



Europe, Middle East and Africa Antitrust Review

2026

**Greece: amended Antitrust Law and
increased cooperation fuel Hellenic
Competition Commission's proactive
enforcement**

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Greece: amended Antitrust Law and increased cooperation fuel Hellenic Competition Commission's proactive enforcement

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IN SUMMARY

This article provides a brief presentation of the Greek antitrust framework in terms of substantive rules and procedure. Aspects of public enforcement in Greece are described, and a comparison is made with equivalent EU rules. Recent developments and trends are also covered.

DISCUSSION POINTS

- Hellenic Competition Authority
 - Types of antitrust violations
 - Leniency, settlement and commitments
 - Sanctions
 - Statute of limitation rules
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REFERENCED IN THIS ARTICLE

- Greek Antitrust Law 3959/2011
 - Articles 101 and 102 of the Treaty on the Functioning of the European Union
 - Council Regulation (EC) No. 1/2003
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The Greek Antitrust Law (Law 3959/2011) (the Antitrust Law) is based on European legislation. Articles 1 and 2 are generally applicable provisions prohibiting, respectively, anticompetitive behaviour and abuse of dominance. The wording of those articles – a literal translation of the equivalent articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) – was introduced before Greece joined the European Community and has remained unchanged. Both articles provide for an indicative list of typical per se violations.

In 2022, Law 4886/2022 amended the Antitrust Law, both by incorporating Directive (EU) 2019/1 (the ECN+ Directive) and by introducing new provisions that modernise the applicable framework. The latter included the addition of a new provision (article 1A of the Antitrust Law), aiming to prohibit, under certain conditions, unilateral practices consisting in an invitation to conclude a prohibited collusion and an announcement of future intentions regarding pricing. In both cases, considering the requirement for uniform application of European antitrust rules, the new national law provision does not apply to the extent that articles 1 and 2 of the Antitrust Law (TFEU, articles 101 and 102) apply.

HELLENIC COMPETITION AUTHORITY

Generally, responsibility for the enforcement of the Antitrust Law lies with the Hellenic Competition Commission (HCC), which is also the national competition authority for the application of articles 101 and 102 of the TFEU.

However, according to the EU common framework for liberalisation in the telecommunications, postal services and energy sectors as implemented in Greece, there are separate national regulatory authorities (NRAs), namely the Hellenic Telecommunications and Postal Services Commission and the Regulatory Authority of Energy (RAE). With the rest of the regulatory sector-specific powers held by those NRAs, the RAE is further responsible for enforcing the Antitrust Law in the aforementioned sectors, although cooperation with or referral to the HCC is also possible.

Under the Antitrust Law, the HCC comprises 10 members (including the chair, the vice chair and six commissioners), six of whom are full-time appointees.

Investigations can be initiated either *ex officio* (eg, in cases of public interest or when a certain anticompetitive pattern has come to the attention of the authority) or in response to a complaint submitted by a third party (usually a competitor, supplier or customer).

The investigative powers of the General Directorate of Competition (part of the HCC) are specifically provided for in the Antitrust Law and are generally in line with those of other European competition authorities. As mentioned above, the relevant provisions of the ECN+ Directive have been incorporated into the Antitrust Law. An investigation requires a written mandate from the chair of the HCC that defines the scope and legal basis of the investigation and also mentions the applicable sanctions should the enterprise fail to cooperate. Other public officers or authorities may be involved in an investigation carried out by the officers of the General Directorate of Competition, which must also comply with constitutional restraints (eg, if an investigation is in the residence of a representative of an enterprise, court authorisation is required).

The failure of an enterprise to comply with an investigation (eg, refusing to provide information, submitting misleading data or concealing documents) entails administrative and criminal sanctions.

As soon as the investigation is concluded, the General Directorate of Competition assesses the findings of the investigation and proceeds, in cooperation with one of the commissioners, to draft a recommendation (similar to a statement of objections) to the HCC. This recommendation is notified to the parties involved, who may express their position both orally and in writing before the HCC (right of prior hearing).

Prioritisation of cases is generally at the discretion of the HCC; nevertheless, it is subject to relevant internal rules for reasons of consistency and transparency.

The current points system was established by HCC Decision No. 696/2019, which introduced a new way of calculating the degree of priority of various cases by correlating, using a mathematical formula, the impact of the case and the extent of time and human resources needed to handle it.

