

GREECE

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I. Introduction¹

The legal instrument regulating competition in Greece is Law 703/1977 on the Control of Monopolies and Oligopolies and the Protection of Free Competition ("Law 703/1977" or "the Law").² Articles 1 and 2 of Law 703/1977 are the national equivalents of Articles 81 and 82 of the EC Treaty.

Unfair competition is regulated by Act 146/1914 on "Unfair Competition". Act 146/1914 is intended to protect individual traders from unfair practices by their competitors contravening "*bonos mores*".³ Act 146/1914 is not related to Articles 81 and 82 of the EC Treaty. Therefore, this study does not consider actions for damages for infringement of the provisions of Act 146/1914.

II. Actions for damages – status quo

A. What is the legal basis for bringing an action for damages

- (i) **Is there an explicit statutory basis, is this different from other actions for damages and is there a distinction between EC and national law in this regard?**

Articles 81 and 82 EC

The right to damages for breach of Article 81 EC has already been established by the European Court of Justice ("ECJ")⁴, which held that any individual can rely on a breach of Article 81(1) of the EC Treaty before a national Court, even where he is a party to a contract that is liable to restrict or distort competition, within the meaning of that provision.

In Greek law, there is no specific statutory basis for bringing actions for damages for infringement of EC Competition Law. The basis for such action would be Article 914 of the Greek Civil Code ("Article 914 CC") establishing tort liability.⁵

Greek Competition Law

There is no specific statutory basis for bringing actions for damages for injury caused by an infringement of Articles 1 and 2 of Law 703/1977. The basis for such action would be Article 914 CC which establishes tort liability.

Law 703/1977 is silent as to whether individuals, injured as a result of an anti-competitive behaviour, have the right to bring actions for damages before the Courts on the basis of Article 914 CC.

1 The Court decisions cited in the present study have been obtained from the legal database "NOMOS" and from references in legal publications.

2 Published in the Greek Government Gazette (the "Government Gazette"), Issue A', No. 278/26.9.1977. Law 703/1977 was most recently amended by Law 3105/2003, published in the Government Gazette, Issue A', No. 29/10.2.2003.

3 In the Greek legal order, the concept of "*bonos mores*" denotes the moral and social principles prevailing at a certain time in society as these are felt by the fair and honest average citizen.

4 Case C-453/1999, Courage Ltd. v Bernard Crehan [2001] ECR I 06297.

5 Article 914 CC reads as follows: "*Whoever acting unlawfully and in fault causes a pecuniary damage to another party, is obliged to compensate same*".

The question of whether Law 703/1977 provides a legal basis for remedies under civil law to those who have suffered damage caused by an infringement of Article 1 or Article 2 of Law 703/1977 has been examined by legal commentators on several occasions in the past.⁶ In particular, this question has been associated with the wider issue of whether Law 703/1977 aims at the protection of competition as an institution alone (in which case a right to compensation would be excluded) or whether it also aims at the protection of the interests of individuals (in which case a claim for damages under Article 914 CC would be admissible).

The case law of the Civil and Administrative Courts has established that individuals (e.g. competitors, customers, suppliers, consumers) who have suffered injury as a result of anti-competitive behaviour would be entitled to compensation on the basis of Article 914 CC and could bring actions for damages before the Civil Courts.⁷

In 1982, in a case concerning agreements between publishing organisations caught by Article 1(1) of Law 703/1977 (the Greek equivalent of Article 81(1) of the EC Treaty), the Athens Administrative Court of First Instance held that the scope of Law 703/1977 covers the control of monopolies and oligopolies and the protection of free competition in any sector of the economy to the benefit of consumers and of the public in general.⁸

However, two years later, the Competition Commission delivered two opinions⁹ regarding the abuse by two battery manufacturers of their respective dominant positions. In those opinions, the Competition Commission set out its view that the protection of competition is exclusively related to the economic public order and cannot lead to private actions for damages.¹⁰

In 1989, the Supreme Court adjudicated on whether a refusal to supply petroleum products constituted an abuse of a dominant position. The Court concluded, by majority vote, that the defendant's refusal to supply was not abusive. However, the dissenting judges held that an abuse of a dominant position had taken place and argued that under Article 914 CC, a party who suffered injury as a result of an infringement of Article 2 of Law 703/1977 is entitled to compensation based on tort.¹¹

More recent judgments of Greek Civil Courts have confirmed that the infringement of Articles 1 and 2 of Law 703/1977 may constitute a tort under Article 914 CC and may give rise to private actions for damages. In a judgment concerning a refusal to supply under Article 2 of Law 703/1977, the Athens Single Member Court of First Instance once again ruled that a breach of Article 1 of Law 703/1977 may establish a right of compensation.¹²

Further, the Court of Appeal held that, under Article 18 para. 2 of the Law, Civil Courts can only incidentally examine the nullity of an agreement, decision or concerted practice caught by Article 1(1) of Law 703/1977, when examining private disputes, such as claims for damages deriving from tort, subject to the condition that, with regard to such agreements, decisions and concerted practices, there does not already exist "*res judicata*" from a previous ruling by the competent Administrative Court¹³. However, such judgements are not binding on the

6 Leonidas N. Georgakopoulos, NoV 35, 883. Costas Vainanidis, The Greek Anti-Trust Law (1984), International Anti-Trust Law (ESC Publishing Limited). Mih.-Theod. D. Marinos, The Revocation of the Competition Commission's Decisions under Law 703/1977, (Ant. N. Sakkoulas Publications, 1994). Athanasios Th. Liakopoulos, The Financial Freedom as an Object of Protection in Competition Law, (P. Sakkoulas Publications, 1981). Also, Panagiotis M. Bernitsas, The European Community Competition Law and its Influence in the Enactment and Implementation of Law 703/1977, (Ant. N. Sakkoulas Publications, 1988).

7 Leonidas N. Georgakopoulos, Commercial Law Textbook, (P. Sakkoulas Publications, 1984).

8 Decision 7638/1982 of the Athens Administrative Court of First Instance, Publishing Houses, Dim. V. Koutsoukis – Dim. N. Tzouganatos, The Enforcement of Law 703/1977 on the Protection of Free Competition, (1987).

9 At the time, opinions of the Competition Commission were not binding.

10 Opinions 17/1984 and 18/1984 of the Hellenic Competition Commission regarding the abuse of dominant position by the companies UCAR and SUNLIGHT respectively, Dim. V. Koutsoukis – Dim. N. Tzouganatos, The Enforcement of Law 703/1977 on the Protection of Free Competition, (1987).

11 Decision 2/1989 of the Supreme Court, Epitheorisi Emporikou Dikaiou, 1989, 657-665.

12 Decision 18743/1992 of the Athens Court of First Instance, Epitheorisi Emporikou Dikaiou, 1994, 141.

13 Decision 18/2002 of the Patras Court of Appeal, Dikaio Epixeiriseon kai Etaireion, 2003, 524. Also, Thanasis Liakopoulos, Industrial Property, (Law and Economy, P.N. Sakkoulas 2000).

