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**Commercial / Competition
Law 4886/2022: Reforming Competition
Law in the light of the digital era**

Newsletter
April 2022

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Law 4886/2022: Reforming Competition Law in the light of the digital era

In the wake of digital era and with the aim of granting additional powers to the Hellenic Competition Commission ('HCC'), Greek Competition Act (Law 3959/2011) has been recently reformed by virtue of Law 4886/2022 (Government Gazette A'12/24.01.2022) 'on the modernisation of competition law for the digital era' ('Amending Law').

Aim of the amendments

The amending Law serves a twofold aim: it transposes Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 'to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market' ('ECN+ Directive') in Greece and it further modernises the legal framework of Greek competition law in light of the challenges posed by the digital economy.

Entering into force on **24 January 2022** (with the exception of the newly introduced provision of Article 1A, described below, which enters into effect as of July 1st, 2022), the new Law has brought about a number of significant substantive and procedural amendments to the Greek Competition Act as presented below.

Prohibition of invitation to collude and price signaling

The first key amendment is the **introduction of a new provision to the Greek Competition Act as Article 1A** prohibiting two new types of **unilateral conduct** with significant negative impact on competition, namely **invitation to collude** and **price signaling**. According to the newly inserted provision, undertakings are prohibited from:

- Proposing, coercing or providing incentives or in any way inviting another undertaking to participate in agreements between undertakings, decisions by associations of undertakings or concerted practices aiming at preventing, restricting or distorting competition in the Greek market and consisting of:
 - (a) directly or indirectly fixing purchase or selling prices on a market; or
 - (b) limiting or controlling production, distribution, technological development or investment; or
 - (c) allocating markets or supply sources.

- Disclosing information on prices, rebates, benefits or credit regarding the products or services it supplies or purchases if:
 - (a) the disclosure restricts effective competition in the Greek market; and
 - (b) it does not constitute a common commercial practice.

To assess whether such disclosure restricts effective competition, the new provision sets forth certain criteria which are taken into account, including, the degree of specialisation and the nature of the information, the extent to which the information is readily accessible to the public, whether the relevant market is concentrated and oligopolistic, etc.

The disclosure of information exclusively addressed to end users is not considered to restrict effective competition.

New Article 1A aims at tackling the unilateral behaviour of major players in the market, as undertakings with a total turnover below EUR 50m and less than 250 employees are excluded from its scope.

Regarding the concurrent application of new Article 1A with Articles 1 and 2 of the Greek Competition Act and Articles 101 and 102 of the TFEU, it is explicitly stipulated that the latter articles shall apply to the exclusion of Article 1A (for instance in the case of exchange of commercially sensitive information).

It is noted that the new provision shall enter into effect on 1 July 2022.

Merger control

The amending Law further brings about certain novel reforms regarding merger control. Firstly, it introduces the possibility of notifying parties to suggest commitments to the Hellenic Competition Commission (HCC) during the Phase I Investigation, which, under the previous regime, was possible only at Phase II Investigation. Moreover, the parties, within 20 days from the notification of the HCC, may now also propose modifications to the contemplated concentration to address any serious concerns of the HCC as to its compatibility with the conditions of competition in the relevant markets. If the HCC, following the suggested modification, deems that the competition concerns have been lifted, it may clear the transaction at Phase I Investigation.

In regard to the minimum thresholds and criteria required for the prior notification of the concentration, the new Law provides that they may be amended by virtue of a joint Ministerial Decision of the Minister of Finance and the Minister of Development and Investments, following a public consultation, instead of a recommendation of the HCC, as it was provided under the previous regime. The said Decision may further set different minimum threshold and criteria for each sector of the economy, based on the market mapping conducted by the HCC every three (3) years.

