Greece

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General

1 What is the legislation applying specifically to the behaviour of dominant firms?

The legislation applying specifically to the behaviour of dominant undertakings is article 2 of Law 703/1977 on the control of monopolies and oligopolies and the protection of competition. The latest reform of the above law (by Law 3373/2005) came into force in 2005.

The provisions of article 2 are substantially the same as those of article 82 of the EC Treaty, except that the Greek law does not foresee any effects on trade between EU member states.

Article 2 provides that any abuse by one or more undertakings holding a dominant position within the market of the Greek territory, or in a part of it, shall be prohibited. The law specifies the above general prohibition by setting out types of conduct considered to be abusive, in line with article 82 of the EC Treaty.

2 Does the law cover conduct through which a non-dominant company becomes dominant?

Article 2 applies only if a dominant undertaking abuses its dominant position. It does not regulate conduct through which a non-dominant undertaking becomes (or attempts to become) dominant, except for the merger control provision of article 4(c) of Law 703/1977, according to which concentrations that restrict competition by creating or strengthening a dominant position will be prohibited by the Hellenic Competition Commission (HCC).

3 Is the object of the legislation and the underlying standard a strictly economic one or does it protect other interests?

Law 703/1977 aims to protect competition as an institution and a good of economic public policy. However, the HCC has pointed out that the interests of consumers are necessarily taken into consideration when appraising the behaviour of a dominant undertaking and its effect on competition. (decision 318/V/2006).

Therefore, even if the object of the above legislation is mainly an economic one, it also aims to protect the general public interest.

As far as the protection of small and medium-sized businesses is concerned, article 2(a), as recently amended by Law 3373/2005, prohibits abusive behaviour towards economically dependent undertakings, irrespective of the existence of a dominant position ('relevant dominant position').

4 Are there any rules applying to the unilateral conduct of non-dominant firms? Is your national law relating to the unilateral conduct of firms stricter than article 82?

In conformity with article 3(2) of EC Regulation 1/2003, which stipulates that member states should not be precluded from applying on their territory stricter national competition laws which prohibit or impose sanctions on unilateral conduct of undertakings, the Greek legislature, through Law 3373/2005, reinstated article 2(a) of Law 703/1977, which had been abolished in 2000. According to this provision, it is prohibited that powerful undertakings behave abusively towards economically dependent undertakings, irrespective of whether they hold a dominant position or not. Therefore, the point of reference for applying this clause is the 'economic dependence' between two undertakings that enables one to take advantage of the other. These abuses include the undertaking's refusal to sell, the application of dissimilar conditions to similar transactions and the sudden interruption of an established commercial relationship.

5 Is dominance controlled according to sector?

Although Law 703/1977 covers each and every market sector in Greece, the telecoms and postal services as well as the energy market are also supervised by separate national regulatory authorities, the Hellenic Telecommunications and Post Commission (HTPC) and the Regulatory Authority of Energy (RAE), which are independent and financially autonomous decision-making bodies ensuring the proper operation of the relevant markets in the context of sound competition and providing for the protection of the interests of consumers. Both the HTPC and RAE possess additional regulatory and supervisory powers to those of the HCC regarding the application of general competition law provisions in the telecoms and energy markets, leading to stricter control of these sectors.

Furthermore, these sectors are regulated by specific laws which, although they do not refer explicitly to the control of dominance, they have similar effects.

6 What is the relationship between the sector-specific provisions and the general abuse of dominance legislation?

General abuse-of-dominance legislation is supplemented by sector-specific provisions when those may have a bearing in the determination of the competitive behaviour of undertakings in the relevant market.

7 How frequently is the legislation used in practice and what is its practical impact?

The competition legislation and its provisions on dominance are not frequently used in practice, since the HCC has not been often called upon to determine whether an undertaking abuses its dominant position in the market and therefore to impose fines and/or structural remedies. In most cases, the HCC has decided on interim measures concerning suspected cases of infringement of article 2 of Law 703/1977.

8 What is the role of economics in the application of the dominance provisions?

Pursuant to Greek Law, the role of economics in the enforcement of the dominant position legislation and similarly of the generally accepted principles of competition law is very important. The concepts of dominant position and abuse undergo vigorous economic analysis based on the specific characteristics of each case. Hence the HCC occupies a number of economists (department of economics research), who have been appointed based on their education and skills in the field of economics (eg, professors of economics, etc), and are responsible for preparing and supervising sectoral studies of the economy and developing a database for the monitoring of the market and competition.

