MERGER CONTROL

Greece

LEXOLOGY
Getting The Deal Through

Consulting editor
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Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into legislation and regulators; scope of legislation; thresholds, triggers and approvals; notification and clearance timetable; substantive assessment; remedies and ancillary restraints; involvement of other parties or authorities; judicial review; enforcement record and reform proposals; and recent trends.

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UPDATE AND TRENDS

Key developments of the past year

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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

The relevant legislation is Law No. 3959/2011 on the Protection of Free Competition. This law has been substantially amended by Law No. 4886/2022 (the New Law), and the amendments introduced became effective as of 24 January 2022 (with the exception of the new article 1A, which is not related to merger control) (the Competition Law). In addition to modernising the substantive and procedural provisions of competition law, the New Law has transposed into the Greek legal order Directive (EU) 2019/1.

The Competition Law is enforced by a 10-member Competition Commission (the Commission), an independent authority with administrative and economic autonomy. With respect to its administrative and economic affairs, it is monitored by the Minister of Development and Investments and is subject to parliamentary control. It has a five-year term of office. Under the previous regime, the Commission had eight members, of which there were four rapporteurs. After the New Law came into effect, there are now six rapporteurs.

The Directorate General of Competition is headed by a general director appointed by the Commission for a four-year term of office. It has approximately 100 members.

The National Telecommunications and Post Committee enforces the law regarding concentrations and antitrust cases in the electronic communications sector, according to Law No. 4727/2020 .

Concentrations and antitrust cases in the media sector (TV, radio, newspapers and periodicals) are governed in principle by Law No. 3592/2007 (the Media Law) and by the Competition Law. These laws are enforced by the Commission.

Law stated - 01 May 2022

Scope of legislation

What kinds of mergers are caught?

The Competition Law applies to concentrations in general. The term 'concentration' includes any kind of merger or acquisition between two or more previously independent undertakings (article 5.2 of the Law). A concentration is also deemed to arise where one or more persons already controlling at least one undertaking, or one or more undertakings, acquire direct or indirect control over the whole or parts of one or more undertakings.

In a 2021 decision in the electricity generation and supply markets, the Commission held that two or more transactions can be treated as a single concentration if they are interdependent. This occurs if one of the transactions would not have been carried out without the other, and control is ultimately acquired by the same undertakings.

Conditionality is normally demonstrated if the transactions are linked de jure (on the basis of a contractual term) or de facto. An indication of de facto conditionality may be the statement of the parties themselves or the simultaneous conclusion of the relevant agreements. In the case at hand, the notified concentration referred to two agreements for the acquisition of sole control over two target companies by the same ultimate undertaking, which were signed on the same day. From the spirit of the agreements and their simultaneous conclusion, the transactions were considered interdependent and were thus treated as a single concentration.

Law stated - 01 May 2022

What types of joint ventures are caught?

All full-function joint ventures shall constitute a concentration and shall be examined under merger control rules; however, the cooperative aspects of the joint venture shall be examined under article 1(1) and (3) of the Competition Law. In making this appraisal, the Commission takes into account:

- whether the parent undertakings will retain a significant portion of activities in the same market as the joint venture or in an upstream, downstream or closely related market; and
- whether it is likely that the joint venture will eliminate competition in a substantial part of the relevant market.

Law stated - 01 May 2022

Is there a definition of 'control' and are minority and other interests less than control caught?

According to the Competition Law, control shall be constituted by rights, contracts or other means that, either separately or in combination, and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on the activities of an undertaking, in particular by ownership or usufruct over all or part of the assets of an undertaking, and rights or contracts that confer decisive influence on the composition, voting or decisions of the organs of an undertaking. Control is acquired by the person or persons who (or undertakings that) are holders of the rights or entitled to rights under the contracts concerned, or while not being holders of such rights or entitled to such rights under such contracts, have the power to exercise the rights deriving therefrom.

