Private antitrust litigation in Greece: overview

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A Q&A guide to private antitrust litigation in Greece.

The Q&A provides a high level overview of the legal basis for bringing private antitrust litigation actions; parties to an action; limitation periods and forum; standard of proof and liability; costs and timing; pre-trial applications and hearings; alternative dispute resolution; settlement or discontinuance of an action; proceedings at trial; available defences; available remedies; appeals and proposed legislative reform.

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Legal basis for bringing private antitrust litigation actions

1. Can stand-alone and/or follow-on actions be brought in the context of private antitrust litigation? If so, what is the legal basis for bringing such actions?

Free competition is currently regulated in Greece by Law 3959/2011 "On the protection of free competition" (Law 3959/2011), as applicable, which entered into force in April 2011, abolishing and replacing the previously applicable Law 703/1977. Antitrust infringements, as a general rule, are usually established at first degree by the Hellenic Competition Commission (HCC), which acts as a first instance administrative tribunal. HCC's decisions can be appealed against before the Athens Administrative Appeal Court and, ultimately, the Council of State (which is the supreme administrative court in Greece). The decisions of the Athens Administrative Appeal Court and of the Council of State have the force of *res judicata* and, as such, are binding concerning their findings on whether (or not) an antitrust violation has occurred.

However, the HCC and the competent appellate court can only impose administrative sanctions on parties that infringe competition law, and are not competent to award damages to those who have incurred loss as a result of an antitrust infringement. Damages can only be awarded by the civil courts.

The private enforcement of the rules of competition law was not specifically regulated at either EU or national level in Greece until 2014. That regulatory gap was filled by Directive 2014/104/EU on actions for damages under national

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law for infringements of competition law provisions of the member states (Antitrust Damages Directive), which was aimed at harmonising civil damages actions for competition law infringements between member states of the EU.

The Antitrust Damages Directive was transposed into Greek national law by Law 4529/2018 "On the transposition into Greek law of 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), which was enacted in March 2018. The provisions of Law 4529/2018 took effect from 27 December 2016 (unless otherwise provided), and this law is now the legal basis to bring actions (whether stand-alone or follow-on actions) for damages resulting from an antitrust infringement.

Before the enactment of Law 4529/2018, actions for damages for antitrust infringements were governed under the general tort provisions contained in Article 914 *et seq* of the Greek Civil Code, which continue to apply in supplement to Law 4529/2018.

Stand-alone actions

In line with the Antitrust Damages Directive, Article 3(2) of Law 4529/2018 establishes that liability for damages for an antitrust infringement is independent from any prior finding of an infringement by a competition authority. Therefore, it is possible to bring stand-alone actions without any prior finding of a competition violation by:

- The European Commission.
- The HCC.
- The Hellenic Telecommunications & Post Commission (EETT) (where, by law, it is competent to apply competition rules).
- A competition authority of another EU member state.

An injured party can bring an action directly before the civil courts claiming that an infringement of the antitrust rules on restrictive trade practices and/or abuse of dominance has taken place, and seeking damages for the loss suffered as a result. Law 4529/2018 applies to infringements of Articles 1 and 2 of Law 3959/2011, and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), regarding restrictive trade practices (horizontal or vertical) and abuses of dominance, respectively (*Article 2(1), Law 4529/2018*).

Follow-on actions

Under Article 3(2), in combination with Article 9, of Law 4529/2018, follow-on actions for damages for antitrust infringements are possible. In this respect, the following decisions which establish a competition law infringement will be binding before the Greek civil courts when ruling on an action for damages for a competition law infringement:

- Decisions of the HCC, the EETT, and the European Commission that are not subject to appeal.
- Final decisions, not subject to appeal, of the Greek and EU appellate courts.

As a result, decisions which are subject to appeal or are made in preliminary or provisional proceedings will not be binding on the Greek civil courts.

Finally, final decisions issued by the authorities of another member state of the EU, which establish a competition law infringement under Articles 101 or 102 of the TFEU or the relevant national law of the member state concerned,

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constitute full evidence of the infringement before the Greek national courts trying an action for damages for competition law infringement. However, this presumption can be subject to rebuttal (*see Question 9, Rebuttable presumptions*).

Parties to an action

2. Who can bring an action and what must be demonstrated to commence an action?

Stand-alone actions

Article 3(1) of Law 4529/2018 specifically provides that actions for damages (whether stand-alone or follow-on) can be brought by any natural or legal person that has suffered damage caused by a competition law infringement, to obtain full compensation for the damage incurred. Both direct and indirect purchasers/suppliers, as well as end consumers, have the legal standing to raise damages actions before the Greek civil courts.

To bring an action for damages for a competition law infringement, the claimant must show all of the following:

- An act was committed in breach of the competition law.
- The act breaching competition law is attributable to the person against whom the claim is raised (the defendant).
- There is a causal link between the act in breach of competition law and the damage suffered by the claimant.

The above requirements, whilst not specifically provided for in Law 4529/2018, are a prerequisite to establish an infringer's tortious behaviour under the general tort provisions contained in Article 914 *et seq* of the Greek Civil Code.

Follow-on actions

See above, *Stand-alone actions*.

3. Is it possible to bring actions on behalf of multiple claimants (for example, collective actions)?

Stand-alone actions

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A specific system for the collective redress of antitrust infringements has not yet been put in place in Greece (for either stand alone or follow-on actions). Both the Antitrust Damages Directive and Law 4529/2018 do not contain any specific provisions on collective actions. Although the European Commission has recommended that member states put in place collective redress mechanisms for actions for antitrust infringements, this recommendation is not binding per se, and the general provisions of Greek law will apply to multiple claimants' actions for antitrust infringements.

Specifically, under Article 74 of the Greek Code of Civil Procedure, collective redress actions can be commenced, unless otherwise provided for by law, where either:

- In relation to the subject matter of the dispute, the claimants have a common right or obligation, or their rights and obligations are based on the same factual and legal basis.
- The subject matter of the dispute consists of similar claims or obligations based, in substance, on a similar factual and legal basis and, at the same time, the court has jurisdiction over each defendant.

In addition, a collective redress mechanism was adopted under Article 10 of Law 2251/1994 "On consumers' protection" (Law 2251/1994). However, it is debatable whether this provision also applies to damages actions for antitrust infringements, or whether it is limited in scope only to collective actions raised by consumers' associations (or commercial, industrial or professional chambers) for matters which exclusively fall under the consumers' protection legislation. At the time of writing, there is no available case law testing this matter.

Follow-on actions

See above, *Stand-alone actions*.

4. On what basis will a court or tribunal assume jurisdiction with respect to a claim?

Depending on the residence/seat of the litigants, the jurisdiction and the international competence of the Greek courts will be established by reference to the applicable legal rule (that is, the Greek Code of Civil Procedure, Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation), or any relevant bilateral or multilateral agreements).

Under Article 3(1) of the Greek Code of Civil Procedure, both Greek and foreign nationals can fall within the jurisdiction of the Greek civil courts in private law disputes. Under Articles 22 to 40 of the Greek Code of Civil Procedure, the jurisdiction of the Greek courts will be established where it can be proven that the dispute contains a link to the Greek state. Provided that this condition is fulfilled, an action for damages for an antitrust infringement can be brought before the special chamber of the Athens Court of First Instance (*Article 13, Law 4529/2018*).

