

The International Comparative Legal Guide to:

# Cartels & Leniency 2009

A practical insight to cross-border Cartels & Leniency



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Advokatfirmaet Selmer DA

Allende & Brea

Allens Arthur Robinson

Andreas Neocleous & Co. LLC

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bpv Braun Haškovcová s.r.o.

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# Greece



Vassilis Stergiou

## PI Partners

### 1 The Legislative Framework of the Cartel Prohibition

#### 1.1 What is the legal basis and general nature of the cartel prohibition e.g. is it civil and/or criminal?

Cartel conduct is prohibited by Law 703/77, which prohibits anti-competitive agreements and arrangements between undertakings.

The concept of “undertaking” is defined broadly and can be extended to include any legal or natural person engaged in economic activity.

The general nature of the cartel prohibition is civil and administrative, but criminal sanctions are provided for as well. Article 9 of Law 703/77 provides for administrative sanctions on the undertakings engaged in cartel conduct. On the other hand, article 29 imposes criminal sanctions (fines of Euro 3,000-30,000 but not imprisonment) to individuals who participated in cartel conduct.

#### 1.2 What are the specific substantive provisions for the cartel prohibition?

Article 1(1) of Law 703/77 prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition. Article 1(1), provides an indicative list of anti-competitive practices, including those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development, or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 1(2) provides that agreements or decisions prohibited pursuant to article 1(1) shall be automatically null and void.

According to article 1(3), agreements, decisions and concerted practices caught by article 1(1) may be assessed by the Hellenic Competition Commission (“HCC”) as compatible with Law 703/77 provisions, if they fulfill the following three cumulative criteria:

- they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and
- they do not afford such undertakings the possibility of eliminating competition in a substantial part of the pertinent market.

It is notable that the system of “self-assessment” introduced by article 1(2) of Council Regulation 1/2003 in the European regime has not been implemented in the Greek regime and, therefore, the HCC is exclusively competent to rule on whether the criteria of article 1(3) apply.

However, “hard core” cartel conduct such as price-fixing and market-sharing cartels will never qualify for the above exemption.

#### 1.3 Who enforces the cartel prohibition?

The competent body authorised to enforce the cartel prohibition is the HCC, which consists of eleven members.

Its Chairman is appointed by the Council of Ministers, upon a proposition by the Minister of Development and an opinion of the Parliamentary Committee for transparency. Its members are appointed by the Minister of Development. The Chairman, the members (and deputies) are appointed for a three-year term.

The body assisting the HCC in its duties is the Directorate General for Competition (“DG”).

Decisions of the HCC in competition matters are subject to judicial review under articles 14-17 of Law 703/77. Appeals (in the first instance) are filed to the Athens Administrative Court of Appeals. The latter’s judgments may be further appealed on points of law only, in front of the Supreme Administrative Court (Conseil d’Etat).

It should be noted that the Hellenic Telecommunications & Post Commission (EETT) is exercising the competence of the HCC in the telecommunications and the postal services market. EETT has the discretion either to ask for the assistance of the HCC or to refer the case to the HCC.

#### 1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

An investigation can be opened on the basis of one or more of the following grounds: (a) HCC own market intelligence (ex officio); (b) following a complaint; and/or (c) following a leniency application.

The DG performs a fact-finding exercise in order to collect data necessary for the establishment of an infringement. For this reason it may perform dawn-raids, send questionnaires and take statements. The duration of the investigation varies from case to case, while Law 703/77 does not provide for a specific deadline. In practice, the duration of an investigation can be significantly long.

When the DG believes that it has sufficient grounds to establish an infringement, it will send to the parties under investigation a “statement of objections”. The statement of objections has to be notified to the parties at least 60 days before the hearing, unless the case under examination is urgent. It sets out the facts on which the DG relies, the legal basis of the infringement and the actions proposed.

Subsequently, the parties are allowed to have access to the file in order to review the investigation documents.

The parties have to submit their written response to the HCC at least 30 days before the hearing. In the written response, the parties may ask to exercise their right for an oral hearing. At least 15 days before the hearing, the parties may submit a supplementary written response. Third parties may submit their statements at least 15 days before the hearing.

