IN-DEPTH

Dominance And Monopolies

GREECE



LEXOLOGY

Dominance and Monopolies

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In-Depth: Dominance and Monopolies (formerly The Dominance and Monopolies Review) provides an accessible and easily understandable summary of global abuse of dominance rules. Each jurisdiction-specific chapter – authored by specialist local experts – highlights the most consequential legal and regulatory provisions; provides a review of the regime's enforcement activity in the past year; and sets out a prediction for future developments.

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LEXOLOGY

Explore on **Lexology**

Greece

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Summary

INTRODUCTION
YEAR IN REVIEW
MARKET DEFINITION AND MARKET POWER
ABUSE
REMEDIES AND SANCTIONS
PROCEDURE
PRIVATE ENFORCEMENT
OUTLOOK AND CONCLUSIONS
ENDNOTES

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:

1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
2. limiting production, distribution or technical development to the prejudice of consumers;
3. 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
4. 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 the contracts.

Following the amendments to the Greek Competition Act that were introduced in 2022,-[1] including extending the scope of the settlement procedure, inter alia, to cover cases of abuse of dominance, the Hellenic Competition Commission (HCC) issued several decisions regulating issues also in this field.[2] In addition, a simplified procedure regarding the issuance of a no action letter following an interested party's request that no enforcement action will be taken against certain multilateral or unilateral conduct for public interest reasons with an emphasis on the attainment of sustainable development goals has been introduced (Article 37A).[3]

Apart from the above, during the past two years the HCC 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,[4] the treatment of confidential information and access to file.[5]

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.[6]

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, as in force, 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.[7]

Year in review

In 2023, one case was brought before and examined by the HCC involving alleged abuse of dominance practices, resulting in a significant fine to the undertaking concerned.[8] In addition, two decisions involving abuse of dominance allegations that were examined by the HCC in 2021 and 2022 were also published this year.[9] In both cases, the HCC found infringements in the form of abuse of dominance resulting in the imposition of significant fines.[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 seven decisions concerning abuse of dominance. In 2021, the HCC rendered two rulings on abuse of dominance, thereby imposing fines amounting to approximately €1.2 million in total.[12] In 2022, the HCC examined two cases of alleged abuse of dominant position; however, no violation has been substantiated in any of these.[13]

OPAP SA

By virtue of Decision 787/2022 of 8 July 2022, the HCC, convening at plenary, imposed a historically high fine of €24.5 million against the Organization of Football Prognostics SA (OPAP), a company active in the sector of gaming via terrestrial and online means, upon finding of an infringement of, inter alia, Article 2 of Greek Competition Act and Article 102 TFEU.[14]

The investigation of the Directorate for Competition (DGC) was initiated upon the complaints of 65 (former) agents of OPAP in 2018 followed by the complaint of the gaming agents' union, the Hellenic Cooperative of Lotteries' Agents (HCLA) in 2020. Pursuant to the complaints OPAP imposed on the agencies, by means of its newly introduced Agency Agreement of 2017 (2017 Agency Agreement), a non-compete and exclusivity obligation applying to ancillary services, as defined below, which amounted to abusive tying.

OPAP holds a statutory monopoly in the market for the provision of gaming services via terrestrial means, being granted by the state with the exclusive right to offer 13 gaming services and betting until 2030, resulting in a super-dominant position in the relevant markets.[15]

The relevant product market was defined as the gaming market via terrestrial means,[16] whereas the markets for ancillary services included the provision of bill payment and money remittance services via a physical network, in which agents act as intermediaries, as well as the provision of distribution services for third-party (telecoms) products.[17] As regards the definition of the geographic market, the HCC considered the Greek territory for both relevant markets (gaming and ancillary services market).

