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Greece

CARTELS

Contributing firm

Kyriakides Georgopoulos Law Firm



Dr Victoria Mertikopoulou

Partner, EU & Competition, Regulatory and Compliance | v.mertikopoulou@kglawfirm.gr

Ifigeneia Argyri

Junior Associate | i.argyri@kglawfirm.gr

This country-specific Q&A provides an overview of cartels laws and regulations applicable in Greece.

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GREECE CARTELS



1. What is the relevant legislative framework?

Greek Law 3959/2011 on the “Protection of Free Competition” (hereinafter “Competition Act” or “CA”) is fully aligned with EU competition law rules. Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”) are directly applicable in Greece in cases with an EU dimension, whereas Articles 1 and 2 of the Greek Competition Act are equivalent provisions for national cases. Merger control provisions in the Competition Act follow the principles of the EU Merger Regulation. The Competition Act also contains the main procedural and implementation rules.

Cartels / anticompetitive agreements and concerted practices between undertakings and decisions by associations of undertakings: Article 1 CA contains the general prohibition on anti-competitive agreements and arrangements between undertakings: “...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 in the Hellenic Republic shall be prohibited, and in particular those which: a) directly or indirectly fix purchase or selling prices or any other trading conditions; b) limit or control production, distribution, technical development or investment; c) share markets or sources of supply; d) apply dissimilar conditions to equivalent trading transactions, especially the unjustified refusal to sell, buy or otherwise trade, thereby hindering the functioning of competition; e) make the conclusion of contracts subject to acceptance, by the other parties, of supplementary obligations which, by their nature or according to commercial use, have no connection with the subject of such contracts. 2. Any agreements and decisions by associations of undertakings which come under paragraph 1 and to which paragraph 3 does not apply shall be automatically void [...]”.

There is an exemption under Article 1 par. 3 of the Competition Act, similar to that of Article 101 par. 3 TFEU stating that: “Agreements, decisions and concerted

practices which come under paragraph 1 shall not be prohibited, provided that they cumulatively satisfy the following preconditions: a) they contribute to improving the production or distribution of goods or to promoting of technical or economic progress; b) at the same time, they allow consumers a fair share of the resulting benefit; c) they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives and d) they do not afford the possibility of eliminating competition or eliminating competition in respect of a substantial part of the relevant market”. Block Exemption: According to Article 1 par. 4 of the Competition Act. EU Regulations on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices (Block Exemption Regulations) shall apply mutatis mutandis to the implementation of the above paragraph 3, to agreements, decisions by associations of undertakings or concerted practices which are not likely to affect trade between Member States within the meaning of Article 101(1) of the TFEU.

Abuse of dominance: Article 2 of the Competition Act contains the prohibition of abusive exploitation of a dominant position: “It is prohibited for one or more undertakings to abuse their dominant position within the national market or in a part of it. 2. Such abuse may, in particular, consist in: a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; b) limiting production, distribution or technical development to the prejudice of consumers; c) applying dissimilar conditions to equivalent trading transactions with other trading parties, especially the unjustified refusal to sell, buy or otherwise trade, thereby placing certain undertakings at a competitive disadvantage; d) making the conclusion of contracts subject to acceptance, by the other parties, of supplementary obligations which, by their nature or according to commercial practice, have no connection with the subject of such contracts”.

Sector Regulation: Competition rules on the electronic communications and postal services markets are enforced by the national regulatory authority, National

Telecommunications and Posts Commission (“EETT”), which supervises and regulates the electronic communications and postal services market. EETT holds concurrent competence with the Hellenic Competition Commission (“HCC”) for the enforcement of competition law in the electronic communications sector (article 12 of law 4070/2012 – Electronic Communications Act). On the other hand, in the energy sector, the sector regulator Regulatory Authority for Energy (RAE) is an independent authority, with an advisory role and the task of monitoring the market and a consumer protection mandate, however it does not enforce competition law (Law 4011/2011). The HCC is responsible for enforcing competition law in the gas and electricity sectors. It is noted that in the media sector, the Competition Act is complemented by additional legal provisions. The HCC applies Law 3592/2007, Article 3, to media concentrations involving media of informative content. This provision sets dominance thresholds ranging from 25% to 35%, depending on the media markets under consideration, and applies to merger control as well as abuse of dominance enforcement. Unfair Competition: Rules on unfair competition (Law 146/1914), fall under the competence of the civil courts. There are no industry specific exemptions or sectoral exclusions. The Competition Act also applies to the commercial activities of Stated-Owned Enterprises (SOEs), without any exceptions regarding its application.

2. To establish an infringement, does there need to have been an effect on the market?

The HCC follows the legal principles of EU legislation and sources of law, and the interpretation of the EU Courts. Cartel conduct may constitute an infringement irrespective and without the NCA having to prove whether it had an anti-competitive effect on the market. The three classical “by object” restrictions in agreements between competitors are price fixing, output limitation and market sharing (sharing of geographical or product markets or customers) [see European Commission’s Guidance on restrictions of competition “by object” for the purpose of defining which agreements may benefit from the De Minimis Notice, 2014]. In order to determine whether an agreement reveals a sufficient degree of harm to competition that it may be considered a restriction of competition “by object”, regard is attributed to a number of factors, such as the content of its provisions, its objectives and the economic and legal context of which it forms a part. Although the parties’ intention is not a necessary factor in determining whether an agreement restricts competition “by object”, the Commission may nevertheless take this aspect into account in its analysis.