Aside from taking into account factors that were used in the previous points systems (eg, whether a practice is hardcore, its geographical extent or the existence of novel legal issues), the new system refines the notion of public interest as a factor for prioritisation and assigns, for example, priority to cases deriving from complaints by consumer associations with which the HCC has concluded a memorandum of cooperation. Another innovation is the

introduction of an 'impending limitation factor', which applies to cases that are nearing the end of the limitation period and multiplies the final score, so that those cases achieve a higher priority ranking for investigation.

ANTICOMPETITIVE AGREEMENTS

According to article 1 of the Antitrust Law, all agreements between undertakings, all decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition in the Greek territory are prohibited, in particular those that:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby impeding competition, in particular by refusing, without valid justification, to sell, purchase or conclude any other transaction; or
- make the conclusion of contracts subject to acceptance by other parties of additional obligations that, by their nature or according to commercial usage, have no connection with the object of the contracts.

The prohibition captures both horizontal and vertical behaviours, the difference being that cartels are considered to constitute the most serious type of violation and entail heavier sanctions. Regarding vertical agreements, the EU Block Exemption Regulations also apply in Greece, the resale price maintenance and the restriction of passive sales constituting the main points of concern.

Under article 1, paragraph 3 of the Antitrust Law, the provisions of paragraph 1 may not apply in cases where any agreement between undertakings, decision by associations of undertakings or concerted practice:

- contributes to improving the production or distribution of goods, or to promoting technical or economic progress;
- allows consumers a fair share of the resulting benefit;
- does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of those objectives; and
- does not afford those undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

The above exemption criteria are cumulative, in accordance with the EU model. The system of self-assessment, as introduced by Council Regulation (EC) No. 139/2004 (the Merger Regulation), applies also in Greece automatically once the above criteria are cumulatively fulfilled. The burden of assessment lies with the undertakings involved.

ABUSE OF DOMINANCE

Greek law does not contain a definition of dominance. However, in accordance with well-established European and Greek case law, the market share (potentially greater than 50 per cent, depending on the allocation of the market power of the remaining players) and the

ability of a firm to act independently of competitors and customers are critical. The overall market structure (eg, other competitors, or legal or actual barriers to entry) is always of interest, so even undertakings with a smaller market share (even around 30 per cent) can be held dominant if the degree of market-share dispersion is high.

Article 2 of the Antitrust Law prohibits any abuse by one or more undertakings of a dominant position within the national market or in a part of it. This abuse may, in particular, involve:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, placing them at a competitive disadvantage; or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of the contracts.

From the above indicative examples, it is clear that the provision does not distinguish between horizontal (exclusionary) and vertical (exploitative) practices, therefore both aspects of possible abusive practices are covered. The exact form of abuse of dominance may vary. There are, therefore, two points of particular interest for dominant undertakings: rebates and predatory pricing.

It is true that, with the evolution of EU case law, it is hard for a dominant firm to implement a feasible discount policy that can stand effectively in the market and, at the same time, fully comply with competition rules. It is generally accepted that rebates connected with, for example, target sales are only exceptionally admissible if they are cost-related and justified. The rationale follows the EU approach (preventing dominant firms from any practices that end up binding the customers and excluding potential competitors).

Proper assessment of predatory pricing presupposes careful cost analysis. As a general rule, the critical threshold is the average variable cost, as sales below that cost are deemed abusive. Other than that, each case must be examined ad hoc, in the framework of the exact competition conditions of each market.

A critical element for defending alleged abuse of dominance is its objective justification relating to a commercial rationale. Also, potentially overriding interests (more efficient service for the customer) may counterbalance prima facie abusive behaviour. Proportionality is crucial in any case for the overall assessment of a certain type of conduct.

The prohibition of dissimilar treatment of similar situations is often misinterpreted as a 'flat' equality of treatment, particularly in cases involving alleged discrimination. However, the details of a specific practice cannot and must not be disregarded as, for example, the different credit risk or sales volume between customers may justify their different treatment. Comprehensive understanding of the facts of each case, combining vigorous legal analysis and economic competitive assessment, is a prerequisite for grey areas, which are prevalent in competition law.

