

THE DOMINANCE AND
MONOPOLIES
REVIEW

ELEVENTH EDITION

Editors

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I INTRODUCTION

In Greece, Law 3959/2011 on the Protection of Free Competition as amended and in force (Greek Competition Act) is the main piece of legislation regulating free competition. The prohibition of abuse of dominance is established, in particular, by virtue of Article 2 of the Greek Competition Act, which essentially mirrors Article 102 of the Treaty on the Functioning of the European Union (TFEU).

Hence, the abuse may consist of:

- 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; or
- d* making the conclusion of contracts subject to acceptance, by the other parties, of supplementary obligations that, by their nature or according to commercial practice, have no connection with the subject of such contracts.

Following the amendments to the Greek Competition Act that were introduced last year,² including extending the scope of the settlement procedure to cover cases of abuse of dominance, the Hellenic Competition Commission (HCC) issued several decisions regulating issues also in this field.³ In addition, a simplified procedure regarding the issuance of a no action letter for public interest reasons has been introduced (Article 37A). As stipulated, the Chairman of the HCC may issue a letter following an interested party's request stating that no enforcement

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2 By means of Law 4886/2022 (Government Gazette A' 12/24.01.2022).

3 Such as Decision 790/2022 on 'terms, conditions and procedure in the context of the settlement procedure in cases relating to prohibited agreements, invitation to enter into a prohibited agreement and public announcement concerning future pricing intentions for products and services between competitors as well as in cases of abuse of a dominant position in breach of Articles 1, 1A and 2 of the Greek Competition Act 3959/2011, as amended by L. 4886/2022 and in force and/or Articles 101 and 102 TFEU'.

action will be taken against certain multilateral or unilateral conduct when this is justifiable for public interest reasons, with an emphasis on the attainment of sustainable development goals.^{4,5}

Apart from the above, the HCC has issued acts on procedural issues that also apply in investigations for abuse of dominance cases, such as rules on procedure for the acceptance of commitments,⁶ the treatment of confidential information and access to file.⁷

The HCC is the national competition authority, which, without prejudice to the responsibilities of other authorities, is competent for the enforcement of the provisions of the Greek Competition Act, as well as of Articles 101 and 102 of the TFEU.⁸

In assessing abuse of dominance cases, the HCC follows the relevant guidance of the European Commission and respective EU case law.

Finally, in relation to the telecommunications sector, the Hellenic Telecommunications and Post Commission (EETT) is, pursuant to the provisions of Law 4727/2020 on digital governance, electronic communications and other provisions, responsible for, inter alia, applying the provisions of the Greek Competition Act as well as of Articles 101 and 102 of the TFEU and EU Regulation 1/2003 in relation to the exercise of electronic communications activities.⁹

II YEAR IN REVIEW

This year, three cases were brought before and examined by the HCC involving alleged abuse of dominance practices. Of these, the HCC found an infringement and imposed a fine in one case.¹⁰

In terms of the statistics, the HCC issued 11 decisions, between 2012 and 2017, on abuse of dominance. In 2018 the authority rendered a notable decision against Elais-Unilever Hellas for the implementation of abusive practices at the retail and wholesale level in the margarine market, resulting in the imposition of a fine of approximately €8.7 million regarding the abuse of dominance aspect of the case.¹¹ In 2019 and 2020, the HCC issued

4 In this respect, the HCC has issued Decision 789/2022 on ‘criteria, conditions for the issuance of no action letter under Article 37A paragraph 1 of L.3959/2011 and determining other relevant matters relating to the implementation of this provision following a public consultation’.

5 Regarding sustainability, the HCC introduced in June 2022 a sandbox for sustainability and competition in the Greek market, the latter forming a supervised, online environment where companies can undertake initiatives that contribute to the goals of sustainable development while not significantly impeding competition.

6 HCC Decision 786/2022 on ‘terms, conditions and the procedure for accepting commitments by the interested undertakings and other issues related to the suspension of deadlines provided for in Paragraphs 4 and 5 of Article 15 of Law 3959/2011, as in force’.

7 HCC Rules of Internal Procedure and Management of 21 March 2023, as in force (Government Gazette B’ 1790/21.03.2023).

8 Articles 101 and 102 of the TFEU are directly applicable in Greece in cases where it is proven that trade between Member States is affected.