The types of restrictions that are considered to constitute restrictions “by object” differ depending on whether the agreements are entered into between competitors (horizontal agreements) or between non-competitors (vertical agreements). In the former case of horizontal agreements, restrictions of competition by object include, in particular, price fixing, output limitation and sharing of markets and customers. Regarding vertical agreements, the category of restrictions by object includes, in particular, fixing (minimum) resale prices and restrictions which limit sales into particular territories or to particular customer groups. The fact that an agreement contains a restriction “by object”, and thus falls under Article 101(1) TFEU, does not preclude the parties from demonstrating that the conditions set out in Article 101(3) TFEU are satisfied. Nevertheless, restrictions by object are unlikely to fulfil the four conditions set out in Article 101(3). In exceptional cases, a restriction “by object” may be compatible with Article 101 TFEU because it is objectively necessary for the existence of an agreement of a particular type or nature or for the protection of a legitimate goal, such as health and safety, and therefore falls outside the scope of Article 101(1) TFEU. Agreements containing one or more “by object” or hardcore restrictions cannot benefit from the safe harbour of the De Minimis Notice (De Minimis Notice, 2014).

3. Does the law apply to conduct that occurs outside the jurisdiction?

According to Article 46 of the Law on the Protection of Free Competition [“Scope of application of the law”], this law applies to all restrictions of competition which affect or might affect Greece, even if these are due to agreements between undertakings, decisions by associations of undertakings, concerted practices between undertakings or associations of undertakings or concentrations of undertakings implemented or taken outside Greece or to undertakings or associations of undertakings which have no establishment in Greece. The same shall apply with regard to abuse of a dominant position in Greece. Therefore, the legal framework on free competition protection applies to conduct occurring outside the country where the particular conduct affects the country’s market.

4. Which authorities can investigate cartels?

Cartels are investigated by the HCC. The HCC constitutes an Independent Administrative Authority with legal personality, full administrative and financial

independence, which has the exclusive competence of implementing the Competition Act and Articles 101 and 102 of the TFEU, and is supervised by the Minister of Development and Investments. It is the Greek National Competition Authority (NCA). Its members enjoy personal and functional interdependence, and in the exercise of their duties they are bound only by the law and their consciousness and the principles of objectivity and impartiality. The authority includes two bodies: the Directorate General for Competition which conducts the investigation and the HCC Board which takes decisions. The HCC's main statutory responsibilities and powers are to: Investigate anti-competitive agreements and abuses of a dominant position and impose sanctions where applicable; order interim measures where an infringement is suspected and there is an urgent need to prevent an imminent risk of irreparable harm to the public interest; assess and approve concentrations between undertakings falling under the merger control provisions; conduct market studies and sector inquiries and recommend regulatory measures concerning the structure of the market; issue opinions on regulatory measures restricting competition; cooperate with sector regulators, with the European Commission and European NCAs; and promote the values of competition and efficient regulation. According to Article 28 CA, the HCC, as the National Competition Authority, is responsible for cooperation: (a) with the competition authorities of the European Commission and for providing its designated bodies with the necessary assistance to undertake the investigations provided for under European law, and (b) with the competition authorities of other countries. Thus, the HCC cooperates with the European Commission and the European Competition Network (ECN) in enforcing EU competition rules, in the context of Regulation (EC) 1/2003. Regarding electronic communications and postal services markets, see under Question 1.

5. What are the key steps in a cartel investigation?

Key steps in a cartel investigation – Initiation of Procedure: According to Articles 25 and 36 of the Law on Protection of Free Competition, a cartel investigation is launched upon a) the HCC's initiative / *ex officio* initiation, b) a complaint filed by any third party, c) a request by the Minister of Development and Investments, d) a leniency application. Key procedural steps: Once alleged cartel conduct comes to its attention, the HCC uses its formal powers of investigation (requests for information, on-premises investigations or 'dawn raids', etc.) to find sufficient evidence of an infringement. According to Article 14 of the same Law, the Chairman of the HCC -upon recommendation by the General Directorate for

Competition- introduces before the HCC all cases which fulfill the particular priority criteria set by Law and relevant HCC prioritization decision 696/2019. The HCC issues a preliminary decision for those cases fulfilling the priority criteria in order for a HCC Member-Rapporteur to be appointed and in order for the case to be referred in plenary session or before a competent HCC Division. The Rapporteur issues a Statement of Objections ('SO'), the parties are granted access to the non-confidential information on the HCC's file and have the opportunity to respond in writing and in the course of an oral hearing. After considering the parties' submissions, the Commission issues an infringement decision, or a commitments decision, or a decision abstaining from finding an infringement if the evidentiary threshold is not attained, or a settlement decision (see below). Investigations timeline: The timeline of the investigative phase varies significantly according to the particular circumstances of each case, extending, as a general rule, over several years. In the investigative phase, there is no set deadline for the HCC investigative body. After assigning the case to the Rapporteur, the latter shall, within a period of 120 days, submit the SO to the HCC Plenary Session or Division. This deadline can be extended up to sixty (60) days following a request from the Rapporteur. The HCC shall issue a decision on the case within twelve (12) months period starting from the Rapporteur's appointment. This deadline can be extended up to two (2) months if further investigation deemed necessary (indicative timelines). There is a five-year limitation period for the imposition of penalties, commencing on the date on which the infringement was committed or, in the case of continuing or repeated infringements, on the date on which the infringement ceased according to Article 42 CA. Any action taken by the HCC, the European Commission or any other competent competition authority of a Member State, for the purpose of the investigation or proceedings in connection with the specific infringement, shall interrupt the limitation period for the imposition of fines.