SANCTIONS IN GENERAL

According to article 25 of the Antitrust Law, the HCC may impose fines against undertakings that violate the law. The fine cannot exceed 10 per cent of the aggregate global turnover of the undertaking for the previous fiscal year, depending on the gravity and the duration of the infringement. European guidelines for the calculation of the fine are also followed by the HCC.

In accordance with the provisions of the Antitrust Law, there are three new elements regarding administrative sanctions:

- In cases with a group of companies, the aggregate global group turnover is to be considered.
- If the economic benefit enjoyed by the undertaking can be measured, the fine cannot be lower (even if it exceeds the threshold of 10 per cent).
- Individuals involved in violations of Law 3959/2011 face a twofold personal liability:
 - they are jointly liable with the undertaking for the payment of the fine; and
 - a separate fine ranging from €200,000 to €2 million may be imposed if they were involved in preparing, organising or committing the violation.

Criminal sanctions are also threatened in cases that violate the Antitrust Law or articles 101 and 102 of the TFEU. According to article 44 of the Antitrust Law, a distinction is made, depending on the type of violation:

- horizontal violation leads to imprisonment of between two and five years, and a fine ranging from €100,000 to €1 million;
- vertical violation leads to a fine ranging from €15,000 to €150,000; and
- abuse of dominance leads to a fine ranging from €30,000 to €300,000.

Criminal sanctions are eliminated in the case of leniency or settlement, provided the accused undertakings have paid off any fines imposed by the HCC.

JUDICIAL PROTECTION

Decisions issued by the HCC are, at the first stage, subject to appeal before the competent administrative court of appeal. The court examines both the legality and the substance of the decision, which may be annulled in total or in part. This includes any reduction of the fine, which is not at all unusual.

However, annulment of the decision is not as frequent, and in many cases this is because of technicalities owing to the inability of the HCC to adhere strictly to administrative procedural rules.

The appeal does not suspend the payment of the fine or the enforcement of other conditions or remedies. The court, however, may suspend enforcement, totally or in part, conditionally or unconditionally, in extreme cases, such as a clearly unfounded decision or the complete inability of the undertaking or undertakings to pay the fine. The authority of the court is limited so that it may suspend the fine by no more than 80 per cent.

The decision of the Appellate Court is subject to appeal (cassation) before the Supreme Administrative Court for legal reasons only (wrong application of the law assuming as correct the factual basis accepted or dictum not supported by reasoned arguments).

The law also allows the suspension of the contested decision of the Appellate Court by the Supreme Administrative Court.

LIMITATION PERIOD

Article 42 of the Antitrust Law provides that the power of the HCC to assess antitrust fines is subject to a five-year limitation period, which starts on the date of the violation. In cases of continuous or repeated violations, it starts on the date the offence ceased.

The above provision follows the European rules and resolves a controversial issue in respect of violation of articles 1 and 2 of the Antitrust Law. Previously, the HCC was generally unwilling to accept the concept of a limitation period, although it was validly argued that many generally accepted principles that are applicable in administrative law require the administration to act in a timely manner (ie, within a reasonable time frame) and, in addition, that the rule of uniform application and the interpretation of European and national law cannot be disregarded.

Contrary to Council Regulation (EC) No. 1/2003, which clearly refers only to violation of articles 101 and 102 of the TFEU, the above provision, speaking generally for 'violations of the law', appears also to cover infringements of Greek merger control provisions, although issues of limitation periods have not been tackled by the HCC in merger cases.

The limitation period can be interrupted by any act of the HCC (or the European Commission) within the framework of the investigation of the violation or of related procedures, including, but not limited to:

- written requests by the HCC or other authority to provide information or orders for audit (or dawn raids);
- assignment of the case to a rapporteur; and
- service of a statement of objections or of a recommendation report.

The interruption starts from the communication of the relevant act to at least one of the undertakings participating in the violation and applies to all accomplices. The limitation period is suspended while the act or decision of the HCC relating to the case is pending before courts. In any case, the period is complete after 10 years have passed (ie, twice the basic limitation period).

COMMITMENTS

The 'commitments decision' procedure under Council Regulation (EC) No. 1/2003 and Greek competition law empowers the HCC to settle competition law cases.

The involved undertaking may voluntarily propose that the HCC undertake certain behavioural or structural commitments to terminate the alleged infringement (an anticompetitive agreement, decision or concerted practice, or an abuse of dominance).