Competition Commission or the Athens Administrative Court of Appeal or the Council of State.¹⁴

In 2002, in a case regarding a refusal to supply, the Court of Appeal again ruled that a breach of Article 1(1) of Law 703/1977 constitutes illegal conduct under Article 914 CC and, provided that the other requirements for the application of this Article are fulfilled, any person suffering damage as a result of such illegal conduct has a right of compensation.¹⁵

B. Which courts are competent to hear an action for damages?

(i) Which courts are competent?

The Civil Courts have jurisdiction to hear actions for damages caused by an infringement of Articles 81 and/or 82 EC or Articles 1 and 2 of Law 703/1977.

The Civil Courts are competent to hear both disputes between private parties and actions for damages brought by private parties against State-controlled undertakings, when the latter do not conduct activities in the exercise of public authority.¹⁶

The Magistrates' Courts consider claims for damages for amounts below 12,000.00. The single-member Court of First Instance consider claims for damages for amounts of between 12,000.00 and 80,000.00. For claims for damages for amounts in excess 80,000.00 the competent court is the multi-member Court of First Instance.

(ii) Are there specialised courts for bringing competition-based damages actions as opposed to other actions for damages?

There are no specialised Courts which hear actions for damages caused by an infringement of Articles 81 and/or 82 EC or Articles 1 and/or 2 of Law 703/1977.

C. Who can bring an action for damages?

(i) Which limitations are there to the standing of natural or legal persons, including those from other jurisdictions? What connecting factor(s) are required with the jurisdiction in order for an action to be admissible?

Who can be a claimant?

Under Article 914 CC, a party which has suffered pecuniary damage by an action of another party which is acting unlawfully and in fault, has standing to bring an action for damages against the party which caused the damage.¹⁷

Under Article 3 of the Code of Civil Procedure ("CCP"), both Greek and non-Greek parties have standing to bring an action for damages upon the basis of Article 914 CC before any Greek Court which has jurisdiction to hear such an action.

Under Article 62 CCP, associations of persons and entities without legal personality have standing to bring an action for damages upon the basis of Article 914 CC before the Courts.¹⁸

14 An action for the annulment of decisions of the Competition Commission can be submitted before the Athens Administrative Court of Appeal, while the parties which were litigants in the action before the latter, may appeal before the Council of State to quash judgments by the Athens Administrative Court of Appeal in accordance with the provisions of Law 703/1977. Under Law 703/1977, judgements of the Athens Administrative Court of Appeal and the Council of State have the force of "res judicata", i.e. they are binding on Civil Courts.

15 Decision 6042/2002 of the Athens Court of Appeal, *Dikaio Epixeiriseon kai Etaireion*, 2003, 282. Also, Thanasis Liakopoulos, *Industrial Property*, (Law and Economy, P.N. Sakkoulas 2000).

16 Article 104 of the Introductory Law of the Civil Code.

17 Decision 1405/1998 of the Supreme Court, NOMOS legal database.

18 Article 62 CCP reads as follows: "...Associations of persons and entities without legal personality can be litigants".

Who can be a defendant?

More than one person can be held jointly and severally liable for paying damages, if:

- (a) the damage has been the result of their joint act; or
- (b) they are in parallel liable for the same damage; or
- (c) they have acted simultaneously or consecutively and it cannot be determined whose act has caused the damage.

Where more than one person is liable for damages, each of these persons is liable for the entire amount of damages, but the claimant is entitled to claim such an amount only once.¹⁹ Where one of the persons, who are jointly and severally liable, has paid the entire amount of damages, he has a right of restitution against the other joint defendants either on the basis of the fault of each one, as determined by the Court or, if the degree of fault cannot be determined, in equal parts.²⁰

In cases where the person causing the damage under Article 914 CC is the lawful representative of a legal entity, Article 71 CC provides that the legal entity is liable for compensation under Article 914 CC for the acts and omissions committed by its representatives, provided that the representatives have acted during the performance of their duties. Such representatives remain jointly and severally liable together with the legal entity for such damage. This means that the injured party can sue both the legal entity and the person causing the damage, but can recuperate damages only once.

In addition to the liability under Article 71 CC, the lawful representatives of a legal entity which breaches Article 1 and/or 2 of Law 703/77 have criminal liability in the form of a pecuniary penalty.²¹ These individuals could be sued for damages upon the basis of Article 914 CC.

Associations of persons and entities without legal personality can be sued for damages arising from injury caused by an infringement of competition rules on the basis of Article 62 CCP.

For defendants domiciled in an EC Member State jurisdiction is decided on the basis of EC Council Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters²². For EEA residents jurisdiction is decided on the basis of the Lugano Convention.

Under Article 5(3) of Regulation 44/2001, a person domiciled in a Member State may be sued in the Greek courts "*in matters relating to tort, delict or quasi delict, in the Courts of the place where the harmful event occurred or may occur*". That is the place where either the harmful event or the damage has occurred.²³

For persons domiciled outside the EC, Greek Courts have jurisdiction on the basis of Article 40 CCP, i.e. when the defendant has assets in Greece (in the form of tangible assets or claims against third parties). Moreover, under Article 35 CCP, a Greek Court has jurisdiction to hear a claim for damages arising from a criminal act committed in Greece by persons domiciled outside the EC. As noted above, the infringement of Articles 1 and 2 of Law 703/77 constitutes a criminal act by virtue of Article 29 of Law 703/77.

(ii) Is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation?

Under Greek law, an action for damages may be brought jointly by more than one party (joinder of claimants) if:

19 Article 481 CC.
20 Articles 926 and 927 CC.
21 Articles 29 and 30 of Law 703/1977.
22 OJ L 012/16.1.2001.
23 K. D. Keramefs – G. D. Cremlis – X. N. Tagaras, The Brussels Convention, (Ant. N. Sakkoulas Publications 1989).

- (a) the claimants' right for damages arises from the same factual and legal basis; or
- (b) the object of the dispute consists of similar claims based on similar factual and legal basis.²⁴

Public interest litigation is provided in Law 2251/1994 on Consumer Protection.²⁵ According to Law 2251/1994, a union of consumers which has at least 500 members and which has been registered in the Registry of Consumers' Unions, may bring an action for the protection of the general interests of the consumers, without distinguishing between member and non-member consumers. The object of such litigation is the payment of pecuniary indemnity for moral damage and any proceeds are used for public benefit purposes relevant to the protection of consumers. However, this type of legal action is not available under Law 703/1977.

Collective claims and class actions are not provided for under Greek law.

D. What are the procedural and substantive conditions to obtain damages

Greek civil law recognizes two principal bases for civil liability: contractual liability and tort liability. Contractual liability arises as a result of a breach of an obligation to perform arising from a contractual agreement²⁶. Tort liability arises as a result of the performance of an unlawful act.²⁷

There are three cumulative substantive conditions for claiming damages under tort or contractual liability:

1. Unlawful act.
2. Damage.
3. Causal link between the unlawful act and the damage.

Civil liability aims at remedying the damage caused to the injured party. Its purpose is to protect the injured party.²⁸

The unlawful act is behaviour (whether by act or omission) which is contrary to a provision of a contractual agreement between the parties, or, in the absence of such a contractual agreement, contrary to a provision of law protecting a right or a legitimate private (rather than public) interest.

(i) What forms of compensation are available?

