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Greece

CARTELS

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This country-specific Q&A provides an overview of cartels laws and regulations applicable in Greece.

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1. What is the relevant legislative framework?

Greek Law 3959/2011 on the "Protection of Free Competition" (hereinafter "Competition Act" or "CA"), as amended by Law 4886/2022 "on the Modernisation of Competition Law for the Digital Era" (GG A' 12/24.01.2022) and in force is aligned with substantive EU competition law rules and also contains the main procedural and implementation rules. In particular, Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU") are directly applicable in Greece in cases with an EU dimension, whereas Articles 1 and 2 of the Greek Competition Act are equivalent provisions for national cases. Merger control provisions in the Competition Act follow the principles of the EU Merger Regulation.

However, a new clause 1A added by Law 4886/2022 is a first amongst the other EU jurisdictions. In particular, article 1A Law 3959/2011 "Invitation to collude and announcement relating to communicating future pricing intentions for products and services between competitors" aims to tackle two different forms of unilateral practices with negative effects on competition, consisting of: (a) invitation(s) to collude with the object of preventing, restricting or distorting competition in the Greek territory, or (b) announcement(s) relating to communicating mainly future pricing intentions for products or services between undertakings that are competitors ("price signaling") if the disclosure restricts competition in the Greek territory and is not an ordinary business practice.

Cartels / anticompetitive agreements and concerted practices between competitors:

Article 1 CA contains the general prohibition on anti-competitive agreements and arrangements between undertakings: "...all agreements and concerted practices between undertakings and all decisions by associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition in the Hellenic Republic shall be prohibited, and in particular those which: a) directly or indirectly fix purchase or selling prices or any other trading conditions; b) limit or control production, distribution, technical development or investment; c) share markets or sources of supply; d) apply dissimilar conditions to equivalent trading transactions, especially the unjustified refusal to sell, buy or otherwise trade, thereby hindering the functioning of competition; e) make the conclusion of contracts subject to acceptance, by the other parties, of supplementary obligations which, by their nature or according to commercial use, have no connection with the subject of such contracts. 2. Any agreements and decisions by associations of undertakings which come under paragraph 1 and to which paragraph 3 does not apply shall be automatically void [...]".

There is an exemption under Article 1 par. 3 of the Competition Act, similar to that of Article 101 par. 3 TFEU stating that: "Agreements, decisions and concerted practices which come under paragraph 1 shall not be prohibited, provided that they cumulatively satisfy the following preconditions: a) they contribute to improving the production or distribution of goods or to promoting of technical or economic progress; b) at the same time, they allow consumers a fair share of the resulting benefit; c) they do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives and d) they do not afford the possibility of eliminating competition or eliminating competition in respect of a substantial part of the relevant market".

Block Exemption: According to Article 1 par. 4 of the Competition Act, EU Regulations on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices (Block Exemption Regulations) shall apply mutatis mutandis to the implementation of the above paragraph 3, to agreements, decisions by associations of undertakings or concerted practices which are not likely to affect trade between Member States within the meaning of Article 101(1) of the TFEU.

Abuse of dominance: Article 2 of the Competition Act contains the prohibition of abusive exploitation of a dominant position: "It is prohibited for one or more

undertakings to abuse their dominant position within the national market or in a part of it. 2. Such abuse may, in particular, consist in: a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; b) limiting production, distribution or technical development to the prejudice of consumers; c) applying dissimilar conditions to equivalent trading transactions with other trading parties, especially the unjustified refusal to sell, buy or otherwise trade, thereby placing certain undertakings at a competitive disadvantage; d) making the conclusion of contracts subject to acceptance, by the other parties, of supplementary obligations which, by their nature or according to commercial practice, have no connection with the subject of such contracts".

Invitation to conclude a prohibited collusion and announcement of future pricing intent: On 01.02.2023 the Hellenic Competition Commission ('HCC') published Guidelines on the implementation of article 1A [available here in Greek: https://epant.gr/nomothesia/nomothesia-antagonismou/1a.html]. New Article 1A stipulates that:

It is prohibited for an undertaking to propose, coerce, motivate or in any way invite another undertaking to participate in an agreement between undertakings or in decisions of associations of undertakings or in concerted practices aimed at preventing, restricting or distorting competition in the Greek Territory and which consist in:

a. directly or indirectly fixing purchase or selling prices on a market, or
b. limiting or control production, supply, technological development, or investments, or
c. sharing markets or sources of supply.

An undertaking is prohibited from disclosing price, discount, supply or credit information about products or services it supplies or is supplied where:

a. the disclosure restricts effective competition in the Greek Territory, and
b. does not constitute a normal business practice.

In order to assess whether a disclosure restricts effective competition, the following shall be taken into account:

a. the degree of specification and the individual nature of the information;
b. whether the information relates to future activities;
c. the extent to which the information is readily accessible to the public;
d. whether the disclosure is part of a pattern of similar disclosures by the undertaking;
e. whether there is a history of past collusion in the specific market or industry between the same undertakings, and
f. whether the market to which the disclosure relates is concentrated and oligopolistic in nature.

Disclosure of information is not considered to restrict effective competition if it is addressed solely to the end users of the product or service.

Practices that fall under par. 1 and 2 are not prohibited, as long as they meet by analogy the conditions of par. 3 of article 1.

The undertakings with a total turnover of **less than fifty million (50,000,000) euros** and with **less than two hundred and fifty (250) employees are excluded** from the application of par. 1 and 2.

This Article is without prejudice to Articles 1 and 2 hereof or Articles 101 and 102 of the Treaty on the Functioning of the European Union. Where the conditions set out herein and in Articles 1 and 2 and Articles 101 and 102 of the Treaty on the Functioning of the European Union are met, including, inter alia, the exchange of commercially sensitive information, the latter articles shall apply to the exclusion of the present".

'Hence, it is worth noting that the new provision will only apply to the large players in the market meaning it will not be applicable to undertakings with a total turnover of less than fifty million (EUR 50 000 000) and fewer than two hundred and fifty (250) employees. Moreover, it does not apply to invitations or disclosures that occur in the context of a vertical relationship or in the context of a relationship between an undertaking and a final consumer, when this does not have a horizontal object or effect, that is, the invitation or the disclosure do not have as a real target an undertaking that is an actual or potential competitor. This new provision is without prejudice to the application of Articles 1 and 2 of the Competition Act, as well as Articles 101 and 102 TFEU and where the conditions set out in article 1A and in Articles 1 and 2 CA and Articles 101 and 102 TFEU are met, the latter articles shall apply to the exclusion of Article 1A.

Sector Regulation: Competition rules on the electronic communications and postal services markets are enforced by the national regulatory authority, National Telecommunications and Posts Commission ("EETT"), which supervises and regulates the electronic communications and postal services market. EETT is competent for the enforcement of competition law in the

electronic communications sector (article 113 L. 4727/2020). On the other hand, in the energy sector, the sector regulator Regulatory Authority for Energy (RAE) is an independent authority, with an advisory role and the task of monitoring the market and a consumer protection mandate, however it does not enforce competition law (Law 4011/2011). The HCC is responsible for enforcing competition law in the gas and electricity sectors. It is noted that in the media sector, the Competition Act is complemented by additional legal provisions. The HCC applies Law 3592/2007, Article 3, to media concentrations involving media of informative content. This provision sets dominance thresholds ranging from 25% to 35%, depending on the media markets under consideration, and applies to merger control as well as abuse of dominance enforcement. Unfair Competition: Rules on unfair competition (Law 146/1914), fall under the competence of the civil courts. There are no industry specific exemptions or sectoral exclusions. The Competition Act also applies to the commercial activities of Stated-Owned Enterprises (SOEs), without any exceptions regarding its application.

