



ICLG

The International Comparative Legal Guide to:

Competition Litigation 2018

10th Edition

A practical cross-border insight into competition litigation work

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EDITORIAL

Welcome to the tenth edition of *The International Comparative Legal Guide to: Competition Litigation*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of competition litigation.

It is divided into two main sections:

Five general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting competition litigation work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in competition litigation in 29 jurisdictions.

All chapters are written by leading competition litigation lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Euan Burrows of Ashurst LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 General

1.1 Please identify the scope of claims that may be brought in your jurisdiction for breach of competition law.

Law 3959/2011 (hereinafter the “**Law**”), as amended, is the core competition law in Greece. Any breach of its antitrust provisions (i.e. articles 1 and 2, which mirror articles 101 and 102 TFEU respectively), as well as primary EU legislation on competition law, raises the following claims, which may be brought before the national competent civil courts (private enforcement):

a claim for declaring a contractual relationship as null and void (case no 928/2006 issued by Patras Court of Appeal);

a claim for damages by persons who have suffered injury due to antitrust violations. Damages may be divided into pecuniary and non-pecuniary/moral damages. Following the seminal cases *Courage and Manfredi*, issued by the European Court of Justice, articles 101 and 102 TFEU are directly applicable and produce direct effects in the sense that any individual can claim compensation for the harm suffered due to antitrust infringements. Similarly, such right to damages is also recognised under Greek jurisprudence regarding violations of articles 1 and 2 of the Law (case no 1286/2011 issued by the Supreme Court);

according to the prevalent view of Greek legal theory, an individual may ask from the competent civil courts to order the cessation and the non-recurrence in the future of an infringement of antitrust laws; and

an individual may submit a complaint concerning antitrust violations before the Hellenic Competition Commission (hereinafter the “**HCC**”), which is the competent authority for the public enforcement of competition law. The HCC may, upon examination of the complaint, impose administrative fines.

This article shall solely cover aspects of private enforcement of competition law in Greece.

1.2 What is the legal basis for bringing an action for breach of competition law?

Articles 1 and 2 of the Law, as well as 101 and 102 TFEU, constitute the legal basis for bringing actions for declaratory judgments. Article 70 of the Greek Code of Civil Procedure (hereinafter the “**GCCP**”) recognises the right to such action, provided that certain conditions are met (i.e. such action must concern a specific legal relationship and requires a

legal interest on the claimant’s part especially worthy of protection).

No statutory basis is explicitly provided under Greek legislation concerning claims for damages. Hence, article 914 of the Greek Civil Code (hereinafter the “**GCC**”), which encapsulates the basic rule on tort liability, is considered as the legal basis for bringing claims for pecuniary damages that derive from antitrust infringements. Article 932 GCC may be invoked for the award of non-pecuniary/moral damages.

Finally, it should be emphasised that Greece was obliged to implement Directive 2014/104/EU on antitrust damages actions (hereinafter the “**EU Damages Directive**”) by 27 December 2016. Despite the lapse in the implementation date, Greece has not yet transposed the EU Damages Directive into Greek law.

1.3 Is the legal basis for competition law claims derived from international, national or regional law?

As aforementioned, the legal basis may derive from both national and European law, whereas no regional law exists.

1.4 Are there specialist courts in your jurisdiction to which competition law cases are assigned?

There are no such specialist courts in Greece. Greek civil courts, namely the Magistrate’s Court or the Court of First Instance, are competent, depending on the value of the claim, to hear private disputes due to infringements of competition law (see question 9.1 below regarding judicial review of cases issued by the aforementioned courts).

1.5 Who has standing to bring an action for breach of competition law and what are the available mechanisms for multiple claimants? For instance, is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation? If collective claims or class actions are permitted, are these permitted on an “opt-in” or “opt-out” basis?

According to articles 3, 62 and 68 GCCP in conjunction with article 914 GCC, any person (individual or legal entity, irrespective of nationality, associations of persons and entities without legal personality), who has suffered damage by another party acting unlawfully and in fault, is entitled to bring an action against that party which caused the damage.