A remedy in the form of damages is available to a party who can establish that it has suffered loss as a result of a breach of Articles 81 and/or 82 EC or Articles 1 and/or 2 of Law 703/1977.

The payment of damages corresponds to an injury caused to the tangible or intangible assets of a specific person.

Damages are distinguished into pecuniary damages and reasonable pecuniary satisfaction.

Pecuniary damages

Pecuniary damages relate to injury to goods that have an economic value. According to the prevailing legal theory, such damages result from a comparison between the actual situation following the unlawful act and the situation which would have existed had the unlawful act not occurred.

²⁴ Article 74 CCP.

²⁵ Published in the Government Gazette, Issue A', No. 191/15-16.11.1994.

²⁶ Articles 330, 335 *et seq.*, 340 *et seq.*, 362 *et seq.*, 380 *et seq.* CC.

²⁷ Article 914 CC.

²⁸ A. Georgiadis – M. Stathopoulos, Interpretation of the Civil Code, (P. Sakkoulas Publications, 1982), Volume IV.

Pecuniary damages can be paid in one of the following two ways:

- (a) in kind, where this:
 - (i) is requested by either party;
 - (ii) is possible; and
 - (iii) is not contrary to the injured party's interests.
- (b) in the form of monetary compensation.²⁹

Monetary compensation will cover actual damage (*damnum emergens*) (current and future) and lost profit (*lucrum cessans*).³⁰ Lost profit is compensated to the extent that it could be anticipated in all probability and in the normal course of events, or due to the specific circumstances and especially the preparatory measures adopted.³¹ For example, in case of intentional failure of a supplier to deliver merchandise to the distributor, the latter may claim as monetary compensation from the former the lost profit, i.e. the profit he would have recovered from the resale of the merchandise to its customers, who had already placed respective orders for such merchandise.

Reasonable pecuniary satisfaction

This is awarded in case of "moral" damage which is the damage to non-pecuniary goods such as life, health, freedom, honor and reputation, which arise from the corporal, spiritual and social individuality of a person. The damage of moral values cannot be quantified and therefore, strictly speaking, there cannot be monetary compensation. Therefore, in case of breach of moral values the law does not provide for monetary compensation of the damage involved. Instead, it provides for the grant of an indemnity in the form of a "reasonable pecuniary satisfaction" of the injured party. Such "reasonable pecuniary satisfaction" does not mean a full scale restitution but rather a pecuniary relief for the "moral" damage incurred. Such "pecuniary satisfaction" is available only where it is expressly provided for in the law, such as in the case of tort liability³² (but not in the case of contractual liability).

"Moral" damage may be indemnified irrespective of whether the injured party is a natural person or a legal entity (for example, where its reputation or professional credibility have suffered damage as a result of the unlawful act of the party causing the damage).

(ii) Other forms of civil liability (e.g. disqualification of directors)?

In addition to liability for damages under Article 71 CC and Articles 29 and 30 of Law 703/1977, the directors of an undertaking infringing Articles 1 and/or 2 of Law 703/1977 are jointly and severally liable for the payment of the fines imposed on the undertaking in breach of the above articles.

(iii) Does the infringement have to imply fault? If so, is fault based on objective criteria? Is bad faith (intent) required? Can negligence be taken into account?

Under Greek law, both contractual and tort liability require fault. There are two degrees of fault: intent and negligence. In order to claim compensation for breach of competition law before the Greek Courts, the plaintiff would have to prove the existence of fault (intent or negligence) in relation to the infringement.

An intentional act can be of two types: (i) the party causing the damage pursues the unlawful result or anticipates that such result will occur and accepts the result (*dolus directus*); or (ii) the party causing the damage anticipates the unlawful result as potential and accepts it (*dolus eventualis*).

29 Article 297 CC.

30 Article 298 CC.

31 Article 298 CC.

32 Articles 299 and 932 CC.

Negligence exists when the party causing the damage:

- anticipates the unlawful result as potential, but hopes that it will be avoided, which eventually does not happen; or
- does not anticipate the unlawful result due to lack of care.

The party causing the damage is liable even if it could not have anticipated all the unlawful results in detail, but could have foreseen the immediate results.

Negligence may be heavy or light. The distinction depends on the degree of deviation from the behaviour of the average diligent person.

An injury is compensated only to the extent that between the unlawful act and the injury there exists a causal link. The jurisprudence of Greek Courts follows the "*causa adaequata*" theory.³³

Under the theory of "*causa adaequata*", the party causing the damage shall have to make good the damage caused by any unlawful act which, upon the basis of the normal course of events and upon the basis of common practice, is considered to be capable of causing this damage.

From a practical point of view, the establishment of the liability of the party causing the damage can involve difficulties in the case of indirect damage.³⁴

E. Rules of evidence

(a) General

(i) Burden of proof and identity of the party on which it rests (covering issues such as rebuttable presumptions and shifting of burden to other party etc.)

The allocation of the burden of proof is provided in Article 338 CCP, according to which each litigant has to prove those facts which are a condition for the award of the type of protection sought. Thus, the burden of proof that the agreement or the conduct in question is in breach of Article 81 or 82 EC or Article 1 or 2 of Law 703/1977, lies with the party claiming compensation for such breach.

The Court is restricted to adjudicating on the object of the dispute as determined by the parties' allegations.³⁵

(ii) Standard of proof

The standard of proof laid down by the CCP is that the Court must be satisfied about the truth of the parties' allegations "beyond reasonable doubt". The Court will require full proof of the truth of the litigants' allegations and its judgment should be free of doubts. Where, despite all the evidence submitted, the Court continues to have doubts about the veracity of a litigant's allegations, the litigant's request will be rejected.

Where the CCP does not require full proof, it explicitly provides so. For example, Article 690 CCP provides that in injunction proceedings it suffices that the judge considers "probable" that the allegations are true. Under the probability requirement, it suffices that the judge considers the invoked facts as probable, even if he maintains doubts about their veracity.

(iii) Limitations concerning form of evidence (e.g. does evidence have to be documentary to be admissible? Which witnesses can be called, e.g. the CEO of a company? Can evidence/witnesses from other jurisdictions be admitted/summoned?)

33 Decision 1261/85 of the Supreme Court, NoV 34, 860; also, decision 1200/86 of the Supreme Court, NoV 35, 906.
34 A. Georgiadis – M. Stathopoulos, Interpretation of the Civil Code, (P. Sakkoulas Publications, 1982), Volume IV.
35 Article 106 CCP.

The CCP recognises only certain specific means of evidence. These are: confession, documents, inspection, expert-opinion, examination of litigants, witnesses and judicial presumptions.³⁶

The evidential power of certain forms of evidence is provided for in the law. For example, a document drafted by a public servant constitutes full evidence in relation to the acts which the document ascertains have been carried out by the author of the document or have been witnessed by the author. The evidential power of such a document can be discarded only if a claim of forgery is successful.³⁷ Similarly, a litigant's confession before the Court constitutes full proof. The Court is free to assess an out-of-Court confession.³⁸

The Court is constrained by the power of evidence attributed by the CCP to each specific form of evidence. Where the power of a certain form of evidence is not expressly provided in the law, then the judge has discretion in his assessment regarding the truth of the arguments invoked.³⁹ In its decision the Court should set out its assessment of the evidence put forward and the reasoning of its judgment.