After the right to be heard has been exercised and upon the application of the parties, the Chairman may grant to the parties the right to submit a supplementary written response.

The HCC is obliged to issue a decision within 30 days from its last meeting regarding the case at hand. This last meeting has to be held within 30 days from the last hearing of the case. In practice, the above deadlines are not observed.

**1.5 Are there any sector-specific offences or exemptions?**

Under article 6 of Law 703/77:

- undertakings of general importance for the national economy;
- undertakings and association of undertakings engaged in agriculture, farming, forestal products and fishery; and
- transport undertakings and their associations,

may be exempted from the application of Law 703/77, by means of a joint-ministerial decision issued by the Minister of Development and the competent minister.

Article 7 of Law 703/77 provides that, subject to the international obligations of Greece, Law 703/77 does not apply to agreements, decisions and concerted practices which exclusively intend to secure, promote or strengthen exports.

**1.6 Is cartel conduct outside Greece covered by the prohibition?**

Article 1 applies as well to conduct outside Greece, which has an effect on competition within Greece.

**2 Investigative Powers**

**2.1 Summary of general investigatory powers.**

**Table of General Investigatory Powers**

Investigatory power	Civil / administrative	Criminal
Order the production of specific documents or information	Yes	N/A

Investigatory power	Civil / administrative	Criminal
Carry out compulsory interviews with individuals	Yes	N/A
Carry out an unannounced search of business premises	Yes	N/A
Carry out an unannounced search of residential premises	Yes*	N/A
■ Right to ‘image’ computer hard drives using forensic IT tools	Yes	N/A
■ Right to retain original documents	No	N/A
■ Right to require an explanation of documents or information supplied	Yes	N/A
■ Right to secure premises overnight (e.g. by seal)	Yes	N/A

**Please Note:** \* indicates that the investigatory measure requires the authorisation by a Court or another body independent of the competition authority.

**2.2 Specific or unusual features of the investigatory powers referred to in the summary table.**

There are none.

**2.3 Are there general surveillance powers (e.g. bugging)?**

There are no formal general surveillance powers, although the list with the investigatory powers is indicative and not exhaustive. On this ground, the surveillance cannot be excluded, provided that constitutional rights are not violated.

**2.4 Are there any other significant powers of investigation?**

The officers of the DG have the authority not only to require an explanation of documents or information supplied, but also to take statements (sworn or not).

**2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?**

The officers of the DG carry out the searches of business and/or residential premises. The officers may ask the assistance of any competent authority (such as the Public Prosecutor). Investigations of residential premises have to be performed under the presence of the judicial authority.

The DG officers normally wait for a reasonable time (30-60 minutes) for the external legal advisors to arrive before they commence the investigation.

**2.6 Is in-house legal advice protected by the rules of privilege?**

There is no specific provision. While the theory is currently bifurcated, the officers of the HCC have in the past seized communication between the in-house legal counsel and the company under investigation, but the existence of an in-house lawyer/client privilege has not been yet addressed by the courts.

### 2.7 Other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

There are none.

### 2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used?

A fine of Euro 15,000-100,000 may be imposed on persons obstructing the investigations. No decisions have been issued so far imposing such sanctions.

## 3 Sanctions on Companies and Individuals

### 3.1 What are the sanctions for companies?

According to article 9 of Law 703/79, the HCC has the power to impose penalties on a company violating article 1 of up to 15% of its turnover for the current financial year or the financial year preceding the violation. Fines up to Euro 10,000 are imposed for each day of non-compliance to HCC decisions.

On 12 May 2006, the HCC published guidelines on the method of setting fines. Fines should have a sufficiently deterrent effect, not only in order to sanction the company concerned (specific deterrence) but also in order to deter other companies from engaging in, or continuing, behavior that is contrary to article 1 of Law 703/77. The HCC will use the following two-step methodology when setting the fine to be imposed on companies:

#### 1. Basic amount of the fine

First, the HCC will determine a basic amount for each company. The basic amount of the fine will be set at a level of up to 30% of the value of sales of goods or services to which the infringement directly or indirectly relates, depending on the degree of gravity of the infringement, multiplied by the number of years of infringement.

