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CONTENTS

Greece

George Ballas, Nicholas Gregoriades and Nancy Gerakinis

Ballas, Pelecanos & Associates

Intellectual property

1 Intellectual property law

Under what legislation are intellectual property rights granted? Are there restrictions on how IP rights may be exercised, licensed or transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Copyright Law No. 2121/1993 not only defines the extent of protection provided for copyright and related rights, but also sets out the restrictions applying on how such rights may be exercised, licensed or transferred. For instance, all acts, dealing either with the exploitation of patrimonial rights or with the exercise of moral rights, are voidable, upon request of the author, if not concluded in writing or concluded for future works. Moreover, as a rule of thumb, the fee concluded between the author and the other contracting party shall be determined as an obligatory percentage arrangement of the gross revenues or the expenditure resulting from the exploitation of the works licensed, or both.

As far as software licensing acts are concerned, any contractual provisions prohibiting the licensee from reverse engineering, decompiling or disassembling the licensed software has no binding effect if such prohibited acts are necessary to obtain information vital to achieving the interoperability of the licensed software with other software, provided that certain conditions are met.

Trademarks

The main legislative framework for Greek trademarks is set out by Trademarks Law No. 2239/1994, as well as Law 2783/2000 and Ministerial Decision K4-307/2001, respectively ratifying and implementing the Madrid Protocol.

Noteworthy restrictions include the obligation falling upon a trademark's owner to submit any licence agreement concluded with third parties to the Trademark Bureau for validation. The latter shall verify whether the licence submitted for validation is liable to mislead the public or to establish restrictive practices, and act accordingly.

Moreover, under Greek law, use of a competitor's trademark in accurate and non-deceptive comparative advertising as well as for indicating the intended purpose of a product or service, whenever such use is necessary and in accordance with honest practices in industrial or commercial matters, is legal and does not constitute trademark infringement.

Patents and industrial designs

Patents and industrial designs are granted in Greece, respectively, under Law No. 1733/1987 and Law No. 2417/1996. The current legislation provides for several limitations to the otherwise exclusive prerogatives conferred by such rights.

For instance, the owner of a patent may not forbid the use of the invention for acts done privately and for non-commercial purposes or used for experimental purposes relating to the subject matter of the patented invention. The same applies to the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

Moreover, despite the exclusive-use rights awarded to a patent owner, any person who at the filing date of a patent was, in good faith, in possession of the invention that is the subject matter of the patent shall enjoy a personal right to use that invention despite the existence of the patent.

Where a patent is not being properly utilised, any person or legal entity is entitled to apply for a compulsory licence. Such licences may also be granted to bodies of the public sector, especially if the patented goods produced are insufficient to cover local demand.

TRIPs Agreement and Greece

Greece ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) by Law 2290/1995.

In the examination process of the compatibility of the legislative framework of the WTO members with the TRIPs provisions, the TRIPS Council reviewed Greek Law in force at that time and found it to be generally in accordance with the standards set by the TRIPs Agreement.

However, while on some occasions Greek law exceeds the minimum set by the TRIPs Agreement (for instance Law No. 2121/1993, in accordance to Article 6bis of the Berne Convention admits moral rights, independently of economic rights), Greece has not yet fully implemented a national plant variety protection system (though part of the Community system).

Moreover, the Greek IP enforcement regime provides adequate procedures complying in general with the TRIPs provisions but in some cases, while in theory they appear to be fair and equitable, they entail unreasonable time limits or unwarranted delays.

2 Responsible authorities

Which authorities are responsible for administering IP legislation?

Three distinct authorities are responsible for administering IP legislation in Greece: the Directorate for Cultural Relations under the auspices of the Greek Ministry of Culture, along with the Copyright Organisation, deals with copyright related issues, the General Secretary for Commerce, part of the Greek Ministry of Development, deals with trademark related issues, and the Industrial Property Organisation deals with patent and industrial design issues.