The HCC found, by majority, that OPAP by making the conclusion of 2017 Agency Agreement for the provision of gaming services conditional upon agents' also accepting

the ancillary services – not connected to the gambling per se – abused its super-dominant position for the period 2017–2021. This tying practice was considered to have been combined with a non-compete clause that obliged agents to deal solely with undertakings of OPAP's choice and not with third parties and OPAP's competitors (including HLAC). As a result, the HCC found that the hyper-dominant OPAP, enjoying a statutory monopoly in the market for the provision of gaming services through terrestrial means,[18] not only protected its strong position in the gaming market (competition on the merits) but also affected competition in ancillary services, namely bill payment and distribution of telecoms products, for which no statutory monopoly existed, thus eliminating both actual and potential competition. In addition, the HCC considered that OPAP's power-leveraging practices (with tied sales being an example) may also have potential effects on end consumers as well, by limiting the possibility of its competitors in the ancillary markets to compete effectively, thus obtaining a competitive advantage in these markets, affecting the entry of new market players and end consumer choice.

Argos SA

By its Decision 763/2021 of 30 December 2021, the HCC ruled that Argos SA Press and Book Distribution Agency (ARGOS), a company active in the market for the distribution of printed press,[19] packaging and repackaging of new newspapers and magazines, and holding a monopoly position in the market for the distribution of printed press, infringed, inter alia, Article 2 of the Greek Competition Act and Article 102 TFEU[20] and imposed a fine of €750,656.06 on it.[21]

The HCC launched an *ex officio* investigation upon the request of the Minister of Economy and Development for interim measures against ARGOS under Article 25(5) of the Greek Competition Act.[22] This was in response to letters from publishing companies alleging abusive behaviour from ARGOS by means of a new commercial policy and unilateral termination of existing contracts, having previously issued a provisional measure ordering the non-implementation of ARGOS's new commercial policy.

The HCC did not accept the commitments offered by ARGOS taking into account that the alleged practices constituted hardcore infringements of competition law and also that these were not offered in a clear and unconditional manner as required by competition rules.

The product market was delimited to the printed press distribution market (magazines, newspapers and Athenian-Panhellenic), operating at three levels: (1) press distribution agency; (2) news vendors/subagents; and (3) final points of sale. Regarding the relevant geographic market, the HCC distinguished it per level as follows: (1) agent level – the entire Greek territory; (2) level of news vendors/subagents – the narrower area in which printed press is distributed; and (3) final points of sale (mainly kiosks) – their operating region.

Following an in-depth investigation involving dawn raids and contacts with numerous stakeholders and receiving input from other national competition authorities, the HCC found that ARGOS, by imposing exclusivity obligations from 2017 to 2021 both to its distributors (subdistributors and subagents) and to the publishing companies (i.e., at more than one level of the production chain), abused its dominant position. The HCC considered that the contractual clauses apart from strengthening ARGOS's dominant position also

contributed to the market foreclosure constituting per se barriers to entry in a declining market with existing high barriers.[23]

Summary

Summarised information about HCC investigations and decisions issued during 2023 is provided below.

HCC investigations of abuse of dominance in 2023 (and 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 *ex officio*, into possible violations of Articles 1 and 2 of the Greek Competition Act and Articles 101 and 102 TFEU	May 2023
Market for dried grapes	HCC	The HCC carried out an unannounced inspection, acting *ex officio* and following a complaint, over possible violation of Articles 1, 1A and 2 of Greek Competition Act and Articles 101 and 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	February 2023

		Greek Competition Act and Article 102 TFEU	
Beer and alcoholic beverages sector	HCC	The HCC carried out an unannounced inspection, acting *ex officio* and following a complaint, over alleged infringement of Article 2 of the Greek Competition Act and Aricle 102 TFEU	January 2023

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

Sector	Investigating authority	Conduct	Fine imposed
Gaming market via terrestrial means and ancillary services markets (provision of bill payment and money remittance services via a physical network and of distribution services for third - party (telecoms) products)	HCC	Tying and non - compete obligations	€24,562,249.05
Printed press distribution market at three levels	HCC	Exclusivity obligations	€750,656.06
Metallurgical and non - metallurgical bauxite production and supply	HCC	Refusal to supply and discriminatory practices	€1.3 million

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,[24] 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:

1. market share exceeding 35 per cent, where the company is active in only one media sector (television, radio, press and magazines);
2. 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;
3. total market share exceeding 32 per cent in two sectors with the same geographical coverage;
4. total market share exceeding 28 per cent in three sectors with the same geographical coverage; and
5. total market share exceeding 25 per cent in four sectors with the same geographical coverage.

