THE CARTELS AND LENIENCY REVIEW

ELEVENTH EDITION

Editors
John D Buretta and John Terzaken

THE LAWREVIEWS

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PREFACE

Cartels are a surprisingly persistent feature of economic life. The temptation to rig the game in one's favour is constant, particularly when demand conditions are weak and the product in question is an undifferentiated commodity. Corporate compliance programmes are useful but inherently limited, as managers may come to see their personal interests as divergent from those of the corporation. Detection of cartel arrangements can present a substantial challenge for both internal legal departments and law enforcers. Some notable cartels have managed to remain intact for as long as a decade before being uncovered. Some may never see the light of day. However, for those that are detected, this compendium offers a resource for practitioners around the world.

This book brings together leading competition law experts from 23 jurisdictions to address an issue of growing importance to large corporations, their managers and their lawyers: the potential liability, both civil and criminal, that may arise from unlawful agreements with competitors as to price, markets or output. The broad message of the book is that this risk is growing steadily. Stubborn cultural attitudes regarding cartel activity are gradually shifting. Many jurisdictions have moved to give their competition authorities additional investigative tools, including wiretap authority and broad subpoena powers. There is also a burgeoning movement to criminalise cartel activity in jurisdictions where it has previously been regarded as wholly or principally a civil matter. The growing use of leniency programmes has worked to radically destabilise global cartels, creating powerful incentives to report cartel activity when discovered.

This book serves as a useful resource for the local practitioner, as well as those faced with navigating the global regulatory thicket in international cartel investigations. The proliferation of cartel enforcement and associated leniency programmes continues to increase the number and degree of different procedural, substantive and enforcement practice demands on clients ensnared in investigations of international infringements. Counsel for these clients must manage the various burdens imposed by differing authorities, including by prioritising and sequencing responses to competing requests across jurisdictions, and evaluating which requests can be deferred or negotiated to avoid complicating matters in other jurisdictions. But these logistical challenges are only the beginning, as counsel must also be prepared to wrestle with competing standards among authorities on issues such as employee liability, confidentiality, privilege, privacy, document preservation and many others, as well as considering the collateral implications of the potential involvement of non-antitrust regulators.

The authors are from some of the most widely respected law firms in their jurisdictions. All have substantial experience with cartel investigations and many have served in senior positions in government. They know both what the law says and how it is actually enforced,

and we think you will find their guidance regarding the practices of local competition authorities invaluable. This book seeks to provide both breadth of coverage (with a chapter on each of the jurisdictions) and analytical depth for those practitioners who may find themselves on the front line of a government inquiry or an internal investigation into suspect practices.

Our emphasis is necessarily on established law and policy, but discussion of emerging or unsettled issues has been provided where appropriate.

This is the 11th edition of *The Cartels and Leniency Review*. We hope you will find it a useful resource. The views expressed are those of the authors, not of their firms, the editor or the publisher. Every endeavour has been made to make updates until the last possible date before publication to ensure that what you read is the latest intelligence.

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January 2023

Chapter 7

GREECE

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I ENFORCEMENT POLICIES AND GUIDANCE

i Statutory framework

The main legal instrument pertaining to the protection of undistorted competition in the Greek market is Law No. 3,959/2011 (the Competition Act), which abolished and replaced Law No. 703/1977. The legislator's intention was the production of a coherent statute (the previous regime of Law No. 703/1977 had been amended numerous times), while further harmonising Greek legislation with EU best practices and promoting the effectiveness of the Hellenic Competition Commission (HCC). Law No. 3,959/2011 has been recently further amended by Law No. 4,886/2022 aiming at modernising the national legislation by transposing EU Directive 2019/1 (the ECN+ Directive) into the Greek legal order.

Article 1 of the Competition Act provides that 'all agreements and concerted practices between undertakings, and all decisions by associations of undertakings, which have as their object or effect the prevention, restriction or distortion of competition within the Hellenic Republic' are prohibited.

The Competition Act does not define the term 'cartel'. Nonetheless, the notion of 'prohibited agreements and/or concerted practices' is used and, essentially, refers to the same practices prohibited under Article 101 of the Treaty on the Functioning of the European Union (TFEU) (which, in any event, is applied in parallel in most investigations pursued by the HCC).

Any agreement between actual or potential competitors that fixes prices, limits output or shares markets, customers or sources of supply will generally be regarded as an agreement restricting competition (by object) within the meaning of the law.

While the Competition Act does not distinguish between hardcore and other types of horizontal collusive agreements, the HCC's decisional practice corresponds to EU competition law jurisprudence. The published guidelines on the method of setting fines postulate that horizontal price-fixing, market sharing and output limitation agreements are considered the most serious infringements of competition law. Similarly, both the leniency programme and the published guidelines on the settlement procedure adopt the same definition of hardcore cartels as that in the EU context.