Fines and monetary penalties

As regards the fining powers of the HCC, the amending Law ensures the uniform regulation of HCC's power to impose fines in case of violations of antitrust law and/or monetary penalties for each day of non-compliance by undertakings or the association of undertakings concerned with its decisions. In particular, it is stipulated that the **fines** imposed shall be effective, proportionate and dissuasive and may amount to **up to ten per cent (10%) of the total worldwide turnover** of the undertaking in the financial year preceding the issuance of the HCC's decision, **compared to the national turnover which was the basis for the determination of the fine under the previous regime**. It

is expressly clarified that the notion of ‘undertaking’ includes the parent companies and the legal or economic successors of undertakings, according to the principles of single economic unit and economic continuity established by the CJEU’s jurisprudence. Furthermore, in case of an infringement committed by an association of undertakings which is linked to the activities of its members, the fine may amount to up to ten percent (10%) of the total worldwide turnover of its members active in the market where the infringement occurred.

As provided by virtue of the new Law, **monetary penalties** are imposed per day of non-compliance and they are determined in proportion to the **average daily aggregate worldwide turnover of the undertaking or association of undertakings for the financial year preceding the adoption of the decision, up to a maximum of three per cent (3%) of the above turnover.**

It is further explicitly provided that any damages paid to the injured parties in the context of a settlement shall be considered as a mitigating factor by the HCC when determining the amount of fine. If the settlement is pending, the HCC may suspend the issuance of its decision for up to three (3) months.

Settlement procedure

Another significant novelty of the new Law constitutes the introduction of Article 29A which amends the settlement procedure and extends its scope to any infringement of Articles 1, 1A and 2 of the Greek Competition Act as well as 101 and 102 TFEU. In contrast with the settlement procedure that was applicable only for horizontal practices under the previous regime, by virtue of the above amendment, abuse of dominance, vertical agreements as well as the newly introduced prohibitions of invitation to collude and price signaling may now fall under the scope of settlement procedure.

Leniency program

By virtue of the amending Law, the provisions regarding leniency program are further supplemented. The leniency program is extended to associations of undertakings in case they participate in a cartel on their own behalf. Moreover, the general conditions for leniency and the specific conditions for immunity and reduction of fines are in line with the ECN+ Directive. According to the new Law, in case an application for immunity is rejected, a leniency applicant may request that their application is considered by the HCC as an application for a reduction of fines. However, the HCC may at its discretion do so.

No-action letter

The amending Law introduces an innovative procedure regarding the issuance of the no-action letter (i.e. a written statement assuring that the HCC will refrain from commencing enforcement action for failure to comply with Articles 1 and 2 of the Greek Competition Act or 101 and 102 TFEU respectively) for reasons of public interest, such as sustainable development. Under this new provision, following the request of an interested party and the recommendation of the Directorate-General for Competition of the HCC, the President of the HCC may issue a letter vis-à-vis the non-enforcement action in relation to a certain conduct, if it is justified by reasons of public interest. However, it is noted that the no-action letter is not binding on the HCC or the national courts.

The above letter is revoked if new evidence comes to the HCC's attention which substantially alters the assessment of the conduct, if the facts change, or if the HCC's decision is based on false or misleading information.

Extension of powers of the HCC

The new Law further provides additional powers to the HCC to promote its enforcement role. According to the amendment brought upon to the competition law framework, the HCC may now systematically map the competition condition in markets or sectors of the Greek economy, when it is necessary for the effective exercise of its powers, without

having to initiate an ex officio investigation, as well as cooperate with other national competition authorities for the enforcement of fines and monetary penalties.

Finally, the HCC's powers on providing interim relief are further bolstered. More precisely, where there is a suspected infringement of Articles 1 and 2 of Greek Competition Act or of Articles 101 and 102 TFEU and there is an urgent case of serious and irreparable harm to competition, the HCC may now, pending its decision on the adoption of interim measures, issue a **provisional order**.

Concluding remarks

Overall, Law 4886/2022 introduces a number of notable amendments to the existing legal framework, and it significantly enhances HCC's role in the effective enforcement of competition law in line with the EU legislation. As the digital age continues to pose new challenges to the uniform and effective enforcement of competition law, it remains to be seen in practice whether the new legal framework will provide the necessary means to address the increasing competition concerns and the complex obstacles emerging in the digital era.

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