Any person can testify as a witness, if proposed by a litigant, with the exception of, among others, lawyers and the litigants' counsel, regarding facts entrusted to them or ascertained during the exercise of their profession and covered by professional secrecy. Under Article 402 CCP, a witness is not obliged to testify regarding facts that constitute business secrets. In civil procedure, witnesses cannot be compelled to testify before the Court.

(iv) Rules on (pre-trial or other) discovery within and outside the jurisdiction of the court vis-à-vis:

- **Defendants**
- **Third parties**
- **Competition authorities (national, foreign, Commission)**

Discovery does not exist under the CCP. As mentioned, the Court takes into consideration only the allegations set forth by the litigants, who have the burden of submitting evidence in support of their allegations, in accordance with Article 106 CCP. Article 107 CCP introduces a derogation from the rule of Article 106 CCP and provides that the Court has the supplementary power to order evidence of the litigants' allegations by one or more of the means of evidence recognised by the CCP.

The CCP provides⁴⁰ that a litigant may bring a separate action before the competent Court requesting the issuing of an order to another litigant or a third party to produce documents in the latter's possession, which may provide evidence regarding the litigants' allegations.⁴¹ Such documents need to be identified.

Facts constituting public knowledge are considered proven and are taken into account by the Court on its own initiative.⁴²

Article 338 CCP provides that, where the law sets a legal presumption, the burden of proof is reversed to the other party.⁴³

Evidence obtained outside Greece could be admissible before the Greek Courts.

Finally, under Regulation 1206/2001 on Cooperation between the Courts of the Member States in the taking of Evidence in Civil or Commercial Matters,⁴⁴ which applies in its entirety since January 2004, Greek Courts may request the

36 Article 339 CCP.

37 Article 438 CCP.

38 Article 352 CCP.

39 Article 340 CCP.

40 Articles 450 and 451 CCP.

41 In the context of this possibility, the Greek State, represented by the Ministers of Development and Finance and the Competition Commission, could theoretically be considered a third party, from which the production of documents could be requested.

42 Article 336 CCP.

43 K. Beis, Evidence, (P. Sakoulas Publications, 1983).

44 OJ L 174/27.6.2001.

competent Court of another Member State to take evidence or request that evidence to be taken directly in another Member State.

(b) Proving the infringement

(i) Is expert evidence admissible?

Expert evidence is admissible.

The Court is entitled to appoint one or more experts selected from a special list of experts drawn by the Court.⁴⁵ The expert is required to assist the judge on matters which require specific scientific, technical or practical knowledge.⁴⁶

Where such type of expert knowledge is required and the appointment by the Court of an expert is requested by a litigant, the Court is obliged to proceed with such an appointment.⁴⁷

Article 369 CCP provides that the expert offers assistance to the Court by providing a written or an oral consultative opinion on issues determined by the latter. The Court offers guidance to the expert regarding the way he/she may carry out his/her duties. The expert may consider the documents produced by the litigants but may also gather his/her own evidence with the Court's prior consent or subsequent approval.

The parties cannot appoint their own experts. However, where the Court appoints an expert, each litigant may appoint a technical consultant to advise, to submit questions to the Court's expert and to comment on the latter's report.

The Court has discretion as to its assessment of the expert's and technical consultant's opinions, both having the same evidential value.⁴⁸

The CCP also provides that the Court may examine expert witnesses, i.e. persons who have perceived the facts which are established by evidence on the basis of their special knowledge.⁴⁹

(ii) To what extent, if any, is cross-examination permissible?

Cross-examination of witnesses is permissible during the hearing of the case. Each litigant is entitled to examine at least one witness before the Court. Written sworn affidavits of witnesses (up to a maximum of three affidavits for each litigant) or experts' reports should be deposited by each litigant, together with its brief, to the Court Secretary before the hearing. These are accessible by the other litigant.

(iii) Under which conditions does a statement and/or decision by a national competition authority, a national court, an authority from another EU Member State have evidential value?

An appeal against the decisions of the Competition Commission can be submitted before the Athens Administrative Court of Appeal.⁵⁰ Parties who are not satisfied by the Administrative Court's judgment, may appeal before the Council of State to have such judgment quashed in accordance with the provisions of Law 703/1977.⁵¹ Under Law 703/1977, judgements of the Athens Administrative Court of Appeal and the Council of State have the force of "res judicata", i.e. they are binding on Civil Courts.

In case no appeal against the decision of the Competition Commission has been submitted before the above mentioned Courts, Civil Courts can only incidentally decide on the validity of decisions by the Greek Competition Commission but are

45 Article 371 CCP.
46 Article 368 para. 1.
47 Article 368 para. 2 CCP.
48 Article 387 CCP.
49 Article 413 CCP.
50 Law 703/1977, Article 14 para. 1.
51 Law 703/1977, Article 15 para. 1.

bound concerning the substantive issues decided by the Competition Commission's decision.

A statement or a decision by a foreign competition authority or a foreign Court regarding the effects of an agreement on competition in Greece shall be freely assessed by the Civil Courts.

The burden of putting forward such statements or decisions as supportive evidence during the proceeding lies on the litigants.⁵² These decisions should be translated in the Greek language.

(c) Proving damage.

(i) Are there any specific rules for evidence of damage?

The injured party is required to establish that the conditions for its claim of damages in tort, namely the existence of breach of law, damage, fault and causation, are fulfilled.

In the context of tort liability, there are no specific rules regarding the evidence of damage other than the principles described above and those mentioned below with regard to the proof of causation.

With regard to the evidence of fault, the burden of proving fault lies with the plaintiff/injured party. The nature of this burden depends on whether it relates to tort liability or contractual liability. In the context of a contractual agreement, each party is required to show a higher degree of diligence than in the absence of any agreement in order to avoid the other party's damage and this requirement justifies an increased liability of the party causing injury. As a result, in case of breach of contract there is a rebuttable presumption concerning the fault of the party causing the injury, which means that this party has the burden to prove that he did not act in fault.

Blind adherence to the rule that the plaintiff must prove the defendant's fault could in practice lead to the exoneration of the defendant in cases where proof depends on data which falls within the sphere of influence of the party causing the injury. To avoid such a situation, some authors suggest that the burden of proof should be allocated in such a manner that each party would have the burden to prove the facts which fall within its sphere of influence.⁵³

In 1977, in a case concerning a claim for damages which arose from a defective product, the Court of Appeal (Thessaloniki) acknowledged the inherent difficulty for consumers in proving the fault of product manufacturers.⁵⁴ The Court held that consumers cannot have access to data falling exclusively within the product manufacturer's sphere of influence, such as the organization and functioning of the manufacturer's business, the production process and storage of the products involved. Thus, the Court found that:

- (a) the consumer was required to prove the existence of the product's defect and to provide evidence of any causal link between the alleged product defect and the damage caused; and
- (b) the product manufacturer had to demonstrate that (i) the defect in question was not due to the product's fabrication/preservation; or (ii) even if the defect in question arose during the fabrication/preservation of the product, the manufacturer was not at fault.