2. To establish an infringement, does there need to have been an effect on the market?

The HCC follows the legal principles of EU legislation and sources of law, and the interpretation of the EU Courts. Cartel conduct may constitute an infringement irrespective and without the NCA having to prove whether it had an anti-competitive effect on the market. The three “by object” restrictions in agreements between competitors are price fixing, output limitation and market sharing (sharing of geographical or product markets or customers) [see European Commission’s Guidance on restrictions of competition “by object” for the purpose of defining which agreements may benefit from the De Minimis Notice, 2014]. In order to determine whether an agreement reveals a sufficient degree of harm to competition that it may be considered a restriction of competition “by object”, regard is attributed to a number of factors, such as the content of its provisions, its objectives and the economic and legal context of which it forms a part. Although the parties’ intention is not a necessary factor in determining whether an agreement restricts competition “by object”, the Commission may nevertheless take this aspect into account in its analysis. The types of restrictions that are considered to constitute restrictions “by object” differ depending on whether the agreements are entered into between competitors (horizontal agreements) or between non-competitors (vertical agreements). In the former case of horizontal agreements, restrictions of competition by object include, in particular, price fixing, output limitation and sharing of markets and customers. Regarding vertical agreements, the category of restrictions by object includes, in particular, fixing (minimum) resale prices and restrictions which limit sales into particular territories or to particular customer groups.

The fact that an agreement contains a restriction “by object”, and thus falls under Article 101(1) TFEU does not preclude the parties from demonstrating that the conditions set out in Article 101(3) TFEU are satisfied. Nevertheless, restrictions by object are unlikely to fulfil the four conditions set out in Article 101(3). In exceptional cases, a restriction “by object” may be compatible with Article 101 TFEU because it is objectively necessary for the existence of an agreement of a particular type or nature or for the protection of a legitimate goal, such as health and safety, and therefore falls outside the scope of Article 101(1) TFEU. Agreements containing one or more “by object” or hardcore restrictions cannot benefit from the safe harbour of the De Minimis Notice (De Minimis Notice, 2014).

3. Does the law apply to conduct that occurs outside the jurisdiction?

According to Article 46 of the Law on the Protection of Free Competition [“Scope of application of the law”], this law applies to all restrictions of competition which affect or might affect Greece, even if these are due to agreements between undertakings, decisions by associations of undertakings, concerted practices between undertakings or associations of undertakings or concentrations of undertakings implemented or taken outside Greece or to undertakings or associations of undertakings which have no establishment in Greece. The same shall apply with regard to abuse of a dominant position in Greece. Therefore, the legal framework on free competition protection applies to conduct occurring outside the country where the particular conduct affects the country’s market.

4. Which authorities can investigate cartels?

Cartels are investigated by the HCC. The HCC constitutes an Independent Administrative Authority with legal personality, administrative and financial autonomy, appearing in its own right before any court and in any kind of judicial proceedings. It is the Greek National Competition Authority (NCA). Its members enjoy personal and functional interdependence, and in the exercise of their duties they are bound only by the law

and their consciousness and the principles of objectivity and impartiality. The authority includes two bodies: the Directorate General for Competition ("DGC") which conducts the investigation and the HCC Board, namely the decision-making body. The HCC's main statutory responsibilities and powers are to: investigate anti-competitive agreements and abuses of a dominant position and impose fines and other sanctions where applicable; order interim measures where an infringement is suspected and there is an urgent need to prevent an imminent risk of irreparable harm to the public interest; assess and approve concentrations between undertakings falling under the merger control provisions; conduct market studies and sector inquiries and recommend regulatory measures concerning the structure of the market; issue opinions on competition matters and on proposals to amend the Competition Act, pursuant to Article 23 CA and implement information and public awareness actions on competition policy; perform mapping of the conditions of the competition, in all markets or all sectors of the economy, when required for the effective exercise of its powers; cooperate with sector regulators, with the European Commission and European NCAs; and promote the values of competition and efficient regulation. According to Article 28 CA, the HCC, as the National Competition Authority, is responsible for cooperation: (a) with the competition authorities of the European Commission and for providing its designated bodies with the necessary assistance to undertake the investigations provided for under European law (b) with the competition authorities of other countries, and (c) with the competition authorities of other countries bilaterally and within the framework of international and regional cooperation networks. Thus, the HCC cooperates with the European Commission and the European Competition Network (ECN) in enforcing EU competition rules, in the context of Regulation (EC) 1/2003. The above are without prejudice to EETT competence, mentioned above; namely, regarding electronic communications and postal services markets, see under Question 1.

5. What are the key steps in a cartel investigation?

Key steps in a cartel investigation – Initiation of Procedure (see Articles 15, 25 and 36 of the Law on Protection of Free Competition): A cartel investigation is launched upon a) the HCC's initiative / ex officio initiation, b) a complaint filed by any third party.

Key procedural steps: Once alleged cartel conduct comes to its attention, the HCC uses its formal powers of investigation (requests for information, on-premises investigations or 'dawn raids', etc.) to find sufficient evidence of an infringement. Cases which fulfil the particular priority criteria set by Law are introduced before the HCC. The score is basically the ratio of the impact of an investigated practice to the achievement of time and human resources savings in terms of enhancing the efficiency of the HCC's operation. Also alleged infringements for which the statute of limitations is about to expire are prioritized (see HCC prioritization decision 696/2019).

Each case shall be assigned by lot, by the HCC plenum, to one of the Commissioners Rapporteurs, as soon as a decision concerning the priority consideration of the case is issued. Commissioners Rapporteurs are assisted by the case handlers of the Directorate-General for Competition.

The Rapporteur issues a Statement of Objections ('SO'), and the parties are granted access to the non-confidential information on the HCC's file and have the opportunity to respond in writing and in the course of an oral hearing. The SO shall be submitted to the Plenary or the corresponding chamber, as appropriate, within 150 days from the assignment of the case, without prejudice to the time-limits prescribed in Articles 5 to 10. This time-limit may be extended by the President for a period not exceeding 60 days.

After considering the parties' submissions, the Commission issues an infringement decision, or a commitments decision, or a decision abstaining from finding an infringement if the evidentiary threshold is not attained, or a settlement decision (see below).

On 21.03.2023, the new Regulation on Operation and Management of the HCC (hereinafter: O&M Regulation) entered into force. In the discussion before the Competition Commission, the persons who submitted the request or the complaint may appear in person or together with or represented by an attorney-at-law and they shall be summoned to attend 60 days before the discussion, as will the undertakings and associations of undertakings against which the proceedings before the Competition Commission were initiated. The parties are required to file their initial Submissions no later than 30 days and the Addendum no later than 20 days before the hearing (Article 14(2) and (4) O&M regulation).

The use of the teleconferencing process is decided by the Competition Commission, at its sole discretion. Minutes shall be kept throughout the proceedings. Decisions of the Competition Commission shall be notified to all parties concerned, under the responsibility of the Secretaries of the Commission in accordance with the provisions of this Law.

