced considerably (as the new procedural rules have shortened the scheduling of hearings and reduced oral hearings). Although there can be no standard timetable, proceedings before the Court of First Instance can vary from two to two-and-a-half years for the Multi-Member Court formation (claims above €250,000) and at least three years for the Single-Member court formation (claims up to €250,000). In the event of an appeal, cases before the Appellate Court can last 12 to 18 months until the delivery of a judgment. This judgment can subsequently be further appealed before the Supreme Court on legal grounds only, which in turn delivers an irrevocable decision within approximately 12 to 18 months.

The aforementioned indicative timetables do not change substantially whether there is a single or a collective party proceeding.

In principle, the CCP does not provide explicitly for any rights for the acceleration of proceedings. However, the CCP, as recently amended, contains several general provisions with a view to accelerating proceedings.

17 What are the relevant limitation periods?

According to article 8 of Law No. 4529/2018, which is consistent with the general provisions of the Greek civil law on tort (see article 937 of the CC), the limitation period for antitrust damages actions is five years. The limitation period starts to run when the injured party became aware or could reasonably be expected to know the infringement of competition law, the harm and the infringer. The said limitation period does not begin to run before the termination of the infringement. In any event, actions for damages are time-barred after 20 years from the termination of the infringement.

The limitation period is suspended if a competition authority takes actions to investigate the infringement and that suspension ends one year after the decision of the competition authority becomes final or the investigation is otherwise terminated. It is also suspended for the duration of any consensual dispute resolution procedure.

18 What appeals are available? Is appeal available on the facts or on the law?

According to article 511 of the CCP, the judgments of first instance courts (ie, single-member and multi-member court of first instance) may be appealed before the competent appellate courts. In particular, judgments of the Single-Member Courts of first Instance can be appealed before the Single-Member Court of Appeal; judgments of the Multi-Member Courts of First Instance can be appealed before the Three-Member Court of Appeal. Appeals are available both on the merits and facts, and on points of law. Under questions 3 and 5, once specialist court sections are set up for antitrust damages claims pursuant to article 13 of Law No. 4529/2018, decisions of the Athens specialist section of the court of first instance will be appealable before the Athens specialist section of the court of appeal.

The decisions issued by appellate courts, as well as judgments of first instance courts that are not appealed on second instance, are open to review (appeal) before the Supreme Court; however, this review process is possible on points of law only (article 552 of the CCP).

Collective actions

19 Are collective proceedings available in respect of antitrust claims?

The new law on antitrust damages actions (Law No. 4529/2018) does not include any specific provisions on collective actions, nor does Greek civil procedure law provide for collective proceedings specifically for competition law matters.

Following the general provisions of the CCP (articles 74 et seq), more claimants can file collective actions in case:

Update and trends

The most recent development is the recent enactment of Law No. 4529/2018 (March 2018), which transposes the Damages Directive into Greek law. It remains to be seen whether the new legislation, which is intended to complement the general rules on civil liability and procedure, will be successful in facilitating the effective exercise of the rights of the injured parties to seek compensation for antitrust infringements. Albeit the introduction of the new rules, a number of obstacles in pursuing private damages (including in relation to the quantification of damages) are likely to persist and much will depend on how civil courts ultimately interpret the inherent ambiguities of the new legislation and its interrelation with general rules of civil liability and procedure.

- they have a common right or obligation in relation to the subject matter of the dispute or their rights and obligations arise from the same factual and legal base; or
- the subject matter of the dispute comprises similar claims or obligations, which arise broadly from the same factual and legal basis, and the court where the action is filed is competent to rule in relation to each of the claimant.

It is further noted that a collective redress mechanism was introduced in paragraph 16, article 10 of Law No. 2251/1994 on consumers' protection. This mechanism enables certain certified consumers' associations to file class actions for the protection of the interests of its members in relation, however, to violations of consumer protection legislation.

20 Are collective proceedings mandated by legislation?

No.

21 If collective proceedings are allowed, is there a certification process? What is the test?

Not applicable.

