

PANORAMIC

# PRIVATE ANTITRUST LITIGATION

Greece



LEXOLOGY

# Private Antitrust Litigation

Contributing Editor

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# Contents

## Private Antitrust Litigation

### LEGISLATION AND JURISDICTION

- Development of antitrust litigation
- Applicable legislation

### PRIVATE ACTIONS

- Availability
- Required nexus
- Restrictions

### PRIVATE ACTION PROCEDURE

- Third-party funding
- Jury trials
- Discovery procedures
- Admissible evidence
- Legal privilege protection
- Criminal conviction
- Utilising of criminal evidence
- Stay of proceedings
- Standard of proof
- Time frame
- Limitation periods
- Appeals

### COLLECTIVE ACTIONS

- Availability
- Applicable legislation
- Certification process
- Opting in or out
- Judicial authorisation
- National collective proceedings
- Collective-proceeding bar

### REMEDIES

- Compensation
- Other remedies
- Punitive damages
- Interest
- Consideration of fines
- Legal costs
- Joint and several liability

Contribution and indemnity  
Passing on  
Other defences  
Alternative dispute resolution

## UPDATE AND TRENDS

Recent developments

# Contributors

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## LEGISLATION AND JURISDICTION

### Development of antitrust litigation

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

In Greece, private antitrust litigation is an expanding area of legal practice that has emerged mainly due to the growing public enforcement of competition law in recent years, as well as legislative developments in this field at the EU level.

[Law No. 4529/2018](#) (the Antitrust Damages Act), which transposed [Directive 2014/104/EU](#) (the Damages Directive) into Greek law, introduced a set of substantive and procedural rules aiming to facilitate the effective exercise of the right of injured parties to seek compensation for competition law infringements. This specialised legal framework complements and further exemplifies the general rules of civil liability under the Greek Civil Code (CC), which was, until the enactment of the Antitrust Damages Act, the only applicable set of rules for antitrust damages claims in Greece.

However, private enforcement by parties typically injured by antitrust infringements, such as customers of a cartel or competitors of a dominant undertaking, remains under-developed. Therefore, case law on the Antitrust Damages Act is still relatively limited.

Law stated - 12 June 2024

### Applicable legislation

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?

Before the transposition of the Damages Directive, 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 the procedural rules of the Code of Civil Procedure (CCP).

By virtue of the Antitrust Damages Act, the Greek legislator transposed the Damages Directive into statute, introducing specific substantive and procedural provisions for actions for damages, with a view to promoting an effective system of private enforcement of competition law. Article 11, paragraph 1 of Law No. 4529/2018 now specifically provides that a claim for damages can be brought by any (legal or natural) person having suffered harm caused by an antitrust infringement, regardless of whether it is a direct or indirect purchaser of the infringer.

Law stated - 12 June 2024

### Applicable legislation

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

The relevant legislation applicable to antitrust damages actions is the Antitrust Damages Act, which in turn is systematically integrated into the general civil liability framework under the CC and the general procedural framework under the CCP. Being *lex specialis*, the Antitrust Damages Act prevails over the CC and CCP provisions; however, on issues not regulated by it, the pertinent CC and CCP provisions still apply.

The general provisions of the CCP provide that the competent courts should be 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). However, article 13 of the Antitrust Damages Act specifies that claims for antitrust damages arising across the country are to be brought before a specialist section of the Athens Court of First Instance, where judges specialised in competition law and EU law should in principle be appointed. Likewise, subsequent appeals are to be brought before a specialist section of the Athens Court of Appeals. Therefore, these specialist court sections in Athens should have exclusive territorial jurisdiction to adjudicate antitrust damages actions.

The pertinent specialist section in the Athens Court of First Instance is still in the process of being established, whereas the specialist section in the Athens Court of Appeals has been set up (22nd Section for Competition).

Law stated - 12 June 2024

## PRIVATE ACTIONS

### Availability

**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 natural or legal person that has suffered harm from a competition law infringement (article 3, paragraph 1 of the Antitrust Damages Act). The term 'competition law infringement' refers to any infringement 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](#) or of articles 1 and 2 of [Law No. 3959/2011](#) (the Greek Competition Act). Therefore, private actions are available for any type of antitrust matter, be it an agreement and concerted practice or an abuse of dominance, in so far as the claimant suffers damage that is in causal link with the pertinent infringement.