Investigations timeline: The timeline of the investigative

phase varies significantly according to the circumstances of each case, extending, as a general rule, over several years. In the investigative phase, there is no set deadline for the HCC investigative body. After assigning the case to the Rapporteur, the latter shall, within a period of 150 days, submit the SO to the HCC Plenary Session or Division. This deadline can be extended up to 60 days following a request from the Rapporteur. The HCC shall issue a decision on the case within 15 months period starting from the Rapporteur's appointment. This deadline can be extended up to 2 months if further investigation deemed necessary (indicative timelines). There is a five-year limitation period for the imposition of penalties, commencing on the date on which the infringement was committed or, in the case of continuing or repeated infringements, on the date on which the infringement ceased according to Article 42 CA. Any action taken by the HCC, the European Commission or any other competent competition authority of a Member State, for the purpose of the investigation or proceedings in connection with the specific infringement, shall interrupt the limitation period for the imposition of fines and periodic penalty payments.

6. What are the key investigative powers that are available to the relevant authorities?

The investigative powers granted to the HCC are prescribed through Articles 38 and 39 CA which, in essence, reflect the investigative powers of the European Commission under Regulation (EU) 1/2003. In particular, the HCC may request in writing information from undertakings, associations of undertakings or other natural or legal persons or public or other authorities (art. 38 CA).

Article 38 (2A) provides that the HCC President or the HCC official authorised by him/her, may summon any representative of a company or association of companies, representatives of companies or associations of companies, representatives of other legal persons, as well as any other natural person to sworn or unsworn witness statements.

Moreover, per Article 38 (2B), the HCC President or authorised official may call to deliberations any representative of a company or association of companies, representatives of companies or associations of companies, representatives of other legal persons, as well as any other natural person. Furthermore, regarding the conduct of investigations and inspections, officials of the Directorate General for Competition have the investigative powers of tax auditors (art. 39 CA). In particular, they have the authority:

a. to inspect all types and categories of books, records and other documents of the undertaking or association of undertakings, including the business emails of the undertaking, the directors, the chief executive officers, the managers and the persons entrusted with the administration or management in general and the staff of the undertaking or association of undertakings, regardless of how and where they are stored, and to take copies or extracts of them and have the right of access to all information accessible to the undertaking under inspection;
b. to seize, receive or obtain, in any form, copies or extracts of books, documents and other records, and electronic storage and transmission of information relating to professional information, and where they consider it appropriate, to continue the investigation for information and to select copies or extracts at the premised of HCC or at any other designated premises;
c. to inspect and collect information and data from mobile terminals and portable devices and their servers and the cloud computing, in cooperation with the competent authorities on a case-by-case basis, located inside or outside the premises of the undertakings inspected or their associations;
d. to carry out inspections in the offices and other premises and means of transport of the undertaking or association of undertakings;
e. to seal any professional premises, books or documents for the period of and to the extent necessary for the inspection;
f. to carry out inspections in premises, land, and means of transport other than those referred to in subpar. (d) of par. 1 of Article 39, including the residencies of the businessmen, directors, chief executive officers and persons entrusted with the management or administration in general and of the staff of the undertaking or association of undertakings, where there is reasonable cause to suspect that they are keeping books or other documents pertaining to the undertaking and the purpose of the inspection and the purpose of the inspection may be important to establish an infringement;
g. to take, at their discretion, sworn or unsworn witness statements, subject to the provisions of Article 212 of the Code of Criminal Procedure, and to ask any representative or member of staff of the undertaking or association of undertakings or any third

person for explanations of facts or documents relating to the subject matter of the investigation and to record their respective answers.

In addition to the above, the HCC may address compulsory requests for information also to public or other authorities and the latter have a duty of cooperation (to provide information). In case the subject of the investigation refuses to accept the investigation, and in all cases of inspections of non-business premises, a judge or public prosecutor should be present and article 9 of the Constitution on the asylum of residence shall be respected.

7. On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?

In Greece, legal privilege is protected by the Greek Constitution and, in other areas of law, has been interpreted as covering all documents and information linked to the lawyer's activity (see art. 38 of the Lawyers' Code of Conduct), not distinguishing between in-house lawyers and independent lawyers.

The interpretation of HCC, however, as a matter of practice, follows EU competition case-law according to which, the protection is subject to two conditions: First, the communication must be made for the purposes and in the interests of the client´s rights of defence in competition proceedings. Secondly, the protection only applies to communications emanating from independent lawyers, i.e. lawyers who are not bound to the client by a relationship of employment. This condition applies to any lawyer entitled to practise his profession in one of the Member States.

Thus, the legal professional privilege applies to communications between independent lawyers and their clients and is connected to the client's rights of defence. Communications to and from in-house lawyers are not considered by the HCC to be covered by the legal professional privilege on the basis of EU jurisprudence.

8. What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?

Article 29B – 29Z CA, as well as HCC Decision 791/2022 set out the national legal framework under which exemption from the payment of fines or fine reduction shall be granted to undertakings and associations of undertakings which participated independently in a horizontal cartel and on persons who contribute to the investigation of horizontal restrictive practices (cartels) under Article 1 of this law or Article 101 TFEU. The national Leniency Programme (LP) is in general aligned with the respective LPs across the Union, a key objective of the ECN+ Directive, and it is only applicable to horizontal cartels laid down by Article 1 CA and 101 TFEU and to specific legal and natural persons involved in cartels, which are liable to a fine under article 25 and 25B CA. A novelty is that Art. 29B CA "Leniency Programmes for secret cartels" provides that associations of undertakings are eligible for immunity from fines or reductions of fines in cases they participate in an alleged cartel on their own.

Under the national LP, there are two types of immunity, full or partial immunity. Regarding full immunity, complete exemption from fines shall be granted to the applicant who:

a. discloses its participation in a cartel;
b. has not sought to coerce other undertakings to join or to remain in a secret cartel;
c. will be the first to submit evidence which:

- either, provide, at the time of the application, the HCC, with the possibility to carry out a targeted investigation in relation to a possible horizontal cartel for which the Competition Commission did not previously have sufficient evidence to carry out such an investigation or had not already carried out such an investigation , or
- at the discretion of HCC, it is sufficient to establish a horizontal cartel of Article 1 CA or Article 101 TFEU, for which HCC had not, by the time of the application, sufficient evidence allowing it to establish such an infringement and no other undertaking meets, at the time of the application, the conditions for an exemption under indent ca) regarding the infringement; d) fulfils the general leniency conditions set out in Article 29C.

Article 29D (2) CA titled "Immunity from fines" provides that in cases where the HCC rejects an application for exemption from fines, the applicant concerned may request the HCC to examine its application as a request for a reduction of the fine.

9. What level of leniency, if any, is available to subsequent applicants and

what are the eligibility conditions?

Regarding reduction of fines (partial immunity) for subsequent applicants, Article 29E of the Competition Act provides that the HCC grants a reduction of fines to an undertaking, an association of undertakings or to a natural person where: a) the conditions for the granting of full immunity are not met, b) discloses its participation in a horizontal cartel; c) provides the HCC with evidence of the alleged cartel, representing significant added value with respect to the evidence already in the HCC's possession at the time of the request, d) fulfils the general conditions for leniency set out in Art. 29C (see below). With regard to the extent of reduction, significant added value for type 2 applications shall not be rewarded with a reduction of any fine of more than 50 per cent%. This reduction rises to 70% with regard to natural persons.

10. Are markers available and, if so, in what circumstances?

Under Article 29F of the Competition Act, the applicant may request a "marker". The granting of a marker protects the applicant's place in the queue for leniency for a period to be determined as appropriate, thus allowing it to collect within the said period the information and evidence necessary in order to meet the minimum conditions and requirements for immunity. The granting of the marker is at the discretion of the HCC. Where a marker is granted, the HCC Chairman determines the period within which the applicant has to 'perfect' the marker by submitting the information required to meet the relevant evidential threshold for immunity. If the applicant perfects the marker within the set period, the information and evidence provided will be deemed to have been submitted on the date when the marker was granted. The applicant must justify his/her application for a market and provide the HCC with the application, his/her name and address and information on: (a) the names and addresses of all other undertakings that participate or have participated in the suspected cartel, (b) the affected product/products and the territories, (c) the duration and nature of the suspected cartel, (d) information on already submitted or future leniency applications to any other competition authorities, inside or outside the European Union, in connection with the suspected cartel.

