

COMPETITION BRIEFING: Special Edition

## Modernisation of Greek Competition Law: Amendments to the Greek Competition Act

This Briefing provides a general overview of the amendments introduced to the Greek Competition Act from the transposition of Directive 2019/1 into Greek Law and the modernisation of competition rules in view of the challenges posed in the digital era

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#### A. Introduction

1. By means of Law 4886/2022 (Govt Gazette Issue A' 12/24.01.2022, the Amending Act), the Greek legislature has brought about a series of substantial changes to Law 3959/2011 'on the protection of free competition' (Govt Gazette Issue A' 93/20.04.2011, the Greek Competition Act).
2. The aim of the revision is twofold: on the one hand, the Amending Act contributes towards the transposition into Greek Law of Directive (EU)

2019/1 of the European Parliament and of the Council of 11 December 2018 'to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market' (Directive 2019/1). On the other hand, the Amending Act aims at the modernization of the Greek competition framework taking into account the development of the digital economy.

3. An overview of the most important amendments brought about to the Greek Competition Act is presented below under Sections B-J.

#### B. Extension of the HCC's Powers

1. Under the new regime, the Hellenic Competition Commission (HCC) is granted additional powers, which include:
  - a. enforcement of the newly introduced provision prohibiting unilateral conduct that amounts to an invitation to collude or to price signalling (see below under Section D);
  - b. the systematic mapping of the competition conditions in markets or sectors of the Greek economy to the extent necessary for effectively exercising its powers; and
  - c. the strengthening of its cooperation with other national competition authorities, in line with

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Directive 2019/1, including mutual cooperation with other Member-State competition authorities in the enforcement of fines and periodic penalty payments.

2. The Amending Act also enhances the HCC's powers on interim relief. In particular, where there is an urgent need to prevent an imminent risk of serious and irreparable harm to competition, the HCC may, on its own initiative, issue interim measures. Under the Amending Act, the HCC may now also issue a provisional order (*προσωρινή διαταγή*) pending the outcome of the HCC's decision on the adoption of interim measures. A precise timeframe is set for the issuance of the HCC's final decision following the interim relief procedure.
3. The HCC's fining and investigative powers are further analysed under Sections G to I below.

## C. No Action Letter

1. Inspired by recent EU practice, the Amending Act has introduced an innovative, simplified procedure regarding the issuance of the so-called 'no action letter' for public interest reasons.
2. More specifically, the HCC's Chairman may issue a letter to interested parties following their request, stating that no enforcement action will be taken against certain multilateral (horizontal or vertical) or unilateral conduct when this is justifiable for reasons of public interest, with emphasis on the attainment of sustainable development goals. The HCC Chairman's no action letter is not binding on the HCC and the courts.
3. The HCC is expected to issue a decision laying down the criteria and conditions for issuance of a no action letter which will provide more clarity on the scope of application of this provision.

## D. Invitation to Collude and Price Signalling

1. A new provision is added to the Greek Competition Act as Article 1A prohibiting two types of unilateral conduct with significant effects on competition: an invitation to collude and price

signalling. In particular, an undertaking shall be prohibited from:

- a. proposing, coercing, providing incentives to or in any other way inviting another undertaking to participate in agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object to prevent, restrict or distort competition in the Greek market by:
    - i. directly or indirectly fixing purchase or selling prices;
    - ii. limiting or controlling production, distribution, technical development or investments; or
    - iii. sharing markets or sources of supply;
  - b. disclosing information on prices, rebates, benefits or credits related to the products or services supplied or purchased by it, where such disclosure:
    - i. restricts effective competition on the Greek market; and
    - ii. does not constitute standard commercial practice.
2. To assess whether the disclosure restricts effective competition, the following is taken into account:
    - a. the degree of specialization and the individualized nature of the information;
    - b. whether the information relates to future activities;
    - c. the extent to which the information is directly accessible to the public;
    - d. whether the disclosure forms part of a body of similar disclosures by the undertaking;
    - e. the existence of previous collusive practices on the market between same undertakings; and
    - f. whether the market is concentrated and oligopolistic in nature.

The disclosure of information exclusively addressed to end users is not considered as restricting effective competition.

3. The scope of the provision does not cover undertakings with less than €50m turnover and

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less than 250 employees. Also, the application of this provision is excluded where the conditions for application of Articles 101 TFEU and 1 of the Greek Competition Act on restrictive trade practices and/or Article 102 TFEU and 2 of the Greek Competition Act on abuse of dominance are met, including in case of exchange of commercially sensitive information between competitors.

