Journal of Antitrust Enforcement, 2026, **00**, 1–54
https://doi.org/10.1093/jaenfo/jnag011
Article

OXFORD

The 'suspended step' of damages claims for competition law infringements in Greece: an institutional odyssey†

Ioannis Lianos [1,*], Konstantinos Pantelidis[2]

[1]Centre for Law, Economics and Society, UCL Faculty of Laws, Endsleigh Gardens, London, WC1H 0EG, United Kingdom
[2]Lincoln College, University of Oxford, Turl Street, Oxford, OX1 3DR, United Kingdom

*Corresponding author. Centre for Law, Economics and Society, UCL Faculty of Laws, Endsleigh Gardens, London, WC1H 0EG, United Kingdom. E-mail: i.lianos@ucl.ac.uk

†Title inspired by the following film title: 'The Suspended Step of the Stork' by Theo Angelopoulos.

ABSTRACT

This study examines the 'suspended step' of competition damages claims in Greece, identifying multiple institutional constraints that hinder their development alongside underlying policy choices made during implementation of the European Union (EU) Damages Directive and, more recently, the Directive on representative actions. These factors contribute to Greece's weak position in the inter-jurisdictional competition 'game' fostered by the EU legislator with the aim of ensuring effective judicial protection for victims of anticompetitive conduct. Through empirical analysis combined with a law and political economy approach—a key innovation of this article—the study examines both public and private enforcement of competition law, viewing them holistically. This methodology moves beyond traditional optimal enforcement theory to provide a uniquely comprehensive 'law in action' perspective on competition law enforcement institutional design. The findings offer valuable insights for all jurisdictions considering the adoption of mixed public and private enforcement systems for competition law.

KEYWORDS: Private Enforcement; Damages Claims; Damages Directive; Political Economy; Varieties of Capitalism; Greece

1. INTRODUCTION

Since the 2014 EU Damages Directive[1] introduced minimum harmonization for competition damages claims, there has been extensive academic literature examining private enforcement

[1] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance, OJ L 349, 5 December 2014, pp. 1–19 (the 'Damages Directive').

systems throughout the European Union (EU), particularly delving into how different legal systems use the policy choices left open by the Directive to either facilitate or obstruct private damages actions.[2] Parallel research has investigated transnational damages claims and the rise of key litigation centres in jurisdictions with favourable legal systems and supportive private enforcement conditions (litigation funding, specialized judiciary, and vibrant legal and economic support industries).[3] The emergence of certain jurisdictions as magnets for private enforcement, particularly in competition damages litigation, has spawned extensive analysis,[4] while smaller jurisdictions typically receive only descriptive coverage of recent legislative changes, lacking critical examination of the underlying factors shaping their enforcement trajectories.[5] Such analysis would, however, be valuable for understanding policy choices regarding private enforcement levels and the public–private enforcement mix chosen in each case, and for designing more effective private enforcement—particularly collective redress—over a decade after the adoption of Directive 2014/104.

Greece presents an intriguing case study as a continental civil law jurisdiction that had to reform its competition regime while undergoing significant economic transformation following the 2010s economic crisis. Calls for strengthening competition enforcement primarily concerned public enforcement, which has nevertheless been at least as intensive as in comparable jurisdictions despite the Hellenic Competition Commission's (HCC) limited resources and institutional challenges over the past decade. Yet, while public enforcement has gained traction, the same cannot be said of private enforcement. The latter remains significantly underdeveloped to this day, highlighting a dissonance between enforcement demands and Greece's limited private enforcement record in competition damages actions, compared to similar-sized economies like Portugal.

The Greek case study gains additional importance from 'Greek cases' contributing to CJEU jurisprudence on inter-jurisdictional competition law actions—a process that the Brussels I (recast) Regulation's abolition of exequatur rules could have facilitated by increasing the possibility of forum shopping.[6] Particularly, the recent *Heineken* saga[7] illustrates a concrete example where private enforcement action could have been initiated in Greek courts rather than pursued in foreign jurisdictions. Given Greece's specific economic

[2] Ioannis Lianos, Peter Davis and Paolisa Nebbia, *Damages Claims for the Infringement of EU Competition Law* (OUP 2015); Pier Luigi Parcu, Giorgio Monti and Marco Botta, 'Introduction' in Pier L Parcu, Giorgio Monti and Marco Botta (eds), *Private Enforcement of EU Competition Law - The Impact of the Damages Directive* (Edward Elgar Publishing 2018); Eda Şahin, *Collective Redress and EU Competition Law* (Routledge 2021); Amaro Rafael, *Private Enforcement of Competition Law in Europe: Directive 2014/104/EU and Beyond* (Bruylant 2021); Barry Rodger, Miguel Ferro and Francisco Marcos, *Research Handbook on Private Enforcement of Competition Law in the EU* (Edward Elgar Publishing 2023); Pedro Caro de Sousa, *The Private Enforcement of Competition Law* (OUP 2024).

[3] For an empirical analysis, see European Commission, Staff Working Document, on the implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, SWD (2020) 338 final.

[4] See, for instance, Magnus Strand, Vladimir Bastidas and Marios C Iacovides, *EU Competition Litigation - Transposition and First Experiences of the New Regime* (Hart 2019).

[5] For some few comparative studies see, Barry J Rodger, Miguel S Ferro and Francisco Marcos, 'A Panacea for Competition Law Damages Actions in the EU? A Comparative View of the Implementation of the EU Antitrust Damages Directive in Sixteen Member States' (2019) 26 Maastricht Journal of European and Comparative Law 480; Jurgita Malinauskaite and Caroline Cauffman, 'The Transposition of the Antitrust Damages Directive in the Small Member States of the EU—A Comparative Perspective' (2018) 9 Journal of European Competition Law & Practice 496; Parcu, Monti and Botta (n 2), none of which, however, includes a discussion of the implementation in Greece.

[6] art 39, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L 351/1. See also, European Commission's Report on the application of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), SWD (2025) 135 final (reflecting on the expansion of the jurisdictional rules to also include disputes involving defendants domiciled outside the EU).

[7] Case C-393/23, *Athenian Brewery SA and Heineken NV v Macedonian Thrace Brewery SA.*, EU:C:2025:85; Amsterdam District Court, Case C/13/701248/ HA ZA 21-421, *Macedonian Thrace Brewery SA v Heineiken NV*, ECLI: NL: RBAMS: 2026:1692 (18 February 2026).

conditions and history, this case study extends beyond mainstream optimal enforcement theory frameworks, adopting a broader law and political economy lens to provide critical analysis connecting institutional development and enforcement mechanisms with private enforcement intensity outcomes within the Directive's inter-jurisdictional competition system designed to protect victims and ensure deterrence of competition law violations.

Beyond reviewing the development of private enforcement in Greece, this article's core thesis is that Greece's private enforcement deficit cannot be understood through doctrinal analysis alone. We show that transposition deficiencies and procedural barriers are mutually reinforcing and embedded within a broader political economy that shapes both the public and private enforcement capacity of the country. Our law and political economy lens directs attention to how institutional constraints—resource limitations, market concentration, regulatory capture risks, and path dependencies in legal culture—interact to produce enforcement outcomes that formal legal rules may not adequately explain. By integrating optimal enforcement theory with this institutional analysis, we demonstrate why Greece remains a litigation-exporting jurisdiction despite formal compliance with EU harmonization requirements, and why reform proposals must address systemic (institutional) complementarities rather than individual barriers.

The study begins by exploring the broader EU law framework put in place by the Damages Directive, and Greece's legal regime and its evolution following the Directive's implementation in Greece.[8] It then provides a rather rare empirical analysis of private competition litigation in Greece, examining main trends and illustrating the slow emergence of a nascent private enforcement system. The next section examines some shortcomings of the Greek private enforcement, particularly regarding competition damages claims. The next two sections engage with the institutional background and explore interactions between public and private enforcement in Greece. Taking both a law and economics (optimal enforcement theory) and a law and political economy perspective, the study explores institutional design of public and private enforcement in Greece, moving beyond 'law in the books' to provide a 'law in action' account of their development. This analysis provides concrete suggestions for institutional reforms that, drawing on the 'success stories' of some European jurisdictions in attracting competition damages claims, would enhance Greek private enforcement and enable it to reach its full potential for the benefit of Greek consumers, businesses, and the general public. The final section concludes.

2. LEGAL REGIME

The development of competition law private enforcement in Greece, as well as most EU Member States, was facilitated by EU legislation and case law, which provided the framework for recognizing the right to compensation and a set of baseline rules to enact it.[9] Our

[8] Law 4529/2018. For a recent book-length commentary (in Greek) of this Law and practice in Greece, see Daphne Koutsouki, *Cartel damages actions in accordance with Greek Law 4529/2018* (Nomiki Viviothiki 2024). However, the study does not proceed to an empirical 'law in action' analysis of the case law, a gap that this study aims to fill. For analysis of some cases in Greek courts related to the quantification of damages, see (also in Greek) Nikolaos Pylarinos, *Quantification of harm from infringements of Competition Law in the jurisprudence of Greek courts* (Nomiki Vivliothiki 2023). For an older account of the Greek case law, see, *inter alia*, Vasiliki Brisimi and Maria Ioannidou, 'Stand- alone damages actions: insights from Greece and Cyprus' (2013) 34 European Competition Law Review 654; Ioannis Symplis, 'Damages actions in private antitrust enforcement: Greek report' in C Bernardo, *EU Competition Law: Between Public and Private Enforcement* (Kluwer Law International 2014), 269; and particularly, Vasiliki Brisimi and Maria Ioannidou, 'Greece' (Report 2012), in AHRC funded project Comparative Private Enforcement and Consumer Redress in the EU <https://www.clcpecreu.co.uk/pdf/final/Greece%20report.pdf> accessed 20 August 2025 (finding 3 successful cases from a total of 27 cases identified during the period 1999–2011, with damages awarded amounting to €70,744 for damages and €10,000 for moral damage in case Arios Pagos (AP – Supreme Court_ 1497/2009 and €123,269 for damages in case 3692/2009)).

[9] See, *inter alia*, Richard Whish and David Bailey, 'Private Enforcement of Competition Law: Its Role and Development in the EU' in Barry J Rodger, Miguel Ferro and Francisco Marcos (eds), *Research Handbook on Private Enforcement of Competition Law in the EU* (Edward Elgar Publishing 2023); Parcu, Monti and Botta (n 2); Ulf Bernitz, 'Introduction to the Directive on Competition Damages Actions' in Maria Bergström, Marios Iacovides and Magnus Strand (eds), *Harmonising EU Competition Litigation : The New Directive and Beyond* (Hart Publishing 2016); ibid; Ioannis Lianos, Peter Davis and Paolisa

case study, therefore, opens with an overview of the EU-level legal framework and its transposition into Greek law, contextualizing the rules while highlighting the degree of minimum harmonization and Europeanisation that may constrain the distinctive features of Greece's local political economy of competition law, features examined in greater depth in the sections that follow.

EU legislation: setting the bar and facilitating jurisdictional competition

The Damages Directive emerged after extensive consultation spanning nearly a decade, reflecting the need to balance multiple competing interests.[10] The Directive's legal basis—Articles 103 and 114 TFEU—reflects its twofold aim: ensuring effective competition enforcement while removing internal market distortions caused by divergent national rules.[11] The Directive aimed to address uncertainties in damages claims and to provide a minimum legal standard for private enforcement across the EU. However, it can be seen more as an intermediate step, as opposed to a fully developed regime,[12] and only provides a base level of harmonization[13] and inter-jurisdictional competition, rather than creating a level playing field across all Member States.

Beyond providing a baseline standard for private actions across the EU, the Damages Directive effectively promotes competition between Member States.[14] While it harmonizes some key matters such as the pass-on defence or limitation periods, the Directive allows Member States sufficient room to develop their own private enforcement frameworks.[15] Differences among procedural rules between states enable strategic litigation and forum shopping, which may further lead to jurisdictional competition in private actions.[16] That is, jurisdictions with rules favouring private enforcement can attract transnational disputes, enhancing their role in global governance while generating economic benefits for their local litigation industry, including law firms, courts, and related legal service providers. Jurisdictional competition may generate positive externalities through enhancing protection for victims of anticompetitive conduct and increasing deterrence.[17]

The significance of jurisdictional competition is evident when evaluating the state of private enforcement in Member States, as potential claimants now have alternative avenues to pursue restitution when their own states cannot provide a sufficient framework. The *Athenian Brewery* case exemplifies this phenomenon.[18] A Greek claimant chose to pursue follow-on damages in the Netherlands rather than Greece, utilizing the anchor defendant

Nebbia, 'The Directive on Actions for Damages for Infringements of Competition Law', *Damages Claims for the Infringement of EU Competition Law* (OUP 2015).

[10] See the analysis at Lianos, Davis and Nebbia, 'The Directive on Actions for Damages for Infringements of Competition Law' (n 9).

[11] Damages Directive, Recital (8).

[12] See eg, Anneli Howard, 'Too Little, Too Late? The European Commission's Legislative Proposals on Anti-Trust Damages Actions' (2013) 4 Journal of European Competition Law & Practice 455, 463–464.

[13] Niamh Dunne, 'Courage and Compromise: The Directive on Antitrust Damages' (2015) 40 European Law Review 581, 593–594.

[14] Ioannis Lianos, Peter Davis and Paolisa Nebbia, 'Cross-Border Damages Actions in the EU: Managing Inter-Jurisdictional Competition in the EU Mixed Enforcement System' in Peter Davis, Ioannis Lianos and Paolisa Nebbia (eds), *Damages Claims for the Infringement of EU Competition Law* (OUP 2015) 357.

[15] See the discussion at Lianos, Davis and Nebbia, 'The Directive on Actions for Damages for Infringements of Competition Law' (n 9) ch 3.

[16] Lianos, Davis and Nebbia, 'Cross-Border Damages Actions in the EU: Managing Inter-Jurisdictional Competition in the EU Mixed Enforcement System' (n 14) 304.

[17] ibid 305.

[18] Case C-393/23, *Athenian Brewery SA, Heineken NV v Macedonian Thrace Brewery SA*, EU:C:2025:85.

provision under Article 8(1) of the Brussels I bis Regulation.[19] The case illustrates both the comparative weakness of Greece's private enforcement framework and the consequent loss of economic rents to jurisdictions with more litigation-friendly regimes. It also demonstrates the 'corrective' function of private enforcement, as the HCC's refusal to impose parental liability in its infringement decision[20] necessitated a hybrid follow-on/standalone claim in the Netherlands. Notably, this outcome did little to enhance Greece's perception as an investment-friendly destination.

Collective redress constitutes another area left to inter-jurisdictional competition. The Damages Directive contained no provisions on collective actions,[21] with the exception of alternative ('regulatory') dispute resolution mechanisms.[22] The newer Directive EU 2020/1828[23] on representative actions, primarily a consumer protection instrument,[24] allows both opt-in and opt-out claims for habitual EU residents,[25] but excludes competition claims from its scope, further highlighting the choice of inter-jurisdictional competition as the preeminent governance approach to deal with private competition litigation.[26] Some Member States, notably Germany, have nonetheless diverged,[27] extending their implementing regimes to competition litigation,[28] although the Directive's design choices present certain limitations, most notably a preference for representative actions over other models[29] and restrictions on funding options.[30] Like the Damages Directive, this minimum-harmonization approach encourages forum shopping, but channels it towards 'competition for the top'—where jurisdictions compete by enhancing rather than weakening private enforcement standards.

Greek legislation

In Greece, in terms of substantive law, competition law lacks explicit statutory provisions for competition damages in the Greek Competition Act (Law 3959/2011). Private enforcement relies entirely on ill-suited general tort and contract law principles encountered in the Greek Civil Code.[31] Article 914 of the Civil Code, serving as the foundation for tort liability,[32] is fault-

[19] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20 December 2012, pp 1–32.

[20] HCC Decision, 590/2014.

[21] See eg, Csongor István Nagy, 'Collective Redress and Aggregation of Claims' in Barry J Rodger, Miguel Ferro and Francisco Marcos (eds), *Research Handbook on Private Enforcement of Competition Law in the EU* (Edward Elgar Publishing 2023).

[22] Christopher Hodges, 'Mass Collective Redress: Consumer ADR and Regulatory Techniques' (2015) 23 European Review of Private Law 829; Christopher Hodges and Stefaan Voet, *Delivering Collective Redress: New Technologies* (1st edn, Hart Publishing 2018).

[23] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (Text with EEA relevance), OJ L 409, 4.12.2020, pp 1–27

[24] Luis Visscher and Michael Faure, 'A Law and Economics Perspective on the EU Directive on Representative Actions' (2021) 44 Journal of Consumer Policy 455, 455–456. The Representative Actions Directive explicitly mentions competition violations in Recitals (2), (6)–(7).

[25] Representative Actions Directive, art 9.

[26] See Lianos, Davis and Nebbia, *Damages Claims for the Infringement of EU Competition Law* (n 2) para 8.08.

[27] Alexandre Biard-Denieul, 'Thunder Road: The Implementation of the Representative Actions Directive in Europe' (2024) 38 Emory International Law Review 751, 754–755.

[28] Lena Hornkohl, 'Collective Actions for Competition Law Violations and DMA Infringements Following the Transposition of the Representative Action Directive (Germany)' (2024) 15 Journal of European Competition Law & Practice 311.

[29] Visscher and Faure (n 24) 468–469, 474–475.

[30] Luis Visscher, 'The Law and Economics of Punitive Damages' in Lotte Meurkens and Emily Nordin (eds), *The Power of Punitive Damages - Is Europe Missing Out?* (Intersentia Ltd 2012). See also, Visscher and Faure (n 24) 472–474.

[31] See also, Agisilaos Karpetas, 'Practical Private Enforcement: Perspectives from Greece and the Netherlands' in Maria Bergström, Marios Iacovides and Magnus Strand (eds), *Harmonising EU Competition Litigation : The New Directive and Beyond* (Hart Publishing 2016) 237.

[32] There are four cumulative conditions for awarding compensation: unlawful conduct, fault, harm, and causation. See also, art 937 of the Greek Civil Code regarding the statute of limitations. For the application of these requirements in competition law, see Lefkothea Nteka and Assimakis Komninos, 'The Damages Directive in Greece' in Andrea Biondi, Gabriella Muscolo

based and thus sits uneasily with the strict liability character of EU competition law. A complementary possibility for redress is offered by Article 938 of the Civil Code regarding unjust enrichment, but in Greece, it is regarded as a last resort,[33] and can only be invoked if no alternative claim is available. Breach of contract rules are relatively complex,[34] but generally, they require a breach of a primary or secondary obligation arising from the contract and causation.[35] They are, in any case, dependent on a contractual relationship between the parties, and thus, they are not always applicable. Importantly, the absence of any statutory provision for competition damages forces claimants to navigate doctrinal categories not designed to address the complexities of antitrust harm, particularly when losses are diffuse, indirect, or require sophisticated economic proof.

Procedurally, Article 13 of Law 4529/2018 regulates the creation of a specialized competition division within the commercial law branch of the Athens Court of First Instance. This division has territorial jurisdiction for all competition claims in Greece and comprises judges experienced in competition law matters. Article 13 also provided for the creation of a similarly specialized division in the Athens Court of Appeal.

Transposition of the Damages Directive with Law 4529/2018 occurred in March 2018, that is, a couple of years after the deadline set by the Directive.[36] The parliamentary process itself was remarkably compressed,[37] which contrasts sharply with the complex issues at stake. The transposition reveals several issues,[38] of which two are worth particular attention. First, while the matter of joint and several liability was regulated similarly to the rules in Articles 480–481 and 926–927 of the Greek Civil Code, the transposition fails to explicitly address joint company liability, a glaring omission given the importance of the single economic entity doctrine.[39] Secondly, Article 11 consolidates offensive and defensive pass-on in a single provision, introducing plausibility as the standard for calculating overcharge levels. However, Greek law does not generally recognize pass-on,[40] and the Damages Directive does not harmonize the matter of causation.[41]

Recently, Greece transposed the Representative Actions Directive, extending its application to competition law, through Law 5019/2023, which amended the previous consumer protection regime established under Law 2251/1994.[42] The new law introduces a reinforced mechanism for representative actions initiated by consumer associations, under an 'opt-in' or 'late opt-in model', although it also introduced stricter rules for consumer associations

and Renato Nazzini (eds), *After the Damages Directive: Policy and Practice in the EU Member States and the United Kingdom* (Wolters Kluwer 2022) 227–230.

[33] For further analysis, see, Koutsouki (n 8) 579–607.

[34] For example, the Greek Civil Code explicitly regulates non-performance and late performance, but not other breaches (except for specific contracts, such as sale or rental contracts).

[35] Apostolos Georgiadis, *General Law of Obligations* (2nd edn, P. N. Sakkoulas 2015) 304, 345–346. Breach of contract is important because in Greece, competition law has also been used as a tool to allege breaches of contract and unlawful terminations of contract. On this, see also, Iannis Symplis, 'Greece: A View from the Bench' in Andrea Biondi, Gabriella Muscolo and Renato Nazzini (eds), *After the Damages Directive: Policy and Practice in the EU Member States and the United Kingdom* (Wolters Kluwer 2022) 255–256.

[36] For a detailed analysis of the transposition of the Damages Directive in Greece, see Maria Ioannidou, 'Greece' in Barry Rodger, Miguel Sousa Ferro and Francisco Marcos (eds), *The EU Antitrust Damages Directive: Transposition in the Member States* (OUP 2018) 158–163.

[37] Law 4529/2018 transposing in the Greek legal order Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, Official Gazette A 56/23.03.2018

[38] See eg, Nteka and Komninos (n 32); Ioannidou (n 36).

[39] See also the controversy arising in Larisa Court of Appeal Judgment No 416/2013. For a discussion, see Symplis (n 35) 258–259.

[40] See Supreme Court Judgment No 74/2014 for defensive pass-on and Supreme Court Judgment No 86/2014; Supreme Court Judgment No 439/2012 for offensive pass-on. See also, Karpetas (n 31) 252.

[41] See the analysis at Ioannis Lianos and Claudio Lombardi, 'Causation' in Barry Rodger, Miguel Ferro and Francisco Marcos (eds), *Research Handbook on Private Enforcement of Competition Law in the EU* (Edward Elgar Publishing 2023) 204.

[42] See also, George Dionysopoulos, 'The New Framework of Law 5019/2023 for Representative Actions' (2023) 156 Attorney 32, 34.

(see Articles 10c and 10f of Law 2251/1994).[43] Amended Law 2251/1994 provides the possibility to ask, in addition to injunctive relief, civil penalties to punish anti-consumer conduct.[44] The 'qualified' consumer associations can seek court-ordered redress measures against suppliers, including damage compensation and various forms of consumer relief, without having to identify specific affected consumers—they need only describe the group of consumers who are entitled to benefit from them.[45] These remedies include product repairs or replacements, partial refunds through price reductions, contract cancellation, or full refunds of amounts already paid.[46] The legislation also provides for some limited review of settlements by the court to protect the interests of consumers.[47]

While these are all welcome additions, the transposition explicitly prohibits third-party funding for representative actions,[48] a restriction that compounds the system's other deficiencies. Given the doctrinal hurdles inherent in Articles 914 and 938, the evidentiary burdens of proving competition harm, and the choice of opt-in over opt-out mechanisms, few Greek consumer associations possess the financial resources or litigation expertise to pursue complex competition claims. The funding prohibition thus transforms what might otherwise be a manageable design choice into a structural impediment, effectively foreclosing representative actions as a realistic avenue for collective redress in competition cases.

Greece's approach to the DMA exemplifies broader patterns of legislative inertia. While the HCC has been designated as the competent authority under Article 38(7) DMA, no provisions govern private enforcement.[49] It remains unclear whether Law 4529/2018 or Law 5019/2023 would extend to DMA violations[50]—a gap that creates obstacles to effective implementation and leaves victims of gatekeeper non-compliance without clear avenues for redress. The absence of any private DMA litigation to date is unsurprising, particularly given that the most likely claims would combine injunctive relief for DMA violations with damages for concurrent abuses of dominance, precisely the kind of complex, resource-intensive litigation that Greece's underdeveloped private enforcement infrastructure is least equipped to support.

[43] The Parliamentary Scientific Service note explains the rationales for this legislation. See, Greek Parliament's Scientific Committee (2023), Report on the Law Transposing Directive 2020/1828, 13-14 <https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/12210700_1.pdf> accessed 20 August 2025.

[44] art 10*ι*, para 4 of Law 2251/1994 as amended.

[45] art 10*ια*, para 2 of Law 2251/1994 as amended

[46] art 10*ια*, para 1 of Law 2251/1994 as amended.

[47] art 10*ιγ* of Law 2251/1994 as amended.

[48] art 10*ιδ* of Law 2251/1994 as amended.