3 Proceedings to enforce IP rights

What types of legal or administrative proceedings are available for enforcing IP rights?

Greek legislation provides for the possibility of taking judicial action against infringements of IP rights through civil, criminal or administrative proceedings.

As far as civil proceedings are concerned, IP rights-owners have the option of judicial action against third parties supposedly infringing thei rights. Preliminary injunctions are also possible.

With regard to administrative proceedings, Greek customs regulation provides for a detention procedure, subject to a preliminary

customs application by the rights holder, as well as a seizure procedure, limited to trademark and design infringement.

4 Remedies

What remedies are available to a party whose IP rights have been infringed?

Orders to seize and desist, interlocutory measures, seizure, confiscation and destruction orders, preliminary injunctions, as well as damages and costs awards compensating both the direct loss and loss of profits suffered are the main remedies available under Greek law.

Moreover, where infringing acts fall simultaneously within the scope of civil liability provisions, damages shall also cover the potentially unjust enrichment gained at the expense of the plaintiff.

Furthermore, any judgments made by the Greek courts may also be published, in summary or in entirety, upon request of the plaintiff.

5 IP legislation and competition

Does IP legislation make any specific mention of competition or contain provisions on the anti-competitive or similar abuse of IP rights?

In general, Greek IP legislation does not include any specific mention of competition, nor does it contain provisions on the anti-competitive abuse of IP rights. It is mainly a matter of case-by-case analysis.

6 Remedies for deceptive practices

With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices in addition to traditional 'passing off' or trademark infringement cases?

Competition law does not provide remedies for deceptive practices regarding 'passing off' or trademark infringement.

The Consumer Protection Law, as amended, addresses the issue of unfair trademark use. Apart from including misleading actions where the unlawful use of a trademark may confuse the consumer, the said law also specifically categorises such use of a trademark or other distinctive sign as an unfair practice. In addition, the said law's provisions regarding comparative advertising include trademark defamation, undermining unfair exploitation thereof, and creation of confusion to the consumer as cases of unlawful comparative advertisement.

7 Technological protection measures and digital rights management

With respect to copyright protection, is WIPO protection of technological protection measures and digital rights management enforced in your jurisdiction? Does legislation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Could TPM or DRM protection be challenged under the competition laws?

Violations of TPMs and DRM are punished by imprisonment of at least one year and a fine of between €2,900 and €15,000. The civil sanctions described in question 4 shall also apply mutatis mutandis.

With regard to the ability of manufacturers to incorporate TPM or DRM protection limiting the interoperability between different proprietary systems, no steps have been taken to date to mitigate the potential side effects of the protection granted by Greek copyright law to copyright holders of digitally available content. However, where TPMs or DRM are misused in order to decrease consumer autonomy through unilaterally imposed contractual conditions and interoperability information is of significant competitive importance, national competition laws shall apply, at least on a theoretical basis.

8 Industry standards

What consideration has been given in legislation or case law to the impact of the adoption of proprietary technologies in industry standards?

No specific consideration has been given to the impact of adoption of proprietary technologies in industry standards.

Competition

9 Competition legislation

What legislation sets out competition law?

Law No. 703/77, including its amendments and the relevant provisions of other laws (Law No. 146/1914 against unfair competition, Consumer Protection Law No. 2251/1994, as amended and supplemented, Law No. 3592/2007 concerning media regulation) set out the main framework of competition law in Greece.

10 IP rights in competition legislation

Does the competition legislation make specific mention of IP rights?

The core of Greek competition legislation makes no specific mention of IP rights. However, both the Unfair Competition Law and the Consumer Protection Law include provisions relating to IP rights (protection of unregistered trademarks, comparative advertising).

11 Review and investigation of competitive effect

Which authorities may review or investigate the competitive effect of conduct related to IP rights?