#### 2. Adjustments to the basic amount

##### A. Aggravating circumstances

The basic amount may be increased where the HCC finds that there are aggravating circumstances, such as:

- where the company is a “repeat offender” (100% increase for the same or similar violation);
- refusal to cooperate with or obstruction of the HCC in carrying out its investigations; or
- role of leader in, or instigator of, the infringement.

##### B. Mitigating circumstances

The basic amount may be reduced where the HCC finds that mitigating circumstances exist, such as:

- the infringement was terminated as soon as the HCC intervened;
- the company committed the violation as a result of negligence;
- the company’s involvement was substantially limited; and
- the company has effectively cooperated with the HCC outside the scope of the leniency programme.

In exceptional cases, the HCC may take account of the company’s inability to pay in a specific social and economic context.

Additionally, the HCC has the power to require a company to bring an infringement to an end, to order interim measures and to impose any structural or behavioral remedy.

### 3.2 What are the sanctions for individuals?

Any person, who executes agreements, takes decisions or performs concerted practices, prohibited by article 1 of Law 703/77 and article 81 of the EC Treaty, shall be punished by a fine of Euro 3,000-30,000. These thresholds are doubled in case of a repeated offence.

Additionally, any person obstructing the investigations of the HCC is punishable by a fine of Euro 15,000-100,000.

Finally, any person:

- obstructing the application of the provisions of law 703/77;
- delaying the provision of information to the HCC;
- providing false information or concealing true information; or
- denying to provide affidavits or witnessing false statements or concealing true information,

is threatened with imprisonment (at least for 3 months) and is punishable by a fine of Euro 5,000-15,000. These thresholds are doubled in case of a repeated offence.

### 3.3 What are the applicable limitation periods?

Greek law does not provide for a limitation period. Existing literature deems a 5-year limitation period as applicable by analogy to the European law.

### 3.4 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

Neither is there any relevant provision in the Greek law nor have any financial penalties been imposed to companies’ employees so far. Nevertheless, there is no provision prohibiting a company to reimburse such costs to its employees.

## 4 Leniency for Companies

### 4.1 Is there a leniency programme for companies? If so, please provide brief details.

In March 2006, the HCC adopted a leniency programme on immunity from fines and reduction of fines in cartel cases.

#### 1. Immunity from fines

The HCC will grant immunity from any fine which would otherwise have been imposed to a company disclosing its participation in an alleged cartel if that company:

- (a) is the first to submit information and evidence which in the HCC’s view will enable it to: (i) carry out a targeted inspection in connection with the alleged cartel; or (ii) find an infringement in connection with the alleged cartel;
- (b) cooperates genuinely, fully, on a continuous basis and expeditiously from the time it submits its application throughout the HCC’s administrative procedure;
- (c) stopped its involvement in the alleged cartel immediately following the submission of the evidence;
- (d) has not induced other companies to participate in the alleged cartel;
- (e) has treated as confidential its application for leniency until the issuance of the statement of objections; and
- (f) has not been found in the past by the HCC or the EU Commission to have participated in a prohibited agreement.

#### 2. Reduction of a fine

Companies that do not meet the conditions under 1 above may be

eligible to benefit from a reduction of any fine that would otherwise have been imposed.

In order to qualify, a company must provide the HCC with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the possession of the HCC. Also, the company has to stop its involvement in the alleged cartel immediately following the submission of the evidence.

The first company to provide significant added value gets a reduction of 30-50%, the second 20-30% and the following 15-20%.

#### 4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

No, the Greek leniency programme does not provide for a marker system.

#### 4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

No, the Greek leniency programme does not provide for oral applications.

#### 4.4 To what extent will a leniency application be treated confidentially and for how long?

A leniency application has to be treated confidentially by the applicant until the issuance of the statement of objection.

#### 4.5 At what point does the 'continuous cooperation' requirement cease to apply?

The 'continuous cooperation' requirement ceases to apply with the completion of the administrative procedure.

#### 4.6 Is there a 'leniency plus' or 'penalty plus' policy?

No there is not.