[49] art 83 of Law 5019/2023, voted in December 2023, is the only legislative text containing provisions regarding the implementation of the DMA in Greece. It added art 14.1A to Competition Law 3959/2011, providing that 'The Competition Commission is the national competent authority for the application of Regulation (EU) 2022/1925 […] and in particular of paragraph 7 of Article 38 thereof, subject to the special provisions concerning the competences of the National Telecommunications and Post Commission […].' For the fulfillment of this competence, both the HCC may make use of the powers provided for in arts 38 and 39 of Law 3959/2011. However, as the HCC does not dispose of any jurisdiction in the area of telecoms, and this exception has been maintained by that provision without however providing for the competence of the Telecommunications authority, it is unclear which public authority will be responsible for the enforcement of the DMA regarding art 38, para 7, if the implementation of the DMA core against gatekeepers may also affect telecommunication markets (particularly Article 7 DMA). The HCC may, however, request information from the Telecommunications Authority, under art 24 of Law 3959/2011, but this does not concern the enforcement of the DMA, only the enforcement of arts 101 and 102 TFEU, and in any case, it does not provide for any obligation of the regulatory authorities, such as the Telecommunications Authority, to provide the requested information to the HCC. It follows that regarding public enforcement, there is a gap in the legislative provisions regarding the implementation of art 38(7) DMA.

[50] As one of the first actions based on the private enforcement of the DMA, we can cite the Regional Court of Mainz's ruling dated 12 August 2025, which prohibited Google from giving preference to its own email service Gmail when setting up an Android smartphone (an injunction). The legal basis of the lawsuit was the DMA, and it was initiated by email providers GMX and WEB.DE, represented by their parent company 1&1 Mail & Media, in October 2024. For a summary, see <https://www.glademichelwirtz.com/en/pressemitteilungen/glade-michel-wirtz-advises-11-mail-media-on-enforcement-of-the-dma-against-google-mainz-regional-court-prohibits-google-from-favouring-gmail-over-gmx-and-web-de/> accessed 20 August 2025.

In the next section, we summarize the developments of competition litigation in Greece. The statistics highlight that the absence of a competition litigation culture, combined with funding restrictions, procedural limitations, and Greece's historical challenges with collective redress, has limited the success of private enforcement, perpetuating rather than resolving the existing barriers to effective consumer protection through collective actions.

3. COMPETITION LITIGATION IN GREECE: AN EMPIRICAL ANALYSIS

Our review of Greek case law over the past 5 years (2020–2025) reveals that, despite legislative developments, private enforcement in Greece remains underdeveloped. Cases were identified through a systematic search of the Isokratis and Qualex legal databases, the published decisions of the Areios Pagos (Supreme Court), the Athens Court of Appeal, and cross-referenced against the HCC's infringement decisions to capture follow-on claims. The dataset covers the period January 2020 to July 2025 and includes all identified cases in which competition law formed a basis (whether primary or alternative) for the claim. Given the absence of a centralized litigation register in Greece, the dataset may not be exhaustive, though we are confident it captures the substantial majority of reported decisions.

Our review reveals two distinct categories of cases. The first—and numerically dominant—comprises commercial disputes in which competition law is invoked opportunistically alongside claims for unfair competition or abuse of economic dependence, typically in the context of terminated distribution or franchise agreements. The second comprises genuine competition damages claims seeking compensation for harm flowing from anticompetitive conduct as such. This pattern is not unique to Greece, as commentators have noted competition claims being invoked in the context of broader commercial litigation.[51] Our analysis below considers only cases that include genuine competition law elements.

There were more than 20 cases between 2020 and 2024, but this number is highly misleading. There was no representative action, and all cases were initiated by either a single or a very small number of claimants. The majority of cases involved commercial disputes, primarily challenging the termination of distribution or franchising agreements.[52] In most of these cases, competition law, through the prohibition of abuse of a dominant position and occasionally through the prohibition of collusion as an alternative basis, was used to supplement claims for abuse of economic dependence or unfair termination of contracts.[53] Many of these commercial disputes also arose in the context of the termination of commercial agreements.[54] Almost all cases were rejected, at least in terms of their competition abuse basis. Private enforcement and particularly competition claims for damages were relatively rare, also pre-Damages Directive. The 2006 refusal-to-supply case in the pharmaceutical sector, which reached the CJEU for a preliminary ruling request,[55] was finally concluded with the

[51] See eg, Barry J Rodger and Mary Catherine Lucey, 'Private Enforcement in the UK and Ireland' in Barry Rodger, Miguel Ferro and Francisco Marcos (eds), *Research Handbook on Private Enforcement of Competition Law in the EU* (Edward Elgar Publishing 2023) 388; Wouter PJ Wils, 'Should Private Antitrust Enforcement Be Encouraged in Europe?' (2003) 26 World Competition: Law and Economics Review 473, 473.

[52] See eg, the Athens Court of Appeal in Tribunal Judgment Nos 1399/2025, 2114/2024, 1463/2024, 117/2024, 2257/2023, 1508/2023, 530/2021.

[53] Note that abuse of economic dependence used to be part of the competition law and enforced by the HCC (Competition Law 703/1977), but it was abolished under L.3959/2011 as a competition law violation, and subsequently introduced under the unfair competition law statute: art 18a, Law 146/1914, which is implemented by civil courts instead of the HCC.

[54] Relating to the rules of the Presidential Decree No 219/1991 (implementing the Commercial Agency Directive 86/653/EEC), which govern the relationship between commercial agents and their principals.

[55] Case C-468/06, *Sot. Lélos kai Sia EE and Others v GlaxoSmithKline AEVE Farmakeftikon Proïonton, formerly Glaxowellcome AEVE*, EU:C:2008:504.

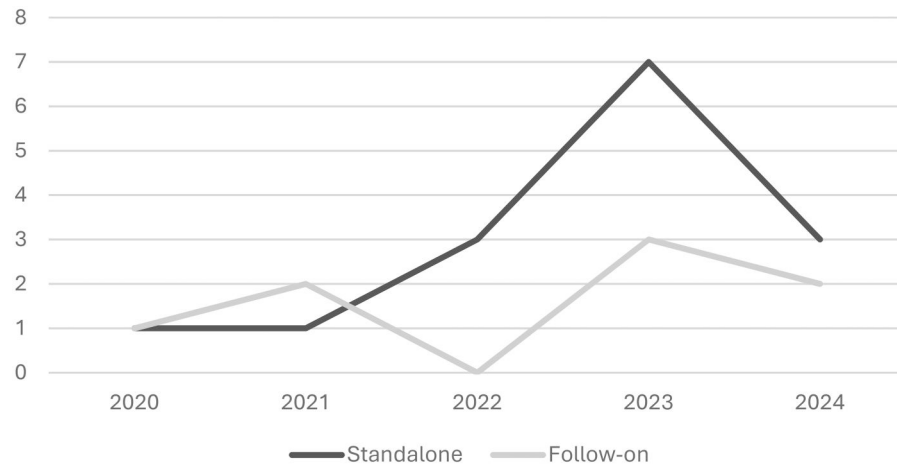

Figure 1. Types of private enforcement (2020–2024). *Source*: Dataset compiled by the authors.

Greek Supreme Court finding that no abuse had been proven and that the distribution policy of the pharmaceutical companies was legitimate.[56] The cases alleging potential cartel activity were fewer in number than those involving claims of abuse of dominance.[57]

On a more positive note, there was a handful of cases where the courts have also found some competition infringements. Over the past 5 years (2020–2024), we identified three standalone and five follow-on private enforcement claims that were successful from a total of 15 standalone and 6 follow-on private claims for competition law infringements identified during that period (see Fig. 1).

In terms of standalone claims, two cases had a similar legal basis. The Athens Court of Appeal found that a franchisor was imposing fixed retail prices on its franchisees. The court found that the agreement effectively allowed the franchisor to impose RPM, and even after the removal of the term, the franchisor had continued the practice through commercial pressure.[58] In the third case, the Athens Court of Appeal found that a franchisor imposed resale price maintenance terms by setting and fixing retail prices and forcing franchisees to accept automatic deliveries of products.[59]

Five successful follow-on cases arose from the milk cartel litigation.[60] In three of them, the Supreme Court finally approved damages for the cartel agreements between dairy companies to suppress milk purchase prices and territorial division to prevent farmers from switching between companies. The Supreme Court upheld the award of both economic damages and moral damages for harm to the claimants' personality and dignity.[61] In another case, although the claim in tort was time-barred, the court allowed compensation on the basis of unjust enrichment, which in Greece has a 20-year limitation period.[62] The third case was similar to the second one, although this time, the Court of Appeal rejected the

[56] Supreme Court Judgment No 1829/2024.

[57] See eg, Athens Court of First Instance in Tribunal Judgment No 3123/2020.

[58] The first case was the Athens Court of Appeal in Tribunal Judgment No 303/2024. The case was technically standalone, although an HCC decision had also established these violations at an earlier time than the relevant period for this case. The second case was the Athens Court of Appeal in Tribunal Judgment No 2601/2022.

[59] Athens Court of Appeal in Tribunal Judgment No 5191/2023.

[60] The cartel was sanctioned in the HCC Decisions No 369/2007 and 373/2007.

[61] Supreme Court Judgment No 756/2023.

[62] Athens Court of Appeal Judgment No 2445/2023.

Table 1. Private enforcement for competition law breaches (2020–2024) (The highest level of published court judgment for each case only included.)

Case	Award
Court of Appeal 303/24	278,246.74
Court of First Instance 1288/24	314,090.66
Supreme Court 756/23	73,771.74
Court of Appeal 5191/23	Injunction
Court of Appeal 2445/23	123,052.79
Court of Appeal 2103/23	63,706.80
Court of Appeal 2601/22	20,000
Court of Appeal 4636/21	195,444.04
Court of Appeal 3368/21	539,326.73
Court of Appeal 1944/20	60,384.77

Source: Dataset compiled by the authors.

defendants' appeal, upholding the decision at first instance, which awarded damages.[63] The other two follow-on cases involved vertical restraints. In the first case, the Court of First Instance awarded damages to a franchisee for the franchisor's breach of contract, basing the award on illegal vertical restrictions previously identified by the HCC in Decision 580/2013.[64] The other one was a follow-on claim to a resale price maintenance restriction sanctioned by the HCC in 2013[65] in the telecommunications sector.[66]

Table 1 lists the damages awarded in the few successful private enforcement cases, as well as a judgment imposing injunctive relief. In the absence of collective proceedings, these actions do not appear to address the full extent of harm caused, particularly in cartel cases. Without extensive economic analysis, damages were also limited to what could be reasonably proven through 'hard' evidence such as invoices. Consequently, claimants avoided sophisticated economic models for calculating harm, which may have resulted in inadequate compensation for a significant portion of the damage, even in cases where damages were awarded.

Figure 2 summarizes the legal nature of the claim. It includes all cases we identified that involved a competition law claim, excluding those that utilized competition law purely as an alternative to unfair competition. While damages for competition infringements are generally pursued as tort claims, in Greece, there was a significant number of claims based on breach of contract. This is likely because claims are currently only pursued on an individual basis, as opposed to collective actions, which are typically tort-based, and many of them were initiated by producers affected by the milk cartel. Most of the milk cartel cases were brought under both contract and tort law as alternative bases. However, given the nature of the relationship, the predominant element was the contractual relationship between the parties. Given the evidentiary burden, most successful cases were follow-on actions arising from the milk cartel or vertical agreement cases, with very few successful standalone claims.[67]

[63] Athens Court of Appeal Judgment No 2103/2023.

[64] Athens Court of First Instance in Tribunal Judgment No 1288/2024.

[65] See, HCC Decision No 580/2013.

[66] Athens Court of Appeal Judgment No 4636/2021.

[67] In the Athens Court of Appeal in Tribunal Judgments Nos 5191/2023 and 2601/2022, the court accepted two standalone claims for vertical restrictions. However, in the standalone case, the Athens Court of First Instance in Tribunal Judgment No 1288/2024, the claimant alleged a standalone vertical restriction abuse; however, the court ultimately rejected the competition-based argument, although it awarded damages to the claimant on another basis.

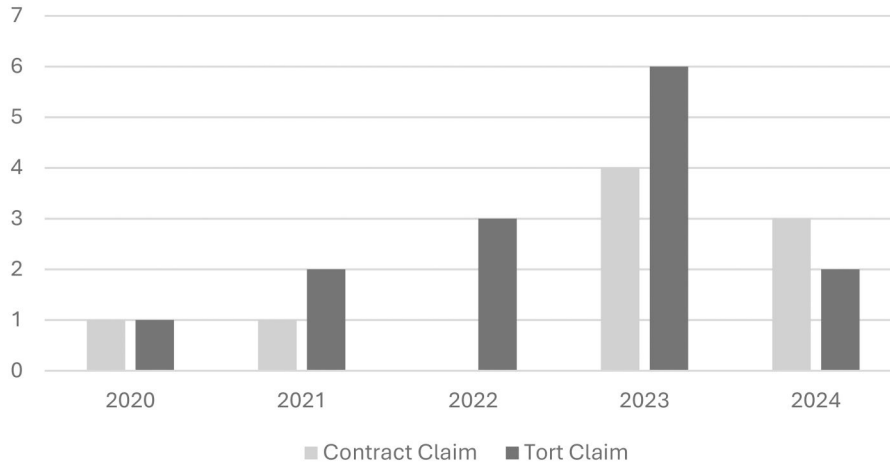

Figure 2. Nature of private enforcement claims. *Source*: Dataset compiled by the authors.

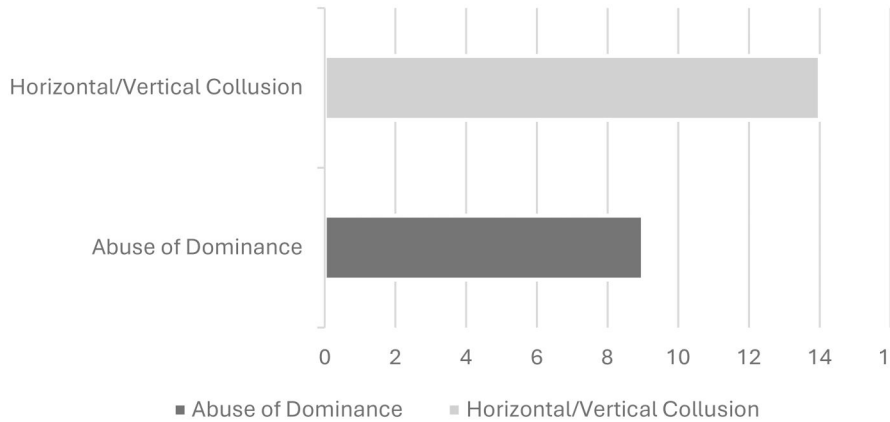

Figure 3. Type of competition law infringements in private enforcement actions in Greece (2020–2024). *Source*: Dataset compiled by the authors.

Moreover, in the absence of robust market analysis, no standalone abuse of dominance case succeeded.

Cases predominantly involve collusive conduct (cartels or vertical agreements), though there are also several abuse of dominance private enforcement actions (see Fig. 3).

To put these figures into perspective, Laborde's study of cartel damages actions across 30 European jurisdictions records 444 cases through mid-2024. The distribution is heavily skewed, with Germany accounting for 237 cases, France for 67, and Spain for 35. Greece, by comparison, sits at the lower end, close to smaller Member States such as Latvia (13 cases), Portugal (12), and Hungary (10).[68] These findings are consistent with other studies, such as Sousa Ferro's survey, showing significant under-development in private enforcement across most European countries, a chasm between public enforcement output and private follow-

[68] Jean-François Laborde, 'Cartel damages actions in Europe: How courts have assessed cartel overcharges (2025 ed.)' Concurrences N° 7-2025, 5 <https://www.concurrences.com/IMG/pdf/7-2025_legal_practice_laborde-v4.pdf> accessed 20 December 2025.

on activity, and a leading position for specific jurisdictions, such as the UK, when it comes to private actions.[69]

Overall, despite some scholars' assertion that 'competition litigation in Greece is not underdeveloped',[70] our review of the case law reveals a contrasting reality. Claimants consistently misapplied competition law as an alternative to unfair competition claims, while genuine antitrust violation cases remained rare. There are no actions from final consumers, and very few from small and medium-sized enterprises, probably except for the milk cartel cases, which provided opportunities for farmers to claim damages. Despite increased HCC enforcement activity in recent years, private actions have not followed suit to the same extent, and no representative action has yet been brought, though it should be noted that the regime is relatively new. Notably, however, the timing of rulings in the specialized divisions of the Athens Court of First Instance and Court of Appeal seems to be remarkably efficient.[71]

The Damages Directive and Representative Actions Directive, when implemented through mere integration of their minimum requirements, prove largely inadequate for developing an efficient private enforcement system that could enhance the competitiveness of the forum in question (in this case, Greece), particularly for the development of consumer compensation. The underdevelopment of private enforcement in Greece[72] and the lack of further forum-competition improving initiatives by the national legislator may have undermined the goal of the Damages Directive to ensure effective legal protection for the victims of competition law violations, thus crippling public trust in the functioning of the market. It is not surprising that Greek claimants may choose to bring competition claims in other jurisdictions, such as the Netherlands (see the *Athenian Brewery* case mentioned above). Strategic forum shopping may prevent countries from developing their own jurisprudence on private antitrust actions and ultimately allows a foreign legal system to adjudicate domestic cases, while any litigation rents accrue to the chosen forum's legal industry. Against this backdrop, the next section of the article examines shortcomings in the Greek legal system that impede competition litigation development, before, in subsequent Sections, establishing a framework for identifying optimal levels of private enforcement, and finally proposing corresponding amendments and recommendations.

4. SOME SHORTCOMINGS OF THE GREEK SYSTEM

Foundational problems of the Greek legal system

The Greek legal system generally ranks poorly in international reports.[73] An International Monetary Fund Report states that 'Greece is one of the countries with the lowest judicial

[69] Miguel Sousa Ferro, 'Consumer Antitrust Private Enforcement in Europe' (2022) 13 Journal of European Competition Law & Practice 578.

[70] Nteka and Komninos (n 32) 225.

[71] Eg, the Athens Court of Appeal Judgment No 2445/2023 was issued only 1 year after the first instance decision.

[72] See also the analysis in Ioannidou (n 36) 159–160. According to the author, between 1999 and 2011, out of 27 actions for competition law damages, only three were successful.

[73] See eg, World Bank Group, 'Economy Profile Greece - Doing Business 2020' (2020) 52–57 <https://www.doingbusiness.org/content/dam/doingBusiness/country/g/greece/GRC.pdf> accessed 27 July 2025. In this report, the Greek legal system ranked low in terms of the time, cost, and quality of resolving commercial disputes through first-instance courts. Competition law claims would be trialled by commercial courts. See also, European Commission, 'The 2024 EU Justice Scoreboard' (Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions) COM (2024) 950 final; Democracy Reporting International, 'Greece' (The Judiciary Hub, 2024) <https://judiciaryhub.eu/country/greece/> accessed 20 December 2025.

system efficiency in the EU, with only modest recent improvement.'[74] It seems that the most significant issue contributing to this inefficiency is considered to be the excessive delay in delivering justice,[75] which is partially attributed to the slow pace of digitalization.[76] Legal aid is also regarded as relatively underdeveloped,[77] while court fees are not on the lower end of the spectrum.[78]

EU statistics also show that alternative dispute resolution mechanisms are underutilized. Especially for representative actions, data show that Greece lacks measures for allowing consumers to express their will online on whether they want representation and whether representative actions are heard by specialized courts.[79] While these reported inefficiencies do not encourage development, they should not be on their own sufficient to prevent private actions from 'ideological claimants', such as consumer associations and harmed persons themselves. Thus, beyond these issues, we will highlight additional factors preventing the growth of private enforcement in Greece.

A first major issue is that disclosure in the Greek legal system is very narrow. There are two main provisions for disclosure under Greek law.[80] According to case law, disclosure of documents is regulated by the Civil Code outside the trial context and by the Civil Procedure Code in a trial setting.[81] The requirements are equally onerous in both cases. Disclosure under the Greek Civil Code, Article 902, must be requested by filing a claim,[82] a highly inconvenient process with stringent requirements.[83] In a trial context, disclosure can be ordered under Article 450 of the Greek Civil Procedure Code,[84] which requires the requesting party to prove that the document is necessary to establish an otherwise viable claim (or part of the claim). Additionally, the requesting party must identify the document and demonstrate that the other party or a third party is in possession of it.[85] As competition claims often depend on the claimants accessing necessary evidence from the defendants, the restrictive disclosure regime limits the viability of claims—particularly for collective

[74] Katherine Dai and others, 'Enhancing Judicial System Efficiency in Greece: Drivers and Economic Impact' (International Monetary Fund 2025) Selected Issues Paper No 2025/057 4 <https://www.elibrary.imf.org/view/journals/018/2025/057/article-A001-en.xml> accessed 27 July 2025.

[75] See eg, Efthymia Chatziioannou and Maria Giannakourou, 'Quality of Court Services and ICT: The Case of Greek Justice' (2024) 15 International Journal for Court Administration 1, 9. The authors cite statistics showing that an average judgment in Greece takes about 1580 days. The EU Justice Scoreboard 2025 shows lower numbers, but Greece still ranked in one of the lowest positions in the EU. See European Commission, 'THE 2025 EU Justice Scoreboard' (European Commission 2025) COM (2025) 375, 7–10 <https://commission.europa.eu/document/download/51b21eff-a4b0-4e73-b461-06bd23b43d4e_en?filename=2025%20EU%20Justice%20Scoreboard_template.pdf> accessed 27 July 2025.

[76] European Commission (n 75) 23–40. Conversely, Greece is above the EU M.O. for the number of lawyers and professional judges. See ibid 31–32.

[77] European Commission (n 75) 20–21.

[78] ibid 22.

[79] ibid 25.

[80] There is also a number of provisions applicable in specific scenarios, such as disclosure of commercial/business records between merchants, disclosure of articles of association for companies, or disclosure of documents in employer–employee disputes. There is no relevant specific provision apart from those specific to competition law.

[81] Thessaloniki Court of First Instance 18445/2014. See also, Ioannis Karakostas ed, Models of Civil Law (Nomiki Bibliothiki 2017) 806.

[82] See also, ibid 807; Nikolaos T Trianos, Civil Code – Analysis per Article (Nomiki Bibliothiki 2018) 1482–1484.

[83] The provision requires a specific connection between the claimant and the document, and the claimant must explicitly identify the document. The requirements of the provision are so stringent that some scholars argue the provision may be at odds with the European Convention of Human Rights. See eg, Nikolaos Klamaris, 'Issue of Legal Interest for the Validity of a Claim for Document Disclosure in Light of the Constitutional Procedural Right of Judicial Protection' (2003) 44 Elliniki Dikaiosini 621.

[84] Another avenue for disclosure is the Greek Civil Procedure Code, art 232(1), which allows a judge to order a party to disclose a document to the court; however, the judge has no obligation to issue such an order, and this order cannot be enforced. Thus, the provision is rarely ever used. See Christina Apalagaki and Stephanos Stamatopoulos, The New Civil Procedure Code – 1st Tome (Articles 1-494) (Nomiki Bibliothiki 2022) 1420.

[85] Supreme Court Judgement No 464/2019.

redress—to follow-on actions where claimants can benefit from access to the file of the HCC or the European Commission.

That said, some jurisdictions, such as Portugal[86] and Germany,[87] do not have extensive disclosure mechanisms but have successfully developed a working private enforcement system. Some of the key differences may lie in institutional complementarities. Germany combines specialized cartel chambers, a statutory presumption of harm, detailed Bundeskartellamt decisions that reduce claimants' evidentiary burden, while Portugal employs a highly attractive opt-out regime. Importantly, both jurisdictions foster claims through third-party funding conveniences.[88] Greece, lacking many such amenities, is further hindered by its restrictive disclosure regime.

Another issue is that the court must decide on the claim's admissibility, as well as its legal and factual merit. The admissibility criterion demands, *inter alia*, that the action, as first filed, contains all the necessary information which would allow the judge to decide on the merits of the case—evidence is submitted at a later stage.[89] The issue is that courts in Greece sometimes display a certain level of creativity in evaluating whether a filed lawsuit is admissible, occasionally requiring elements that do not appear in the provisions relied on in the claim.[90] Claims deemed to lack necessary information—determined at the judge's discretion without binding precedent—are dismissed as inadmissible. Given the complexity of competition claims, judges could easily find claims inadmissible based on minor omissions, depending on the type of abuse alleged. The latest amendment of the Civil Procedure Code through Law 5221/2025, taking effect starting 2026, allows, under the new Article 237(3), the court to give the claimant a deadline of 10 days to correct the filing if it finds an admissibility issue. However, given the courts' tendency to outright dismiss claims, it is yet uncertain how this provision will be applied. For example, based on the wording, courts could interpret it as applying only to a sub-category of inadmissibility, insufficiently particularized claims, and continue to apply a 'claim dismissal policy'.