The HCC can consider those commitments and render them mandatory if and when:

- they remove the HCC's initial competition concerns;
- a fine would not be appropriate (therefore excluding commitment decisions in hardcore cartel cases); and
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efficiency reasons justify that the Commission limits itself to making the commitments binding and does not issue a formal prohibition decision.

The HCC is considered to have wide discretion in accepting commitments. It has rendered Decision No. 588/2014 on commitments.

LENIENCY

Leniency was introduced into Greek competition law in 2005. The HCC later rendered Decision No. 526/VI/2011 on leniency, following, in general terms, the European Commission's Leniency Notice.

Leniency applies only in horizontal cartel not vertical cartel or abuse of dominance cases. In accordance with the EU approach, a distinction is made between:

- full immunity from fines, if the undertaking is the first to submit evidence for a cartel about which the HCC had, at the time of submission, insufficient evidence to carry out an investigation or find out about the infringement; and
- reduction of fines, if the undertaking provides the HCC with evidence of the alleged infringement that represents 'significant added value' compared with other information that the HCC already possesses.

The undertaking must also:

- cooperate fully, actively and continuously throughout the investigation procedure, and provide the HCC with all information and evidence in its possession or that might later become available to it;
- end its participation in the alleged infringement as soon as it submits the information to the HCC;
- not have encouraged other undertakings to participate in the infringement;
- treat with full confidentiality the fact that it has applied for leniency until the completion of the investigation and the drafting of the HCC report; and
- not have participated in any cartel case in the past that has been detected and confirmed by a national competition authority or the European Commission.

In May 2016, the HCC issued a statement of objections in a construction cartel focusing on alleged collusion regarding tenders for public works of infrastructure, notably road construction, rail transport, metro rail and concession projects (public–private partnerships). This is practically the first case in Greece in which one of the accused parties contributed considerably to the substantiation of the infringement by submitting a leniency application following HCC dawn raids and was granted full immunity.

SETTLEMENT

On 18 July 2016, the HCC issued Decision No. 628/2016, formally establishing a settlement procedure for cartel infringements, further aligning its practice with the European Commission, which introduced this procedure in 2008. Pursuant to this HCC decision, companies may express their interest, in writing, to participate in the settlement procedure, either before the issue of a statement of objections or 35 days before the date set for an oral

hearing (in contrast to the Commission, which will always carry out the procedure before the issue of a statement of objections).

Unlike the European Commission, which offers a 10 per cent reduction, the HCC offers a 15 per cent reduction of the fine for cases that successfully complete the settlement procedure. In light of the ongoing financial crisis in Greece, which has hit businesses especially hard, it is anticipated that this settlement tool will be used often.

The HCC decision coincided with the issue of a statement of objections for the largest case dealt with to date by the HCC, both in terms of the number of implicated undertakings (40) and the fines threatened (over €200 million). The settlement decision was eventually issued on 10 March 2017 (HCC Decision No. 642/2017) and was followed by the standard hearing procedure for the remaining undertakings that did not participate in the settlement (HCC Decision No. 647/2017).

Previously, on 10 January 2017, the HCC had issued its first settlement decision (HCC Decision No. 636/2017), relating to a cosmetics and selective distribution channel, following a settlement request by the leading retailer in the Greek market. This was the second case submitted to the simplified (settlement) procedure but the first to complete it successfully. Since then, settlement has become a popular choice and several further cases have been settled or are under way for settlement.

As per the recent amendment of the Antitrust Law, the settlement mechanism is now expanded and has become an option for all sorts of violations, not only cartels but also vertical infringements and abuse of dominance.

MERGER CONTROL

Framework

The HCC may also enforce articles 5 to 10 of the Antitrust Law, which deal with control of business concentrations of a national dimension. In this capacity, it may decide whether there is significant impact on competition from the concentration and allow or prohibit it, accept remedies or impose conditions.

The HCC may also handle mergers with a Community dimension that are referred to it by the European Commission in accordance with the provisions of the Merger Regulation.

National merger control applies when a concentration exceeds the following thresholds:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least €150 million; and
- the aggregate turnover of each of at least two of the undertakings concerned in the Greek market exceeds €15 million.

The above thresholds apply to all market sectors, except for mass media, where special legislation (Law 3592/2007) defines the thresholds as follows:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least €50 million; and
- the aggregate turnover of each of at least two of the undertakings concerned in the Greek market exceeds €5 million.