A finding of infringement by a competition authority is not required to bring a claim. However, the Antitrust Damages Act introduces specific provisions regarding the probative value of prior public enforcement decisions, distinguishing between decisions of the European Commission or a Greek competition authority and decisions issued in other EU member states.

First, article 9, paragraph 1 of the Antitrust Damages Act provides that Greek civil courts should be bound (1) by a decision of the European Commission or a Greek competition authority finding an antitrust infringement, which is no longer subject to an appeal, as well as (2) by a final judgment of the competent EU or Greek court that reviewed,

on appeal, the infringement decision of such competition authority. Under Greek law, the Hellenic Competition Commission (HCC) and the Hellenic Telecommunications and Post Commission (EETT) are designated as national competition authorities (the EETT having jurisdiction to apply EU and national competition rules only in relation to the telecommunications and postal sectors), whereas the Athens Administrative Court of Appeals is exclusively competent to review on the merits all administrative decisions issued by the HCC or EETT.

As clarified in the [Explanatory Memorandum](#) to the Antitrust Damages Act, the binding effect pertains to the material, personal, temporal and territorial scope of the infringement; therefore, it covers the facts of the conduct concerned, the legal assessment thereof and the identity of the persons that committed the infringement. The scope of the binding effect also extends to the legal successors of the infringers.

The Explanatory Report further reminds that in the case an appeal is filed before the Council of State against a judgment of the Athens Administrative Court of Appeals, the civil court hearing the damages claim has the discretion to stay the proceedings.

Second, article 9, paragraph 2 of the Antitrust Damages Act provides that final infringement decisions issued in other EU member states constitute full proof of infringement in proceedings before the Greek civil courts; however, proof to the contrary can be adduced. Therefore, the probative value accorded to final decisions in other EU member states under the Antitrust Damages Act is higher than that under the Damages Directive (prima facie evidence to be assessed along with any other evidence adduced by the parties).

**Law stated - 12 June 2024**

### **Required nexus**

**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, regarding the subject matter jurisdiction, private actions for damages should be brought before the civil courts in accordance with the general provisions of the Code of Civil Procedure (CCP). The competent district court has jurisdiction for claims up to €20,000; 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. Until the specialist sections in the Athens Court of First Instance are established, as per article 13 of the Antitrust Damages Act, the general and special grounds of jurisdiction under the CCP should continue to apply for first instance civil proceedings.

Furthermore, the international jurisdiction 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 (article 4, paragraph 1 and article 7, paragraph 2 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 its judgment of 21 May 2015 in [C-352/13, CDC Hydrogen Peroxide](#)), jurisdiction clauses are not valid if the injured party could not reasonably foresee the litigation and had no knowledge of the unlawful conduct at the time it agreed to the clause.

Law stated - 12 June 2024

### Restrictions

**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, antitrust litigation cases are commonly brought against corporations.

Law stated - 12 June 2024

## PRIVATE ACTION PROCEDURE

### Third-party funding

**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 Greek Civil Code (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 litigation 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 20 per cent of the value of the subject matter of the dispute or up to 30 per cent where more than one lawyer is involved.

Law stated - 12 June 2024

### Jury trials

**Are jury trials available?**

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

Law stated - 12 June 2024

### Discovery procedures

## | What pretrial discovery procedures are available?

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

**Law stated - 12 June 2024**

## | Admissible evidence

### | What evidence is admissible?

According to article 339 of the Code of Civil Procedure (CCP), evidence admissible in civil proceedings comprises 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 unfettered evaluation of evidence (article 340 of the CCP). In the 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 the Hellenic Competition Commission (HCC) or Hellenic Telecommunications and Post Commission (EETT) or of the competent review court, upon appeal, finding an infringement are binding upon civil courts trying a damages action.

To further facilitate damages actions, the Antitrust Damages Act introduces special provisions on the disclosure of evidence. More specifically, article 4 of the Antitrust Damages Act (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.

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 reasonably 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 requests for information), information that the competition authority has drawn up and sent to the parties (eg, statement of objections) and settlement submissions that have been withdrawn can only be disclosed after the competition authority has closed its proceedings. However, 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 up to €100,000.

