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Statement of Objections on Hellenic Competition Commission's first-ever vertical case submitted to the Settlement Procedure under the newly enacted regime

On 8 July 2022, the Hellenic Competition Commission (the Greek Competition Authority, 'HCC') issued a Statement of Objections ('SO') on the ex officio investigation into the import, wholesale and retail markets for power-driven hand tools and garden tools, proposing to the HCC to accept the settlement procedure for alleged violations in the context of vertical agreements of Article 1(1) of the Greek Competition Act (Law 3959/2011) and Article 101(1) 1 TFEU. The HCC will convene in plenary to decide on whether to accept the relevant Settlement Submissions of the parties.

It is reminded that, adopting the relevant OECD Recommendation, the national legislator recently introduced new Article 29A by virtue of Law 4886/2022* 'on the Modernisation of Competition Law for the Digital Era', amending the Greek Competition Act and extending the Settlement Procedure to any infringement of Articles 1, (new) 1A and 2 of the Greek Law 3959/2011 or Articles 101 and 102 TFEU, thus also to abuse of dominance and the new provision on invitation to collusion and announcement of future pricing intent. Under the previous regime, Settlement Procedure was possible only in the event of participation in horizontal restrictive practices.

*GG A' 12/24.01.2022.

Suspected violations and settlement procedure

According to the SO, the undertakings concerned in this case engaged in resale price maintenance ('RPM') practices, which the affiliated retailers largely complied with. RPM practices qualify as hardcore restrictions. Moreover, regarding one undertaking, it was established that a contractual term concerning the indirect prohibition of parallel imports was imposed in contracts concluded with the network of authorized resellers.

All the parties involved in the case engaged in settlement discussions with the Authority. Following these submissions, the HCC unanimously decided on 21.03.2022 that this case may fall within the Settlement Procedure, as it meets the criteria provided for in the relevant HCC Notice (HCC Decision 704/2020), which continues to apply until the issuance of the new decision of the HCC regarding the terms, conditions and the settlement procedure.

In this case, in the context of exercising its discretionary power to subject cases to the Settlement Procedure, the

HCC took into account, inter alia, the nature of the infringement in question as a vertical restriction and the significant expected extent of procedural efficiency. The Rapporteur invited the interested parties to bilateral meetings and, when a sufficient degree of common understanding was reached regarding the facts, their legal classification, the gravity and duration of the infringements, the standard of proof of the claims based on the evidence and the calculation of the amount of any fine to be imposed, the parties concerned submitted their Settlement Submissions.

The SO proposes the acceptance of the relevant Settlement Submissions by the parties involved and the issuance of a decision by which HCC:

- Finds that the parties concerned infringed Article 1 of the Greek Competition Act and Article 101 of the TFEU through their participation in prohibited vertical agreements.
- Orders the parties concerned in the above infringement to cease, if they have not already done so, and refrain in the future from the violations of Article 1 of Law the Greek Competition Act and Article 101 TFEU found in the SO.
- Imposes fines for the violations of Article 1 of the Greek Competition Act and Article 101 TFEU found in the SO.

The SO is not binding for the HCC, which will decide taking into account all the evidence in the case file.

Commentary

This is the first ever vertical HCC case submitted to the Settlement Procedure, which, until the recent Greek Competition Law amendment of 2022, was reserved only for horizontal agreements.

Now, also the suspected vertical anti–competitive practices in question, falling within the scope of articles 1 of the Greek Competition Act and/or 101 TFEU in the context of vertical agreements, may benefit from this simplified process, following the amendment of the Competition Law 3959/2011 by Law 4886/2022 (Government Gazette A' 12/24.12.2022).

It is very interesting that the HCC unanimously decided that the case at issue may fall within the Settlement Procedure, in a first application of the amended legislation.

We are eager to see whether the already widespread use of settlement procedures in Greece in horizontal cartel cases will now apply extensively to vertical agreements.

Stay tuned!