Claims against corporate entities domiciled within Greece

Any corporate entity domiciled within Greece has the capacity to be a party in proceedings before the Greek courts (*Article 62, Greek Code of Civil Procedure*). A corporate entity domiciled in Greece can therefore be a party to antitrust damages actions (whether stand alone or follow-on).

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Claims against corporate entities domiciled outside of Greece

Claimants can bring (stand-alone or follow-on) actions in Greece against corporate entities domiciled outside of Greece, provided the entity concerned can be a party to legal proceedings under the law of the country where it is seated (*Article 10, Greek Civil Code*). No special leave to serve proceedings on corporate entities domiciled abroad is required. Therefore, provided that the infringement giving rise to the action for damages occurred in Greece, there should be no jurisdictional issues for the Greek courts, which are likely to assume jurisdiction on the basis of the tortious behaviour of the relevant corporate entity under the Greek Code of Civil Procedure, the Recast Brussels Regulation, or any relevant bilateral or multilateral agreements (depending on the residence/seat of the infringer).

Liability of parent companies for acts of their subsidiaries

Generally, a parent company will not be held liable for the actions of its subsidiaries, as Greek law recognises the autonomy of legal entities that belong to the same group. Where a subsidiary infringes the provisions of competition law, and the parent company has had no involvement in that infringement, only the infringing subsidiary will be liable in tort or under the provisions of competition law. The parent company is not liable purely in its capacity as a parent, it must have been independently involved in the infringement for liability to arise.

However, as regards antitrust infringements where a local subsidiary's conduct breaches antitrust law, and its foreign parent company has determined the business policies of that local subsidiary (so that the subsidiary cannot be considered to be autonomous from a business and financial perspective), the HCC has accepted that the actions of the local subsidiary can be attributed to the parent company (*HCC Decision No. 318/V/2006*). This approach is in line with EU case law. In the judgment of 10 September 2009 in *Akzo Nobel NV and Others v Commission of the European Communities (Case C-97/08)*, it was held that the conduct of a subsidiary can be imputed to its parent where, although the subsidiary has a separate legal personality, it does not decide independently upon its own conduct on the market but carries out, in all material respects, the instructions of its parent. However, in this case, the fact that the parent held 100% of subsidiary's share capital was considered to be a rebuttable presumption that the parent company did, in fact, exercise decisive influence over the conduct of its subsidiary.

In terms of private anti-trust enforcement, this issue has not been settled to date at EU level. In a recent opinion of Advocate General Wahl of 6 February 2019 (in *Case C-724/17 Vantaan kaupunki v Skanska Industrial Solutions and others*), the Advocate General addressed the issue of whether the fundamental principle of economic continuity of EU competition law must also be applied in the context of private enforcement of EU competition law. Advocate General Wahl has taken the view that the principle of economic continuity must indeed be applied in this context as well (at paragraph 54), concluding that: "Article 101 TFEU must be interpreted as meaning that, in determining the person liable to pay compensation for harm by a breach of that provision, the principle of economic continuity is to be applied so that, in a private law action for damages before a national court, an individual may seek compensation from a company that has continued the economic activity of a cartel participant" (paragraph 84).

The case upon which Advocate General Wahl's opinion was handed down involved the liability of the successors of entities that had gone into liquidation and, therefore, did not deal with intra-group members' liability (where, however, the same principle of economic continuity applies). It therefore remains to be seen how the Court of Justice of the European Union (CJEU) will rule on the matter.

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5. Can actions be brought against individuals (such as directors of corporate entities), whether domiciled within, or outside, the jurisdiction?

Stand-alone actions
Under Article 2 of Law 4529/2018, the term "infringer" means "the undertaking, or association of undertakings, which has committed an infringement of competition law". No reference is made to natural persons/individuals representing the undertaking concerned, such as the company's directors. Therefore, it would appear that no action for damages can be brought against company officials for the company's illegal conduct purely on the basis of Law 4529/2018, irrespective of their domicile.

However, under Article 71 of the Greek Civil Code, the management of a corporate body may be liable, on a joint and several basis, for any liability arising from a tort that has been committed by the corporate body. Further, under Law 3959/2011, a company's legal representatives (which would include directors) may be held liable under public competition law enforcement for a company's anti-competitive conduct. As a result, they can face not only administrative sanctions, but may also face criminal sanctions, since under Greek criminal law criminal sanctions cannot be imposed on legal entities.

Follow-on actions
See above, *Stand-alone actions*.

Limitation periods and forum

6. What are the relevant limitation periods for stand-alone and/or follow-on actions? When do these start to run? Can these be extended?

Stand-alone actions
Article 8 of Law 4529/2018 sets a five-year limitation period for bringing an action for damages: this is in line with the limitation period provided for by Article 937 of the Greek Civil Code (on general liability for tort).

Under Law 4529/2018, the limitation period begins to run from the day that the infringement of competition law has ceased and the claimant knows, or can reasonably be expected to know, about:

- The behaviour, and the fact that it constitutes an infringement of competition law.
- The damage caused by the infringement.

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- The identity of the infringer.

In any event, all claims are time-barred after 20 years have elapsed from the date that the infringement has ceased.

The five-year limitation period is suspended if a competition authority initiates an investigation, or proceedings, for the infringement. The maximum duration of the suspension is one year after the competition authority's, or the appellate court's, decision on the infringement has become irrevocable, or the proceedings were otherwise terminated. The limitation period may also be suspended for the duration of any consensual dispute settlement proceedings between the parties, although that suspension is limited to only the parties involved in those settlement proceedings.

The limitation period for bringing damages actions may be extended where either:

- The limitation period has been suspended for any of the reasons prescribed in Article 255 *et seq* of the Greek Civil Code (in which case, it will continue to run after the suspension is over).
- The limitation period is interrupted for any of the reasons prescribed in Article 260 *et seq* of the Greek Civil Code (in which case, it will continue to run after the interruption is over).

Follow-on actions

See above, *Stand-alone actions*.

7. Where can an action be commenced? Are there specific courts or tribunals before which stand-alone and/or follow-on actions may be brought?

Stand-alone actions

Under Article 13 of Law 4529/2018, damages actions are brought before the Athens Court of First Instance or, in case of an appeal, before the Athens Court of Appeal, which have jurisdiction over the entire territory of Greece for such actions. Article 13 provides for the establishment of a special chamber within each of the aforementioned courts, which will specifically hear actions for damages concerning antitrust infringements. These special chambers should comprise regular judges with specialisation in competition or EU law, or commercial law in general. However, at the time of writing, these special chambers have not yet been formed within either the Athens Court of First Instance or the Athens Court of Appeal (and there is currently no specific guidance on the expected date on which they will be established). As a result, antitrust damages actions are currently being heard by the above courts under the regular proceedings of the Greek Code of Civil Procedure.