In general, the HCC follows the European Commission's practice concerning both the notion of agreements and concerted practices falling within the scope of antitrust rules and the constitutive elements of hardcore cartels and the ensuing substantiation of an infringement (including rules of evidence and the use of assumptions) – having due regard to pertinent

1 Dimitris Loukas is a partner and Athanasios Taliadouros is an associate at PotamitisVekris.

EU case law. In particular, an infringement cannot be established exclusively on the basis of indicia of parallel behaviour (tacit collusion); thus, the HCC must adduce corroborating evidence demonstrating that parallel behaviour stems from anticompetitive conduct, such as exchanges of commercially sensitive information (e.g., individualised intentions of future prices and quantities).

Participation in a cartel is both an administrative and a criminal offence (see Section V for more details). In this context, the HCC has wide discretion to impose substantial fines for cartel behaviour and for infringements of pertinent procedural rules (e.g., for failure to cooperate with inspectors in the context of a dawn raid).

Nonetheless, the HCC is only competent to impose administrative fines; the power to impose criminal sanctions lies within the competence of the criminal courts.

ii The authority

The HCC is the competent authority for the enforcement of the Competition Act, as well as Articles 101 and 102 of the TFEU. According to Article 12 of the Competition Act, the HCC is constituted and shall operate as an independent authority, vested with administrative and financial autonomy; the HCC has legal personality and appears in its own right before any court, in all kinds of proceedings, whereas its members enjoy personal and functional independence.

In accordance with Regulation 1/2003,[2] the HCC performs all the enforcement actions of a designated national competition authority (NCA) and, consequently, is fully competent to enforce Article 101 of the TFEU and Article 1 of the Competition Act (i.e., the domestic equivalent) on cartels.[3] The HCC can initiate proceedings either *ex officio* or following a complaint.

As far as agreements and concerted practices are concerned, the HCC has the competence to:

a make decisions on finding an infringement of Article 1 of the Competition Act or Article 101 of the TFEU (or both) and impose administrative fines;[4]

b take interim measures in the case of a suspected infringement;

c launch investigations and conduct dawn raids for the purpose of enforcing antitrust legislation;[5]

d deliver opinions on competition issues either on its own initiative or at the request of the competent minister, in accordance with Article 23 of the Competition Act;

2 Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty.

3 Article 3(1) of Regulation 1/2003 provides that, if an NCA within the European Union enforces domestic competition law to investigate a cartel that may affect trade between Member States, it must also apply Article 101 of the TFEU. Moreover, national competition rules should not be used to prohibit agreements that are compatible with EU competition rules (the convergence rule).

4 HCC decisions can be appealed before the Athens Administrative Court of Appeal within 60 days of their notification to the parties concerned. The decisions of the appellate court can be further appealed to the Supreme Administrative Court (the council of state). The appeal to the Supreme Court is limited to points of law.

5 The HCC has extensive powers of investigation and inspection, including the power to demand the production of information, take statements from individuals, search private premises and seal premises or business records (Article 39 of the Competition Act).

e conduct sector inquiries, in accordance with Article 40 of the Competition Act; and
f launch market investigations (regulatory interventions) in sectors of the economy, pursuant to Article 11 of the Competition Act.[6]

The HCC has consultative competence in the areas of identifying and tackling regulatory barriers to competition and has taken various steps in recent years to diversify and expand its advocacy efforts. In this vein, it has published practical guides on compliance and awareness (which are accessible online) and often organises training seminars and conferences to promote awareness on antitrust matters.

II COOPERATION WITH OTHER JURISDICTIONS

Pursuant to Article 28 of the Competition Act, the HCC closely cooperates with the European Commission and NCAs in all EU Member States, with a view to enforcing EU competition rules in the context of Regulation 1/2003, notably through the European Competition Network (ECN).[7]

In addition, the HCC cooperates with other (non-EU) competition authorities (e.g., mutual legal assistance treaties, memoranda of understanding and cooperation agreements),[8] notably in its capacity as a member of both the Organisation for Economic Co-operation and Development and the International Competition Network.

If an undertaking that has its seat or exercises its activity in Greece refuses to allow the inspection provided for under EU law, the HCC, acting either *ex officio* or at the request of

6 The HCC has already exercised its regulatory competence by launching a market investigation in the press distribution sector in 2020 with a focus on the market for printed press distribution, where it concluded that the monopolistic structure of the market at the distribution agency level constitutes in itself a distortion of competition and proposed remedies to restore competition in the sector. Since 2021 the HCC has also initiated a market investigation in the construction sector in order to examine the economic activities related to the development of building and infrastructure projects (including concessions), founding so far that there is a lack of effective competition particularly in the market for public works.

7 For example, NCAs may ask each other for assistance in collecting information in their respective territories and can also exchange information for the purpose of applying Article 101 of the TFEU. Members of the ECN also cooperate with a view to ensuring the efficient allocation of cases (best-placed authority); the HCC will normally be best placed if the agreement mainly affects competition within the Greek market. The HCC has a duty to inform the European Commission immediately when it starts an Article 101 TFEU investigation; it may also inform other NCAs. Information containing sensitive business information can be communicated between NCAs. For further details, see Commission Notice on Cooperation within the Network of Competition Authorities (2004/C 101/03).