Abuse

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.[25] 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.[26]

It is settled in case law (following in the footsteps of EU case law)[27] 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.[28] 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.[29]

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.[30]

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,[31] 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 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,[32] 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:

1. the rebates being conditional upon the achievement by the client of a quantitative target regarding products purchased by Elais-Unilever;
2. 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);

3. 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
4. the rebate was applied retroactively.

Finally, another notable HCC decision involving a bundling practice includes that of Nestlé,-[33] 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.

In the recent *OPAP* case, HCC found that OPAP imposed tying obligations to its agents through the introduction of contractual arrangements such as non-compete clauses regarding the ancillary services of bill payment and distribution of third party (telecoms) products resulting in the restriction by means of exclusion of the existing and potential competitors in the relevant market.

Discrimination

The HCC has also dealt with a few discriminatory treatment cases in the energy sector. In its *Gas Distribution Companies* case,[34] 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 decision[35] 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,[36] 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 than the negotiated price, with a parallel reduction in quality, constituted 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.

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.[37] 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 management fees.[38] 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.

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.

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.

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 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.

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.

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.[39]

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.

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 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 (10 dawn raids on 36 undertakings)[40] in various 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,[41] and criminal penalties of at least six months' imprisonment may also be imposed.

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 chair following the rapporteur's request.[42]

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.[43] 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 of the issuance of the interim measures decision (said deadline may be extended for additional 12 months, otherwise the interim measures automatically cease to apply).

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:

1. prioritisation and assignment of the case to a rapporteur, if not already done;
2. preparatory meetings with the DGC or the rapporteur handling the case, or both;
3. assessment of the intent of the offering undertaking, suitability of the case for the acceptance of commitments and adequacy of the commitments;
4. submission of a commitments offer by the undertaking within 30 days of being invited to do so by the rapporteur;
5. market testing (if considered appropriate);
6. drafting by the rapporteur of the statement of objections for the acceptance of the commitments offer;
7. 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;
8. summoning of parties to the hearing, at least 60 days in advance; and
9. issuance of the HCC decision, by virtue of which the commitments are made binding.[44]

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.

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.[45] Thus, it may be expected that the general Greek legislation on the matter would apply (Article 74 of the Greek Code 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.[46]

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:

1. documents and information drawn up by natural or legal persons specifically in the context of the proceedings before the HCC and EETT;
2. documents and information drawn up by the HCC or EETT and sent to the parties during their proceedings; and
3. 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. In contrast, 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.

Outlook and conclusions

The imposition of high fines from HCC in conjunction with the steady high rate of dawn raids, targeting numerous different product markets, reflects HCC's watchfulness in an attempt to balance between protecting both free competition and consumers in a backdrop of inflation and perpetual crises.

The HCC deploys all the relevant tools, human and technological, in order to address any anticompetitive behaviors effectively. In this regard, dynamic and strategic interaction with market players and civil society is considered instrumental by the HCC in achieving a more comprehensive understanding of the market and an in-depth and substantive examination of cases. By cultivating trust among market stakeholders and persistently pursuing active regulatory presence, an equilibrium will be attained between dynamic markets and elevated consumer protection.

Endnotes

1. By means of Law 4886/2022 (Government Gazette A' 12/24.01.2022). ^ Back to section

2. 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'. ^ Back to section

3 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'. Regarding sustainability, in June 2022 the HCC introduced 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. ^ Back to section

4 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'. ^ Back to section

5 HCC Rules of Internal Procedure and Management of 21 March 2023, as in force (Government Gazette B' 1790/21.03.2023). ^ Back to section

6 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. ^ Back to section

7 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. ^ Back to section

8 HCC Decision 807/2023. ^ Back to section

9 HCC Decisions 763/2021 and 787/2022. ^ Back to section

10 HCC Decision 807/2023, Imerys. ^ Back to section

11 HCC Decision 663/2018, Elais–Unilever Hellas. ^ Back to section

12 HCC Decision 730/2021 and 741/2021. ^ Back to section

13 HCC Decisions 765/2022 and 778/2022. ^ Back to section

14 Pursuant to the decision the abusive practices of OPAP favored its subsidiaries, namely TORA WALLET and TORA DIRECT. ^ Back to section