Article 74 GCCP provides for the possibility of a joinder if either the claimants' rights for damages arise from the same factual and legal basis or the object of the dispute consists of similar claims based on a similar factual and legal basis.

Class/collective actions are not provided in Greek law for competition law cases. However, article 10(16) of Law 2251/1994, as amended, which is the basic legislative regime for consumer protection, provides for representative actions. Such actions may be brought for the protection of the general interests of the consuming public by a consumers' union, should certain requirements be fulfilled.

1.6 What jurisdictional factors will determine whether a court is entitled to take on a competition law claim?

Subject matter jurisdiction depends on the value of the claim. The Magistrate's Court is primarily competent to hear all disputes which can be assessed in monetary terms, where the value of the claim does not exceed €20,000.00, whereas the respective thresholds for Single-Member Court of First Instance vary from €20,001.00 to €250,000.00. The Multi-Member Court of First Instance shall adjudicate on all disputes for which the Magistrate's Court and the Single-Member Court of First Instance are not competent (articles 14GCCP *et seq.*).

Concerning territorial jurisdiction, article 22 GCCP provides for a general jurisdiction rule, according to which a defendant may be sued in the courts of his/her residence/domicile. In addition, article 35 GCCP, in compliance with the recast Brussels Regulation (EU Regulation 1215/2012) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, stipulates that claims in respect of torts may be brought in the courts of the place where the harmful event occurred or may occur. It is up to the claimant to choose one of the foregoing venues.

1.7 Does your jurisdiction have a reputation for attracting claimants or, on the contrary, defendant applications to seize jurisdiction, and if so, why?

No, it does not.

1.8 Is the judicial process adversarial or inquisitorial?

Judicial process is adversarial in the sense that evidence is produced at the initiative of the parties, and procedural acts are initiated upon litigants' diligence (article 106 GCCP *et seq.*).

2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

Yes, interim remedies are available.

2.2 What interim remedies are available and under what conditions will a court grant them?

The following interim remedies are available under the GCCP: (i) surety; (ii) registration of a mortgage prenotation; (iii) conservative attachment; (iv) judicial sequestration; (v) interim hearing of claims; (vi) interim regulation of the situation; (vii) impoundment; (viii) release from impoundment; (ix) stock-taking; and (x) deposit of assets at a bank. Civil courts shall grant interim remedies:

- i. in case of urgency, or if the courts estimate that this is necessary for the prevention of imminent danger for the purpose of securing or preserving a right or for the purpose of regulating a situation; and
- ii. if it is reasonably supposed that the measure will serve to temporarily protect a specific right in need of protection.

3 Final Remedies

3.1 Please identify the final remedies which may be available and describe in each case the tests which a court will apply in deciding whether to grant such a remedy.

On the basis of the claims under question 1.1 above, the following final remedies may be awarded:

a declaratory judgment declaring an anti-competitive agreement void; and

damages, provided that the following requirements, upon which application of 914GCC is triggered, are met: (a) unlawful act; (b) liability attributed to the defendant; (c) damage; and (d) a causal link between the unlawful act and damage.

3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available? Are there any examples of damages being awarded by the courts in competition cases which are in the public domain? If so, please identify any notable examples and provide details of the amounts awarded.

Damages awarded on the basis of tort liability aim to reconstitute the economic injury that the victim has suffered. Pecuniary damages relate to injury caused to goods that have an economic value and are, in principle, awarded in the form of monetary compensation, which covers both actual damage and lost profit. In exceptional circumstances, pecuniary damages may be awarded in the form of "in natura restitution". Non-pecuniary damages are granted as a reasonable pecuniary satisfaction and cover moral damage (e.g. damage to legal personality, reputation, etc.).