8 See, indicatively: (1) 'Agreement in the context of the South-East European Cooperation Process Memorandum concerning the mechanism for the exchange of information among Competition Authorities of the SEECP' (Istanbul, 25 October 2010); (2) 'Agreement with the Commission for the Protection of Competition of Cyprus Memorandum of Cooperation' (Nicosia, 30 October 2014); (3) 'Memorandum on Partnership in the field of Competition Policy between the Albanian Competition Authority and the HCC' (7 September 2021); (4) 'Memorandum on Partnership in the field of Competition Law Enforcement and Policy between the HCC and the Commission for Protection of Competition of the Republic of North Macedonia' (29 September 2021); (5) 'Memorandum on Partnership in the field of Competition Law Enforcement and Policy between the HCC and the Competition Protection Commission of the Republic of Armenia' (7 October 2021); (6) 'Memorandum of Partnership between the HCC and the Commission for Protection of Competition of the Republic of Serbia' (28 February 2022); (7) 'Memorandum of Understanding between the HCC and the Competition Council of the Kingdom of

the designated bodies of the European Commission, shall ensure overall proper conduct of the investigation, providing all necessary assistance, as envisaged under Article 38 et seq. of the Competition Act.

As far as leniency applications are concerned, the HCC processes summary applications with due regard to the status and overall progress of the corresponding leniency application filed before the European Commission and giving precedence to the main proceedings at the EU level (by way of comity), notwithstanding that no strict obligation of this kind applies.[9]

The HCC often cites in its reasoning the relevant EU court judgments and infringement decisions made by the European Commission and other NCAs.

III JURISDICTIONAL LIMITATIONS, AFFIRMATIVE DEFENCES AND EXEMPTIONS

i Extraterritoriality

The Competition Act applies to all restrictions of competition that affect or might affect the Greek market, even if the restrictions are because of agreements or concerted practices between undertakings implemented or entered into outside Greece, and even if the undertakings have no establishment in Greece; hence, undertakings domiciled outside Greece can be investigated and fined, as long as they have entered into anticompetitive agreements or practices that might have an effect on the national market.

ii Affirmative defences and exemptions

Agreements or concerted practices falling within the ambit of Article 1(1) of the Competition Act are valid, in whole or in part, if they cumulatively meet the following criteria set out in Article 1(3), mirroring those of Article 101(3) of the TFEU:

a they contribute to improving production or distribution of goods, or to promoting technical or economic progress;

b at the same time, they allow consumers a fair share of the accruing benefit;

c they do not impose restrictions on the undertakings concerned beyond those that are indispensable for attaining the objectives; and

d they do not afford the possibility of eliminating competition in a substantial part of the relevant market.

Be that as it may, under HCC practice, it is most unlikely that a hardcore cartel agreement (considered an infringement by object) could possibly qualify for an exemption of this kind.

Similarly, cartel-type agreements typically cannot benefit from EU Block Exemption Regulations (which are also applicable in Greece).

Morocco' (30 March 2022); (8) 'Memorandum of Intent on Cooperation between the HCC and the Israeli Competition Authority' (22 June 2022); and (9) 'Memorandum of Partnership between the HCC and the Egyptian Competition Authority' (4 October 2022).

9 Case C-428/14, *DHL Express (Italy) Srl and DHL Global Forwarding (Italy) SpA v. Autorità Garante della Concorrenza e del mercato*, EU:C:2016:27.

In line with the provisions of Regulation 1/2003, there is no prior notification mechanism; undertakings are responsible for conducting their own self-assessment and ensuring compliance with antitrust rules.[10]

The Competition Act applies to all economic activities; there are no industry-specific defences or exemptions.

IV LENIENCY PROGRAMMES

i Overview

In 2011, the HCC (via Decision No. 526/VI/2011) introduced a revised leniency programme (the leniency programme was first introduced in the domestic legal order in 2005) with a view to promoting full alignment with current EU applicable standards.[11] According to the HCC, international experience to date confirms that leniency programmes are considered to be the most appropriate and effective measure in combating cartels; hence, it is expected that putting an effective leniency regime in place will be a key factor in the fight against cartels, which, owing to their covert nature, are hard to detect without the active cooperation of the undertakings or individuals involved. Nonetheless, until very recently, the HCC's leniency programme had not yielded any significant results.[12]

In short, the pertinent conditions for immunity or reduction of fines include, inter alia, the timing of the application, the degree to which the application enhances the ability of the HCC to establish to the requisite level the existence of an anticompetitive agreement, the significance and completeness of the evidence and information submitted[13] and, especially, whether the information provided substantially enhances the authority's ability to establish critical facts of the infringement at hand. In substance, the HCC's leniency programme essentially conforms to the ECN Model Leniency Programme.