Law 4529/2018 does not specify if damages actions should be heard by a single-member or multi-member chamber. Under the applicable provisions of the Greek Code of Civil Procedure, this depends on the value of the claim. Since the specialised chambers have not yet been established, we cannot currently comment on whether damages actions for antitrust infringements will be heard by a single-member or multi-member chamber once the specialised chambers

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have been created, or whether the provisions of the Greek Code of Civil Procedure will simply be applied to these chambers.

Follow-on actions
See above, *Stand-alone actions*.

8. Where actions can be brought before different courts and tribunals, what are the comparative advantages and disadvantages of bringing actions in each forum?

Stand-alone actions
Law 4529/2018 is explicit on this matter, stating that antitrust damages actions will be heard by specialised chambers to be set up at the Athens Court of First Instance and the Athens Court of Appeals (*see Question 7*). Antitrust damages actions will, therefore, not be brought before any other court or tribunal once these chambers have been formed.

Follow-on actions
See above, *Stand-alone actions*.

Standard of proof and liability

9. What is the standard of proof?

Standard of proof
Under Article 340 of the Greek Code of Civil Procedure, in civil cases the judge, as a matter of principle, decides the action on the basis of his or her belief, as formed based on the evidence presented by the parties to the action (this is known as "full judicial belief"). However, there are several exceptional instances (for example, during interim measures proceedings) where the law expressly provides that the standard of proof can be reached with a reasonable belief or suspicion (*Article 34, Greek Code of Civil Procedure*).

Under Law 4529/2018 both standards of proof can apply: for example:

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- Full judicial belief remains the standard of proof in actions for damages for competition law infringements (*see Article 9(2) and Article 11(5), Law 4529/2018*).
- Reasonable belief or suspicion will suffice under Article 11(3) (assessment of the amount of the overcharge passed-on) and Article 14(1) (estimate of the amount of harm where it is established that a claimant suffered harm, but it is practically impossible or excessively difficult to precisely quantify the harm suffered on the basis of all the evidence available) of Law 4529/2018.

Burden of proof
The civil courts in ordinary proceedings (which include actions for damages for antitrust infringements) follow an adversarial system, each party having the burden of proving its own allegations. Under Article 338 of the Greek Code of Civil Procedure, each party bears the burden of proving the necessary factual elements to substantiate its claim (or counterclaim). In actions for damages for antitrust infringements, the claimant must prove all of the following:

- That an infringement of competition law (that is, a restrictive trade practice or abuse of dominance) occurred.
- The infringement is attributable to the defendant's fault (fraud or negligence).
- The infringement resulted in harm caused to the claimant, and there is causal nexus between the infringement and the harm caused to the claimant.

Likewise, where the defendant raises the "passing on" defence, the defendant bears the burden of proving the existence and scope of that passing-on (*Article 11(2), Law 4529/2018*). Conversely, if passing-on is raised as a ground for the action by the claimant or an indirect purchaser, then the burden of proof lies with that claimant/indirect purchaser to prove the existence and scope of that passing-on (*Article 14(1), Antitrust Damages Directive*).

Deviations from the general rule on the burden of proof may apply in case of:

- Rebuttable presumptions (*see below, Rebuttable presumptions*).
- Facts commonly known, or which are known by the court, or facts of common experience.
- Where the disclosure or production of evidence is requested by one of the litigants and ordered by the court (*see Question 26*).
- The existence of a prior final finding of an antitrust infringement by another member state, produced before the Greek civil court ruling on the action for damages for an antitrust infringement, where this prior final finding constitutes full proof of the infringement of Articles 101 or 102 of the TFEU and/or of the relevant provisions of that member state's law, unless otherwise rebutted by the counterparty (*Article 9(2), Law 4529/2018*).

Rebuttable presumptions
There are two instances where Law 4529/2018 provides for the existence of rebuttable presumptions:

- Under Article 11 (passing-on of the overcharge), an indirect purchaser will be presumed to have proven that a passing-on of the overcharge to that indirect purchaser occurred (both in terms of having suffered harm, and of the existence of a causal link between the illegal act and the harm incurred by it) if that indirect purchaser has shown all of the following:

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- the defendant has committed an infringement of competition law;
- the infringement of competition law resulted in an overcharge to the direct purchaser of the defendant; and
- the indirect purchaser has purchased the goods or services that were the object of the antirust infringement, or has purchased goods or services derived from, or containing, them.

This presumption is rebuttable if the defendant can credibly demonstrate to the satisfaction of the court that the overcharge was not, or was not entirely, passed on to the indirect purchaser.

- Cartels are by law presumed to cause harm (*Article 14(3), Law 4529/2018*). Taking into account the particular facts of each case, the defendant may be able to prove that the cartel did not result in the claimant's damage (that is, that there is an absence of a causal link between the antitrust breach and the damage caused).

10. Is liability on a joint and several basis?

Under Article 10 of Law 4529/2018, undertakings which have infringed competition law through joint behaviour are jointly and severally liable for the harm caused by the infringement. Each of those undertakings is bound to compensate for the harm in full, and the injured party has the right to require full compensation from any of the jointly liable undertakings until it has been fully compensated.

By way of derogation from the above, where one of the infringers qualifies as a small or medium-sized enterprise (SME) under Commission Recommendation 2003/361/EC, this undertaking will be liable only to its own direct and indirect purchasers if both:

- Its market share in the relevant market was below 5% at any time during the infringement of competition law.
- The application of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value.

However, the above derogation will not apply where either:

- The SME concerned led the infringement of competition law, or coerced other undertakings to participate in the infringement.
- The SME has previously been found to have infringed competition law.

In addition, where one of the jointly liable undertakings has received immunity under the leniency provisions, then that immunity recipient will be jointly and severally liable:

- To its direct or indirect purchasers or providers.

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- To other injured parties only where full compensation cannot be obtained from the other undertakings that were involved in the same infringement of competition law.

An undertaking that has paid compensation in full will be entitled to take recourse against the other co-infringers to recover the part of the compensation that can be attributed to them. The court will determine each co-infringers' liability in the light of their relative responsibility for the harm caused by the antitrust infringement. The amount of compensation payable by an infringer which has been granted immunity from fines under a leniency programme will usually not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers. However, to the extent that the infringement of competition law caused harm to injured parties other than the direct or indirect purchasers or providers of the jointly and severally liable infringers, the amount of any contribution from an immunity recipient will be determined in the light of its relative responsibility for that harm.

Where other jointly and severally liable infringers are not defendants in an action for damages for antitrust infringement, the defendant in the action can claim compensation from them either by means of an independent action against them, or by means of an incidental action. An incidental action can be filed jointly with, or upon a summons against, the jointly and severally liable infringers requesting them to join the proceedings, and to compensate the main defendant for any amount adjudicated to be paid in the action, beyond the main defendant's own liability. A five-year limitation period applies to both independent and incidental actions. In non-competition cases, both aforementioned actions are reasonably common in practice, particularly where each co-infringers' liability can be easily proven.

Special provisions apply in the case of co-infringers' liability for disputes that are being resolved by alternative dispute resolution or consensual settlement (*see Question 29*).