## 5 Whistle-blowing Procedures for Individuals

#### 5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

There are no formal procedures for individuals to report cartel conduct independently of their employer. Nevertheless, employees may always provide to the HCC information regarding cartel conduct as any third party.

## 6 Plea Bargaining Arrangements

#### 6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)?

No there is not.

## 7 Appeal Process

#### 7.1 What is the appeal process?

HCC decisions can be appealed (in the first instance) in front of the Athens Administrative Court of Appeals within 60 days of the notification of the decision.

Decisions issued by the Athens Administrative Court of Appeals may be challenged before the Administrative Supreme Court (Conseil d'Etat) on points of law only.

#### 7.2 Does the appeal process allow for the cross-examination of witnesses?

Yes it does.

## 8 Damages Actions

#### 8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct?

Third parties who have suffered a loss as a result of cartel conduct may bring a civil claim for damages in the Greek courts. There is no specific statutory basis for such claims. The basis of such claim would be article 914 of the Civil Code, which establishes tort liability.

Such actions can be brought regardless of whether the HCC has already issued an infringement decision in respect of the relevant conduct.

#### 8.2 Do your procedural rules allow for class-action or representative claims?

No. However, the Greek Civil Procedure Code provides that an action for damages may be brought jointly by more than one party if:

- the plaintiffs' right for damages arises from the same factual and legal basis; or
- the object of the dispute consists of similar claims based on similar factual and legal basis.

#### 8.3 What are the applicable limitation periods?

The limitation period is 5 years from the day the plaintiff became aware of the damage and the identity of the responsible person. In any case, the limitation period cannot exceed 20 years from the relevant action.

#### 8.4 What are the cost rules for civil damages follow-on claims in cartel cases?

There are no special provisions for costs regarding civil damages follow-on claims in cartel cases. The general rule is that the losing party is responsible to pay the costs. This rule has several exceptions and limitations, which depend on the specific facts of each case.

#### 8.5 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct?

There have not been any civil damages claims for cartel conduct in the Greek courts so far.

## 9 Miscellaneous

### 9.1 Provide brief details of significant recent or imminent statutory or other developments in the field of cartels and leniency.

There have been no recent developments in the field of cartels and leniency.

### 9.2 Please mention any other issues of particular interest in Greece not covered by the above.

None.



#### Vassilis Stergiou

PI Partners  
11th km Athens-Lamia National Road  
Metamorfofi 14451, Athens  
Greece

*Tel:* +30 210 2886 512

*Fax:* +30 210 2886 910

*Email:* [vasileios.stergiou@pipartners.eu](mailto:vasileios.stergiou@pipartners.eu)

*URL:* [www.pipartners.eu](http://www.pipartners.eu)

Vassilis is a senior associate with PI Partners working in its EU and competition department in Athens. His work involves advising clients on a broad range of competition law issues, including merger control, cartel and leniency issues, abuse of dominant position, vertical/horizontal agreements, sector inquiries and dawn raids. During the last year he has focused his practice on the application of competition rules in the area of mass media, which, since the introduction of the new mass media law in August 2007, is regulated by special competition provisions, and he has handled several filings before the Hellenic Competition Commission under the new law. Vassilis received his LL.B. from the University of Athens in 2003, and an LL.M. in 2005 from University of Pennsylvania (Upenn) Law School.

## PI PARTNERS

PI Partners EU and Competition law practice has extensive experience in advising on all aspects of competition law, including cartels, abuse of dominant position, merger control, vertical agreements, cooperation agreements as well as handling on site-inspections and subsequent investigations by the authorities. PI Partners' Bucharest and Sofia offices are actively engaged in advising on the effects of Romania and Bulgaria joining the European Union in 2007. Lawyers in our Istanbul office have built an extensive track record in advising on the compatibility of all types of commercial agreements with competition regulations. We represent our clients in their applications before the European Court of Justice and active contestations against the Competition Commission's decisions. Our team is highly specialised: Xenophon Paparrigopoulos is the Head of the Department of EU Studies of the Scientific Service of the Hellenic Parliament, with responsibility for the briefing of Parliament on important developments in EU law and for the review of national bills to ensure conformity with EU legislation.