10 However, according to the provisions of Article 37A of Law No. 3,959/2011 (as amended by Law No. 4,886/2022) and HCC Decision No. 789/2022, one or more undertakings may submit a request for issuance of a 'no-action letter' by the President of the HCC, stating that no action will be taken against a horizontal or vertical agreement. Undertakings can submit a relevant request on public interest grounds, especially with regard to implementation of sustainable development goals.

11 The leniency programme is now explicitly provided for in Articles 29B-29Z of Law No. 3959/2011, as in force following its amendment by Law No. 4886/2022. Pursuant to these provisions, the HCC has adopted Decision No. 791/2022 laying down the criteria and conditions for granting full immunity from, or reduction of the fines imposed on undertakings and natural persons contributing to the detection of prohibited horizontal agreements.

12 The first successful leniency application was made in 2013 in the context of the Construction cartel, which was subsequently sanctioned by the HCC in 2017 following an extensive investigation (see Section V.iv). In 2020, the leniency programme was utilised in a cartel case pertaining to the furniture and office equipment market (HCC Decision No. 703/2020). In addition to that, the HCC has recently put in place two anonymous information systems (whistle-blowing), designed, on the one hand, for use by citizens and undertakings to uncover cartels or other anticompetitive practices and, on the other hand, specifically for use by Contracting Authorities to detect practices of manipulation of public tenders (bid-rigging).

13 The applicants should accompany their leniency applications with a detailed description of the alleged cartel and its objectives, the products or services concerned, and the cartel's geographical coverage, duration and background.

In line with the EU regime, an applicant can investigate the applicability of the leniency programme before proceeding to a formal application, requesting clarification on the applicability of the programme to the case at hand, by presenting the evidence at its disposal on a hypothetical and anonymous basis.

There are no deadlines for initiating or completing an application for immunity or partial leniency. In this vein, the applicant may request a 'marker' (i.e., protecting the applicant's place in the queue for a given period (decided by the president of the HCC on an ad hoc basis)), thus allowing it to collect all the evidence needed to meet the conditions and requirements for immunity. As long as the information and evidence requested are duly adduced, the latter is deemed to have been submitted at the time when the marker was granted.

An undertaking wishing to apply for leniency should contact the HCC president, who immediately informs the HCC's director general or, provided the case has already been prioritised and assigned to a member of the HCC board, the competent rapporteur member.

ii Requirements

The programme applies to prohibited horizontal anticompetitive agreements or concerted practices in the form of a cartel; it does not apply to vertical agreements or abuses of dominant position. The general requirements of a leniency application (fully or partial) can be summarised as follows:

a the undertaking concerned cooperates fully and continuously throughout the HCC's investigative procedure and has not destroyed or concealed evidence pertaining to the cartel;

b its involvement in the anticompetitive agreement or practice ended, at the latest, when the application was filed; and

c the applicant has treated its application as fully confidential until the issuance of a statement of objections by the HCC.[14]

iii Immunity from fines and reduction of fines

The programme provides for either full immunity from fines or reduction of fines.

Full immunity (Type 1A) can be granted to the applicant who is the first to submit evidence enabling the HCC to initiate a targeted inspection with regard to a suspected cartel in cases where the HCC was not already in possession of sufficient evidence at the time of the application, allowing it to initiate the investigative procedure.

Alternatively, full immunity (Type 1B) is granted to the applicant who is the first to submit evidence enabling the HCC to establish an infringement, where the evidence already in the HCC's possession was not sufficient in this respect.

If the conditions for granting immunity are not met, a reduction in the fine that would otherwise have been imposed (Type 2) may be granted to the applicant who provides the HCC with evidence relating to a suspected cartel, as long as the evidence brings about significant added value to the evidence already in the HCC's possession.

14 The identity of the applicant is kept confidential until the issuance of the statement of objections and the initiation of proceedings against the alleged cartelists. This is in line with the general obligation of the officials of the Directorate General and the members of the HCC to treat as confidential any material gathered during the investigation of cases. Article 41 of the Competition Act provides that any information gathered in the context of the examination of any case may be used in relation only to that particular case.

As far as natural persons are concerned,[15] the admission to the leniency programme pursuant to Article 29B of the Competition Act with the granting of total immunity or a fine reduction and full payment thereof also absolves them from criminal liability (see Section V). Nevertheless, in the case of a fine reduction, where the fine is not fully paid, the admission to the programme of Article 29C of the Competition Act is regarded as a mitigating circumstance, resulting in the imposition of a reduced sanction in line with stipulations of the Penal Code.

An undertaking or a natural person that took out actions to coerce other companies to participate in the collusive agreement is not eligible for Type 1A or Type 1B immunity.

iv Leniency and settlement

It should be stressed that leniency and settlement (see Section V for more details) are not mutually exclusive; where applicable, the reduction of fines under the settlement procedure will be cumulative with the reduction of fines under the leniency programme.

