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Greece

COMPETITION LITIGATION

Contributor

Nikolinakos & Partners Law Firm

Alexis N. Spyropoulos

Partner | spyropoulos@nllaw.gr

Dina Th. Kouvelou

Partner | kouvelou@nllaw.gr

Dr. Nikos Th. Nikolinakos

Partner | nikolinakos@nllaw.gr

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

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GREECE
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1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

In Greece competition damages claims are regulated by Law 4529/2018 which has transposed the Directive 2014/104/EC (EU Damages Directive) into the Greek order and is considered a lex specialis in relation to the general provisions of Greek Civil Code (GCC hereinafter) and the procedural rules set by the Greek Code of Civil Procedure (GCCP). Competition damages claims may be grounded on violations of EU and Greek competition law covering:

Anti-competitive agreements, including horizontal and vertical agreements, based on article 101 TFEU or Article 1 of Law 3959/2011 which reflects the provisions of Article 101 TFEU.

Abuses of a dominant position, based on article 102 TFEU or Article 2 of Law 3959/2011 which reflects the provisions of Article 102 TFEU.

Sufferers of the above infringements can bring actions for full compensation, covering the actual loss and loss of profit plus the interests, regardless of whether or not there has been a prior finding of an infringement by a competition authority.

2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

The procedure before the competent Court for civil claims arising from the infringement of competition law is the same as the procedure for any other regular civil claim. The lawsuit for compensation due to violation of competition law is based on the provisions of tort liability of the GCC (articles 914 et seq. GCC) in conjunction with Law 4529/2018. Thus, more conditions must be met in order to claim liability for compensation under article 914 et seq. In particular, according to article 914 GCC, "whoever harms another illegally and culpably has the obligation to compensate him". The lawsuit should, therefore, state the following (conditions of liability): a) human behavior, b) illegality c) fault, d) damage and e) causal link between the perpetrator's behavior and the damage. In competition damages claims, the competition law infringement will be the wrongful act. The essential minimum requirements for a claim to be filed with a Greek court are listed in Articles 118-119 and 215-216 GCCP. The lawsuit requires the filing of a writ at the secretariat of the court to which it is addressed and the service of a copy of it to the defendant. The lawsuit must state i) the court or judge before which the trial or procedural act is conducted; ii) the type of litigation; iii) the name, surname, father's name, residence and address of all parties and their legal representatives, as well as the tax registration number of the party filing or submitting the lawsuit and, if they are legal entities, their name, address of residence, as well as their tax registration number; iv) the subject of the application, in a clear, definite and concise manner; and v) the date and signature of the party or his legal representative or attorney and, where representation by a lawyer is required, the signature of the lawyer. The signature can be placed only with the electronic verification of the identity of the above persons, as provided by law. Also, the lawsuit must contain i) a clear statement of the facts that establish the lawsuit according to the law and justify its exercise by the plaintiff against the defendant, ii) an accurate description of the object of the dispute, and iii) a certain request. In addition, the lawsuit refers to i) in the case of property lawsuits, the monetary value of the object in question and ii) the elements that establish the jurisdiction of the court.

3. What remedies are available to claimants in competition damages claims?

Any party that is affected by an infringement of competition law may bring claims for cease-and-desist and removal as well as claims for damages (either as stand-alone or follow-on actions) against the infringers. Specifically, it is a general rule of Greek legal order that

in case of illegal violation of a right or legal interest that has occurred or is about to occur in the future, even before the occurrence of damage, the plaintiff has a claim for cease-and-desist and removal of the infringement. Under this rule, a claim for cease-and-desist and removal of the infringement is recognized also in cases of infringement of competition law, without even requiring the fulfillment of all the conditions for the occurrence of tort liability. Therefore, an individual who disputes the compatibility of a certain agreement or conduct with the competition rules may request the cease-and-desist of the anti-competitive action by means of ordinary proceedings or through interim measures of the GCCP, which can be ordered by the court when there is an urgent need, or when it is necessary to avert an imminent damage (articles 682 et seq of the GCCP).