In addition to the Hellenic Competition Committee (HCC), the Trademark Bureau has some limited authority to investigate anti-competitive conduct in relation to restrictive practices concluded in licence agreements. In such a case, and upon request of the Trademark Bureau, the HCC shall opine for all competition-related matters related to a trademark licence agreement.

12 Competition-related remedies for private parties

Do private parties have competition-related remedies if they suffer harm from the exercise, licensing or transfer of IP rights?

Under Greek law, there is no explicit statutory basis for bringing actions for damages for infringement of EC or national competition law.

However, competition-related remedies for private parties are allowed in terms of the general civil liability provisions included in part II of the Greek Civil Code.

Article 914 (the general tort clause of breach of statutory duty), provides for two forms of compensation: pecuniary damages and reasonable pecuniary satisfaction.

As a result, civil courts have jurisdiction to hear actions for damages, on the aforementioned basis, as a result of anti-competitive behaviour resulting from the exercise, licensing or transfer of IP rights.

13 Competition guidelines

Has the competition authority issued guidelines or other statements regarding the overlap of competition law and IP?

No such guidelines, or any other type of statement, related to the overlap of IP and competition law, have been issued at the present.

14 Exemptions from competition law

Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

No exemptions are provided by Greek legislation or case law regarding IP rights. The use of IP rights by the rights holder is subject to competition law.

15 Copyright exhaustion

Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws, for example with regard to efforts to contract out of the doctrine, to control pricing of products sold downstream and to prevent 'grey marketing'?

Pursuant to article 3, paragraph 1(d) of Law No. 2121/93 the distribution right is considered exhausted within the European Community

only if the first sale or the first assignment of the original or copies thereof within the European Community is made either by the rights holder or with his or her consent.

Pursuant to article 3, paragraph 3(c) of the above law, the first sale of a copy of the database in the European Community either by the rights holder or with his or her consent results in the exhaustion of the right of resale of said copy in the European Community.

Pursuant to trademarks legislation, and in particular according to article 20, paragraph 3 of Law No. 2239/94, trademark rights do not entitle their holders to prohibit the use of their trademarks on products bearing them that have been already in circulation inside the European Community, either by their rights holders or with their consent.

The aforementioned stipulations constitute jus cogens; therefore, they apply notwithstanding any other contrary agreement between the parties. Should, however, the parties infringe those stipulations, competition law applies.

The exception to the above is provided solely by article 20, paragraph 3 of the Trademarks Law No. 2230/94. In particular, the doctrine of exhaustion does not apply where the rights holder has a justifiable reason to object to any future commercial exploitation of the products, especially when the condition of the products changes or deteriorates after their circulation in the market. Pursuant to article 20, paragraph 3(b) of Law No. 2239/94, trademark holders may exercise the rights provided by the said stipulation in the aforementioned circumstances.

16 Import control

To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

An IP rights holder can prevent 'grey-market' or unauthorised importation or distribution of its products subject to the provisions of article 20, paragraph 3(b) of Law No. 2239/94, according to which trademark holders may exercise the rights provided by the said stipulation where the condition of the product changes or deteriorates after its circulation within the market.

17 Competent authority jurisdiction

Are there circumstances in which the competition authority may have its jurisdiction ousted by, or will defer to, an IP-related authority, or vice versa?

Both the HCC, which provides protection against the infringement of the rules on competition, and the Trademarks Bureau, which is competent for the registration and deletion from the records of trademarks, constitute independent jurisdictions; they apply different rules.

Merger review

18 Powers of competition authority

Does the competition authority have the same powers with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

The HCC has the same powers with respect to reviewing mergers involving IP rights as it does for any other merger.

In terms of article 4 of the Competition Law 703/77, a concentration will arise in circumstances where:

- two or more previously independent undertakings merge, regardless of the form of the merger; or
- one or more persons who already control at least one (or more) undertakings, acquire direct or indirect control of the whole or part of one or more other undertakings.