In a 2019 decision, the Commission stated that control may be acquired by natural persons if those natural persons carry out further economic activities on their own account or if they control at least one other undertaking. In that case, the natural person who acquired the shares of the target company (the son) did not fulfil these requirements, so the Commission examined whether the requirements were met by the other notifying natural person (the father) on the grounds that the formal holder of a controlling interest may differ from the person or undertaking, having, in fact, the real power to exercise the rights resulting from this interest. The Commission concluded that control over the target would be, in essence, exercised by the father and that the undertakings concerned were the target undertaking and the father, with the turnover of the undertakings controlled by him being included in the calculation of his turnover.

The acquisition of control may be in the form of sole or joint control. Sole control can be acquired on a de jure or a de facto basis. In the former case, sole control is normally acquired where an undertaking acquires a majority of the voting rights of a company. In the case of a minority shareholding, sole control may occur in situations where specific rights are attached to this shareholding.

Sole control on a de facto basis may exist, among other cases, when a minority shareholder is likely to achieve a majority in the shareholders' meeting, given that the remaining shares are widely dispersed to a large number of shareholders, and this shareholder has a stable majority of votes in the meetings, as the other shareholders are not present or represented. The Commission will assess whether, following the concentration, the party acquiring control will be able to determine the strategic commercial decisions of the target undertaking.

Joint control exists when the shareholders must reach agreement on major strategic decisions concerning the controlled undertaking. The Commission has consistently held that joint control exists in the case of equality in voting rights or in the appointment of decision-making bodies. Furthermore, it has held that the acquisition of minority interests may be caught by the Competition Law if, in combination with other factors, it may confer joint control to the holding party (ie, when this minority shareholder can block actions that determine the strategic commercial behaviour of the undertaking).

As such, the Commission takes into consideration decisions on investments, business plans, determination of budget

or the appointment of management. Such veto rights may be included in a shareholders' agreement or in the company's statutes.

Finally, joint control exists, according to the Commission, when the minority shareholdings together provide the means for controlling the target undertaking. This can be the result of either an agreement by which they undertake to act in the same way or can occur on a de facto basis, when, for example, strong interests exist between the minority shareholders to the effect that they would not act against each other in exercising their rights in relation to the joint venture.

In a 2016 decision, the Commission dealt with the acquisition of exclusive control over 14 regional airports in Greece. This was achieved through the conclusion of concession agreements between Fraport AG and the Hellenic Republic Asset Development Fund, whereby Fraport was assigned with the financing, upgrade, maintenance, management and operation of the airports for a period of 40 years. This period was considered sufficiently long to lead to a lasting change in control of the undertaking concerned.

Regarding the acquisition of control of a part of an undertaking, the Commission looks separately at each category of assets acquired and examines whether, despite the fact that they may have been acquired by different legal acts, they constitute a single unitary transaction. Furthermore, it considers the acquisition of control over assets as a concentration if those assets constitute a business to which a turnover can be attributed. It has found that this occurs in cases where the assets include, for example, installations, stock, goodwill, operation licence, intangible assets and are combined with a transfer of personnel.

In the same context, in a 2013 decision, it has considered as part of an acquired business, apart from the tangible (eg, inventory) and intangible (eg, goodwill) assets transferred, the right of the acquiring undertaking to use the premises where the target business was carried out by virtue of a lease agreement of a 12-year duration concluded with the owner of the premises.

In a 2018 case in the media sector, the Commission found that the acquisition by an undertaking in a public auction of five trademarks under which a corresponding number of newspapers had been previously published and that had been given as security to the lending banks by the owning company constituted a concentration, as these newspapers, when in circulation, generated a turnover. The acquiring undertaking, which re-launched the circulation of the newspapers under the acquired brands, received (small) fines for late notification and early implementation of the transaction on the grounds that it should have been aware that such acquisition was a concentration and should have suspended implementation until the Commission had issued its decision.

