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Cartels 2022

Greece: Trends & Developments
Victoria Mertikopoulou and Ifigeneia Argyri
KYRIAKIDES GEORGOPOULOS (KG) Law Firm

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Trends and Developments

Contributed by:

Victoria Mertikopoulou and Ifigeneia Argyri

KYRIAKIDES GEORGOPOULOS (KG) Law Firm see p.7

Introduction

The digital sector and cartels, especially bid rigging, remain key priorities for the Hellenic Competition Commission (HCC). Here, we examine key trends on cartels enforcement and unannounced inspections, basic sectors under investigation, as well as key statutory developments.

In particular, in 2022, the HCC intensified dawn raid action, holding one of the highest numbers of dawn raids in EU jurisdictions. The investigations and inquiries focused on the COVID-19 pandemic-affected products and basic consumer goods, as well as the areas where price increases were observed, such as the energy sector, particularly targeting the markets and sectors of the economy where indications of anti-competitive practices or information were derived from complaints and the whistleblowing programme.

The HCC included in its strategy sector inquiries in key sectors of the national economy (reflecting the areas of principal interest and anticipated to generate cases) such as e-commerce, basic consumer goods, fintech, medical services and health insurance, waste recycling and management, among others, as well as regulatory interventions in the construction and press distribution sectors. Regarding sector inquiries, the publication of the Final Reports of the SIs in the fintech and the e-commerce sector is expected before the end of 2022.

Key Trends in Cartel Enforcement

Statutory developments: focus on collusion and price–signalling and “no-enforcement action letter”

Law 3959/2011 (“Competition Act” / “CA”) was recently substantially amended by Law 4886/2022 (GG A’ 12/24.01.2022). New Article 1A, “Invitation to collude and announcement relating to communicating future pricing intentions for products and services between competitors”, is a provision aimed at tackling both invitations to collude and information disclosures on future pricing to competitors. This provision does not exist in other EU jurisdictions.

In particular, Article 1A CA aims to combat practices, presumably both in a digital and in a non-digital environment, aiming at:

- the invitation, coercion or induction in any other way by one undertaking to another to engage in or contribute to a prohibited agreement between competitors; and
- the disclosure (possibly by public announcement) of an undertaking’s future intentions regarding the pricing of its products (“price signalling”) if this disclosure restricts effective competition in the Greek territory and does not constitute a common commercial practice.

This new provision will only apply to large players in the market, ie, it will not apply to undertakings with a total turnover of less than fifty million (EUR50,000,000) and fewer than two hundred and fifty (250) employees. Article 1A does in no way affect the application of Articles 1 and 2 of Law 3959/2011, as well as Articles 101 and 102 TFEU and where the conditions set out in Article

1A and in Articles 1 and 2 CA and Articles 101 and 102 TFEU are met, the latter articles shall apply to the exclusion of Article 1A. The said provision will enter into effect on 1 July 2022 in accordance with paragraph 2 Article 73, and in the meantime, it is expected that the HCC will issue guidelines concerning its application. The introduction of this Article illustrates a strict approach towards collusion and price signaling, thus the relevant HCC Guidelines on the application of Article 1A are highly anticipated to inform businesses further.

Moreover, on another noteworthy development, the newly inserted Article 37A provides that, for reasons of public interest, such as the achievement of sustainable development goals, HCC's Chairman is empowered to issue a no-enforcement action letter regarding multilateral behaviour (ie, agreements between undertakings, decisions by associations of undertakings and concerted practices), because the conditions of Article 1 (1) CA or 101 TFEU are not fulfilled, or the respective practices are exempt under Article 101 (3) TFEU. This is upon recommendation of the Directorate-General for Competition and following a request by the interested parties. This mechanism is centred around the HCC Sandbox for sustainable development and competition, which refers to multilateral behavior, either horizontal or within a supply chain (vertical), but may also concern unilateral behaviour. The sandbox will initially operate within targeted industries, such as energy, recycling/waste management, industrial production of consumer products, production and/or distribution of food, pharmaceuticals, healthcare, etc. The operation of the no-action letter presents analogies with the mechanism used by the European Commission for accepting co-operation for reasons of public health due to the pandemic.

Lastly, pursuant to the newly added Article 40 (investigation of algorithmic methods), when suspicions arise for restriction or distortion of competition, the HCC may also investigate methods of shaping commercial behaviour, including algorithmic methods.

Initiation of dawn raids into numerous sectors of the Greek economy

HCC has conducted a series of dawn raids in multiple sectors of the Greek Economy with a particular interest in investigating cartels. During Q1 of 2022, the HCC conducted dawn raids indicatively in the wholesale supply of electricity and the retail supply of electricity to low voltage customers (households and SMEs), as well as in the catering services provision sector, a public tender for the supply of medical products, the construction sector, the pasta sector, the eyewear sector. The HCC, in co-operation with the national regulatory authority (RAE), is closely monitoring price increases in the energy sector occurring worldwide, as these increases may impact Greek consumers.