However, except for the general tort provisions contained in Article 914 et seq of the GCC that continue to apply in supplement to Law 4529/2018, the main type of remedies available to claimants in competition damages claims are damages. Specifically, 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. Therefore, punitive or exemplary damages are not available under Greek law. In addition, the court may also order compensation for non-pecuniary (moral) harm caused by the antitrust infringement. According to article 932 of the GCC, both natural and legal persons that suffered harm owing to an unlawful act have the right to seek non-pecuniary (moral) damages, such as damage to their feelings or honour, or to their legal personality or reputation, respectively. Other than the above, according to Article 15 of Law 4529/2018 the parties can resolve their dispute amicably prior to the initiation/filing of an action or at any stage of the proceedings. Especially, according to Law 4529/2018, consensual dispute resolution can be suspended by national courts presented with an action for damages for up to two (2) years where the parties thereto are involved in consensual dispute resolution concerning the claim covered by the action for damages. Following a consensual settlement, the claim of the settling injured party is reduced by the settling co-infringers' share of the harm that the infringement of competition law inflicted upon the injured party. In addition, private disputes may be subject to arbitration pursuant to Article 867 GCCP, as well as Law No 3898/2010 applicable to civil and commercial disputes.

4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

Damages

The Greek law for competition damages claims adopts the right for the injured party to claim and to obtain full compensation for the harm. Full compensation includes both actual damages, in the sense of reduction of one's assets due to infringement (described as "positive damage" under the Greek Civil Code) and loss of profit, in the sense of the loss of the profit that would have occurred in case the infringement had not taken place. Payment of interest for the period starting when the damage was caused until the payment of the compensation is also included. [Art.3(1)(3) of Law 4529/2018].

According to the Explanatory Memorandum of Law 4529/2018 positive damage is generally caused by the effect of the anti-competitive behavior on price levels. The positive damage will be the difference between the price actually paid and the hypothetical market price which would have existed without the restriction of competition, while loss occurs when the artificial price increase has led to a reduction in the demand for the products of the injured competitor or of the direct or indirect purchaser. Secondarily, the horizontal agreement or abuse of dominant position may regulate the quantity of goods produced or disposed. The same applies to loss of profits.

In view of the difficulties of quantification of the harm, the European Commission has adopted a more general Communication on quantifying harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union [2013/C 167/07] and Practical Guide (SWD 205/2013) related to that Communication.

In addition, under Article 14(4) of Law 4529/2018 and upon request of the civil court, the Hellenic Competition Commission (HCC) or the EETT (the Hellenic Telecommunications and Post Commission) may assist with respect to the determination of the quantum of damages, where the authorities consider such assistance to be appropriate.

According to Article 14(1) of Law 4529/2018, the court is competent to estimate the damage incurred, even on the basis of a probability, in case it is practically impossible or too difficult to determine precisely the amount of the damage according to the available

evidence by the claimant. For that purpose, it shall take into account the nature and extent of the infringement and the due diligence shown by the claimant in the collection and use of evidence.

Joint and Several Liability

Joint and Several Liability is recognised in competition damages claims under Greek law. Specifically, Article 10 of Law 4529/2018 provides that undertakings which have infringed competition law through joint behaviour are jointly and severally liable for the harm caused by the infringement of competition law.

Exceptions

If any of the jointly liable undertakings is a small or medium-sized enterprise (SME), as defined in the Commission's Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, this undertaking is only liable for its own direct and indirect purchasers, provided that the undertaking's market share in the relevant market was below 5% during the whole infringement and that the joint and several liability would irretrievably jeopardize the undertaking's economic viability and cause its assets to lose all their value. This derogation shall not apply where the SME has led the competition law infringement or has coerced other undertakings to participate therein or the SME has previously been found to have infringed competition law [Article 10(2)(3) of Law 4529/2018].

Another exception concerns an undertaking that is an immunity recipient through a leniency program. According to Art. 10(4) of Law 4529/2018, in such a case an immunity recipient is jointly and severally liable (a) to its direct or indirect purchasers or suppliers and (b) 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. The amount of contribution of an infringer which has been granted immunity from fines under a leniency program shall not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers, as provided in Art. 10(6) of Law 4529/2018.