11. What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?

When deciding on immunity or fines reduction, the HCC takes into account the extent and consistency of the cooperation of the undertaking and/or the individual after the date of submission of the evidence. In order for undertakings and natural persons to be granted full immunity, general, cumulative requirements should be met (on-going cooperation, art. 29C CA of the LP). In particular:

a. The applicant should cooperate fully, genuinely, on a continuous basis and expeditiously with the HCC, from the time it submits its application throughout HCC's administrative procedure for the examination of the case for all parties involved, and in particular: aa) by providing the CA promptly with all relevant information and evidence that comes into the applicant's possession or under its control; (bb) remaining at the disposal of the CA to reply promptly to any requests that, in the CA's view, may contribute to the establishment of relevant facts; (cc) not destroying, falsifying or concealing relevant information or evidence; (dd) unless and to the extent otherwise explicitly authorised by the CA, not disclosing the fact or any of the content of the leniency application at least before the CA has notified its objections to the parties, and (ee) making current and, to the extent possible, former employees and directors available for interviews with the CA.
b. In case the application is submitted by an undertaking or an association of undertakings, it shall terminate its involvement in the alleged infringement no later than the time it submits its formal leniency application, unless the HCC demands the continuation of its participation in order to facilitate the HCC investigation;
c. For submitting a leniency application to the HCC, the undertaking or natural person must: aa) have refrained from destroying, falsifying or concealing relevant information or evidence that could fall within the scope of the leniency application, and bb) have not disclosed to any third party, with the exception of other NCAs and the Commission, the fact that it intends to submit a leniency application and its content. This exclusion shall not apply to natural persons who have acted on behalf of the first undertaking. With regard to the form and the content of the submission, the submission must be provided in a corporate statement accompanied by other evidence related to the alleged cartel. Corporate statements (in either written or oral

form) should generally include: a detailed description of the relevant conduct; contact details of the applicant and other members of the alleged cartel; and information about which other competition authorities have been (or will be) approached. The HCC accepts oral corporate statements in order to protect leniency applications from disclosure in civil proceedings.

12. Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?

A cartel infringement of Art. 1 par. 1 CA and Art. 101 TFEU is a criminal offence, and natural persons who participate to the cartel may be punished (art. 44 (1) CA) by imprisonment of between two and five years and a pecuniary sanction in a range from EUR 100,000 to EUR 1 million. According to Art. 44 par. 3A CA as in force (upon amendment by virtue of Law 4635/2019 and Law 4886/2022), if an application for leniency is approved, pursuant to article 29B CA providing for total immunity from fine or reduction of fine and full payment thereof, no criminal sanctions will be imposed on the above individuals.

Furthermore, persons who commit or are involved in a cartel shall go unpunished if they report it of their own volition along with evidence, prior of being examined in connection with their act, to the Public Prosecutor, the Competition Commission or any other competent authority and no criminal sanctions are imposed against those individuals (Article 44 par. 4 CA). In all other circumstances, these persons' significant contribution to uncovering the cartel and submitting evidence to the competent authorities will be deemed to be mitigating circumstances on the basis of which reduced sanctions are imposed in accordance with Article 83 of the Penal Code. Thus, the imposition of a reduced fine according to Article 29C of the Competition Act, constitutes a mitigating circumstance in itself on the basis of which reduced sanctions will be imposed pursuant to Article 83 of the Penal Code.

Regarding employees, no criminal sanctions will be imposed against employees of an undertaking that has been granted immunity or fine reduction. It is noted that an individual (current or former employee) can apply for personal immunity from criminal liability irrespective of whether the company makes a leniency application. According to Article 44.3B of Law 3959/2011, where: a) an application for leniency is approved, pursuant to article 29(B) providing for total immunity from fine or reduction of fine and full payment thereof, the former and current directors, executives and other staff members, as well as any other responsible person of par. 5 of article 25B shall be relieved from any administrative penalty and fines imposed in non- criminal judicial proceedings, provided that said persons cooperated actively with the Competition Commission during the investigation of the infringement and that the application for leniency program or for settlement procedure was submitted before they were duly informed of the criminal prosecution against them.

13. Is there an 'amnesty plus' programme?

No. There is no 'amnesty plus' programme in the Greek Leniency provisions.

14. Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for doing so?

Yes, settlement is provided in Article 29a of the Competition Act and HCC decision 790/2022. In particular, according to Article 29a CA, by decision of the plenary of HCC, a procedure for settlement may be established for undertakings which admit their participation in the restrictive practices attributable to them in violation of articles 1, 1A and 2 of the Competition Act or/and article 101 and 102 TFEU.

To be noted that, Article 29A stipulates that the Settlement Procedure to vertical agreements, abuse of dominance and Article 1A "Invitation to collude and announcement relating to communicating future pricing intentions for products and services between competitors", as opposed to of the pre-existing Settlement Procedure which reserved settlements only to participation in horizontal restrictive practices. Pursuant to the provision of article 52 CA titled "Transitional provisions", until the issuance of the implementing HCC decision, the current decision of the Competition Commission (i.e. HCC decision 628/2016) with respect to the terms, conditions and procedure for settlement regarding horizontal agreements shall apply.

Thus, the Settlement Procedure concerns cases where undertakings or associations of undertakings make an unequivocal acknowledgement of participation and liability in relation to their participation in anti – competitive agreements (both horizontal and vertical, as well as unilateral practices, such as abuse of dominance and invitation to collude and announcement relating to communicating future pricing intentions for products and

services between competitors) and the subsequent breach of competition law. Companies subject to settlement procedure can obtain a reduction of 15% to the fine otherwise imposed. The Settlement Procedure is essentially modelled after the EU settlement procedure and aims at simplifying and expediting the handling of pending cases. In addition, the settlement procedure may lead to a reduction in the number of appeals against the HCC's decisions before administrative courts. In the context of the settlement procedure, the parties shall not request full access to the file or an oral hearing before the HCC's Board. Companies subject to a settlement procedure waive their right to appeal the HCC's decision with respect to specific aspects, such as the validity of the procedure. Hybrid settlement decisions in which some of the defendants settle while others follow the standard procedure are possible and have been adopted to date by the HCC (e.g. in the construction, cosmetics, electrical contractors and printed media sectors).

Settlements are not incompatible with leniency (the two procedures may apply concurrently and the fine reductions in this case shall apply cumulatively). Settlements are incompatible with commitments since in the latter procedure no acknowledgement of participation in the cartel and liability takes place: contrary to settlements, which are contained in infringement decisions, commitments decisions do not establish an infringement or impose a fine. Companies which become aware of the existence of a cartel investigation may already at any stage, even an initial one, indicate to the HCC their interest in exploring settlements (in case an SO has been issued, up to 35 days before the oral hearing is set). Settlement discussions start once the Directorate General of the HCC has analysed the evidence. Court approval is not required.