9 EETT is also competent for the application of the competition rules in the postal services sector by virtue of Law 4053/2012 on the regulation of postal market operation, telecommunication issues and other provisions.

10 HCC Decision 807/2023, *Imerys*.

11 HCC Decision 663/2018, *Elais–Unilever Hellas*.

seven decisions related to abuse of dominance. In the year 2021, the HCC rendered two rulings on abuse of dominance, thereby imposing fines amounting to approximately €1.2 million in total.¹²

i Imerys Bauxites SA

By virtue of Decision 807/2023 of 19 January 2023, the HCC, convening at plenary, imposed a fine of circa €1.4 million against Imerys Bauxites SA (Imerys), a company active in the market of metallurgical and non-metallurgical bauxite production and supply, for the infringement of Article 2 of the Greek Competition Act. The Directorate for Competition (DGC) undertook the investigation of the case following a complaint lodged to it by Mytilineos SA (Mytilineos), a customer of Imerys. The complaint of Mytilineos comprised of the allegation of refusal to supply and the imposition of exploitative conditions during negotiations, excessive pricing, monopolistic inefficiency, as well as structural abuse by Imerys in the Greek bauxite monohydrate and dispersed market.

Imerys was found by the HCC majority to have abused its dominant position by fully or partially having refused to supply Mytilineos. In particular, the HCC considered that Imerys had engaged in the unilateral refusal to supply and, eventually, the discontinuation of bauxite deliveries to Mytilineos at intervals during the three-year period 2017–2019. Imerys had interrupted the supply of bauxite both in January 2017 and May 2018 to Mytilineos, whereby in parallel it unilaterally imposed different price and quality terms of the bauxite being sold. It was also found that Imerys had also treated Mytilineos in a discriminatory manner by altering unilaterally the price of supply of bauxite to the latter, as it sold a quantity of high calcium bauxite to China at a price lower than the sales price it was requesting from Mytilineos in 2019.

In rendering its decision, the HCC took into account Imerys' super-dominant position in the market of production and supply of Greek dispersed bauxite as well as the fact that the anticompetitive practice of unilaterally discontinuing the supply of bauxite was addressed towards its most regular customer and also lacked objective justification. Additionally, the HCC considered the fact that Mytilineos had no reliable alternative option to purchase the bauxite abroad (due to the narrow relevant product and geographic market definition as well as the fact that the possibility of domestic supply from Mytilineos' subsidiary would only partially cover the required quantities of bauxite).

With regard to the other allegations raised by Mytilineos, the HCC found that these were not substantiated. Specifically, it was ruled that the prices charged by Imerys for the supply of bauxite to Mytilineos did not satisfy the required limbs of the United Brands test¹³ and were considered fair. Additionally, it was found that Imerys had demonstrated pre-contractual good faith behaviour, while no structural abuse was substantiated, as the parties were not competitors and Imerys did not already hold a dominant position. Finally, regarding the allegations of monopolistic inefficiency raised by Mytilineos, these were not upheld either, as Imerys was found to be in apparent incapacity to meet a significant part of the demand and had developed an investment programme in the relevant market.

¹² HCC Decision 730/2021 and 741/2021.

¹³ Case 27/76, *United Brands Co v. Commission*, 1978.

ii Sarantis SA

By its Decision 765/2022 of 21 January 2022 (which came public in late 2022), the HCC in plenary unanimously rejected the complaint of three wholesale distributors of Sarantis SA (Sarantis) against the latter for alleged violations of Articles 1 and 2 of the Greek Competition Act, as well as of Articles 101 and 102 TFEU.

Sarantis, a company active in the import, production and distribution of a wide array of products, including, *inter alia*, cosmetics, sanitary products, cleaning products and food packaging products, was found to hold a dominant position in the following relevant markets for a specific period: (1) drain pipe cleaners (2004–2014); (2) shoe care products (2004–2014); (3) widely distributed women’s perfumes (at least 2011–2014); and (4) widely distributed men’s perfumes (at least 2011–2014).

In its relevant product market definition, the HCC considered the markets in which the products sold by Sarantis fell in the ‘small market’ through its wholesalers (since this was the subject-matter of the complaints). These products were found to be divided into two general categories, that of household products and that of widely distributed cosmetics.