Also, from January-November 2021, the HCC carried out more than 17 dawn raids in 101 companies, inter alia, into the sector of refining, wholesale and retail trade of petrol (gasoline) and diesel, the markets for sunflower, cotton and maize seeds, the markets for plant protection products, and the markets for telecommunications and teleconferencing equipment and related equipment, spare parts and software.

HCC's anonymous reporting system for citizens and business ("whistleblowing platform")

In March 2021, the HCC created a Digital Services platform for the provision of integrated Electronic Transaction Services to interact with stakeholders and an anonymous reporting of information in a digital environment, following

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the standards of the respective digital tools (whistleblowing) used by the European Commission, as well as other NCAs.

HCC's Whistleblowing platform seems to have a noteworthy response, as according to HCC's relevant press release, 55 report messages were sent in January 2022, exceeding those of the previous year (March - December 2021) since the implementation of this whistleblowing tool.

Bid rigging in the spotlight

Bid rigging seems to be a continuous focus for the HCC. In April 2022, the HCC issued its updated "Manual for Contracting Authorities: Detection and Prevention of Collusive Practices in Public Procurement tenders". This Manual contains all the necessary information with respect to the detection and prevention of bid-rigging practices in public procurement tenders and sanctions issues and is accompanied by annexes with a checklist of warning signs and relevant instances. Moreover, the HCC presented the creation of a special platform for anonymous complaints concerning bid rigging in public procurement and an information programme for contracting authorities.

It is also noteworthy that most HCC decisions issued in 2021 and 2022 concerned bid-rigging cases, as illustrated below.

Regulatory interventions

In January 2021, the HCC launched a regulatory intervention in the construction sector and issued its Interim Report in April 2022. According to the findings of the Interim Report, the joint horizontal participation of a specific fund in the two largest construction undertakings in Greece may lead to uncoordinated unilateral effects of reducing or mitigating competition incentives and unilateral effects of concerted behaviour. Other potential issues identified in the existing legal framework are the issue of regulating unusually low bids and

the issue of reintroduction of the construction joint venture after the selection of the bidder. On March 2022, the HCC also conducted dawn raids at the premises of undertakings active in the construction sector in the Attica region.

This further showcases HCC emphasis on the tool of regulatory interventions (also used in the press distribution sector), pursuant to Article 11 of the CA as a tool to create conditions of competition in the sector under investigation in case of the absence of effective competition where it considers that the application of Articles 1, 2, 5 and 10 of CA is not sufficient.

Settlements

Settlements constitute a tool of which the HCC makes widespread use. In this context, the new Law 4886/2022 introduced a new Article 29A, extending the settlement procedure to any infringement of Articles 1, 1A and 2 of the Greek Law 3959/2011 or Articles 101 and 102 TFEU, thus also to abuse of dominance and vertical restraints, as well as the new invitation to collusion and announcement of future pricing intent provision. Under the previous regime, the settlement procedure only covered the event of participation in horizontal restrictive practices.

It is noted that the settlement procedure aims at simplifying and speeding up the handling of pending cases, at the same time reducing the number of appeals against the HCC's decisions before administrative courts.

HCC's use of computational techniques in cartel detection

Following the increasing use of screening tools for cartel investigations based on computational techniques (ie, Big Data, AI, machine learning, deep learning) by competition authorities worldwide, the HCC has proceeded in the following initiatives.

Firstly, in April 2021, the HCC implemented its own data collection platform, ie, the HCC Data Analytics & Economic Intelligence Platform. This new tool can collect and process economic data (eg, prices) of products in various markets in Greece in real-time, while at the same time, the platform incorporates a screening mechanism to ensure that the prioritisation of the HCC's cases is done efficiently and based on their real impact on the economy.

Accordingly, the HCC has appointed experts to design a program, drawing raw data from unstructured information available on the Internet in PDF format (as well as in other formats) and extracting it in CSV file form. This data will be mainly used for cartel detection but will also offer an integrated data analytics environment with various tools/apps on the basis of bespoke programs and/or available off-the-shelf software tools to visualise and analyse data. In addition, a screening-tool program, mainly for cartels and excessive pricing, is also being designed based on a theoretical framework that primarily sets the data parameters needed for cartel detection and could apply in bid-rigging markets. Said Economic Intelligence Platform monitors consumer goods and foodstuff prices in supermarkets, fresh products and diesel/petrol systematically to detect possible concerted practices.

Notable Cases

Below is a summary of recent HCC Decisions that show HCC's particular interest in cartels focusing on bid rigging and information exchange.

Settlement Decision 748/2021

Decision 748/2021 refers to the tender for the public infrastructure project "Northern Road of Crete, Gournes – Chersonisos Part" regarding bid rigging in the sector. The horizontal agree-

ment/concerted practice concerned market allocation in the said tender and, more specifically:

- an agreement with other members of the cartel, prior to the submission of the financial offer, of:
 - (a) which joint venture would submit the winning bid;
 - (b) which undertakings would submit cover biddings;
 - (c) the monetary compensation for the companies submitting the cover bids; and
- to have exchanged sensitive commercial information with the other cartel members.

The HCC imposed a fine of EUR4,954 on the company at issue and, by decision 755/2021, a fine of EUR582,855 to another company that participated in the cartel.

