

Law 4529/2018

Actions for Damages from Antitrust Infringements

Law 4529/2018 was published on March 23, 2018, incorporating into Greek Law Directive 2014/104/EU on private damages arising out of competition law infringements. Highlights of the law include specific rules on the disclosure of evidence, a rebuttable presumption of harm in cartel infringements, and the establishment of specialized court chambers adjudicating antitrust claims.

Introduction

Due by December 2016, the transposition of Directive 2014/104/EU¹ was finally voted by the Hellenic Parliament on March 14, 2018.

Law 4529/2018² aims at encouraging the victims of antitrust infringements to claim damages suffered, thus closing an enforcement gap that has long survived, not only in Greece, but in most civil law jurisdictions where public enforcement by competition authorities has been prioritized.

The substantial provisions of Law 4529/2018 enter into force, retroactively, on December 27, 2016, whereas the procedural provisions apply to suits filed after December 26, 2014. The new specialized chamber formations shall handle suits filed after September 16, 2018.

Below, we outline the main features of the new Law.

Full Compensation (Article 3)

The Law provides that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full

compensation for that harm. Full compensation includes positive damages and lost profits, as well as interest for the period starting from the causing of the damage to the claimant until the full payment of the compensation.

Disclosure of evidence (Articles 4-6)

The Law introduces rules for disclosing evidence during trials re actions for damages deriving from violations of competition law. Specifically, upon request of a claimant who has presented a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim for damages, national courts are able to order the defendant or a third party to disclose relevant evidence which lies in their control.

National courts may limit the disclosure of evidence to that which is proportionate. In determining whether any disclosure requested by a party is proportionate, national courts shall consider the legitimate interests of all parties and third parties concerned. They shall, in particular, consider:

- (a) The extent to which the claim or defense is supported by available facts and evidence;
- (b) The scope and cost of disclosure;
- (c) Whether the sought evidence contains confidential information.

In case a litigant party failed or refused to comply with the disclosure order of any court or destroyed

¹ [Directive 2014/104/EU](#) of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

² Government Gazette A' 56/2018.

the relevant evidence, the allegations of his/her counterparty are deemed fully evidenced and a monetary fine amounting to € 50,000-100,000 shall be imposed against the party who did not comply.

Disclosure of evidence included in the file of the HCC – leniency & settlement submissions (Article 7)

National courts cannot at any time order a party or a third party to disclose leniency statements and settlement submissions. They may however order the disclosure of the following categories of evidence only after the Hellenic Competition Commission (HCC) has closed its relevant proceedings:

- (a) Information that was prepared by a natural or legal person specifically for the proceedings of the HCC;
- (b) Information that the HCC has drawn up and sent to the parties in the course of its proceedings; and
- (c) Settlement submissions that have been withdrawn.

To the extent that the HCC is willing to state its views on the proportionality of disclosure requests, it may, acting on its own initiative, submit observations to the national court before which a disclosure order is sought.

Limitation periods (Article 8)

The limitation period for bringing an action for damages is 5 years following the time period since the claimant knows, or can reasonably be expected to know of:

- (a) The behavior and the fact that it constitutes an infringement of competition law;
- (b) The fact that the infringement of competition law caused harm to it; and
- (c) The identity of the infringer.

In any case the limitation period may not exceed 20 years following the cease of the infringement.

The limitation period is suspended if the HCC takes action for the purpose of the investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension shall end at the earliest one year after the infringement decision has become

final or after the proceedings are otherwise terminated.

Effect of national decisions (Article 9)

An infringement of competition law found by a final decision of the HCC or by a reviewing court is deemed to be irrefutably established for the purposes of an action for competition law damages brought before national courts.

Where a final decision referred is taken in another Member State, that final decision may, in accordance with national law, be presented before the Greek courts as at least *prima facie* evidence that an infringement of competition law has occurred and, as appropriate, may be assessed along with any other evidence adduced by the parties.

Joint and several liability (Article 10)

Undertakings which have jointly infringed competition law are jointly and severally liable for the harm caused by the infringement of competition law.

Where the infringer is a small or medium-sized enterprise (SME) as defined in Commission [Recommendation 2003/361/EC](#), the infringer is liable only to its own direct and indirect purchasers where:

- (a) Its market share in the relevant market was below 5 % at any time during the infringement of competition law; and
- (b) The application of the normal rules of joint and several liability would irretrievably jeopardize its economic viability and cause its assets to lose all their value.

The derogation laid down above shall not apply where:

- (a) The SME has led the infringement of competition law or has coerced other undertakings to participate therein; or
- (b) The SME has previously been found to have infringed competition law.

A new objection: The passing-on of overcharges (Article 11)

The defendant in an action for damages can invoke as a defense against a claim for damages the fact

that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law. The burden of proving that the overcharge was passed on shall be on the defendant, who may reasonably require disclosure from the claimant or from third parties. Full evidence is not required as regards the exact amount of the overcharge.

Compensation of harm can be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers from an infringer, and compensation of harm exceeding that caused by the infringement of competition law to the claimant, as well as the absence of liability of the infringer, are avoided.

The indirect purchaser shall be deemed to have proven that a passing-on to that indirect purchaser occurred where that indirect purchaser has shown that:

- (a) The defendant has committed an infringement of competition law;
- (b) The infringement of competition law has resulted in an overcharge for the direct purchaser of the defendant; and
- (c) The indirect purchaser has purchased the goods or services that were the object of the infringement of competition law, or has purchased goods or services derived from or containing them.

Establishment of specialized chambers in the Athens First and Second Instance Courts (Article 13)

The law provides for the establishment of one specialized chamber in the Athens Court of First Instance and in the Athens Court of Appeal, which will examine all antitrust suits arisen out of Law 4529/2018. The geographic jurisdiction of these courts shall cover the whole country. The chambers shall comprise of well-experienced magistrates, specialized in competition and/or E.U. law.

Quantification of Harm (Article 14)

The standard of probability to be established by the national courts in order to estimate the amount of harm is that of a 'probable cause', when it is established that a claimant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the available evidence.

The law also introduces a (rebuttable) presumption of harm in antitrust suits arisen out of cartel infringements.

With respect to the determination of the quantum of damages, the HCC may, upon request of the court, assist that court where such assistance is considered appropriate by the HCC.

Consensual Dispute Resolution (Article 15)

The limitation period for bringing an action for damages is suspended for the duration of any consensual dispute resolution process. The suspension of the limitation period shall apply only with regard to those parties that are or that were involved or represented in the consensual dispute resolution.

Greek courts seized an action for damages may suspend their proceedings for up to two years where the parties thereto are involved in consensual dispute resolution proceedings concerning the claim covered by that action for damages.

Following a consensual settlement, the claim of the settling injured party is reduced by the settling co-infringer's share of the harm that the infringement of competition law inflicted upon the injured party.

Any remaining claim of the settling injured party shall be exercised only against non-settling co-infringers. Non-settling co-infringers shall not be permitted to recover contribution for the remaining claim from the settling co-infringer.

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