The aforementioned control derives from rights, contracts or other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising a decisive influence on an undertaking, in particular by ownership or the right to use all or part of the assets of an undertaking, or rights or contracts that confer a decisive influence on the composition, voting or decisions of an undertaking.

The HCC has the power to review an acquisition of IP rights (copyright, licence, patents, etc) if it can be characterised as an acquisition of control of the whole or part of one or more other undertakings.

A merger control filing (pre-merger notification) is required where the combined aggregate turnover of the undertakings involved amounts to at least €150 million worldwide and each of at least two of the participating undertakings have a turnover of more than €15 million in the Greek market. The obligation to make a post-merger notification is required for concentrations where the combined market share of the undertakings involved in the product market represents at least 10 per cent of the total market of the products or services concerned, or where the aggregate turnover of at least two of the undertakings involved in Greece amounts to €15 million.

19 Analysis of the competitive impact of a merger involving IP rights

Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

The HCC's analysis of the competitive impact of a merger involving IP rights does not differ from a traditional analysis. In its analysis the HCC takes into account the effect of the transaction on competition, the special circumstances of the market (ie, whether the transaction affects actual and potential competition in the market), the benefit to the consumer, the restriction of access to the market, etc.

20 Challenge of a merger

In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights?

According to article 4c, the HCC may block any concentration that is subject to a pre-merger notification and that significantly impedes competition in the national market or part of it, in particular when it creates or strengthens a dominant position.

In order to evaluate whether a merger would significantly impede competition the HCC shall take into consideration:

- the structure of the relevant market;
- the actual or potential competition;
- the position and the financial power of the parties concerned in the market;
- the existence of actual or legal barriers to entry;
- the potential choice of suppliers of the parties concerned;
- the trend of demand and supply of the relevant products, their access to suppliers or product markets; and
- the interests of intermediary and final consumers and their contribution to technical and economic progress, provided that this progress is to the benefit of the consumer and does not impede competition.

It follows that mergers involving IP rights that could restrict competition in the national market (unfair prices, etc) would be challenged by the HCC.

It must be noted that a concentration prohibited by the HCC may be approved by a reasoned decision of the ministers of economy and finance and of development, where the concentration in question presents general economic advantages that counterbalance the resulting restriction of competition or is regarded as necessary to serve the public and social interest.

21 Remedies to alleviate anti-competitive effect

What remedies are available to alleviate the anti-competitive effect of a merger involving IP rights?

If there are serious concerns that a merger may significantly affect competition, the president of the HCC may call for an in-depth

investigation and must immediately inform the parties concerned. In order to avoid such prohibition, the parties may propose modifications to the transaction or undertake commitments in order to obtain clearance. The parties must comply with the aforementioned commitments and inform the president of the HCC of the actions they have taken in this regard. The HCC has the right to revoke the decision that allows the merger where the parties infringe any of the terms or obligations imposed on them.

Specific competition law violations

22 Conspiracy

Describe how the exercise, licensing, or transfer of IP rights can relate to cartel or conspiracy conduct.

Horizontal agreements between undertakings involved in the exploitation of IP rights with the intention of foreclosing competition by fixing prices, dividing markets or allocating customers or geographical areas contravene essential principles of free market and thus are considered hard-core violations of competition law.

With regard to collecting societies, several decisions of HCC have ruled that they constitute 'undertakings' in the sense of article 1, paragraph 1 of Law No. 703/1977 and consequently fall under the scrutiny of the aforementioned article. Consequently, according to Greek competition law theory, reciprocal representation agreements between collecting societies from different states, which include exclusivity clauses (eg, exclusion of direct access to their repertoires by users established abroad), will be deemed invalid and sanctions may be imposed.

Reverse patent settlement payments, patent pools, standard-setting bodies have not raised any issues before HCC or Greek courts. However, on the occasion that a relevant case occurs, competent Greek authorities will scrutinise an agreement that includes hard-core competition law restrictions, has foreclosing effects on the market and thus eliminates or lessens consumer benefits.