A further problem is access to litigation funding. Law 2251/1994 explicitly prohibits third-party litigation funding.[91] The provision is brief and broadly worded. While it is certain that funding by a third-party (professional) litigation funder is not permitted, it is unclear whether contingency fee agreements with lawyers are allowed. Such agreements would likely be available because they do not introduce a third party to the claim, and they are already a recognized means of payment and financial assistance available to both lawyers and clients.[92] However, under a different view, the text of the law may also extend to prohibiting not only contingency fees but all direct as well as indirect financing of private enforcement litigation, including within the framework of corporate social responsibility initiatives or crowdfunding.[93] However, such a broad

[86] Miguel Sousa Ferro and Francisco Marcos, 'Portugal and Spain' in Barry Rodger, Miguel Sousa Ferro and Francisco Marcos (eds), *Research Handbook on Private Enforcement of Competition Law in the EU* (Edward Elgar Publishing 2023) 430. See also, Miguel Sousa Ferro, 'The Reality of Access in Antitrust Private Enforcement: Overview of 3 Years' Experience in Portugal' (2021) 46–47 Revista de Concorrência**e Regulação 37.**

[87] Jannik Otto, Patrick Hauser and Simon Vande Walle, 'Germany and the Netherlands' in Barry J Rodger, Miguel Ferro and Francisco Marcos (eds), *Research Handbook on Private Enforcement of Competition Law in the EU* (Edward Elgar Publishing 2023) 462.

[88] Otto, Hauser and Vande Walle (n 87).

[89] See Greek Civil Procedure Code, art 216. See also the discussion in Nikolaos Nikas, *Civil Procedure* (Sakoulas Publications Athens-Thessaloniki 2018) 328–332.

[90] See eg, the discussion in Apalagaki and Stamatopoulos (n 84) 848–851.

[91] Law 2251/1994, art 10n.

[92] Lawyers Code, art 60. See also, European Commission DG Justice and Consumers, 'Mapping Third Party Litigation Funding in the European Union' 242–243 <https://commission.europa.eu/document/download/65adb710-1a36-4550-a4c6-a606adbff061_en?filename=Final%20Report%20EC%20Mapping%20TPLF%20in%20the%20EU.pdf> accessed 29 July 2025.

[93] See particularly the view expressed by the Greek Parliament's Scientific Committee (2023), Report on the Law Transposing Directive 2020/1828, 15 <https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/12210700_1.pdf> accessed 20 August 2025.

view of the prohibition would, in our view, directly contradict both the text and the objectives of the Directive.[94]

Litigation funding remains a topic discussed at the EU level,[95] and new EU-wide legislation may be introduced in the future. For the time being, however, the main option for claimants remains contingency fees, which can be arranged with a written agreement that conditions the lawyer's remuneration on the outcome of the trial. In non-representative cases, litigation funding may be available. However, according to another view, even this may not be allowed because it could allegedly violate the equality of arms between the parties.[96] Limited access to funding significantly impedes access to justice, particularly when individual claims are not economically feasible for the victim of a competition law violation to pursue. This issue becomes more significant when coupled with the often low costs that courts award to the winning party.[97]

An additional hurdle is satisfying the standard of proof for the claim. As mentioned, in Greece, a claim for compensation for breach of competition law is typically brought under tort law and requires proving unlawful conduct, fault, harm, and causation (Greek Civil Code, Article 914).[98] Things are slightly easier in a follow-on action as the claimant(s) do not have to prove the breach of competition law, since they can rely on the competition authority's decision.[99] However, they still bear the onus of proof for the other elements of the test. Interestingly, in many cases, establishing a breach of competition law does not require fault on the part of the infringing undertaking,[100] but establishing a compensation claim requires fault, either intent or negligence,[101] as the existence of a competition abuse relates only to the 'unlawful' element. Under Greek law, each party bears the burden of proof for the facts they rely on,[102] while the standard of proof is that of 'full judicial belief',[103] meaning that the judge must be fully persuaded about the facts, as the party bearing the burden of proof claims them to be. This high standard, especially in contrast to legal systems like the UK, where the standard is 'on the balance of probabilities',[104] in combination with the limited disclosure options, may significantly harm the viability of many claims, standalone and follow-on alike.

Burden of proof issues extend to the calculation of harm. Article 14(1) of Law 4529/2018 establishes a potentially lower standard of proof for quantification of harm, allowing a 'plausibility' check. However, the wording of the provision is problematic. Specifically, it states: 'the court has the power to evaluate the extent of the harm caused on the basis of plausibility, if it is practically impossible or extremely onerous to determine the exact extent of the harm by the claimant based on available evidence.' First, the provision's wording does

[94] In favour of our narrow interpretation of this prohibition, see also the Government's response to the public consultation [see https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/12205355.pdf at 120], noting that '(t)he provision regarding the financing of representative action, which is prohibited in our national law under article 10ι*δ*, does not modify the resources of the (consumer) association that are provided for in the other provisions of the law'), yet it is remarked that funding of consumer associations is particularly circumscribed.

[95] See eg, European Parliament, 'Responsible Private Funding of Litigation' (European Parliament 2021) <https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662612/EPRS_STU(2021)662612_EN.pdf> accessed 28 July 2025.

[96] See the discussion in ibid on this principle, which is mentioned in the Greek Civil Procedure Code, art 110.

[97] See, Apalagaki and Stamatopoulos (n 84) 765–770.

[98] As held in the Athens Court of Appeal Judgment No 3078/2023, the incorporated Damages Directive applies in parallel with the Civil Code and only regulates specific matters. See also, Vasileios Toundopoulos, 'Fault and the Burden of Proof in Actions for Breach of Competition Law' (2024) 12/2024 Business and Company Law 1121, 1122.

[99] See also Damages Directive, art 9.

[100] See eg, Case 85/76, *Hoffmann-La Roche & Co. AG v Commission*, EU:C:1979:36, para 91; Case C-62/86, *AKZO Chemie BV v Commission*, EU:C:1991:286, para 69, where the CJEU held that abuse of dominance is an objective concept.

[101] Greek Civil Code, art 330.

[102] Greek Civil Procedure Code, art 338(1).

[103] Greek Civil Procedure Code, art 348. See also Greece Supreme Court Judgment No 512/2015.

[104] See *Miller v Ministry of Pensions* [1947] 2 All E.R. 372, [374].

not establish a lower standard; it merely allows the judge to apply this standard at their discretion. Second, the judge must be satisfied that an accurate calculation is impossible or extremely onerous, and many judges may choose to stick to the normal standard of proof. Additionally, review of the case law shows that courts have not all used internationally utilized economic models for calculating harm, claimants do not seem to rely on extensive economic reports to underpin their claims, and an elaborate econometrics-based damages calculation.[105] It is advisable, as also suggested by Koutsouki, that the legislator establishes a rebuttable presumption of overcharge (harm) for cartels under Article 101 TFEU, which could be 10 or 20 per cent, following in the lead of some other Member States.[106]

Additionally, the procedural framework of Greek civil trials is ill-suited to address the intricate complexities of competition law disputes. The procedural stages are: filing the claim,[107] independent filing of the parties' arguments and all their evidence,[108] filing of objections,[109] and a single hearing, not necessarily in the presence of the parties,[110] before the issuance of the judgment. While this structure may suffice for simpler and more straightforward claims, a fully developed competition claim is a complex litigation requiring the determination of numerous matters, including jurisdiction over the claimant(s) and all defendants, the existence of anticompetitive conduct, pass-on effects, causation, fault, and quantification of damages. A judge would have to decide on all these matters based on the written submissions, with evidence only submitted once, and with a token—at best—oral presentation of arguments by each party's lawyers. This significantly increases the judicial burden, contributing to time inefficiency and increasing the possibility of errors in the assessment, while the evidentiary burden lies with the claimant.

Competition law-specific issues

Beyond the general characteristics of the Greek legal system, several matters specific to competition law merit consideration. The first relates to the jurisdictional divide between public and private enforcement cases. Public enforcement falls under administrative law, with disputes between undertakings and competition authorities handled by administrative courts, while damages claims constitute private law matters decided by civil courts. This jurisdictional separation may limit organic development of competition law by a unified court system, could potentially lead to complications in parallel civil and administrative proceedings on the same matter (although civil courts may stay proceedings), and may reduce

[105] For a discussion, see Koutsouki (n 8) 286–287; Nikolaos Pilarinos, *Calculating Harm in Competition Law Abuses* (Nomiki Bibliothiki 2023) 117–121 and 160 (noting after review of the case law that it shows an inconsistent or incomplete approach to economic assessment, particularly regarding the lack of a systematic methodology for measuring damages or harm, probably with the exception of CFI 3/2021 which used a but-for analysis and comparative methods with other markets, which, however, raised considerably the evidential bar for the claimant).

[106] See Koutsouki (n 8) 287–296 (examining the empirical evidence about cartel overcharges and the examples of Hungary, Latvia, and Romania, which have already established such rebuttable presumptions of harm in their legislation, in Romania, this presumption being 20 per cent). See also, the press release of HCC in HCC Decision 755/2021, which refers to the OXERA study based on Connor and Lande data, according to which 93 per cent of cartels often lead to overcharge, with the most frequent percentage of overcharge being more than 20 per cent: Oxera (2009), Quantifying antitrust damages Towards non-binding guidance for courts, Study prepared for the European Commission, available at <https://www.oxera.com/wp-content/uploads/2018/03/Quantifying-antitrust-damages-3.pdf> accessed 20 August 2025. See also, most recently, JM Connor, 'Price-Fixing Overcharges: Revised 4th Edition' (2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4906907> accessed 20 August 2025, which analysed 2476 quantitative overcharge estimates from 709 price fixing cartels over this 330 years period finding that the median episodic (average long-run) overcharge estimates for all types of cartels since the late 1600s is 23.2 per cent points above benchmark prices, the media for the period 2000–2019 being 21 per cent, and noting that only 5 per cent of cartels resulted in zero overcharge.

[107] Greek Civil Procedure Code, art 216.

[108] Greek Civil Procedure Code, art 237(1). This stage is similar to the particulars of claim in UK law, but applies to both parties.

[109] Greek Civil Procedure Code, art 237(2).

[110] Greek Civil Procedure Code, art 281.

opportunities for judicial specialization through consistent exposure to competition law matters. The functioning of a specialized tribunal to decide on competition law claims has been a feature in most jurisdictions with an active system of competition litigation,[111] although this is not a factor on its own sufficient to deter private enforcement.

Another matter is identifying the stakeholders who will engage in private enforcement litigation. The rationale behind collective actions is to facilitate access to justice for claimants whose individual claims would be too small to pursue independently.[112] Since, in many cases, particularly those involving final consumers, the harmed persons are not in a position to independently seek compensation, some other stakeholder must be willing to pursue the claim. In most jurisdictions where private enforcement is well-developed, including the USA, the UK, the Netherlands, and Portugal, claims are commonly initiated by lawyers seeking to profit from the regime. Lawyer entrepreneurship is extensively debated in regimes like the USA[113] and the UK,[114] and there does not seem to be a definitive answer on how to strike an appropriate balance between facilitating private actions and avoiding a complete commercialization of the legal system. In Greece, Law 5019/2023, which transposed the Representative Actions Directive, only allows registered consumer associations to bring representative actions. The Parliament has, thus, chosen not to facilitate entrepreneurial lawyering by limiting the capacity to bring representative actions to 'ideological claimants'. At the time of writing, only three consumer organizations have been registered[115] and, to our knowledge, there has not yet been any representative action filed before the Greek courts. In a subsequent section, we make arguments in favour of expanding the scope of representative actions to a broader group of stakeholders.

A third consideration concerns the distribution of damages, as the transposition of the Representative Actions Directive presents particular challenges. Law 2251/1994, Article 10k (7) states: '(u)ndistributed funds from compensation and/or restitution, which are not claimed within the deadlines set by the court by consumers who expressed their will to be represented by a qualified entity, shall pass on to the qualified entity on condition that a deadline of 60 days has passed from the invitation of consumers by the qualified entity to receive their awarded compensation.'[116] This provision may be intended to provide resources to consumer associations, though it might also raise questions about the efficient utilization of undistributed damages awards. Consumer associations aim to advance consumer interests,[117] but they also remain private entities and have the right to privately determine how to utilize their financial resources. By comparison, in the UK, unclaimed sums are awarded

[111] In addition to our analysis above, see also, eg, Sousa Ferro and Marcos (n 86) 420.

[112] See the opinion of Harry Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (Stationery Office 1996) ch 17. According to Lord Woolf, the other two objectives of collective actions are enhancing procedural efficiency and better balancing between the interests of claimants and defendants.

[113] John C Coffee, *Entrepreneurial Litigation: Its Rise, Fall, and Future* (Harvard University Press 2015); John C Coffee, 'The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action' (1987) 54 University of Chicago Law Review 877.

[114] Marcus Smith, 'Remarks on Private Enforcement of Competition Law' 2–3 <https://www.catribunal.org.uk/sites/cat/files/2023-02/2023_PRIVATE%20ENFORCEMENT%20OF%20COMPETITION%20LAW%202023.pdf> accessed 26 August 2025.

[115] See a summary of the registry (in Greek) at <https://kataggelies.mindev.gov.gr/wp-content/uploads/%CE%9C%CE%B7%CF%84%CF%81%CF%8E%CE%BF-%CE%95%CE%BD%CF%8E%CF%83%CE%B5%CF%89%CE%BD-%CE%9A%CE%B1%CF%84%CE%B1%CE%BD%CE%B1%CE%BB%CF%89%CF%84%CF%8E%CE%BD_20250116.pdf> accessed 28 July 2025.

[116] Qualified entity means the entity allowed to initiate a representative action, which in Greece would typically be a registered consumer association. Worth mentioning that the wording of the provision is somewhat confusing, because art 10k does not mention that the consumer association bringing a representative action has an obligation to invite consumers to receive compensation.

[117] Under the Greek Civil Code, Article 78, an association is a private law legal entity comprised of at least twenty members that pursues a specific goal—not necessarily for profit. See also, Vasileios Tsoumas, *Associations* (Nomiki Bibiliothiki 2010).

to the Access to Justice Foundation, which is a Charity.[118] This is also a topic we revisit in a subsequent section of this article, offering some recommendations.

Finally, given the decision to award undistributed damages to the consumer association bringing the claim, it would be beneficial to establish mechanisms that encourage claimant associations to actively inform consumers of their right to claim damages, while ensuring appropriate oversight of this process. While Law 2251/1994, as amended, includes provisions stating that the General Secretariat for Commerce of the Ministry of Development and Investments provides information on pending representative actions,[119] and that the consumer associations will publish on their website, and through other appropriate means, information about representative actions,[120] these means may not be sufficient in fostering consumer awareness, particularly if the association is disincentivized to disclose. Note also that the court, in contrast to the UK, does not oversee the application of these measures of publicity.

Our review of the Greek litigation system identifies various factors that may constrain the development of private enforcement for competition law infringements, which is of value for studying many other jurisdictions. In the following section, we examine the role that private enforcement should play within an 'optimal' enforcement system, which leads us to consider its interaction with public enforcement, first generally, and then in application to the Greek context.

5. THE PRIVATE–PUBLIC ENFORCEMENT INTERSECTION

We first explore how EU courts understood private enforcement's role as both a compensation mechanism and a deterrence tool. Building first on optimal enforcement theory's more narrow framework (as it focuses on economic efficiency), we argue for a mixed approach combining public and private enforcement that aims to achieve both compensation and deterrence goals without functional specialization preconceptions. This argument becomes even stronger when enforcement is viewed from a broader law and political economy perspective, which also integrates the analysis of distributional implications, taking into account the existing balance of power among various conflicting socio-economic interests in the specific jurisdiction.

The role of private enforcement: an optimal enforcement theory perspective

In the EU, private enforcement has primarily been conceived as an instrument of corrective justice to serve the purpose of providing compensation to the victims of competition law violations. The landmark ruling in *Courage v Crehan* (2001), however, established the possibility of seeking compensation for losses caused by contracts or conduct liable to restrict or distort competition[121], tasking national courts with ensuring the Community rules' effectiveness and protecting EU law-derived individual rights. The judgment placed compensation and deterrence rationales on equal footing, with no prima facie reason to prioritize either. Private enforcement can achieve both goals, with priorities being policy choices potentially influenced by case-specific circumstances.[122] 'Damages claims' primarily serve corrective justice through compensation, reflecting the *neminem laedere principle* (harm no one), which

[118] Competition Act 1998, s 47C(5).

[119] Law 2251/1994, art 10q.

[120] Law 2251/1994, art 10p.

[121] Case C-453/99, *Courage Ltd v Crehan and Crehan v Courage Ltd and Others*, EU:C:2001:465.

[122] See also Joined Cases C-295/04 to C-298/04, *Manfredi and Others*, EU:C:2006:461, para 95. See also, more recently, Case C-312/21, *Tráficos Manuel Ferrer SL & D. Ignacio v Daimler AG*, EU:C:2023:99, para 34.

obligates wrongdoers to remedy breaches of another's market autonomy.[123] Deterrence is thus just a socially beneficial by-product of such claims, as it increases the probability of detection and the expected cost of violations.

The EU's choice of single rather than multiple damages reflects a normative preference for compensation, despite evidence that double damages might be more efficient for deterrence, or for mixed deterrence-corrective justice objectives (particularly in cartel cases).[124] The conferral of standing in EU law to 'anyone harmed' by a competition law infringement, which has been confirmed by the Damages Directive,[125] theoretically opens the gates to a flood of claims for damages initiated by non-direct purchasers or competitors, such as indirect purchasers, umbrella customers, and counterfactual customers.[126] Private enforcement through injunctive relief primarily serves deterrence by strengthening compliance, while monetary relief directly serves compensation. Public enforcement focuses on deterrence rather than compensation, though proposals to expand its compensatory role are examined in Section 6.[127]

In contrast, US private enforcement aims to 'provide a mechanism for wider public regulatory and observance goals', particularly deterrence, extending beyond mere compensation. This regulatory objective explains US system specificities (eg, cost rules) and has shaped economic analysis of tort law within an efficiency-based framework.[128] The task of ensuring deterrence and the observance of the law is delegated to the 'private attorney general', an intrinsic characteristic of the 'adversarial legalism' of the US policy implementation and dispute-resolution system.[129] Some scholars even argue that compensation plays a secondary role in US private enforcement and that 'deterrence has emerged as paramount.[130] Identifying those harmed by anticompetitive behaviour and quantifying their losses presents challenges comparable to determining tax incidence in public finance theory. Just as tax burdens shift in complex ways—backwards to suppliers or employees, forward to direct or indirect purchasers, while generating deadweight losses—anticompetitive conduct creates similarly diffuse economic effects. This makes it quite difficult to assess damages suffered by every affected economic operator with reasonable accuracy or at a manageable cost. This problem illustrates the broader difficulties that torts with widespread effects pose for establishing causation, particularly when standing is extended to all parties potentially affected by competition law violations. Another issue relates to the possibility of such collective redress to compensate victims or for its benefits to be captured' by legal and other professionals.[131]

[123] Lianos, Davis and Nebbia, *Damages Claims for the Infringement of EU Competition Law* (n 2) 18.

[124] Report for the European Commission, *Making antitrust damages actions more effective in the EU* (n 25) 562–566 (scenario 1: double damages for all competition cases) and 579–594 (scenario 2: double damages only for cartel cases).

[125] Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law, OJ 2014 L 349/1.

[126] Lianos, Davis and Nebbia, *Damages Claims for the Infringement of EU Competition Law* (n 2).

[127] See, Ariel Ezrachi and Maria Ioannidou, 'Access to Justice in European Competition Law–Public Enforcement as a Supplementary Channel for "Corrective Compensation"' (2011) 19 Asia Pacific Law Review 195; Prentiss Cox and Christopher L Peterson, 'Public Compensation for Public Enforcement' (2022) 39 Yale Journal on Regulation 61; Lena Hornkohl, 'Public Compensation for Private Harm: Fair Funds for Consumer Competition Law Redress' (2024) 47 World Competition: Law & Economics Review 89; Grigoris Bacharis and John Kwan, 'Public Redress in UK Competition Enforcement: A Study of Rationales and Techniques' [2025] Journal of Antitrust Enforcement.

[128] See, among others, William M Landes and Richard A Posner, 'The Positive Economic Theory of Tort Law' (1980) 15 Georgia Law Review 851, 924; Michael Faure (ed), *Tort Law and Economics* (Edward Elgar 2009).

[129] Robert A Kagan, *Adversarial Legalism—The American Way of Law* (Harvard University Press 2003).

[130] Hannah Buxbaum, 'Private Enforcement of Competition Law in the United States—of Optimal Deterrence and Social Costs' in Jurgen Basedow (ed), *Private Antitrust Enforcement* (Kluwer Law International 2007) 44 (noting, however, that 'the compensation goal is subsumed within the efficiency framework').

[131] For a discussion, see the different views expressed by Albert H Choi and Kathryn E Spier, 'Class Actions and Private Antitrust Litigation' (2022) 14 American Economic Journal: Microeconomics 131; Žygimantas Juska, 'The Effectiveness of Private Enforcement and Class Actions to Secure Antitrust Enforcement' (2017) 62 Antitrust Bulletin 603; Daniel A Crane, 'Optimizing Private Antitrust Enforcement' (2010) 63 Vanderbilt Law Review 675 (all taking a more critical perspective on

Despite this seemingly functional specialization, public enforcement can also achieve compensation through public redress mechanisms, though resource constraints prevent competition authorities from pursuing all cases. Similarly, private enforcement can achieve deterrence, exemplified by punitive damages or treble damages in the USA, but concentrating enforcement entirely within a single system may create negative externalities, ultimately undermining both deterrence and compensation objectives.

The 2008 Commission White Paper established that EU harmonization efforts culminating in the 2014 Directive aimed to create an effective private enforcement system through damages actions that complement, but do not replace or jeopardize, public enforcement.[132] The Commission appeared to view compensation and deterrence as objectives in tension.[133] This tension means an injured party's right to compensation may be constrained depending on policymakers' commitment to maintaining effective public enforcement. This trade-off manifests in several areas. Access to incriminating evidence, including materials from competition authority files, may be restricted when disclosure would compromise investigation strategies or weaken leniency programmes. Similar balancing considerations arise when designing regimes for joint and several liability, determining indirect customers' standing rights, and establishing the passing-on defence scope. The Commission prioritized ensuring effective interaction between enforcement mechanisms, with central concern involving evidence disclosure from competition authority investigations, which could potentially undermine leniency programmes and weaken cartel enforcement.

The EU Courts initially accepted this concern, with the CJEU emphasizing in *Pfleiderer* the need to ensure that facilitating private actions does not undermine effective public enforcement.[134] In *Donau Chemie*, however, the CJEU insisted that 'any request for access to the [cartel file] must be assessed on a case-by-case basis, taking into account all the relevant factors of the case' and dismissed the Austrian government's point that broad access to the cartel file could undermine leniency programmes, observing that 'the argument that there is a risk that access to evidence contained in a file in competition proceedings […] may undermine the effectiveness of a leniency programme […] cannot justify a refusal to grant access to that evidence'.[135] This trend became even clearer in the *Kone* judgment, where the CJEU held that national legislation cannot categorically exclude the right to compensation, regardless of the particular circumstances of a case.[136] The court introduced a flexible interpretation of the causal link emphasizing the need to guarantee the 'effectiveness' of competition law enforcement, understood here by reference to 'the right of any individual to claim compensation for loss sustained'.[137]

In *Skanska*,[138] AG Wahl invoked the principle of 'full effectiveness of EU competition law and deterrence' when examining situations where constitutive conditions of the right to claim compensation are at stake, such as causation, analysing these by reference to substantive EU law provisions like Article 101 TFEU. He contrasted this approach with the simple

the benefits of private enforcement for the compensation of victims) and Robert H Lande and Joshua P Davis, 'Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases' (2008) 42 University of San Francisco Law Review 879, 902–903, and 905–907.

[132] White Paper on Damages actions for breach of the EC antitrust rules, COM (2008) 165 final, 3 (emphasis added).

[133] Commission Staff Working document impact assessment report, *Damages actions for breach of the EU antitrust rules accompanying the proposal for a directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union*, SWD/2013/0203 final, para 1.

[134] Case C-360/09, *Pfleiderer AG v Bundeskartellamt*, EU:C:2011:389.

[135] Case C-536/11, *Bundeswettbewerbsbehörde v Donau Chemie AG and others*, EU:C:2013:366, paras 39 and 46.

[136] Case C-557/12, *Kone AG and Others v ÖBB-Infrastruktur AG*, EU:C:2014:1317, para 33.

[137] ibid para 32.