In a more recent ruling,⁵⁵ the Court of Appeal (Piraeus) confirmed the above ruling and held that a consumer of defective standardized products, who brings an action

52 Article 106 CCP. Also, K. Beis, Evidence, (P. Sakkoulas Publications, 1983).

53 A. Georgiadis – M. Stathopoulos, Interpretation of the Civil Code, (P. Sakkoulas Publications, 1982), Volume IV.

54 Decision 1259/1977 of the Thessaloniki Court of Appeal, Armenopoulos (1978) τΑΒ', p 121-123.

55 Decision 301/2001 of the Piraeus Court of Appeal, Dikaio Epixeiriseon kai Etaireion, 2001, 1147.

based on Article 914 CC⁵⁶ for damages, unrelated to the production process, very often encounters great obstacles in seeking to prove the fault of the manufacturer. Such difficulties can be surmounted by switching the burden of proof of fault from the plaintiff/injured party to the defendant. Private actions for breach of competition law could be facilitated by such switching. However, to date, such an approach has been developed only with regard to product liability.

(d) Proving causation

(i) Which level of causation must be proven: direct or indirect?

Greek law requires that indirect causation must be proven.

Where indirect causation is proven, both direct and indirect damage are covered. Indirect damage is the damage not directly due to the harmful event, but to other facts resulting from the original event, for example wages lost by an injured worker, while recovering from a work-related accident.

F. Grounds of justification

(i) Are there grounds of justification?

Despite the plaintiff having fulfilled all the conditions necessary for the action for damages to succeed, namely unlawful act, fault, damage and causation, there are certain events which are generally deemed as exculpatory, such as force majeure, self-defence, reaction to illegal conduct, consent.

(ii) Are the "passing on" defence and "indirect purchaser" issues taken into account?

"Passing on"

The "passing on" defense would be examined by a Greek Court in the context of proof of damage.

There is no presumption by the court that higher prices have been "passed on" and that, therefore, the plaintiff has not incurred any damage. If the defendant claims that the plaintiff's alleged damage has not (wholly or partially) been caused by the unlawful act because the plaintiff "passed on" the effects of the unlawful act, the defendant has the burden of proof that "passing on" occurred.

Indirect purchaser

The "indirect purchaser" issue would be examined by a Greek Court in the context of proof of a causal link between the unlawful act and the damage incurred.

Article 914 CC provides for the payment of damages to the injured party, that is the person who has directly suffered damage as a consequence of the unlawful act. This means that, under Article 914 CC, a person that has suffered damage indirectly cannot bring an action for damages.

No general rule can be formulated regarding the distinction between directly and indirectly injured parties but, instead, the matter is examined on the basis of the facts surrounding each case. A creditor of the injured party (which suffers injury because the debtor/ injured party cannot fulfill its obligations as a result of its own damage) is an example of an indirectly injured party which is not entitled to damages. Similarly, a person who suffered injury not because of the unlawful act

56 In addition, this decision found that an action for damages can also be brought before the Courts on the basis of Law 2251/1994 on Consumer Protection, in which case the consumer is not required to prove fault on the part of the manufacturer. Under Article 6 of Law 2251/1994, the existence of the manufacturer's fault is presumed (non-fault liability) and it is for the manufacturer to prove the absence of fault.

itself, but as a consequence of the damage which the unlawful act caused to the directly injured party is not entitled to damages.⁵⁷

(iii) Is it relevant that the plaintiff is (partly) responsible for the infringement (contributory negligence leading to apportionment of damages) or has benefited from the infringement? Mitigation?

Yes, it is relevant. When an unlawful act which has caused the damage has also produced a benefit to the injured party, only the net damage (i.e. the total damage minus the benefit) should be compensated. The purpose of the granting of compensation is to restore the entire damage of the injured party, and only such damage so as not unjustly to enrich the injured party.

In addition, if the injured party has contributed by its own fault to the occurrence of the damage or its extent, or when the injured party could have avoided or reduced the damage, the Court may reduce the amount of damages awarded to the claimant or even acquit the defendant.⁵⁸

G. Damages

(a) Calculation of damages

Damages are available in Greek law to compensate the injury suffered by the injured party. The award of damages is intended to remedy, so far as possible, the pecuniary or non-pecuniary loss suffered by the injured party.

Under Articles 117, 118 and 216 CCP, a damages action should contain a description of all the facts giving rise to the claim in a precise and concrete manner, so that the defendant may be able to defend itself and the Court may determine the issues, which should form the object of evidence. A great number of damages claims are rejected by the Greek Courts as inadmissible for failure to fulfil these requirements.

Moral damage is compensated in case of tort liability. For the assessment of the amount of compensation, the Court, inter alia, takes into account the nature of the unlawful act, the degree of fault and the financial standing of the parties.

(i) Are damages assessed on the basis of profit made by the defendant or on the basis of injury suffered by the plaintiff?

Damages are assessed on the basis of injury suffered by the plaintiff.

Greek legal theory and Courts apply cumulatively the following three principal rules in the determination of damages which can be compensated:

- (a) according to the rule of "causa adeguata", damage which can be compensated must:
 - have in fact occurred;
 - have been caused by an unlawful act, which alone is objectively capable of producing the damage under the normal course of events;
 - not be the result of entirely unpredictable and exceptional circumstances unrelated to the normal course of events, irrespective of whether the injured party could have or have not anticipated the specific damage caused;⁵⁹
- (b) according to the so called "theory of difference", the damage which can be compensated should result from the comparison between the financial standing of the injured party and the one existing before the occurrence of the damage. The damage is assessed not only with respect to the specific

57 A. Georgiadis – M. Stathopoulos, Interpretation of the Civil Code, (P. Sakkoulas Publications 1982), Volume IV p.710

58 Article 300 CC.

59 Decision 4351/2002 of the Court of Appeal, Elliniki Dikaiosisini 2003, 200.

injured good, but to the entirety of the injured party's goods, whether tangible or not, constituting this party's financial standing;

- (c) in accordance with the rule of the "concrete assessment of damage", the damage taken into account in the determination of the amount of compensation is the one incurred by the injured party, on the basis of this party's specific circumstances.

Types of damage compensated

Damage may consist of (a) positive loss; and/or (b) lost profit.

Positive loss

Positive loss relates to the actual reduction of the existing financial standing of the injured party⁶⁰ and comprises any such damage incurred by the injured party as a result of the unlawful act.

Lost profit

Lost profit would include loss of anticipated profits for a specific future period of time.

Where the unlawful act results in the early termination of an agreement between the plaintiff and a third party, loss of profit could be claimed for the period from the date of termination until the contractual expiry of the agreement, if the agreement was for a defined term, or the period for which the agreement could reasonably be expected to last. The Courts have held that this term could extend to the number of years or months required for the plaintiff to find a new source for the supply of competitive products.⁶¹

It would not be sufficient to provide a numerical figure for the gross profit of the last year and to project that into the future, for example by claiming an increase of 20% in gross profit for each of the following years. Thus, for example, in a case where the plaintiff was the purchaser of components used by the plaintiff to assemble a final product, the Court would request that the plaintiff would provide a description of the types of product produced and the quantity of each such type of product and an analysis of the cost of production of the same, including an analysis of the operational expenses, i.e. all the components on the basis of which the gross profit of the last year was assessed.

