

**The legal framework of actions for damages for competition law
infringements in Greece after the transposition of the directive 2014/104/EU
by Law No 4529/2018**

The Law 4529/2018 (Government Gazette A' 56/23-3-2018) on private enforcement of competition law transposes into Greek legal order the directive 2014/104/EU concerning actions for damages for competition law infringements. Such actions existed well before the adoption of the directive, but the latter lays down a comprehensive set of legal rules aiming at facilitating the effective exercise of the rights of the victims.

Our firm has an extensive experience in all aspects of Greek and European Competition Law and has represented in the past clients before civil courts for damages claims as claimants or respondents. [Dr. Vassilis Karagiannis](#), who heads the EU & Competition Law department of our firm, was a member of the legislative committee that drafted the new Law on private enforcement of competition law in Greece.

- **Coverage: agreements and abuses of dominance included – vertical agreements - direct or indirect victims / standalone and follow-on actions.**

The field of application of the Law is quite wide: it covers not only anticompetitive agreements (horizontal or vertical) but also abuses of dominance. Not only the direct victims of an anticompetitive collusion or practice (e.g. the undertakings who have dealt directly with one or several members of a cartel or a dominant firm who has abused of its position), but also the indirect ones (remoted buyers) are protected. In order to facilitate the position of remoted buyers, the Law establishes some presumptions to their favor: the indirect buyer is presumed having suffered of the anticompetitive overcharge, if he proves the existence of the infringement, the overcharge suffered by the direct buyer and the fact that he purchased goods or services related to the infringement.

The ascertainment of the infringement by the competent competition authority is not a prerequisite for the civil jurisdictions. In other words, the victim is not obliged to defer first his

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case before the competition authority, but can address himself from the beginning to the civil court in order to obtain remedy of the damage incurred. Thus, the Law covers not only *follow-on actions* (i.e. actions filed with the court after the issuance of the competition authority's decision for the infringement), but also *standalone actions*.

▪ Passing-on defense

It is common place that the direct buyer of the infringer will have interest to pass-on the overcharge related to the infringement to his own clients and so on. Not recognizing this fact could lead to the possibility of the victims for undue enrichment. Therefore, the Law acknowledges that the respondent in an action on damages can suggest the *passing-on defense* either for the totality of the amount claimed or for a part of it. In this case, the passing on argument plays the role of an objection. However, as already said, presumed passing on of the overcharge can also function as basis of the claim of the remotest buyer against the infringer.

▪ Disclosure of evidence

Often it is rather improbable that the victim possesses all the necessary evidence in order to establish properly his claim. The infringer may control crucial evidence (such as internal business notes, financial records, fiscal books etc. that may be considered as covered by business secret). The Law establishes a system of compulsory notifications in order to facilitate the effective exercise of the rights of the victims. Thus, the claimant can ask, under specific conditions, the civil court to order the respondent or a third person to produce some evidence necessary for the establishment of the infringement and / or the establishment of the damage. The court may also ask the National Competition Authority (NCA) to produce some evidence incorporated in the administrative file of the case (follow-on actions), but only if said evidence cannot be reasonably produced by the respondent or a third party (last resort principle). For reasons of equity, the defender can also ask the court to order the claimant or a third party to produce evidence, necessary for founding a passing-on defense.

All possible evidence are not at any time notifiable, because private enforcement should not be of prejudice for the public enforcement of competition law by the European Commission and the NCAs. Basically, some evidence are never notifiable (Black List), some other are

notifiable only after the end of the administrative procedure before the NCA in whatever manner (Orange List) and some are notifiable at any time (White List), according to the following table :

Table: Disclosure of evidence

Black List	Orange List	White List
<ol style="list-style-type: none"> 1. Leniency statements 2. Settlement submissions. 3. Other documents containing self-esteem parts of the aforementioned documents under 1) and 2) 	<ol style="list-style-type: none"> 1. Information that was prepared by a natural or legal person specifically for the proceedings of a competition authority 2. Information that the competition authority has drawn up and sent to the parties in the course of its proceedings including the Statement of Objections 3. Settlement submissions that have been withdrawn. 	Any other (not black or orange) evidence submitted to the NCA

▪ **Probative value of the decisions of the European Commission and of the National Competition authorities (NCAs)**

An infringement of competition law found by a final decision of the European Commission, of the Hellenic Competition Commission or of the Hellenic Telecommunications and Posts Committee (HTPC), acting as NCA or by a review court (General Court of the European Union's final decisions, Court of the European Union's decisions, Athens Administrative Court of Appeal's final decisions or Council of the State's decisions, according the case) is deemed to be irrefutably established for the purposes of an action for damages brought before Greek civil court under Article 101 or 102 TFEU or under national competition law. Where a final decision is taken in another Member State, this final decision may be presented before the Greek civil

court as full evidence that an infringement of competition law has occurred, but counter proof is permitted.

- **Quantification of harm**

The quantification of the damage is often a difficult exercise for the claimant. Despite the fact that the special rules concerning the disclosure of evidence are expected to tease the relevant difficulties of the claimant, the definition of the damage stills a highly hypothetical task. Therefore, the Law establishes a merely liberal system of proof permitting to the judge to estimate the height of the damage, in case the exact amount of it cannot be defined with absolute accuracy. This would permit to the claimant to file with the court economic studies based on the so-called counterfactual scenario. In any case, the court can base the quantification of the damage only to speculation, if otherwise the quantification of the damage would be practically impossible or excessively difficult.

- **Collective redress**

The Law does not contain any specific provision on the possibility of filing with the civil court collective actions on damages. However, general provisions of the specific consumer law protection could apply given the fact that the enumeration of violations possible of a collective action in the law for the protection of consumers (Law 2251/1994 as in force) is only indicative. Thus, consumers' unions could claim locus standi for violations of competition law susceptible to cause a damage to consumers. Nevertheless, it is important to note that according to the general provisions of said law on the protection of consumers, the right of the unions to stand before the courts for the account of their members is limited to actions of omission and / or moral damage. It is therefore wishful that in the near future the Greek legislator covers specifically the possibility of collective redress in case of competition law infringements.

- **Miscellanea**

The Law provides for a single jurisdiction all over the country of the First Instance Tribunal of Athens and on appeal of the Court of Appeal of Athens for the actions covered by the Law. Special chambers should be created in these jurisdictions for that purpose, which should be

operative as from 16.9.2018. Exceptionally only the procedural provisions of the Law will apply retroactively to actions filed with the courts from 26.12.2014 onwards.

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