Discussions for settlement commence at the interested party's initiative by contacting the General Directorate for Competition. At this stage, HCC may, at its full discretion, decide whether the case is suitable for settlement procedure or not and initiate the settlement procedure by virtue of its decision, if it deems appropriate, at its unfettered discretion. It should be noted that the HCC may discontinue the procedure at any stage. It is also the case that a party may withdraw from the settlement procedure at any time; in such case the normal procedure will be initiated for such party when settlement procedure for the rest of the undertakings is completed. If the HCC decides to commence the settlement procedure, the HCC and the parties get into bilateral discussions on case-relevant information. In particular, for the undertakings to make an informed decision, the HCC and the parties hold bilateral meetings in which information about the case is disclosed. This includes the facts known to the authority, the specific evidence indicating an infringement and the range of fines that would be imposed on the business. During this phase, the parties make statements and written submissions to present their arguments. These are treated as confidential and cannot be used in other proceedings, such as follow-on damage claims. Upon conclusion of the bilateral discussions, the interested party shall, within a set deadline, submit a Settlement Proposal accepting liability for the infringement and the maximum amount of fine. The HCC may accept or reject the Settlement Proposal. If one or more of the alleged participants use their right to opt out of the procedure, the HCC may settle with the remaining alleged participants.

15. What are the key pros and cons for a party that is considering entering into settlement?

Possible advantages for parties considering a settlement are: a) Expediting the proceedings before the HCC in cartel cases; b) increased options to be informed earlier of potential objections and of the evidence supporting them, as well as of the likely range of fines, prior to the adoption of the final decision; c) 15% reduction of fine (comparing with the amount that would be imposed if the settlement had not occurred); d) according to Article 44 par. 3A, 3B and 3C CA, criminal and administrative liability is waived (including fines imposed in non-criminal judicial proceedings), as well as exclusion from public tenders or concession contracts, except in the case of repeated infringement / recidivism, provided the fines are paid in full, or, in case of a facilitated partial fine payment, for as long as the arrangement is in force and the party complies with its terms.

Disadvantages: The clear and unequivocal acknowledgement of participation and liability in relation to the participation in a cartel contained in the course of a settlement procedure might encourage third party claims for damages. Other conditions ensuing from the settlement are the waiver of the parties' right to obtain full access to HCC's file or to be heard in an oral hearing, as well as to challenge HCC's jurisdiction and the validity of the procedure followed. In practice, and although not formally prohibited, parties to a settlement may not successfully appeal the HCC decision before national courts.

16. What is the nature and extent of any cooperation with other investigating

authorities, including from other jurisdictions?

According to Article 28 CA, the HCC, in its capacity as a National Competition Authority, is responsible for cooperation:

a. with the European Commission, providing its designated bodies with the necessary assistance to undertake the inspections provided for under European law,
b. with the competition authorities of other countries and
c. with the competition authorities of other countries bilaterally and within the framework of international and regional cooperation networks. HCC may conclude memoranda of cooperation with competition authorities of other countries to promote cooperation between them. In this context, Article 28A specifies the cooperation between competition authorities in the context of investigative measures.

In particular, the HCC may request a competition authority of a Member State to take any investigative measure on its territory, in accordance with its national law, in its name and behalf, in order to determine the extent to which undertakings or associations of undertakings do not comply with investigative measures ordered or decisions issued by the HCC.

Moreover, Article 28B sets forth the service of documents of competition authorities procedure in line with Articles 25 and 27 of ECN+ Directive. Article 28C CA provides for the enforcement of decisions from competition authorities of Member States: At the request of the NCA of another Member State, the HCC proceeds to all the necessary actions for the enforcement of decisions imposing fines or periodic penalty payments adopted during procedures for the implementation of Articles 101 or 102 TFEU, provided that the decision is final and the undertaking liable for the payment of the fine does not have sufficient resources in the Member State of the requesting authority to be able to recover the fine or penalty. The said possibility of the HCC applies additionally in the event the undertaking concerned does not have an establishment in Member State of the requesting authority. The HCC is also entitled to request the competition authorities of other Member States to enforce its final decisions imposing fines or periodic penalty payments in proceedings for the application of Articles 101 or 102 TFEU.

Regarding international cooperation, the HCC participates actively in ECN's work and cooperates with other NCAs and the Commission within ECN groups. Greece is also an active member of the International Competition Network (ICN), as well as of the Organisation for Economic Co-operation and Development -OECD- (the President of the HCC was re-elected in 2023 as a regular member in the Bureau of the OECD Competition Committee).

Moreover, according to Article 24 CA, the HCC shall cooperate with regulatory or other authorities which monitor particular sectors of the national economy, and shall assist such authorities, upon request, on matters of application of Articles 1 and 2 of this Law and Articles 101 and 102 TFEU in the relevant sectors (Article 24 CA). Thus, the HCC cooperates with sector/ industry – specific regulators, as well as with other public authorities / agencies. In this context, further to the Memoranda signed with EAADHSY (Hellenic Single Public Procurement Authority), the Hellenic Regulatory Authority for Energy (RAE), and the Regulatory Authority for Ports (RAL), in 2022, Memoranda of Cooperation were signed between the HCC and the Hellenic Capital Market Commission (HCMC), as well as the Hellenic Data Protection Authority (HDPA), respectively. The HCC also cooperates with other bodies and Authorities to gather data for its Economic Intelligence, whereas also it has signed MoUs with various Consumers' Organizations.

Moreover, the HCC has dedicated cooperation agreements with several countries' NCAs with a view to foster and extend cooperation bilaterally.

17. What are the potential civil and criminal sanctions if cartel activity is established?

Civil sanctions: By virtue of Law 4529/2018, substantive and procedural rules were introduced with the aim of facilitating the effective exercise of the rights of injured parties to seek compensation for antitrust infringements. This law complements the general rules of civil liability under the Civil Code (CC) but is *lex specialis vis-à-vis* the latter. Law 4529/2018 facilitates the disclosure of evidence, the passing-on defence and the quantification of harm.

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 shall 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:

a. Its market share in the relevant market was below 5% at any time during the infringement of competition law.
b. 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:

a. The SME concerned led the infringement of competition law, or coerced other undertakings to participate in the infringement.
b. 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 the immunity recipient will be jointly and severally liable to:

a. Its direct or indirect purchasers or providers.
b. 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 corresponding part of the compensation that can be attributed to them. The court determines each co-infringers' liability on the basis of their respective 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 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.

Criminal Liability (Article 44 CA): Imprisonment from two to five years and fines ranging from 100.000 to 1.000.000 Euros, in case the illegal collusion refers to cartel activities taking place between competitors (see above under). The power to impose criminal sanctions lies with the criminal courts.

18. What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?

In case of infringement, the Competition Law provides for administrative sanctions and fines against the participating undertakings (art. 25 CA). In particular, the HCC may decide, either alternatively or cumulatively, to: (a) address recommendations; (b) require the undertakings to bring the infringement to an end and desist in the future, (c) impose behavioural or structural remedies, necessary and appropriate for cessation of the infringement and proportionate to its nature and gravity. Structural remedies shall be allowed only where no equally effective behavioural remedies exist or where any equally effective behavioural remedies are liable to be more burdensome than structural remedies; (d) impose a fine on undertakings and associations of undertakings that committed an infringement intentionally or negligently; (e) threaten a fine pursuant to art. 25B (1) or (2) or both where the infringement is continued or repeated; (f) impose the threatened fine of art. 25B (1) or a financial sanction according to par. 2 of the same article or both, when, by its decision, the continuation or repetition of the violation or the failure by the undertakings or associations of undertakings to fulfil a commitment undertaken by them is confirmed, which has been made compulsory by a decision pursuant to Article 25C, or the non-observance of imposed behavioral or structural measures. According to Article 25B par. CA, the fine threatened or imposed under paragraph 1(d), (e), (f)and (g) of Article 25 CA must be effective, proportionate and dissuasive, and can reach up to up to ten percent (10%) of the total worldwide turnover of the undertaking in the business year preceding the decision. In the case of a group of companies, calculation of the fine shall take account of the total worldwide turnover of the group.

