



## Announcement

**Reply to a query of the Hellenic Capital Market Commission** (Ref. No 3945/12.10.2016)

In reply to queries included in the Hellenic Capital Market commission letter, with Ref.No 3945 dated 12.10.2016, we mention the following:

***a. What accusations have been made, for which companies of your group, to which period do they pertain, and to which projects does the Hellenic Competition Commission refer.***

Companies AKTOR S.A. and AKTOR CONCESSIONS are checked for potential infringement of Article 1 of Law 703/77, now art. 1 Law 3959/211 and Article 101 TFEU. Specifically, in accordance with these provisions, all agreements and concerted practices between undertakings, which aim to or result in the obstruction, restriction or distortion of competition are prohibited, and, in particular, those which consist of: a) directly or indirectly fixing of purchase or sales prices or any other trading terms; b) limiting or controlling production, sale, technological development or investments; c) the distribution of markets or supply sources; d) the application of dissimilar conditions in trade for equivalent provisions, in particular, in the unjustified refusal to sell, purchase or make any other transaction in a manner that obstructs competition; e) making the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts. In accordance with the HCC's Recommendation, the Group companies participated, each one starting at a different time, in a cartel collusion to manipulate public project tenders, which include, *inter alia*, large road construction projects, METRO, Urban railway and railway line/station projects, projects auctioned through the concession system, and public private partnership projects (PPP), which, according to the Recommendation, lasted overall between the years 1990 and 2016.

***b. A detailed description of your company's status, regarding the ex officio investigation ordered by the Hellenic Competition Commission, mentioning, inter alia, whether your company has asked for its submission to the Dispute Settlement Procedure, and, in such a case, at what stage of the procedure is it, and what does this procedure mean for your company.***

The Plenary of the HCC will be called to examine the case, taking into consideration the facts of the evidential procedure and the views of the Group's companies, without being bound by the Recommendation. Due to the confidential nature of the settlement procedure imposed by law, the company is not in a position either to disclose to you or publish any information or data related to any potential statement on any expression of interest for its submission under the settlement procedure and its progress. In particular, according to Decision No 628/2016 of the HCC "Terms,

*conditions and procedure for dispute settlement in cases of horizontal collusions in infringement of Article 1 of Law 3959/2011 and/or Article 101 of the TFEU”, which has been issued under authorisation of the provisions of Article 14 par. 2(n)(ee) and 25a of Law 3959/2011, the following are stipulated: “23. **This information and the related documents remain confidential.** Each undertaking participating in the bilateral meetings and their authorised attorneys do not have the right to disclose to a third party, whether involved or not, the content of the meetings or documents which were presented to them, or to which they were given access within the framework of the Dispute Settlement Procedure, unless they have first received the written permission of the President of the HCC. [...] 49. The statements on the investigation of the possibility of submission to the Dispute Settlement Procedure, the technical memos that may be submitted by the involved undertakings during the bilateral meetings, any minutes of the bilateral meetings as internal documents, the excerpts or parts of the summons of the competent Case Handler that reproduce the results of the bilateral meetings, the Proposals of the Dispute Settlement, the Settlement Statements, the minutes of the bilateral meetings before the HCC and the citing of excerpts of the above documents that are included in other documents **are considered confidential information and are not disclosed to third parties**, including the natural or legal persons that filed a complaint, according to Article 36 of Law 3959/2011. 50. **The use and/or dissemination of the above documents and information for different purposes is an aggravating circumstance** in the sense of point 14 of the HCC Announcement of 12.05.2006 - Guidelines for the calculation of fines - and may be considered as refusal of cooperation with the Commission, in the sense of Chapter V, subparagraph. A) cc) and subparagraph C) aa) of the HCC Decision 526/VI/2011 on the terms and conditions of exemption or reduction of the fines imposed against companies and natural persons who contribute in the investigation of horizontal collusions of Article 1 of Law 3959/2011 and/or Article 101 TFEU (“Leniency Program”)). Furthermore, it may lead to the suspension of the Dispute Settlement Procedure (see para. 10 of the HCC Decision).*

**c. What does the relevant legislation stipulate in the case of ascertainment of infringement, mentioning, inter alia, the estimated range of the potential fine.**

According to Article 25 of Law 3959/2011 Powers of the Commission on infringements “1. *If the Competition Commission, following a relevant investigation, carried out either ex officio or following a complaint or a request by the Minister of Economy, Competitiveness and Shipping, finds that Articles 1, 2 and 11 of this Law or Articles 101 and 102 of the Treaty on the Functioning of the European Union have been infringed, it may decide, either alternatively or cumulatively, to:*a) address recommendations in the event of infringement of Articles 1 and 2 of this Law or Articles 101 and 102 of the Treaty on the Functioning of the European Union;b) oblige the undertakings or associations of undertakings concerned to bring the infringement to an end and refrain from it in the future;c) impose behavioural or structural measures, which must be necessary and appropriate for cessation of the infringement depending on its nature and gravity. Structural measures shall be allowed only where no equally effective behavioural measures exist or all the equally effective behavioural measures are probably heavier than structural measures ;d) impose a fine, pursuant to paragraph