Costs and timing

11. What are the recent trends in relation to the costs of bringing an action before the relevant courts/ tribunals?

Stand-alone actions

Law 4529/2018 does not specifically provide for the allocation of judicial costs between the parties. Therefore, this issue is dealt with under the general provisions of the Greek Code of Civil Procedure. Under Article 176 *et seq* of the Greek Code of Civil Procedure, the most common practice is that the costs associated with bringing an action before the civil courts are borne by the defeated party, following a relevant court order to that end. A claimant will be considered to constitute a defeated party where the defendant confessed or recognised part of the claimant's case, but the rest of the lawsuit was rejected. Where a case is not fully won by either party, the court has the discretion to decide to split the judicial costs between both parties as it sees fit.

Judicial stamp duty must also be paid by the claimant in an action for damages, charged at a rate of 1% of the estimated value of the claim, which must be paid by the date of the hearing at the latest.

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Follow-on actions
See above, *Stand-alone actions*.

12. What is the applicable principle regarding the apportionment of the costs of the action? Is there a "loser pays" approach to costs?

Stand-alone actions
See *Question 11*. Since the amount of costs is subject to the court's discretion and is usually considerably lower than the actual expenses incurred, the winning party may not actually recover the full costs of the action.

Follow-on actions
See above, *Stand-alone actions*.

13. Can parties insure against costs risk associated with an action?

Stand-alone actions
In theory it is possible to insure against the costs risk associated with an action, but this is not customary in practice in Greece.

Follow-on actions
See above, *Stand-alone actions*.

14. Can a third party fund the costs of bringing an action?

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Stand-alone actions

In theory, a third party can fund the costs of bringing an action before the Greek courts. However, litigation funding by third parties has not currently developed as a practice in Greece. There is no legislative framework in Greece governing third-party litigation funding, and interested third-party funders would usually not be located in Greece.

Follow-on actions

See above, *Stand-alone actions*.

15. Can claimants assign their claim to a third party funder?

There is no legislative framework governing litigation funding by third parties (*see Question 14*).

Under Article 455 *et seq* of the Greek Civil Code, it is possible for claimants to assign their claim to a third party (whether for the purposes of litigation funding or otherwise). Unless an agreement is in place between the debtor (infringing party) and the creditor (injured party) that the claim cannot be assigned, the creditor can assign the claim, provided that the debtor is notified of this assignment by either the creditor assigning the claim, or the person to whom the claim is assigned (assignee). This notification must be accompanied by a specific request to the debtor to pay the assignee, instead of the original creditor. The debtor may raise any objections against the assignee that it was otherwise able to raise against the original creditor prior to the assignment.

16. Can parties engage legal representation under either a "conditional" fee arrangement, or a "damages-based" fee arrangement?

Stand-alone actions

Under Article 58 of the Code of Lawyers, which regulates the conduct of lawyers, including disciplinary matters, fees and professional advancement, lawyers' fees can either be set by agreement, or according to the minimum fees set by the Code. Fees set by agreement may be based on an hourly rate, on the case's positive outcome (contingency or conditional fees), or on any other condition. Fees can also be agreed where a part of the trial's subject matter is

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assigned or transferred to the lawyer. However, where fees are set by an agreement and are not set on an hourly rate basis, the agreement must be written and the fees must not exceed:

- 20% of the value of the action (where one attorney is engaged).
- 30% of the value of the action (where more than one attorney is engaged).

In addition, contingency or conditional fees are only valid on the conditions that:

- The lawyer has undertaken the case until the issuance of a final judgment.
- No fees will be payable in the event that the case is unsuccessful.

Follow-on actions
See above, *Stand-alone actions*.

17. Is it possible for a defendant to a claim to bring an application for security for costs?

Under Article 169 of the Greek Code of Civil Procedure, it is possible for a defendant to petition the court for an order to secure the costs related to an action, by means of the provision of a guarantee. However, in practice, such a request is rarely raised, and it will only be granted where it is shown that there is a manifest risk that an award of costs in favour of the defendant may be unable to be enforced at a later date, due to the financial position of the claimant. The claimant's domicile does not affect the court's decision in relation to a request for security for costs, unless domicile is a relevant issue with respect to the claimant's solvency.

18. What is the current trend, if any, regarding the period of time from commencing an action to a subsequent first instance judgment by a competent body?

Stand-alone actions
Litigation before the courts can take a considerable period of time. Experience shows that (except for injunctive measures) it can take approximately six to eight months from the date of filing an action for the hearing date to be scheduled by the court. The court will then usually issue its judgment within six to eight months from the hearing date.

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Law 4529/2018 provides for the establishment of a special chamber within the Athens Court of First Instance and the Athens Court of Appeal to deal specifically with antitrust damages actions (*see Question 7*). As these chambers have not yet been set up, it remains to be seen whether cases handled by the special chambers will be dealt with in a shorter timeframe.

In any case, the court has the discretion to suspend a case heard before it if the dispute depends, in whole or part, on either:

- Another lawsuit pending before a civil or administrative court, or before an arbitral tribunal.
- A case that is about to be, or is being, investigated by an administrative authority.

A suspension may be granted until the issuance of the relevant court's, or tribunal's, final or irrevocable decision, or until the issuance of an administrative authority's decision that is no longer subject to further recourse (*Article 249, Greek Code of Civil Procedure*). Naturally, such a suspension will inevitably cause further delay. The courts may also refer questions for a preliminary ruling to the Court of Justice of the European Union (CJEU) under Article 267 of the TFEU, which can also delay the proceedings.

Follow-on actions
See above, *Stand-alone actions*.

Pre-trial applications and hearings

19. Where statements of case are lodged with the relevant court or tribunal, can third parties seek to obtain copies?

Stand-alone actions
Under Article 112 of the Greek Code of Civil Procedure, the pre-trial stage and any out-of-court proceedings are not public, and only the parties to the action, including the parties' legal representatives/attorneys can be involved in those proceedings. Third parties may only attend the hearing of the case in court. As a result, a request by a third party to obtain copies of statements of case lodged with the relevant court or tribunal will be denied, unless the third party has specifically obtained the court's permission to access these documents.

Follow-on actions
See above, *Stand-alone actions*.

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20. Can a claimant seek interim measures?

Stand-alone actions

In the absence of specific provisions dealing with interim measures in respect of private antitrust litigation, the general provisions of Article 682 *et seq* of the Greek Code of Civil Procedure on temporary judicial protection will apply. This temporary grant of judicial protection seeks to ensure future satisfaction of the claim, which will be assessed by the court in detail in the context of the main trial. The interim measures available include the following:

- Surety.
- Registration of a prenotation of mortgage (this provides the beneficiary of the prenotation of mortgage with a registered preferential right over a mortgage, and the beneficiary of the prenotation of mortgage will acquire a full mortgage in the event that the claim has been adjudicated by the court by means of a final judgment or a final payment order).
- Conservative attachment.
- Judicial seizure of property.
- Interim hearing of claims.
- Interim arrangement/regulation of the situation related to the alleged infringement.
- Impoundment (or release from impoundment).
- Deposit of assets at a bank.

Follow-on actions

See above, *Stand-alone actions*.