Regarding the abuse of dominance aspect of the case,¹⁴ namely the allegation of abusive sales target rebates, the HCC rejected this allegation, as it considered that the rebates offered by Sarantis did not qualify as target rebates.^{15,16} Particularly, the HCC concluded that Sarantis was offering a fixed discount on company’s price list, for the entire duration of the cooperation with the wholesalers, without retroactive effect at the end of each reporting year. The fact that it was a basic discount, not dependent on the efficiency of the wholesaler, in terms of the targets attained, led to the conclusion that no indirect pressure was exerted on the wholesalers and that as such no incentive was provided to create a loyal customer relationship.

Additionally, the allegation that Sarantis forced its wholesalers to engage in exclusionary practices against competitors through the provision of extra benefits at retail outlets to eliminate the presence of competing products was also rejected. The HCC found that the benefits in question (i.e., additional discounts, free products) and other marketing activities, such as stand placements and presentations, were promotional activities carried out by Sarantis on an entirely voluntary basis, without the intention or actual imposition on the wholesalers.

14 Overall, the allegations under the complaint involved violations of both Article 1 (vertical agreements) and 2 (abuse of dominance) of the Greek Competition Act, which were investigated by the HCC and consisted of the following: (1) obligations to follow promotional activities of Sarantis; (2) imposition of discounts; (3) indirect fixing of prices and profit margins; (4) obligation to purchase specific quantities and maintain a specific stock; (5) non-compete obligation; (6) obligation to install specific software (Flyers Sales Manager); (7) obligation to resell within a specific territory; and (8) exclusive supply obligation.

15 In assessing the nature of Sarantis’ rebates scheme to confirm whether such scheme qualified as a loyalty rebates scheme contrary to competition rules, the HCC took into account its former case law, the case law of Greek courts, as well as EU case law (PostDanmarkII, Michelin II, British Airways). Based on the applied criteria, a rebates scheme must cumulatively meet the following to qualify as target rebates: (1) link to the achievement by the customer of a quantitative target; (2) a long reference period; (3) individualised character; and (4) retroactive character.

16 Particularly, the HCC found that Sarantis’ rebates were not calculated over a long reference period and that they lacked retroactivity.

iii Frezyderm SA

By means of its Decision 778/2022, the HCC rejected the complaint of Intermed SA (Intermed) against Frezyderm SA (Frezyderm) for alleged infringement of Articles 1 and 2 of the Greek Competition Act and/or Articles 101 and 102 TFEU. Both companies are active in the market of production and marketing of cosmetics, personal and baby care products, ‘parapharmaceuticals’ and other related products. The relevant product market for the specific case was that of production and marketing of cosmetics, personal care products, of high quality and price (lux), which are distributed through selective distribution systems, in this case through pharmacies.

On the allegation involving Frezyderm’s supposed abusive conduct, the HCC considered that the complaint was not supported by clear allegations and evidence adequate to substantiate abuse of dominance under Article 2 of the Greek Competition Act but were rather generic.

The alleged anticompetitive behaviour under the complaint consisted of a promotional action undertaken by Frezyderm towards the pharmacies distributing its products, allegedly encouraging the latter to engage in a concerted practice with regard to their discount policy, with the effect of restricting competition.

However, upon examination, no dominant position of Frezyderm was found during the period of the alleged infringement, thereby negating the need for any further investigation.

iv Summary

Summarised information about HCC investigations and decisions issued during 2022 is provided below.

HCC investigations of abuse of dominance in 2022 (and 2023 to date)

Sector	Investigating authority	Conduct	Case opened
Poultry sector (including the market for slaughtering and sale of fresh and/or frozen poultry)	HCC	The HCC carried out an unannounced inspection, acting <i>ex officio</i> , into possible violations of Articles 1 and 2 of the Greek Competition Act and/or 101 and 102 TFEU	May 2023
Market for dried grapes	HCC	The HCC carried out an unannounced inspection, acting <i>ex officio</i> and following a complaint, over possible violation of Articles 1, 1A and 2 of Greek Competition Act and/or 101/102 TFEU	April 2023
Pharmaceuticals sector	HCC	The HCC carried out an unannounced inspection, following a complaint, over alleged infringement of Article 2 of the Greek Competition Act and 102 TFEU	February 2023
Beer and alcoholic beverages sector	HCC	The HCC carried out an unannounced inspection, acting <i>ex officio</i> and following a complaint, over alleged infringement of Article 2 of the Greek Competition Act and 102 TFEU	January 2023
Transport industry	HCC	Abuse of collective dominance, unspecified	June 2022
Electricity sector	HCC	The HCC carried out an unannounced inspection, acting <i>ex officio</i> , at the premises of an undertaking active in the wholesale supply of electricity, as well as in the retail supply of electricity to low voltage customers (households and SMEs) for the identification of any anticompetitive practices under Articles 1 and 2 of the Greek Competition Act and/or Articles 101 and 102 TFEU, unspecified	May 2022
Eyewear sector	HCC	Suspected anticompetitive practices under Articles 1 and 2 of the Greek Competition Act and/or Articles 101 and 102 TFEU affecting retail prices	February 2022