2(a), to undertakings or associations of undertakings that commit an infringement or fail to fulfil a commitment made by them and that has been mandatory by a decision of the Competition Commission, pursuant to paragraph 6;e) threaten a fine, pursuant to paragraph 2a or 2b or both, where the infringement is continued or repeated;f) impose the threatened fine according to paragraph 2a or paragraph 2b or both, when, by a decision of the Commission is confirmed the continuation or repetition of the infringement or the failure to fulfil a commitment undertaken by undertakings or associations of undertakings, which has become mandatory by a decision in implementation of paragraph 6.2. **(a) The fine threatened or imposed under paragraph 1(d), (e) and (f) may be up to ten percent (10%) of the total turnover of the undertaking for the financial year in which the infringement was ceased or, if it continues until the adoption of a decision, for the financial year preceding the adoption of the decision. In the case of a group of companies, for the calculation of the fine the total turnover of the group shall be considered. In determining the level of the fine, it should be considered the gravity, duration and geographical extent of the infringement, the duration and nature of participation in the infringement by the undertaking concerned, as well as the economic benefit derived therefrom. Where it is possible to calculate the level of economic benefit to the undertaking from the infringement, the fine shall be no less than that, even if it exceeds the percentage stated in the first subparagraph hereof.**

In the case of a submission to a settlement, it provides a fine “reduced by 15%, due to subjection of the case to the Dispute Settlement Procedure (see par. 3 of Decision No 628/2016 of the HCC “Terms, conditions and procedure for the settlement of disputes in cases of horizontal collusions in infringement of Article 1 of Law 3959/2011 and/or Article 101 of the TFEU”).

It is noted that the HCC, in the past, has taken into consideration the continuing financial crisis in sectors of the economy and the difficulty which the involved companies face in being financed by the banking sector as a result of that crisis, in order to further reduce the fine (see indicatively, decision 563/VII/2013).

During the calculation of the fine, the Commission may take into consideration the possibility that the amount of the fine will put at irrevocable risk the financial viability of the involved company. Therefore, provided it is requested, it may take into consideration the company’s inability to pay the fine in a specific social and financial framework.

**d. The estimated effect of the above case on your company’s financial standing and results, presenting the uncertainties related to the amount and the time of imposition of the potential fine.**

As reported in the relevant HCC Press Release dated 17 May 2016, the recommendation that emerged after the completion of the investigation and was communicated to the involved parties, is not binding for the HCC, the Plenary of which will decide, taking into consideration the data of the evidential procedure and the opinions of the involved parties. The Plenary’s meeting, which had been originally scheduled for 21 July 2016, was *ex officio* postponed and has not been realised to

date. Therefore, there is no final judgment by the HCC regarding the existence and the extent of the infringement under examination.

According to the applicable legislation framework, in the case of infringement, the potential fine to be imposed may reach up to 10% of the overall turnover of the involved undertakings during the fiscal year when the infringement ceased to apply. As explained above, the determination of the fine is a complex procedure which depends on a number of factors which, *inter alia*, include the gravity, duration, geographical extent of the infringement, as well as the financial benefit gained by the involved Company, after taking into consideration the legal and actual claims and the views of the involved companies on them. In fact, the HCC enjoys a broad discretionary power regarding the information it takes into consideration when calculating the fine. It is noted, for example, that the HCC may limit in each case the basis for the calculation of the fine to the gross revenues of a company in the relevant market only of the specific product which was the subject of the anti-competitive behaviour. As regards the duration of the infringement, any acceptance of claims regarding the lapse and excess of the reasonable duration, is capable of significantly limiting the extent of the fine. According to the provisions of the “Guidelines for the calculation of fines” of 12.05.2006, it has the possibility of deviating from the usual method of fine calculation, in each case where the particularities of a specific case dictate it.

Due to the early stage of the case, the individual factors which could affect the amount of the fine cannot be determined, and by extension, any estimate of the effect on the Company’s financial standing and results could not be reliably quantified.

Additionally, the fact that the case affects the overall construction sector in Greece renders it unique, and, due to the absence of any historical data, it is not possible to make any assessment.

Finally, based on the data to date, we do not know the time frame within which the case will be completed. The fact that a number of companies are involved in the case, in combination with the uncertainty regarding the time frame of a potential settlement procedure for each investigated party, supports the above conclusion.

This announcement is published following a relevant query by the Hellenic Capital Market Commission.

Kifissia, 17.10.2016