

## The HCC introduces a settlement procedure for cartel investigations

October 20, 2016

After the adoption of a [Leniency Programme \(2011\)](#) and a [Commitments Procedure \(2014\)](#), the recent introduction by the Hellenic Competition Commission of a Settlement procedure consummates the procedural modernisation of Greek competition law. The successful applicant is rewarded with a 15% fine reduction and the undertakings involved are exempted from the criminal sanctions provided in Law 3959/2011 on the protection of free competition. The HCC considers that the availability of Settlement will speed up and streamline cartel investigations, also limiting the concomitant judicial remedies against infringement decisions.

### *General*

In line with the relevant EU law and the practice of many other Member States, Law 4386/2016 introduced a Settlement procedure for horizontal infringements of competition law in Greece. The Hellenic Competition Commission (“HCC”) in July [announced](#) the general framework of the procedure with its Plenary Decision 628/2016.

The procedure is inspired to a large extent by the relevant EU [Regulation](#) and the [Commission Notice](#). The most notable difference is that the HCC settlement procedure may be launched even after the Statement of Objections has been notified to the undertakings under examination. In such case, it is the competent HCC session that conducts the settlement negotiations.

### *Overview of the procedure*

#### *Settlement before the SO*

In case the Statement of Objections has not been notified, the procedure is initiated if the Commissioner-

Rapporteur handling the case considers it suitable for settlement. The Rapporteur conducts bilateral negotiations with the undertakings that have expressed interest in settling the case and has the discretion to decide on the necessity and the overall development of the negotiations. The HCC Chairman deals with any complaints that the parties may have regarding the procedure and the Rapporteur’s conduct, alike a Hearing Officer. Within the course of the settlement meetings, the Rapporteur presents the parties with the allegations against them and provides them with an indicative amount of evidentiary material. The parties are given the opportunity to express their legal and factual assertions.

The settlement negotiations may cease if the parties involved decide to withdraw their interest in settling the case, or when the HCC asserts that the efficient closing of the case is not possible. The HCC can also break off the negotiations when it ascertains that the parties involved do not have a sincere

intention of settling the case, do not cooperate accordingly or have breached confidentiality. In such case, the investigation carries on.

The parties are invited to submit a Proposal for settlement, within a thirty (30) day timeframe, provided the Rapporteur ascertains sufficient progress in the talks. The Proposal must contain an unreserved admission of involvement in the cartel and the acceptable maximum amount of fine, and the parties must waive their right to a hearing and to full access to the file and the right to contest the competency of the HCC and the process which led to the imposition of the fine. The Rapporteur then issues a settlement Statement of Objections along the lines of the Proposal for settlement which the parties must accept within a ten (10) day period by submitting a Settlement declaration, unreservedly and irrevocably confirming that the settlement Statement reflects their Proposal.

The documents exchanged between the Rapporteur/HCC and the undertakings during Settlement negotiations are deemed confidential and cannot be released to third parties, including the complainant. They cannot also be used against the undertakings in court and are deemed unacceptable evidence in private damages actions. The

documents can however be disclosed to the parties to the case which did not apply for Settlement, but only for the purposes of defending themselves before the HCC.

#### *Settlement after the SO*

Where the Statement of Objections has already been notified to the parties, they have a right to express an interest in engaging in Settlement discussions up to thirty five (35) days prior to the hearing date. In this case, negotiations are held directly with the HCC, in plenary session.

#### *The decision*

The Settlement decision, considerably shorter and more concise compared to a standard infringement decision, to ultimately confirm is issued by the HCC. It reduces the fines imposed by 15% and relieves the undertakings involved in the settlement from the criminal fines stipulated in Law 3959/2011. A Settlement decision can concern all or some of the applicants in which case a separate decision is issued for the non-consenting parties.

Settlement is available to leniency applicants as well, which may benefit from a cumulative decrease in fine, in case both the leniency application and the settlement negotiations are successful.



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