Economists are also often called as expert witnesses in proceedings before the HCC and their written opinions are frequently used by the interested parties, particularly for establishing the relevant market and/or contesting the imposed fines.

9 To whom do the dominance provisions apply? To what extent do they apply to public entities?

The provisions of the Greek legislation regarding dominance apply to both private and public entities.

However, article 6 of Law 703/1977 foresees some exceptions, in particular:

- public entities and entities of common interest may be excluded from the regulations of competition law by a joint ministerial decision of the Ministries of Development and Finance, and the opinion of the HCC, if they are of great importance for the national economy;
- undertakings related to the production or trade of agricultural, livestock raising, forestry and fishing products may also be excluded from the regulations of the competition law by a relevant joint decision of the Ministries of Finance, Development and Agriculture; and
- undertakings related to transport may be excluded or specially regulated by a joint ministerial decision of the Ministries of Development, Finance and Transportation.

10 How is dominance defined?

Article 2 of Law 703/1977 does not define the term 'dominant position'; it indicatively provides for certain behaviour patterns that are considered to be ex lege illegal, if practiced by a dominant undertaking. However, the HCC refers to the definition given by the European Court of Justice in the context of article 82 of the EC Treaty, which is that an undertaking holds a dominant position when its economic strength enables it to have a considerable effect on the function of the market.

Furthermore, dominance suggests the ability of an undertaking to impede effective competition on the relevant market and to act, to an appreciable extent, independently of its competitors, customers and consumers.

11 What is the test for market definition?

The Greek legislation on dominance regarding market definition follows the EU approach. In particular, parties need first to identify the relevant market and then to assess the undertaking's position in that market.

The relevant market has a product or services aspect, and a geographic aspect. The relevant product or service market includes products or services that, owing to their similarities in function, price and usage, can substitute one another, in the demand or supply side of the market. The relevant geographic market is determined by the area where the undertakings provide their services or products and compete with each other as suppliers or buyers, under effectively similar competition conditions (*Vossinakis*, HCC 40/1996).

12 Is there a market-share threshold above which a company will be presumed to be dominant?

The market-share threshold is an important criterion, although not the only one taken into account, when determining whether an undertaking holds a dominant position. In particular, following EU law, a market share exceeding 40 to 50 per cent will be presumed to be dominant. Market shares between 20 and 40 per cent require additional evidence to determine whether a dominant position exists, such as the level of competition by other undertakings and the dispersion of competitors' market shares.

13 Is collective dominance covered by the legislation? If so, how is it defined?

Collective dominance is covered by article 2 of Law 703/1977, which prohibits the abuse of a dominant position by one or more independent undertakings. Therefore, according to the HCC (decision 20/1996) a dominant position may be collective when it is held by more than one undertaking (oligopolistic dominance). According to the criteria set out by the HCC, collective dominance will be affirmed when both the following conditions are met: (i) there is no significant competition among the undertakings forming the oligopoly; and (ii) there is no significant competitive pressure towards them from other undertakings participating in the relevant market. In its decision no. 20/1996, which concerned a uniform behaviour of several financial institutions towards their clients, the HCC stated that the existence of the collective dominant position requires 'as a minimum that the undertakings of the oligopoly act uniformly so that there is no significant competition among them and that consumers are deprived from alternatives in the market'.

14 Does the legislation also apply to dominant purchasers? If so, are there any differences compared with the application of the law to dominant suppliers?

Unjustified refusal of a dominant purchaser to buy products in the market is an example of discriminatory conduct of the dominant undertaking and results in the limitation of production in the relevant market. Hence such a conduct by a dominant undertaking would be held to violate the provisions of Law 703/1977 that prohibit discriminatory practices (article 2(c)) or conducts that result in limitation of production (article 2(b)).

Abuse in general

15 How is abuse defined?

Article 2 of Law 703/1977 1977 sets out a non-exhaustive list of types of abuse. In particular, an abuse of a dominant position may in particular consist of:

(a) directly or indirectly imposing purchase or selling prices or other unfair trading conditions;
(b) limiting production, consumption or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions, and in particular by unjustifiably refusing to sell, buy or enter into other transactions, thereby placing some enterprises at a competitive disadvantage;
(d) making the conclusion of agreements subject to acceptance by other parties of additional obligations, or the conclusion of additional agreements that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Moreover, case law has provided for numerous other types of abuse, such as exclusivity clauses, loyalty rebates and refusal to grant access to essential facilities.