[138] Opinion of AG Wahl in Case C-724/17, *Vantaan kaupunki v Skanska Industrial Solutions Oy and Others* EU:C:2019:100, paras 36–45, spec. paras 40–41.

application of equivalence and effectiveness principles for situations concerning the application of the right to claim compensation before a court, which are governed by domestic law. Through a deterrence lens, AG Wahl found that domestic rules categorically excluding certain persons from claiming damages violate EU law. This may explain the CJEU's *Kone* judgment protecting umbrella pricing victims, even when harm arose from independent pricing decisions by non-cartel undertakings whose actions—keeping prices at cartel levels—nonetheless contributed to the harm. This perspective aligned with his views about the primary role of economic efficiency as a goal of competition law, expressed in other cases.[139]

AG Wahl understood deterrence according to 'wealth maximisation theory' precepts.[140] However, although the CJEU in *Skanska* relied on the principle of full deterrence to establish that EU law, rather than national law, directly governs which entity must provide compensation for Article 101 TFEU infringement damage, it rejected AG Wahl's 'deterrence as wealth maximisation' rationale. The Court instead conceptualized deterrence as maintaining effective competition in the EU, connected to compensation rights for anticompetitive harm, essentially a corrective justice framework.[141]

In *Otis*, concerning the application of national law to exclude certain categories of victims from the elevators cartel case, AG Kokott referenced AG Wahl's *Skanska* opinion without equating full effectiveness with deterrence or adopting his wealth maximization approach.[142] She understood 'full effectiveness' by reference to the need to ensure uniformity and equality before the law for all undertakings active in the EU Internal Market,[143] but also to the *right* of *any* individual to claim compensation.[144] Drawing not only on deterrence principles, as AG Wahl did in *Skanska*, but also on the fact that damages rights provide 'effective protection against the adverse effects' of Article 101 TFEU infringements, AG Kokott affirmed that the right to demand compensation for cartel losses cannot be denied outright, depriving entire categories of claimants without adequate analysis of whether a sufficiently direct causal link exists between the infringing conduct and the damage.[145] The CJEU followed AG Kokott's opinion and its *Kone* precedent, holding that national rules which 'systematically deprive potential victims of the possibility of requesting damage compensation from the outset' breach the 'full effectiveness' of EU competition rules.[146]

[139] See eg, Opinion of AG Wahl in Case C-413/14P, *Intel Corporation Inc v Commission*, EU:C:2016:788, para 41.

[140] ibid para 50 (noting that 'the *real harm* caused by illegal restrictions of competition is the *dead weight loss* resulting from such restrictions, that is to say, a *loss of economic efficiency* caused by the anticompetitive conduct in question. This means that the harm identified in actions for damages based on an infringement of competition law is, in reality, a *proxy for the economic inefficiencies resulting from the infringement* and the *corollary loss to society as a whole in terms of reduced consumer welfare*. In the final analysis, therefore, the compensatory function of an action for damages for an infringement of competition law remains in my view subordinate to that of its deterrent function' (emphasis added). In essence, AG Wahl argues that what is at play is the compensation of the deadweight loss in consumer (and producer) surplus, which is compatible with the definition of the concept of 'consumer welfare' by the Chicago school antitrust theorist Robert Bork. If one adopts this approach, it will be possible to compensate the reduction of consumer surplus arising out of the volume (reduced demand) effect of a cartel price, but not any wealth transfers from consumers continuing to buy the cartelized product at a cartel price that is higher than the counterfactual price to the members of the cartel or other producers in the relevant market that benefit from the cartel price (umbrella pricing). This interpretation is of course contrary to the goal of Directive 2014/104 to ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm, and that full compensation 'shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed': Article 3, Directive 2014/104 [2014] OJ L 349/1. This concept of harm certainly includes the wealth transfer resulting from the cartel overcharge, either directly or indirectly.

[141] Case C-724/17, *Vantaan kaupunki v Skanska Industrial Solutions Oy and Others*, EU:C:2019:204, paras 43–45.

[142] Opinion of AG Kokott in Case C-435/18 *Otis Gesellschaft m.b.H. and Others v Land Oberösterreich and Others*, EU:C:2019:651.

[143] ibid paras 54–55.

[144] ibid para 52. Emphasis added.

[145] ibid paras 77–78.

[146] Case C-435/18, *Otis Gesellschaft m.b.H. and Others v Land Oberösterreich and Others*, EU:C:2019:1069, para 27.

The view that public and private enforcement are complementary, with private enforcement serving a deterrent purpose by ensuring effective competition rule implementation, was reaffirmed in *Tráficos Manuel Ferrer SL* (a trucks cartel case).[147] There, regarding a national cost allocation rule for partially successful damages claims, the CJEU held that 'as is apparent from recital 6 of Directive 2014/104, the EU legislature relied on the finding that combating anticompetitive conduct through public initiatives—the Commission and national competition authorities—was not sufficient to ensure full compliance with Articles 101 and 102 TFEU, and that it was important to facilitate private sphere participation in achieving that objective'.[148] The CJEU continued observing that 'participation by the private sphere in the financial penalization of anticompetitive conduct and, therefore, also in its prevention, is all the more desirable because it is capable not only of providing a remedy for the direct damage alleged to have been suffered by the person in question, but also for the indirect harm done to the structure and operation of the market, which was not able to reach full economic efficacy, in particular as regards benefits to the consumers concerned'.[149]

However, debates over compensation versus deterrence goals should not obscure that combining public and private enforcement (particularly collective actions) serves important deterrent functions, strengthening competition law's overall deterrent effect and helping prevent anticompetitive practices. This need for optimal interaction has led some authors, drawing on optimal enforcement theory, to argue that potential accumulation of remedies from dual enforcement may require formal coordination mechanisms.[150] Over-enforcement may misallocate resources or create chilling effects on competition. The enforcement system should therefore include mechanisms ensuring monetary punishment and compensation do not exceed total damage, both victim wealth transfers and societal deadweight loss.[151] Optimal enforcement may be achieved through punishment, compensation, or both, assuming unlimited resources. However, given resource constraints, the optimal public–private enforcement mix varies by jurisdiction based on institutional capabilities and priorities.[152]

Optimal enforcement theory assumes individuals or firms decide whether to commit harmful acts based on expected utility calculations.[153] They act if expected utility rises, considering gains and the probability, form, and level of sanctions.[154] The primary objective of optimal enforcement is minimizing social welfare losses while maximizing cost-effective

[147] See also, most recently, Case C-21/24, *Nissan Iberia*, EU:C:2025:659, para. 53 (noting that '(t)he right for any person to seek compensation for such harm strengthens the working of the EU competition rules, *since it discourages conduct which is liable to restrict or distort competition*, thereby contributing to the maintenance of effective competition in the European Union' (emphasis added). See also, Case C-253/23, *ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v. Land Nordrhein-Westfalen*, EU:C:2025:40, para 63.

[148] *Tráficos* (n 122) paras 41–42. See also, C-163/21, *AD and Others v PACCAR and Others*, EU:C:2022:863, paras 55–56.

[149] *Tráficos* (n 122), para 42.

[150] Jindrich Kloub, 'White Paper on Damage Actions for Breach of the EC Antitrust Rules: Plea for a More Holistic Approach to Antitrust Enforcement' (2009) 5 European Competition Journal 515, 529–530.

[151] Kloub (n 150).

[152] See eg, in Europe: Wils (n 51), questioning the utility of private enforcement; Wernhard Möschel, 'Should Private Enforcement of Competition Law Be Strengthened?' in Dieter Schmidtchen, Max Albert and Stefan Voigt (eds), *The More Economic Approach to European Competition Law* (Mohr Siebeck 2007) 101; Assimakis P Komninos, 'Public and Private Antitrust Enforcement in Europe: Complement? Overlap?' (2006) 3 Competition Law Review 5; Paolisa Nebbia, 'Damages Actions for the Infringement of EC Competition Law: Compensation or Deterrence?', (2008) 33 European Law Review 23; Kai Hüschelrath and Sebastian Peyer, 'Public and Private Enforcement of Competition Law—A Differentiated Approach' (2013) ZEW—Centre for European Economic Research Discussion Paper No 29 <http://ssrn.com/abstract=2278839> accessed 5 August 2025; Renato Nazzini, 'The Objective of Private Remedies in EU Competition Law' (2011) 4 Global Competition Litigation Review 131; Wouter PJ Wils, 'The Relationship between Public Antitrust Enforcement and Private Actions for Damages' (2009) 32 World Competition: Law and Economics Review 3.

[153] Gary S Becker, 'Crime and Punishment: An Economic Approach' (1968) Journal of Political Economy 169.

[154] Michael Polinsky and Steven Shavell, 'Public Enforcement of Law' in SN Durlauf and LE Blume (eds), *The New Palgrave Dictionary of Economics* (2nd edn, Palgrave/Macmillan 2009) 178.

deterrence through compliance incentives.[155] Deterrence thus serves efficiency rather than corrective justice, addressing misalignment between private and social incentives.[156]

It follows from the above that the relationship between public and private enforcement of competition law can manifest differently depending on deterrence objectives. If additional deterrence consistently yields benefits, the relationship is complementary, with both mechanisms working synergistically. However, if an optimal level of deterrence exists (in the wealth maximization sense), the relationship becomes competitive. Under this scenario, increased private enforcement deterrence should prompt authorities to scale back public enforcement to prevent over-deterrence, as exceeding the optimal threshold could harm overall economic welfare.[157] Conversely, if public enforcement cannot achieve increased deterrence, private enforcement incentives should be scaled up. From this perspective, there is a need to also put in place procedures to achieve an 'optimal' coordination between these two forms of competition law enforcement.[158] It is true that regulating private enforcement is more difficult than public enforcement because it is largely uncontrollable. It is decentralized and driven by individual or collective claimant initiatives. However, it complements public enforcement by fulfilling a relief function. As competition authorities must allocate limited resources to cases of broad significance for competition policy, private enforcement provides an alternative mechanism for parties to protect their legitimate interests when public enforcement is unavailable or unlikely to be pursued.

Determining the 'optimal' level of private enforcement

Having explored optimal enforcement theory and the complementary yet competitive relationship between public and private enforcement, we now examine policy options to maximize social welfare. Policymakers can adjust three key parameters: (i) increase enforcement expenditures to enhance detection probability; (ii) raise fines, sanctions, or damages to strengthen deterrence; and (iii) implement liability rules that maximize social welfare.[159]

The first parameter depends on public enforcement resources, examined in the following Section using Greece as a case study. When resource constraints limit enforcement expansion, private enforcement can delegate standalone damages cases to private parties. Though requiring judicial resources, private enforcement often settles, reducing system costs. In standalone cases, parties and experts also conduct investigations and economic analysis, minimizing judicial effort compared to public enforcement investigations

[155] Becker (n 153).

[156] Ilya R Segal and Michael D Whinston, 'Public v. Private Enforcement of Antitrust Law: A Survey' (2007) 28 European Competition Law Review 306.

[157] This view of an optimal level of deterrence assumes that the objective of deterrence in this context is intrinsically linked to that of economic efficiency or wealth maximization. Indeed, the optimal deterrence model and, more generally, optimal enforcement theory share with economic efficiency theory the belief that the aim of the legal system is to promote wealth maximization. Some authors have distinguished between two forms of deterrence: deterrence as wealth maximization, and deterrence as a moral requirement for corrective justice to work effectively, deterrence having a role to play even for those valuing only the moral principle of corrective justice and rejecting efficiency as a normative value (the deterrence-based corrective justice approach). See, Ioannis Lianos, 'Competition Law Remedies: In Search of a Theory' in Ioannis Lianos and D Daniel Sokol (eds), *The Global Limits of Competition Law* (Stanford University Press 2012) 177–204; Ioannis Lianos, 'Competition Law Remedies in Europe: Which Limits for Remedial Discretion?' in Ioannis Lianos and Damien Geradin (eds), *Handbook in European Competition Law: Enforcement and Procedure* (Edward Elgar 2013) 362–456. If one takes a deterrence-based corrective justice approach, it is unclear on which grounds 'over-deterrence' will be deemed inappropriate; hence, from this perspective, public and private enforcement will always be complements.

[158] See, Recital 6 of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1) (noting 'To ensure effective private enforcement actions under civil law and effective public enforcement by competition authorities, both tools are required to interact to ensure maximum effectiveness of the competition rules. It is necessary to regulate the coordination of those two forms of enforcement in a coherent manner, for instance in relation to the arrangements for access to documents held by competition authorities […]').

[159] This part builds on and expands Lianos, Davis and Nebbia, *Damages Claims for the Infringement of EU Competition Law* (n 2).

Building on Becker's 1968 work, Becker and Stigler advocated purely private enforcement, arguing that public enforcement systems face perverse incentives and corruption risks. They proposed private parties investigate, apprehend, and prosecute violators, retaining conviction proceeds while reimbursing defendants' costs if unsuccessful.[160] Landes and Posner criticized this, arguing that competitive private enforcement leads to over-enforcement relative to optimal public enforcement.[161] Polinsky incorporated enforcement costs and found that private enforcement may result in less overall enforcement, as firms invest only when revenue equals or exceeds costs. Public enforcers, however, seek to deter potential violators, generating fine revenue below enforcement costs.[162]

When harm involves small amounts per individual across large populations, distribution costs may exceed benefits for each victim. This leads claimants to invest less in litigation, as they hold only 'fractional ownership interest in prosecuting the common causes of action'.[163] They may also free-ride on other parties' litigation efforts.[164] Defendants benefit from litigation scale efficiencies, treating common issues as single litigation units and making substantial investments to maximize returns through reduced liability, then distributing costs across multiple actions.[165] Plaintiffs remain fragmented and cannot capitalize on similar efficiencies. Defendants also enjoy asymmetric bargaining power in settlement negotiations, incentivizing settlements. Optimizing deterrence requires aggregating plaintiffs' cases to provide equivalent opportunities for litigation scale efficiencies and correct this 'systemic bias' undermining private enforcement's deterrent function.[166]

The advantage of public over private enforcement assumes public enforcers are motivated by public interest and possess adequate resources for optimal enforcement. These assumptions may not hold, as public enforcers face underperformance due to budgetary constraints, political interference, or misalignment between bureaucratic incentives and public interest (the 'principal-agent problem'). According to McAfee, Mialon, and Mialon, adding private enforcement to public enforcement is socially beneficial if courts are sufficiently accurate, but can prove beneficial even with less accurate courts, provided public enforcement costs are sufficiently high, and government is sufficiently inefficient in litigation.[167]

Damages or pecuniary sanctions on competition law infringers may incentivize individual enforcement agents. Recent experimental research shows that remuneration schemes, while holding expected sanctions constant, impact deterrence. Deterrence levels depend on who receives sanction proceeds, with regimes offering financial incentives to enforcers leading to more enforcement effort and deterrence, challenging the idea that public enforcement is superior regarding deterrence.[168] These findings assume enforcers will not use enforcement to

[160] Gary S Becker and George J Stigler, 'Law Enforcement, Malfeasance, and Compensation of Enforcers' (1974) 3 Journal of Legal Studies 1.

[161] William M Landes and Richard A Posner, 'The Private Enforcement of Law' (1975) 4 Journal of Legal Studies 1, 15.

[162] A Mitchell Polinsky, 'Private versus public enforcement of fines' (1980) 9 Journal of Legal Studies 105. The author assumed that the budget of the public enforcer does not entirely depend on the fines collected, which is usually not the case.

[163] David Rosenberg and James P Sullivan, 'Coordinating Private Class Action and Public Agency Enforcement of Antitrust Law' (2006) 2 Journal of Competition Law & Economics 159.

[164] Roger van den Bergh, 'Private Enforcement of European Competition Law and the Persisting Collective Action Problem' (2013) 20 Maastricht Journal 1, 24–26 (noting that '[an] individual who is the victim of a law infringement has an interest to leave the enforcement efforts to other individuals, so that profits can be obtained without having to spend own resources').

[165] Rosenberg and Sullivan (n 163) 160.

[166] ibid 523, 530–531.

[167] R Preston McAfee, Hugo M Mialon and Sue H Mialon, 'Private v. Public Antitrust Enforcement: A Strategic Analysis' (2008) 92 Journal of Public Economics 1863, 1864.

[168] Florian Baumann and others, 'Fines as Enforcers' Rewards or as a Transfer to Society at Large? Evidence on Deterrence and Enforcement Implications' (2023) 196 Public Choice 229.

extort compliant agents and may inform public enforcement system design, where fines typically flow to state budgets rather than directly funding or incentivizing public enforcers.

The second parameter concerns penalties and damages. Under optimal enforcement theory, with perfect detection and zero punishment costs, optimal sanctions should equal net social efficiency loss from violations, reflecting net harm to all parties except the offender.[169] With positive enforcement costs and imperfect detection, penalties should exceed social cost. The minimum deterrent equals expected gains multiplied by the inverse detection probability. However, pure deterrence theory requires a negative expected violation value, supporting the inclusion of all possible losses, which are 'potentially unlimited'.[170] Increased sanctions may deter efficient conduct and generate over-investment in compliance, though pure deterrence proponents find this less concerning given the wealth-maximization effects of deterring harmful conduct.[171] Note, however, that public enforcers can determine sanction levels and enforcement resources for detection. This flexibility is unavailable in private enforcement, as courts calculate damages based on harm rather than the infringer's gain and operate reactively, unable to act proprio motu. Consequently, choosing between public and private enforcement depends on proceeds levels, with public enforcement proving superior for higher proceeds, given its ability to regulate enforcement levels.

Regarding the third parameter, some EU jurisdictions require proof of negligence or intent alongside evidence of the infringement, while others have no fault requirement or operate with a presumption of fault (rebuttable or irrebuttable) once a competition law violation is established.[172] As it is clear from *Schenker*, negligence suffices to prove an unlawful practice that may give rise to damages.[173]

Assuming an optimal enforcement system requires some combination of public and private enforcement, what factors should guide its design?

Information costs regarding harmful acts are crucial. One can distinguish between available information and acquisition costs for additional information. Private enforcers typically possess superior information on harmful acts, provided these are not secret (eg, cartels), and regarding harm inflicted on them.[174] Public enforcers have informational advantages when anticompetitive conduct is secret and when social costs and benefits are uncertain, requiring case-by-case analysis or expert evaluation, situations where centralized enforcement provides economies of scale in acquiring expertise. Regarding additional information acquisition, costs may be higher for public enforcers since public enforcement is tax-financed.[175] Additional enforcement costs increase taxation and affect economic activity unless financed by penalty proceeds, though this risks creating perverse incentives.

Nevertheless, public enforcers access broader information through complaints and possess more effective information-gathering tools via extensive investigative and sanctioning powers (eg, leniency programmes, self-reporting, and sanction level control).[176] This is particularly

[169] William M Landes, 'Optimal Sanctions for Antitrust Violations' (1983) 50 University of Chicago Law Review 652, 656.

[170] Herbert Hovenkamp, 'Antitrust's Protected Classes' (1989) 88 Michigan Law Review 1.

[171] Wouter PJ Wils, 'Optimal Antitrust Fines: Theory and Practice' (2006) 29 World Competition 183, 183.

[172] See the analysis at Lianos, Davis and Nebbia, 'The Directive on Actions for Damages for Infringements of Competition Law' (n 9) 223–225.

[173] Case C-681/11 *Bundeswettbewerbsbehörde, Bundeskartellanwalt v Schenker & Co AG*, EU:C:2013:404, para 41 (with respect to intention-related or negligence-related conditions regarding the imposition of a fine on a person who has infringed EU competition rules). For the CJEU, the fact that the undertaking concerned has characterized wrongly in law its conduct upon which the finding of the infringement is based, cannot have the effect of exempting it from imposition of a fine insofar as it could not be unaware of the anti-competitive nature of that conduct (paras 37–38). According to the Court, 'legal advice given by a lawyer cannot, in any event, form the basis of a legitimate expectation on the part of an undertaking that its conduct does not infringe art 101 TFEU or will not give rise to the imposition of a fine' (para 41).

[174] Steven M Shavell, 'Liability for Harm versus Regulation of Safety' (1984) 13 Journal of Legal Studies 357, 360.

[175] Segal and Whinston (n 156).

[176] van den Bergh (n 164) 14.

true if violation victims are downstream consumers who are 'too numerous and remote from the violation to locate and compensate'.[177] Causation standards and tort law requirements for damage evidence and harm quantification may also disincentivize consumers suffering 'dynamic injuries' (eg, dynamic efficiency or innovation losses) from suing, resulting in damages for such harm almost never being recovered in private litigation.

In conclusion, deterrence may be achieved more effectively through public enforcement, although private enforcement (particularly collective redress) might safeguard against under-enforcement due to inadequate resources or ideological bias.[178] Public enforcers' pursuit of public interest and superior expertise constitutes additional advantages. Follow-on actions may produce deterrent effects when damages supplement other monetary sanctions. However, they can also lead to over-deterrence, duplication of enforcement efforts, and strategic litigation to harass rivals, thereby suppressing productive business activities.[179] These effects depend on the institutional structure of private enforcement systems in specific jurisdictions. Follow-on actions may prove particularly valuable when public enforcement increasingly takes the form of settlement decisions or hybrid decisions, as currently occurring across the EU.[180]

Follow-on damages may only jeopardize public enforcement effectiveness when public enforcers rely heavily on leniency and self-reporting to uncover harmful activity, as subsequent private damages litigation may diminish leniency programmes' attractiveness.[181] This assumes that leniency policies are effective, an assumption that may not always be valid.[182] It also focuses on the impact of follow-on cases on leniency and does not integrate the impact of standalone private enforcement cases, which may incentivize leniency applications.[183]

[177] See also Christopher Hodges, 'Fast, Effective and Low Cost Redress: How Do Public and Private Enforcement and ADR Compare?' in Barry Rodger (ed), *Competition Law, Comparative Private Enforcement and Collective Redress Across the EU* (Wolters Kluwer 2014) 278 (noting that the minimum threshold of viability for bringing an individual competition case is damages of GB£500,000, and more like GB£3 million and that 'half of those who thought they had been a victim of anti-competitive behaviour did not consider bringing a legal claim because the expected costs outweighed the benefits', for instance, '(i)n the JJB Sports case, individual compensation payments were only between GBP 10 and GBP 20'.

[178] See Juska (n 131).

[179] R Preston McAfee and Nicholas V Vakkur, 'The Strategic Abuse of the Antitrust Laws' (2004) 1 Journal of Strategic Management Education 1.

[180] Wouter JP Wils, 'The European Commission's Cartel Settlement Procedure: An Assessment after 15 Years' (2024) 15 Journal of European Competition Law & Practice 71 (noting that 'the percentage of settlement and hybrid cases has […] increased over time, from 26% in the first five-year period (1 July 2008 to 30 June 2013), over 75% in the second five-year period (1 July 2013 to 30 June 2018) to 82% in the third five-year period (1 July 2018 to 30 June 2023)').

[181] Although leniency promotes self-reporting for cartel activity and thus makes cartel discovery more likely, hence increasing the deterrent effect of the law, while enabling competition authorities to save investigative costs. See, Giancarlo Spagnolo, *Divide et Impera. Optimal Deterrence Mechanisms Against Cartels and Organized Crime* (U. of Mannheim, August 2003) 22; Joseph E. Harrington Jr. and Myong-Hun Chang, 'Modeling the Birth and Death of Cartels with an Application to Evaluating Competition Policy', (2009) 7 Journal of the European Economic Association 1400; Steffen Brenner, 'An Empirical Study of the European Corporate Leniency Program', (2009) 27 International Journal of Industrial Organisation 639. the academic literature predominantly defends the view that (follow-on) private enforcement may impact on the incentives for leniency applications (see, *inter alia*, OECD, 'Relationship Between Public and Private Antitrust Enforcement', *OECD Roundtables on Competition Policy Papers*, No. 174, (2015) OECD Publishing, Paris available at <https://doi.org/10.1787/8c535258-en> accessed 5 August 2025; Olivia Bodnar and others, 'The Effects of Private Damage Claims on Cartel Activity: Experimental Evidence', (2023) 39 The Journal of Law, Economics, and Organisation 27; Roberto Alimonti and others, 'The interplay between leniency programmes and private enforcement: the economist perspective on recent policy proposals', (2023) 21 Competition Law Journal 170; Catarina Marvao and Giancarlo Spagnolo, 'Leniency inflation, the Damages Directive, and the decrease in cartel cases', VoxEU CEPR (9 March 2024) <https://cepr.org/voxeu/columns/leniency-inflation-damages-directive-and-decrease-cartel-cases> accessed 5 August 2025.

[182] Joe Chen and Joseph E Harrington, 'The Impact of the Corporate Leniency Program on Cartel Formation and the Cartel Price Path' in V Ghosal and J Stennek (eds), *Contributions to Economic Analysis*, vol 282 (Elsevier 2007); Gordon J Klein, 'Cartel Destabilization and Leniency Programs: Empirical Evidence' (2010) ZEW Discussion Papers, No 10-107 <https://www.econstor.eu/bitstream/10419/44455/1/645296945.pdf> accessed 5 August 2025. For an interesting critical assessment, see Joan-Ramon Borrell and others, 'Short and Long Run Effects of Leniency Programs on Cartel Stability and Prosecution', (2024) 20 Journal of Competition Law & Economics 181.

[183] See Sinchit Lai, 'Incentivising Private Antitrust Enforcement to Promote Leniency Applications' (2021) 17 Journal of Competition Law & Economics 728.

The impact of private enforcement on the incentive of the parties to enter into settlements with the competition authority remains an open question.

Segal and Whinston observed that public agencies more easily pre-commit to deterrence through resource allocation, enforcement reputation, and priority guidelines.[184] Pre-commitment proves difficult in private enforcement, as reputation-building costs typically exceed benefits unless the plaintiff is frequently harmed, suggesting pure public enforcement might achieve deterrence more effectively. However, recent research notes 'regulatory devices may generate different incentive effects for different individuals' and these 'unequal incentive effects can generate (heterogeneous) social costs by causing some individuals to be over-deterred and others to be under-deterred'.[185] When fine caps exist, and regulators cannot observe firm-specific costs, combining instruments that 'generate variation in opposite directions' proves valuable.[186] This supports mixed enforcement regimes using different 'punishment technologies': public fines and private damages.