6. What are the key investigative powers that are available to the relevant authorities?

The investigative powers granted to the HCC are prescribed through Articles 38 and 39 CA which, in essence, reflect the investigative powers of the European Commission under Regulation (EU) 1/2003. In particular, the HCC may request in writing information from undertakings, associations of undertakings or other natural or legal persons or public or other authorities (art. 38 CA). Furthermore, officials of the Directorate General for Competition shall exercise the investigative powers of tax auditors (art. 39 CA). In particular, they

have the authority: a) to inspect all categories of books, records and other documents of the undertaking or association of undertakings, including the business e-mails of the undertaking, the directors, and the persons entrusted with the administration or management in general and the staff of the undertaking or association of undertakings, regardless of how and where they are stored, and to take copies or extracts of them; b) to seize books, documents and other records, including electronic means of storage containing professional information; c) to inspect and collect information and data from mobile terminals and portable devices and their servers, on or off the premises of the undertaking; d) to carry out inspections in the offices and other premises and means of transport of the undertaking or association of undertakings; e) to seal any professional premises, books or documents for the period of and to the extent necessary for the inspection; f) to carry out inspections in the residencies of the businessmen, directors, and persons entrusted with the management or administration in general and of the staff of the undertaking or association of undertakings, where there is reasonable cause to suspect that they are keeping books or other documents pertaining to the undertaking and the purpose of the inspection; g) to take sworn or unsworn witness statements and to ask any representative or member of staff of the undertaking or association of undertakings for explanations of facts or documents relating to the subject matter of the investigation. In addition, the HCC may address compulsory requests for information also to public or other authorities and the latter have a duty of cooperation (to provide information). In case the subject of the investigation refuses to accept the investigation, and in all cases of inspections of non-business premises, a judge or public prosecutor should be present and article 9 of the Constitution on the asylum of residence shall be respected.

7. On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?

The legal professional privilege applies to communications between independent lawyers and their clients and is connected to the client's rights of defence. According to the European Court of Justice (*Akzo Nobel Chemicals Ltd και Akros Chemicals Ltd v. European Commission*, Case C-550/07 P) the exchange must emanate from independent lawyers not bound to the client by a relationship of employment. Communications to and from in-house lawyers are thus not covered by the legal professional privilege on the basis of EU jurisprudence. In Greece, legal privilege has been

interpreted as covering all documents and information linked to the lawyer's activity (see art. 38 of the Lawyers' Code of Conduct), not distinguishing between in-house lawyers and independent lawyers. This interpretation, however, is not fully aligned with EU law and practice, and would, thus create a discrepancy in cases of parallel application of EU competition rules.

8. What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?

The national Leniency Program is set out in HCC decision 526/VI/2011. The HCC Leniency Program is in line with the EU and ECN leniency regimes and sets the specific conditions under which full or partial immunity is granted to undertakings or natural persons involved in cartels. Under the HCC Leniency Program, there are two types of immunity, full or partial immunity. Full immunity from fines refers to Type 1A and Type 1B applications. Regarding full immunity of Type 1A, complete exemption from fines shall be granted to the applicant who will be the first to submit evidence enabling the HCC to initiate a targeted inspection concerning a suspected cartel, provided that the HCC did not already have in its possession at the time of the application sufficient evidence that would allow the initiation of the investigation procedure in relation to this cartel. Full immunity from fines of Type 1B, shall be granted to the applicant who will be the first to submit the evidence which enables the HCC to establish the infringement of Article 1 CA and/or Article 101 of the TFEU, provided that evidence in relation to the cartel that the HCC already had in its possession at the time the application was submitted was not sufficient to prove such infringement. Moreover, in order for undertakings and natural persons to be granted full immunity, general, cumulative requirements should be met (on-going cooperation, par. 19 of the Leniency Program). In particular: (a) The undertaking or natural person should fully, genuinely and on an ongoing basis cooperate with the HCC until the conclusion of the case; namely, aa) by providing the CA promptly with all relevant information and evidence that comes into the applicant's possession or under its control; (bb) remaining at the disposal of the CA to reply promptly to any requests that, in the CA's view, may contribute to the establishment of relevant facts; (cc) not destroying, falsifying or concealing relevant information or evidence; (dd) unless and to the extent otherwise explicitly authorised by the CA, not disclosing the fact or any of the content of the leniency application at least before the CA has notified its objections to the parties, and (ee) making current and, to the extent possible, former employees and directors available for

interviews with the CA. (b) In case the application is submitted by an undertaking, it shall terminate its involvement in the alleged infringement no later than the time it submits its formal leniency application, unless the HCC demands the continuation of its participation in order to facilitate the HCC investigation; (c) Before submitting a leniency application to the HCC, the undertaking or natural person must aa) have refrained from destroying evidence that could fall within the scope of the leniency application, and bb) have not disclosed to any third party the fact that it intends to submit a leniency application and its content. Last but not least, it should be stressed that the Leniency Program excludes undertakings that have taken action to coerce another undertaking to participate in the cartel cannot benefit from full immunity from fines (Type 1A or Type 1B) under the Leniency Program. This exclusion shall not apply to natural persons who have acted on behalf of the first undertaking. With regard to the form and the content of the submission, the submission must be provided in a corporate statement accompanied by other evidence related to the alleged cartel. Corporate statements (in either written or oral form) should generally include: a detailed description of the relevant conduct; contact details of the applicant and other members of the alleged cartel; and information about which other competition authorities have been (or will be) approached. The HCC accepts oral corporate statements in order to protect leniency applications from disclosure in civil proceedings.

9. What level of leniency, if any, is available to subsequent applicants and what are the eligibility conditions?

Regarding partial immunity (or Type 2 immunity), in case the conditions for the granting of full immunity are not met, a reduction from the fine that would otherwise have been imposed may be granted to the applicant who shall provide the HCC with evidence of the suspected cartel, representing significant added value with respect to the evidence already in the HCC's possession. The general leniency requirements described under 3.1 also apply to partial immunity. Regarding the extent of reduction, significant added value for type 2 applications shall not be rewarded with a reduction of any fine of more than 50%. The reasons for exclusion from the leniency program for undertakings also applies to partial immunity.