16 Does the concept of abuse cover both exploitative and exclusionary practices?

Pursuant to Greek law the concept of abuse covers both exploitative and exclusionary practices. Items (a) and (b) above (see question 15) refer clearly to exploitative abusive practices towards customers or suppliers, while items (c) and (d) refer to exclusionary (or alternatively anti-competitive) abuses, which strengthen the position of dominant undertakings and exclude actual or potential competitors from the market.

17 What link must be shown between dominance and abuse?

According to article 2 of Law 703/1977, a causal link between the dominant position and the abuse must be proved for this provision to apply. However, dominance and abuse need not occur in the same market. In the case that an abuse takes place in a neighbouring market to the one in which the undertaking is dominant ('leveraging'), a causal link is not be necessary to prove the abuse. In other words, such behaviour may be justified by the ad hoc circumstances, but not by the absence of a causal link.

18 What defences may be raised to allegations of abuse of dominance?

Law 703/1977 does not refer explicitly to specific defences that could be raised to allegations of abuse of dominance. However, any undertaking holding a dominant position has the right to defend its interests, provided that this does not aim at the strengthening of the dominant position or its abuse. The behaviour of the enterprise that is proven to be reasonable, objectively justified and proportional in the specific circumstances could be held to be non-abusive. Therefore the dominant undertaking may put forward objective reasons that justify its conduct, such as the risk of non-payment of its customer or the efficiency of its exclusive dealing scheme. An abuse will also be justified under the exceptions provided in article of 6 of Law 703/1977 in favour of entities entrusted with the operation of public service (see question 9).

Specific forms of abuse

19 Price and non-price discrimination

Pursuant to article 2(c) of Law 703/1977, the application by a dominant firm of dissimilar conditions to equivalent transactions, thereby placing some undertakings at a competitive disadvantage, is abusive. But his does not prohibit the 'discriminatory' treatment of clients or suppliers that have dissimilar characteristics.

In decision no. 271/IV/2004 the HCC held that the different specifications (regarding methods of operation, available space, business risk, etc) between the large cosmetic stores and the smaller drugstores were adequate justifications for their supplier to apply dissimilar pricing terms.

20 Exploitative prices or terms of supply

Article 2(a) of Law 703/1977 prohibits a dominant undertaking from using its market power to impose unfair market prices or unfair terms or conditions of purchase or supply in such a way that the counterparty is bound to accept owing to lack of alternatives. The HCC has ruled that unfair terms or conditions are those that impose an obligation on the other party not to sell competitive products or not to resell products bought in a specific geographic area. A price will be considered abusive if it is excessive compared to the economic value of the service provided.

21 Rebate schemes

Case law provides that rebate schemes of dominant undertakings, which have as object or effect to induce their counterparties to achieve specific amount of sales in a given period of time (loyalty rebates), especially when they are given on a lasting basis, result in the dependence of that counterparty from the dominant undertaking and the exclusion of its competitors. Based on the above, target rebate schemes may lead to discriminatory conduct of the dominant undertaking vis-à-vis counterparties and to limitation of production, which are both expressly prohibited by Law 703/1977. However, when rebate schemes are based on justified cost savings or on objective and uniform criteria for all clients, they are considered not to infringe abuse-of-dominance provisions.

In its decision no. 207/III/2002, the HCC found that the target rebate scheme of a dominant undertaking, which depended, for every separate dealer, on its sales during the previous year (ie, realisation of individual targets) and was imposed in the beginning of each year, was abusive because it had as direct effect the exercise of pressure on the dealers in order to exclusively trade its products, precluding in that way all competitive products.

22 Predatory pricing

The HCC has not yet ruled on a predatory pricing case. However, it would probably apply the *Akzo* test (case C-62/86, *Akzo Chemie BV v Commission* [1991]), ruling that the practice of a dominant undertaking to underprice its products (or even sell them below cost) seeking to eliminate competitors is abusive.

23 Price squeezes

Greek courts have ruled that price reductions by a dominant undertaking are abusive when they are not cost-oriented, because they restrict the possibility of undertakings to compete effectively with the dominant undertaking. In the telecoms sector in particu-

lar, such control applies only to OTE SA, as it is the dominant provider in the market and its competitors have considerably lower market shares.

