

Recent Legislative Developments in Competition Law and Case-Law

The current newsletter covers legislative developments in the field of Competition Law that may be of significance for the enforcement of respective rules. Concurrently, reference is made to the very recent opening of the case against the so called construction cartel, allegedly having embarked in collusion with respect to major infrastructure tenders in Greece for the last 25 years.

Introduction of a cartel settlement process under the Greek Competition Act

Law 4389/2016 has introduced a cartel settlement procedure into Greek Competition rules. Such procedural option intending to facilitate fast track adjudication of cartel cases by providing a benefit of reduced sanctions has been long featured in EU competition law practice under Commission Regulation No. 773/2004 (as amended by Commission Regulation No. 622/2008).

The specific formalities and procedural terms and conditions of the cartel settlement process are expected to be detailed in a decision to be issued by the Hellenic Competition Commission ("HCC") in the near future. The cornerstones of the Settlement Procedure, already incorporated in Article 25A of the Greek Competition Act, are the following:

- The Settlement Procedure will apply exclusively to horizontal infringements of Article 1 of the Greek Competition Act and 101 TFEU.
- The explicit acknowledgment of participation in the cartel is a prerequisite for the eligibility of any interested party to settle the case with the HCC.
- An application for settlement may be submitted together with the submission of the kick-off memorandum i.e. not later than twenty calendar days from the first hearing of the case.
- In case of settlement the HCC will issue a "condensed" decision i.e. making brief reference to the facts, the settlement and the sanctions imposed.
- The reduction of the fine to be imposed by the HCC in a settled case may not exceed 15% of the amount of the fine which would otherwise have been imposed if the case had not been settled (taking also into consideration any other reductions that could be applicable in such scenario).

The settlement procedure is expected to complement the leniency scheme of the HCC (the current terms of which are detailed in HCC Decision 526/VI/2011) with respect to the facilitation of handling anti-cartel enforcement policy in Greece.

It is noted that both the settlement procedure and the leniency scheme are voluntary, namely initiated at the discretion of the undertakings concerned. Also, not only are they beneficial for the undertaking involved, but they also advance antitrust enforcement. However, they differ as to the purpose they serve, and as to the stage at which they may be initiated. More particularly, the leniency scheme in essence constitutes an evidence - gathering tool focusing on the early detection of infringements, whereas the settlement process contributes to procedural efficiency and to resource efficiency after an investigation has been initiated and an infringement has been established.

Criminal law provisions in connection with competition law infringements

The newly enacted Law 4389/2016 additionally amends the criminal law provisions of the Greek Competition Act, in the direction of encouraging early payment of fines imposed by the HCC in connection with competition law infringements.

Under the new regime, no separate criminal liability for competition law infringements and no additional administrative sanctions may be imposed where:

- The infringing party admits liability for the competition law infringement throughout an investigative or settlement procedure before the HCC.
- The infringing party pays in full any fine imposed to it by the HCC, or is not fined as a result of its participating in a leniency scheme.

Furthermore, where the infringing party has agreed with the HCC to pay a fine in installments, no criminal proceedings may be initiated for as long as the arrangement is ongoing and the installments are paid.

The above provisions only apply in connection with criminal liability for competition law infringements and do not extend to liability for other crimes that might have been committed in the context of conduct giving rise to competition law infringements.

The HCC issues Statement of Objections involving allegations of collusive tendering in the construction sector

Further to a long running investigation in the construction sector, the HCC has issued a Statement of Objections in relation to alleged infringements of Articles 1 of the Greek Competition Act and 101 TFEU. It is noted that this is the first case where the HCC has awarded full leniency to a whistle blower for providing access to detailed and “smoking gun” evidence of the actual operation of the cartel.

The Statement of Objections encompasses a large number of Greek and international construction companies (sixty in total) and involves allegations of collusive tendering in the entire range of large scale infrastructure projects of the recent years, including road construction, rail transport and concessions of infrastructure.

Among others, the undertakings in question are alleged to have engaged in fixing the level of their bids and rigging tenders in various manners (e.g., by preselecting the winner or withdrawing their bids in exchange for jointly executing the project with the winner).

According to the investigation of the HCC, the above-mentioned bid rigging practices in relation with public construction works have been on-going for a period spanning from 1989 to 2016.

Developments in this case are awaited with particular interest, not only because of the unprecedented number and importance of the undertakings involved in it, but also because of the sensitivity of the construction sector for Greek economy and the current precarious financial standing of the domestic construction companies.

For further information, please contact:

Dr Emmanuel Mastromanolis

T (+30) 210 69 67 000

E e.mastromanolis@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640

www.zeya.com

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