The Court compensates the net lost profit not the gross lost profit.⁶² Recent jurisprudence of the Supreme Court has maintained that the lawsuit will be admissible even if it lacks a detailed description of the expenses which the plaintiff did not incur (i.e. the saved expenses) and therefore of the required net lost profit, as such description relates to the assessment of the damage which would be carried out on the basis of evidence later in the Court process.⁶³

The plaintiff should determine in detail the circumstances which made probable, in the normal course of events, the anticipated profit which was lost. The plaintiff should therefore identify the clients which would have bought the products, the number of products ordered by them and the prices at which the products would be sold, etc.⁶⁴

(d) Are damages awarded for injury suffered on the national territory or more widely (EC or otherwise)?

60 Decision 4351/2202 of the Court of Appeal, *Elliniki Dikaosini* 2003, 200.

61 Decision 34.339/98 of the Athens Court of First Instance, *Dikaio Epixeiriseon kai Etaireion* 1999, 494.

62 Decision 3558/91 of the Thessaloniki Court of Appeal, *Epitheorisi Emporikou Dikaiau* 93, 411.

63 Decision 22/95 of the Supreme Court, *Elliniki Dikaosini* 1995, 1538; Decision 849/2002 of the Supreme Court, legal database "NOMOS"; also, Decision 119/02 of the Athens Court of Appeal, *EpiskED* 2002, 429.

64 Decision 17426/96 of the Thessaloniki Court of First Instance, *Armenopoulos* 1996, 1206; also, Decision 20/92 of the Supreme Court, *Elliniki Dikaosini* 33, 14351.

The effects of the damage will be assessed with regard to the entire financial standing of the injured party. If it can be proven that the unlawful act has caused damage on assets of the injured party outside Greece, compensation for such damages can be awarded.

(i) What economic or other models are used by courts to calculate damage?

No such models have been developed by Greek Courts.

(ii) Are ex-ante (time of injury) or ex-post (time of trial) estimates used?

Greek Courts use ex-post estimates for the calculation of damage.

The right to damages arises as soon as the damage occurs. However, the purpose of damages is to restitute the real damage suffered and so the quantum of damages will be determined in the light of the circumstances at the time judicial protection is granted to the claimant.

(vi) Are there maximum limits to damages?

There are no maximum limits to damages under Article 914 CC.

(vii) Are punitive or exemplary damages available?

No punitive or exemplary damages are available under Greek law.

(vii) Are fines imposed by competition authorities taken into account when settling damages?

Fines imposed by competition authorities are administrative sanctions and thereby serve a different purpose than civil damages. Greek Courts would not take account of such fines.

(a) Interest

- (i) Is interest awarded from the date**
- **the infringement occurred; or**
 - **of the judgment?; or**
 - **the date of a decision by a competition authority?**

The plaintiff in an action for damages is entitled to interest for the period which starts to run either from the day of the service of the lawsuit upon the defendant or from the time he served upon the defendant an extra-judicial statement setting out the infringement and the request for the payment of a specific amount.

(ii) What are the criteria to determine the levels of interest?

In Greece, the level of interest is determined by law (statutory default rate). Currently, the interest rate applicable equates to 10%.

(iii) Is compound interest included?

Compound interest is not included.

H. Timing

(i) What is the time limit in which to institute proceedings?

According to Article 937 CC, the limitation period for a claim for damages based on tort is five years and starts from the date when the injured party became aware of the damage and the identity of the person who is liable to compensate him. In any case, such a claim is subject to a limitation period of 20 years which starts to run from the date of the commitment of the unlawful act.

A claim for damages is subject to a limitation period regarding not only the damage which actually occurred but also the damage which could, under the normal course of events, be anticipated as a result of the unlawful act. Thus, the five-year limitation period mentioned above covers also the future damage, except that which could not be reasonably foreseen.⁶⁵

(ii) On average, how long do proceedings take?

On average, a Court decision at first instance on a claim for damages is issued after a period of between two to three years from the date of the lodging of the lawsuit with the Court Secretary. A Court decision on appeal is issued after a period of between one to two years from the date of the lodging of the appeal.

(iii) Is it possible to accelerate proceedings?

Court proceedings cannot be accelerated.

(iv) How many judges sit in actions for damages cases?

Claims for damages for an amount of less than €80,000 are heard by the single-member Court of First Instance. Claims for damages for an amount exceeding Euro 80,000 are heard by the multi-member Court of First Instance, which consists of three judges.⁶⁶

Appeals against the decision of the Court of First Instance are heard by a Court of Appeal, which consists of three judges.⁶⁷

Actions for annulment against the decision of a Court of Appeal on matters of law are tried before the Supreme Court, which sits in chamber consisting of five members.⁶⁸

(v) How transparent is the procedure?

Proceedings at all levels of the judicial process are transparent.

In cases where the defendant resides in Greece, he should be served with a summons at least 60 days before the hearing.

In cases where the defendant resides outside Greece, he should be served with a summons at least 90 days before the hearing.⁶⁹

At least 20 days before the hearing, the litigants should submit their written pleadings accompanied by all their documentary evidence.⁷⁰

Fifteen days before the hearing, the parties should submit their written rebuttals.⁷¹

At the hearing the litigants examine their witnesses before the Court and the testimony is audio-recorded.

Finally, the parties are entitled to submit their final written briefs at the latest eight days after the hearing and at that time the proceedings before the Court are closed (the final step in the Court process being the issuing of the judgment).

Copies of the decisions issued by the Courts are in principle available from the issuing Court's Secretariat, although, in practice, as a safeguard to the integrity and confidentiality of the documentary evidence in the case files, such copies are delivered to those authorized in writing by one of the litigants or their lawyers.

65 Decisions 53/2002 and 949/2002 of the Supreme Court (NOMOS legal database).

66 Articles 14 and 18 CCP.

67 Article 19 CCP.

68 Article 20 CCP.

69 Article 228 CCP.

70 Article 237 para. 1. CCP

71 Article 237 para. 3 CCP.

Unauthorized parties may be merely allowed to read a Court decision. No central database of all issued Court decisions exists.

I. Costs

(i) Are Court fees paid up front?

The legal costs concerning a claim for damages include:

- the judicial duty;
- the lawyers' fees;
- witnesses' expenses;
- the remuneration of the experts;
- travel expenses of the parties;
- contributions to Lawyers' Funds.

In relation to a claim that the defendant be condemned to pay a certain amount⁷², the judicial duty is due prior to the hearing date and is equal to 4‰ of the amount claimed.⁷³

The lawyers' fees are usually determined by reference to the minimum fees provided by the Code of Lawyers.⁷⁴ In particular, the Code of Lawyers provides that a lawyer's remuneration for drafting a lawsuit for damages and submitting pleadings before the national Civil Courts equates to 3% of the amount claimed, for the plaintiff's lawyer and 2% for the defendant's lawyer.⁷⁵

(ii) Who bears the legal costs?

Legal costs are imposed on the defeated litigant⁷⁶ and the decision of the Court should contain a provision on legal costs. However, in case of partial winning and partial defeat of each litigant the Court may apportion the legal costs in proportion to the extent of the success of each litigant's arguments.⁷⁷ In such cases, the Court will also set the lawyers' fees.