In a 2020 decision, the Commission dealt with a concentration as a result of which the notifying parties claimed that a joint control on a de facto basis would be established between the three minority shareholders and original founders of the undertaking on the one hand and the entering investor shareholder who had the higher minority stake on the other. The Commission held that, in the absence of strong common interests, economic or family links among the original founders, the possibility of changing coalitions between minority shareholders will normally exclude the assumption of joint control. Where there is no stable majority in the decision-making procedure and the majority can be reached on each occasion by any of the various combinations possible among the minority shareholders, it cannot be assumed that the minority shareholders or a certain group thereof will jointly control the undertaking. In the case at hand, the entering investor shareholder was the only one that could veto the strategic decisions of the undertaking, while none of the other shareholders had such a decisive influence; therefore, it would acquire negative sole control.

In a 2021 decision that dealt with a notified transaction in the TV sector, joint control would be acquired over the existing target company, which would become a full-function joint venture. The Commission examined whether the two notifying parties constituted a single economic entity, in which case the control exercised over the target company could be attributed to the single entity.

The Commission held that the pre-existing family ties between the persons exercising control over the notifying parties were not in themselves decisive to establishing the existence of a single economic entity, but it should be examined

whether there also existed other structural links on the basis of which central management could be established between the notifying parties. Such links were not found to exist in that case.

On the same topic, in another 2021 decision concerning the car market, the acquiring company was part of a de facto group of companies where the central person was a natural person. In that case, the Commission again held that the family ties between the persons exercising control over the legal entities are not in themselves sufficient to establish the existence of a single economic entity, but other economic links should be identified.

Such links were found to exist in that case as the legal entities demonstrated a high degree of consolidation in that their share capital was controlled by members of the same family, there was a significant overlap among the members of the board of directors of the legal entities, and they all had the same registered offices. All these factors indicated that there existed a central management of the affairs of these entities, which thus formed a single economic entity. The turnover of all these entities was attributed to the central person who indirectly acquired control over the acquiring company.

In a 2021 decision on a concentration in the gaming market involving the change of the quality of control over the target company from joint control to single control, the Commission held that in the case where a concentration comprising the acquisition of joint control had already been thoroughly examined regarding its effects on competition, any subsequent change of joint to sole control was not likely to raise issues for further analysis.

Minorities and other interests less than control are not caught by the Competition Law.

Law stated - 01 May 2022

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

A concentration is subject to a pre-merger notification if the parties have a combined aggregate worldwide turnover of at least €150 million, and each of at least two participating undertakings has an aggregate turnover exceeding €15 million in Greece. In concentrations in the media sector, the thresholds are €50 million and €5 million, respectively.

The New Law provides that the preceding minimum thresholds and criteria may be subject to amendments by way of a joint ministerial decision of the Minister of Finance and the Minister of Development and Investments. This decision may also introduce different minimum thresholds and criteria for different sectors of the economy.

In a 2020 decision involving the acquisition of joint control in a pre-existing undertaking by an undertaking and a natural person, each one to hold 45 per cent in the joint venture, the Commission held that the undertakings concerned were each of the undertakings acquiring joint control and the pre-existing acquired undertaking. In that case, the natural person was participating in other joint ventures with third parties. For the allocation of the turnover of these joint ventures to the natural person, the Commission allocated to it the turnover of the joint venture on a per capita basis according to the number of undertakings exercising joint control.

In the case of an acquisition of parts of one or more undertakings, irrespective of whether these parts have a legal personality or not, only the turnover related to the target assets shall be taken into account with regard to the seller.

Regarding credit institutions and other financial institutions and insurance undertakings, article 10(3) of the Competition Law includes specific provisions regarding calculations of turnover.

Law stated - 01 May 2022

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

The filing is mandatory without exception.

Law stated - 01 May 2022

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Yes, if the thresholds are met, according to article 6 of the Competition Law. Several foreign-to-foreign mergers have been notified where the parties had sales in the Greek market, even in the absence of a local company or assets. The basis for the application of the Competition Law to such mergers is article 46 thereof, under which the Law is also applicable to concentrations taking place outside Greece, even if participating undertakings are not established in Greece, where they have actual or potential effects on competition in the Greek market.