21. Can a defendant seek to dispose of all or part of the action prior to a full trial?

Under the Greek Code of Civil Procedure, a defendant cannot dispose of all or part of the action prior to a full trial. In addition, it is not possible for a defendant to apply for a summary judgment for all or part of either a stand-alone or follow-on action.

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22. Can a defendant seek to stay an action (for example, pending the outcome of an investigation by a competent competition authority, or an appeal)?

The court has the discretion to suspend a case heard before it if the dispute depends, in whole or in part, on either:

- Another lawsuit pending before a civil or administrative court, or before an arbitral tribunal.
- A case that is about to be, or is being, investigated by an administrative authority.

See *Question 18*.

Suspension may be granted by the court either of its own volition or upon request by any of the litigants (including the defendant).

Where competition infringements also constitute crimes under the Greek Criminal Code, and criminal proceedings may be initiated in relation to competition violations, it may also be possible to stay an action pending the outcome of the criminal proceeding in question before the Greek criminal court. A request to stay an action for this reason may be raised on the basis of Article 250 of the Greek Code of Civil Procedure, which states that if the outcome of the case is substantially affected by pending criminal proceedings, the court may adjourn the hearing of the action until the penal court has reached a final and unappealable decision.

23. Can a party seek to have a specific issue (such as limitation) tried as a preliminary issue in advance of a full trial?

Following a request by one of the parties, which is examined under the expedited procedure provided for by Article 686 *et seq* of the Greek Code of Civil Procedure on interim measures, a preliminary examination of evidence can be conducted in exceptional circumstances prior to the opening of a trial, provided that one of the following conditions are met:

- There is a risk that a means of evidence will be lost, or its usefulness to the proceedings will be diminished, if the preliminary examination is not conducted.
- The present condition of the evidence is material to the purposes of the case.

This expedited procedure is provided for by Articles 348 to 351 of the Greek Code of Civil Procedure.

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Additionally, the court may issue a special judgment on significant procedural issues, as defined in Articles 263 and 267 of the Greek Code of Civil Procedure, before the hearing of the merits of the case. However, this procedure is rarely applied by the Greek courts.

Evidence and legal privilege

24. Are existing findings of fact and/or infringement in a decision or judgment of a competent authority or body binding in the context of an action?

Under Article 9(1) of Law 4529/2018, decisions of the HCC, the EETT and the European Commission (which are not subject to appeal) and final decisions of the competent Greek and EU appellate courts, under which a competition law infringement has been established, will be binding before a Greek civil court ruling on an action for damages for an antitrust infringement, and in the case of a follow-on action the infringement will be considered as irrefutably established. However, this fact does not prevent the Greek civil court from addressing requests for a preliminary ruling to the CJEU where it disagrees with the relevant finding, or has doubts about the interpretation of Articles 101 and 102 of the TFEU (including on the attribution of liability to a parent company for a subsidiary's conduct), or where it is obliged to file a preliminary request under Article 267 TFEU.

Furthermore, in the case of stand-alone actions, where no previous decision which has a binding effect has been issued, the court may assess any other relevant non-binding decision under Article 339 of the Greek Code of Civil Procedure. This can include decisions of foreign antitrust authorities or courts whose binding effect is rebuttable. This is also reflected in Article 12(2) of Law 4529/2018, which provides that the court seized of an action for damages for an antitrust infringement may take due account of:

- Any actions for damages that are related to the same infringement of competition law, but which are brought by claimants from other levels in the supply chain, and any judgments resulting from any such actions for damages.
- Any other relevant information available.

25. What is the evidential status of findings of fact and/or infringement in a decision or judgment of a body in a third country?

A final decision regarding an infringement of competition law issued by the competition authority or court of another EU member state and produced before the Greek court seized of actions for damages for antitrust infringements constitutes full proof of the infringement of either Articles 101 or 102 of the TFEU and/or the relevant provisions of

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the law of such other member state. However, this can be subject to rebuttal under Article 9(2) of Law 4529/2018. The rulings of the courts or authorities in non-EU member states may be taken into consideration at the court's discretion.

26. If discovery is available, what is the general procedure for discovery, and what documents would need to be disclosed?

General court procedure

In general, there is no discovery procedure in the sense that this is typically understood in certain other EU countries. There is a procedure for filing additional pleadings and documentation prior to the hearing and following the filing of the civil action (lawsuit). The parties in Greek proceedings submit to the court and produce as exhibits documents which are in support of their claims (and counterclaims). There is no practice of discovery in the traditional sense for documents which actually support the counterparty's claims (or counterclaims). Further to the latest amendment to the Greek Code of Civil Procedure, the ordinary procedure (which is also applicable in actions for damages for antitrust infringements) is as follows:

- Both parties shall submit their pleadings, evidence, affidavits and procedural documents within the following time limit from the date that the action is filed:
  - within 100 calendar days, where the defendant is domiciled in Greece;
  - within 130 calendar days, where the defendant is domiciled abroad.
- Within 15 calendar days from the lapse of the above deadline (100 or 130 days, depending on the defendant's domicile), both parties shall submit their addendum/rebuttal. Following this, the case file is considered closed, meaning that no additional writs and/or documentation are admissible.

The case hearing is a formal procedure for the judge(s) (so, for example, there are no procedures for the examination of witnesses). Where the parties wish to present witness statements, these must be submitted as affidavits along with their pleadings.

There are no oral proceedings before the Greek civil courts: the judge(s) receives the case file with the claim, the allegations of the parties and the supporting material submitted, in order to study the evidence and issue a judgment. All evidence available to each party, which is capable of supporting its allegations, must be produced to the court within the above timeframe. Article 237 of the Greek Code of Civil Procedure governs the procedure as follows:

- The court takes into consideration all evidence lawfully provided, taking into account the evidentiary value of each element of proof. The court may also take into account, at its discretion, other evidence.
- Each party is entitled to produce up to five affidavits. For the purposes of rebuttal of the affidavits, a maximum of three additional affidavits may be submitted.
- Cases are heard by the court according to their number in the court's case list.
- The final decision is issued based on the evidence submitted by the parties.

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Depending on the particularity of each case and the difficulties that the judge(s) may face during the examination of the case, the court may, at its discretion, issue an interlocutory/partial decision requesting the repetition of the hearing, as well as the holding of an autopsy and/or an expert's opinion and/or witness examination.

Disclosure

Under Article 4 of Law 4529/2018, both claimants and defendants may request the disclosure of evidence held by the other party, or a third party. The court may allow for disclosure where:

- A claimant requests the disclosure of evidence which it does not have in its possession from the defendant or a third party.
- A defendant requests the disclosure of evidence which it does not have in its possession from the claimant or a third party.

The court may order the disclosure of specified items of evidence, or relevant categories of evidence. The court orders the disclosure of such evidence subject to the principle of proportionality. To this end, the court will consider the legitimate interests of the litigants and of third parties and, in particular:

- The extent to which the claim or defence is supported by the already available facts and evidence, to identify whether the request to disclose evidence is justified.
- The scope and cost of disclosure (especially for any third parties concerned), with a view to preventing non-specific searches for information which are unlikely to be of relevance for the parties in the case.
- Whether the evidence for which disclosure has been requested contains confidential information (particularly concerning any third parties), and the arrangements in place to protect such confidential information. In this instance, any undertakings' interest in avoiding actions for damages following an infringement of competition law will not constitute an interest that warrants protection.