Subject to the above limitations, documents obtained during the investigation of a competition authority can be disclosed in the context of pending civil proceedings 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).

**Law stated - 12 June 2024**

## Legal privilege protection

### What evidence is protected by legal privilege?

According to article 4, paragraph 6 of the Antitrust Damages Act, national courts should give full effect to the applicable legal professional privilege under EU or national law, when ordering the disclosure of evidence. The Explanatory Memorandum to the Antitrust Damages Act 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 compared to the EU equivalent notion, covering both external and in-house lawyers.

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).

Despite the above-mentioned provisions of the Antitrust Damages Act, it remains to be seen how legal privilege will be interpreted by civil 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 or is being pursued by the European Commission, instead of the national competition authority).

In regard to trade secrets, civil courts must 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 (the European Commission [Communication](#) on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law is also relevant in that respect).

**Law stated - 12 June 2024**

## Criminal conviction

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

Under the Greek 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 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.

**Law stated - 12 June 2024**

## Utilising of criminal evidence

**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, given that 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 before civil courts.

Although injured parties are in principle not precluded from initiating damages actions against leniency applicants, immunity recipients are protected to a certain extent against follow-on civil litigation. First, article 10 of the Antitrust Damages Act provides that an immunity recipient should be only jointly and severally liable (1) to its direct or indirect purchasers or providers and (2) to other injured parties, where full compensation cannot be obtained from the other undertakings that were involved in the same infringement. Second, the amount of contribution of an immunity recipient should not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers. Third, to the extent the infringement caused harm to injured parties other than the direct or indirect purchasers or suppliers of the jointly and severally liable infringers, the amount of any contribution from the immunity recipient to other infringers should be determined in light of its relative responsibility for that harm.

Furthermore, the Antitrust Damages Act provides, in any case, that leniency statements and pertinent documents containing extracts thereof are exempted from the disclosure of evidence and that such documents are inadmissible in civil actions for damages.

Given the limited development of private enforcement in Greece, there is still no practice of the HCC or EETT routinely disclosing documents obtained in their investigations to private claimants.

As an aside, with respect to criminal liability, it is noted that if an undertaking (1) has been granted immunity under a leniency programme or has been imposed a reduced fine under a leniency programme and has fully paid such reduced fine or (2) has been imposed a reduced fine under the settlement procedure and has fully paid such reduced fine, its former and current directors, managers and other personnel as well as any other liable person are absolved from criminal liability, under the condition that:

1. they actively cooperated with the HCC;
2. they are actively cooperating with the public prosecutor; and
3. the application for leniency or settlement was filed before they were duly informed in relation to the criminal prosecution, or the possibility of criminal prosecution, against them (article 44, paragraph 3A of the Greek Competition Act).

**Law stated - 12 June 2024**

**Stay of proceedings**

## 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 CCP, 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 – at their full and sole discretion – stay a follow-on damages action if the infringement decision of the competition authority is appealed by the defendants.

**Law stated - 12 June 2024**

## Standard of proof

### 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?

Article 340 of the CCP introduces the principle of unfettered evaluation of evidence. This provision assigns to the judge the task of delivering a rational judgment in a twofold manner by freely assessing any evidence put forward by the parties and by freely weighing the probative value it has.

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 their allegations (article 338 of the CCP). Therefore, in a claim for damages, the burden of invoking and proving the conditions of tort (ie, the illegal conduct, the fault, the damage and the causal link between the illegal conduct and the damage) lies with the injured party – the claimant. The defendant bears the burden of proof of the facts that they invoke as objections or counter-arguments to the allegations of the claimant.

Furthermore, as a general rule regarding the requisite standard of proof, the court must be convinced that the facts put forward by the claimant are true. No absolute certainty is necessary in this regard, but the judge must not have any reasonable doubts concerning the truth of the facts (ie, 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, the Antitrust Damages Act introduces certain presumptions in favour of injured parties – claimants – to facilitate the effective exercise of the right to compensation, in line also with the Damages Directive. In this vein, article 9 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 introduces a rebuttable presumption of harm in the case of cartel infringements. 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 of the passing on of a cartel overcharge in favour of indirect purchasers.