23 (Resale) price maintenance

Describe how the exercise, licensing, or transfer of IP rights can relate to (resale) price maintenance.

The direct or indirect fixing of resale prices or minimum resale prices that a licensee sets downstream constitutes a hard-core competition law infringement. However, it is specified that the supplier (eg, the licensor) may recommend or impose a maximum resale price to the distributor (eg, the licensee), except if such a conduct leads to indirect price-fixing. Under Greek competition law, a case that involves the exploitation of IP rights and such obligations will not be treated any differently.

24 Exclusive dealing, tying and leveraging

Describe how the exercise, licensing, or transfer of IP rights can relate to exclusive dealing, tying and leveraging.

To best exploit its IPR, a rights holder may impose the obligation on a contracting party not to manufacture or merchandise competing products. Such a practice or any practice that directly or indirectly imposes exclusive dealing on an IP rights holder will constitute competition law infringement where it leads to a significant foreclosure of opportunities for competing technologies to enter the market. In considering any specific agreement, the Guidelines on Technology Transfer will be taken into account. Specifically, the HCC has held that such an obligation phrased explicitly in the relevant agreement would be found anti-competitive; however, it found the obligation of the licensee to fully inform the licensor before the former is involved in trading competitive products compatible with Greek competition law.

The holder of an IP right may insist that the licensee or transferee accept the supply of certain products or undertake supplementary obligations that are indispensable for the exploitation of the licensed or transferred rights. However, where the rights holder has significant market power in the tying product, such clause or practice may have foreclosing effects to the tied product market and hence falls under the scrutiny of competition law.

25 Abuse of dominance

Describe how the exercise, licensing, or transfer of IP rights can relate to abuse of dominance.

Providing exclusivity as to the exploitation of IP rights for the encouragement and reward of creation, IP law facilitates the acquisition of market power on behalf of the IP owner that may lead to the acquisition of dominance or even monopoly in the relevant market. Once this happens, the rights holder has a special responsibility not to impair effective competition in the market.

Greek case law and theory have dealt mainly with collecting societies that hold a dominant in the relevant Greek market. It has been held that the following contractual terms or practices may constitute infringements of competition law according to article 2 of Law No. 703/1977:

- the obligation of the creator to transfer the entirety of its IP rights to a collecting society;
- the unnecessarily long duration of the agreement signed between a collecting society and the creators;
- the prohibition imposed to an artist to leave the society;
- the excessiveness of a society's withheld commission or of the requested fee to be paid by the users; or
- arbitrary discriminatory practices among creators or users.

26 Refusal to deal and essential facilities

Describe how the exercise, licensing, or transfer of IP rights can relate to refusal to deal and refusal to grant access to essential facilities.

The refusal of an IP rights holder to grant a licence is not per se illegal. Such a refusal would be deemed abusive, once a strict, European case law-generated test is satisfied. It is only under some exceptional circumstances that the economic freedom of the IP owner to license will be overridden by the benefit to consumers:

- The product or service protected by IP must be indispensable for carrying on a particular business.
- The refusal prevents the emergence of a new product for which there is potential consumer demand.
- The refusal is not objectively justified.
- The refusal is such as to exclude all competition on the secondary market.

Remedies

27 Remedies for violations of competition law involving IP

What sanctions or remedies can the competition authority or courts impose for violations of competition law involving IP?

The remedies imposed for competition infringements involving IP are the same as for any other violations of competition law. According to article 9 of Law No. 703/77, as amended, in case of violations the HCC may:

- oblige the undertakings involved to cease the infringement;
- order the undertakings involved to adopt the necessary measures to restore competition;
- make recommendations and impose fines or pecuniary sanctions in case of continuation of the infringement;
- impose a fine on the undertakings involved of up to 15 per cent of the company's turnover;
- accept commitments by the companies involved that they will cease the infringement, etc.

Interim measures may also be imposed by the HCC ex officio when an infringement is considered probable and immediate measures must be taken.