If falling under Greek merger control rules, the undertakings may not effect the concentration before clearance by the HCC or contrary to the prohibition decided by the HCC. Otherwise the undertakings concerned are subject to severe sanctions (a penalty and the possible invalidation of the concentration). A penalty will also be the result of a late notification, even if the parties have not yet implemented the concentration or if the concentration was ultimately approved.

Although the Merger Regulation sets no notification deadline, and it is in the parties' interest to move quickly to get clearance and implement the merger, notification in Greece must be made within 30 days of:

- the entry into an agreement;
- the publication of an offer or an exchange; or
- the undertaking of the obligation to acquire participation that secures the control of another undertaking.

Greek law, following the EU significant impediment to effective competition test, provides that a concentration is prohibited if it may lead to a significant impediment to competition in the whole or a substantial part of the Greek market, especially by creating or strengthening a dominant position.

Therefore, market share is examined, but it is not the sole criterion. In the framework of the adopted test, the law specifies the basic criteria to be considered, such as the structure of the relevant markets, actual or potential competition, barriers to entry, market position of the participating undertakings, available sources of supply and demand, consumers' interest and efficiencies.

The above test applies in all market sectors, except for that of the mass media where the special Law 3592/2007 provides for a dominance test. For the purposes of this Law, 'dominance' translates to a market share of between 25 and 35 per cent, depending on the case.

PROCEDURE

The content of a notification is defined by an HCC decision. The HCC issued a new draft notification form (Decision No. 558/VII/2013) with a separate form for submitting remedies (Decision No. 524/VI/2011). The format of those templates generally follows the guidelines of the European Commission, and the purpose is to make clear to the notifying parties the minimum information they have to substantiate as part of the notification.

The notification form must be submitted in Greek with all required supporting documents and the receipt of the filing fee, currently €1,100. A summary of the notification must also be published in a daily financial newspaper, and on the HCC website, so that any third party (eg, competitor, supplier, customer or customer association) may find out about the transaction and submit comments to the HCC.

If the notification form is not filled in and submitted properly, the notification is not complete, and the deadline for submission has not been met and the time frame for the HCC to issue its decision is not triggered. Depending on the extent of omission, it may be considered as a failure to notify.

Within a month of receiving a notification, the HCC president must either issue an act certifying that the concentration does not fall within the scope of the law, or if the concentration is caught by the law, it may be examined in one or two phases, in line with the practice defined by the Merger Regulation.

If in Phase I the HCC finds that the concentration notified does not raise serious doubts on its compatibility with the competition requirements of the relevant national markets, it issues a decision approving the concentration within a month of the date of notification.

If the HCC finds that the concentration raises serious doubts, its president will issue a decision initiating Phase II proceedings, which is notified to the interested parties. This decision must be issued within a month of receiving the notification. Within 45 days of the decision, the case must be put before the HCC, which must decide within 90 days whether to approve or prohibit the concentration. If the HCC fails to issue a decision within this period, the concentration is deemed to be approved.

During the Phase II investigation, and within 20 days of the parties receiving the recommendation and the case being put before the HCC, the parties may jointly proceed to modifications to the transaction or propose remedies to remove the serious doubts on its compatibility with competition in the relevant market. The HCC may, in exceptional cases, accept a proposal of remedies after the expiry of the deadline. In this case, the Phase II deadline of 90 days may be extended by 15 days to 105 days in total. The recent amendment of the Antitrust Law now allows parties to propose these modifications and remedies during the initial Phase I, which is more flexible and can save valuable time, which is often absolutely critical in merger cases.

The HCC may approve the notified concentration, attaching conditions and provisions to its decision to ensure the participating undertakings' compliance with commitments to render the concentration compatible with the provisions of the law requiring that the concentration must not raise serious doubts about its significant impact to competition in the national market or, in the case of a joint venture, that the latter operate as an autonomous unit.

The decision may threaten fines against the participating undertakings if they fail to comply with the conditions and provisions in the framework of remedies.

SANCTIONS

Depending on the violation, the HCC may impose fines of up to 10 per cent of the aggregate turnover of all participating undertakings. Criminal sanctions may cumulatively be imposed by the court on anyone who violates the provisions on merger control or does not comply with the relevant decisions of the HCC.



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