10. Are markers available and, if so, in what circumstances?

Under the Greek Leniency Program, the applicant may

request a "marker". The granting of a marker protects the applicant's place in the queue for a given period of time, thus allowing it to collect within the said period the information and evidence necessary in order to meet the minimum conditions and requirements for immunity. The granting of the marker is at the discretion of the HCC. Where a marker is granted, the HCC Chairman determines the period within which the applicant has to 'perfect' the marker by submitting the information required to meet the relevant evidential threshold for immunity. If the applicant perfects the marker within the set period, the information and evidence provided will be deemed to have been submitted on the date when the marker was granted. The applicant must justify his/her application for a market and provide the HCC with the application, his/her name and address and information on: (a) the parties to the suspected cartel, (b) the product/products affected, (c) the affected territory, (d) the duration of the suspected cartel, (e) the nature and function of the suspected cartel, and (f) information on already submitted or future leniency applications to any other competition authorities, inside or outside the European Union, in connection with the suspected cartel.

11. What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?

When deciding on immunity or fines reduction, the HCC takes into account the extent and consistency of the cooperation of the undertaking and/or the individual after the date of submission of the evidence. Ongoing cooperation requirements with the HCC are described above, under 3.1 general leniency requirements (par. 19 of the Leniency Program).

12. Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?

A cartel infringement of Art. 1 par. 1 CA and Art. 101 TFEU is a criminal offence, and natural persons who participate to the cartel may be punished (art. 44 CA) by imprisonment of between two and five years and a pecuniary sanction in a range from EUR100,000 to EUR1 million. According to Art. 44 par. 3 CA as in force (upon amendment by virtue of l. 4635/2019), if the undertaking is granted immunity from fines (Type 1A or Type 1B), no criminal sanctions will be imposed on the above individuals. If the undertaking is granted fine reduction (Type 2 leniency), this constitutes mitigating circumstances on the basis of which reduced sanctions will be imposed. Furthermore, no criminal sanctions are

imposed against those individuals who reveal the cartel to the competent public prosecutor, the HCC or any other competent authority by submitting relevant evidence, acting on their own will and before having been examined in any way concerning the cartel (Article 44 par. 4 CA). In all other circumstances, these persons' significant contribution to uncovering the cartel and submitting evidence to the competent authorities will be deemed to be mitigating circumstances on the basis of which reduced sanctions are imposed. Regarding employees, no criminal sanctions will be imposed against employees of an undertaking that has been granted immunity or fine reduction. It is noted that an individual (current or former employee) can apply for personal immunity from criminal liability irrespective of whether the company makes a leniency application.

13. Is there an 'amnesty plus' programme?

No. There is no 'amnesty plus' programme in the Greek Leniency provisions.

14. Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for doing so?

Yes, settlement is provided in Article 25a of the Competition Act and HCC decision 628/2016, supplemented and codified by HCC decision 704/2020. The Settlement Procedure concerns cases where undertakings or associations of undertakings make an unequivocal acknowledgement of participation and liability in relation to their participation in horizontal agreements (cartels) and the subsequent breach of competition law. In this case, they can obtain a reduction of 15% to the imposed fine. The Settlement Procedure is essentially modelled after the EU settlement procedure, and aims at simplifying and expediting the handling of pending cases. In addition, the settlement procedure may lead to a reduction in the number of appeals against the HCC's decisions before administrative courts. In the context of the settlement procedure, on top of the unequivocal acknowledgement on the part of the undertakings of their participation to an infringement and the acceptance of liability in relation to the infringement, the parties must not request full access to the file or an oral hearing before the HCC's Board. Companies submitting to a settlement procedure waive their right to appeal the HCC's decision with respect to specific aspects, such as the validity of the procedure. Hybrid settlement decisions in which some of the defendants settle while others follow the standard procedure are possible and have been adopted to date

by the HCC (e.g. in the construction, cosmetics, electrical contractors and printed media sectors). Settlements are not incompatible with leniency (the two procedures may apply concurrently and the fine reductions in this case shall apply cumulatively). Settlements are incompatible with commitments since in the latter procedure no acknowledgement of participation in the cartel and liability takes place: contrary to settlements, which are contained in infringement decisions, commitments decisions do not establish an infringement or impose a fine. Companies which become aware of the existence of a cartel investigation may already at any stage, even an initial one, indicate to the HCC their interest in exploring settlements (in case an SO has been issued, up to 35 days before the oral hearing is set). Settlement discussions start once the Directorate General of the HCC has analysed evidence. Court approval is not required. Discussions for settlement commence at the interested party's initiative by contacting the General Directorate for Competition. At this stage, HCC may, at its full discretion, decide whether the case is suitable for settlement procedure or not and initiate the settlement procedure by virtue of its decision, if it deems appropriate, at its unfettered discretion. It should be noted that the HCC may discontinue the procedure at any stage. It is also the case that a party may withdraw from the settlement procedure at any time; in such case the normal procedure will be initiated for such party when settlement procedure for the rest of the undertakings is completed. If the HCC decides to commence the settlement procedure, the HCC and the parties get into bilateral discussions on case-relevant information. In particular, for the undertakings to make an informed decision, the HCC and the parties hold bilateral meetings in which information about the case is disclosed. This includes the facts known to the authority, the specific evidence indicating an infringement and the range of fines that would be imposed on the business. During this phase, the parties make statements and written submissions to present their arguments. These are treated as confidential and cannot be used in other proceedings, such as follow-on damage claims. Upon conclusion of the bilateral discussions, the interested party shall, within a set deadline, submit a Settlement Proposal accepting liability for the infringement and the maximum amount of fine. The HCC may accept or reject the Settlement Proposal. If one or more of the alleged participants use their right to opt out of the procedure, the HCC may settle with the remaining alleged participants.

15. What are the key pros and cons for a party that is considering entering into

settlement?

Possible advantages for parties considering a settlement are: a) Expediting the proceedings before the HCC in cartel cases; b) increased options to be informed earlier of potential objections and of the evidence supporting them, as well as of the likely range of fines, prior to the adoption of the final decision; c) 15% reduction of fine (comparing with the amount that would be imposed if the settlement had not occurred); d) according to Article 44 par. 3 CA (as amended by Laws 4389/2016 and 4635/2019 and in force), criminal and administrative liability (exclusion from public tenders or concession contracts, except in the case of repeated infringement / recidivism) is waived, provided the fines are paid in full, or, in case of a facilitated partial fine payment, for as long as the arrangement is in force and the party complies with its terms. Disadvantages: The clear and unequivocal acknowledgement of participation and liability in relation to the participation in a cartel contained in the course of a settlement procedure might encourage third party claims for damages. In practice, and although not formally prohibited, parties to a settlement may not, in practice, successfully appeal the HCC decision before national courts.