HCC decisions for abuse of dominance in 2022 (and 2023 to date)

Sector	Investigating authority	Conduct	Fine imposed
Household products and widely distributed cosmetics	HCC	Target rebates and other exclusionary practices	No infringement – no fine
Cosmetics, personal care products, of high quality and price (lux)	HCC	Unspecified	No infringement –no fine
Metallurgical and non-metallurgical bauxite production and supply	HCC	Refusal to supply and discriminatory practices	€1.3 million

III MARKET DEFINITION AND MARKET POWER

The Greek Competition Act does not provide a definition of dominance. The HCC follows the notion of dominance, as this has been formulated by relevant European and Greek case law. Hence, high market shares (greater than 40 or 50 per cent), and an undertaking's ability to act independently of its competitors' customers and ultimately consumers, are factors that are taken into account. This is also evident in the HCC's case law,¹⁷ in which the authority found that a market share of steadily higher than 65 to 75 per cent in the relevant market suffices to establish that the first criterion of the existence of a dominant position is met. The structure of the market (such as competitors' market position, existence of barriers to entry and countervailing buyer power) is also decisive.

In addition, Article 2 of the Greek Competition Act has been found by the HCC to apply in situations of collective dominance, whose existence presupposes, in accordance with the EU approach, the concurrence of the following two conditions: lack of competition between the dominant parties and absence of (substantial) outside competition.

Special rules apply in the mass media sector. In particular, pursuant to Article 3 of Law 3592/2007 on the Concentration and Licensing of Mass Media Enterprises and Other Provisions, as in force, a concentration that leads to the creation of a dominant position in the media sector is prohibited. The relevant market share criteria applicable for determining dominance are as follows:

- a* market share exceeding 35 per cent, where the company is active in only one media sector (television, radio, press and magazines);
- b* market share exceeding 35 per cent in each market and with respect to the specific geographical market covered in each sector, where the company is active in more than two media sectors;
- c* total market share exceeding 32 per cent in two sectors with the same geographical coverage;
- d* total market share exceeding 28 per cent in three sectors with the same geographical coverage; and
- e* total market share exceeding 25 per cent in four sectors with the same geographical coverage.

¹⁷ HCC Decision 730/2021, *Resoul*.

IV ABUSE

i Overview

Article 2 of the Greek Competition Act, which essentially mirrors Article 102 TFEU, does not contain an exhaustive list of types of abuses. According to the HCC, the purpose behind the prohibition of abusive exploitation of a dominant position is the protection of the free-market system and of the economic freedom of third parties.¹⁸ In addition, while the finding of dominance is not per se unlawful, a dominant undertaking has a special responsibility to refrain from impairing, through its conduct, genuine undistorted competition on the market.¹⁹

It is settled in case law (following in the footsteps of EU case law)²⁰ that the concept of abuse is objective relating to the behaviour of an undertaking in a dominant position that is such as to influence the structure of a market, where as a result of the very presence of the undertaking in question, the degree of competition is weakened and through recourse to methods that, unlike normal competition, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.²¹ Hence, it is sufficient to show that the abusive conduct of the undertaking in a dominant position tends to restrict competition or, in other words, that the conduct is capable of having that effect.²²

However, information witnessing intent of the dominant undertaking to exclude its competitors, especially when such evidence consists of internal documents, may be taken into account as direct evidence in assessing a dominant undertaking's commercial practices to conclude whether these are geared towards the protection of its reasonable commercial interests or whether these were designed and implemented for the purpose of excluding competitors.²³

ii Exclusionary abuses

Article 2 of the Greek Competition Act does not distinguish between exclusionary and exploitative practices, hence both practices are deemed to be caught by the prohibition. To date, the HCC has dealt with a number of abusive practices; however, its most important cases involve rebates and exclusivity terms.