V PENALTIES

Participation in a cartel is both an administrative and a criminal offence.

i Administrative sanctions

According to Article 25B(1) of the Competition Act, the fine imposed for infringement of Article 1 of the Competition Act or Article 101 of the TFEU may be up to 10 per cent of the total world turnover of the undertaking concerned[16] in the financial year preceding the issuance of the decision.[17] In case of a group of companies, for the calculation of the fine, the total global turnover of the group shall be taken into account. Where it is possible to calculate the level of the economic benefit the undertaking derived from the infringement, the fine shall be no less than that, even if that amount exceeds the aforementioned 10 per cent cap.

The HCC has published guidelines on the method of setting fines,[18] mirroring the methodology set out in the European Commission's Fining Guidelines.[19] In short, when determining the level of the fine, account shall be taken of the gravity, duration and geographical scope of the infringement, as well as the duration and nature of participation in the infringement by the undertaking concerned.

15 A leniency application filed by a company automatically covers all natural persons that would otherwise also be liable for fines.

16 As far as association of undertakings are concerned, the fine imposed may be up to 10 per cent of the total turnover of its members. If the association is not solvent, it shall be required to call for contributions from its members to cover the amount of the fine. Further, where the contributions have not been made within the time limit set by the HCC, the latter may require payment of the fine directly from each of the undertakings whose representatives were members of the decision-making bodies concerned.

17 According to Article 25B(2), the HCC may decide to impose a fine for each day of non-compliance with its decision, determined in proportion to the average daily aggregate worldwide turnover of the undertaking or association of undertakings in the financial year preceding the adoption of the decision, up to a maximum of 3 per cent of that turnover, calculated from the date postulated in the HCC decision.

18 HCC Guidelines for the calculation of fines (7 July 2022) pursuant to Articles 25 and 25B of Law No. 3959/2011, as in force.

19 Guidelines on the method of setting fines imposed pursuant to Article 23(2) of Regulation 1/2003 (2006/C 210/02).

Additional adjustments are possible on the basis of other objective factors, including the specific economic characteristics of the undertakings in question. In recent decisions, the financial turbulence of certain sectors of the Greek economy has been taken into consideration as a mitigating circumstance.

Be that as it may, the Administrative Court of Appeals has confirmed that the HCC has a wide margin of appreciation when setting the level of fines on companies; thus, in practice, it can be difficult to assess beforehand and with sufficient certainty the penalty that will be imposed.

In this vein, the highest fines imposed by the HCC in respect of cartel-type cases include the following examples:

a in 2017, record total fines of approximately €81 million regarding several collusion schemes in tenders for public works of infrastructure (*Construction* cartel);

b in 2017, total fines of €19 million for anticompetitive agreements between wholesalers of luxury cosmetics pertaining to indirect price-fixing by setting a uniform maximum level of discounts, although the pertinent decisions were ultimately quashed by the administrative appellate court owing to a breach, on the HCC's part, of the statute of limitations;

c in 2013, total fines of approximately €40 million regarding price-fixing in the production and distribution of poultry meat in Greece; and

d in 2007, total fines of approximately €48 million regarding anticompetitive agreements in the dairy products market.

Notwithstanding the fact that the Greek regime does not provide for an individual sanction in the form of director disqualification, the Competition Act also identifies the natural persons obliged to comply with applicable antitrust provisions:

a in the case of individual undertakings, the owners;

b in the case of civil and commercial companies and joint ventures, the managers and all general partners; and

c in the case of public limited companies, the members of the board and the persons responsible for implementing the relevant decision.

The aforementioned natural persons shall be liable jointly and severally with the undertaking concerned for payment of the fine by means of their personal assets. The HCC may also impose on those persons a separate administrative fine of between €200,000 and €2 million if they have demonstrably participated in preparatory acts or the organisation or commission of the anticompetitive agreement or practice. To date, no such separate administrative fine has been imposed upon a company executive.

ii Criminal liability

According to Article 44 (on criminal sanctions) of the Competition Act, any person who executes an anticompetitive agreement, makes a decision or applies a concerted practice shall be punished by a fine of between €15,000 and €150,000. If the act further pertains to undertakings that are actual or potential competitors (a provision interpreted as covering cartels), a term of imprisonment of between two and five years and a fine of between €100,000 and €1 million shall be handed down. The power to impose criminal sanctions lies within the competence of the criminal courts, not the HCC.

iii Parallel proceedings

From a practical perspective, even though administrative and criminal sanctions can be pursued in parallel with regard to the same conduct, public prosecutors usually initiate proceedings following the adoption of an infringement decision by the HCC or stay proceedings until the HCC has issued a decision on the case at hand.[20]

iv Settlement

The possibility of settlement in cases of horizontal anticompetitive agreements was introduced into the Greek legal order by virtue of Law No. 4,389/2016. The specifics of the procedure are laid out in Article 29A of Law No. 3,959/2011, as amended by Law No. 4,886/2022, and in HCC Decision No. 790/2022 (entirely replacing HCC Decisions No. 628/2016 and 704/2020),[21] which to a great extent mirrors the provisions of the European Commission Notice. The settlement procedure also applies, albeit exceptionally, if the HCC has already issued a statement of objections.[22] Following the recent amendment of the Competition Act, the settlement procedure is now further applicable to cases relating to vertical agreements as well as for cases of abuse of a dominant position.