24 Refusals to deal and access to essential facilities

Pursuant to article 2(c) of Law 703/1977, refusal to deal by a dominant undertaking, in such a way that some undertakings in the relevant market are placed in a disadvantageous competitive position, is abusive. Refusal to deal by a dominant undertaking is a type of abusive discriminatory practice and may be justified, according to HCC case law, only for important financial or legal reasons. If an undertaking's refusal to deal results in denial of access to essential facilities, but fails to fall within the restrictions of the above provision because it is a justified one, it may still be considered 'abuse of right' (and therefore illegal) based on general provisions of the Greek Civil Code. A recent case of the Athens Court of First Instance (9275/2005) ruled that a dominant undertaking (which is the only owner of the most expanded telecoms system in the country) could not threaten an insolvent party with prohibition of access to the system, because this conduct would be 'abusive'.

25 Exclusive dealing, non-compete provisions and single branding

Exclusive dealing, non-compete provisions and single branding very often fall within the prohibitions of Law 703/1977, as they may constitute limiting of production, tying or other abusive practices. For example, a dominant undertaking's exclusive dealing which entails the limiting of the production of its competitors will be held to be abusive under article 2b.

According to recent case law (HCC decision no. 309/V/2006), a dominant undertaking's practice to make available freezer cabinets to its dealers through gratuitous loans, under the strict condition that they shall not store in them any competing products (freezer exclusivity), has been held to be a prohibited abusive conduct.

26 Tying and leveraging

Article 2(d) of Law 703/1977 expressly prohibits as abusive the conclusion of agreements by a dominant undertaking which is made contingent to conclusion of other irrelevant agreements or to supplementary supplies not linked to the object of the governing contracts (according to their nature or commercial usage).

27 Limiting production, markets or technical development

Article 2(b) of Law 703/1977 provides that the conduct of a dominant undertaking limiting production, markets or technical development to the prejudice of consumers is abusive. According to the HCC's legal opinion no. 59/87, the limiting of production of a type of milk for it to be replaced by a new type of milk that would be sold at a higher price was abusive under provision 2(b), since its purpose was not only to ensure the more efficient organisation of production but also to exploit consumers.

28 Abuse of intellectual property rights

The issue has not been treated extensively in Greece. However, pursuant to Greek law, intellectual property rights should not suffice to create on their own a dominant position and even more they do not constitute themselves abusive conduct. For the exercise of intellectual property rights to be held abusive, general conditions of abuse of dominant position will apply.

29 Abuse of government process

Misuse of administrative or judicial procedure in order to exclude rivals from the market or to increase rivals' costs has not been treated in the context of abusive behaviour. Article 281 of the Civil Code regarding 'abuse of right' would more easily apply, since it requires that the conduct will be held abusive when it obviously exceeds the limits of good faith or ethics or the social or economic purpose of the right.

30 'Structural abuses' – mergers and acquisitions as exclusionary practices

Control of mergers is specifically regulated by article 4 et seq of Law 703/1977, which provides that mergers and acquisitions will be prohibited when they substantially constrain competition in the relevant market, especially by creating or strengthening a dominant position.

31 Other types of abuse

Types of abusive conduct listed in article 2 of Law 703/1977 are only examples of abuse and are used as a reading guide. Hence other types of conduct may in principle fall within the prohibition of article 2.

Enforcement proceedings

32 Is there a directly applicable prohibition of abusive practices or does the law only empower the regulatory authorities to take remedial actions against companies abusing their dominant position?

According to Law 703/1977 any abuse of dominant position is prohibited and therefore is illegal. Such a prohibition is directly applicable without the need of a prior decision by another authority such as a court (article 3). However, article 2 does not foresee the legal consequences of this violation. Article 9 provides that the HCC may impose a fine up of to 15 per cent of the undertaking's gross turnover during the current or the previous fiscal year, and other penalty clauses in case the undertakings do not comply with HCC's decision. Article 28 foresees that the committee may inform the public prosecutor of such abuses in order to proceed with criminal court proceedings and implement the sanctions of article 29.

33 Which authorities are responsible for enforcement and what powers of investigation do they have?

According to article 8(b)(1) of Law 703/1977, the HCC is the competent independent authority for the enforcement of Law 703/1977, without prejudice to the provisions of special laws (eg, Law 3431/2006 regarding electronic communications).