16. What is the nature and extent of any cooperation with other investigating authorities, including from other jurisdictions?

The HCC, in its capacity as a National Competition Authority, cooperates with the European Commission and other NCAs through the European Competition Network (the ECN) (see Council Regulation EC 1/2003, and Commission Notice on cooperation within the Network of Competition Authorities). The HCC accepts summary applications in Type 1A and Type 1B immunity applications in line with the European Competition Network Model Leniency Programme. According to Article 28 CA, the HCC is responsible for cooperation: (a) with the European Commission, providing its designated bodies with the necessary assistance to undertake the inspections provided for under European law, and (b) with the competition authorities of other countries. It is noted that Greece is a member of the International Competition Network (ICN), as well as of the Organisation for Economic Co-operation and Development (OECD) whereas also the HCC President was elected in 2021 as a regular member in the Bureau of the OECD Competition Committee. The HCC has dedicated cooperation agreements with several countries. The HCC cooperates with the competent prosecution authority (Article 48 CA). According to the CA, the HCC shall cooperate with regulatory or other

authorities which monitor particular sectors of the national economy, and shall assist such authorities, upon request, on matters of application of Articles 1 and 2 of this Law and Articles 101 and 102 TFEU in the relevant sectors (Article 24 CA). Thus, the HCC cooperates with sector/ industry – specific regulators, as well as with other public authorities / agencies, aspiring to create a Public Administration ecosystem (cf. HCC Annual Report 2019). In October 2019, the HCC signed a Memorandum of Cooperation with EAADHSY (Hellenic Single Public Procurement Authority), which identifies a field of joint actions and activities. Moreover, on 25.09.2020, the HCC signed a Memorandum of Understanding (MoU) with the Hellenic Regulatory Authority for Energy (RAE), with a view to enhancing the cooperation between the two Authorities on issues of common interest. The HCC also cooperates with other bodies and Authorities to gather data for its Economic Intelligence Platform (an innovative tool for collecting and processing economic data for a large number of products in various markets in Greece, in real time), whereas also it has signed MoUs with various Consumers' Organizations.

17. What are the potential civil and criminal sanctions if cartel activity is established?

Criminal Liability (Article 44 CA): Imprisonment from two to five years and fines ranging from 100.000 to 1.000.000 Euros, in case the illegal collusion refers to cartel activities taking place between competitors (see above under). The power to impose criminal sanctions lies with the criminal courts. Administrative Sanctions: In case of infringement, the Competition Law provides for administrative sanctions and fines against the participating undertakings (art. 25 CA). In particular, the HCC may decide, either alternatively or cumulatively, to: (a) address recommendations; (b) require the undertakings to bring the infringement to an end and desist in the future, (c) impose behavioural or structural remedies, necessary and appropriate for cessation of the infringement and proportionate to its nature and gravity. Structural remedies shall be allowed only where no equally effective behavioural remedies exist or where any equally effective behavioural remedies are liable to be more burdensome than structural remedies; (d) impose a fine; (e) threaten a fine, where the infringement is continued or repeated; (f) impose the threatened fine when it is confirmed by its decision, that the infringement is continued or repeated or that the concerned undertakings fail to fulfil a commitment. According to Article 25 par. 2a) of the Competition Act, the fine threatened or imposed under paragraph 1(d), (e) and (f) may be up to ten percent (10%) of the total turnover of the undertaking for the financial year in

which the infringement ceased or, if it continues until issuing of the decision, the year preceding the issuing of the decision. In the case of a group of companies, calculation of the fine shall take account of the total turnover of the group. In determining the level of the fine, account must be taken of the gravity, duration and geographical scope of the infringement, the duration and nature of participation in the infringement by the undertaking concerned, and also its economic benefit derived therefrom. Where it is possible to calculate the level of economic benefit to the undertaking from the infringement, the fine shall be no less than that, even if it exceeds the percentage stated in the first subparagraph hereof. The HCC has issued guidelines on the method of setting fines, aligned with the European Commission's Fining Guidelines. Regarding natural persons, the owners of a single-person enterprise, in the case of civil and commercial companies and joint ventures, the managers and all general partners, and in the case of public limited companies, the members of the board and those persons responsible for implementing the relevant decision shall be liable, by means of their personal assets, jointly and severally with the undertaking concerned for payment of the fine, whereas also the HCC may impose on such persons a separate administrative fine of between €200,000 and €2 million if they have demonstrably participated in preparatory acts, the organisation or commission of the anticompetitive agreement or practice.

18. What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?

Within the limits prescribed by Article 25 (2) CA and according to its guidelines on the determination of fines, HCC sets a fine taking into account the nature, the gravity and the duration of the infringement, its geographical scope, as well as the extent and duration of the participation by the specific undertaking in the infringement, and whether there is a case of recidivism. Furthermore, the dire state of the sector during the economic crisis has been taken into account by the HCC, justifying a reduction in the level of the fines. With regard to the highest fines imposed, in 2017, record total fines of approximately €81 million regarding several collusion schemes in tenders for public works / construction sector (Bid rigging in public procurement). In this case, the highest fine on an individual undertaking (EUR 38.5 million) was imposed by the HCC.

19. Are parent companies presumed to be jointly and severally liable with an infringing subsidiary?

The HCC is able, but under no obligation, to impute liability for the infringement to a parent company. It may base its decision on the presumption of the exercise of decisive influence on the basis of the EU case-law, if the relevant requirements are fulfilled and the circumstances of the case justify this application according to the principle of proportionality (see e.g. HCC decision 610/2015), especially where there is evidence or facts regarding the relation between the parent company and the subsidiary to the effect that the parent company was involved and / or aware of the infringement in question, or the subsidiary did not act entirely on its own but upon guidance from the parent company.