Where the disclosure request concerns evidence included in the file of a competition authority (regardless of whether the competition authority itself, or a litigant party, or a third party, are summoned to produce such evidence), the court will also take into account:

- Whether the request has been formulated specifically with regard to the nature, subject matter or contents of documents submitted to a competition authority or held in the file of that authority, rather than by a non-specific application concerning documents submitted to a competition authority.
- Whether the party requesting disclosure is doing so following the filing of an action for damages.
- The need to safeguard the effectiveness of the public enforcement of competition law.

Save as otherwise provided, the court has the power to order the disclosure of evidence which is included in the file of a competition authority, regardless of whether the competition authority's investigation has been closed. However, the court may only order the disclosure of the following categories of evidence after the competition authority (by adopting a decision or otherwise) has closed its proceedings:

- Information that was prepared by a natural or legal person specifically for the proceedings of a competition authority.

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- Information that the competition authority has drawn up and sent to the parties in the course of its proceedings.
- Settlement submissions that have been withdrawn.

The court cannot at any time order a party (or a third party) to disclose any of the following categories of evidence that are included in the file of a competition authority:

- Leniency statements.
- Settlement submissions.
- Documents to the extent that they quote passages from documents that are either leniency statements or settlement submissions.

However, upon the claimant's reasonable request, the court itself may review leniency statements and settlement submissions (or documents quoting passages from either of these), provided that the court does not permit to either parties to the action, or any other parties, access to that information. In any event, the court can only request the disclosure of evidence from a competition authority where no party to the proceedings, and no other third party, can provide this evidence. Even then, the competition authority must be formally notified of the request to disclose, otherwise it is under no obligation to do so.

Where, under Article 7 of Law 4529/2018, prohibited categories of information (either information that was prepared by a natural or legal person specifically for the proceedings of a competition authority, information that the competition authority has drawn up and sent to the parties in the course of its proceedings, and settlement submissions that have been withdrawn or leniency statements and settlement submissions) are obtained from a competition authority and are illegally introduced into the proceedings, the person or entity introducing that information can be liable to a penalty of up to EUR100,000 and the information will be disregarded by the court as inadmissible.

27. Can a party oppose the provision of any documents not in their possession or control?

A counterparty or a third party may only be ordered to produce evidence that is in its possession or control. Therefore, if the evidence is not in its possession, the relevant party may oppose the production of such evidence either via its pleadings (if the disclosure request was filed by means of an incidental action, appeal or a separate additional appellate motion), or via its rebuttal brief (if the disclosure request was filed by means of pleadings).

28. Can parties rely on legal privilege to withhold documents from inspection?

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The court will give full effect to any applicable legal privilege under the law when ordering the disclosure of evidence (*Article 4(6), Law 45429/2018*). However, the HCC, following the relevant jurisprudence of the Court of Justice of the European Union, excludes in-house lawyers from legal privilege when ordering the disclosure of evidence.

Alternative dispute resolution

29. Can the parties seek to resolve the action through alternative dispute resolution?

Article 182 of Law 4512/2018 "On rules for the application of structural reforms of the financial adjustment programme and other provisions" (which does not come into force until September 2019, under Article 206 of the same law) will govern this matter. Under Article 182 of Law 4512/2018, it will be mandatory to submit several types of disputes to mediation as a prerequisite for their submission to a civil action. However, actions for damages for antitrust infringements do not currently fall into this category, and so at the time of writing they do not have to be submitted to mediation in order to be submitted to a civil action (although, of course, since this provision is not yet in force, it is possible that future amendments may be made to this law before it comes into force which will then include those actions within the mandatory category for submission to mediation).

Currently, under Article 214A of the Greek Code of Civil Procedure, the parties have the right, but not the mandatory obligation, to attempt to resolve a dispute concerning damages for an antitrust infringement prior to trial or at any stage of the proceedings before the issuance of a final court decision. Furthermore, under Articles 214B and 214C, the parties have the right to attempt to resolve the dispute either via out-of-court mediation prior to the filing of an action, or via court mediation during the proceedings, before the issuance of a final court decision.

The court before which the civil action is pending can propose to the parties either court or out-of-court mediation at any stage of the proceedings, depending on the specific case and taking into consideration any special circumstances. Under Article 867ff of the Greek Code of Civil Procedure, every private law dispute may be submitted to arbitration, so the parties have the right (but not the obligation) to submit a dispute concerning damages for a breach of competition law to arbitration. This can be domestic arbitration (where the rules of the Greek Code of Civil Procedure will apply) or international commercial arbitration (where the rules of Law 2735/1999 "On international commercial arbitration" will apply). Since alternative dispute resolution (ADR) is not compulsory, a refusal by either party to engage in ADR has no further implications for that party.

Under Article 15 of Law 4529/2018, where there is a consensual settlement of a dispute (either in or out-of-court), the overall claim of the settling injured party will be reduced by the settling co-infringer's (or co-infringers') share of the harm that the infringement of competition law inflicted upon the settling injured party. Even where the amount of the settlement is less than the original claim against that settling co-infringer(s), the overall claim will still be reduced by the original amount that the settling injured party had claimed against the settling co-infringer(s). Any non-settling co-infringer(s) cannot pursue the settling co-infringer(s) for any contribution towards any other amount

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due under the original claim. However, where the non-settling co-infringer(s) cannot pay the remaining damages that correspond to the original claim (either in full or in part), the settling injured party can still pursue the settling co-infringer(s) for the remaining amount due that cannot be paid by the non-settling co-infringer(s), provided that the settlement agreement made between the settling injured party and the settling co-infringer(s) does not expressly exclude this right.

Without prejudice to the provisions of the Greek Code of Civil Procedure related to arbitration, the court seized of an action for damages may suspend the proceedings before it for up to two years where the parties to that action are involved in consensual dispute resolution.

The tactical advantages of alternative dispute resolution proceedings are as follows:

- Alternative dispute resolution is a more cost-efficient and quicker form of resolution than a civil action.
- When a case is settled (via settlement or mediation), the ruling is final and the parties agree to waive any claims they have against each other under the dispute. First-instance court decisions can be subject to appeal, and appellate court decisions can be subject to appeal in cassation before the Supreme Court.
- HCC/EETT may consider compensation paid as a result of a consensual settlement prior to its decision to impose a penalty as a mitigating factor.

Settlement or discontinuance of an action

30. What are the tactical advantages and disadvantages associated with making an offer of settlement?

See *Question 29*.

31. Is permission required from the relevant court or tribunal to settle any action prior to or during trial?

No permission in required from the relevant court or tribunal where the parties agree to mediation. Under Article 214A of the Greek Code of Civil Procedure. the parties may, at any time following the initiation of legal proceedings and prior to a final decision being issued, agree to settle a dispute. Moreover, under Article 214C, the parties are entitled to seek the resolution of a dispute via out-of-court mediation prior to the filing of an action.