The penal sanctions imposed by the HCC (article 29 of Law No. 703/1977) include a pecuniary sanction ranging from €15,000

Update and trends

Please note that no change has recently occurred in the specific field of the interface of competition and IP law, either in legislation or in case law.

to €150,000 imposed on any person who, acting individually or as representative of a legal entity, is in breach of the provisions on the protection of competition and a sanction of at least six months' imprisonment. In the case of relapse, the aforementioned amounts of pecuniary sanctions shall be doubled.

Also, a sanction of at least six months' imprisonment and a pecuniary sanction ranging from €10,000 to a maximum limit of €50,000 shall be imposed on any person who obstructs the HCC 's efforts to obtain information or in any way hinders the investigations or dawn raids carried out to facilitate the exercise by the HCC of its competences. Again, in the case of relapse, the aforementioned amounts of pecuniary sanctions shall be doubled.

Finally, individuals and companies may submit to national civil courts claims for damages deriving from competition law violations.

It must be noted that according to the currently amended Law No. 703/77, a system of 'immediately applicable exemptions' is introduced: agreements, decisions and concerted practices caught by article 1, paragraph 1, which satisfy the conditions of article 1, paragraph 3 of Law 703/1977, shall be permitted without requiring a prior decision. However, at the same time, Law No. 703/77 (article 21) retains the obligation to notify the Competition Commission of all the relevant agreements so that they may be exempt from the prohibition of article 1, paragraph 1 (something widely criticised).

28 Competition law remedies specific to IP

Do special remedies exist under your competition laws that are specific to IP matters?

No specific remedies apply to IP matters.

29 Remedies and sanctions

What competition remedies or sanctions have been imposed in the IP context?

Companies that are found to infringe competition law as regards IP rights may be requested to terminate such infringement. For example, a collective rights society (AEPI) was found to infringe competition law provisions and the HCC imposed a fine and ordered: the amendment of AEPI's agreements with artists so as not to include unfair terms as regards the exploitation of creator's IP (ie, as regards their choice to delegate only part of their rights to such societies), the reform of AEPI's commission for the collection of artists' royalties (so as not to exceed a fixed percentage), and publication of AEPI's commissions on its website. A dominant company may also be requested to terminate an exclusive licence, etc.

30 Scrutiny of settlement agreements

How will a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective?

There is no case law relating to how a settlement agreement terminating an IP infringement dispute would be scrutinised by the HCC. In any case, such agreements would be evaluated according the standards used for any other agreements, as they may fall within the prohibition of article 81(1) EC and article 1 of Law No. 703/77.

Economics and application of competition law

31 Economics

What role has economics played in the application of competition law to cases involving IP rights?

No use of economics is made in any of the decisions relating to the contradiction between IP rights and competition law.

32 Recent cases

Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

In the recent *AEPI* case (see question 29), the HCC noted that the finding of abuse of a dominant position on the part of AEPI was based on the assessment of terms incorporated into its articles of association and contracts that impose unfair terms on its artists for the administration and protection of their works, and additionally, on the general examination of its conduct that restrict free competition. This evaluation was a result of the balance among the conflicting interests of the parties involved and of the application of the proportionality principle.

Taking into account the above principles and European Commission *GEMA* decisions, the HCC found that AEPI had actually abused its dominant position by unjustifiably obliging the artists to assign the administration of the entirety of their IP rights and by demanding excessive commission for its services regarding specifically mechanical rights. In addition to the imposition of a large fine (which was later reduced by the Administrative Court of Athens), the HCC obliged AEPI not to force rights holders to transfer their rights beyond what is necessary for their protection against large exploiters unless its respective denial is objectively justified. Furthermore, the HCC obliged AEPI to reduce its commission (a clause that was later annulled and referred back to the HCC for reconsideration by the Administrative Court of Athens) and recommended it improve and amplify the information provided to artists and users regarding its administration fees.

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