In the *Athenian Brewery* case,²⁴ dating back to 2014, the HCC imposed a record fine of approximately €31 million against Athenian Brewery, the Greek subsidiary of Heineken NV, for abuse of its dominant position in the Greek beer production and distribution market, in breach of Article 2 of the Greek Competition Act and Article 102 of the TFEU. In particular, the HCC found that Athenian Brewery applied an exclusionary strategy to exclude its competitors from the on-trade consumption market (such as HORECA (hotel, restaurant and café) chains and other retail outlets) and to limit their growth possibilities for

18 HCC Decision 590/2014, *Athenian Brewery*, Paragraph 239.

19 HCC Decision 581/VII/2013, *Procter & Gamble Hellas*, Paragraph 262 and HCC Decision 730/2021, *Resoul*, Paragraph 96.

20 CJEU Decisions in C-85/76 *Hoffmann-La Roche v. Commission*, Paragraph 91, C-322/81, *Michelin v. Commission*, Paragraph 70 and C-62/86, *Akzo v. Commission*, Paragraph 69.

21 Decision 869/2013 of the Athens Administrative Court of Appeals, Paragraph 35.

22 Decision 2458/2017 of the Athens Administrative Court of Appeals, Paragraph 8.

23 HCC Decision 520/VI/2011, *Tasty Foods*, Paragraph 174.

24 HCC Decision 590/2014, *Athenian Brewery*.

a period of 15 years. According to the authority, the company employed various commercial practices aimed at exclusivity, including significant payments conditional upon exclusivity or the foreclosure of competitive brands, loyalty and target rebates.

More recently,²⁵ the HCC imposed a fine of approximately €8.7 million against the company Elais-Unilever Hellas for abuse of dominance. The case involved, inter alia, the offering of target rebates to various supermarkets in the margarine market. The HCC stipulated that the rebate schemes that were offered in exchange for the client's undertaking to increase its purchases from Elais-Unilever, or to achieve a specific sales target, constituted abuse of dominance. The HCC based its findings on the following:

- a* the rebates being conditional upon the achievement by the client of a quantitative target regarding products purchased by Elais-Unilever;
- b* the target was determined at the beginning of each fiscal year, whereas rebates were paid at the end of this period (i.e., an excessive rebates period was applied);
- c* the amount of the rebates depended on the purchased quantities during the above excessive period of reference compared to realised purchases during the previous reference period by the same buyer (individual character of rebates scheme); and
- d* the rebate was applied retroactively.

Finally, another notable HCC decision involving a bundling practice includes that of Nestlé,²⁶ in which the HCC found that Nestlé unlawfully imposed bundling arrangements on its clients in the instant coffee retail market. Nestlé was also held liable for the enforcement of exclusive supply clauses in its agreements with its clients, as well as for offering loyalty rebates to the latter in the same market.

iii Discrimination

The HCC has also dealt with a few discriminatory treatment cases in the energy sector. In its *Gas Distribution Companies* case,²⁷ the HCC found that the non-acceptance of the gas tube of the complaining company and the refusal to grant a licence for use in gas facilities, where the complaining company's steel tubes were used, constituted unjustified discriminatory treatment by the gas distribution companies of Thessaloniki and Thessaly, and imposed against them a fine of approximately €620,000.

In addition, in 2015, the HCC rendered its decision²⁸ in the case of *Public Power Corporation (PPC) v. Aluminium SA*, accepting commitments offered by PPC. According to the HCC investigation, PPC, the incumbent producer and supplier of electricity in Greece, had allegedly abused its dominant position by refusing to supply Aluminium SA and by imposing on it unfair and discriminatory trading conditions.

In the recent *Imerys Bauxite SA* case,²⁹ the HCC ruled, inter alia, that the unilateral alteration of the price for the supply of bauxite by Imerys to Mytilineos, at a higher level compared to the negotiated price, with a parallel reduction in quality, constituted

25 HCC Decision 663/2018.

26 HCC Decision 434/VI/2009.

27 HCC Decision 516/VI/2011.

28 HCC Decision 621/2015.

29 HCC Decision 807/2023.

discriminatory treatment of Imerys against Mytilineos, as Imerys had sold a quantity of high calcium bauxite to China at a price lower than the sales price it requested from Mytilineos in 2019.

iv Exploitative abuses

In 2017, the Athens Administrative Court of Appeals issued its decision in the *AEPI* (the Hellenic Society for the Protection of Intellectual Property) case.³⁰ The case was originally brought before the HCC, following a complaint by various music creators for AEPI's alleged abuse of dominance in the market for the management of copyright of Greek and foreign composers of musical works by setting unreasonable fees for said management.³¹ The HCC compared fees charged by AEPI against fees charged by foreign collective management organisations (CMOs) (in particular by a Swiss CMO), concluding that the amount charged by AEPI, in relation to phonogram rights, was abusive.