In addition, the standard of proof is effectively reduced in respect of the quantification of harm by virtue of article 14, paragraph 1 of the Antitrust Damages Act. This provision empowers civil courts to estimate the amount of harm on the basis of probability (if it is

established that a claimant suffered harm but it is practically impossible or excessively difficult to quantify precisely the harm suffered on the basis of the evidence available). The Athens Court of Appeals has ruled, in judgment 4636/2021, that article 14, paragraph 1 applies for the purposes of estimating actual loss, but is irrelevant with respect to loss of profits, given that loss of profit is in any case estimated on the basis of the standard of probability under generally applicable CC provisions.

As per article 11, paragraph 3 of the Antitrust Damages Act, the same reduced standard (probability) also applies with regard to quantifying the overcharge in the context of the passing-on defence. Finally, the probability standard suffices also in the context of interim measures (articles 347 and 690 of the CCP).

**Law stated - 12 June 2024**

### **Time frame**

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

Although there is no standard timetable, proceedings before the Court of First Instance normally last from two to three years in respect of the multi-member court formation (claims above €250,000) and at least three years in respect of the single-member court formation (claims up to €250,000). In the event of an appeal, the Appellate Court is normally expected to deliver a judgment within 18 to 24 months from the filing of the appeal. This judgment can be subsequently further appealed before the Supreme Court on legal grounds only, which in turn is expected to deliver a judgment within approximately 18 to 24 months. These indicative timetables do not vary substantially depending on whether there is a single or a collective party proceeding.

Article 226 of the CCP provides for the possibility to request in writing the determination of an earlier hearing date than the one determined under standard procedure. The competent judge may accept or decline the request by a reasoned decision. Apart from that, the CCP does not explicitly provide for other rights to accelerate proceedings.

**Law stated - 12 June 2024**

### **Limitation periods**

**What are the relevant limitation periods?**

According to article 8 of the Antitrust Damages Act, 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 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.

Law stated - 12 June 2024

## Appeals

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

According to article 511 CCP, judgments of first-instance courts may be appealed before the competent appellate courts (on the facts and on the law). Based on article 13 of the Antitrust Damages Act, judgments of the specialist section of the Athens Court of First Instance (still in the process of being established) are to be appealed before the specialist section of the Athens Court of Appeals. Judgments of the appellate court are open to further review (appeal) before the Supreme Court on points of law only (article 552 of the CCP).

Law stated - 12 June 2024

## COLLECTIVE ACTIONS

## Availability

### Are collective proceedings available in respect of antitrust claims?

The Antitrust Damages Act 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 Code of Civil Procedure provisions (article 74 et seq), more claimants can file a collective action if (1) 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 (2) 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 claimants.

A collective redress mechanism has been introduced by article 10, paragraph 16 of Law No. 2251/1994, applicable, however, to violations of consumer protection legislation.

Law stated - 12 June 2024

## Applicable legislation

### Are collective proceedings mandated by legislation?

No.

Law stated - 12 June 2024

## Certification process

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

Not applicable.

Law stated - 12 June 2024

### **Certification process**

Have courts certified collective proceedings in antitrust matters?

Not applicable.

Law stated - 12 June 2024

### **Opting in or out**

Can plaintiffs opt out or opt in?

Not applicable.

Law stated - 12 June 2024

### **Judicial authorisation**

Do collective settlements require judicial authorisation?

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

Law stated - 12 June 2024

### **National collective proceedings**

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.

Law stated - 12 June 2024

### **Collective-proceeding bar**

Has a plaintiffs' collective-proceeding bar developed?

Not applicable.

Law stated - 12 June 2024



## REMEDIES

### Compensation

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

Article 3 of the Antitrust Damages Act provides that any injured party is entitled to full compensation, covering both actual loss (positive damage) and loss of profit, plus payment of interest. Full compensation has the aim of restituting the injured party in the situation it would have found itself if the antitrust infringement had not been committed (see Judgment 3/2021 of the Athens Multi-Member Court of First Instance).

Actual loss comprises the reduction of the existing estate of the injured party, either in the form of a reduction of assets or increase of liabilities. Loss of profit comprises any cancellation of an increase in assets or a reduction in the liabilities of the property that would have occurred had the illicit act not taken place. In this respect, the claimant must state those facts that determine the expectation of specific profit, based on the probability of the usual course of events, as well as the particular circumstances and preparatory measures undertaken (see Judgment 4636/2021 of the Athens Court of Appeals).