5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

According to Article 8 of Law 4529/2018, the claims against the infringer for damages due to violation of competition law are barred for five (5) years. The limitation period begins after the injured party has learned or can reasonably be expected to have been aware of the infringement of competition law, the damage and the identity of the infringer. If the cessation of the infringement follows in time, the limitation period starts from the later time point of the cessation. In any case, the claims against the infringer are barred within twenty (20) years from the cessation of the infringement of the competition law. In the case of cartels, the limitation period for the claim against an infringer covered by immunity due to his inclusion in a leniency scheme begins only after the abortive acceleration of enforcement or after the final rejection of the injured party's action against the other infringers who participated in the cartel. This does not apply in the case of claims raised by the infringer's direct or indirect buyers or suppliers.

The limitation period for bringing damages actions shall be suspended if a competition authority takes action to investigate the infringement or institutes proceedings before the competition authority for the infringement to which the claim relates. The suspension expires one (1) year after the inviolability of the infringement decision or the termination of the procedure in another way. In addition, the limitation period for bringing an action for damages is suspended for the duration of any consensual dispute settlement procedure. The suspension of the limitation period is valid only in relation to the parties that participate, in person or through a representative, in the consensual resolution of disputes.

Other than that, the provisions of the Greek Civil Code for the suspension and interruption of the limitation period shall apply accordingly. Specifically, the limitation period is suspended for any of the reasons prescribed in Article 255 et seq of GCC and the limitation period is interrupted for any of the reasons prescribed in Article 260 et seq of the GCC.

6. Which local courts and/or tribunals deal with competition damages claims?

Athens Court of First Instance and – in case of an appeal – Athens Court of Appeal are the competent courts for competition damages claims. In fact, pursuant to Art. 13 of Law 4529/2018 special chambers shall be established in the above courts that will consist of judges specialised in competition or EU Law or generally experienced in commercial law. However, such chambers have not been set up. If a competition damages action is brought following a final decision issued by the European Commission, the HCC or the Hellenic Telecommunications & Post Commission (EETT), the said decision and the findings regarding the antitrust infringement are binding for the civil courts (Art. 9 of Law 4529/2018).

7. How does the court determine whether it has jurisdiction over a competition damages claim?

The selection of the competent court out of the subdivisions of the Court of First Instance is dependent on the value of the dispute in question. Pursuant to Art. 46 of the GCCP, if the Court finds that it has no jurisdiction over a competition damages claim, it refers ex officio the case to the competent court.

8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

Applicable law

As regards competition damages arising out of contractual obligations, applicable law is determined by Regulation 593/2008/EU (Rome I Regulation). Applicable law is in principle the law chosen by the parties. In the absence of such a provision, Article 4 of the Rome Regulation I provides a set of rules relating to certain types of contracts, aimed at determining the applicable law. Notably, a contract for the sale of goods or for the provision of services or a franchising/distribution contract, is governed by the law of the country where the seller or the service provider or the franchisor/distributor has his habitual residence. In case of consumer contracts – that is a contract concluded between a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) – the contract is governed by the law of the country where the consumer has his habitual residence, provided that the professional: (a) pursues his commercial/professional activities in the country where the consumer has his usual residence, or (b) directs such activities to that country by any means (Article 6 – par.1 of Rome I Regulation).

In relation to damages arising out of non-contractual obligations, Regulation 864/2007/EU (Rome II Regulation) stipulates that the applicable law shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected. In that regard, Greek law applies in case the Greek market is directly and substantially affected by the anti-competitive practice upon which the claims are based. Otherwise, the applicable law is the law of the country the market of which is or is likely to be affected.

Standard of proof

The courts are free to assess any evidence that is brought forward by the parties. However, the parties bear the burden of proof for any of the facts and arguments they make. As a general procedural principle (Article 338 par.1 GCCP), the claimant bears the burden of proof for all the establishing elements of a claim, whereas the defendant bears the burden of prove any claims he has raised, for instance counter-arguments to the claimant's allegations.