22 Have courts certified collective proceedings in antitrust matters?

Not applicable.

23 Can plaintiffs opt out or opt in?

Not applicable.

24 Do collective settlements require judicial authorisation?

There is no applicable legislation for collective settlements specifically in private antitrust litigation. Following the general rules of civil law and procedure, settlements do not require judicial authorisation.

25 If the country is divided into multiple jurisdictions, is a national collective proceeding possible? Can private actions be brought simultaneously in respect of the same matter in more than one jurisdiction?

Not applicable.

26 Has a plaintiffs' collective-proceeding bar developed?

Not applicable.

Remedies

27 What forms of compensation are available and on what basis are they allowed?

According to the general provisions of civil law, both damages and restitution are in principle available as compensation, depending on the circumstances. Damages are awarded on the basis of the compensatory-restorative principle (therefore, no punitive or exemplary damages are available). A person who has suffered harm is entitled to full compensation, covering both actual loss (positive damage) and loss of profit, plus the payment of interest.

In particular, the damages to be compensated pertain to any adverse change in the state of the person that suffered harm, whether financial or non-financial, as a consequence of the illegal act (anticompetitive

conduct). Full compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed. It shall therefore include, pursuant to article 298 of the CC and article 3 of Law No. 4529/2018 transposing the Damages Directive, both actual loss (positive damage) and loss of profit. Positive damage comprises the reduction of the existing estate of the injured party, usually a reduction of its assets or an increase in its liabilities, while loss of profit comprises any cancellation of an increase in assets or a reduction in the liabilities of the property, which would have occurred had the loss-making event not taken place. Owing to the inherently hypothetical nature of lost profits, civil law specifies that lost profits is the profit that can possibly be expected in the usual course of events (normal course of business) or by reference to particular circumstances (in particular, preparatory acts already undertaken). As an aside, when calculating the loss of the injured party, any benefit (profit) obtained owing to the anticompetitive conduct shall be subtracted from the compensation to be given (compensation of actual loss and loss of profit).

In addition, the court may also order compensation for non-pecuniary (moral) harm caused by the antitrust infringement. According to article 932 of the CC, both natural and legal persons that suffered harm owing to an unlawful act have the right to seek non-pecuniary (moral) damages, such as damage to their feelings or honour, or to their legal personality or reputation, respectively.

In principle, the party liable for compensation shall provide it in cash, pursuant to article 297 of the CC. However, the court, by way of exception, may order restitution in the form of restoration of the previous situation. This indemnification consists of any act, including the obligation to transfer a right to the injured party or to create or abolish obligations, the absence or existence of which constitutes unlawfulness. Even though the courts have widely recognised their power to order such restitution, this form of compensation remains uncommon (it may, nonetheless, be particularly suitable in certain cases of anticompetitive conduct, such as abusive refusals to supply).

28 What other forms of remedy are available? What must a claimant prove to obtain an interim remedy?

Pursuant to the general provisions of the CCP, interim measures can be ordered by the court in the context of temporary judicial protection, depending on the situation and nature of the dispute, with a view of protecting or preserving a right or a legal relationship, until a ruling on the main trial is rendered (articles 682 et seq of the CCP). Such interim measures are available either when there is an urgent need, or when necessary to avert an imminent damage. Essentially, the claimant must put forward prima facie evidence that there is a claim and that the attainment of such a claim would be significantly imperilled or made impossible without the interim remedy requested (therefore, the standard of proof is essentially lower compared to the main claim on the merits).

29 Are punitive or exemplary damages available?

Punitive or exemplary damages are not available under Greek law.

30 Is there provision for interest on damages awards and from when does it accrue?

Yes. Under the general provisions of the CC, interest on damages accrues from the date of service of the claim to the defendant by court bailiff. However, Law No. 4529/2018 transposing the Damages Directive now specifies with regard to antitrust damages actions that interest accrues from the date the damage occurred (article 3).