4. The new provision shall enter into force on 01 July 2022.

## E. Merger Control

1. After years of academic and institutional discussion, the Amending Act has introduced the possibility of offering remedies during the Phase I merger review period (while, up until now, remedies were only possible at Phase 2).
2. Under the amended procedure, the deadlines for issuance of Phase 1 or Phase 2 clearance have not changed but it is now possible for the parties to also propose modifications to the concentration within 20 days from filing of the complete notification and HCC may, in that case, clear the transaction under Phase 1 if it considers that, following these modifications, relevant competition concerns have been lifted. This is in line with the procedure under EU merger control.
3. Where a Phase 2 procedure is initiated, involving an in-depth review of the transaction, the filing fee for notification is increased from €1,100 to €3,000.

## F. Settlement Procedure/ Leniency Program

1. In line with the relevant recommendation of the OECD, the scope of the settlement procedure, which under the previous regime was applicable solely to horizontal practices, has been extended to also cover cases of abuse of dominance, vertical agreements, as well as the practices of invitation to collude and price signalling.
2. As regards leniency for secret cartels, the Amending Act essentially transposes the relevant provisions of Directive 2019/1 into Greek law and opens-up the leniency procedure also to associations of undertakings, where they

participate in an alleged cartel on their own behalf and not on behalf of their members.

3. To this effect, the Amending Act incorporates into the Greek Competition Act the provisions of Directive 2019/1 on the general conditions for leniency, as well as the specific conditions for immunity and for reduction of fines. In case of rejection of the application for immunity, the applicant may request the HCC to consider its application as a request for a reduction of fines instead. The HCC is not bound to accept such request.
4. Participation in the leniency program is further encouraged through the possibility of the HCC to grant initially to the immunity applicant a place in the queue for leniency (whereby the applicant reserves its order of priority in the leniency process, as long as it provides the necessary information and evidence to qualify for immunity within the deadline set by the HCC for this purpose), as well as the possibility for applicants that have applied to the European Commission for leniency for an infringement covering at least 3 Member-States to submit a summary application before the HCC, giving them the opportunity to apply in full at a later stage.

## G. Fining Powers of the HCC

1. The Amending Act sets out the powers of the HCC:
  - a. to fine undertakings or associations of undertakings that, intentionally or negligently, infringe competition rules, including where undertakings engage in conduct amounting to an invitation to collude and price signalling;
  - b. to threaten a fine in case of a continuous or repeated infringement;
  - c. to impose a fine and/or a penalty payment where the HCC confirms that the infringement is continued or repeated or that the concerned undertakings or associations of undertakings fail to fulfil their commitment that has been made binding by a decision of the HCC or fail to comply with the behavioural or structural remedies imposed on them; and

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- d. to impose a fine and/or a penalty payment against undertakings or associations of undertakings that fail to comply with the HCC's decision ordering the adoption of interim measures.
2. The maximum amount of the fine imposed or threatened by the HCC is set at 10% of the total worldwide turnover of the undertaking for the financial year preceding the issuance of the HCC's decision. In this context, the Amending Act explicitly provides that, for fining purposes, the notion of 'undertaking' includes the parent companies and the legal and economic successors of undertakings, in line with the single economic unit and economic continuity concepts, as per EU case-law. For infringements committed by associations of undertakings, it is now clarified that the fine may be up to 10% of the total worldwide turnover of the association's members that were actively involved in the market where the infringement took place. Any damages paid to those injured by the infringement as part of a consensual settlement works as a mitigating factor in the determination of the amount of the fine. If a consensual settlement is pending, the HCC may suspend issuance of its decision for up to 3 months. This is in line with the provisions of Greek Law 4529/2018, transposing Directive 2014/104/EU on antitrust damages actions, and facilitates the satisfaction of the relevant civil claims.
3. For penalty payments, these are imposed on undertakings and associations of undertakings per day of non-compliance and are determined in proportion to the average daily total worldwide turnover achieved by the undertakings or associations of undertakings concerned in the preceding financial year, with the maximum penalty payment amount being set at 3% of above turnover.
4. Finally, as under the current provisions, the following persons are liable for compliance with competition rules:
  - a. in the case of individual undertakings, the owners;
  - b. in the case of civil and commercial companies and joint ventures, their managers and all the general partners;
  - c. in the case of Société Anonyme companies, the members of the board of directors and the persons responsible for implementing the relevant decisions;
  - d. as specified by the Amending Act, in the case of listed companies, the executive directors; and
  - e. in the case of associations of undertakings, the members of their highest governing body.
5. The above individuals are liable, by means of their personal assets, jointly and severally with the undertaking concerned for payment of the relevant fine, while they may also be separately fined by an amount ranging from €200,000 to €2m if it is established that they were actively involved in the infringement.