Specifically, as regards competition damages, the claimant must cumulatively prove the existence of a wrongful act (i.e., in competition damages claims, a competition law infringement – being a restrictive trade practice or abuse of dominance); that the infringement could be attributable to the defendant due to negligence or fault; that the claimant suffered loss due to this infringement, i.e. the causal link between the wrongful act/infringement and the damage/loss suffered; and to quantify the amount of the damage suffered. As regards the quantification of damage, the court is empowered by Article 14 para. 2 of L.4529/2018 to make a probability estimation, if it is established that a claimant suffered harm yet it is practically impossible or excessively difficult to quantify precisely the harm suffered on the basis of the evidence available. Article 14 (para. 3) of L.4529/2018 sets a rebuttable presumption that cartel infringements cause harm.

Pursuant to Article 9 (paras 1,2) of Law 4529/2018, a final judgement declaring an infringement, delivered by a national competition authority or by the EU competition authority or by a review court is binding for the court adjudicating the competition damage whereas a final infringement decision issued by another Member State's court, may be presented before the court adjudicating the competition damage as a prima facie evidence that an infringement of competition law has occurred and, as appropriate, may be assessed along with any other evidence adduced by the parties. It is provided though that counterproof is permitted against this latter piece of evidence. (See also Question 9).

9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

According to Article 9 (paras 1 & 2) of Law 4529/2018, on the adjudication of a claim for compensation, the trial court is bound by a decision of a national competition authority [Hellenic Competition Commission (HCC), Hellenic Telecommunication & Post Commission (EETT)], and a decision of the European Commission, which are no longer subject to appeal and under which an infringement of articles 1 or 2 of Law 3959/2011 or

articles 101 or 102 of the TFEU has been found. The same applies to the corresponding findings of a final decision of a Greek or EU court issued on appeal against these decisions. Under Article 9 para. 2 of Law 4529/2018, a final decision on an infringement issued by the courts or competition authorities of other Member State and brought before the claimant in a domestic court shall constitute full proof of the infringement of Articles 101 or 102 TFEU or of the applicable provisions of the law of that Member State, which pursue primarily the same objective as Articles 101 and 102 TFEU, but evidence in rebuttal is permitted. The said binding effect pertains to the nature of the infringement and its material, personal, temporal and territorial scope, as set out in the final decision, but not to issues regarding the causation, the fault and the damage.

10. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

According to article 249 of the GCCP, if the substantiation of a dispute is closely related to the subject of another trial pending before the civil or administrative courts or before an administrative authority, the court may ex officio or following a petition by any of the parties order the stay of proceedings, until a final judgment on the other case is delivered. As a result, civil courts can stay a follow-on damages action if the infringement decision of the competition authority is appealed against by the defendants. A stay of proceedings is most commonly ordered in case the court seeks to avoid contradictory rulings between different jurisdictions. Therefore, Greek courts have the option, but are under no obligation, to stay a private damages action if related public enforcement proceedings are pending.

11. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation)? What, if any, threshold criteria have to be met?

No mechanism for collective protection in the specific form of competition damages claims is established under Law 4529/2018, as existing for instance for consumer law protection. However, in view of the fact that a consumer is by default the final “indirect purchaser” in the value chain, as defined under Law 4529/2018, Law 2251/1994 for consumer protection in conjunction with provisions of Law 4529/2018 could apply. According to Law 2251/1994, if they meet the conditions, consumer associations have the right to bring representative actions against suppliers to stop or prohibit illegal behavior and to compensate their consumers / members, in the event of an infringement resulting or likely to result in damage to the collective interests of consumers. Competition law violations are included in the list of offenses within the scope of these collective actions. Moreover, pursuant to the general provisions of the Greek Code of Civil Procedure, several persons can file an action collectively in cases where they share the right or obligation in dispute or their rights or obligations are based on the same factual and legal basis or there are similar rights/obligations at the subject matter of the dispute and, at the same time, the court has competence over each of the defendants (“permissive joinder of claims” – Art. 74 of the GCCP).