In case where the "interpretation of the invoked rule of law" was difficult and, as a result, the outcome of the trial was reasonably uncertain, the Court may set off legal costs between the litigants.⁷⁸

(iii) Are contingency fees permissible? Are they generally available for private enforcement of EC competition rules?

Contingency fees are not permissible under Greek law, whereas conditional fee agreements are. More specifically, Article 92 of the Code of Lawyers provides that lawyers may agree with a client to determine their remuneration upon the basis of the outcome of the case or any other criterion. However, the lawyer's remuneration cannot exceed 20% of the amount claimed⁷⁹.

(iv) Can the plaintiff/defendant recover costs? Are there any excluded items?

Under Article 189 CCP, a party may recover only those legal costs which are necessary for the litigant's participation in the judicial proceedings, such as:

- judicial duty;
- lawyers' fees;

72 Article 11 of Legislative Decree 4189/1961, amending Law ΓπΟΗ' on "Judicial Duties", provides that for a judicial duty to be payable, the claim must exceed the amount of 15,000 drachmas (approximately Euros 44). Where the claimant solely requires that the Court recognise the existence of the defendant's debt, such judicial duty is not payable (Legislative Decree 1544/1924, Article 7 para. 3).

73 An additional sum equal to 60% of the judicial duty is also payable in favour of different public Funds.

74 Legislative Decree 3026/1954 of 6/8.10.1954, published in the Government Gazette, Issue A', No. 235/1954.

75 Articles 100 and 107 of the Code of Lawyers.

76 Article 176 CCP.

77 Article 178 CCP.

78 Article 179 CCP.

79 Article 92 para. 3 of the Code of Lawyers.

- witnesses' expenses;
- remuneration of the experts;
- travel expenses of the parties.

However, Article 189 CCP excludes the recovery of expenses made:

- due to a litigant's extreme diligence (e.g. excessive number of lawyers representing the litigant); or
- due to a litigant's fault.

(v) What are the different types of litigation costs?

The following are the different types of litigation costs:-

- judicial duty;
- lawyers' fees;
- witnesses' expenses;
- remuneration of the experts;
- travel expenses of the parties;
- contributions to Lawyers' Funds.

(vi) Are there national rules for taxation of costs?

As regards the types of costs that are recoverable see above at question I(iv). As noted also under that question, costs that are recoverable are limited to what is reasonable.

Under Greek law, the award of costs forms part of the Court's judgment and, as such, can only be challenged through an appeal of the Court's judgment.

(vii) Is any form of legal aid insurance available?

Following the adoption of Directive 2002/8 to Improve Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules relating to Legal Aid for Such Disputes,⁸⁰ Law 3226/2004 on the Provision of Legal Aid to citizens of Low Income and Other Provisions⁸¹ came into effect. Law 3226/2004 provides for the award of legal aid in relation to disputes concerning civil and commercial matters to citizens of an EC country and non-EC nationals residing lawfully in an EC Member State.⁸²

Under Law 3226/2004, legal aid is available to Greek citizens who establish that their annual family income does not exceed 2/3 of the minimum annual individual income provided for by the National General Collective Employment Agreement.⁸³ The same threshold applies for the award of legal aid to non-Greek citizens. However, non-Greek citizens are eligible for legal aid even if their income exceeds the threshold mentioned above, provided that they prove that they are unable to meet the costs of proceedings, as a result of differences in the cost of living between Greece and the country of their domicile or habitual residence.⁸⁴

Legal aid can be provided by the Court following an application by the interested party at least fifteen days before the hearing.⁸⁵ Courts are required to give reasons for the acceptance or rejection of applications for legal aid.⁸⁶

Legal aid covers the costs related to court proceedings which are mentioned under I(v) above (i.e. judicial duty, lawyers' fees, witnesses' expenses, the remuneration of the experts etc).⁸⁷ Costs related to the international nature of disputes, such as

80 Council Directive 2002/8/EC, of 27 January 2003, OJ 26/41 31.1.2003.

81 Published in the Government Gazette, Issue A', No. 24/4.2.2004.

82 It is worth noting that, under Article 16 of Law 3226/2004, Articles 194-204 CCP under the heading "The Privilege of Penury" intended for the destitute (for civil cases) no longer apply.

83 Article 1 para. 2 of Law 3226/2004.

84 Article 10 (a) of Law 3226/2004.

85 Article 2 of Law 3226/2004.

86 Article 2 para. 5 of Law 3226/2004.

87 Article 9 of Law 3226/2004.

interpretation, translations of documents and travel costs are also covered.⁸⁸ Legal aid is available in all instances before all competent Courts and may also cover expenses relating to the enforcement of judgments.⁸⁹

Legal insurance is available under Greek law.⁹⁰ Such insurance is provided by private insurance companies against the payment of a premium. The insurer undertakes to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to securing compensation for the loss, damage or injury suffered by the insured person, by means of an out of court settlement or through civil or criminal proceedings, as well as defending or representing the insured person in civil, criminal administrative or other proceedings or in respect of any claim made against him.

Legal insurance must be the subject of a contract separate from that drawn up for the other classes of insurance or can be dealt with in a separate section of a single policy, in which the nature of the insurance covering legal expenses and the amount of the relevant premium are specified.

(viii) What are the likely average costs in an action brought by a third party in respect of a hard-core violation of competition law?

The basis for such an assessment shall be the amount of the claim.

J. General

(i) Are some of the answers to the previous questions specific to private enforcement of the competition rules? If so, in what way do they differ from the general private enforcement rules?

The answers to the previous questions are not specific to private enforcement of the competition rules and, therefore, they do not distinguish between the rules concerning private enforcement of the competition laws and general private enforcement rules.

(ii) EC competition rules are regarded as being of public policy. Does that influence any answers given?

The fact that EC competition rules are regarded as being of public policy does not affect any answers given.

(iii) Are there any differences according to whether defendant is public authority or natural or legal person?

There are no differences according to whether a defendant is a public authority or a natural or legal person.

(iv) Is there any interaction between leniency programs and actions for claims for damages under competition rules?

Under Greek law no such interaction exists.

(v) Are there differences from region to region within the Member State as regards damages actions for breach of national or EC competition rules?

Greece is not divided in regions with different legal systems, therefore no such differences exist.

88 Article 10 (b) of Law 3226/2004.

89 Article 9 para. 3 of Law 3226/2004.

90 Legislative Decree 400/1970 concerning private insurance companies, published in the Government Gazette, Issue A', No. 10/15-17.1.1970, as amended by Presidential Decree 459/1990 concerning compliance with the provisions of Directive 87/344/EC on the Coordination of Laws, Regulations and Administrative Provisions relating to Legal Expenses Insurance, published in the Government Gazette Issue A', No. 175/14.12.1990.

- (vi) **Please mention any other major issues relevant to the private enforcement of EC competition law in your jurisdiction.**

All issues relevant to the private enforcement of EC competition laws have already been brought to light in the context of the answers given in Section II above.

- (vii) **Please provide statistics about the number of cases based upon the violation of EC competition rules in which the issue of damages was decided upon.**

No published statistics are available.