20. Are private actions and/or class actions available for infringement of the cartel rules?

Private actions for cartel infringements are available in the Greek jurisdiction and are regulated by Law 4529/2018 (transposing Directive 2014/104/EU - the Damages Directive), the Greek Civil Code and the Greek Code of Civil Procedure. A prior finding of the infringement from HCC is not required to bring such a claim in civil courts but such a finding would be binding for the court. Class actions are not provided for cartel infringements in the Greek Jurisdiction.

21. What type of damages can be recovered by claimants and how are they quantified?

Under Greek law, anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association, irrespective of the fines imposed in the context of public enforcement. Law 4529/2018 provides for full compensation, including actual damage, loss of profit and interest from the time when the harm occurred until the time when compensation is paid. Punitive damages are not available in the Greek jurisdiction. With respect to the quantification of harm, the requisite standard of proof is a reduced standard of probability (article 14, Law No. 4529/2018). The national courts are empowered to estimate the amount of harm if 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 evidence available. It is presumed that cartel infringements cause harm. The infringer has the right to rebut that presumption. The same reduced standard (probability) also applies with regard to quantifying the overcharge in the context of the passing-on defense (article 11 (3) of Law No. 4529/2018). The HCC may, upon request of a national court, assist that national court with respect to the determination of the quantum of damages where it considers such assistance to be appropriate.

22. On what grounds can a decision of the relevant authority be appealed?

According to Article 30 par. 1 CA, the decisions of the HCC are subject to an appeal, filed before the Athens Administrative Court of Appeals within a time-limit of sixty (60) days following notification of the HCC's decision. The Administrative Court of Appeal of Athens acts as a court of first instance and effects full review on the merits of the case. The Court reviews the case on the basis of the law (i.e. legality) and of the facts. HCC decisions can be upheld or annulled, or the Court may uphold the decision in substance and reduce the amount of the fine imposed or refer the case back to the HCC. In addition, according to Article 32 CA, a petition for annulment before the Conseil d' Etat (the Council of State) against the decision of the Athens Administrative Court of Appeal can be filed within 60 days following the issuance of the decision of the Athens Administrative Court of Appeal. The appeal before the Council of State is limited only to points of law.

23. What is the process for filing an appeal?

See question above.

24. What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?

The HCC Plenary Session recently published decision 715/2020, imposing a fine of EUR 217.031 on seven constructors for participation into a horizontal concerted practice of bid rigging (public tender for the project "5th Lyceum of Lamia" for infringement of Article 1 par. 1 of Law 703/1977 (Competition Act in force during the time of infringement). The HCC granted a fine reduction up to 30% to all the undertakings involved, taking into account the critical situation of the construction sector during the economic crisis. The aforementioned HCC decision

concerns firms that participated in the said public tender but did not take part in the Settlement Procedure (see related Hybrid Case 674/2018). The total fines imposed in Hybrid Settlement decision 674/2018 and decision 715/2020 amounts to EUR 461.819.

Furthermore, the HCC issued unanimous decision 721/2020 regarding a cartel (anticompetitive agreements by six companies in the context of a public tender in the market of security services). The HCC, following the simplified Settlement Procedure, imposed a total fine of EUR 688.106,52 on the aforementioned cartel members having engaged in anticompetitive horizontal fixing prices agreements (depending on the duration of the involvement of each one in the infringements). Moreover, the Plenary Session of the HCC adopted its unanimous decision 703/2020 following an ex officio investigation in the furniture and professional equipment market. The said decision was issued according to the simplified Settlement Procedure regarding a cartel (horizontal anti-competitive agreement between two companies in the context of a public tender for the supply of equipment for the five-storey building of the University General Hospital in Ioannina -bid rigging-). Both involved companies submitted a leniency application; the HCC granted full immunity from fines (Type 1A) to one of the applicants. The other cartel member was given a 15% fine reduction for its cooperation with the authority under the Settlement Procedure. The fine imposed amounted to EUR 29.013,59.

25. What are the key recent trends (e.g. in terms of fines, sectors under investigation, applications for leniency, approach to settlement, number of appeals, impact of COVID-19 in enforcement practice etc.)?

The last few years since the adoption of the settlement procedure by the HCC the use of settlements is widespread. In 2020, both cartel cases in decisions 703/2020 and 721/2020 (see above Question 9 (i)) were issued following the Settlement Procedure. Decision 703/2020 was the second case in which all companies involved applied for settlement in early stage without having previously been served with the SO. None of the settling firms appealed the settlement decisions. On the other hand, Leniency Program seems to have limited success in Greece (see, however, the bid-rigging cartel decision 642/2017 and HCC decision 703/2020 above).

The Administrative Court of Appeal of Athens, competent to review the HCC decisions, issued nineteen decisions in 2019. Of these decisions: - Six (6) upheld the decisions of the HCC. - One rejected the request for suspension of

execution of a HCC decision. – Five upheld the HCC decisions in substance, while reducing the fine imposed on the applicants. – Five accepted the appeals and annulled the HCC decisions in so far as they concerned the applicants. – Finally, two decisions concerned the lack of HCC jurisdiction and the referral of cases to the Council of State. Appeals for these decisions have been filed before the Council of State. In addition, the Council of State, issued two decisions notified to the HCC in 2019. In one case, the CoC accepted the HCC appeal against a decision of the Administrative Court of Appeals and referred the decision back to the Court of Appeals. In the other case, the Council of State rejected an appeal against an HCC decision.