31 Are the fines imposed by competition authorities taken into account when setting damages?

No. Administrative fines imposed by the competition authority serve a different objective; notably, general deterrent effect, and are not intended to have a compensatory or restorative effect for the harm incurred by individuals and, or undertakings as a result of an anticompetitive conduct (see, in this regard, the HCC Notice of 12 May 2006 on the 'Guidelines on setting fines'). In this vein, the administrative fines of the competition authority are not taken into account when setting damages and the claimant is entitled to seek full compensation regardless of the fines imposed in the context of public enforcement.

It is noted, however, that, under Law No. 4529/2018, and in line with the Damages Directive, in case of a consensual settlement the compensation paid by a party as a result thereof, should be considered as a mitigating factor by the competition authority when setting its administrative fines (in the context of public enforcement).

32 Who bears the legal costs? Can legal costs be recovered, and if so, on what basis?

The unsuccessful party (the defeated party) shall bear the legal costs, notably costs associated with the court proceedings and attorneys' fees (articles 173 et seq of the CCP). Legal costs are paid in advance by each party, who shall then attach a list of expenses to its submissions until the hearing of the case, in order to recover such costs upon conclusion of the proceedings (depending on the outcome of the case). Attorneys' fees are mostly awarded on the basis of statutory fees.

33 Is liability imposed on a joint and several basis?

As a general rule, under civil law, undertakings that have caused harm by infringing competition law through a joint behaviour are jointly and severely liable (article 926 of the CC). This general principle on joint and several liability is reiterated by Law No. 4529/2018 (paragraph 1, article 10), subject to certain exceptions (paragraphs 2 and 3), again in line with the Damages Directive.

In particular, the first derogation concerns small- or medium-sized enterprises with market share in the relevant market below 5 per cent, the economic viability of which would be jeopardised in a case where they were held jointly and severally liable. The second derogation concerns immunity recipients. Immunity recipients are jointly and severally liable:

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- towards their direct or indirect purchasers or providers; and
- to other injured parties only where full compensation is not available by having recourse to other undertaking involved in the relevant antitrust infringement.

34 Is there a possibility for contribution and indemnity among defendants? How must such claims be asserted?

The party that is jointly and severally liable and compensates the injured party in full shall have the right of contribution against the other liable parties (article 927 of the CC, also reiterated in paragraph 5, article 10 of Law No. 4529/2018). The extent of their reciprocal responsibility shall be determined by the court according to the degree of fault of each party and, in cases where the responsibility cannot be ascertained, the compensation shall be divided and born by all liable parties equally.

35 Is the 'passing on' defence allowed?

Law No. 4529/2018 transposing the Damages Directive now recognises explicitly that the infringer or defendant may invoke the 'passing-on' defence, while bearing the pertinent burden of proof. In particular, according to article 11 of Law No. 4529/2018, defendants in claims for antitrust damages can invoke as a defence the argument that the claimant passed on the whole or part of the overcharge resulting from the relevant antitrust infringement and, therefore, the claimant is not entitled to the full compensation it seeks. In this regard, the court may quantify the amount of the overcharge on the basis of probability (reduced standard of proof).

In addition, the new law introduces a rebuttable presumption in favour of the indirect purchaser that the overcharge passed on to him or her, provided that the infringement involved the overcharging of a direct purchaser by the infringer and the indirect purchaser purchased goods or services that had been the subject matter of the infringement.

36 Do any other defences exist that permit companies or individuals to defend themselves against competition law liability?

No other special defences exist.

37 Is alternative dispute resolution available?

In line with the Damages Directive, Law No. 4529/2018 introduces provisions on consensual dispute resolution and foresees that national courts may suspend their proceedings for up to two years where the parties thereto are involved in consensual dispute resolution. The joint infringer who enters into a consensual dispute resolution agreement is absolved from liability with respect to the injured party, but also with respect to the other non-settling co-infringers. If the non-settling co-infringers fail to satisfy the injured party for the remainder of its claim, the settling co-infringer shall satisfy the injured party (unless otherwise agreed in the context of the settlement), while retaining the right of recourse against the non-settling co-infringers.

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