12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

Aside from the traditional defences available to a defendant in a civil case, a unique defence related to competition damages cases under Greek law is the so-called “passing-on defence” [Art. 11(2) of Law 4529/2018)]. The “passing-on” defence offers the defendant the possibility to invoke that the claimant passed on the whole or part of the overcharge resulting from the infringement further down the value chain. The defendant bears the burden of proof. In other words, if the defendant has decided to raise the “passing-on” defence in a damages case, then he bears the relevant burden of proof of the overcharge that was passed on. It should be noted that probability of the level of the overcharge is sufficient. Article 11(2) of Law 4529/2018 states that the passing-on defence only applies on the positive damage invoked by the claimant, and not on the loss of profit. If the defendant proves that any overcharge has been passed on, a claim for loss of profit is established for the injured party, linked to the passing-on of the overcharge.

Regarding indirect purchasers, Article 11(4) of Law 4529/2018 provides that the indirect purchaser shall be deemed to have proven that a passing-on to that indirect purchaser occurred, where that indirect purchaser has shown that: (a) the defendant has committed an infringement of competition law (i.e., Art. 1 and 2 of Law 3959/2011 and/or Art. 101 and 102 of the TFEU); (b) the above infringement of competition law has resulted in an overcharge for the direct purchaser; and (c) the indirect

purchaser has purchased the goods or services that were the object of the infringement or has purchased goods or services derived from or containing them.

With regard to Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser, the Commission has published its Communication no 2019/C 267/07.

13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is permitted in competition litigation before Greek courts, under the provisions of Articles 368 to 392 GCCP. The court may, at its own initiative or/and at the request of a party, order an expert's report, if it deems that special skills and knowledge are required in order for the court to reach a decision. In any case, parties have the right to introduce opinions of party-appointed experts in their pleadings or during trial hearings. Evidence is submitted in writing in the file submitted before the court. In exceptional circumstances, witnesses can be examined orally, in which case the witnesses need to solemnly swear that they will testify the truth. Cross-examination by the opposing party's lawyer is permitted.

14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

The claim has to be serviced by the plaintiff within 30 days (60 days if the defendant has its residence abroad). After the expiry of the deadline for the service, both parties have to submit their pleadings within 90 days (120 days if the defendant has its residence abroad) in order to substantiate their arguments. Article 237(2) of the GCCP provides that within fifteen (15) days following the expiring date of submission of the pleadings, the parties may submit their rebuttals. After the latter deadline has lapsed, the file of the case closes, a judge (if the court is single-member) or the composition of the court (if the court is multi-member) is appointed and the court hearing takes place, without the physical presence of the parties and their lawyers, according to Article 237(6) GCCP. If the court estimates that examination of witnesses is necessary, it may summon the repetition of the hearing so that witnesses can be examined before the court. The hearing is conducted by the judge presiding over the hearing.

The following means of evidence are exclusively listed in Art. 339 GCCP: confession, direct proof (especially viewing the premises), expert reports, documentary evidence, examination of parties, testimony, presumptions and affidavits. Cross-examination of witnesses is permissible. The evidence adduced by the parties is assessed freely by the judge, however the final judgement declaring an infringement delivered by a national competition authority or by the EU competition authority or by a final judgement of a review court is binding for the court adjudicating the competition damages claim, pursuant to Article 9 of Law 4529/2018. With regard to how evidence is dealt with, see the specific analysis in Question 21.

15. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

Typically, the timelapse from the initiation of the proceedings until the court hearing consists of the following deadlines:

the deadline from the submission of the action until the submission of the pleadings and the rebuttals, that is one hundred and thirty-five (135) days – or one hundred and ninety-five (195) days if the defendant has its residence abroad – after the submission of the action according to Articles 237(1&2) GCCP;

the deadline for the appointment of the judge which is within fifteen (15) days after the previous deadline according to Article 237(6) GCCP;

the deadline for the court hearing which is within thirty (30) days after the previous deadline according to Article 237(6) GCCP.