III. Facilitating private enforcement of Articles 81 and 82 EC

- (i) **Which of the above elements of claims for damages provide scope for facilitating the private enforcement of Articles 81 and 82 EC? How could that be achieved?**

Private enforcement of Articles 81 and 82 EC could be facilitated in Greece by legislative reform establishing non-fault liability. An example of non-fault liability is product liability. This was introduced in the Greek legal order by Article 6 of Law 2251/1994 on Consumer protection. Article 6 of Law 2251/1994 transposed in Greece EC Council Directive 85/374 on the Approximation of Laws, Regulations and Administrative Provisions of the Member States concerning Liability for Defective Products. An alternative approach could be the switching to the defendant of the burden of proof of the fault (i.e. the defendant will have to prove the absence of his fault).⁹¹

Furthermore, private enforcement could be facilitated with the acceptance of a wider circle of injured persons in damages cases arising from breach of competition rules. As mentioned above,⁹² Article 914 CC awards a right of damages to a person that has directly suffered damage as a result of an unlawful act, while a person that has suffered damage indirectly cannot bring an action for damages. The determination of the injured person could be achieved on the basis of the theory of the "objective of the rule of law", according to which both the interests which the breached rule of law intends to protect and the extent to which these merit protection are examined. In this context, the Courts might accept a wider circle of injured parties in damages cases arising from breach of the competition laws upon the basis that the objective of such laws is the protection of competition as an institution.

Finally, the complexity of damages actions based on breaches of competition law may also be an obstacle to private actions. Thus, training seminars in competition law matters would facilitate the judiciary in its functions.

- (ii) **Are there alternative means of dispute resolution available and if so, to what extent are they successful?**

Under Greek law, out of Court settlement and arbitration (provided that an agreement for the submission of disputes to arbitration exists between the parties) are available as alternative means of dispute resolution. No statistics are available regarding the extent to which arbitration and out of court settlement are successful.

91 See above, Section II, E (c)(i).

92 See above, Section II, F (ii) on indirect purchaser.

CASE LAW SUMMARIES

Decision 7638/1982 of the Athens Administrative Court of First Instance⁹³

A number of newspaper publishers were condemned by the Competition Commission for infringement of Article 1 of Law 703/77, as they had concluded an agreement whereby they had set common charges for certain types of publications in their newspapers. The Commission had declared the nullity of this agreement and had imposed fines.

The publishers challenged this decision before the Athens Administrative Court. The Administrative Court upheld the Commission's decision. In its ruling it held that Law 703/77 protected free competition in all the sectors of economic activity to the benefit of consumers in general and, therefore, to the benefit of the public.

Decision 2/1989 of the Supreme Court⁹⁴

Thasos Hellas S.A. (hereinafter "Thasos"), a company trading in petroleum products, brought an action for damages caused by a breach of Article 2 of Law 703/1977 against Aspropyrgos Refinery S.A. (hereinafter "Refinery"), a State-owned company active in the refining and sale of oil.

There existed a standard contract between the parties, drafted in line with a ministerial decision, stipulating that Thasos was entitled to buy oil from the Refinery on 25 days credit, upon the condition that it submitted guarantees covering in full the credited amount. The parties fixed the credit limit to approximately 733,000. The contract also stipulated that, if at any time the credit limit was exceeded, the Refinery would be entitled to charge default interest on any overdue invoices and take any other measures it deemed necessary for the protection of its lawful interests.

When Thasos exceeded its credit limit, the Refinery informed it that it would not supply it until the credit position was restored. Thasos proposed to pay in cash for new supplies and to settle the debt in instalments, to the extent that it exceeded the credit limit, but the Refinery did not agree and refused to supply Thasos.

Thasos based its claim on the abuse of the dominant position enjoyed by the Refinery in the Greek market.

The Supreme Court concluded by majority vote that, under its contract, the Refinery was entitled to refuse supplies and that such a behaviour was not abusive. However, the dissenting judges held that an abuse of a dominant position had taken place and argued that an infringement of Article 2 of Law 703/1977 may establish a right of compensation based on tort, under Article 914 CC, in favour of the party who suffered a damage.

Decision 18743/1992 of the Athens Court of First Instance⁹⁵

The plaintiffs, three companies trading in eyeglasses, brought a petition in injunction proceedings, against two exclusive distributors in Greece of branded eyeglasses for breach of Article 2 of Law 703/1977.

The defendants had informed the plaintiffs that they would cease supplying them, if the plaintiffs refused to accept obtaining their entire supplies only from the defendants. Thus, the plaintiffs would be constrained from dealing in competing goods and would have to obtain their supplies only from the two distributors, who held a market share equal to 30% in the Greek market for eyeglasses.

The Court held that the defendants did not hold a dominant position in the relevant product market in Greece. However, the Court concluded that their refusal to supply was not justified and constituted an abusive exploitation of the economic dependency of the plaintiffs (Article 2 para. 1 of Law 703/1977, as then in force) since, if they refused to comply with the defendants' request,

93 Publishing Houses, Dim. V. Koutsoukis – Dim. N. Tzouganatos, The Enforcement of Law 703/1977 on the Protection of Free Competition, (1987).

94 Epitheorisi Emporikou Dikaiou, (1989), 657-665.

95 Epitheorisi Emporikou Dikaiou, (1993), 141.

they would be restricted from selling these well known brands, accounting for 45% of their sales. The defendants were ordered to continue supplying the plaintiffs. In its ruling, the Athens Single Member Court of First Instance stated that a breach of Article 1 and 2 of Law 703/1977 may establish a right of compensation.

Decision 18/2002 of the Patras Court of Appeal⁹⁶

The plaintiff brought an action seeking the recognition of the nullity of its franchise agreement with the defendant. The plaintiff claimed that the terms of said agreement were in breach of Article 1 of Law 703/1977.

The Court of Appeal held that, when examining private disputes, such as claims for damages deriving from tort, Civil Courts can only incidentally, under Article 18 para. 2 of Law 703/1977, examine the nullity of an agreement, decision or concerted practice between undertakings pursuant to Article 1(1) of Law 703/1977, under condition that, with regard to such agreements, decisions and concerted practices there does not already exist "res judicata" from a previous ruling by a competent Administrative Court.

The Court rejected the plaintiff's action for the recognition of the nullity of the franchise agreement as it held that the Competition Commission had exclusive competence to decide thereon.

Decision 6042/2002 of the Athens Court of Appeal⁹⁷

The plaintiff, a pharmaceutical wholesaler, brought an action against the refusal by subsidiary of a pharmaceutical company to supply medicinal products requesting that the defendant be ordered to supply such products.

The plaintiff claimed that the defendant refused to supply it with the requested quantities of medicines whilst the defendant allegedly satisfied in full orders placed by other wholesalers.

The Court of Appeal held that a refusal to supply constituting a breach of Article 1 of Law 703/1977 is an illegal conduct under Article 914 of the Greek Civil Code and, provided that the other requirements of Article 914 CC are fulfilled, any person suffering damage as a result of such illegal conduct has a right of compensation. Such compensation may also be awarded in kind, i.e. by obliging the defendant to continue to supply the plaintiff.

96 Dikaio Epixeiriseon kai Etaireion, (2003), 524.

97 Dikaio Epixeiriseon kai Etaireion, (2003), 282.

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