Settlement Decision 759/2021

Said Decision refers to the ex officio investigation in the ferry connection market of the port of Igoumenitsa with the island of Corfu. Following an ex officio investigation carried out by HCC's Directorate-General for Competition (DGC) on the conditions of competition in said ferry connection, direct or indirect communication between the two competing companies regarding their future behaviour at the ferry connection services concerning ticket prices and the itinerary declarations of the joint ventures was established. The HCC imposed reduced fines due to the dispute settlement procedure for the infringement found, and a total amount of EUR324,864 was imposed.

Settlement Decision 772/2022

The Decision at issue refers to the ex officio investigation carried out into tenders, for the procurement of impregnated wooden poles, cross-arms, etc. The findings of DGC's investigation and the acknowledgements by the companies involved in the context of the settlement

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KYRIAKIDES GEORGOPOULOS (KG) Law Firm*

procedure have shown that the above companies participated in a horizontal anti-competitive cartel in the form of an agreement/concerted practice between undertakings within the meaning of Article 1(1) of Law 3959/2011 and 10(1) TFEU. These companies participated in a bid-rigging scheme concerning six tenders defining the framework of their joint action, according to which they preventively reduced the uncertainty implied by independent competitive behaviour. More specifically, they have entered into:

- an agreement/concerted practice aiming at fixing prices and quantities (ie, agreement on the amount of the financial bids); and
- an exchange of competitors' sensitive commercial information, in particular on prices and quantities in the form of fax exchanging – prior to submitting their financial bids.

In light of the above, the HCC in Plenary imposed by its unanimous decision reduced fines totalling EUR316,798.

Decision 758/2021 and Settlement Decision 750/2021

HCC Decision 758/2021 refers to the ex officio investigation of the market for installing and maintaining elevators in the northern part of Greece. According to the findings of the DGC's investigation, an association of professionals active in the installation and maintenance of elevators in Northern Greece (SYSEVE) infringed Article 1 Law 3959/2011. The violation concerned a statutory provision which allowed the Board of Directors to set minimum remuneration rates for its members. However, such decision was never adopted.

The HCC imposed a number of corrective/behavioural remedies on the association to educate its members and the general public

and boost competition in this sector instead of imposing a fine.

With regard to SESA's (ie, another association of undertakings active in the installation and maintenance of elevators) anti-competitive practices, HCC adopted Settlement Decision 750/2021, focusing, in particular, on interventions on the pricing policy of SESA members and interventions on the advertising activity of SESA members. Following the settlement procedure, the HCC imposed a reduced fine amounting to EUR570,369 and imposed a number of corrective/behavioural remedies on the association.

Final Remarks

The aforementioned HCC's decisional practice illustrates the continued emphasis on cartel cases, especially bid-rigging practices. It also illustrates that the settlement procedure is clearly an established trend, as in 2021, in the four cartel cases where decisions were issued following the settlement procedure, all the companies involved in the infringement entered the settlement procedure before the drafting of the Statement of Objections by the DGC.

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KYRIAKIDES GEORGOPOULOS (KG) Law Firm*

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AUTHORS



Victoria Mertikopoulou is a partner in EU & Competition, Regulatory and Compliance Practice at Kyriakides Georgopoulos. She focuses on EU law, competition and

antitrust, the digital economy and consumer protection. She is a former member of the Hellenic Competition Commission (HCC), and is experienced in EU law, substantive antitrust issues in industry sectors, including cartels, decisions by associations of undertakings, vertical/distribution agreements and restrictive practices, abuse of dominance cases, merger notification and control, and procedural issues/settlement, leniency, commitments, investigations, sector inquiries, and procedures before administrative authorities. Victoria was a member of the Directorate-General of Competition and, since 2012, Commissioner/Rapporteur of the HCC, participating in European and International organisations. Previously, she advised on EU competition and commercial law, and was a stagiaire at the

European Court of Justice. She is a member of the Working Group on Evaluation of Judicial Systems of the Council of Europe, and a regular contributor to leading industry publications and lectures at international conferences and universities.



Ifigeneia Argyri is a member of the EU & Competition, Regulatory and Compliance Practice at Kyriakides Georgopoulos. Her practice mainly focuses on competition

and antitrust law matters. She regularly advises on all aspects of EU and Greek competition law, as well as on unfair competition and consumer protection law for domestic and international clients. She is also highly involved in regulatory and compliance matters. She is a member of the Athens Bar Association and holds an LLM in Industrial Property and Competition Law ('Distinction') from the National and Kapodistrian University of Athens.

Contributed by: Victoria Mertikopoulou and Ifigeneia Argyri,
KYRIAKIDES GEORGOPOULOS (KG) Law Firm

KYRIAKIDES GEORGOPOULOS (KG) Law Firm

28, Dimitriou Soutsou Str.
115 21 Athens
Greece

Tel: +30 210 817 1500
Fax: +30 210 685 6657-8
Email: kg.law@kglawfirm.gr
Web: kglawfirm.gr



KYRIAKIDES GEORGOPOULOS
Law Firm



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