Introduction

On the 12th of April 2011 a new Law, replacing Law 703/1977 on the protection of Competition was adopted by the Greek Parliament. This is the second time within a period of two years that competition law has been amended in Greece, nevertheless the number and scope of the amendments are significant. This brief note makes reference to the most significant changes that the Law introduces.

Aims

The main aims of the law are to fully align the current competition framework in Greece with that of the EU, and strengthen the institutional role of the Hellenic Competition Commission (HCC), and the effect of its work.

Agreements/notification

The new Law abolishes the notification system for agreements. According to Article 21(1) of (the replaced) Law 703/1977, all agreements falling within the scope of Article 1(1), the equivalent to Article 101(1) TFEU, had to be notified to the HCC. The new Article (3) of the law provides that agreements falling within the realm of Article 1(1) and meeting the criteria for an individual exemption in Article 1(3) are automatically allowed without a clearance decision by the HCC.

With the abolition of the prior notification of agreements, the Greek competition regime follows the self assessment system, introduced in the EU by Regulation 1/2003.

The Law provides that the EU Block exemption Regulations, which apply to agreements that have an effect on the internal market, are also applicable to agreements which do not have an effect on trade between Member States, but only an effect on the Greek market.

The definite departure of the notification system[1] has a significant impact for undertakings, in particular with regard to notification of vertical agreements. Nevertheless companies have to self - assess their agreements in the light of competition law and therefore the relevant analysis is needed.

Mergers

[1] It is noted that EU Law, including Regulation 1/2003, has direct effect and in this regard, Articles 101 and 102 have been applied in accordance with the EU legislation (which presumes abolition of the notification system). In this context, the numbers of notification of agreements falling within the realm of article 1(1) of the law have decreased in recent years. That said, it is the first time that a provision explicitly providing for departure from the notification system is included in the Greek law.

A significant change for companies is the abolishment of Article 4a of (the replaced) Law 703/1977, which provided for a post merger notification procedure for mergers with no significant effect on the Greek Market.[2]

In parallel, the deadline for mergers which meet the thresholds for prior notification[3] and therefore may be implemented only following a clearance by the Authority, has been extended from 10 to 30 days following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

The abolition of the post merger notification procedure may be welcomed, since the obligation for notification of such mergers, a unique feature of the Greek competition regime, created an unnecessary administrative burden to companies. It is expected that the measure may also increase the efficiency of the HCC, in view of significant number of such mergers notified to it.

The extension of the deadline for prior notification from 10 to 30 days is also a positive step, as it gives companies more time to prepare the filing.

Burden of proof

The new Article (4) provides that in the context of examination of cases of Article 1 (anticompetitive agreements) or Article 2 (abuse of dominance), the evidential burden of proof is with the party making the claim. This is an issue already clarified by the Greek Courts, nonetheless, it seems that there was a need to formally include this basic principle within the text of the law. It already follows from Regulation 1/2003 Article 2 and recital 5 that the Commission is bears the legal burden of proof, but the evidential burden of proof can switch between the Commission and the parties to an agreement and between the Commission and a dominant undertaking.

Institutional and procedural changes

Among the various institutional changes provided by the law, the following are considered significant:

[2] According to the abolished article, a merger had to be notified in case where it was leading to a concentration of more than 10% in a given product market in Greece and the aggregate turnover of the undertakings involved was more than 15 million euro.

[3] 150 million euro aggregate turnover of all the involved entities, and at least two of the entities involved having a turnover of 15 million euro in the Greek market)

The establishment of distinct – specialised - units within the Athens Administrative Court of Appeals with the competence to review the cases relating to the application of the Greek Competition Law.

The abolition of a heavily debated provision according to which a Member of the HCC, who submits a reasoned opinion to the HCC following the investigation by the Directorate General for Competition, had the right to vote in the context of the assessment of the case and issuance of a decision by the HCC.

The President and the newly introduced post of Vice-President are appointed by the Parliament. According to the previous framework the President was appointed by the Cabinet Council after a proposal from the Minister of Economy and Competitiveness and an opinion of the Parliament's Committee of Institutions and Transparency.

The competence of the Court of Appeals to order suspension of payment of up to 80 per cent of the fine imposed by the HCC until the issuance of its final decision on the appeal. The Court can exceptionally order suspension of the total fine, in cases where it considers that the appeal against the decision of the HCC, in cases it considers that the appeal is clearly founded.

The law explicitly states that Civil and Penal Courts are obliged not only to apply Articles 1 and 2 of the law, but also Articles 101 and 102 TFEU where there is an effect on trade between Member States. It is stipulated nevertheless, that while the decisions of the Court of Appeals and the Council of state, issued on the basis of an appeal against a decision by the HCC, have the power of legal precedent, the decisions of Civil and Penal Courts do not have such power.

Fines and sanctions

The maximum fine that may be imposed on companies found to have infringed competition law is 10 per cent of their annual worldwide turnover of the involved undertaking(s) or in case of a group of companies, the turnover of the group. This is lower than previously where undertakings could be fined up to 15 per cent. This amendment has aligned the level of the fine with that of the EU regime. The relevant Guidelines on the method of setting fines, issued by the HCC remain in force.

The law gives the HCC discretion to impose administrative fines between 200.000 euro and 2.000.000 euro to CEO's or legal representatives of the companies involved in the anticompetitive practice, if they (the natural persons) have been actively involved in the implementation of the practice.

A criminal fine between 15.000 euro and 150.000 euro can be imposed on individuals actively involved in the infringement of Article 1 of the Law (anticompetitive agreements, other than horizontal agreements). The relevant fine for those involved in the infringement of article and 2 of the Law would be between 30.000 and 300.000 euro. In the case of anticompetitive horizontal agreements (cartels) the law provides that the natural persons found to have entered into such agreements face a fine of between 100.000 and 1.000.000 euro and a jail sentence of at least two years. The representative of companies that have applied successfully for leniency, escape the application of the penal provisions. Furthermore, leniency applicants which have their fines reduced face a reduced penal fine or jail sentence. Successful leniency applicants do not escape responsibility arising from the provisions of the civil law relating to private enforcement.

Limitation Period

A limitation period of 5 years has been introduced. This is the first time the law introduces a limitation period. The 5 year period starts from the completion of the practice that led to an infringement of competition law, but may be suspended on the basis of various conditions set by the (new) law. Following the 5 years, and as far there is no suspension of the limitation period, no fine may be imposed by the HCC.

For more information you may communicate with:

Dr.Anestis Papadopoulos
a.papadopoulos@kpplaw.eu

Dr. Liza Lovdahl Gormsen
l.lovdahl-gormsen@kpplaw.eu