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The payment terms for the out-of-court mediator (who will be accredited by the Greek Ministry of Justice) are prescribed in Law 4512/2018. In particular, the parties are free to agree on the payment of the mediator. If no agreement can be reached, the payment depends on the working hours of the mediator. Settling any action will save both parties the elevated cost of engaging in a court hearing, supporting a case before the court, collecting evidence and filing pleadings since, once the case is settled, the court proceedings related to the same dispute are automatically terminated. The settling procedure per se does not incur any significant costs, except for the alternative dispute resolution option provided for under Article 214B of the Greek Code of Civil Procedure (that is, using a mediator), where the mediator's fees must be paid.

After the settlement agreement has been reached, the court does not have any jurisdiction to rule on the case. The relevant procedure following a settlement agreement may change once the special chambers have been formed in the Athens Court of First Instance and the Athens Court of Appeal to deal specifically with actions for damages for antitrust infringements (*see Question 7*), but currently the procedure is as follows:

- If the case has been brought before the Court of First Instance, either party can submit the settlement agreement, dated and bearing the signature of all interested parties, before the presiding judge and have it duly stamped and certified (*Article 214A, Greek Code of Civil Procedure*).
- If a case is brought before a mediator, as provided for by Articles 214B and 214C of the Greek Code of Civil Procedure, the parties and the mediator should sign the minutes of the settlement agreement and then submit them to the court secretariat. A stamp fee must be paid for this submission.

Under the Greek Code of Civil Procedure, the above provisions also apply to collective redress actions where they are submitted for settlement. Under Article 75(1) of the Greek Code of Civil Procedure, each co-claimant acts independently to the other co-claimants, and their actions and omissions do not affect the other claimants. Therefore, where a co-claimant decides to proceed to a consensual settlement with the infringer, the ongoing litigation of the other co-claimants continues.

Proceedings at trial

32. Are actions heard by a jury?

Currently, actions for damages are brought before the civil courts which are exclusively composed of professional judges (one or more, depending on the case), and there are no juries involved. This will remain the case even once the special chambers have been formed to hear actions for damages for antitrust infringements under Article 13 of Law 4529/2018.

33.How is confidential information protected during the course of proceedings?

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Under the provisions of the Greek Code of Civil Procedure, the pre-trial stage and any out-of-court proceedings are not public, and so only the parties to the action and the parties' legal representatives/attorneys can be involved into those proceedings. Third parties can only attend the hearing of the case (*Articles 112 and 113, Greek Code of Civil Procedure*).

With regard to the protection of confidential information during the judicial proceedings and requests for the production of evidence under Law 4529/2018, see *Question 26*.

34. What evidence is admissible?

With respect to evidence in the file of a competition authority, Article 7 of Law 4529/2018 stipulates that where such evidence falls under the category of prohibited evidence (that is, leniency statements and settlement submissions), and it is obtained by a natural or legal person by accessing that file, it will be deemed to be illegal in actions for damages for antitrust infringements, and will not be considered to constitute part of the case file or be taken into account by the court. The natural or legal person that produced such inadmissible evidence will also be liable to pay a penalty of up to EUR100,000.

Evidence in the file of the competition authority which is not covered by any of the restrictions or prohibitions to produce, and which is obtained by a natural or legal person by accessing that file, can be produced, but only by the natural or legal person that obtained possession of that evidence (or their successors). It cannot be produced by any other party, and any attempt to do so will be considered illegal.

In relation to other available evidence, the following rules apply:

- Evidence from criminal proceedings is admissible in private law litigation.
- Following an amendment to the Greek Code of Civil Procedure, the examination of witnesses in actions for damages for antitrust infringement before the civil courts is solely at the court's discretion, and will only be permitted where it is considered absolutely necessary from reviewing the case file (*Article 237(6)(7), Greek Code of Civil Procedure*).
- Expert evidence is admissible before the court, under Articles 368 to 392 of the Greek Code of Civil Procedure. Depending on the facts of each case, the court may, at its own discretion and at the request of one of the parties or *ex officio*, order an expert's opinion. In practice, such expert evidence takes the form of a written expert's report produced and signed by the appointed expert, which the court will assess under Article 387 of the Greek Code of Civil Procedure.

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Available defences

35. Is a "passing-on" defence available?

A "passing-on" defence is provided for by Article 11 of Law 4529/2018, which implements Articles 12 to 14 of the Antitrust Damages Directive.

Passing-on defence invoked by the defendant

The defendant in an action for damages for an antitrust infringement has the right to invoke and prove that the claimant has passed on the overcharge resulting from the infringement of competition law down the supply chain (*Article 13(1), Antitrust Damages Directive*). As outlined in the Explanatory Memorandum of Law 4529/2018 and Article 12(2) of the Antitrust Damages Directive, the injured party is solely entitled to compensation for the damage caused at the level of the supply chain where it is active.

Article 11(1) of Law 4529/2018 states that any person harmed by a competition law infringement (whether a direct or an indirect purchaser) is entitled to compensation (*see also Article 12(1), Antitrust Damages Directive*), provided, of course, that the casual link between the infringement and the damage suffered is proven. The CJEU ruling of 5 June 2014 on the *Kone AG Case (C-557/12)* has extended the interpretation of the concept of a causal link by acknowledging, essentially, that an individual may claim compensation for harm suffered as a result of a price cartel. This is the case even where that individual does not have a contractual link with a member of the cartel, but does have a contractual link with an undertaking not party to the cartel, whose pricing policy has been affected as a result of the cartel. The CJEU consequently held, at paragraph 34, that "the victim of umbrella pricing may obtain compensation for the loss caused by the members of a cartel, even if it did not have contractual links with them, where it is established that the cartel at issue was, in the circumstances of the case and, in particular, the specific aspects of the relevant market, liable to have the effect of umbrella pricing being applied by third parties acting independently, and that those circumstances and specific aspects could not be ignored by the members of the cartel".

Therefore, applying the passing-on defence in practice means that if the defendant is able to prove that the overcharge was passed-on by the claimant further down the supply chain, then any benefit received by the claimant will effectively reduce the amount of its claim.

Passing-on refers only to the actual loss of the injured party (direct or indirect purchaser): it does not affect the injured party's claim for loss of profits. Where a passing-on defence is established, a claim for loss of profits is created in favour of the injured party due to the partial or full passing-on of the overcharge (*Article 11 (2), Law 4529/2018*).

Law 4529/2018 does not include any specific provisions concerning the disclosure of evidence to prove the amount of the passed-on overcharge (*see Article 13, Antitrust Damages Directive*). However, Article 11(3) of Law 4529/2018 indicates that the competent court may determine the amount of the overcharge based on the standard of probabilities. This is an exception to the rule that the court should form a judicial conviction (that is, it should have no doubt) about the amount in question.

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To date, the Athens Court of First Instance has not applied the passing-on defence, as formulated under Law 4529/2018 or the Antitrust Damages Directive, and so no relevant decision has been issued. As a result, the relationship between the passing-on defence and other provisions of Greek law has yet to be clarified by Greek jurisprudence.