If corrective justice is the enforcement system's principal objective, private enforcement may be superior. First, private parties possess superior information about harm suffered, which in some cases requires incremental information collection during litigation as parties finalize their narratives. Private parties may also enjoy discretion in conceptualizing and quantifying harm unavailable in administrative procedures controlled by competition authorities. Secondly, proceeds go to victims who suffered harm, rather than to the public purse, as occurs with fines in public enforcement.

The relative advantage private enforcement enjoys regarding compensation does not necessarily mean it guarantees *effective* compensation to competition law victims.[187] Taking stock of this, some authors have proposed additional tasks for private enforcement, particularly regarding injunctive relief, such as using the 'power of private litigation to frame private bargaining (through settlement agreements, arbitration, or other mechanisms of private governance) over problems of market power', with courts adopting forward-looking 'remedies' where private bargaining fails to achieve desirable results.[188]

A law and political economy perspective on the interaction between public and private competition law enforcement

The 'regulatory capture' and 'private-interest' theories of regulation, along with public choice perspectives, argue that competition policy serves not only to promote economic or consumer welfare but is also vulnerable to rent-seeking exploitation.[189] This highlights the distributional politics and interest-driven character of competition law and policy.[190] The efficiency-centred framework of optimal enforcement theory may accordingly be

[184] Segal and Whinston (n 156).

[185] Brian Galle and Murat C Mungan, 'Optimal Enforcement with Heterogeneous Private Costs of Punishment', (2021) 50 Journal of Legal Studies 445.

[186] ibid 464–466.

[187] See the statistics of JF Laborde, 'Cartel Damages Actions in Europe: How Courts Have Assessed Cartel Overcharges' (2025 edn), Concurrences N° 7-2025 <7-2025_legal_practice_laborde-v4.pdf> accessed 5 December 2025. The author notes with regard to cartel private enforcement that, based on data in 30 European jurisdictions, 444 cartel damages actions were identified, including 115 cases in which damages were awarded, 73 cases in which liability was established, and 215 cases that resulted in dismissals. From these cases, 51 per cent were follow-on from NCA's decisions, 46 per cent were follow-on from a European Commission's decision, and only 2 per cent were stand-alone actions. The study notes five cases in Greece in which damages were awarded.

[188] Crane (n 131) 677.

[189] Sam Peltzman, 'Stigler's Theory of Economic Regulation After Fifty Years' (2022) 193 Public Choice 7; William F Shughart II and Fred S McChesney, 'Public Choice Theory and Antitrust Policy' (2010) 142 Public Choice 385; Fred S McChesney and William F Shughart II (eds), *The Causes and Consequences of Antitrust: The Public-Choice Perspective* (University of Chicago Press 1995).

[190] Moritz Wassum, 'The Political Economy of Competition Policy: Varieties of Competition Policy Approaches?' (PhD thesis, University of Strathclyde 2023).

supplemented with broader political economy perspectives, such as a 'varieties of capitalism' approach. This acknowledges that competition policy frameworks emerge from and reflect the broader institutional architecture of domestic political economies and legal systems or alternatives.[191] Competition policy features are arguably complementary to, and shaped by, broader institutional configurations of the legal system and its political economy. From this broader political economy perspective, it has been argued that even the adoption of competition laws, let alone their implementation, is driven by the convergence of capitalist production modes, democratic political institutions, and pro-consumer policy orientations, largely explaining their spreading 'to nearly all corners of the globe'.[192]

The 'varieties of capitalism' (VoC) framework posits that competition policy should reinforce rather than undermine institutional complementarities. VoC traditionally distinguishes two types of economies: Liberal Market Economies (LME) emphasize market-oriented policies and adaptability, while Coordinated Market Economies (CME) feature strategic public–private coordination that complements market mechanisms to accumulate specific skills.[193] Some scholars refine the LME/CME distinction by introducing Mixed Market Economies (MMEs), predominantly found in Southern Europe, to capture systems displaying hybrid institutional characteristics.[194] Countries following the Mediterranean model are characterized by extensive product-market regulation that creates barriers to entrepreneurship and a large public sector presence in the economy.[195] Greece exhibits distinctive features even within the Mediterranean model of which it forms part. Its political economy is characterized by clientelism and arguably corruption.[196] It also has a fragmented corporatist structure in which trade unions predominantly represent public sector employees while employer federations favour large firms.[197] This leaves private sector employees and small and medium enterprises without effective representation, while the rent-seeking nature of interest mediation, marked by antagonism and mistrust, further marginalizes their concerns in the policy process.[198] This contrasts with the reality of the structure of the economy, which is still marked by very few large enterprises and a large number of micro- and small-firms.[199] This imbalance of potential influence creates opportunities for large corporations and oligarchs in concentrated

[191] Peter A Hall and David Soskice (eds), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (OUP 2001). Alternative approaches adopt a wider typology than the binary distinction between liberal market economies (LME) and co-ordinated market economies (CME) as in the 'varieties of capitalism' framework, and also engage more deeply with institutional change, focusing not only on firms, but also the state, labour power, legal institutions, the growth imperative and distributional conflict: see, for instance, Amable B, *The Diversity of Modern Capitalism* (OUP 2003); Baccaro L and Pontusson J, 'Rethinking Comparative Political Economy: The Growth Model Perspective' (2016) 44 Politics & Society 175.

[192] Raju Parakkal and Sherry Bartz-Marvez, 'Capitalism, Democratic Capitalism, and the Pursuit of Antitrust Laws' (2013) 58 Antitrust Bulletin 693.

[193] Peter A Hall and Daniel W Gingerich, 'Varieties of Capitalism and Institutional Complementarities in the Political Economy: An Empirical Analysis' (2009) 39 British Journal of Political Science 449.

[194] Bruno Amable, *The Diversity of Modern Capitalism* (OUP 2003); Luigi Burroni, Emmanuele Pavolini and Marino Regini (eds), *Mediterranean Capitalism Revisited: One Model, Different Trajectories* (Cornell University Press 2022).

[195] Amable (n 194) 22 and 175.

[196] Aris Trantidis and Vasiliki Tsagkroni, 'Clientelism and Corruption: Institutional Adaptation of State Capture Strategies in View of Resource Scarcity in Greece' (2017) 19 British Journal of Politics and International Relations 263.

[197] Kostas A Lavdas, 'Interest Groups in Disjointed Corporatism: Social Dialogue in Greece and European "Competitive Corporatism"' (2005) 28 West European Politics 297; Christos A Ioannou, *Trade Unions in Greece: Development, Structures and Prospects* (Friedrich Ebert Stiftung 1999).

[198] Kevin Featherstone, 'Varieties of Capitalism and the Greek Case: Explaining the Constraints on Domestic Reform?' GreeSE Paper No 11 (Hellenic Observatory Papers on Greece and Southeast Europe, February 2008).

[199] Institute for Hellenic Growth and Prosperity The Greek Economy: Current State and Perspectives (American College of Greece, February 2025) <https://acg150.acg.edu/wp-content/uploads/2025/03/IHGP_The-Greek-Economy-Current-State-and-Perspectives.pdf> accessed 26 December 2025 (observing that in 2023 'SMEs made up 99.8% of all domestic businesses, with micro-ventures -those employing less than 10 individuals - comprising 94.7%' and also noting that although 'smaller firms play a dominant role in the economy, their low productivity, limited growth capacity, and lack of digital intensity, result in Greek businesses operating far from the technological frontier compared to EU counterparts).

markets and industries, particularly the non-tradable sector, to gain political power.[200] This dynamic is consistent with findings from the corporate political activity and political marketplace literature[201] and is reinforced by the general public's lack of knowledge about competition law and policy.[202]

The VoC perspective challenges the idea of a single optimal institutional configuration, as is suggested by the optimal enforcement theory, and provides some word of caution as to the possibility of transferring institutions to other economies due to institutional complementarities and interaction effects across institutions.[203] It also appears potentially at odds with the process of Europeanization of competition law and policy undertaken since Regulation 1/2003 for public enforcement and minimum EU harmonization for private enforcement.[204] Nevertheless, this process pressures institutional change to overcome the domestic inertia of Mediterranean capitalism, especially in Greece.[205] The EU's competition framework, based on neoliberal economic principles with decentralized public enforcement (by the Commission and national authorities) and private enforcement via representative actions, should be implemented across all Member States, irrespective of their diverse varieties of capitalism. Institutional reform should consider complementarities between public and private enforcement of competition law, as well as broader cross-domain effects on the legal system.

In addition to VoC approaches, academic literature has also highlighted that the business cycle affects competition law enforcement activity, identifying GDP growth rates and unemployment levels as variables that may determine enforcement intensity.[206] This literature emphasizes the countercyclical role of regulation and competition law enforcement: low enforcement intensity during downturns protects producer interests, while high intensity during expansions promotes consumer protection. This pattern is also consistent with interest-group theories of regulation,[207] and should also be considered in view of the specificities of Greece's economic situation over the last decade. Applying this broader framework to the respective role of public and private enforcement, it becomes clear with regard to public enforcement that the independence of competition authorities from political and economic influence represents a key feature of democratic capitalism in Europe, their non-majoritarian

[200] See, Michael Mitsopoulos and Theodore Pelagidis, 'Vikings in Greece: Kleptocratic Interest Groups in a Closed, Rent-Seeking Economy' (2009) 29 Cato Journal 399; Tryphon Kollintzas and others, 'Market and Political Power Interactions in Greece: An Empirical Investigation' (2018) 7 IZA Journal of Labor Policy 1. For the general proposition of special interests impacting on policymaking, see Gene M Grossman and Elhanan Helpman, *Special Interest Politics* (MIT Press 2001).

[201] David P Baron, 'The Nonmarket Strategy System' (1995) 37 Sloan Management Review 73; Amy J Hillman, Gerald D Keim and Douglas Schuler, 'Corporate Political Activity: A Review and Research Agenda' (2004) 30 Journal of Management 837; Ivana V Katic and Amy Hillman, 'Corporate Political Activity, Reimagined: Revisiting the Political Marketplace' (2023) 49 Journal of Management 1.

[202] OECD, *Competition Law and Policy in Greece: A Peer Review* (OECD 2017) <https://www.oecd.org/competition/greece-peer-review-competition-law-policy.htm\> accessed 10 March 2026.

[203] For an analysis of the application of the VoC framework in competition law, see Chase Foster and Sebastian Kohl, 'Competition Law and Varieties of Capitalism in the Long Run: The Evolution of Institutional Complementarity, 1890–2010' (2026) Governance e70128.

[204] Lee McGowan, 'Europeanization Unleashed and Rebounding: Assessing the Modernization of EU Cartel Policy' (2005) 12 Journal of European Public Policy 986.

[205] Featherstone (n 198) 10.

[206] Ryan Amacher and others, 'The Behavior of Regulatory Activity over the Business Cycle: An Empirical Test' (1985) 23 Economic Inquiry 7 (finding that the enforcement of the Robinson-Patman Act supplied more producer protection (counteracting downturns) during contractions and more consumer protection during expansions); Vivek Ghosal and Joseph Gallo, 'The Cyclical Behavior of the Department of Justice's Antitrust Enforcement Activity' (2001) 19 International Journal of Industrial Organization 27; Robert M Feinberg and Kara M Reynolds, 'The Determinants of State-Level Antitrust Activity' (2010) 37 Review of Industrial Organization 179 (finding a positive relationship between unemployment levels and the number of cases filed by US state attorney generals from 1992 to 2006 as evidence for countercyclical enforcement activities).

[207] On the application of this theory in competition law, see Thomas J DiLorenzo, 'The Origins of Antitrust: An Interest-Group Perspective' (1985) 5 International Review of Law and Economics 73.

institutional design reflecting the evolution towards a (EU or Europeanized national) regulatory state.[208]

Political science scholarship distinguishes agencies' formal political independence, defined as legal capacity to decide without political interference[209] from 'informal', 'actual', or 'de facto' independence.[210] Gilardi and Maggeti observe that independence has two components: first, it means self-determination, 'the faculty of actors to judge their own interests and values', these being 'distinguishable from those of other social forces'; second 'ownership' of their actions, enabling them to translate their 'own interests and values (e.g., preferences) into (authoritative) actions, without external constraints'.[211] Agencies should, however, form 'open systems',[212] their preferences and behaviour being 'always shaped by their social interactions with other actors',[213] including the government, the legislator and the judiciary, to which they are politically and legally accountable.[214] Traditional indicators of formal independence have included incompatibility between agency board membership and other governmental positions, or provisions governing appointment terms, though recent research questions whether appointment procedures reliably signal formal independence. Yet even formal independence proves complex: as Hanretty and Koop observe, 'If we are interested in independence from politics simpliciter, why is independence from legislators different from independence from cabinet ministers–particularly when the cabinet enjoys a legislative majority?'[215] Informal or *de facto* independence takes a broader perspective and 'connotes the extent of regulators' effective autonomy as they manage their day-to-day regulatory actions', thus indicating that in order to measure it 'one needs to address the extent and the degree of the institutionalization of the discretionality conveyed to these agencies', not only 'with reference to elected politicians, but also with respect to representatives of the sectors targeted by regulation'.[216] Relevant criteria for measuring this informal independence (from politics or business) include the frequency of revolving doors, of contacts, or adequacy of the budget and discretion to use it, influence of politicians or the private sector on internal organization, the partisanship of nominations, political vulnerability, etc.[217]

While scholarship on law and political economy concerning the structure and operation of public EU competition law enforcement is well-developed, the contribution of private enforcement to competition law's political economy in Europe has received insufficient attention.[218] Focusing on the US example, some studies argue that 'private antitrust enforcement

[208] Giandomenico Majone, 'Temporal Consistency and Policy Credibility: Why Democracies Need Non-Majoritarian Institutions' (European University Institute Working Paper RSC No 96/57, 1996); Pierre Rosanvallon, *Politics in an Age of Distrust* (Arthur Goldhammer tr, CUP 2008) On the emergence of an EU or Europeanized national regulatory state, see Giandomenico Majone, 'The Rise of the Regulatory State in Europe' (1994) 17 West European Politics 77; Martin Lodge, 'Varieties of Europeanisation and the National Regulatory State' (2002) 17 Public Policy and Administration 43.

[209] Chris Hanretty and Christel Koop, 'Measuring the Formal Independence of Regulatory Agencies' (2012) 19 Journal of European Public Policy 198, 202.

[210] Fabricio Gilardi and Martino Maggetti, 'The Independence of Regulatory Authorities' in D Levi-Faur (ed), *Handbook on the Politics of Regulation* (Edward Elgar 2011) 201; Fabricio Gilardi, 'The Formal Independence of Regulators: A Comparison of 17 Countries and 7 Sectors' (2005) 11 Swiss Political Science Review 139; Chris Hanretty and Christel Koop, 'Shall the Law Set Them Free? The Formal and Actual Independence of Regulatory Agencies' (2013) 7 Regulation and Governance 195.

[211] Gilardi and Maggetti (n 210) 201.

[212] Walter JM Kickert, 'Autopoiesis and the Science of (Public) Administration: Essence, Sense, and Nonsense' (1993) 14 Organization Studies 261.

[213] Gilardi and Maggetti (n 210) 204.

[214] For a discussion of the interaction between different forms of accountability in economic (digital) regulation, see Ioannis Lianos and Despoina Mantzari, 'Accountability of Digital Regulators' (10 January 2026) SSRN <https://ssrn.com/abstract=6111866\> accessed 10 March 2026.

[215] Hanretty and Koop (n 209) 204.

[216] Gilardi and Maggetti (n 210) 205.

[217] ibid.

[218] See, however, in the United States, work by Eric Posner, Luigi Zingales and Filippo Lancieri, 'The Political Economy of the Decline of Antitrust Enforcement in the United States' (University of Chicago Becker Friedman Institute Working Paper No 2022-104, 2022); Filippo Lancieri, 'Rethinking The Key Role of Private Antitrust Enforcement' (SSRN Working Paper, 1

plays a key role in helping diminish risks of regulatory capture in three ways': by diminishing incentives and the potential returns of political influence campaigns, by increasing the transparency of rents extracted through the exercise of market power, and by establishing a countervailing interest group, such as the development of a strong plaintiffs' bar.[219]

The formal or informal independence of courts adjudicating competition law disputes has generated less controversy compared to debates surrounding public enforcement. First, judges (whether in generalist or specialized courts/tribunals) are usually appointed through standard procedures applicable across all legal fields, without political involvement at this stage, at least similar to that for the appointment of members of competition authorities. Moreover, this may stem from the relatively limited adjudicatory scope in private enforcement cases: courts are traditionally viewed as resolving private disputes rather than tackling (proactively) polycentric problems involving intricate webs of interdependent relationships that generate complex repercussions.[220] In reality, however, damages (and other private enforcement) actions may necessitate value judgments concerning, for example, the incentives, costs, and compensation entitlements of all parties affected by anticompetitive conduct. This can extend along entire value chains and into markets with cross-domain effects, thus encompassing interests beyond those directly represented in the litigation.

The foregoing analysis demonstrates that private enforcement must offer sufficient opportunities for *all* stakeholders to participate in judicial enforcement and interpretation of competition law. Considering Greece's fragmented corporatist framework, this necessitates broadening participatory rights exercised through collective (representative) court actions for less organized interests—consumers, employees, and SMEs—allowing them to pursue their interests judicially without relying on the competition authority. This justifies a complementary role for private enforcement on grounds distinct from optimal enforcement theory. This complementarity holds particular significance within Greece's broader political economy context, characterized by clientelism and threats to the competition authority's de facto independence arising, as discussed in a subsequent section, from persistent resource limitations and inadequate investment, exacerbated by the Greek economy's unstable business cycles during the past decade. Its effectiveness, however, hinges on wider institutional complementarities that are largely absent in Greece, including burdensome evidentiary rules, a weak competition law plaintiff bar, insufficient specialized judicial expertise, the absence of third-party litigation funding, and inadequate public enforcement resources, particularly for follow-on damages actions. The 2018 transposition process for the Damages Directive inadequately addressed these institutional complementarities, potentially explaining the relatively underwhelming empirical outcomes discussed in the preceding section.

6. PRIVATE ENFORCEMENT AS A NECESSARY COMPLEMENT TO PUBLIC ENFORCEMENT: THE POLITICAL ECONOMY OF ANTITRUST ENFORCEMENT IN GREECE

This section applies the theoretical framework. From an optimal enforcement theory perspective, the principal factor supporting our conclusion about private enforcement's critical importance in Greece involves challenges related to detecting anticompetitive conduct and, more generally, the standard of public enforcement. We also briefly consider the two other

February 2025), noting relying on the private-interest theory of regulation that 'a policy exclusively reliant on public enforcement is under heightened risk of regulatory capture' and that "weak enforcement windows" exist not only due to legitimate variations in political preferences, rather through the active steps that companies take to create them'.

[219] Filippo Lancieri, 'Rethinking The Key Role of Private Antitrust Enforcement' (SSRN Working Paper, 1 February 2025) 32–34 <https://ssrn.com/abstract=4767723> accessed 28 December 2025.

[220] Lon L Fuller, 'The Forms and Limits of Adjudication' (1978) 92 Harvard Law Review 353.

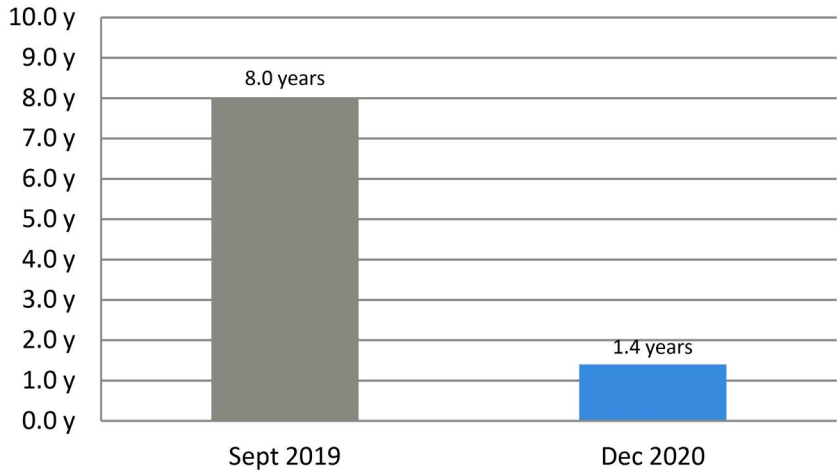

Figure 4. Average age of pending cases (years). *Source*: Dataset compiled by the authors from HCC Newsletters and Annual Reports.

essential parameters of the optimal enforcement approach: sanction and fine levels, and the overall liability framework governing both standalone and follow-on actions. In Greece, private enforcement fulfils not only its conventional compensatory function but may also serve as a vital element of both general and specific deterrence. This assessment finds support in the law and political economy perspective, which underscores the institutional complementarities required to establish an effective private enforcement system that achieves both deterrence and corrective justice objectives.

The decade following the Greek government debt crisis in 2009 represented a severe socio-economic downturn that was exceptional by peacetime standards.[221] It resulted in a substantial decline of more than 40 per cent in nominal GDP per capita (from $31,695 in 2008 to $17,886 in 2020)[222] while unemployment reached a peak of 27.7 per cent in 2013.[223] Government debt increased to 294.4 per cent of the GDP in 2020 (from 129 per cent GDP[224] or after recalculations from 115 per cent GDP in 2009),[225] despite three bail-out packages from the IMF and the Eurozone Member States totalling approximately $320–330 billion USD at historical exchange rates.[226] It also led to significant strain on the financial system, with the number of banks decreasing and banking concentration—measured by the assets held by the three largest commercial banks as a share of total commercial banking assets increasing from 64.9 per cent in 2009 to 98.2 per cent in 2015 and coming slightly down to 97.7 per cent in 2019.[227] A similar increase in economic concentration has occurred

[221] For an interesting discussion see, among others, Ioannis Lianos, La crisis de endeudamiento de Greciatécnica y democracia en la formulación de políticas, (2025) 15 Foreign Affairs: Latinoamerica 80, La crisis de endeudamiento de Grecia | Foreign Affairs Latinoamérica | Revista oficial de Foreign Affairs Latinoamérica <https://revistafal.com/la-crisis-de-endeudamiento-de-grecia/> accessed 5 August 2025; George Pagoulatos, 'Greece after the Bailouts: Assessment of a Qualified Failure', paper no 130 (Hellenic Observatory, November 2018) <https://www.lse.ac.uk/Hellenic-Observatory/Assets/Documents/Publications/GreeSE-Papers/GreeSE-No130.pdf> accessed 5 August 2025.

[222] See <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=GR> accessed 5 August 2025.

[223] See <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=GR> accessed 5 August 2025.

[224] See IMF: Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement, June 2013, p 5.

[225] See <https://data.worldbank.org/indicator/GC.DOD.TOTL.GD.ZS?locations=GR> accessed 5 August 2025.

[226] See Vassiliki Dimakopoulou, George Economides and Apostolis Philippopoulos, 'Repayment of EU Bailout Loans in a Member-country of the ES: The Case of Greece. *Open Econ Rev*' (2025) <https://doi.org/10.1007/s11079-025-09822-8> accessed 5 August 2025.

[227] <https://fred.stlouisfed.org/series/DDOI01GRA156NWDB> accessed 5 August 2025.

across other economic sectors in Greece during the same period.[228] Research over the contribution of Unit Profit to inflation also shows that between 2014 and 2018 Unit Profit contributed negatively to GDP deflator, Greece standing relatively at the top of the list of EU countries,[229] concerning the contribution of Unit Profit to GDP deflator. Research also shows a relative decline in labour share during this period and more recently (2019–2022).[230]

The crisis period (2009–2019) also witnessed a significant reduction in the HCC's material and human resources. While this did not affect the overall levels of public enforcement activity by the HCC, which remained roughly consistent with pre-crisis levels, the rise in economic concentration during this period does not appear to have been addressed through more aggressive competition law enforcement. Following significant cuts to public sector pay (in some cases exceeding 40 per cent), a freeze on new recruitment, and relatively modest salary increases for HCC staff (including the absence of bonus or productivity payments), the HCC experienced substantial staff turnover during 2011–2022. New recruitment rounds for permanent staff managed by the Supreme Council for Civil Personnel Selection (ASEP) occurred only in 2016 (11 positions) and 2020 (14 positions), resulting in fewer than 60 FTE scientific staff (lawyers, economists, and data scientists) by 2023. These recruitments did not replace departures, which led to an increased workload for the remaining staff.

This lack of resources, along with broader case management and efficiency issues, resulted in a concerning backlog: by September 2019, half of the cases pending before the Directorate General of the HCC had been initiated before 2011, with an average age of pending cases at the HCC reaching eight years.[231] The excessive length of proceedings was exemplified by the fact that most antitrust completed cases (published HCC Board's infringement decisions or decisions declaring non-infringement and excluding interim measures) during 2015–2019 took an average of 7.67 years (for Article 101 TFEU and national equivalent) and 9.8 years (for Article 102 TFEU and national equivalent) to be finalized, with quite a few cases extending beyond ten years from initiation (whether through ex officio investigation or following a complaint). In a notable example relating to the 'foreign-language books' cartel during 2006–2009, the HCC was itself condemned by the Administrative Court of Appeal of Athens in 2015 and 2024[232] to pay damages totalling €770,000 for moral harm suffered by one of the cartel victims due to the 'unjustified delay' in completing its investigation. However, since late 2019 and particularly during 2020–2021, new case management techniques were introduced, including the establishment of a task force to address the caseload, publication of a manual of procedures, implementation of a new sector-oriented interdisciplinary structure for the Directorate General to enable smoother cooperation between lawyers and economists, and rapid digitalization of the HCC with a case management and task monitoring system.