Furthermore, the HCC, from the beginning of the COVID – 19 pandemic outbreak, has responded to the challenges resulting therefrom. In April 2020, the HCC Directorate – General carried out dawn raids in foodstuff markets. In the same period, an investigation in public procurement tenders for healthcare materials and hospital equipment for public hospitals and other health units was launched, as a preliminary step aiming at the identification of the imposition of excessive prices during the pandemic. The research was based on data collection from seven Regional Health Units and data from the open public procurement platform “Diavgeia.gov.gr” on the basis of automatic data extraction methods. The interim results of the aforementioned investigation were announced on 11.09.2020, while the analysis of the data collected is under further investigation, in order to detect any indication of violation of Articles 1 and 2 of CA. According to the interim results no systematic increase in the average and/or median gross profit margin from the sale of the healthcare products concerned during the investigation period has been confirmed. Additionally, in August 2020 the HCC initiated an investigation into the market for the COVID – 19 diagnostic and antibody tests in order to assess whether to launch an ex officio investigation. The data collected are for the time being processed. Moreover, the HCC launched an ex officio investigation in the markets and supply chains for milk, cereals and flour in order to investigate possible infringements of Articles 1 and 2 of CA and/or Articles 101 and 102 TFEU. According to the interim results of the investigation there was no significant increase in the median prices of these products in super markets chains during the COVID – 19 outbreak in Greece. Additionally, the HCC carried out dawn raids in the food and beverage sector, as well as on undertakings and conglomerates active in the ferry boat connections sector, in June and August 2020 respectively.

Recently, the HCC has given emphasis on the tool of regulatory interventions in sectors of the economy,

pursuant to Article 11 of the CA. On this basis, the HCC takes all necessary measures to create conditions of competition in the sector under investigation in case of absence of effective competition and if it considers that the application of Articles 1, 2, 5 and 10 of CA is not sufficient for the creation of effective competition. In that vein, the following activities are worth mentioning:

Regulatory Intervention procedure in the construction sector: The HCC initiated on 08.01.2021 a regulatory intervention procedure in the said sector.

Regulatory Intervention procedure in the press distribution sector: On 14.01.2021, a regulatory intervention procedure was initiated in the press distribution sector. It should be noted that the HCC has already examined the press distribution sector in various occasions, inter alia on the basis of a relevant legal opinion.

In addition to the above, the HCC has also been increasingly using sector inquiries as a means of soft enforcement, and a tool to map sectors of economy and to detect competition problems. In particular, inter alia, the HCC launched in 2020, on the basis of Article 40 of Law 3959/2011, **a sector inquiry into e-commerce and a sector inquiry in the financial technology services (Fintech) sector** initiating a broad review of the structure and state of the Greek digital economy. The publication of the Final Report on the Fintech sector is expected in December 2021 (with a delay due to COVID – 19 pandemic). Upon completion of the inquiry the HCC may issue specific remedies and undertake initiatives for improving competition in the broader Fintech sector to the benefit of undertakings and consumers. The HCC has also initiated mapping of Greek economic sectors and markets.

Very recently (05.03.2021), the HCC published its **Final Report on the sector inquiry into basic consumer goods** (Sector inquiry into production, distribution and marketing of basic consumer goods and in particular food products as well as cleaning and personal hygiene products), examining problems and practices identified in the various stages through the entire supply chain of consumer goods, analyzing actions that will improve its effectiveness in order to assess the overall economic impact of the retail sector. The HCC concluded that for the time being it is not necessary to initiate a regulatory intervention in the sector or to consider the introduction of new institutions, such as that of an Ombudsman or Commissioner appointed by the HCC. HCC continues to monitor the sector, both for the specific consumer products examined in the context of this Sectoral Inquiry (SI), as well as in other products, food or other basic consumer products categories. HCC Supermarket Taskforce will prepare a report annually on the state of competition in the retail sector and will measure the

bargaining power of supermarket chains as well as suppliers. Using an indicator of vertical market power at the supply chain level for the 11 product categories the HCC concluded that: a) while some markets are characterised by relatively stable and low levels of vertical bargaining power between 2015 and 2019 (i.e. breakfast cereals, cold cuts, yogurt and yogurt desserts and toilet paper), others (such as toast, pulses and coffee) are characterised by relatively high levels of vertical market power for the same (time) period and b) some markets show significant variations in the level of vertical market power during the above years.

Furthermore, the HCC commissioned an independent study on the competitiveness of the Greek mobile data market, published in May 2020.

Lastly, the HCC has published a Staff Discussion Paper on Sustainability Issues and Competition Law and collaborated with the Netherland Authority for Consumers and Markets (ACM) for the commissioning of a technical report on sustainability and competition, published in January 2021. The HCC aspires to adopt more initiatives for the promotion of sustainability issues compatible with competition law, through the collaboration with other NCAs.

In the field of Settlement Procedure HCC decision 628/2016 was amended by decision 704/2020 in line with paragraph 35 of Commission Notice (2008/C/167/01) with a clarification on when the information to be obtained from those documents may be used by the party who has acquired access to the file.

Regarding the impact of Covid-19 to the enforcement practice, it is noted that the HCC continues its investigations and inspections. The HCC continues to accept and review complaints and merger notifications, without announced extensions or delays to the review timelines. Undertakings and citizens addressing the HCC may use its online services inter alia for complaints, prior notifications of concentrations, submission of commitments, interventions, and any inquiries. The HCC, considering the businesses need to adjust their operation and organization in order to respond to the significant changes in supply and demand market conditions, has set up a Covid-19 Task Force to address possible distortions of competition due to the Covid-19 pandemic and provide businesses and citizens with information about the application of competition rules, inform the public about the investigations carried out by the HCC in currently crucial business sectors and on the actions of other national competition authorities and the European Commission. Among the primary objectives of this Task Force is also to create a hub collecting questions raised by different institutions and businesses,

concerning the initiatives they intend to take and their compatibility with competition law. According to the HCC, the challenges faced by the businesses due to the pandemic does not justify unlawful conduct such as excessive pricing or prohibited agreements between undertakings likely to undermine consumer and public interest.