The HCC decision was challenged by AEPI. Following a lengthy process before Greek courts, the Athens Administrative Court of Appeals issued its decision on the case, ruling essentially that the comparison method employed by the HCC was the most appropriate because of the same object pursued by AEPI and CMOs, and the specific characteristics of the market.

V REMEDIES AND SANCTIONS

The Greek Competition Act authorises the HCC to impose a series of sanctions, as well as behavioural or structural remedies, upon finding an infringement of Article 2 thereof or Article 102 of the TFEU, or both.

i Sanctions

The Greek Competition Act provides that a fine will be imposed on undertakings or associations of undertakings for abuse of dominance or failure to fulfil commitments offered by them and that are made binding by the HCC decision or failure to comply with the behavioural or structural remedies imposed on them. The amount of the fine must not exceed 10 per cent of the aggregate worldwide turnover of the undertaking for the financial year preceding the issuance of the HCC decision. In the case of groups of companies, the group's aggregate worldwide turnover is taken into account for calculating the fine. The calculation of the fine is also subject to factors such as the gravity, duration and geographic scope of the infringement, as well as the duration and nature of participation in the infringement by the undertaking. If the economic benefit of the undertaking that derived from the infringement can be measured, the amount of the fine cannot be less than that (even if it exceeds the 10 per cent upper limit).

The HCC may impose on the infringing undertaking a penalty payment per day for non-compliance with its decision, which is determined in proportion to the average daily total worldwide turnover achieved by the undertaking in the preceding financial year of up to 3 per cent of said turnover.

30 Decisions 1102/2017 and 1103/2017 of the Athens Administrative Court of Appeals.

31 HCC Decision 245/III/2003.

Individuals who, because of their position in the company are involved in the infringement, are jointly liable with the company for payment of the HCC fine and may also be separately fined by an amount ranging from €200,000 to €2 million, as long as it is established that they participated in the organisation or commitment of the infringement. Their position in the company and the degree of their participation in the infringement shall be taken into account.

According to the recently updated HCC Guidelines on the calculation of fines of 7 July 2022, the HCC determines the basic amount of the fine, depending on the gravity and duration of the infringement, the geographical extent of the infringement, as well as the duration and type of participation in the infringement of each party involved therein; the fine shall not exceed 30 per cent of the undertaking's total gross revenues for each year of the infringement. This amount is then adjusted – upwards or downwards – depending on aggravating or mitigating factors that may exist. The overall amount of the fine, for all years of the infringement, should not, as a rule, exceed the 10 per cent cap set by Greek Competition Act.

This year, the HCC did not impose fines in any of dominance cases brought before it, save for the recent *Imerys* case, in which the HCC imposed a fine of €1,372,369. In calculating the fine, the HCC took into consideration, inter alia, Imerys' request for an adjustment of the fine at a lower level invoking the 'inability to pay' argument. In adjusting the fine, however, the HCC ensured not to jeopardise the necessary deterrent effect of the fine, also taking into account the gravity and the duration of the infringement.

Penal sanctions, in the form of a monetary penalty ranging from €30,000 to €300,000, may also be imposed in abuse of dominance cases. Penal sanctions are imposed by the competent criminal authority against an undertaking's legal representatives.

ii Behavioural remedies

The Greek Competition Act also provides for the imposition by the HCC of behavioural remedies, to the extent these are necessary and appropriate for the termination of the infringement, depending on its nature and gravity.

The HCC has accepted commitments of a behavioural nature by infringing undertakings in its past case law.³²

iii Structural remedies

According to the Greek Competition Act, the HCC may impose structural measures only in cases where there are no equally effective behavioural measures, or the existing equally effective behavioural measures are more burdensome compared to the structural ones.

Contrary to its practice in merger control cases, the HCC does not seem to favour the imposition of structural measures in the context of abuse of dominance cases.