[228] European Commission: Directorate-General for Competition, *Protecting competition in a changing world – Evidence on the evolution of competition in the EU during the past 25 years*, Publications Office of the European Union, 2024, 5 <https://data.europa.eu/doi/10.2763/089949> accessed 5 August 2025 (noting that average market concentration regarding consumer facing markets (B2C) is comparatively (to other EU member States) high in Greece over the 2000-2019 period).

[229] Athanassios Stavrakoudis, 'A Short Note on the Latest Developments in the Food Sector, Hellenic Competition Commission Newsletter' issue 7 (August 2023), 23, spec 25–26 <https://www.epant.gr/en/information/publications/newsletters/item/2689-issue-7.html> accessed 5 August 2025.

[230] See the discussion in Dimitris Papageorgiou and Anastasios Rizos, Inflation Dynamics and the Role of Domestic Factors (December 2024) Bank of Greece – Economic Bulletin 7.

[231] See the statistics in HCC Newsletter issue 8 (December 2023), available (only in Greek) at <https://www.epant.gr/enimerosi/dimosieyseis/enimerotika-deltia/item/2784-teyxos-8.html> accessed 5 August 2025.

[232] Athens Administrative Court of Appeal Judgment No. 2903/2013 and 1286/2024.

These reforms reduced the average age of pending cases to 1.4 years by December 2020, and this improvement has been sustained at below 2 years throughout 2021–2024 (Fig. 4).[233]

This trend is also confirmed by the significant drop of the average duration of the proceedings in the published completed decisions dataset the period 2020–2024 (published HCC Board's infringement decisions or decisions declaring non-infringement and excluding interim measures) which was 4.3 years (for Article 101 TFEU and national equivalent) and 6.1 years (for Article 102 TFEU and national equivalent), a drop of more than 40 per cent in the length of investigations and proceedings, in comparison to the period (2015–2019). If one only considers the decisions issued in 2023 and 2024 (for Article 101 TFEU and national equivalent) the average duration of proceedings falls below 2.68 years, a drop of almost 65 per cent in the duration of investigations and proceedings in comparison to the period 2015–2019, showcasing the significant impact of the case management reforms introduced at the end of 2019/early 2020 in the effectiveness of the HCC. Notably, complex cases of large-scale cartel activity, such as the one in the banking sector[234] or in the provision of harbour tug services[235] or complex abuse of dominance cases,[236] to cite some examples, were completed (imposing fines) in less than 4 years from initiation, despite the lockdown period and other COVID-related complications.

In addition to better case management practices, a significant factor explaining these improvements is the increased use of settlement decisions and, to some extent, commitment decisions. There has been a limited upward trend in recent years in the number of settlement decisions issued since 2017 when the procedure was used for the first time, with settlements representing 34.7 per cent of the total infringement decisions (regarding Article 101 TFEU and the national equivalent being settlements) during the period 2017–2020, while this percentage slightly increased to 39.4 per cent during the period 2021–2024, but still remains below the EU Commission's average for hybrid and 'pure' settlement decisions, which was 82 per cent of the infringement decisions regarding Article 101 TFEU during the period July 2018 to July 2023.[237] It should be noted that the revision to Law 3959/2011 introduced by Law 4886/2022 expanded the use of settlement decisions from horizontal restrictive practices to all infringements of Articles 101 and 102 TFEU and Articles 1, 1A, and 2 of Law 3959/2011.[238] The procedure has thus far been used primarily for RPM cases and not for abuse of dominance cases.

This expansion was particularly important for several reasons. First, the HCC lacks a dedicated legal support (litigation) department and has long been represented in administrative and other courts on an ad hoc basis by external lawyers appointed by the Board for specific cases. The relatively low legal fees paid by the HCC and potential conflicts of interest, given the relatively small legal market specializing in competition law in Greece, have made it increasingly difficult to attract experienced legal practitioners to represent the HCC in court. A reform introduced in 2020 established an Office of the Legal Council of State at the HCC to represent the authority before administrative and other courts,[239] while maintaining the

[233] ibid.

[234] See <https://www.epant.gr/en/information/press-releases/item/2779-press-release-fines-totaling-41-756-180-10-euro-imposed-on-five-banks-and-the-hellenic-banking-association-hba-along-with-the-imposition-of-a-behavioural-remedy-following-decision-adopted-under-the-settlement-procedure.html> accessed 5 August 2025.

[235] See <https://www.epant.gr/en/information/press-releases/item/2373-press-release-fines-of-4-360-818-28-euros-to-companies-providing-harbour-tug-services.html> accessed 5 August 2025.

[236] See Decision 787/2022 available at <https://www.epant.gr/en/decisions/item/2940-decision-787-2022.html> accessed 5 August 2025.

[237] Wils (n 180).

[238] art 29A Law 3959/2011 (as amended by Law 4886/2022).

[239] art 67 of Law 4714/2020.

possibility of appointing external lawyers under specific circumstances. However, the Legal Council of State Office at the HCC has not been adequately staffed with legal counsel possessing significant practical experience in competition law litigation. Consequently, preparing the HCC's cases before administrative courts requires substantial involvement from HCC management, supported by the Chief Legal unit and specific case teams. This draws upon the scarce resources of the Directorate General of the HCC, of which these units form part.

Secondly, the length of the administrative appeal process in front of the Administrative Court of Appeal, and even more at the Council of State may jeopardize the possibility of the victims of competition law infringements to get timely compensation particularly as the civil courts usually stay proceedings in follow on cases when the decision of the HCC on which relies the damages/private enforcement claim has been appealed to the Administrative Court of Appeal. Settlement decisions may expedite the process, as defendants typically waive their right to contest the HCC's decision in court, with positive effects for both deterrence and compensation. This is particularly true when the drafters of HCC decisions provide detailed explanations of the facts and include information regarding specific instances of conduct that led to the legal qualification of the infringement in question. Where possible, they may even quantify the amount of overcharge resulting from cartels and horizontal restrictions.[240]

The role of settlements is particularly important in the specific political economy of antitrust enforcement in Greece, given the limited success of the leniency programme to date. This may be attributed to cultural norms and close family and social ties among leading entrepreneurs, as well as among top management personnel, reflecting the small size of the economy and the fact that certain sectors remain relatively closed and protected by barriers to foreign competition.[241] Since its establishment in 2005, there have been only three leniency applications for cartel cases (for which public information is available),[242] and in two out of the three instances, the leniency application was submitted *following* the HCC dawn raids and the subsequent discovery of potentially incriminating material.[243] This considerably increases the difficulty of cartel detection and extends the duration of investigations, as the HCC must resort to dawn raids and other intensive investigative measures to uncover cartel activity. However, due to procedural guarantees and the litigious behaviour of the undertakings involved, the HCC's evaluation of the evidence gathered may require several months to a few years of extensive investigation before the administrative file can be completed and finalized to proceed to a statement of objections. Given the limited success of the leniency programme, the HCC established a whistleblower tool in 2021 for use by the

[240] Note that although not including a calculation of the suspected overcharge, the recent settlement decision of the HCC regarding bank charges (Decision 838/2023) imposes a price cap of at least 30 per cent per bank of the amount of ATM charges imposed (thus insinuating that the overcharge is at least as much) for the duration of the infringement, and provides quite detailed information as to the facts of the case and the specific conducts of each bank and the banking association that led to the legal qualification of a single and continuous infringement of art 101 and art 1 Law 3959/2011. It is also uncontroversial that the type of conduct found to infringe Law 3959/2011 and Article 101 TFEU constitutes a horizontal restriction of competition (cartel) thus falling under the (rebuttable) presumption of art 14(3) of Law 4529/2018 implementing art 17(2) of Directive 2014/104 that it causes harm. This is clear as the Competition Act does not define the term 'cartel' and in any case does not distinguish between hardcore and other types of horizontal collusive restrictive agreements.

[241] For a discussion, see Yannis Katsoulacos, Christos Genakos and George Houpis, 'Product Market Regulation and Competitiveness: Towards a National Competition and Competitiveness Policy for Greece' in Costas Meghir and others, (eds), *Beyond Austerity: Reforming the Greek Economy* (MIT Press 2017) ch 4.

[242] HCC Decision 642/2017, HCC Decision 703/2020, HCC Decision 869/2024.

[243] The first leniency application was submitted following the dawn raid effectuated by the HCC that led to uncover the collusive scheme in the construction sector (HCC Decision 742/2014). This is also the first case in which the settlement decision procedure was also used, thus providing an example of simultaneous use of both the leniency and the settlement tools: see Decision 642/2017, s I.2. The second leniency application was submitted followed an HCC dawn raid in November 2021 in the market for the provision of services for the creation of the national cadastre that led to a settlement decision (Decision 790/2022) and an infringement decision in December 2024 (HCC Decision 869/2024).

general public, including specifically for bid rigging cases.[244] Following a significant public awareness campaign by the HCC, there has been a considerable increase in its use.[245]

Reinforcing its positioning in the broader political economy of Greece, the HCC has also, in recent years, developed an outreach strategy and entered into a number of MoUs with consumer associations as well as established cooperation with representatives of small and medium enterprise associations and academic institutions, with the aim of developing a vibrant public ecosystem for the protection of competition and to develop direct links with important stakeholders valuing an independent competition authority.[246] In particular, the points system for case prioritization introduced in 2019 provided preferential treatment to consumer associations with which the HCC has signed an MoU, with the aim of providing incentives for consumer associations to submit complaints to the HCC.[247]

The competition authority's independence from business, political, and other governmental interests has also proven contentious, as anticipated by the analysis in the preceding section. Although the HCC is an independent authority,[248] and since Law 4886/2022 is 'observed financially and administratively'[249] and not any more 'supervised' by the Ministry of Development,[250] its independence may be compromised by the central role played in the procedure of appointment of the members of the HCC by the Minister of Development, and more generally by the power of the government to decide its budget and the material resources (including human resources) on which it can rely.[251] Furthermore, the government has no recognized power to provide strategic steer to the HCC.[252]

Regarding the appointment of HCC members, tensions erupted in 2016[253] and more significantly in 2019,[254] with regard to the institution of conflicts of interest/incompatibilities that affected the appointment of existing members. This resulted in legal challenges to both

[244] See <https://www.epant.gr/en/whistleblowing.html> accessed 5 August 2025.

[245] It was reported that the whistleblower tool was used for 42 communications for possible infringements of competition law by the end of 2021, and that figure rose to more than 200 communications by the end of 2023.

[246] <https://www.epant.gr/en/information/press-releases/item/1423-press-release-memoranda-of-cooperation-between-the-hellenic-competition-commission-and-consumer-associations.html> accessed 5 August 2025. The HCC also provided competition training to consumer associations, in collaboration with BEUC, see <https://www.epant.gr/en/enimerosi/press-releases/item/1424-press-release-training-of-consumer-associations.html> and <https://www.epant.gr/en/enimerosi/press-releases/item/1434-press-release-competition-law-and-policy-training-consumer-associations.html> accessed 5 August 2025.

[247] See, HCC Decision 696/2019, criterion A.1.1.d. The most recent prioritization decision of the HCC Decision 844/2024 removed this criterion nonetheless.

[248] art 12(1) Law 3959/2011 stipulates that '(t)he Competition Commission is established and shall operate as an independent authority. Its members shall enjoy personal and functional independence, they shall be bound only by law and their conscience in exercising their competences and they are required to observe the principles of objectivity and impartiality. Its members shall neither receive nor request directions regarding the exercise of their duties from the Government or other public or private parties. The members of the Competition Commission shall not be removed from office for reasons related to the performance of their duties or the exercise of their powers, without prejudice to Articles 13 and 13A'.

[249] art 9 Law 4886/2022.

[250] Old version of art 12(1) Law 3959/2011.

[251] The HCC cannot recruit additional personnel, even if it disposes of the financial capacity under its budget, unless this is explicitly proposed by the Ministry of Interior Affairs, and approved by the cabinet in the annual programmation of recruitments in the public sector. Furthermore, for the initiation of the recruitment procedure, there must be an explicit authorization by the Ministry of Interior. As a result of this 'bottleneck' although the cabinet had approved in 2020 and 2021 the recruitment of 21 additional members of staff, the recruitment process stalled until the publication in May 2025 of an Announcement for the recruitment of 51 lawyers, economists, and IT, which constitutes a significant addition to the manpower and womanpower of the HCC. arts 56 and 57 of Law 5043/2023 further enhanced the autonomy of the HCC in managing the recruitment process, under the supervision of the Supreme Council for Civil Personnel Selection (ASEP), thus removing the central role ASEP played until then in the recruitment process, which culminated in significant delays. Due to delays resulting from the election period (during which there is a freeze on recruitments in the public sector) and further delays by the Ministry of Interior in implementing measures for the law, no recruitment of new personnel so far has been fully managed by the HCC.

[252] Such as the one existing in the UK for the CMA since April 2014 under the Enterprise and Regulatory Reform Act 2013.

[253] See <https://www.euractiv.com/section/competition/news/greek-government-accused-of-targeting-independent-authorities> accessed 5 August 2025.

[254] See <https://www.euractiv.com/section/economy-jobs/news/eu-commission-politics-intensifies-greek-row-over-competition-post/> accessed 5 August 2025.

the legitimacy of several members' appointments and the compatibility of their subsequent dismissals with applicable law. The Council of State eventually ruled that such dismissals were not incompatible with EU law, albeit only for the period preceding the transposition of the ECN Plus Directive.[255]

Law 4886/2022 introduced a significant reform regarding the appointment of members by attempting to place constraints on the Minister of Development's role in the process. The law created an independent expert committee to evaluate candidates through open competition and provide rankings to the Minister, who selects from the list with Parliamentary Committee consent for each candidate. The HCC head and vice-president are chosen by the government on the Minister of Development's proposal with Parliamentary Committee approval. Initially, three of five committee members were government-independent: the Council of State President or Vice-President (or State Legal Council equivalent) as Chair, the ASEP President or Vice-President, and a lottery-selected former Competition Commission President or Vice-President. Two members were academics in competition law and economics appointed by the Minister. However, a 2024 revision undermined this independence by replacing the lottery selection with ministerial appointment for the former Competition Authority representative, reversing Law 4886/2022's progress and reinforcing the Minister's central role in appointing HCC Members.[256]

Regarding financial autonomy and material resources, Law 3959/2011 established a system of own resources stipulating that each time a public limited company is formed or increases its capital, 0.1 per cent of the share capital or its increase is paid into the HCC budget. Although this system provided some independence in the HCC's resources, the economic crisis that Greece experienced in the 2010s led to a significant decline in the HCC's budget, which fell to €4 million in 2019 (down from €12.6 million in 2009). Of this amount, approximately €3.6 million covered staff salaries (an amount that remained constant throughout the period).[257] The uncertainty resulting from the choice of corporate form, with only public limited companies being subject to this contribution, and the impact of the economic crisis, made it increasingly difficult for the HCC to plan investments to enhance its capabilities, particularly in new computational tools.[258]

A legislative intervention in 2020 maintained this system of own-resources, but to enhance HCC's financial autonomy and stability, it further provided that if the HCC budget falls below 0.00004 per cent of the Greek GDP, the shortfall is made up out of the State budget.[259] This legislation and subsequent Law 4886/2022 introduced Key Performance Indicators (KPIs) to be determined by the HCC, whose performance is to be evaluated by an independent advisory expert group every 2 years. If the HCC attains its objectives, it may receive an additional 0.00001 per cent of GDP.[260] Following these reforms, aided by Greece's economic recovery, the HCC's budget doubled to reach €11 million in 2023,[261]

[255] Council of State, Decision No 911/2021.

[256] art 19 Law 5111/2024.

[257] See <https://one.oecd.org/document/DAF/COMP/AR(2023)14/en/pdf> accessed 5 August 2025 (indicating an amount of $5.3 million in 2019).

[258] For instance, the HCC's investments in IT and software equipment totalled less than €90,000 during the entire period from 2015- to 019 (less than €20,000 per year!). This, combined with the fact that the HCC employed no more than 3 IT specialists and had no strategic plan for technological transformation, largely explains the organization's technological backwardness during this 'lost' period for the digitalization of HCC: For the data, see HCC, Newsletter–issue 8 (December 2023), p 3 (only available in Greek).

[259] art 16 of Law 4753/2020.

[260] art 17(1) and art 22(3) of Law 3959/2011 (as amended by Law 4886/2022).

[261] See HCC, Annual Report 2023 <https://www.epant.gr/enimerosi/dimosieyseis/ektheseis-pepragmenon/item/2913-ekthesi-pepragmenon-tou-2023.html> accessed 5 August 2025.

though this remains significantly lower than the 2009 budget when adjusted to 2025 euros.[262]

Despite these challenging material conditions, the HCC has been an active competition law enforcer, particularly in recent years. It has been consistently ranked as the dawn raid leader among EU Member State competition authorities[263], dropping to second place in the final quarter of 2024.[264] In 2023, it imposed higher fines for competition law infringements than many larger competition authorities in Europe (totalling over €51 million) and brought more than €204.3 million in consumer benefits, as measured according to the OECD methodology.[265] However, despite being promising, this recent progress may be easily jeopardized by several factors: the lack of resources (compared to the needs following chronic underinvestment in public competition law enforcement), limited autonomy in personnel management issues, the very low level of HCC staff salaries that impedes significant progress in attracting and retaining qualified experts, and the slow pace of public sector reforms in Greece.

More generally, the political climate has been challenging for independent administrative authorities in Greece in recent years. The HCC has come under attack when it has taken a more assertive position aimed at protecting its independence and expanding its competence to economic sectors from which it has been excluded (eg, telecommunications, where authority rests with the Telecommunications Authority, with a very limited enforcement record regarding Articles 101 and 102 TFEU and national equivalent provisions).[266] Unfortunately, a historical public perception of political influence over the HCC persists, despite the significant progress achieved, and remains prevalent to this day, particularly in certain media outlets.[267] Due to its decentralized character, an active private enforcement system may empower private actors and stakeholders, such as consumers and small and medium enterprises, to pursue anticompetitive activity even when the HCC has not taken adequate action, and seek compensation for their damages, thereby improving deterrence. It may also foster a plaintiff bar representing consumers, labour, and SMEs, rebalancing a system dominated by large corporations represented by the Hellenic Federation of Enterprises and a defence-oriented bar and academic environment (many academics maintain active defence practices).

This is particularly important as the administrative courts have, in many instances, lowered the fines/sanctions imposed by the HCC on appeal,[268] seemingly not taking account of

[262] The amount of €12.6 million has not been adjusted for inflation to account for the period from 2009 to 2025. This is worth €17.9 million in 2025.

[263] The HCC has been the leader during the period 2019-2023: see <https://www.whitecase.com/insight-our-thinking/dawn-raid-analysis-quarterly-2023-q4> accessed 5 August 2025.

[264] <https://www.whitecase.com/insight-our-thinking/dawn-raid-analysis-quarterly-2024-q4> accessed 5 August 2025.

[265] HCC, Newsletter–issue 8 (December 2023), p 1 and 3 (only available in Greek).

[266] The Law Commission, put in place for the modernization of competition law in 2020, discussed the issue of expanding the competence of the HCC to all sectors of the economy (including telecommunications), but there were divergent positions put forward by its Members for the Law Commission to make final recommendations on this issue. It is noted that the European Consumer Association BEUC publicly supported the HCC leadership's claim to expand the HCC competence to the telecom sector: see <https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-117_greek_draft_law_modernization_of_competition_law_for_the_digital_age.pdf> accessed 5 August 2025.

[267] See Ioannis Tasopoulos (ed), *Institutional Defining of Duties for Protecting Competition Law in Greece* (Centre for European Constitutional Law 2025), available (in Greek) at <Thesmiki-oriothetisi-antagonismou.pdf> accessed 16 August 2025.

[268] See eg, HCC, Annual Report 2021, 71 <https://www.epant.gr/en/information/publications/annual-reports/item/2447-annual-report-2021.html> accessed 16 August 2025. The HCC notes that in three cases, the administrative courts reduced the fines imposed; HCC, Annual Report 2020, 92 <https://www.epant.gr/enimerosi/dimosieyseis/ektheseis-pepragmenon/item/1885-ekthesi-pepragmenon-tou-2020.html> accessed 16 August 2025. The HCC notes that in three cases, the administrative courts reduced the fines imposed; HCC, Annual Report 2019, 76 <https://www.epant.gr/enimerosi/dimosieyseis/ektheseis-pepragmenon/item/1278-ekthesi-pepragmenon-tou-2019.html>, accessed 16 August 2025. The HCC notes that in five cases, the administrative courts reduced the fines imposed.

the need for deterrence adequately, adopting a procedural rather than substantive approach to judicial review. The HCC has revised its guidelines for setting fines in 2022, and introduced in addition to the basic amount an amount ranging between 15 and 25 per cent of the enterprise's gross revenue in order to also deter undertakings from simply engaging in horizontal price-fixing, market-sharing and output-limiting agreements, and regardless of the duration of an undertaking's participation in the infringement, the Commission being also able to impose such an additional amount in cases of other infringements.[269]

Finally, with regard to the overall liability rules for actions for damages, it has been noted that in view of the Greek Council of State's jurisprudence excluding the possibility of exoneration for absence of fault, except for circumstances beyond the sphere of conduct of the undertaking regarding public enforcement,[270] there is no compelling reason why a more lenient standard should apply in private enforcement proceedings, where the same principles of liability should govern.[271] Note also that an Athens Court of Appeal judgment has accepted that negligence may also render a practice unlawful or, conversely, that the infringement of competition law may itself constitute negligence, representing a breach of the general duty of care, thus adopting an approach similar to that of the CJEU in *Schenker*.[272] It follows that evidence of an intentional element or fault is not required, as otherwise this would make it exceedingly difficult for plaintiffs to prove a damages claim.

7. BEST PRACTICES AND RECOMMENDATIONS

The features of systems attracting competition litigation

In Europe, the UK, the Netherlands, and Portugal are the jurisdictions attracting the most competition claims. Reviewing their systems' structure offers insights for other jurisdictions seeking to develop their private enforcement regime.

In the UK, the Competition Appeal Tribunal (the CAT) exercises jurisdiction over both private and public competition enforcement, combining legal expertise with economic understanding through its three-member panels that comprise two judges and an economist.[273] English law provides several class action procedures available across different types of legal disputes. These include Group Litigation Orders, which enable case management of claims arising from common or related issues of fact or law,[274] the possibility of a joint claim by multiple claimants against one or more defendants (omnibus claim form),[275] and representative actions (opt-in mechanisms) available where different claimants share 'the same interest in a claim', which are not restricted to competition claims.[276]

In addition to these general collective redress mechanisms, the Consumer Rights Act 2015 established a specialized opt-out collective proceedings mechanism restricted to competition claims seeking damages, other sums of money, and injunctive relief, thus offering

[269] See <https://www.epant.gr/en/legislation/calculation-of-fines.html> accessed 5 August 2025.

[270] Council of State, Judgment 1695/2017.

[271] See Symplis (n 35) 255 footnote 10.

[272] See Athens Court of Appeal, judgment 1775/2017 cited by Symplis (n 35).

[273] Competition Act 1998, S 47A, 47B. Rodger and Lucey (n 51) 393–394.

[274] Civil Procedure Rules (CPR) 19.21–19.26 & Practice Direction 19B.

[275] CPR Rule 7.3, the claims being 'conveniently disposed of in the same proceedings'.

[276] CPR Rule 19.8. This avenue may, however, be particularly difficult for consumer collective action claims in view of the cautious interpretation by the UK Supreme Court of the requirement of the 'same interest' and English law would seek to compensate the individual class members by reference to the harm or loss sustained and the fact that the claimant needs to adduce evidence of harm or loss for each member of the represented class. See, *Lloyd v Google LLC* [2021] UKSC 50 (regarding an alleged data protection infringement). Similarly, the High Court has recently rejected the attempt by claimants to use this process for first establishing liability, and then pursue in a bifurcated way the individualized assessment of damages in a subsequent action: *Wirral Council as Administering Authority of Merseyside Pension Fund v Indivior PLC* [2023] EWHC 3114 (Comm) upheld by *Wirral Council v Indivior PLC* [2025] EWCA Civ 40.

enhanced possibilities for large-scale consumer redress specifically within competition law litigation.[277] The new regime enables collective actions without requiring the identification of individual claimants, the courts having rejected overly restrictive certification requirements.[278] Additionally, while damages-based agreements are prohibited for opt-out proceedings (although possible for all other types of collective redress),[279] third-party litigation funding has flourished, with funders usually recovering costs from unclaimed damages.[280] The CAT's expertise (as it is composed of lawyers and economists) and pragmatic approach to damages quantification further enhance the system's effectiveness.[281] It was reported by the press that the total amount of opt-out action claims for competition law infringements at the CAT in 2024 was approximately £160 billion, which represents a significant part of the total of UK opt-in and opt-out claims in all areas of law.[282] Major cases involve the *Merricks v Mastercard* litigation,[283] the *FX* Claims against six international banks,[284] a number of certified to proceed to trial cases against Big Tech companies,[285] most of these cases being standalone damages cases[286] with at the time of writing two cases reaching judgment in the CAT[287] (some cases being settled subject to control by the CAT that the settlement passes the tests of fairness to class members and reasonableness).