Moral damage may also be compensated. In this respect, a legal person must demonstrate that its commercial loyalty, business reputation or commercial future has been prejudiced (see Judgment 4636/2021 of the Athens Court of Appeals).

Furthermore, when calculating the loss of the injured party, any benefit (profit) obtained owing to the anticompetitive conduct is subtracted from the compensation to be given.

In principle, the party liable for compensation must provide it in cash. *In natura* compensation may exceptionally be ordered according to article 297 of the Greek Civil Code (CC) and comprises any act, including the obligation to transfer a right to the injured party or to create or abolish obligations. Although this form of compensation remains uncommon, it may be suitable in certain cases of anticompetitive conduct, such as abusive refusals to supply.

Law stated - 12 June 2024

### Other remedies

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

Pursuant to general Code of Civil Procedure (CCP) provisions, interim measures can be ordered by the civil court, with a view to protecting or preserving a right or a legal relationship until a ruling on the main trial is rendered (article 682 et seq of the CCP). Such interim measures are available either when there is an urgent need or when necessary to avert imminent damage. Essentially, the claimant must put forward prima facie evidence that there is a claim and that the attainment of the 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).

Law stated - 12 June 2024

### **Punitive damages**

Are punitive or exemplary damages available?

No.

Law stated - 12 June 2024

### **Interest**

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

Yes. Article 3 of the Antitrust Damages Act specifies that, with regard to antitrust damages actions, interest accrues from the date the damage occurred.

Law stated - 12 June 2024

### **Consideration of fines**

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 a general deterrent effect, and are not intended to have a compensatory or restorative effect for harm incurred. However, compensation paid to the injured parties or a significant part thereof in the context of a consensual settlement is considered as a mitigating factor when setting administrative fines (see article 15, paragraph 4 of the Antitrust Damages Act and the Hellenic Competition Commission [Guidelines on the Calculation of Fines](#)).

Law stated - 12 June 2024

### **Legal costs**

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

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

Law stated - 12 June 2024

### **Joint and several liability**

## | 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 joint behaviour are jointly and severally liable (article 926 of the CC). This general principle on joint and several liability is reiterated in article 10 of the Antitrust Damages Act, subject to two derogations. First, small or medium-sized enterprises with a market share in the relevant market below 5 per cent, whose joint and several liability would endanger their economic viability, are liable only towards their direct or indirect purchasers or providers. Second, immunity recipients are jointly and severally liable towards (1) their direct or indirect purchasers or providers and (2) other injured parties only where full compensation is not available by having recourse to other undertaking involved in the relevant antitrust infringement.

Law stated - 12 June 2024

## | Contribution and indemnity

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 has the right of contribution against the other liable parties (article 927 of the CC, also reiterated in article 10, paragraph 5 of the Antitrust Damages Act). The extent of their reciprocal responsibility is determined by the court according to the degree of fault of each party, and in cases where the responsibility cannot be ascertained, the compensation is divided and born by all liable parties equally.

Law stated - 12 June 2024

## | Passing on

Is the 'passing-on' defence allowed?

Article 11 of the Antitrust Damages Act recognises that the infringer – defendant – may invoke the passing-on defence, while bearing the pertinent burden of proof. In particular, it can invoke the argument that the claimant passed on the whole or part of the overcharge resulting from the antitrust infringement and, therefore, 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 Antitrust Damages Act introduces a rebuttable presumption in favour of an indirect purchaser that the overcharge passed on to them, 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.

Law stated - 12 June 2024

## | Other defences

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

No other special defences exist.

Law stated - 12 June 2024

## Alternative dispute resolution

### Is alternative dispute resolution available?

In line with the Damages Directive, the Antitrust Damages Act introduces provisions on consensual dispute resolution and foresees that national courts may suspend their proceedings for up to two years where the parties are involved in consensual dispute resolution. A joint infringer who enters into a consensual dispute resolution agreement is absolved from liability in respect of the injured party and also in respect of 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 will 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.

Law stated - 12 June 2024

## UPDATE AND TRENDS

### Recent developments

#### Are there any emerging trends or hot topics in the law of private antitrust litigation in your country?

There are no particular updates at this time.

Law stated - 12 June 2024