The settlement procedure is wholly distinct from the commitments procedure. Settlement decisions establish the existence of a cartel infringement, setting out all the relevant parameters thereof; require the termination of the infringement; and impose a corresponding fine. By contrast, commitment decisions do not establish an infringement, nor do they impose a fine, but instead bring an alleged infringement (not pertaining to cartels) to an end by imposing on companies the commitments offered to appease the HCC's concerns.

In short, the settlement procedure concerns cases where undertakings make a clear and unequivocal acknowledgement of liability in relation to their participation in horizontal agreements and the subsequent breach of competition law.[23] As a result, undertakings can obtain a reduction of up to 15 per cent of the imposed fine, which is a greater reduction compared with what is provided for in the EU context, provided that certain conditions are fulfilled.

Settlement discussions commence at the parties' initiative at any stage of the investigation; if a statement of objections has been issued, undertakings must express their interest not later than 35 days prior to the hearing before the HCC. The procedure is initiated by a decision by the HCC, which enjoys unfettered discretion in determining whether a specific case is suitable for settlement.[24] Consequently, the HCC may discontinue the

20 Article 44(5) of the Competition Act.

21 According to the HCC, the settlement procedure aims to simplify and speed up the handling of pending cases. It is stated that it would allow the HCC to achieve efficiencies through a streamlined administrative process, resulting in a more expedited adoption of infringement decisions in cartel cases. In addition, the procedure provides scope for a reduction in the number of appeals before administrative courts; this allows a better allocation of resources to deal with more cases, thereby increasing the deterrence effect of the HCC's enforcement action.

22 In those cases, procedural efficiencies are less likely to occur, but the HCC has apparently made the policy choice to encourage settlement as much as possible.

23 Article 1 of the Competition Act or Article 101 of the TFEU.

24 Factors taken into account include the number of companies involved, the nature of the alleged infringements, whether efficiencies and resource savings can be realised, etc.

procedure at any time. Furthermore, a party may withdraw at any time, in which case the normal procedure will be initiated upon completion of the settlement procedure for the rest of the undertakings.

The procedure's key parameters are the following.

Upon commencement of the settlement proceedings, bilateral discussions between the parties and the HCC take place, with a view to presenting each undertaking that is considering settlement with the necessary information concerning the case and the range of the possible fines. The bilateral meetings do not imply bargaining about those matters in respect of the existence of the infringement or pertinent evidence; however, the undertakings concerned shall be heard effectively and shall have the opportunity to present their comments about the alleged infringement.

On completion of the bilateral discussions, as long as the HCC considers that there is room for settlement, a deadline for submissions is set. The official settlement proposals shall include, inter alia:

a unequivocal acknowledgement of participation and liability;
b acceptance of the maximum amount of the fine that may be imposed;
c confirmation that the parties have had the chance to express their opinions to the HCC;
d confirmation that the parties waive their right to obtain full access to the file and to be heard in an oral hearing; and
e waiver of the right to challenge the validity of the procedure followed.[25]

If the settlement proposals reflect the consensus reached under the bilateral discussions, a settlement recommendation is drafted by the HCC and served to the parties, who are asked to confirm (settlement declaration) its content unconditionally. The recommendation is not binding; if the HCC decides to settle, it issues a simplified decision accepting the settlement.

As an aside, according to Article 44(3) of the Competition Act, as amended by Law No. 4,886/2022, criminal liability for any relevant crimes based on the infringement duly acknowledged by the undertaking is effaced, as long as the fines ultimately imposed are paid in full. It has been further clarified that natural persons are absolved from criminal liability not only in relation to the criminal infringement pertaining to competition law, as stipulated in the Competition Act, but also in relation to any related criminal infringement arising from the same facts (i.e., criminal acts with the same underlying constituent elements; for example, fraud). Other possible administrative sanctions (e.g., exclusion from participating in public tenders) are similarly lifted.

Since the adoption of the settlement procedure, the HCC has already issued several settlement decisions. In March 2017, the HCC found that 15 undertakings active in the construction sector in Greece participated in collusive schemes (running from 1981 to 2012) regarding tenders for public works of infrastructure, and imposed fines totalling approximately €81 million. One undertaking also received full immunity from fines. This is

25 Submissions and other statements made in the course of settlement discussions are considered confidential and cannot be disclosed in the context of other administrative or judicial proceedings (including follow-on damages claims). Further, if the procedure is discontinued, settlement submissions and declarations are not binding upon the party and cannot be used in other proceedings, before either the HCC or the competent courts.

the first successful application of the leniency programme in Greece (see also Section VIII) and the first settlement procedure to be initiated by the HCC. It is also the first hybrid settlement case, as some of the alleged infringers declined the opportunity to settle.