In Greece, pecuniary damages are quantified on the basis of the actual losses and the loss of profits incurred by the claimant to the extent that there is a direct causal link between the infringement and the damage suffered. Since no specific economic method is applied by the Greek courts regarding quantification of harm, a useful tool, to this effect may be the non-binding Commission's Communication and Practical Guide on quantifying antitrust harm in damages actions, which was issued as a complementary measure to EU Damages Directive. Non-pecuniary damages are calculated at the discretion of the court and should be reasonable.

Greek law does not provide for exemplary/punitive damages.

Private litigation for antitrust infringements in Greece is currently underdeveloped. In that regard, there are no notable cases to refer since the awarded amounts by the courts are rather low.

3.3 Are fines imposed by competition authorities and/or any redress scheme already offered to those harmed by the infringement taken into account by the court when calculating the award?

No, they are not.

4 Evidence

4.1 What is the standard of proof?

Greek civil courts must be satisfied about the truth of the parties' allegations "beyond reasonable doubt". However, in cases that the courts award interim measures, probability is sufficient regarding the veracity of allegations.

4.2 Who bears the evidential burden of proof?

The burden of proof lies with the party invoking the necessary factual elements in order to substantiate its claim or counterclaim.

4.3 Do evidential presumptions play an important role in damages claims, including any presumptions of loss in cartel cases that have been applied in your jurisdiction?

In principle, the party will be based on tort liability for claiming damages due to breach of competition law. Unlike the EU Damages Directive, there are no evidential presumptions in Greece, such as the presumption that cartel infringements result in harm.

4.4 Are there limitations on the forms of evidence which may be put forward by either side? Is expert evidence accepted by the courts?

The means of evidence that may be invoked by the litigants before the civil courts are exhaustively listed in the GCCP and are, especially: confession; inspection; expert evidence; documents; litigants' examination; witnesses; affidavits (i.e. sworn statements); and judicial presumption. As indicated above, expert evidence is an accepted means of evidence by the GCCP.

4.5 What are the rules on disclosure? What, if any, documents can be obtained: (i) before proceedings have begun; (ii) during proceedings from the other party; and (iii) from third parties (including competition authorities)?

There are no requirements on a lawyer's duty to ensure full disclosure under GCCP. Parties are free to choose the documents they wish to disclose and file them with the trial bundles. In principle, any documents/means of evidence referred in an action, which support the factual allegations of a party, must be disclosed with that party's pleadings, within 115 days from the filing of the claim. Such evidence is also taken into account for the proof of the arguments of the opposing party.

Exceptionally, article 450(2) GCCP provides that a litigant may request the competent court to issue an order enforcing the other litigant or a third party (including the HCC) to produce documents in the latter's possession, which may provide evidence regarding the litigants. The requested party may deny such disclosure only for material reasons (e.g. professional secrecy, self-incrimination).

4.6 Can witnesses be forced to appear? To what extent, if any, is cross-examination of witnesses possible?

Witnesses are not forced to appear under the GCCP. Following the recent amendment of the GCCP by virtue of Law 4335/2015,

cross-examination of witnesses is exceptional since it may be conducted only following an order issued by the competent judge. Furthermore, each litigant may submit written sworn statements of witnesses which are accessible by the other litigant.

4.7 Does an infringement decision by a national or international competition authority, or an authority from another country, have probative value as to liability and enable claimants to pursue follow-on claims for damages in the courts?

Article 16(1) of EU Regulation 1/2003 provides that national courts cannot take decisions running counter to the decision adopted or contemplated by the European Commission. Thus, the claimant in subsequent proceedings before national courts may rely on the European Commission's decision finding a breach of the competition rules as a binding proof.

Furthermore, pursuant to article 35(1) of the Law, any decisions issued by the Administrative Court of Appeal (i.e. competent court to hear appeals upon points of fact and law against decisions issued by the HCC) and the Council of State (its judicial review covers appeals against decisions issued by the Administrative Court of Appeal, only on points of law), have the force of "*res judicata*" and accordingly they are binding regarding their findings on whether an antitrust violation has occurred.

Infringement decisions issued by a national competition authority from another country or an international competition authority are freely assessed by the courts.