Law stated - 01 May 2022

Are there also rules on foreign investment, special sectors or other relevant approvals?

Regarding competition matters relating to special sectors of the economy under the umbrella of a regulatory authority, such as the telecommunications sector, which is supervised by the National Telecommunications and Post Committee (NTPC), the Commission will deal with markets falling within its competence, while referring others to the NTPC. This was demonstrated in a 2018 decision of the Commission, which approved the acquisition of sole control by Vodafone Hellas over Cyta Hellas regarding the market of acquisition of TV content, including the right to retransmit other TV channels and to offer pay TV services. In contrast, the examination of the offering of combined or bundled landline telephony, broadband access to internet, pay TV and mobile telephony were referred to the NTPC.

Legislation relating to special sectors (eg, banking, insurance, investment services, telecommunications, media and energy) provides for special notifications or approvals, not related to antitrust issues, in cases of acquisitions of major holdings. In addition, there exist special reporting requirements when a major holding in a company listed on the Athens Stock Exchange is acquired or disposed of. These should be examined on a case-by-case basis.

Legislation aiming to attract investments includes the Development Bank Law 4608/2019 , the Development Law 4399/2016 and the Law on Strategic and Private Investments 4146/2013 . Tax incentives on the transformation of companies are provided by a number of laws, such as Law 4601/2019 , Law 4172/2013 , Law 2166/1993 and Law 1297/1972 .

Law stated - 01 May 2022

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

A pre-merger filing should be submitted within 30 calendar days of the conclusion of a binding agreement, the announcement of a public bid or the acquisition of a controlling interest. Filing before any of the above events, in principle, shall not trigger the timetable for clearance.

In the case of wilful failure to notify a concentration as above, the Competition Commission (the Commission) imposes

a fine of at least €30,000 up to 10 per cent of the aggregate turnover of the undertaking under obligation to notify. In the majority of cases, the fines for late notification do not exceed double the minimum fine amount, although there have been some exceptions.

Failure to notify constitutes a criminal offence for the undertaking's lawful representative, punishable with a penalty from €15,000 to €150,000.

Law stated - 01 May 2022

Which parties are responsible for filing and are filing fees required?

In the case of a merger agreement, the concentration must be notified by all parties involved, whereas in cases of acquisition of sole control by the party acquiring control and in cases of acquisition of joint control, notification must be made by all the undertakings participating in the agreement.

The filing fee for a pre-merger filing amounts to €1,100. Law No. 4886/2022 (the New Law) provides that if a Phase II procedure is initiated, the filing fee will be increased to €3,000.

Law stated - 01 May 2022

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

In cases of concentrations subject to pre-merger control, the implementation of the transaction is prohibited until the Commission issues a decision:

- approving the transaction under article 8(3) of the Competition Law within 30 days of the notification of the transaction (Phase I decision);
- approving the transaction after an in-depth investigation (with or without conditions) within 90 days of the initiation of Phase II proceedings, according to article 8(4), (5), (6) and (8) of the Competition Law (Phase II decision);
- approving the transaction before a 90-day term following the initiation of Phase II proceedings has expired without the issuance of a prohibitive decision (deemed clearance), according to article 8(6) of the Competition Law; and
- prohibiting the transaction within 90 days of the initiation of Phase II proceedings, according to article 8(6) of the Competition Law.

In a 2014 case, the Commission dealt with an acquisition of joint control, approved back in 2012, in the form of veto rights awarded to the 49 per cent shareholder by virtue of a shareholders' agreement and examined whether the concentration had been implemented before the issuance of its approving decision while it should have been suspended. According to the facts, on the same day that the shareholders' agreement was signed and even before the submission of the notification to the Commission, the shareholders' meeting of the target company had elected a new board of directors comprising directors appointed by both parties in conformity with the shareholders' agreement.