In December 2018, the HCC decided to settle a case against two companies in the market for the production and marketing of dairy products (horizontal market segmentation pertaining to their participation in public tenders). This is the first case in which all implicated parties expressed their interest in settling the case and without prior issuance of a statement of objections. The HCC reduced the fines imposed on each of the undertakings involved by 15 per cent.

Most recently, in 2022, the HCC approved the settlement proposals of companies engaged in infringements in the sector of import and manufacturing, wholesale and retail trade of school supplies. The HCC also approved the settlement proposals of the parties involved in a concerted practice of setting prices and allocating markets in the provision of coastal shipping services referred to a local ferry connection.

In July 2022, the HCC approved the settlement proposals of all the parties involved in a case pertaining to vertical agreements in the import, wholesale and retail markets for power-driven hand tools and garden tools. Interestingly, this has been the first HCC case placed under the settlement procedure, where the alleged infringements related to vertical agreements, following the recent amendment of the Competition Act.

In September 2022, the HCC issued Decision No. 796/2022 regarding horizontal agreements in the market for the provision of harbour tug services, accepting the relevant settlement proposals submitted by the undertakings concerned prior to the issuance of a statement of objections. This case has been efficiently settled despite the large number of companies involved and the complex issues raised with regard to the principles of economic unit and economic succession.

According to HCC statistics, in the period between November 2021 and October 2022, approximately 44 per cent of cases have been settled.

VI 'DAY ONE' RESPONSE

Pursuant to Articles 38 and 39 of the Competition Act, the HCC has extensive investigative powers (which essentially mirror those of the European Commission pursuant to Regulation 1/2003). To establish the existence of an infringement, HCC officials can:

a inspect and take copies or extracts of any kind of book, record, document or electronic business correspondence;

b seize books, records, documents and electronic means of storage;

c conduct searches at the business premises and means of transport of the undertakings concerned;

d seal business premises and books or records for the period and to the extent necessary for the inspection;

e carry out inspections in the residences of managers, directors, chief executive officers and staff of the undertaking concerned, where there is reasonable cause to suspect that they are keeping books or other pertinent documents;

f take sworn or unsworn testimonies and ask for explanations of facts or documents and record the answers; and

g request the lifting of confidentiality of communication pursuant to the stipulations of the Criminal Procedure Code and of Law No. 2,225/1994. The HCC may only make

use of such a power, subject to the principle of proportionality, when there are reasonable grounds for suspecting an infringement of Articles 1 and 2 of the Competition Act and such evidence is likely to be essential for the detection of that infringement.

Before conducting a dawn raid,[26] HCC officials must obtain written authorisation from the HCC president or another official appointed by the president, specifying with sufficient clarity the subject matter and purpose of the inspection and the penalties[27] provided for under the Competition Act in the case of obstructions or a refusal to present the requested books, information, etc.

A court warrant is not a prerequisite to conducting an inspection of business premises, but it must be obtained if the undertaking concerned refuses to accept the investigation; however, in all inspections of non-business premises, a judge or public prosecutor should be present.

Before submitting to the inspection, the company has the right to request that the inspectors produce their identification documents and the relevant written authorisation. External legal counsel may be present at all stages of the inspection; HCC inspectors are normally willing to accept a reasonable delay for the arrival of an external lawyer. The company may invoke legal privilege[28] or privilege against self-incrimination.

Nonetheless, there is no absolute right to silence, and an individual may not refuse to answer questions on facts or provide information that may be used as evidence for the establishment of the infringement. The company also has the right to raise objections or make remarks that must be recorded in the relevant minutes; therefore, it is advisable for an undertaking to have guidelines in place for dawn raids.

The HCC has so far adopted three procedural infringement decisions against undertakings and associations of undertakings for failure to cooperate or obstruction of a dawn raid, all of which have subsequently been confirmed by the Administrative Court of Appeals.

26 The HCC would decide to launch a dawn raid for the investigation of cases, notably suspected cartel infringements, that have been prioritised on the basis of the criteria stipulated in Article 14 of the Competition Act, as further specified in the HCC's Decision No. 696/2019 (the prioritisation of cases), which replaced Decisions Nos. 525/VI/2011 and 616/2015.