It is noted that in practice, however, because of the heavy workload of the Greek courts in overall, the above timescale may be lengthier.

The decisions issued by civil Courts of First Instance may be appealed before the Court of Appeals ("Efeteion") within thirty (30) days (60 days if the defendant has its residence abroad). Judgments of the Court of Appeals can then be challenged within thirty (30) days (60 days if the defendant has its residence abroad), before the Supreme Court of Greece ("Areios Pagos") on the basis of substantive and procedural grounds delineated under Article 559 GCCP. If the Supreme Court concludes that a lower court violated substantial or procedural rules of law, then it can order the rehearing of the case by the relevant lower court. Judgements of the Supreme Court

are irrevocable.

16. Do leniency recipients receive any benefit in the damages litigation context?

According to Article 10 of Law 4529/2018, the undertakings that jointly infringed competition law are jointly and severally liable. A claimant can seek to be fully compensated by any of the jointly liable undertakings. Exceptionally, under Article 10 (4) of Law 4529/2018, if the infringing undertaking has immunity under a leniency application, this undertaking is jointly and severally liable: a. for its direct and indirect purchasers and/or suppliers; and b. for other injured parties only to the extent these third parties cannot be compensated by the remaining infringing undertakings. Therefore, the amount to be paid by an undertaking covered by immunity may not exceed the amount of the damage it has caused to its own direct or indirect buyers or suppliers.

17. How does the court approach the assessment of loss in competition damages cases? Are “umbrella effects” recognised? Is any particular economic methodology favoured by the court? How is interest calculated?

In general, loss of profit can only be hypothetical and when compensation for loss profits is claimed, the specific events which determine the expectation of a certain profit must be set out in the action, on the basis of the normal course of events or the special circumstances and in particular the preparatory measures taken to make the profit possible.

For information regarding the legal framework for damages and loss as well as reference to European Commission’s Guidelines, see Question 4.

Only one case has been published in Greek courts regarding competition damages claims (Decision no 3/2021 of the Multi-Membered Court of First Instance of Athens), therefore no safe conclusions can be drawn regarding economic methodologies favoured by the Court. In the case at issue, the claimant decided to quantify its loss through «the yardstick method» or «benchmark market», which is a method of comparison of the situation at issue with data from another, similar market. However, the Court stated the counterexample the claimant used as a similar market was applied vaguely and arbitrarily, without clear and complete clarification of specific key features and corresponding economic variables, market shares, cost structure etc. and that not sufficient evidence to quantify the loss had been brought for an assessment. Nevertheless, even though the Court found the comparison vague, it followed that certain method as a legit assessment.

“Umbrella effects” are recognised in the context that compensation of harm can be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers from an infringer. On that regard, buyers of products from competitors who did not participate in a cartel are also legalised to raise a competition damages claim against the participants of the cartel in the event that the cartel led their purchaser to adjust his prices through parallel behavior.

18. How is interest calculated in competition damages cases?

According to Art. 3(3) of Law 4529/2018, interest is due for the period from the occurrence of the damage to the payment of the compensation.

19. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?

In general, the doctrine of joint and several liability is reflected in Greek legal order within Articles 926 and 480 GCC. Specifically as regards competition damages claims, the doctrine is enshrined in Article 1, para.10 of Law 4529/2018. The rule of several and joint liability extends also to the liability of the parent and the subsidiary company, as long as those companies constitute a “single economic unit”. Article 5 para10 of L.4529/2018 has in turn incorporated the right of an infringer, who has compensated victims, to recover a contribution from any other infringer, the amount of which shall be determined in the light of their relative responsibility for the harm caused by the infringement.

To assert the level of the responsibility of each jointly and severally liable infringer, the Court shall consider any existing valid agreements of the parties which allocate the responsibility among them. In absence of those agreements the Court needs to assess all circumstances of the individual case, such as the turnover, the market shares, the level of involvement at a cartel, the level of liability, the causal link with the damage and the economic capacity of the companies involved.