Any undistributed damages are paid to a Charity, the Access to Justice Foundation, while the CAT has discretion to award a portion of the undistributed damages to the class representative to cover costs, thus opening the possibility for litigation funding.[288] In view of the

[277] Competition Act 1998, S 47B.

[278] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* [2020] UKSC 51 at [45], where Lord Briggs emphasized on the importance of a functional regime, stating that: 'Collective proceedings are a special form of civil procedure for the vindication of private rights, designed to provide access to justice for that purpose where the ordinary forms of individual civil claim have proved inadequate for the purpose". Certification follows a formal hearing before the CAT, the Court conducting a 'carriage dispute' hearing to determine the most appropriate class representative in case multiple applicants seek certification. The CAT has occasionally rejected class representatives for not having the requisite understanding of their responsibilities. A class representative 'is not, and cannot be, merely a figurehead for a set of proceedings being conducted by their legal representatives, but must act as the independent advocate for the class': *Christine Riefa Class Representative Limited v Apple Inc. & Others* [2025] CAT 1.

[279] Competition Act 1998, S 47C(8) (finding that damages-based agreement is unenforceable if it relates to opt-out collective proceedings). The parameters of what constitutes a Damages Based Agreement are set by section 58AA of the Courts and Legal Services Act, some of these parameters being interpreted by the Supreme Court in R (on the application of *PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents)* [2023] UKSC 28 a way that may qualify litigation funding agreements pursuant to which the funder is entitled to recover a percentage of any damages recovered, which are largely used for financing opt out collective actions, as prohibited damages based agreements.

[280] See also the discussion at Rodger and Lucey (n 51) 401–402. For a discussion on the importance of litigation funding and some issues with the court adopting a narrower approach, see Rachael Mulheron, 'Unpacking Paccar: Statutory Interpretation and Litigation Funding' (2024) 83 Cambridge Law Journal 99.

[281] *Sainsbury's v MasterCard* [2016] CAT 11, para [423(3)].

[282] It was reported that in 2023, more than 50 per cent of collective action claims (quantum) in the UK were competition law claims, human rights and discrimination/environmental cases coming second. The estimated class size for all these opt-in/opt-out claims in all fields of law was estimated to be more than 544 million class members in 2023: see, CMS, European Class Action Report 2024, available at <https://cms.law/en/int/publication/cms-european-class-action-report-2024> accessed 5 August 2025.

[283] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* [2025] CAT 28 approving the £200 million collective settlement.

[284] See CAT Case No 1336/7/7/19, *Mr Phillip Evans v Barclays Bank PLC and Others*; CAT Case No 1329/7/7/19 *Michael O'Higgins FX Class Representative Limited v Barclays Bank PLC and Others.*

[285] See, for instance, Case No 1720/7/7/25: *Coll v Alphabet Inc. & Others (Google Play Store)*; Case No 1606/7/7/23: *Nikki Stopford v Alphabet Inc. & Others*; Case No 1673/7/7/24: *Professor Barry Rodger v Alphabet Inc. & Others*; Case No 1403/7/7/21, *Kent v Apple* and related Case No 1601/7/7/23, *Dr Sean Ennis v Apple Inc and Others*; Case No 1382/7/7/21: *Which? V Qualcomm Inc.*

[286] UK Department of Business & Trade, Opt-out collective actions regime review: call for evidence (August 2025) <https://www.gov.uk/government/calls-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence#fn:1> accessed 5 August 2025. reports that 'approximately 90 per cent of the current caseload is now made up of standalone cases'.

[287] *Justin Le Patourel v BT Group Plc* [2024] CAT 76; *Dr Rachael Kent v Apple Inc and Apple Distribution International Ltd* [2025] CAT 67.

[288] Legal Services Act 2007 and Competition Act 1998, s 47C(6).

UK Supreme Court's restrictive stance on Litigation Funding Agreements in *PACCAR*, and the report by the Civil Justice Council's recent review of Litigation Funding conducted in 2025,[289] the UK government announced in August 2025 a consultation over a reform of the system, 'examining potential improvements to opt-out collective actions', and considering 'alternative routes consumers could use to seek redress'.[290]

Beyond the innovations of the collective actions regime, the UK legal system features several mechanisms to facilitate collective redress. Among many, we may cite the discretion the CAT enjoys in not refusing certification of a claim outright if it is not fully satisfied with the application, thus allowing the proposed class representative to amend the application.[291] Depending on the complexity of the case, the trial may also be split into multiple parts, such as jurisdiction, main claim, damages, etc, where individual matters are decided. The court may receive separate submissions for each part, thus limiting the burden for the claimants each time and the amount of work that needs to be spent in collecting the evidence. Third, disclosure is extensive in the UK, encompassing all documents relevant to the litigation, including those on which each party relies and those that adversely affect their case.[292]

The Netherlands has also achieved prominence through deliberate judicial receptiveness and competition for international litigation. Dutch courts have demonstrated remarkable creativity in jurisdictional matters.[293] The Netherlands also allows claim aggregation through assignment models, enabling efficient bundling of dispersed claims.[294] The costs regime, whereby 'each party bears its own cost', reduces adverse cost deterrence while maintaining discipline against frivolous litigation.[295] The Netherlands Commercial Court, operating in English,[296] exemplifies the jurisdiction's strategic approach to attracting complex international disputes. More recent amendments to the Dutch WAMCA (Resolution of Mass Damages in Collective Actions Act) and the European Representative Actions Directive Implementing Act (RAD) have introduced the possibility for consumer-related competition 'cross-border representative actions'[297] to be brought also by interest organizations outside of the Netherlands if designated by their Member State as 'qualified entities', thus implementing the principle of mutual recognition. These are opt-in actions, as the Dutch Implementation Act 2023 prohibits an opt-out regime for collective actions that are brought under the RAD in the interest of consumers who live outside the Netherlands. However, the Dutch class members (even non-consumers) benefit from an opt-out regime established by WAMCA. This initiative demonstrates how private enforcement can be intentionally developed as a distinct economic sector open to international competition. The absence of wide

[289] Civil Justice Council, 'Review of Litigation Funding – Final Report' (2025) <https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf> accessed 5 August 2025.

[290] UK Department of Business & Trade (n 286).

[291] See Competition Act 1998, s 47B.

[292] Civil Procedure Rules, pt 31. For competition law claims, see Competition Appeal Tribunal Rules 2015, Rules 60–65. See also, Sebastian Peyer, 'Private Antitrust Enforcement in England and Wales after the EU Damages Directive: Where Are We Heading?' in Pier L Parcu, Giorgio Monti and Marco Botta (eds), *Private Enforcement of EU Competition Law: The Impact of the Damages Directive* (Edward Elgar Publishing 2018) 99–107.

[293] Simon Vande Walle, 'Private Enforcement of Antitrust Law in Belgium and the Netherlands – Is There a Race to Attract Antitrust Damages Actions?' in Pier L Parcu, Giorgio Monti and Marco Botta (eds), *Private Enforcement of EU Competition Law: The Impact of the Damages Directive* (Edward Elgar Publishing 2018) 130–131. District Court Arnhem, 26 October 2011, ECLI:NL:RBARN:2011:**BU3548.**

[294] Otto, Hauser and Vande Walle (n 87) 491–492.

[295] ibid 485–486.

[296] Peyer (n 292) 135–136. See also, Dutch Council for the Judiciary, 'Plan tot oprichting van de Netherlands commercial court' (2015) 3 <https://www.rechtspraak.nl/sitecollectiondocuments/plan-netherlands-commercial-court.pdf> accessed 27 July 2025.

[297] art 6 of Directive 2020/1828.

evidence and disclosure rules,[298] may nevertheless be a relative obstacle to the development of such actions. The Netherlands nevertheless has a quite active collective action scene with a total quantum of damages during the period 2016–2023 of €35.33 billion, with a sizable part of this amount being competition law cases (approximately €5 billion).[299]

Portugal has emerged as a European leader in collective actions for competition infringements, with approximately €45.85 billion in total claims value, of which €43.9 billion relates to competition law violations.[300] It has become an increasingly sophisticated private enforcement jurisdiction through its specialized competition court (Tribunal da Concorrência, Regulação e Supervisão), established in 2018 following implementation of the Damages Directive, which exercises exclusive jurisdiction over both public and private enforcement.[301] Portugal's most distinctive innovation is its opt-out collective redress regime, which extends to both consumers and undertakings and has been complemented by third-party litigation funding for consumer claims.[302] The system's accessibility is also enhanced by the costs regime, which, like the Netherlands, does not operate on a 'loser pays' basis.[303]

Law No 23/2018 grants extensive pre-filing rights, allowing parties to obtain evidence needed before formal proceedings.[304] Portugal has also implemented the European RAD by explicitly allowing third-party funding for collective actions protecting collective consumer interests, subject to conditions such as disclosure of any LFA to the court, funder independence, and absence of conflicts of interest. Parties to antitrust actions may petition the court to order disclosure of documents or evidence from other parties, third parties, or public entities.[305] There have already been damages awards in the context of collective redress follow-on claims, such as in the Trucks cartel or the Land Surveyors case.[306]

Consumer organizations (Ius Omnibus and Citizens' Voice) have brought collective actions against telecom companies, airlines, supermarkets, and major banks, with consumer associations initiating a 2024 case requesting approximately €6 billion compensation. This is particularly important as the €225 million fines the Portuguese competition authority imposed in 2019 against eleven banks for illegal information exchange were annulled by the Lisbon appeal court in 2025 for statute of limitations reasons.[307] Nevertheless, consumer association actions proceed as follow-on or standalone cases, given that practices condemned in the 2019 decision were confirmed as EU competition law infringements by the CJEU in Portuguese banks.[308] The substantial damages claims and the fact that private enforcement currently represents the only remaining avenue for addressing this infringement underscore its importance for deterrence.

[298] Otto, Hauser and Vande Walle (n 87) 488–491. Dutch law does not provide for full discovery of documents, and the requirements for disclosure under art 843a of the DCCP imposes strict conditions for disclosure.

[299] CMS, European Class Action Report 2024, 8–9 <https://cms.law/en/int/publication/cms-european-class-action-report-2024> accessed 5 August 2025.

[300] ibid 8–9.

[301] Sousa Ferro and Marcos (n 86) 425.

[302] ibid 420.

[303] ibid 425.

[304] Law No 23/2018, art 13.

[305] See, for instance, *Ius Omnibus v Meliá*, discussed in *AF Pinto Dias, Ius Omnibus v Meliá* - Access to Evidence Before Filing a Follow-on Action for Damages (November 2023) <https://legalblogs.wolterskluwer.com/competition-blog/ius-omnibus-v-melia-access-to-evidence-before-filing-a-follow-on-action-for-damages/> accessed 5 August 2025.

[306] See, Competition Court Judgment, Case 54/19.6YQSTR, Transportes Guilherme Fernandes v Renault Trucks (2023), upheld by the Court of Appeal of Lisbon, Case 54/19.6YQSTR.L1-PICRS; Ius Omnibus v Associação Nacional de Topógrafos (ANT), Case 15/21.5YQSTR (2021).

[307] See Reuters, 'Portugal Court Spares Big Banks from Paying Millions in Fines for Mortgage Collusion' (February 11th edn, 2025) <https://www.reuters.com/business/finance/portugal-court-spares-big-banks-paying-millions-fines-mortgage-collusion-2025-02-10/> accessed 7 August 2025.

[308] Case C-298/22, *Banco BPN/BIC Português SA et al v Autoridade da Concorrência*, EU:C:2024:638.

Collective redress develops in other EU Member States as well, with notable cases in Germany, Poland, Italy, Spain, and Slovenia[309]. The three examined jurisdictions nonetheless demonstrate that multiple pathways can achieve effective private enforcement. The UK emphasizes institutional innovation through specialized tribunals and novel collective mechanisms, while the Netherlands focuses on judicial flexibility and competitive positioning for cross-jurisdictional collective actions. Portugal combines specialized tribunals, an opt-out regime for collective actions, and openness to third-party litigation, under certain conditions. All systems share crucial features, including genuine procedural choice, pragmatic damages assessment, and sustainable funding models. Their success suggests that effective private enforcement requires not merely favourable rules but a comprehensive ecosystem development addressing the practical realities of complex economic litigation. As competition damages actions increasingly transcend borders, these models offer valuable lessons for jurisdictions seeking to enhance their private enforcement regimes.

Policy recommendations for Greece

Private enforcement in Greece would benefit significantly from targeted interventions that address both systemic barriers and practical impediments, as indicated by the legal but also political economy analysis in Sections 4 and 6. Meaningful progress can be achieved through two complementary approaches: strategic amendments to the existing legal framework established by Law 4529/2018, and operational improvements that follow the successful models of other Member States with similar legal systems, particularly Germany and France. Greece should also capitalize on the forthcoming transposition of the new EU Product Liability Directive, which introduces a more claimant-friendly disclosure regime. This directive not only facilitates access to existing documents but also mandates the creation of documents *de novo* and establishes longer limitation periods.[310] These provisions are particularly valuable given the significant informational and power asymmetries that typically exist between consumers and small-to-medium enterprises on one side, and corporations that infringe competition law on the other.

Given that collective redress mechanisms offer the most promising pathway for overcoming individual litigation barriers, reforms should prioritize the creation of a functional collective action system that incorporates a significant role for third-party litigation funding. The experiences of the UK, the Netherlands, and Portugal demonstrate that such funding constitutes a key ingredient for establishing a successful competition law enforcement regime. In addition to these reforms and adjustments for the private enforcement of competition law, we also suggest the development of collective redress in the context of public enforcement of competition law and alternative dispute resolution procedures.

Reforms/Adjustments to the private enforcement of the competition law framework

Collective redress mechanisms

Our analysis revealed that Greece's opt-in regime has generated zero consumer collective actions, confirming the Parliamentary Service's assessment that opt-out would be preferable for low-value claims, though the legislature chose opt-in nonetheless. The current framework suffers from fundamental design flaws, guaranteeing underutilization. Restricting standing to

[309] See, the findings in CMS, European Class Action Report 2024, 13 <https://cms.law/en/int/publication/cms-european-class-action-report-2024> accessed 7 August 2025. Germany represented 8 per cent, Poland 6 per cent, Italy 4 per cent, Slovenia and Spain 3 per cent of the collective actions brought in 2023 (without this being limited to competition law-based actions). England and Wales had 29 per cent, Portugal 23 per cent, and the Netherlands 18 per cent, remaining the largest jurisdictions with collective actions in Europe.

[310] Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC, OJ L, 2024/2853, 18 November 2024.

consumer associations creates an artificial bottleneck, with only three registered associations currently eligible, each with minimal resources; the system lacks the capacity to address potential competition law violations.[311] The perverse incentive structure created by Article 10k (7) of Law 2251/1994, which awards unclaimed damages to the bringing association, may also be criticized. This provision does not provide adequate incentives to consumer associations for ensuring the publicity of the claims, which may create tension with the compensatory purpose of private enforcement.[312]

Unclaimed funds could be collected by a charity whose board includes consumer associations, civil society representatives, and competition law academics. This charity would operate as a competition enforcement fund, providing litigation funding and creating a self-reinforcing cycle where successful actions generate resources for future enforcement, similar to the cy-près doctrine in other jurisdictions.[313] Additionally, following the findings of the broader political economy environment in the country, eligibility to bring representative claims could expand to include trade associations, trade unions, chambers of commerce, and specially constituted legal entities, given low representation levels and recent competition authority focus on anticompetitive conduct harming trade partners in input and labour markets.[314]

Alternatively, Greek law could integrate a two-stage Model Declaratory Action system like Germany's Musterfeststellungsklage (established 2018),[315] which requires qualified entities consisting of at least 10 consumer associations or 350 individuals registered for 4 years. Interested consumers opt in by registering claims in a public online register. The court first issues a declaratory judgment on common issues; then, absent settlement, consumers file individual claims for damages. If parties settle, court approval is required, and the settlement enters force only if at least 70 per cent of registered consumers agree within one month. This collective redress form could expand in Greece to cover trade union confederations and agricultural cooperatives, given the need to enhance private enforcement and mitigate power asymmetries between employers–employees and processors–farmers.

Beyond representative actions, Greece may introduce genuine opt-out collective proceedings for competition law violations, following the Portuguese model. An opt-out system would automatically include all affected parties unless they actively exclude themselves, dramatically improving the economics of bringing collective claims. This would be justified given the HCC's limited resources, high economic concentration and profit margins in certain non-tradable sectors, and the need for more effective deterrence. Notably, over two-thirds of damage actions in Greece are standalone claims, demonstrating that private enforcement plays a significant complementary role to public enforcement. Concerns about abuse could be addressed through certification requirements ensuring only meritorious claims with genuine commonality proceed collectively.

[311] See also the analysis of Gerhard Wagner, 'Collective Redress – Categories of Loss and Legislative Options' (2011) 127 Law Quarterly Review 55.

[312] See also the discussion on the legitimate class representative in Samuel Issacharoff, 'Governance and Legitimacy in the Law of Class Actions' (1999) 1999 Supreme Court Review 337, 358–384. The author discusses that class actions may create misalignment of incentives between the representative and the class, and that the law should strive remove structural conflicts of interest between the representative and the class. The Greek legislation is achieving exactly the opposite: it provides financial incentives for representatives to prevent claimants from claiming compensation.

[313] Martin H Redish, 'Cy Pres Relief and the Pathologies of Modern Class Action: A Normative and Empirical Analysis' (2010) 62 Florida Law Review 617.

[314] See, John Vickers, 'Competition Policy and the Consumer Welfare Standard' (2024) 13 Journal of Antitrust Enforcement 6.

[315] Sections 606-614 German Code of Civil Procedure (2018). It was integrated in 2023 to the German Code of Civil Procedure into the Consumer Rights Enforcement Act (VDuG): Gesetz zur gebündelten Durchsetzung von Verbraucherrechten (Verbraucherrechtedurchsetzungsgesetz – VDuG) vom 12. Oktober 2023, BGBl I Nr. 272/2023.

An intermediary solution would be adopting a representative action regime similar to Germany's Consumer Rights Enforcement Act and RAD Implementing Act, which introduced for the first time a direct redress action (as opposed to the indirect Model Declaratory Action) within the collective action framework that also applies to competition law.[316] Such actions may be introduced by a sufficient number (in Germany, 50) of affected consumers, including microenterprises employing fewer than 10 people with annual turnover under €2 million, which can join the redress action alongside consumers if their claims are 'essentially similar'.[317] Claimants can directly claim damages and other relief, including injunctive relief, contract termination, price reduction, replacement or repair of products, and purchase price refunds.[318]

Large companies may utilize the fiduciary assignment model for such direct claims of a collective nature, where claims from a high number of persons or companies are assigned to a special purpose 'action vehicle' (legal entity), founded solely to pursue these claims in subsequent damages proceedings.[319] Additionally, section 33(1) and (4) of the German Competition Act provide opportunities for injunctive relief claims filed by certain professional associations or qualified domestic consumer associations, including cross-border consumer associations.[320] The Greek legislator could expand the benefit of such direct representative actions (for damages or injunctive relief) to a smaller number (than 50) of micro and small enterprises, as defined in the EU 2003 Recommendation,[321] as well as trade unions and agricultural cooperatives, for the same reasons highlighted above. The assignment model may also be easier to implement as it requires only legislative clarification of its compatibility with the Code of Civil Procedure. In contrast, a true class action mechanism would require structural legislative change and potentially raise constitutional questions regarding the representation of absent parties, though these are not insurmountable.

The *ASG 2/Roundwood* precedent could be leveraged to enhance possibilities for group litigation in Greek civil procedure, potentially through a special purpose vehicle entity. However, extending this rationale to Greece faces significant challenges. Greece already permits 'joint suits', where multiple claimants base claims on identical or similar facts, and representative claims, potentially limiting this case law's applicability. More fundamentally, this CJEU precedent would only result in disapplying provisions prohibiting aggregation of competition claims. It cannot create a positive right to collective actions or establish specific procedural rules for bringing such claims

[316] Verbraucherrechtedurchsetzungsgesetz vom 12. Oktober 2023 (BGBl I Nr. 272/2023).

[317] s 1(2) of the VDuG.

[318] s 14 VDuG.

[319] For the compatibility of this model with the EU principles of equivalence and effectiveness, see Case C-253/23, *ASG 2 Ausgleichsgesellschaft für die Sägeindustrie Nordrhein-Westfalen GmbH v Land Nordrhein-Westfalen*, EU:C:2025:40, para. 87 (regarding standalone damages cases for which the assignment method was used where the CJEU recognized that the principle of effectiveness allows Member States a rather wide margin of discretion on whether or not to enable claims for competition damages to be assigned to a provider of legal services (third-party litigator) if 'national law does not provide for any other possibility of grouping the individual claims of those injured persons that would ensure the effectiveness of the exercise of those rights to compensation' and 'the bringing of an individual action for damages is, having regard to all the circumstances of the case, impossible or excessively difficult for those persons, with the result that they are deprived of their right to effective judicial protection', these conditions being assessed by national courts).

[320] The cross-border 'qualified consumer associations' should be part of the European Commission's list pursuant to art 5 (1) sentence 4 of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409 of 4 December 2020, p 1).

[321] arts 2(2) and 2(3), Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (C(2003) 1422), 2003 OJ L124/36 (distinguishing between small enterprises defined as enterprises which employ fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed €10 million and microenterprises, defined as enterprises which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million).

Funding mechanisms

The prohibition on third-party funding operates as a necessary institutional complementarity and a force multiplier for every other barrier we identified. Without external financing, the high costs of economic expertise, lengthy proceedings, evidentiary burdens, and the absence of strong representative organizations or other stakeholders capable and willing to take action render even meritorious claims economically irrational to pursue.

The implementation of Directive 2020/1828 in Greece has been a missed opportunity to develop a proper third-party litigation system that would bring Greece back to the inter-jurisdictional competition game. Worse, the Law 5019/2023 added a provision (Article 10n) to Law 2251/1994 on Consumer Protection, which prohibits third-party legal funding for representative actions, thus fundamentally undermining the viability of collective actions.[322] Without external funding, consumer associations and claimants themselves often lack the resources to pursue complex competition claims, which require substantial investments in economic evidence and legal expertise.[323]

This provision may be explained by the rather lukewarm treatment of third-party litigation funding by the very few articles published on this issue in Greece,[324] with arguments that do not stand any serious scrutiny. Indeed, it has been alleged that third-party litigation funding will impact on the purported 'procedural principle of equality' enshrined in Article 110 of the Code of Civil procedure, not because one of the parties will receive external financial support but indirectly because '(b)y financing the claim, the funder may enhance its strength in various ways, potentially influencing the court's perception', the judge being biased if it is known that 'a pre-assessment (of the case for funding) is conducted by a well-known financing company'(!). It is difficult to follow such an argumentation, to the extent that such a concern about possible bias from which the judge may be affected has never, to our knowledge, been put forward in regimes with more developed third-party litigation regimes, even by the representatives of the defence bar. It is also clear from the above that such an argumentation has nothing remotely to do with the 'procedural principle of equality'. On the contrary the 'principle of equality' of each party to the proceeding to have equal access to the evidentiary process, equal right to speak, and equal opportunity to present their claims would be greatly jeopardized by the prohibition of third-party litigation, as it was obviously put forward, unfortunately in vain, during the public consultation for the implementation of Directive 2020/1828 by the consumer associations.[325]

It is recommended that this prohibition be lifted for collective proceedings initiated by 'qualified entities' (now consumer associations, as well as trade associations, trade unions, etc., if this category is to be expanded in the future) and those entities authorized to bring

[322] art 8 Law 50219/2023.

[323] Christopher Hodges, John Peysner and Angus Nurse, 'Litigation Funding: Status and Issues' (2012) Oxford Legal Studies Research Paper No 55/2012 <https://www.law.ox.ac.uk/sites/default/files/migrated/litigation_funding_here_1_0.pdf> accessed 8 August 2025.

[324] See, particularly, the study by Niki Kerameos and Apostolia Vasilakopoulou, 'Third Party Legal Funding in Litigation and Arbitration' (2012) 10 DEE 915, which provides a rather superficial analysis of third-party litigation funding and its alleged 'risks' of jeopardizing the fundamental principle of equality of parties before the courts. This literature may have influenced the legislative choices made regarding third-party litigation funding, despite the protests of consumer associations and veiled criticisms from the Parliamentary Scientific Service commenting on this aspect of the legislative bill. See also, for similar rather conservative views regarding third party litigation funding, also citing the Kerameos and Vasilakopoulou study, Alexandra Mikroulea and Triantafyllia Mavridopoulou, Greece, in European Commission DG Justice and Consumers Mapping Third Party Litigation Funding in the European Union (March 2025), 241, 245 (noting without referring to any evidence for such claim that '[…] Greek society is somewhat sceptical towards trade and financing of claims' drawing a somewhat arbitrary and questionable parallelism between third-party litigation funding and the possibility of lawyers to provide collection and management services for bad loans).

