

NEWSLETTER

COMPETITION

January 2012

New Greek leniency rules encouraging cartelists to “blow the whistle”

Towards the end of 2011, Greece adopted its new cartel leniency program (“**New Leniency Program**”) in replacement of the 2006 leniency program which had not led to any successful leniency applications. The main changes brought about under the new regime relate to the persons who may apply for leniency, the conditions under which such application may be submitted, and the procedures which the applicants must follow, as summarised below:

- a) **Applicants:** the New Leniency Program extends the right to apply to individuals who are subject to fines for Article 1(1) of Law 3959/2011 and/or Article 101(1) TFEU;
- b) **Conditions:** the New Leniency Program abolishes the prohibition for recidivists to apply for immunity or a reduction of the fine. With respect to coercing undertakings, they are still precluded from applying for leniency; the same however does not apply to coercing individuals who are free to file a relevant application; and
- c) **Procedure:** the New Leniency Program introduces:
 - the “marker system” under which the applicant may be granted a marker and be given a time limit to collect and submit the required information and evidence;
 - the possibility of applying for leniency by oral statement;
 - the possibility of informal communications by the interested person on a “no-name basis” asking for clarifications on whether leniency is available; and

Recent decisions of the HCC

- a more limited role for the Director General of the HCC in conjunction with a strengthening of the role of the President of the HCC, who under the new leniency regime becomes the first point of reference for the applicant seeking immunity or a reduction of the fine.

The new leniency regime allows one immunity recipient, either the company or the individual, resulting to a “race” both between companies as well as between companies and individuals. Given the introduction of the possibility for individuals to file for leniency, the New Leniency Program lays down specific rules on the relationship between the individuals and undertakings when applying. In this respect, the granting of immunity or a reduction of the fine to a company is automatically extended to individuals acting for it who would also be subject to fines under Greek competition rules; however this does not apply by analogy to a company where the applicant is an individual. Further, the approval of a leniency application also reflects positively on criminal sanctions in the sense that full immunity waives any criminal liability of the persons involved in the violations whereas a reduction of the fine constitutes a mitigating circumstance which gives right to a reduced sentence.

In the event of a successful application for leniency, the New Leniency Program provides that the fine may be reduced up to 50% if the applicant is an undertaking and 70% if the applicant is an individual. In addition, the New Leniency Program abandons the prescribed level of fine reduction depending on whether the applicant approached the Commission first, second etc, but maintains that the HCC will need to determine the level of the fine reduction *taking into account* the sequence of the applicant (i.e. whether it came in first, second, third etc).

The new Leniency Program appears more attractive and straightforward than its predecessor. It therefore remains to be seen whether it will provide enough incentives for cartelists to “blow the whistle”.

- *Decision no. 518/VI/2011*: The HCC fined four **real estate agents’ associations** (fines ranging from €156.00 to €15,515.31 on the grounds that (a) they adopted minimum fees for the provision of real estate services in Greece (2% of the properties’ value) and/or (b) they did not allow the advertising by real estate agents of reduced fees (i.e. below 2% of the properties’ value or *gratis*). The HCC accepted the commitments offered by a fifth real estate agents’ association to cease the aforementioned prohibition on advertising;
- *Decision no. 516/VI/2011*: The HCC fined two **gas supply companies** for abusing their dominant position in the relevant market (€419,781.88 and €201,201.28 respectively), by unjustifiably refusing to accept the use of certain types of pipes for their gas indoor installations;
- *Decision no. 507/VI/2010*: The HCC found that the discussions taking place between the members of the **Association of Undertakings of Maritime Transport Services** and the subsequent decision adopted by this body and its members relating to increased fuel costs did not infringe Article 101(1) TFEU (and/or its Greek equivalent provision). In addition, the HCC found that the members’ alleged coordinated practice to submit and/or refrain from submitting routing statements to the Ministry of Merchant Marine from 2002 to 2008 regarding the operation of vessels on certain routes, does not qualify as an infringement of Article 101(1) TFEU (and/or its Greek equivalent provision); and
- *Opinion no. 12/VI/2011*: The HCC issued an Opinion proposing the abolition of the Greek Ministerial Decision which provided that **infant milk formulas** can be sold solely in pharmacies. The HCC found that this

regulation introduces barriers to entry, forecloses the retail market, impedes free competition and cannot be justified on overriding public policy considerations. The HCC also found that consumer protection and quality of infant formulas are

guaranteed under the applicable EU law on composition, labeling, advertising and marketing.

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