4.8 How would courts deal with issues of commercial confidentiality that may arise in competition proceedings?

As described in question 4.5 above, the requested party by virtue of article 450(2) GCCP is not obliged to disclose information that entails issues of commercial confidentiality.

4.9 Is there provision for the national competition authority in your jurisdiction (and/or the European Commission, in EU Member States) to express its views or analysis in relation to the case? If so, how common is it for the competition authority (or European Commission) to do so?

As per article 35(3) of the Law, courts of all jurisdictions which apply articles 101 and 102 TFEU may ask: (a) the European Commission to send them information in its possession or to formulate an opinion on matters pertaining to the application of EU competition law; and (b) the HCC to formulate an opinion on the above matters and on matters pertaining to the application of articles 1 and 2 of the Law.

5 Justification / Defences

5.1 Is a defence of justification/public interest available?

For events of *force majeure*, self-defence and reaction to illegal conduct, consent may be invoked by the defendant as grounds of justification. Public interest defence is not available under the GCC.

5.2 Is the “passing on defence” available and do indirect purchasers have legal standing to sue?

There is not a clear view on this matter in Greek legal theory. It is accepted that the passing on defence would be examined on a case-by-case basis in the context of proof of damages. In other words, the defendant, upon invocation of such defence, shall bear the burden to prove that the claimant has not suffered (wholly or in part) any damage due to the fact that the latter passed on the effects of the unlawful act to the downstream level (e.g. indirect purchaser, consumer).

According to the prevalent Greek legal theory, indirect purchasers are entitled to sue, provided that they will be able to prove that all the conditions of tort liability have been met. In that regard, it is accepted that indirect purchasers have difficulty in proving the causal link between the damage and the unlawful act.

5.3 Are defendants able to join other cartel participants to the claim as co-defendants? If so, on what basis may they be joined?

There are no specific provisions regarding the intervention of a third party in competition law proceedings. Under GCCP, a third party may intervene in support of a defendant if it has a legal interest (i.e. to win the pending case).

6 Timing

6.1 Is there a limitation period for bringing a claim for breach of competition law, and if so how long is it and when does it start to run?

The general rule is set by article 937 GCC, which sets a five-year limitation period starting from the date the claimant has acquired both knowledge of the damage and the identity of the person liable to pay compensation. In any event, the claim is time-barred after the lapse of 20 years from the date that the wrongful act was committed. If the wrongful act is also an act that is punishable under the penal law, and under that law the prescription is longer, then this longer prescription is also applicable for the claim of compensation.

6.2 Broadly speaking, how long does a typical breach of competition law claim take to bring to trial and final judgment? Is it possible to expedite proceedings?

Until the recent amendment of the GCCP by virtue of Law 4335/2015, hearing of a case was normally scheduled after a period of approximately one year from the date the claim was lodged before the secretary of the competent court. Courts normally delivered their judgments within six months from the hearing. Nevertheless, it should be emphasised that the foregoing time-frames varied, especially in cases of adjournment of the hearing, which was a common practice in the Greek judicial system.

Following the recent amendment of the GCCP, which intends to accelerate the judicial proceedings, hearing of a case may take place within 160 days from the filing of the claim. It should be noted that such a timeline is indicative. Moreover, under the new legislative framework, it is not possible to postpone the hearing.

Finally, it is not possible to expedite proceedings in Greece.

7 Settlement

7.1 Do parties require the permission of the court to discontinue breach of competition law claims (for example if a settlement is reached)?

Discontinuation of any action may be achieved in various ways, none of which requires the court’s permission. With respect to settlement, GCCP provides for judicial as well as extra-judicial settlement of disputes, according to which the parties are entitled to attempt to resolve their disputes at any time following the initiation of the legal proceedings (or even before such initiation in the case of judicial settlement) and before the issuance of a final court decision. Regarding extra-judicial settlement, the parties should conclude a settlement agreement and submit such agreement dated and signed by them before the presiding judge of the competent court, in order to have such agreement duly stamped and certified. Following this procedure, the trial is abolished. With respect to judicial settlement, if the parties reach an agreement, minutes of mediation should be drawn and signed by the mediator, the parties and their lawyers in order to be filed with the court secretariat where the mediation took place.