[325] Law 5019/2023, Explanatory Memorandum detailing the reactions and arguments of the consumer associations, which emphasized the need to ensure effective equality of arms between consumer associations and the deep-pocketed corporations that have infringed competition law.

opt-in (or opt-out) claims directly, provided our previous proposals are adopted. This lifting should apply where there exists a genuine power asymmetry that materially affects the parties' rights and obligations under Article 110 of the Code of Civil Procedure. In reality, lifting the ban on third-party litigation funding is crucial for ensuring equal access to justice, as required by Article 6 ECHR, which mandates that all parties have equal opportunities to present their cases and access proper legal representation and expertise.

There is no empirical evidence that consumer and small enterprise competition litigation discourages corporate investment or reduces foreign direct investment (FDI). Comparable economies demonstrate the contrary. Portugal, which permits third-party litigation funding, significantly outperforms Greece in absolute FDI volumes, attracting nearly three times more private investment.[326] This suggests that active competition enforcement may actually enhance, rather than diminish, investor confidence in the jurisdiction's regulatory framework, particularly for investments in production and innovation.

A regulated funding framework should include court oversight of funding agreements, ensuring fair terms and appropriate funders' returns relative to risks undertaken.[327] Caps should also be imposed on funders' recovery, with higher percentages permitted only where exceptional risk or investments justify them.[328] Transparency requirements should ensure class members understand funding arrangements and their impact on potential recovery.

Furthermore, contingency fee arrangements, which are already permitted under the Greek lawyers' code,[329] should be explicitly authorized for collective competition claims, thus providing an alternative funding mechanism to third-party litigation funding. The legislation could establish sliding scales with percentage caps decreasing as recovery amounts increase, ensuring lawyers' incentives align with maximizing class recovery rather than quick settlements.[330] Short-term reform is possible through amendments to the Bar Association rules and the Civil Procedure Code. A major legislative change is likely unnecessary, as demonstrated by the unregulated but permissive approaches in Germany and Portugal.

Distribution mechanisms

Effective damage distribution is essential for collective actions to achieve compensatory objectives. Current requirements relying on association websites and ministry notices are inadequate. A specially constituted charitable entity with stakeholder representation—including consumer associations, other qualified entities, and academic experts in competition law and economics—should claim undistributed awards. These funds should be redistributed to original beneficiaries or allocated to fund strategic litigation and research in highly concentrated sectors with substantial profits and entry barriers. Courts should alternatively approve distribution plans requiring infringing undertakings to compensate harmed consumers (end-consumers, micro or small businesses) by returning anticompetitive profits through vouchers or discounts. For small amounts, distribution should use automated systems where claimants submit simple online forms verified against purchase records.

[326] Portugal received €13.2 billion in FDI transactions in 2024, compared to Greece's €4.8 billion in 2023.

[327] See also, Victorian Law Reform Commission, 'Civil Justice Review - Report 14' (2008) <https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRCCivilJusticeReview-Report.pdf> accessed 8 August 2025. For example, the Victorian Law Reform Commission discussed new funding mechanisms and safeguards in ch 10.

[328] See, for instance, the situation in Germany after 2023 with Verbraucherrechtedurchsetzungsgesetz (VDuG), s 4(2) no 3, stipulating that if the litigation funder's success fee exceeds 10 per cent of the sum to be paid by the defendant, the action is inadmissible. In view of the disincentive such a low fee may create for third-party litigation funders, particularly also as the duration of the procedure in Greece may be longer than in Germany, which also creates a disincentive, it is suggested that the cap, if adopted, is set at a higher level.

[329] Lawyer Code, art 60, which imposes a limit to lawyers' fees which cannot exceed 20 per cent of the case's subject matter, and 30 per cent if more than one lawyer is involved.

[330] Sliding scale arrangements are discussed in Charles Silver, 'Restitutionary Theory of Attorneys' Fees in Class Actions' (1991) 76 Cornell Law Review 656.

Supporting institutional infrastructure

If class actions are recognized, Athens courts' specialized competition divisions could develop procedural rules for collective proceedings addressing class certification, notice, and settlement approval, streamlining processes while protecting absent members.

The HCC should prioritize enforcement actions generating collective follow-on claims, particularly cartels and exploitative abuses affecting micro/small businesses and end-consumers in essential services. Decisions, especially settlements, should include detailed factual findings facilitating private actions. Where feasible, preliminary overcharge estimates should reduce claimants' evidential burden. As Section 5 explains, this would not invalidate settlements given strong settlement incentives.

Additional systemic reforms

Beyond collective redress, several targeted reforms could reduce the evidentiary burden claimants face. Our analysis shows that restrictive disclosure regimes do not preclude private enforcement where institutional complementarities exist. Yet, Greece's disclosure rules become a bottleneck precisely because no alternative evidentiary route—such as specialized judicial expertise, detailed infringement decisions, or collective data-pooling—is available.

The restrictive disclosure regime requires urgent attention, as without essential evidence, even well-funded collective actions may fail. Legislative intervention could create special disclosure rules for competition claims, permitting category-based document requests, recognizing inherent information asymmetries. For instance, the new EU Product Liability Directive stipulates that claimants need only provide 'facts and evidence to support the plausibility of the claim' to obtain disclosure of all necessary and proportionate documents.[331] The HCC should also timely provide access to the file of the case, duly protecting the confidential information, particularly of third parties.[332]

Further reforms may address the difficulty of proving causation and the quantum of the damages. The Courts should apply a lower burden of proof for quantifying damages through stronger presumptions and adverse inferences, particularly where defendants withhold relevant data, and in any case, this should not follow the very high threshold set by the Civil Code. Courts should be required to accept reasonable economic estimates where precise calculation is impossible due to the nature of the violations or the defendants' conduct, as harm can rarely be calculated with precision, due to information asymmetries.[333]

These recommendations, which require light legislative reform, prioritize creating a functional collective redress system as the foundation for effective private enforcement in Greece. Individual reforms may provide incremental improvements, but only comprehensive

[331] art 9 of Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC. Furthermore, it is provided in this Article that 'Member States shall ensure that, where a party is required to disclose evidence, national courts are empowered, upon a duly reasoned request of the opposing party or where the national court concerned deems it appropriate and in accordance with national law, to require such evidence to be presented in an easily accessible and easily understandable manner, if such presentation is deemed proportionate by the national court in terms of costs and effort for the required party'.

[332] According to art 6(10) of the Damages Directive disclosure from a competition authority of evidence included in its file occurs only where no party or third party is reasonably able to provide that evidence. Note that according to art 6(9) of the Damages Directive, the disclosure of evidence in the file of a competition authority that does not fall into any of the protected categories of evidence listed in art 6 may be ordered in actions for damages at any time.

[333] A good practice to follow in this case is that of the UK courts which rather than relying on precise calculations, calculate damages often based on general estimates (the 'broad axe principle') as explained by Lord Shaw in *Watson Laidlaw & Co Ltd* v *Pott, Cassells and Williamson* (1914) 31 RPC 104, paras 117–118: '[t]he restoration by way of compensation is therefore accomplished to a large extent by the exercise of a sound imagination and the practice of the broad axe'). The Courts also need to integrate their interpretation of national law with art 17 of the Damages Directive, which establishes that neither the burden nor the standard of proof required for quantifying harm may render the exercise of the right to damages 'practically impossible or excessively difficult'.

collective mechanisms can overcome the economic barriers preventing meaningful access to compensation for competition law violations.

Public enforcement and ADR

Another possibility, which can be implemented alongside these recommendations, is the development of collective settlement practices, particularly, though not exclusively, if the suggested Model Declaratory Action is adopted. Additionally, it would be possible to enhance cross-fertilization between public and private enforcement through two complementary mechanisms: First, public enforcement could be leveraged to provide direct compensation to consumers and other protected categories among the victims of competition law violations, thereby ensuring collective redress without requiring separate private litigation. Secondly, final decisions in standalone damages actions or model declaratory proceedings could serve as *prima facie* evidence of infringement in subsequent public enforcement cases initiated by the competition authority. This would mirror the approach established in Article 9(2) of the Damages Directive, but operate in reverse for the benefit of public enforcement. Under this framework, competition authorities would have the discretion to rely upon final civil court judgments—whether declaratory or awarding damages—including their factual and legal analysis, as prima facie evidence of a competition law infringement and, following assessment of the evidence put forward by the parties, decide to impose administrative fines.[334]

Collective settlements

The absence of a binding collective settlement mechanism means that even where claims are aggregated, defendants lack an incentive to settle comprehensively, as any agreement binds only participating claimants and leaves open the possibility of subsequent individual actions. This prolongs litigation spending and wastes court resources, particularly where meritorious claims could be settled early, granting abuse victims quick redress.

The Commission Staff Working Paper accompanying the Green Paper gave little consideration to alternative dispute-resolution (ADR) mechanisms and was limited to stating that the number of claims settled out of court 'is very substantial in comparison to the number of cases that are actually adjudicated on in court', also noting that 'the power of the claimant in settlement negotiations might increase the longer the limitation period is as the claimant will feel reduced pressure to bring an action to stop the running of the limitation period'.[335] One of the Damages Directive's aims was to encourage ADR, both pre-trial and during the proceedings, by suspending the duration of the consensual dispute-resolution process, to provide sufficient time to the parties to settle (Article 18), and by providing that an infringer that pays damages through consensual dispute-resolution should not be placed in a worse position vis-à-vis its co-infringers than it would be without the consensual settlement (Article 19). Where a collective settlement is agreed, this should be verified by the courts to ensure the appropriate protection of interests and rights for all parties involved.

In this favourable context in the Damages Directive to settlements, the absence of a structured collective settlement framework in Greece (particularly when the Damages Directive was implemented in 2018) represents a missed opportunity for effective dispute resolution. Greece could introduce legislation explicitly authorizing and regulating collective settlements

[334] art 9(2) of the Damages Directive provides that a finding of competition law infringement by a final decision of a national competition authority or review court is deemed to be *prima facie* evidence that an infringement of competition law has occurred for the purposes of an action for damages brought before the courts of another Member States, and the court will assess this evidence along with any other evidence adduced by the parties.

[335] Commission Staff Working Paper—Annex to the Green Paper, SEC (2005) 1732, para 262.

in competition cases, with court oversight ensuring fairness to absent class members.[336] Such settlements could resolve claims more efficiently than full litigation while providing meaningful compensation to victims with lower costs and eventually bypassing some of the difficulties mentioned in the previous Section that are related to civil procedure rules in Greece. Of particular interest is the Dutch WCAM (*Wet Collective Afwikkeling Massaschade*—the Collective Settlements of Mass Claims Act), which introduced standalone collective settlements in 2005, although not used so far for competition cases (as claimants prefer the newer WAMCA opt-out settlement procedure, particularly in the context of follow-on cases), it remains a useful option. It does not require the parties to first file a collective action, it does not require that all or most potential claimants be located in the Netherlands (extraterritorial effect), and all parties within the scope of the settlement that has been declared generally binding by the Amsterdam Court of Appeal will be universally bound, unless the group member opts out during a court ordered opt-out period after the settlement is declared binding.[337]

The framework should establish clear criteria for settlement approval, including assessment of the settlement's adequacy relative to the strength of claims, the state of proceedings, and the risks of continued litigation. Courts should be required to appoint independent experts to evaluate proposed settlements, particularly regarding damage calculation and distribution mechanisms. The HCC could play a valuable role here, providing guidance on appropriate overcharge calculations for follow-on cases or estimates based on available information about the affected markets.

Critically, collective settlements should be binding on all class members (at least residents/established in Greece, although an extraterritorial scope may provide the advantage of 'global peace'), and proceedings should be subject to appropriate notice and objection procedures. This finality is essential for defendants to engage meaningfully in the settlement negotiations. The legislation should specify minimum notice periods, multiple notification channels, and clear procedures for class members to object or opt out before settlement approval.

For Greece, incorporating similar provisions would bypass many procedural hurdles identified above, particularly the restrictive disclosure regime and high burden of proof requirements. That being said, the legal system should also provide incentives for parties to settle. In a litigation-unfriendly regime, where claimants face several obstacles in bringing a claim, the defendant's incentives to settle will be low, as they are likely to get a favourable outcome from engaging in litigation. Thus, collective settlements are an efficient mechanism of alternative dispute resolution, primarily when the primary justice-awarding mechanism functions well. Reforming Greece's judicial system to establish an effective competition litigation infrastructure may be a prerequisite to developing effective collective settlement processes.

Collective redress through public enforcement and cross-fertilization with private enforcement

The political economy analysis revealed that Greece's public enforcement, while improving since 2020, remains constrained by limited HCC resources, lengthy administrative appeals, and cultural factors limiting leniency applications—precisely the conditions private enforcement could compensate for. Yet, Greece's private enforcement deficit means neither

[336] For the approach followed in the Netherlands, see Ianika Tzankova and Hélène van Lith, 'Class Actions and Class Settlements Going Global: The Netherlands' in Duncan Fairgrieve and Eva Lein (eds), *Extraterritoriality and Collective Redress* (OUP 2012) 67.

[337] For a description, see Xandra E Kramer, 'Enforcing Mass Settlements in the European Judicial Area: EU Policy and the Strange Case of Duct Collective Settlements (WCAM)' in Christopher Hodges and Astrid Stadler (eds), *Resolving Mass Disputes* (Edward Elgar Publishing 2013) 63–90; Andriana Andreangeli, *Private Enforcement of Antitrust* (Edward Elgar Publishing 2014) 303–321.

mechanism operates at full capacity, leaving the enforcement system in suboptimal equilibrium. Integrating compensatory elements within public enforcement presents a potential solution to Greece's private enforcement challenges. Public redress addresses the justice gap where private enforcement is particularly difficult, requiring significant resources and time investment.

Compensation through public enforcement avoids the coordination problems Rosenberg and Sullivan identify in unregulated private-public enforcement: duplicate 'piggy-back' litigation adding no social value while imposing deadweight costs.[338] Furthermore, the rationale for public redress rests on both pragmatic and normative foundations. Public compensation addresses the 'rational apathy' problem where individual losses are too small to justify litigation costs, yet aggregate harm remains substantial.[339] Beyond filling this enforcement gap, public redress also serves corrective justice by ensuring wrongdoers do not retain ill-gotten gains.[340] Public redress also promotes access to justice when litigation funding is unavailable, and enhances the legitimacy of competition authorities through viable benefits to victims, cultivating a culture of competition by demonstrating tangible consequences of infringements.[341]

As examined in Section 5, Greece's public enforcement landscape underscores the particular need for public redress mechanisms. The milk cartel cases, though ultimately successful, required decades of litigation despite damages being limited to documented invoice losses rather than damages estimated through complex economic modelling, reflecting the courts' conservative stance on damages evaluation.[342] Meanwhile, enforcement decisions, such as in the banking sector,[343] have not attracted so far follow-on damages claims despite substantial penalties, suggesting significant harm, and also the practice followed in this case by the HCC to adopt a detailed settlement decision with information on the factual findings of infringement to facilitate private enforcement. Public redress could bridge this gap by leveraging the HCC's investigatory findings and settlement leverage to secure compensation without requiring victims to navigate Greece's restrictive disclosure regime, high burden of proof, dysfunctional collective proceedings framework, and the important length of public enforcement proceedings pre-2020. Additionally, public redress may be less controversial than private enforcement of competition law when considering the potential trade-offs from discouraging settlements with the HCC for fear of follow-on damages claims.[344]

Implementation could follow graduated approaches that have been proven in other jurisdictions. For cartels, where Article 14(3) of law 4529/2018 presumes harm, the Commission could require victim compensation as a settlement condition, following the German model where the Bundeskartellamt accepted price reductions and customer refunds totalling €127 million in gas pricing.[345] A first step in this direction was achieved through the banking charges settlement decision,[346] where the parties agreed to an immediate reduction of approximately 30 per cent in their charges. For abuse of dominance, particularly

[338] Rosenberg and Sullivan (n 163) 161.

[339] Ariel Ezrachi and Maria Ioannidou, 'Public Compensation as a Complementary Mechanism to Damages Actions: From Policy Justifications to Formal Implementation' (2012) 3 Journal of European Competition Law & Practice 536, 541–542.

[340] ibid 537–538; Bacharis and Kwan (n 127) 8–9.

[341] Bacharis and Kwan (n 127) 10–11.

[342] Supreme Court Judgment No 756/2023; Athens Court of Appeal Judgment No 2445/2023; Athens Court of Appeal Judgment No 2103/2023.

[343] See HCC Decision No 838/2023.

[344] See the provision in art 34 GWB of the possibility of disgorgement of the economic benefits of the infringer by the competition authority (Bundeskartellamt), for competition law violations.

[345] <https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2008/01_12_2008_Gaspreisverfahren.html> accessed 15 August 2025.

[346] HCC Decision 838/2023.

involving essential services or vulnerable consumers, particularly in the pharmaceutical sector, the HCC could negotiate redress schemes similar to the UK's *Aspen* case, where £8 million was secured for the NHS without the need for litigation.[347]

From a procedural perspective, Greece could amend Law 3959/2011 to provide explicit authorization for the HCC to accept compensation as an alternative to fines or alongside them, subject to court oversight ensuring fair distribution. The 2022 fining guidelines revision[348] already introduced additional deterrent amounts of 15–25 per cent for hardcore restrictions, providing room to accommodate compensatory elements, including voluntary redress or structured settlements. Distribution could follow the cy-près model for unidentifiable victims, funding competition advocacy or consumer protection initiatives, while identifiable victims receive direct compensation through simplified procedures. Distribution could also be organized through taxation. Since all citizens file tax returns, they can be informed of compensation rights more efficiently than through publicity measures. Tax returns could include sections listing all decisions awarding damages for competition violations, requesting relevant evidence (receipts or transaction records), and claiming returns from awarded compensation. This method could incentivize keeping purchase records, decreasing unregistered transactions. If consumers paid electronically, refunds can be processed automatically.

However, public redress cannot fully substitute for functional private enforcement as it remains limited by institutional constraints. A competition authority's enforcement efficiency depends on prioritization principles, often emphasizing strategic significance over comprehensive victim compensation. With fewer than 60 lawyers and economists as of 2023 and recruitment requiring government approval, the HCC cannot pursue all meritorious cases. Moreover, as the foreign-language books cartel litigation demonstrates—where the Commission paid €770,000 in damages for investigative delays—institutional capacity affects both public enforcement effectiveness and subsequent compensation possibilities.[349] Public redress thus supplements but cannot replace private enforcement; both mechanisms must function efficiently in parallel for optimal deterrence and compensation.

Finally, this complementary enforcement framework could achieve greater reciprocity if the legal framework accorded evidential value to court judgments in subsequent HCC proceedings. Analogous to how foreign competition authority decisions possess prima facie evidential value in private damages actions, Greek law could provide that final judgments in standalone damages cases establish a rebuttable presumption of infringement in subsequent administrative proceedings. This would enable the HCC to leverage extensive factual findings and economic analysis from private litigation, focusing resources on quantifying aggregate harm, imposing deterrent sanctions, and determining appropriate remedies rather than establishing liability. Such cross-fertilization would be particularly valuable where well-funded collective proceedings have already invested substantially in proving complex cartels (including illegal information exchanges) and abuse of dominance cases. Recent collective actions against digital platforms in jurisdictions like the UK demonstrate that private enforcement increasingly generates substantive precedents on novel theories of harm, informing and accelerating parallel public investigations. This bidirectional approach would transform the current parallel track system into genuine complementarities, with each enforcement stream reinforcing the other's efforts.

[347] CMA, Case 50455—Fludrocortisone Acetate Tablets: Anti-Competitive Agreement, Decision of 9 July 2020.

[348] See <https://www.epant.gr/en/legislation/calculation-of-fines.html> accessed 15 August 2025.

[349] Athens Administrative Court of Appeal Judgment Nos 2903/2013 and 1286/2024.

8. CONCLUSION

The study examined the 'suspended step' of competition damages claims in Greece, identifying the multiple institutional constraints that hinder their development alongside the underlying policy choices made following implementation of the EU Damages Directive and, more recently, the Directive on representative actions. These factors contribute to Greece's weak position in the inter-jurisdictional competition 'game' fostered by the EU legislator with the aim of ensuring effective judicial protection for victims of anticompetitive conduct.

Our analysis reveals a stark picture. Of the approximately twenty published judgments of genuine competition law cases over 2020–2025, most were standalone claims with only about one-third awarding damages, and a complete absence of collective actions. These findings reflect the structural deficiencies we identified. Claimants face a restrictive disclosure regime that operates as a bottleneck in the absence of complementary mechanisms, evidentiary burdens calibrated to general tort law rather than competition-specific circumstances, a prohibition on third-party funding that renders complex claims economically irrational, and an opt-in collective redress framework that the legislature adopted despite acknowledging opt-outs' superiority for low-value claims. The result is a system where formal transposition of EU directives has not translated into effective private enforcement and compensation for competition violations.

Viewing our findings through the lens of Greece's political economy, we identified a suboptimal enforcement equilibrium. The same crisis-era conditions that constrained HCC resources and increased market concentration also undermined institutional capacity for private enforcement, leaving neither mechanism operating at full potential. In particular, notwithstanding the HCC's considerable improvements in case management and enforcement activity since 2020, optimal deterrence cannot be achieved without also a robust and sustained record of private damages claims. Moreover, the empirical predominance of standalone over follow-on cases refutes concerns that active private enforcement would undermine settlement incentives with the HCC: the mechanisms operate largely independently, and comparative evidence from jurisdictions with robust private enforcement confirms that settlement with the authority can remain an attractive option even in the presence of standalone claims.[350]

Against this background, we propose liberalizing third-party funding to address the cost barriers that make litigation currently unattractive, given Greece's absence of institutional complementarities that enable other jurisdictions to operate under similar formal rules. Enabling claim bundling through collective actions or an assignment model offers a realistic path to aggregated enforcement within existing civil procedure frameworks, avoiding the constitutional and legislative complexities of creating new class action mechanisms. Cross-fertilization between public and private enforcement, that is, to include compensatory elements in HCC settlements and bidirectional evidential recognition, may assist in genuine complementarity between the two enforcement systems, responding directly to the coordination failures that optimal enforcement theory predicts in unregulated dual systems.

Ultimately, Greece's experience offers a broader lesson about the limitations of (EU) harmonization strategies in competition law enforcement: minimum standards alone prove insufficient to overcome entrenched institutional barriers and political inertia. This conclusion is particularly striking given that the Greek public demonstrates relatively high regard for

[350] Paolo Buccirossi, Catarina Marvão and Giancarlo Spagnolo, 'Leniency and Damages' (CEPR Discussion Paper No 10682, 2015) <https://cepr.org/publications/dp10682\> accessed 10 March 2026.

competition and competitiveness as societal values.[351] The Damages Directive's approach assumes member states possess equivalent institutional capacity to compete for litigation. Yet, our findings suggest this assumption proves problematic for jurisdictions lacking the institutional complementarities that determine whether formal legal rules translate into *real* enforcement activity. With the approval of forum shopping in the *Athenian Brewery* case, we may soon experience certain EU jurisdictions, such as the Netherlands, Portugal, or Germany, developing as competition litigation hubs across the Union, while smaller stakeholder States may miss out on the benefits of litigating competition claims in their own jurisdictions. This calls into question whether the 2014 minimum harmonization EU Directive was fit for purpose, assuming the aim is the parallel development of competition culture across the EU, however, with due regard to each jurisdiction's institutional complementarities.

The path forward requires recognizing that optimal enforcement is a complex institutional challenge demanding sustained commitment across multiple dimensions, particularly engaging with institutional complementarities. The 'odyssey' metaphor captures the current irony: claimants opt for longer journeys through foreign legal systems rather than simpler domestic routes. Converting this suspended step into forward momentum requires not merely legislative amendment but a fundamental reorientation of private competition law enforcement, one that treats it as a complement to, rather than a competitor with, public enforcement.

ACKNOWLEDGEMENTS

Any views expressed are strictly personal and do not engage the CAT. Lianos has been the President of the Hellenic Competition Commission between Sept. 2019 and Jan 2024 and the Chair of the special Law Commission for the revision of Greek Competition Law, which ultimately led to Law 4886/2022.

FUNDING

None declared.

CONFLICT OF INTEREST

None declared.

[351] See, DIANEOSIS, 'What Greeks Believe?, Part C: State and Policies, Society and Everyday Life' (February 2024) 47, available (in Greek) at <https://www.dianeosis.org/wp-content/uploads/2024/05/TPE2024_Kentriki_Ekthesi_Apotelesmatwn_Part_C.pdf> accessed 5 August 2025.

Journal of Antitrust Enforcement, 2026, 00, 1–54
https://doi.org/10.1093/jaenfo/jnag011
Article