27 The company is obliged to cooperate fully and actively with the inspection. According to Article 39 of the Competition Act, a fine for each day of non-compliance shall be imposed by a decision of the HCC on undertakings that obstruct or hamper investigations, in any manner, or that refuse to submit to relevant inspections, produce records and other documents requested, etc. The fine is determined in proportion to the average daily aggregate worldwide turnover of the wayward undertakings in the financial year preceding the adoption of the decision, capped at 3 per cent of that turnover and calculated from the date postulated in the HCC decision. The HCC may also impose on any other person who engages in such conduct a fine of at least €15,000 and on officials of the undertakings or the associations of undertakings engaged in such conduct a fine of at least €5,000. In addition, pursuant to Article 44(7), criminal sanctions (at least six months' imprisonment) are imposed on any person who obstructs investigations carried out by the HCC (especially by concealing evidence), refuses to provide information or knowingly provides false information, or refuses after having been duly summoned by an HCC official to make a sworn or unsworn statement before it.

28 In principle, legal privilege does not extend to communications between the client and in-house lawyers; however, the HCC has accepted that legal privilege extends to communication with in-house lawyers when the latter simply reproduces communication by external counsel.

The HCC officials largely follow the same rules and procedure as the European Commission. Upon completion of the dawn raid, the HCC prepares a relevant report containing a description of the procedure and any pertinent objections or remarks made by the company, which is then notified to the company. Electronic data gathered in the course of inspections are usually copied (or hard discs imaged) and then reviewed by investigators at the HCC's premises.

VII PRIVATE ENFORCEMENT

Private antitrust litigation, albeit still at an embryonic stage (like most other EU Member States, Greece does not have a tradition or any meaningful track record when it comes to private enforcement), 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 HCC played a pivotal role in the negotiations and ensuing adoption of Directive 2014/104/EU (the Damages Directive) on antitrust damages action during the Greek presidency of the European Union, Greece has only recently transposed the Damages Directive into domestic law.

In this vein, by virtue of Law No. 4,529/2018, enacted by the Greek Parliament in March 2018, a set of substantive and procedural rules was introduced with the aim of facilitating the effective exercise of the rights of 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 the aforementioned law, the only applicable set of rules for antitrust damages claims. Consequently, the recently introduced provisions are systematically integrated into the general civil liability framework of the CC.

The provisions of Law No. 4,529/2018, being *lex specialis*, prevail over those of the CC; however, regarding issues on which Law No. 4,529/2018 is silent, the pertinent CC provisions are applicable. The same applies in respect of the general rules on civil procedure.

The new provisions facilitate the disclosure of evidence, including that obtained by public authorities, the passing-on defence and the quantification of harm. It is thereby expected to result in a more effective and consistent application of the right to compensation; however, it remains to be seen how they will be applied by courts in practice.

VIII CURRENT DEVELOPMENTS

In recent years, the HCC has aimed at maintaining a consistent level of antitrust enforcement, while adapting its prioritisation and focus to cases with increased systemic effect in the marketplace.

The introduction of a new system for prioritising cases (as recently amended and updated by virtue of HCC Decision No. 696/2019) enhanced the HCC's ability to reject complaints and significantly reduced the backlog of pending cases, thereby freeing up human resources. The HCC continues, however, to also pursue a high number of vertical cases and to adopt a relatively high number of infringement decisions against trade associations and other professional bodies, which is a particularity compared to most other Member States.

Similarly, the revision of the Leniency Notice (to conform to the ECN Model Leniency Programme) has not produced the desired outcomes until very recently. The low response from companies is partly because of the prevailing market features linked to a small-market economy and family-run, less sophisticated businesses.

Nonetheless, by using its investigative powers extensively (notably in dawn raids) and by improving its market reflexes, the HCC has still managed in recent years to unveil several collusive practices that have spanned a long period. The *Construction* cartel infringement decision (see Section IV), with fines totalling €81 million, is likely to be a turning point: first, the complexity and intensity of the case attest to the HCC's enhanced capabilities, thereby increasing detection and deterrence; second, the exemplary conduct of the investigation helps to consolidate cartel enforcement, particularly considering that it marks the first successful application of both the leniency programme and the settlement procedure. In 2019, dawn raids in the banking and payment services sector targeting Greece's systemic banks and the Hellenic Bank Association attracted much publicity.

In 2020, the HCC has conducted an unprecedented number of dawn raids, including in the pharmaceutical, grocery (supermarket chains) and energy markets. In 2021 and 2022, the HCC further carried out dawn raids in several other markets, such as, indicatively, the gasoline and diesel, school bags, transport, electricity and construction sectors.

Following the amendment of the Competition Act by Law No. 4,886/2022 and the transposition of the ECN+ Directive, the Greek legislation has been significantly updated, taking into account the developments in the digital economy. The changes brought about by the new regime, as outlined above, aim at enhancing the effectiveness and deterrence of the HCC's powers against anticompetitive practices. Overall, the HCC has been vested with new investigative powers and its existing competences have been extended.

Finally, a rather innovative, albeit yet ambiguous, novelty is the introduction of Article 1A of the Competition Act, prohibiting certain forms of unilateral conduct, namely invitations to collude and announcements of future pricing intentions. As of the time of writing, the effectiveness and application of the new Article 1A remains to be tested in practice.

Appendix 1

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