VI PROCEDURE

The HCC may initiate an investigation either acting *ex officio* or following receipt of a complaint. Investigations are most commonly triggered by complaints submitted to the HCC. The case is assigned to the competent economic and legal services directorates of the

³² See, indicatively, HCC Decision 698/2019 (*Diageo*).

DGC, which proceeds to a preliminary assessment of the case based on information requests to interested parties, as well as on-site investigations (dawn raids). This year the DGC has conducted a significant number of dawn raids (16 dawn raids on 68 undertakings)³³ in different sectors. Failure to provide information requested by the HCC, as well as obstruction of the DGC's dawn raid, entail the imposition of a daily penalty payment, calculated pro rata to the average daily total worldwide turnover achieved by the undertaking in the preceding financial year but not exceeding 3 per cent of this turnover.³⁴ Criminal penalties of at least six months' imprisonment may also be imposed in this case.

Upon completion of the DGC investigation, the case is assigned to a rapporteur (who is an HCC member). The rapporteur must submit his or her statement of objections to the HCC within 150 days of assignment of the case. This deadline may be extended by a maximum period of 60 days by the HCC Chairman following the rapporteur's request.³⁵

Following submission of the rapporteur's statement of objections, the case is heard by the HCC. The HCC is not bound by the statement of objections.

Interested parties are summoned to appear before the HCC at least 60 days before the hearing and are served with the rapporteur's statement of objections simultaneously. Parties must submit their statements of objection 30 days prior to the hearing. In addition, they may submit their addenda rebuttal 20 days before the hearing. After completion of the hearing and after notification to them of the minutes of the hearing, parties have a short deadline to submit their final pleadings before the HCC issues its ruling. According to the law, the HCC's decision must be taken within 15 months of assignment of the case to the rapporteur. This deadline may be extended for a maximum of two months.

The Greek Competition Act also provides for an interim measures procedure where there is an emergency that necessitates the prevention of an imminent danger of irreparable damage to the public interest. Interim measures may be taken on the HCC's own initiative. The HCC may now also issue a provisional order pending the outcome of the HCC's decision on the adoption of interim measures.³⁶ In the event of issuance of a provisional order, the interim measures shall be brought before the HCC (at Plenary or before the competent chamber) within 30 days, otherwise the provisional order automatically ceases to apply. In the case of the ordering of interim measures, the HCC is required to bring the case before the competent chamber or the Plenary within 12 months from the issuance of the interim measures decision (said deadline may be extended for additional 12 months, otherwise the interim measures automatically cease to apply).

33 HCC Newsletter No. 6, March 2023, p.8.

34 The HCC may also impose a separate fine against the directors and employees of the undertaking concerned from €15,000 to €30,000 for each day of non-compliance with a request for information. In the case of obstruction of a dawn raid, the HCC may also impose a fine ranging from €5,000 to €2 million on the employees of the infringing entity. A penalty payment ranging from €15,000 to €2 million may be imposed on any other person impeding the investigation.

35 The only exception being if, based on the HCC Decision 696/2019 on the prioritisation of cases, the case does not match the prioritisation criteria and is archived.

36 Such possibility was introduced by means of the recent amendment of the Greek Competition Act.

In addition, undertakings under investigation may offer commitments at any stage of the investigation and at the latest 30 days prior to the hearing (if they have been served with the rapporteur's statement of objections). The procedure for the acceptance of commitments by the HCC is summarised as follows:³⁷

- a* prioritisation and assignment of the case to a rapporteur, if not already done;
- b* preparatory meetings with the DGC or the rapporteur handling the case, or both;
- c* assessment of the intent of the offering undertaking, suitability of the case for the acceptance of commitments and adequacy of the commitments;
- d* submission of a commitments offer by the undertaking within 30 days of being invited to do so by the rapporteur;
- e* market testing (if considered appropriate);
- f* drafting by the rapporteur of the statement of objections for the acceptance of the commitments offer;
- g* service of the statement of objections to the interested parties (i.e., the undertakings under investigation and complainants) within three months of the submission of the commitments offer;
- h* summoning of parties to the hearing, at least 60 days in advance; and
- i* issuance of the HCC decision, by virtue of which the commitments are made binding.