Exceptions from joint and several liability, subject to certain conditions and limitations, are provided where

the infringer qualifies as a small or medium-sized enterprise (SME) as well as to immunity recipients.. In detail, the following two categories of undertakings benefit from a special regime: a. Undertakings that have been granted exemption from fines are jointly and severally liable only against their direct or indirect purchasers or suppliers. As for the rest of the injured, they are responsible only in cases where they are unable to obtain full compensation from the other infringing undertakings, b. Small and medium-sized enterprises (SMEs) are only liable to their direct and indirect purchasers, if the market share they hold in the relevant market is below 5% at any given time of the breach and since the application of the usual rules of joint and several liability will could cause irreparable damage to their economic viability. This special regime does not apply, however, in cases where the small and medium-sized enterprise orchestrated the infringement, forced other undertakings to participate in the infringement or has been found to have committed a violation of its law competition at an earlier time (subpoena). In any case, If one of the infringing enterprises has paid a greater contribution to an injured than what is attributable to it, it should be able to appeal against the other infringers for its recovery.

20. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

A competition damages claim can be disposed of without a full trial through alternative dispute resolutions. Law 4529/2018 explicitly provides for such an option under Article 15 (“Consensual Dispute Resolution”). Private disputes may be subject to arbitration in accordance with Art. 867 of the GCCP. Also, Law 3898/2010 introduced the mechanism of mediation in civil and commercial cases.

21. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

Greek Law does not avail any mechanisms for the collective settlement of competition damages. However, GCCP sets out rules governing joinder of actions. Where the subject matter of a dispute consists of similar claims/obligations which are based on the same historical and legal basis and the court has competence over each of the defendants – discretionary joinder (Art.74-75 GCCP), then more persons may sue or be sued under a single claim with each joinder party being independent to each other. When the dispute can only be settled under a sole judgment, so that contradictory judgments be avoided, a joinder shall be mandatory, and all plaintiffs and defendants be jointly entitled to a remedy or declared jointly liable, respectively (Art.76-78 GCCP).

22. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

Disclosure of documents during a competition damages claim before civil courts is regulated by the rules of civil procedure (Articles 4 & 6 of Law 4529/2018) introduced into Greek law as part of the implementation of the Damages Directive.

Upon request of a claimant who has presented a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim for damages, the court may order the defendant or a third party to disclose relevant evidence which lies in their control. In determining whether any disclosure request is proportionate, the court shall consider the legitimate interests of all parties and third parties concerned. In particular, the court considers whether the claim/defense is sufficiently evidenced, the protection of the confidentiality of such evidence as well as the necessity and consistency of the disclosure request.

When relevant evidence contains business secrets or otherwise confidential information, such confidential information needs to be appropriately protected by the Court according to Article 4 (par.5) of L.4529/2018. The main protection mechanism refers to the appointment of an expert pursuant to the provisions of Article 368 GCCP, who will draft a synoptic report of the said information. In that case and for the purpose of protection of confidentiality of information, parties are not permitted to appoint a technical advisor. Finally, courts, when ordering the disclosure of evidence, shall give full effect to applicable legal professional privilege under Union or national law.

Failure or refusal to comply with the disclosure order, may lead to fines ranging from 50.000 to 100.000 Euros.

Rules of disclosure of documents from a competition authority

Where the court orders the disclosure of evidence included in the file of a competition authority, the following provisions of Article 6 of Law 4529/2018 apply in addition to the rules applicable to disclosure of evidence of Article 5 as mentioned above. The disclosure of the following categories of evidence may be ordered only after a competition authority, by adopting a decision or otherwise, has closed its proceedings: (a) information that was prepared by a natural or legal person specifically for the proceedings of a competition authority; (b) information that the competition authority has drawn up and sent to the parties in the course of its proceedings; and (c) settlement submissions that have been withdrawn. (Article 6, para. 4) The disclosure from a competition authority of evidence included in its file may be ordered only where no party or third party is reasonably able to provide that evidence (Article 6, para. 8). The request for disclosure of documents included in the file of a competition authority is not valid unless an attestation is provided for prior notification of a copy of the request to the relevant competition authority (Article6, para. 9). The competition authority can submit ex officio observations to the court in relation to the proportionality of the disclosure request as well as it can be requested by the court to state its views on matters related to the disclosure of documents (Article 6, paras10 &11).