Pursuant to Article 25B (5), regarding natural persons, the owners of a single-person enterprise, in the case of civil and commercial companies and joint ventures, the managers and all general partners, and in the case of public limited companies, the members of the board and those persons responsible for implementing the relevant decision and in listed public limited companies, the executive members of the board of directors, while, in associations of undertakings, their supreme governing

body shall be liable by means of their personal assets, jointly and severally with the undertaking concerned for payment of the fine. Any responsibility for decisions of the collective bodies of the undertaking or the association of undertakings, taken by a majority, lies solely with those who voted in favour thereof. HCC may impose on such persons, after their prior hearing, a separate administrative fine of between €200,000 and €2 million if they have demonstrably participated in preparatory acts, the organisation or commission of the anticompetitive agreement or practice. For the calculation of the fine, special account shall be taken of their position in the undertaking and the extent of their participation in the unlawful act.

According to Article 25B (1) CA, the fine for cartels (and, in general, for infringements of Articles 1, 1A and 2 and 11 CA or Articles 101 and 102 TFEU may be up to 10 per cent of the total worldwide turnover of the undertaking for the financial year in the business year preceding the decision. This provision is aligned with the respective Article 15 of the ECN + Directive. In case of a group of companies, calculation of the fine shall take account of the total worldwide turnover of the group. In determining the level of the fine, account must be taken of the gravity, duration and geographical scope of the infringement, the duration and nature of participation in the infringement by the undertaking concerned, and also its economic benefit derived therefrom. Where it is possible to calculate the level of economic benefit to the undertaking from the infringement, the fine shall be no less than that, even if it exceeds the percentage stated above. For the purpose of imposing the fine, the concept of undertaking covers the parent companies, within a single economic entity, the partial and total universal successors in case of corporate transformations and the acquirers of the business after the occurrence of the infringement, if the infringer is unable to pay the fine or other fine imposed at the time of their imposition. Furthermore, Article 25B (3) CA provides that, when determining the amount of the fine to be imposed, the HCC hall take into account as a mitigating circumstance, any compensation paid to the parties injured by the anti-competitive practice in question, or to a significant number of them, in the context of a consensual settlement. If the consensual settlement is pending, HCC may suspend the adoption of the decision imposing the fine for a period not exceeding three (3) months.

In July 2022, the HCC adopted its new Guidelines on the method of setting fines on undertakings that infringe both national and EU competition rules. In general, the Guidelines reflect the respective EU Guidelines on the method of setting fines imposed further to Regulation No. 1/2003 (“EU Guidelines”). With reference to the methodology adopted by the HCC on the fines calculation, the HCC follows a two – step procedure. Firstly, it sets a basic amount of the fine for each undertaking or association of undertakings taking into account the gravity, the duration, the geographic scope of the infringement, as well as the duration and the type of participation in the infringement of the specific undertaking. Secondly, it may adjust that basic amount upwards (in case of aggravating circumstances) or downwards (in case of mitigating circumstances). With regard to aggravating factors, the HCC may take into account factors such as undertaking’s recidivism, refusal to cooperate with or obstruction of the HCC in carrying out its investigations and the role of leader in or instigator of the infringement. The HCC will also pay particular attention to any steps taken to coerce other undertakings to participate in the infringement and/or any retaliatory measures taken against other undertakings with a view to enforcing the practices constituting the infringement. Regarding mitigating factors, the HCC may reduce the basic amount, in case of existence of mitigating factors, such as: where the undertaking provides evidence that the infringement has been committed as a result of negligence, where the undertaking concerned provides evidence that it terminated the infringement as soon as the first intervention of the Directorate General (e.g. following the first dawn raid), where the undertaking provides evidence that its involvement in the infringement is substantially limited and where the undertaking concerned has effectively cooperated with the HCC outside the scope of the Leniency Programme Notice and beyond its legal obligation to do so. Moreover, para. 19 of the HCC Guidelines provides that the Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect; to that end, it may increase the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.

In practice, the maximum level of fines that has been imposed in the case of recent cartels was in 2017, when record total fines of approximately €81 million regarding several collusion schemes in tenders for public works / construction sector (Bid rigging in public procurement) were imposed. In this case, the highest fine on an individual undertaking (EUR 38.5 million) was imposed by the HCC. In this case of the construction cartel, the HCC took also into account the dire state of the construction sector during the economic crisis, justifying a reduction in the level of the fines (see indicatively HCC decision 755/2021).

19. Are parent companies presumed to be jointly and severally liable with an

infringing subsidiary?

Article 25B specifies that for the purpose of imposing the fine, the concept of enterprise covers the parent companies, within a single economic entity, as well as the partial and total universal successors in case of corporate transformations and the acquirers of the business after the occurrence of the infringement, if the infringer is unable to pay the fine or other fine imposed at the time of their imposition.

20. Are private actions and/or class actions available for infringement of the cartel rules?

Private actions for cartel infringements are available in the Greek jurisdiction and are regulated by Law 4529/2018 (transposing Directive 2014/104/EU – the Damages Directive), the Greek Civil Code and the Greek Code of Civil Procedure (pl. see above under 6.1). A prior finding of the infringement from HCC is not required to bring such a claim in civil courts but such a finding would be binding for the court. Class actions are not provided for cartel infringements in the Greek Jurisdiction.

21. What type of damages can be recovered by claimants and how are they quantified?

Under Greek law, anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association, irrespective of the fines imposed in the context of public enforcement. Law 4529/2018 provides for full compensation, including actual damage, loss of profit and interest from the time when the harm occurred until the time when compensation is paid. Punitive damages are not available in the Greek jurisdiction. With respect to the quantification of harm, the requisite standard of proof is a reduced standard of probability (article 14 of Law No. 4529/2018). The national courts are empowered to estimate the amount of harm if it is established that a claimant suffered harm, but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available. It is presumed that cartel infringements cause harm. The infringer has the right to rebut that presumption. The same reduced standard (probability) also applies with regard to quantifying the overcharge in the context of the passing-on defence (article 11 (3) of Law No. 4529/2018). The HCC may, upon request of a national court, assist that national court with respect to the determination of the quantum of damages where it considers such assistance to be appropriate.

22. On what grounds can a decision of the relevant authority be appealed?

According to Article 30 par. 1 CA, the decisions of the HCC are subject to an appeal, filed before the Athens Administrative Court of Appeals within a time-limit of sixty (60) days following notification of the HCC's decision. The Administrative Court of Appeal of Athens acts as a court of first instance and effects full review on the merits of the case. The Court reviews the case on the basis of the law (i.e. legality) and of the facts. HCC decisions can be upheld or annulled, or the Court may uphold the decision in substance and reduce the amount of the fine imposed or refer the case back to the HCC. In addition, according to Article 32 CA, a petition for annulment before the Conseil d' Etat (the Council of State) against the decision of the Athens Administrative Court of Appeal can be filed within 60 days following the issuance of the decision of the Athens Administrative Court of Appeal. The appeal before the Council of State is limited only to points of law.

23. What is the process for filing an appeal?

See question above.