## H. Limitation Period

1. The Amending Act clarifies that, though the power of the HCC to impose sanctions is subject to a 5 years' limitation period, this does not restrict the HCC's power to establish that an offence has taken place in the past (even where it may no longer impose a sanction for the infringement due to the lapse of 5 years).

## I. Requests for Information/Conduct of Investigations

1. The HCC, when exercising its market/sector mapping power, may now:
  - a. request in writing the provision of information from various stakeholders, including undertakings, associations of undertakings, other natural or legal persons, as well as public or other local government bodies, without, however, the latter having an obligation to respond (though, if they do, the information provided must not be misleading, inaccurate, or incomplete); and

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- b. invite the representatives of undertakings, associations of undertakings or of any other legal entity, as well as any other individual, to oral discussions.
2. The HCC may also take sworn or unsworn statements from the representatives of undertakings and associations of undertakings, as well as of any other legal entities, and from any natural person, where this is deemed required for the establishment of an infringement. Anyone who refuses to give a sworn or unsworn statement to the HCC, or who gives a false testimony, may face at least 6 months' imprisonment.
3. Non-compliance by an undertaking or association of undertakings with a request for information entails the imposition of a daily penalty payment, calculated pro rata to the average daily total worldwide turnover achieved by the undertakings or associations of undertakings concerned in the preceding financial year but not exceeding 3% of this turnover. The HCC may also impose a separate fine against the directors and employees of the undertakings or associations of undertakings concerned ranging from €15,000 to €30,000 for each day of failure to comply. This is without prejudice to the criminal sanction of at least 6 months' imprisonment in case of refusal to provide information or the provision of inaccurate information to the HCC.
4. On the HCC's investigative powers, in addition to those already provided for by the Greek Competition Act, the Amending Act authorizes the HCC to request, subject to the principle of proportionality, a waiver from the confidentiality of communications, where there is reasonable suspicion that an infringement of the provisions of the Greek Competition Act on restrictive trade practices and abuse of dominance has occurred.
5. The Amending Act has also updated the sanctions available to the HCC for non-compliance with its investigative measures. Specifically, the HCC may impose:
  - a. a daily penalty payment against undertakings or associations of undertakings obstructing or

- hampering, in any manner, its investigations calculated on the basis of their average daily total worldwide turnover and up to 3% thereof;
- b. a penalty payment ranging from €15,000 to €2m on any other person impeding the investigation; and
- c. a fine ranging from €5,000 to €2m on the employees of the infringing entity or association.

Liabe individuals may also face a minimum of 6 months' imprisonment.

### J. Interplay Between Leniency and Immunity from Fines and Criminal Sanctions

1. In line with Directive 2019/1 which it transposes, the Amending Act stipulates that where an application for leniency or settlement has been approved by the HCC and the relevant fine has been paid in full, the individuals that are liable for compliance (now specified as current and former directors, managers and other members of staff, as well as any other natural person liable for the infringement of competition rules as per Section G above) and facing individual sanctions (criminal sanctions and sanctions imposed in administrative and non-criminal judicial proceedings) are shielded from these sanctions if:
  - a. they actively cooperate with the HCC and the public prosecutor (with respect to criminal proceedings); and
  - b. the application for leniency or settlement predates the time when these persons obtained knowledge of the (possible) prosecution or imposition of sanctions against them.
2. In this case, the undertaking concerned is also exempted from any administrative sanctions (other than the fines and penalty payments provided by the Greek Competition Act, as now amended by the Amending Act).
3. Anyone who breaches the secrecy of the HCC's hearings may be criminally sanctioned by a penalty payment ranging from €10,000 to €20,000.

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4. If the European Commission or another Member-State competition authority is dealing with a case involving multiple jurisdictions, including Greece, and has granted leniency to an undertaking involved in the case, the HCC must ensure communication and the exchange of information between the European Commission or the relevant national competition authority and itself, the public prosecutor and any other competent Greek authority, in order to ensure the exemption from penalties of the individuals that may be held liable for the infringement, where the relevant conditions are met. To this end, the HCC may notify the public prosecutor and any other competent national authority of any information, data and documents received from the European Commission or the national competition authority in charge of the case.
5. The provisions on criminal and other sanctions are without prejudice to the right of those who have suffered harm caused by an infringement of competition law to claim full compensation for their damages pursuant to Law 4529/2018 on private antitrust enforcement.

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