HCC decisions may be challenged before the Athens Administrative Court of Appeals within 60 days of their notification to the parties. The above deadline, as well as the filing of the appeal, do not have a suspensory effect; suspension of enforcement may, however, be granted by the Court upon request of the interested party. Decisions of the Athens Administrative Court of Appeals may be challenged by an application for cassation before the Council of State. As regards interim measures decisions in particular, these are only subject to appeal before the Athens Administrative Court of Appeals within 60 days of their notification to the parties.

VII PRIVATE ENFORCEMENT

Law 4529/2018 on transposing into Greek law 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 and other provisions (Law 4529/2018) governs private enforcement of competition law in Greece.

Like Directive 2014/104/EU, Law 4529/2018 introduces the right to full compensation of every natural or legal person that has suffered harm by an infringement of competition law. Compensation includes both actual loss and loss of profit, plus payment of interest (Article 3).

Law 4529/2018 does not, however, include a collective redress mechanism, despite the European Commission's relevant horizontal recommendation.³⁸ Thus, it may be expected that the general Greek legislation on the matter would apply (Article 74 of the Greek Code

37 HCC Decision 786/2022.

38 Commission Recommendation of 11 June 2013 'on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law'.

of Civil Procedure). In addition, the possibility to bring a collective action for damages is provided for by Law 2251/1994 on consumer protection. However, in the absence of relevant case law, it is not absolutely clear whether these provisions would apply to private antitrust enforcement cases or whether these are limited to matters solely arising under the consumer protection legislation.

For the calculation of the damages, Law 4529/2018 stipulates that the court may estimate the amount of the damage inflicted on the claimant based on a probability standard in cases where it is practically impossible or excessively difficult for the claimant to determine the precise amount of the harm suffered on the basis of the available evidence. To this end, the court should consider the nature and scope of the infringement, as well as the diligence that the claimant showed in collecting and using the relevant evidence. In this respect, we would expect the court to rely on relevant soft-law provisions of the European Commission.³⁹

As regards the evidence that may be used in the context of private competition litigation, Law 4529/2018 specifically mentions that the court is authorised to order the disclosure of evidence contained in the HCC's and EETT's case files. This possibility is, however, subject to certain restrictions. In particular, the court may not order the disclosure of the following evidence until the HCC or EETT have terminated proceedings:

- a* documents and information drawn up by natural or legal persons specifically in the context of the proceedings before the HCC and EETT;
- b* documents and information drawn up by the HCC or EETT and sent to the parties during their proceedings; and
- c* withdrawn settlement submissions.

In addition, under no circumstance may the court order the disclosure of (1) leniency statements; (2) settlement submissions; and (3) documents that quote, to an extent, parts of the documents under (1) and (2).

At the same time, the finding of a competition law infringement by virtue of a decision of the HCC, the EETT or the European Commission, that is not subject to appeal, as well as a final decision of the Greek and EU courts, following appeal, is binding for the Civil Court ruling on a damages action. On the contrary, a final decision finding an infringement, which has been issued in another EU Member State and produced before the Greek Civil Court, constitutes conclusive proof of the infringement but is subject to rebuttal.

Third-party litigation funding is not specifically regulated by Greek law and it is not standard practice.

Law 4529/2018 provides for the formation of special chambers within the Athens Courts of First Instance and Appeals (which are competent by law to hear damages actions) consisting of judges specialised in competition law; however, these are yet to be formed.

Finally, following enactment of Law 4529/2018, no relevant court decision has yet been publicised applying the new legal framework in abuse of dominance cases. The greatest difficulty that the Greek courts are expected to face in awarding damages under Law 4529/2018 is how to quantify harm.

³⁹ Communication from the Commission 'on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union' and the accompanying Practical Guide of 11 June 2013.

VIII FUTURE DEVELOPMENTS

The HCC's vigilance with regard to safeguarding free competition and notably on abuse of dominance issues is reflected in the steadily high number of unannounced on-site dawn raids it has carried out thus far. These proactive investigatory and enforcement actions constitute efficient tools for combating anticompetitive practices. In addition, the HCC has to date leveraged technological developments, thus fostering competition policy and adapting appropriately to the evolving market and emerging advancements.

In its endeavour to promote free competition, HCC attempts to mobilise consumers to contribute by engaging them in campaigns and launching tools, which aim to build understanding and awareness around anticompetitive practices and to empower the effectual cooperation between them towards this goal. By instilling confidence in market participants and by continuing its proactive and enforcement efforts to protect free competition, a balance will be struck between open, free and innovative markets and a high level of consumer welfare.