Passing-on defence invoked by an indirect purchaser
The passing-on defence may also be raised by indirect purchasers, since it is to be expected that, under commercial practice, price increases are passed on down the supply chain. In this case, the indirect purchaser will be deemed to have proven that a passing-on to it occurred where it shows all of the following:

- The defendant has committed a competition law infringement.
- That infringement has resulted in an overcharge for the direct purchaser of the goods or services that were the object of the competition law infringement.
- The indirect purchaser bought the goods or services that were the object of the competition law infringement, or bought goods or services derived from or containing these.

The presentation of this evidence is rebuttable (*see* *Question 9*).

36. Are any other defences available?

Under the provisions of the Greek Code of Civil Procedure, it may be possible, depending on the relevant circumstances of the case, for a defendant to raise one of the following defences:

- Lack of locus standi of the claimant (that is, the claimant has not suffered damages in the capacity set out in the action).
- Lack of locus standi of the defendant (that is, the defendant is the wrong party to sue).
- Lack of international jurisdiction and competence.
- Statute of limitations (that is, the claim is time-barred under the relevant statute of limitations).

For the relationship between parents and subsidiaries, see *Question 4*.

Available remedies

37. Are damages available, and if so, on what basis are damages awarded?

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Damages

Under Article 3 of Law 4529/2018, any natural or legal person who has suffered harm caused by an infringement of competition law may raise a claim for, and obtain, full compensation for that harm. This compensation includes actual loss and loss of profit, plus the payment of interest.

Since there are no specific provisions concerning restitutionary or exemplary damages, compensatory damages will apply.

Interest

The interest on the awarded damages covers the time period starting from the occurrence of the harm suffered as a result of the competition infringement until payment of the compensation (*Article 3(3), Law 4529/2018*).

38. How are damages quantified?

Under Articles 298 and 914 of the Greek Civil Code, damages are quantified on the basis of the actual losses and the loss of profits incurred by the claimant to the extent there is a direct causal link between the infringement and the harm suffered. The claimant bears the burden of proof and must provide evidence that proves the existence of all the elements of the tort (that is, that an infringement has occurred, that the defendant committed the infringing act, and that there is a causal link between the act in breach of competition law and the damage suffered by the claimant) in order for the claim to be adequately proved.

Under Article 14 of Law 4529/2018, the court is empowered to estimate the amount of harm, even though this estimation may be based on speculation on the amount of the damage, if it is practically impossible or excessively difficult for the claimants to precisely quantify the harm suffered on the basis of the evidence available. The court should take into account the type and extent of the infringement, as well as the diligence of the claimants, with regard to the collection and use of the evidence supporting their claim.

For the purpose of calculating damages, the court should refer to the Commission Communication "On quantifying harm in actions for damages based on breaches of Articles 101 or 102 of the Treaty on the Functioning of the European Union" (2013/C 167/07), as well as the Practical Guide on the Quantification of Harm in Actions for Damages Based on Breaches of Articles 101 or 102 TFEU which accompanies the Commission Communication. In the context of the Commission Communication and, especially, the accompanying Practical Guide, the Commission suggests several methods for the calculation of harm based on a counterfactual scenario (that is, comparing the actual position of the claimants with the position they would have found themselves had there been no infringement). The Commission Communication and the Practical Guide do not bind the court, but offer guidance to allow it to determine the amount of damages to be awarded.

The court will assess the amount of the harm caused according to the data provided by the claimant, taking into account the nature and scope of the infringement, and the diligence shown by the claimant in collecting and

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submitting relevant evidence to the court. The Supreme Court has previously held that where the information required to quantify the damage relates to the claimant's own business, then this information is considered easily accessible and should be presented before the court (*Supreme Court Decision No. 403/2016*). However, in quantifying damages following the enactment of Law 4529/2018, the court must now consider that cartel infringements are, by law, presumed to cause harm (and it is up to the defendant to rebut this presumption). The court may also seek to obtain the opinion of the HCC (or EETT) as regards the quantification of the damage. Since implementation of the Antitrust Damages Directive in Greece is fairly recent, there is currently no relevant jurisprudence to date concerning the courts' preferred economic approach in respect of quantifying damages for competition law infringements.

39. Are any other remedies available?

Following the enactment of Law 4529/2018, there are no other remedies available.

Appeals

40. Is it possible to appeal the judgment of the relevant court or tribunal?

Under Article 511 *et seq* of the Greek Code of Civil Procedure, every judgment issued by a first instance court may be appealed against before the competent appellate court by lodging an appeal, which must be based on errors of law and/or errors of fact. An appeal can be filed by either the defeated party, or by the successful party where its case has only been partially accepted. The appellate decision can further be appealed to the Supreme Court, although appeals in this instance are only permitted where they are based on errors of law (*Article 552 et seq, Greek Code of Civil Procedure*).

Once the special chambers provided for under Article 13 of Law 4529/2018 have been established, appeals against decisions of the special chamber for actions for damages for antitrust infringements heard in the Athens First Instance Court will be lodged before the special chamber of the Athens Court of Appeal.

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Reforms

41. Are there any reforms proposed or due regarding the legal regime applicable to private antitrust actions?

As far as we are aware, there no pending legislative reforms of Law 4529/2018. Further developments concerning Law 4529/2018 may be expected as case law on it evolves both at EU and national level. Under Article 20 of the Antitrust Damages Directive, this Directive will be up for review by the European Commission by 27 December 2020.

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Recent transactions

- Successfully representing the Attica Group, a leader in the provision of international ferry services in the Eastern Mediterranean Sea, on the merger clearance procedure before the Hellenic Competition Commission of its acquisition of sole control over Hellenic Seaways, the biggest merger in the maritime sector to have taken place in Greece.
- Successfully representing Hellenic Healthcare Sàrl, part of the CVC Group, on the merger clearance procedures before the Hellenic Competition Commission of its acquisition of sole control over IASO General and HYGEIA Group.

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- Represented a leading international group in proceedings before the Hellenic Competition Commission concerning alleged antitrust infringements in the context of public works tenders, including representing the client in the settlement procedure, resulting in no fine being imposed.

Languages. Greek, English, French

Publications

- *Merger Control International Series, Greece Chapter*, Sweet & Maxwell, 3rd Edition.
- *Public Contracts and Competition Law*, Greek Law Digest, 2016 edition.

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- Successfully representing Techtronic Industries in proceedings before the Multi-Member Court of First Instance of Athens for the rejection of the lawsuit filed against it by a Greek former business partner, UNIMAC Manufacturing and Trading of Machinery and Tools SA.
- Advising the subsidiary of a leading European insurance company in complaints and damages claims relating to life insurance products sold in the Greek market brought against it in the aftermath of the Cypriot banking crisis.
- Acting on behalf of the subsidiary of a leading denim jeans, clothing and accessories manufacturer in the filing of several claims, including a pending EUR25 million breach of trust and fiduciary duty, unfair competition, unpaid invoices and mismanagement claim against the subsidiary's former management and legal entities controlled by the latter.

Languages. Greek, English

Publications

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- *Getting the Deal Through Dispute Resolution, Greece Chapter,* 2018 edition.
- *ICLG to Enforcement of Foreign Judgments, Greece Chapter,* 2016.

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