24. What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?

Recently issued notable cartel decisions of the HCC include:

- Settlement Decision 796/2022 on the ex officio investigation and a relevant complaint into the market for the provision of harbour tug services. In particular, by its unanimous decision, the Plenary Session of the HCC imposed fines totalling EUR 4,360,818.28 on the companies concerned for participation in cartel. More specifically, said companies entered into a horizontal agreement (market allocation and setting of prices (discounts) in the provision of tug services for commercial ships a) in the port of Thessaloniki (both cargo ships and oil tankers, b) in the ports of Attica (oil tankers), and c) in the ports of Kavala (both cargo ships and oil tankers), thus

violating of Article 1 of Law 3959/2011.
- Settlement Decision 767/2022 on the markets concerning the provision of catering services to migrants/ refugees: HCC imposed a total fine to four companies amounting to EUR 304,427.89 further to an ex officio investigation regarding the competitive conditions in the markets for the provision of catering services to migrants/ refugees in the refugee reception centers located in the islands of the North and East Aegean Sea. The obligation of exclusive cooperation contained in the agreements concluded between the companies for a future number of tenders resulted in the exclusion of independent participation for each of the participating companies or in association with other companies and the exclusion of competitors. Therefore, the above companies entered into a horizontal agreement with the object of restricting the provision of catering services in the specific islands of Lesvos and Chios, which constitutes a serious restriction of competition caught by Article 1(1) of Law 3959/2011.
- Settlement Decision 793/2022 on the ex officio investigation in the ferry connection Igoumenitsa – Lefkimmi. According to HCC's unanimous decision, the Companies concerned participated in a concerted practice of setting prices and allocating markets, defining the framework of their joint action in relation to their commercial policy (ticket discounts and the scheduled routes) that they would run on the Lefkimmi-Igoumenitsa ferry connection. The total amount of the fine imposed was EUR 135,236 for violation of Article 1 of Law 3959/2011 due to participation in a prohibited horizontal concerted practice.

25. What are the key recent trends (e.g. in terms of fines, sectors under investigation, applications for leniency, approach to settlement, number of appeals, impact of COVID-19 in enforcement practice etc.)?

Sectors under investigation: The COVID-19 pandemic, energy crisis and the phenomenon of price increases especially after the Russia-Ukraine war has raised HCC's concerns and led to the initiation of a significant number of dawn-raids. During 2022, the HCC carried out sixteen (16) dawn–raids in 68 companiesinter alia in undertakings offering catering services, in the pasta product sector, in the cosmetics and personal care sector and in the eyewear sector, in the transport industry, in the electricity sector, in the breast pumps sector, in the white goods sector, in the manufacturing, import and distribution of aluminium, PVC and iron processing machines, in the children's toy sector.

The HCC also conducted unannounced inspections at the premises of undertakings active in the construction sector in the Attica region in the context of the "Regulatory intervention in sectors of the economy" to examine the effects which common ownership/common shareholding in companies active in the construction sector might have on the conditions of effective competition in the market. However, no virtual dawn raids or investigations of domestic premises have been conducted.

With reference to HCC approach to **settlement procedure**, the use of settlements is widespread. Continuing this trend, in 2022, in most cartel cases, decisions were issued following the Settlement Procedure, whereas all the companies involved in the infringement entered the Settlement Procedure before the drafting of the SO by the Directorate General of Competition, which increased the procedural efficiency of HCC. In July 2022, the first HCC's Settlement Decision within the scope of articles 1 CA and/or 101 TFEU, in the context of vertical agreements, was issued.

On the other hand, **Leniency Program** seems to continue to have limited success in Greece (see, however, the bid-rigging cartel decision 642/2017 and HCC decision 703/2020). However, HCC's Whistleblowing tool (i.e. Digital Services platform for the provision of integrated Electronic Transaction Services to interact with stakeholders and an anonymous reporting of information in a digital environment) seems to have a note-worthy response, as according to HCC's relevant press release, more than two hundred four(204) report messages were sent since the implementation of the whistleblowing tool.

The Administrative Court of Appeal of Athens and the Council of State issued twenty final judgments in 2021 (15 AACA Decisions and 5 Council of State Decisions). Of these decisions: – In thirteen cases (8 AACA and 5 Council of State Decisions) the HCC Decisions were upheld in their totality, that is the relevant appeals against HCC Decisions were rejected; – In three cases (all AACA Decisions), the HCC Decisions were partly upheld, given that the decisions were upheld on their merits but the relevant appeals were accepted with regard to the reduction of the fines imposed on the appellants; In two (2) cases of applications for suspension of enforcement of HCC Decision, these were accepted until the discussion of the appeals; In two cases (both AACA Decisions), some past HCC Decisions

were rejected.

Regarding procedural amendments, in July 2022, the HCC launched its updated guidelines, notices and forms regarding complaints, concentrations, commitments, settlement procedure, leniency programme and treatment of confidential information with its respective Decisions. Moreover, following the introduction of Article 37A in the Competition Act, the Greek NCA launched its Decision 789/2022 on 'No – Action Letter'. The 'No – Action Letter' is a tool for assessing the business plans from undertakings operating in the Greek market for reasons of public interest, in particular to achieve sustainable development objectives.

Further to the above, the HCC has also been increasingly using **sector inquiries** (article 40 CA) as a means of soft enforcement, and a tool to map sectors of economy and to detect competition problems. In particular: The HCC published on 27.12.2022 its Final Report on its SI on FinTech (the executive summary is available in English here). Pursuant to the Final Report key take, the Authority concluded that it may be premature to draw definitive conclusions about the existence of restrictions or distortions of competition at this stage of the SI.

With reference to the **SI on e–commerce**, the HCC launched is Final Report on 2nd November 2022. According to the findings of the Final Report, the implementation of the P2B Regulation is estimated to have a positive effect on the activity of companies in e-commerce, however, in practice there have generally been no changes in business relationships with online service providers. In this regard, it proposed the adoption of mechanisms to monitor the implementation of the Regulation, as well as the adoption of fast-track dispute resolution mechanisms. Regarding DMA and DSA, the Authority stressed the need for their alignment with national law and avoidance of a creation of additional formalities. With reference to purely competition issues, certain distortions in the functioning of electronic market have been identified, such as restrictions on pricing policy, use of the Internet and cross-border sales.

The HCC has launched two (2) other SIs, into the **market of provision of private health care and related insurance services** and into the **waste management sector** respectively. In the first one focusing on the health services sector, HCC will examine issues such as the definition and mapping of the relevant markets at issue and the assessment of the bargaining power created throughout the value chain in the provision and financing of health services. Regarding other competition issues that shall be explored, HCC will focus on the competition between health service providers on the quality and prices of the services providers, as well as on the extent to which the concentration of the sector leads to symmetry of market shares, thus facilitating coordinated or non-coordinated effects resulting from the structure of the market. The Interim Report is still expected to be launched.

The second SI, launched on 16.7.2021, examining the waste management and recycling sector, aims to clarify any potential competition issues in certain markets of this industry. The publication of the Final Report is still expected. In the context of HCC initiatives regarding competition law & sustainability, following HCC's publication of Staff Discussion Paper on Sustainability Issues and Competition Law in collaboration with the Netherland Authority for Consumers and Markets (ACM), the HCC launched its "Sandbox for Sustainable Development and Competition", i.e. a supervised space for experimentation where businesses can adopt sustainable initiations, for a specific period of time under the guidance and in direct collaboration with the HCC, in order to ensure that said initiatives do not significantly impede competition with a view to facilitate the Green transition of the Greek economy and the promotion of public interest and the avoidance of any anti – competitive practices such as "green-washing" practices. The legal basis of the said initiative is the "no – enforcement action letter" referred in Article 37A of the Greek Competition Act which provides that the HCC President may issue a no-enforcement action letter against a horizontal or vertical agreement for violation of Article 1 CA and /or Article 101 TFEU or against a practice for violation of Article 2 CA and /or Article 102 TFEU.