The HCC, either acting ex officio or following relevant complaints, certifies any violation of article 2, collects and examines every relevant document, imposes the fines in cases of violation, imposes a penalty for every day of non-compliance with its decisions, and adopts injunction measures in case of an emergency.

Civil and administrative courts can also enforce Law 703/1977 on compensation claims and the validity of contracts and they can also in passing decide about the abuse of a dominant position. Decisions of the HCC may be challenged in the Athens Administrative Court of Appeal.

34 Which sanctions and remedies may they impose?

The HCC, when finding an abuse of a dominant position, may:

- oblige the undertakings to terminate their anti-competitive behaviour and refrain from repeating it in the future;
- accept the interested undertakings' commitment to terminate the infringement and render this commitment mandatory;
- impose behavioural and structural remedies on them, which must be both necessary and appropriate for the termination of the infringement and proportionate with the nature and gravity of the infringement. Structural remedies, however, can only be imposed on the condition that no behavioural remedies of equal effect are available or that all behavioural remedies of equal effect appear to be more onerous than the structural remedies;
- address recommendations in case of infringements and threaten the undertakings with a fine or penalty or both, should the infringement continue or be repeated.
- consider the fine or the penalty or both forfeit when it certifies by its decision the continuance or the repetition of the infringement; and
- impose fines on the undertakings that have committed an infringement.

The imposed or threatened fine can be up to 15 per cent of the gross turnover of the undertaking for the current or previous fiscal year, depending on the gravity and the duration of the infringement, while the penalty for every day of non-compliance with the HCC decision, may amount to €10,000.

The highest fine for an abuse of dominant position case, amounting to €8.7 million, was imposed by the HCC on Coca-Cola Greek Distilling Company in June 2006 (see question 38).

35 What are the consequences of an infringement for the validity of contracts entered into by dominant companies?

These contracts are null and void. The civil courts will rule on the validity of such contracts, and more specifically will decide on whether their content is against the moral principles based on the Civil Code, articles 178 and 179.

36 To what extent is private enforcement possible? Does the legislation provide a basis for a court or authority to order a dominant firm to grant access (to infrastructure or technology), supply goods or services or conclude a contract?

As there are no special provisions for the application of competition rules by the civil courts (private enforcement), a natural person or legal entity may only seek damages before the civil courts based on the general provisions of the Civil Code. In these cases, courts rule preliminarily on the existence of abusive behaviour. However, in practice such cases are rare because persons injured as a result of infringements of the competition law provisions prefer to address themselves to the HCC, since the latter has exclusive authority to oblige infringing undertakings to terminate their abusive behaviour.

According to article 24 of Law 703/1977 every person or legal entity is entitled to file a complaint with the HCC about an infringement of article 2 and 2(a) of the Law (abuse of a dominant position or abuse towards economically dependent undertakings). Following such complaint, the HCC has the power to oblige the undertaking to terminate its infringement or to impose behavioural and structural remedies or a fine (article 9). Apart from that, the HCC also has exclusive authority to apply, on certain conditions, the injunction measures under article 9(5).

37 Do companies harmed by abusive practices have a claim for damages?

Companies harmed by abusive practices have a claim for damages according to article 914 of the Greek Civil Code. The legal entity or person that has violated the law and harmed another party by its abusive behaviour is liable to compensate the injured party. Only civil courts can adjudicate on such claims.

The compensation is calculated on the financial damages and the loss of profit of the harmed party. Adjudication of damages has not been treated extensively by Greek courts.

Recent enforcement action

38 What is the most recent high-profile dominance case?

The most recent high-profile dominance case involves Coca-Cola Greek Distilling Company SA (CCGDC).

In its decision no. 207/III/2002, the HCC found CCGDC liable for a series of commercial practices which constituted an abuse of its dominant position, such as application of prohibited pricing policies (target discounts and fidelity rebates), application of discriminatory treatment among its wholesale and retail dealers, tying and freezer exclusivity, and ordered it to refrain from applying the above practices with a penalty of €5,869 for each day of infringement. Following that, in its decision no. 309/V/2006 the HCC held CCGDC liable for not complying with its previous decision and for continuing to infringe article 2 of Law 703/1977 and imposed on it a fine of €8.7 million, ie, €5,869 x 1,476 days of infringement.

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