Finally, in the context of COVID - 19 outbreak the HCC made a Joint statement with the European Competition Network (ECN) on application of competition law during the Corona crisis. In particular, according to the said statement, the existing rules allow manufacturers to set maximum prices for their products, as the latter could prove useful to limit unjustified price increase at the distribution level.

26. What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?

Statutory changes in the CA are anticipated in the near future; in the context of the transposition of the ECN+ Directive (EU) 2019/1, empowering national competition authorities, a legislative Committee has submitted to the competent Ministries a draft competition law amending Law 3959/2011, which has not yet been published. The draft bill includes inter alia a provision concerning the abuse of a dominant position in an ecosystem of structural importance for competition in the Greek Territory, aiming to address the specificities of multi - sided markets, asymmetries of power and market tipping. This provision will be applicable only in case the aggregate worldwide turnover of the company in a dominant position amounts to at least 300 million Euros.

Regarding upcoming HCC decisions, the following cases on which an SO has been issued are worth noting (the SO is not binding on the HCC, which decides on the case after taking into consideration all evidence and arguments put forward by the parties during the hearing):

Firstly, the press distribution market has been an area of focus for the HCC, with several ongoing procedures (ex officio investigation, interim measures, review of compliance with HCC decision, legal opinion, obstruction of investigation, etc). In particular, on 16.11.2020, a SO was issued following an ex officio investigation in the press distribution market concerning alleged infringements of Articles 1 and 2 of CA and /or Articles 101 and 102 TFEU, as well as an ex officio investigation initiated pursuant to HCC's Decision No 659/2018.

According to the SO, distribution network of ARGOS S.A. adopted anti-competitive practices towards sub-distributors (contractual terms and practices related to the operation of the distribution network of ARGOS S.A. Press distribution Agency (notably: a) restriction of cross-supplies, b) single branding obligation/non-compete clause, and c) fixing of a minimum profit margin at the vertical level). With reference to the ex officio investigation ordered pursuant to HCC's Decision 659/2018, according to the SO, there is no evidence of infringement. Moreover, on 23.02.2021 a SO relating to the alleged obstruction of an HCC dawnraid in the press distribution market was issued. Additionally, on 26.01.2021 the HCC issued a Decision on non-compliance with its Decision 687/2019 ordering interim measures.

Furthermore, on 30.12.2020, a SO addressed to companies active in the importation and distribution of wristwatches in Greece concerning alleged infringements of Articles 1 of CA and 101 TFEU in the Greek market for the sale/ distribution of wristwatches, further to a complaint and an ex officio investigation of the HCC's GDC, was issued. According to the relevant SO, the defendants adopted anti-competitive practices, relating to: (a) resale price maintenance (RPM); (b) restriction of parallel trade; (c) restriction of cross-supplies between appointed distributors within a selective distribution system; (d) restrictions on passive sales. HCC Plenary will convene on 8 April 2021 to examine the alleged infringements.

On 22.12.2020, a SO regarding an ex-officio and upon complaint investigation of HCC in the market for the production and marketing of cosmetics, personal and baby care products was issued. According to the SO there was no finding of any by object restrictive practice and no findings of a dominant position in the relevant market. Restrictive contractual terms were identified concerning the restriction of mutual supplies between the authorized Greek retailers of the selective network, as well as of their wholesale export sales to selected distributors of the network in the member states and of the possible sales of the authorized Greek retailers to the Greek drugstores / members of the selective distribution network.

Additionally, on 20.01.2021, a SO in relation to alleged infringements of Articles 1 and 2 of CA and Articles 101 and 102 TFEU in the Greek market for waste oils management following a complaint, was issued, regarding exclusivity clauses.

Other anticipated decisions refer to the examination, in March 2021, of the complaint of the company MYTILINEOS S. A. - GROUP OF COMPANIES for alleged abuse of dominance in the bauxite production and supply market.

Regarding the investigation on possible anti-competitive horizontal agreements or exclusionary practices in the provision of banking and payment services, following HCC dawnraid in 2019, the HCC announced that it has proceeded to actions to unseal the hard disks that have been collected so as to start data processing and analysis, a procedure that has been delayed due to the restrictive measures imposed because of the COVID 19 pandemic and various procedural objections, and that the continuation and completion of these investigations within a reasonable time frame is a priority for the HCC.

Moreover, the HCC proceeded to changes to its organization structure (Decision 719/2020 on HCC Organization structure), replacing the current Economics and Legal Services Directorates by 'mixed' sectoral Directorates, which focus on adjacent economic sectors, and are staffed by officials with economic, legal and technical training. In addition, the new Organisation of the HCC foresees the setting up of 'horizontal' Units dedicated to Economic Research & Documentation and Forensic Detection, as well as a Chief Legal Officer Directorate. Also, new Directorates are created (Directorate of Coordination and Secretariat of the HCC and Directorate of International Relations and Communications), as well as the Office of the Legal Council of the State at the HCC.

To be noted, lastly, that HCC has repeatedly stated its focus on digital economy, aiming, inter alia, to investigate the effects of the digital economy to competition, through consultation with digital economy firms, and has set up an expert advisory group, in order to make proposals at national and European level on the application of competition law and competition policy in the digital economy.

The HCC has also launched a Digital Services platform for the provision of integrated Electronic Transaction Services to interact with stakeholders and an anonymous reporting of information (whistleblowing) tool in a digital environment. The above, as well as initiatives as the HCC economic intelligence platform, the appointment of a Digital Economy Expert, and sector-inquiries into e-commerce, in the Fintech sector and the study commissioned on the competitiveness of the Greek mobile data market could be seen in this broader context.

Contributors

Dr Victoria Mertikopoulou
Partner, EU & Competition,
Regulatory and Compliance

v.mertikopoulou@kglawfirm.gr



Ifigeneia Argyri
Junior Associate

i.argyri@kglawfirm.gr