Furthermore, following an ex officio investigation into 15 refining, wholesale and retail gasoline and oil companies, the HCC, by virtue of its decision on 22.3.2022, conducted its first Mapping study on the conditions of competition in the Petroleum Industry. Mapping is a new tool which allows HCC to study the competitive conditions in any market or sector of the economy – where required – for the effective exercise of its powers. Said Mapping selectively focused on 95 octane unleaded petrol, diesel and heating oil, i.e., three prime necessities with low price-inelastic demand and examined price pass-through in the oil production and distribution chain in the Greek market. In particular, HCC's mapping examined the phenomenon of asymmetric adjustment of fuel prices in relation to costs (also referred to as the "Rockets & Feathers") phenomenon, especially regarding the existence of asymmetry in price adjustment between the different stages of the petroleum industry (refining, wholesale, retail). Based on the findings of this Mapping, the HCC initiated a *regulatory intervention* in the petroleum

sector.

In February 2023, the HCC launched a Mapping study on the conditions of competition in the markets for (a) laundry detergents, (b) fresh whole milk, (c) infant milk, (d) cheese and (e) cow's yoghurt. The scope of the Mapping in the aforementioned markets is to enhance HCC's investigation, which was launched on a number of products following the set-up of a Supermarket 'Task force' proposed in the Sector Inquiry into basic consumer goods, published in March 2021, taking also into account the latest market developments and price increases in certain product categories, changes in consumer habits, and measures adopted by the State.

Recently, also, the HCC has given emphasis on the tool of **regulatory interventions** in sectors of the economy, pursuant to Article 11 of the CA. On this basis, the HCC takes all necessary measures to create conditions of competition in the sector under investigation in case of absence of effective competition and if it considers that the application of Articles 1, 2, 5 and 10 of CA is not sufficient for the creation of effective competition.

In particular,

a. Regulatory Intervention procedure in the **construction sector** launched on 08.01.2021, with publication of its Interim Reports in April and August 2022. In this second phase of the investigation, the HCC found again that in the construction sector and in particular in the market for public works, there is a lack of effective competition, which cannot be remedied with the application of the antitrust and merger control provisions. Specifically, the risks for theories of harm, related to possible, uncoordinated anti-competitive effects, as well as coordinated anti-competitive effects, have been identified. Regarding proposed remedies, the Authority in its second interim report proposed inter alia independent Management – Chinese Walls, the introduction of a Code of conduct, in cases of horizontal common ownership of competing companies, concerning the members of the management and the shareholders of these companies, as well as the manner and type of information (sensitive and not) that will be transmitted by the common Shareholders to competing businesses and vice versa, the imposition of a notification obligation to the Authority, to carry out a relevant economic analysis of competitive effects, in cases of an increase in the percentage of horizontal common ownership, when any legal entity, acquires a percentage of more than 5% in the share capital of more than one competing company in the examined industry and additional obligations to "active common shareholders" present in the examined sector, and the specific sub-sector/markets involved.
b. Regulatory Intervention procedure in the **press distribution** sector: On 14.01.2021, a regulatory intervention procedure was initiated in the press distribution sector. Following the publication of its second Interim Report, as well as a second public consultation, on November 4th 2022, the HCC issued its Final Report. According to its findings, the HCC concluded that there is a lack of effective competition in the press distribution sector and imposed inter alia the following remedies to restore competition in the sector: a prior notification of changes in the shareholding of the sole press distribution agency changes in the corporate governance of the sole press distribution agency; Chinese Walls; the introduction of a code of conduct and the appointment of a trustee (cf. HCC Decision 768/2022).
c. Regulatory Intervention procedure in the **petroleum sector**: The petroleum industry seems to be under the continuous monitoring of the HCC, since the Authority has systematically dealt with this sector, issuing a series of Opinions and Regulatory Decisions over the last fifteen years (e.g. Opinion no. 26/VII/2012 regarding the maintenance of prior administrative authorisation in a number of professions in the petroleum industry; "Opinion no. 29/VII/2012, aiming at eliminating restrictions and regulations that create barriers to free competition in the petroleum products sector", etc.). In the context of the initiated procedure, the conditions of competition in the relevant markets will be examined in depth, in order to clarify whether the observed asymmetry, and in general the price increase of these products over the last two years, are due to the absence of conditions of effective competition, as well as issues regarding the pricing policy mechanism, the maintenance of security stocks and other potential barriers to entry and development of the market, and maintenance of a high profit margin by the industry firms.

In parallel to the aforementioned initiatives, in 2022 the HCC also took other key advocacy initiatives. Certain of

these are worth noting, namely:

a. Opinion 40/2022 on issues related to the protection of free competition raised by the Greek "household basket" initiative. Certain potential competition law concerns have been identified regarding the increase of leverage capacity of supermarkets in negotiations with suppliers of such products, especially with those with a weak bargaining power, the adoption of systematic self-preferencing practices by supermarkets for their own private label products, against branded products and/or potential price increases on products or product categories (from the same or different suppliers) off-basket to compensate for any losses from making the in-basket products available at affordable (or possibly reduced) prices. In this regard, the HCC will systematically monitor the markets in question in accordance with the rules of VBER and accompanying Guidelines, as well as intervene immediately in case of any anticompetitive practices are detected, such as agreements between competitors or vertical agreements between suppliers and retailers for resale price maintenance.
b. Issuance of an updated "Guide for Associations of Undertakings" with the information needed, in order for associations of undertakings to avoid potential anti-competitive conduct. Said Guide serves as a "code of conduct" for associations of undertakings.
c. Issuance of the updated "Guide for Contracting Authorities: Detection and Prevention of Collusive Practices in Public Procurement tenders" with the necessary information on detection and prevention of bid-rigging practices in public procurement tenders and sanctions issues.

Moreover, during 2022, the HCC held several conferences which focused on the emerging landscape regarding the enforcement of Article 102 TFEU and national equivalent rules by the European Commission and the NCAs, not only in the digital sector, but also in more "traditional" economic sectors.

Bid rigging seems to be in the spotlight since that most HCC decisions issued in 2021 and 2022 concerned bid-rigging cases. In this context, the HCC created a special platform for anonymous complaints concerning bid rigging in public procurement and an information programme for contracting authorities.

26. What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?

The HCC continues its investigations and inspections, responding to the challenges resulting thereof. The Authority systematically monitors the economic data in various sectors, with a focus on healthcare products and services, consumer commodities and foodstuffs regarding, possible price increases in basic consumer goods.

Regarding upcoming HCC decisions, cases on which an SO has been issued are anticipated as well as in sectors for which cartel investigations / dawn-raids have taken place. Indicatively, in the investigation in the market for the retail supply of electricity to low voltage customers, the investigation in public tender for the procurement of medical devices/rapid tests for Covid-19 and the ex officio investigation in the banking sector (retail and business banking, card issuing and acquiring, interbanking systems, payment services and electronic transactions).

Regarding sector inquiries, the publication of the Interim Reports of the SIs into the market of provision of private health care and related insurance services and into the waste management sector respectively are expected. Furthermore, the fist findings of the Regulatory Intervention procedure in the petroleum sector are anticipated.

To be noted, lastly, that HCC has repeatedly stated its focus on digital economy, aiming, inter alia, to investigate the effects of the digital economy to competition, and has set up an expert advisory group, in order to make proposals at national and European level on the application of competition law and competition policy in the digital economy. In this context, the HCC has appointed experts to design a program, to be mainly used for cartel-detection.

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