7.2 If collective claims, class actions and/or representative actions are permitted, is collective settlement/settlement by the representative body on behalf of the claimants also permitted, and if so on what basis?

As indicated under question 1.5 above, no class/collective actions are provided for competition law claims.

8 Costs

8.1 Can the claimant/defendant recover its legal costs from the unsuccessful party?

The general rule is that the losing party pays the legal costs. Nevertheless, in cases of partial winning and partial defeat, the court may allocate the legal costs in proportion to the extent of the success or defeat of each party. Finally, the court may set off the legal costs in cases where the interpretation of the applicable law is rather complicated.

8.2 Are lawyers permitted to act on a contingency fee basis?

In accordance with the Code of Lawyers, a lawyer may agree with his/her client to be remunerated on the basis of the outcome of the case or on any other criterion. However, such remuneration shall not exceed 20% of the value of the case.

8.3 Is third party funding of competition law claims permitted? If so, has this option been used in many cases to date?

Third party funding is not provided for in the Greek legal system.

9 Appeal

9.1 Can decisions of the court be appealed?

Judgments issued by the Court of First Instance may be appealed against before the Court of Appeal on errors in law and in fact. An appeal may be filed by either the defeated party or the successful party, if its case has only partially been accepted. Following the issuance of a decision by the appellate court, this decision may be contested by means of a cassation before the Supreme Court, but only on the basis of errors in law.

10 Leniency

10.1 Is leniency offered by a national competition authority in your jurisdiction? If so, is (a) a successful, and (b) an unsuccessful applicant for leniency given immunity from civil claims?

Decision no 526/VI/2011, issued by the HCC, provides for leniency in Greece. Unlike the EU Damages Directive which does not attribute immunity to leniency applicants only under certain conditions (article 11(4)), no similar provision exists in Greece.

10.2 Is (a) a successful, and (b) an unsuccessful applicant for leniency permitted to withhold evidence disclosed by it when obtaining leniency in any subsequent court proceedings?

In contrast to the EU Damages Directive which prohibits disclosure by a court order of leniency statements and settlement submissions on follow-on actions (article 6), no similar provision exists in Greece. In that regard, Greek courts should consider as well the joint position of all ECN Competition Authorities following the *Pfleiderer* judgment, according to which leniency materials should be protected against disclosure to the extent necessary to ensure the effectiveness of leniency programmes.

11 Anticipated Reforms

11.1 For EU Member States, highlight the anticipated impact of the EU Directive on Antitrust Damages Actions at the national level and any amendments to national procedure that are likely to be required.

Upon transposition of the EU Damages Directive into Greek law, the following reforms to damages litigation shall occur in Greece:

indirect purchasers' burden of proof shall be alleviated by the adoption of a rebuttable presumption regarding the passing on of overcharges upon fulfilment of certain conditions;

proof of compensation for cartel victims shall be facilitated, given that a rebuttable presumption is established, according to which cartels cause harm; and

easier access to evidence for victims shall be provided, since they shall be entitled to ask for disclosure of categories of evidence.

11.2 Have any steps been taken yet to implement the EU Directive on Antitrust Damages Actions in your jurisdiction?

To the best of our knowledge, the General Secretariat for Commerce and Consumer Protection has appointed a legislation committee responsible for the implementation of the EU Damages Directive into Greek law.

11.3 Please identify with reference to transitional provisions in national implementing legislation, whether the key aspects of the Directive (including limitation reforms) will apply in your jurisdiction only to infringement decisions post-dating the effective date of implementation or, if some other arrangement applies, please describe.

As aforesaid under question 1.2, Greece has not yet transposed the EU Damages Directive into Greek law.

11.4 Are there any other proposed reforms in your jurisdiction relating to competition litigation?

No, there are not.

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