15 Save for the market of Video Lottery Terminals (VLTs machines). ^ Back to section

16 Including: (1) the market of special-knowledge sports gaming, conducted via terrestrial means; (2) the market for traditional lotteries via terrestrial means; (3) the market for gaming machines (OPAP VLTs and casino slot machines); (4) the market for state lotteries; and (5) the market for totalisator horse-race betting via terrestrial means. ^ Back to section

17 Pre-paid mobile and fixed phone cards and Internet data through a physical network. ^ Back to section

18 What was considered important here was that OPAP's dominant position was not acquired by its commercial policy but was granted by the state. ^ Back to section

19 Delivery via own or other means. ^ Back to section

20 The HCC also found violations of Article 1 of Greek Competition Act and Article 101 TFEU by the ARGOS's conduct and, in particular, that the vertical restrictions contained in the contracts of ARGOS with the members of its distribution network constituted a hardcore restriction of intra-brand competition along with single-branding obligations (single and continuous infringement). ^ Back to section

21 The amount of fine is broken down into €339,120.52 for infringements of Article 1 of Greek Competition Act and 101 TFEU and € 411,535.54 for Article 2 of Greek Competition Act and 102 TFEU substantiated violations. The HCC in the calculation of the fine took into account as an aggravating circumstance that ARGOS had previously infringed competition rules (HCC Decision 669/2018) in the form of horizontal anticompetitive collusions with a view of imposing, inter alia, a uniform trading and pricing policy. In addition, it took into account the marginal profits of the company as well as the shrinking of the printed press sector. ^ Back to section

22 Pursuant to Paragraph 5 of Article 25 of the Greek Competition Act "The HCC is solely entitled to issue interim measures ex officio or upon request of the Minister of Economy, Competitiveness and Shipping, where there is an alleged infringement of Articles 1, 2 and 11 of the Greek Competition Act or Articles 101 and 102 TFEU and there is an imminent danger of irreparable damage to the public interest." This provision has been repealed by Article 19 of Law 4886/2022 further to which the Minister is no longer entitled to request for the adoption of interim measures. ^ Back to section

23 The allegations consisting in excessive pricing, discriminatory treatment, refusal to supply (in the form of refusal to sell and distribute as well as of unilaterally imposed unfair terms) were not substantiated as an anticompetitive practice. ^ Back to section

24 HCC Decision 730/2021, Resoul. ^ Back to section

25 HCC Decision 590/2014, Athenian Brewery, paragraph 239. ^ Back to section

26 HCC Decision 581/VII/2013, Procter & Gamble Hellas, paragraph 262 and HCC Decision 730/2021, Resoul, paragraph 96. ^ Back to section

27 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. ^ Back to section

28 Decision 869/2013 of the Athens Administrative Court of Appeals, paragraph 35. Back to section

29 Decision 2458/2017 of the Athens Administrative Court of Appeals, paragraph 8. Back to section

30 HCC Decision 520/VI/2011, Tasty Foods, paragraph 174. Back to section

31 HCC Decision 590/2014, Athenian Brewery. Back to section

32 HCC Decision 663/2018. Back to section

33 HCC Decision 434/V/2009. Back to section

34 HCC Decision 516/VI/2011. Back to section

35 HCC Decision 621/2015. Back to section

36 HCC Decision 807/2023. Back to section

37 Decisions 1102/2017 and 1103/2017 of the Athens Administrative Court of Appeals. Back to section

38 HCC Decision 245/III/2003. Back to section

39 See, indicatively, HCC Decision 698/2019 (Diageo). Back to section

40 HCC Newsletter No. 8, December 2023, p.20. Back to section

41 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. Back to section

42 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. Back to section

43 Such possibility was introduced by means of the recent amendment of the Greek Competition Act. Back to section

44 HCC Decision 786/2022. Back to section

45 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'. ^ Back to section

46 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. ^ Back to section

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