The court may not at any time order the disclosure of any of the following categories of evidence included in the file of the competition authority: (a) leniency statements; (b) settlement submissions; (c) documents containing statements from the documents referred to under (a) and (b). (Art.6, par.4) However, it is noted that CJEU has left open the prospect of access by the injured party to a file relating to proceedings under a leniency programme, as far as this access is necessary for the effective protection of the right to compensation enjoyed by that party [Cases C-536/11 (Donau Chemie), C-360/09 (Pfeiderer)].

23. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?

Article 176 GCCP provides that the unsuccessful party pay the costs of the successful party. However, in judicial practice Greek courts frequently oblige the successful party to pay a fraction of the costs incurred by the latter. In the event of a partial victory and a partial defeat of each party, the court shall divide the costs according to the extent of the victory or defeat of each party.

Article 189 GCCP stipulates that only court fees and costs necessary for the hearing proceedings and the advocacy are awarded by the Court. Indicatively: i) stamp dues for the drafting of lawsuits and any other legal documents, court decisions and reports and other procedural documents; ii) court deposit slip; iii) attorney fees and other court servants, such as court bailiffs, according to the relevant legal tariffs in force; iv) witnesses' compensation and costs, as well as experts fees and costs, according to the relevant legal tariffs in force; v) costs paid for the production of other means of evidence as well as travel expenses that may be paid by the litigant in order to appear at the hearing.

24. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

There is no legal framework specifically dealing with third-party litigation funding in Greece. In the absence of any specific framework, third-party litigation funding is permissible under the general contract rules of the GCC, which do not lay down specific circumstances, but rather apply under all circumstances. Specifically, third-party funding agreements can be permissible under the general contract law provisions of the GCC. Moreover, contingency fees are permissible under Greek legislation. In particular, in accordance with article 60 of the Lawyer's Code of Conduct, trial contracting is permitted, if conducted in writing and up to the amount of 20 per cent or 30 percent of the value of the subject matter of the dispute and depending on the number of lawyers involved.

25. What, in your opinion, are the main obstacles to litigating competition damages claims?

Competition damages claims carry the difficulty for the claimant to deal with the burden of quantifying their damages and/or loss of profits. An injured party who has proven having suffered harm as a result of a competition law infringement still needs to prove the extent of the harm in order to obtain damages, which can be a very fact-intensive process and may require the application of complex economic models. This is often very costly, and

claimants may have difficulties in obtaining the data necessary to substantiate their claims. This difficulty is enhanced in cases where a competition damage claim is raised at first and no previous results regarding the certain competition infringement have been judged by the national competition authority.

Also, the delay in litigation procedures is a long-standing problem in Greece.

26. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

The most significant development affecting competition litigation in the coming years is expected to be the effective application of the new provisions that were introduced into Greek law as part of the implementation of the Damages Directive, as well as the fact that more cases will likely have been adjudicated and thus there will be a more complete comprehension of the Courts' approach to all controversial issues, e.g., in relation to the quantification of the damage.

Numerous ex officio investigations in several sectors (e.g., e-commerce, basic consumer products and fintech) initiated by the Hellenic Competition Commission (HCC) could lead to subsequent investigations against certain undertakings and, possibly, to the adoption of numerous infringement decisions. Furthermore, the HCC's enforcement efforts are expected to increase awareness amongst various stakeholders and, consequently, various companies and organisations may decide to file claims for damages in relation to antitrust infringements, before the Greek courts.

In addition, the special chambers in the competent courts of Athens provided in Article 13 of Law 4529/2018 that will comprise judges specialised in competition or EU Law or commercial law are expected to be established.

Contributors

Alexis N. Spyropoulos
Partner
spyropoulos@nllaw.gr

Dina Th. Kouvelou
Partner
kouvelou@nllaw.gr

Dr. Nikos Th. Nikolinakos
Partner
nikolinakos@nllaw.gr