From the evidence submitted to it, the Commission found that although the board had been elected by the shareholders' meeting and had convened at a meeting to constitute itself into a corporate body before the issuance of the Commission's approving decision, it had not thereafter exercised any of its powers: a month after its election, the shareholders' meeting of the target company revoked its decision electing such board with retroactive effect since its election. The Commission thus concluded that the joint control had not been actually implemented and refrained from

imposing fines for early implementation of the concentration to the shareholders of the target company.

The issue of suspension of the implementation of a transaction came up in a 2018 decision dealing with the acquisition of sole control. In that case, the parties had notified to the Commission their non-binding memorandum of understanding providing for the sale of 100 per cent of the shares of the target company by the seller to the acquiring undertaking. A few days later, they signed and submitted to the Commission the sale and purchase agreement according to which the seller sold and delivered the shares to the acquiring undertaking, the latter paid to the seller a big portion of the purchase price and the board members of the target company had handed their written resignations to the acquiring company.

That agreement did not contain a provision that the sale would be conditional on the approval of the transaction by the Commission; however, a similar clause was contained in the notified memorandum of understanding. The Commission cleared the transaction with commitments.

Until the issuance of that decision, the acquiring undertaking had not exercised its rights as the new shareholder of the target company and the resignation of the board members had not been become effective. So, until that day, the target was still being managed by the previous shareholder (ie, the seller). On the basis of those facts, the Commission found that there had not been early implementation of the transaction, especially because there was no evidence that the parties had intended to conceal the change of control and avoid the substantive examination of the transaction; however, there was a dissenting minority, including the president of the Commission.

Law stated - 01 May 2022

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

Closing before clearance incurs a fine of at least €30,000 and up to 10 per cent of the aggregate turnover of the undertaking under obligation to notify, according to article 9 of the Competition Law. In the majority of cases, the fines for early closing do not exceed double the minimum fine amount, although there have been exceptions.

Closing before the Commission's decision constitutes a criminal offence for the undertaking's lawful representative, punishable with a fine from €15,000 to €150,000.

The Commission may adopt appropriate provisional measures to restore or maintain conditions of effective competition if the concentration has closed before a clearance decision or in breach of the remedies imposed by the Commission's clearance decision.

Early implementation may only be allowed following a special derogation by the Commission. Derogations may be granted to prevent serious damage to one or more of the undertakings concerned or to a third party. A derogation may be requested or granted at any time (before notification or after the transaction) and revoked by the Commission in the circumstances provided in the law, for example, if it was based on inaccurate or misleading information.

The Commission may, in granting a derogation, impose conditions and obligations on the parties to ensure effective competition and prevent situations that could obstruct the enforcement of an eventual blocking decision. The Commission regards derogations as an exceptional measure and grants them with great caution, in particular where the participating undertakings face serious financial problems.

The Commission has granted a derogation to a major Greek bank that intended to take over from a bank under liquidation all its current account contracts with its customers. The Commission held that the immediate implementation of the succession was crucial not only for the customers of the failed bank, so that they could have immediate access to their bank accounts, but also to safeguard the reputation of the Greek banking system.

Law stated - 01 May 2022

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The Commission may impose sanctions in cases involving closing before clearance in foreign-to-foreign mergers.

Law stated - 01 May 2022

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

'Hold-separate' arrangements have, to date, not been accepted by the Commission as it considers that a concentration at the level of the parent undertakings outside Greece gives the possibility to the acquiring undertaking of implementing its business and pricing policy to the seller's customers in Greece, thus acquiring control of the target's local market share.

Law stated - 01 May 2022

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

In the case of public bids or acquisitions of controlling interest on the stock exchange, implementation is allowed, provided the transaction has been duly notified to the Commission and the acquirer does not exercise the voting rights of the acquired securities, or does so only to secure the full value of the investment and on the basis of a derogation decision issued by the Commission.

In a derogation issued in this context, the Commission allowed the exercise of the voting rights of the acquired shares to elect a new board of directors, provided the board would not proceed to acts of management that would substantially modify the assets or liabilities of the company until the issuance of the clearance decision by the Commission.

Law stated - 01 May 2022

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

Pre-merger filing is onerous. A specific form exists similar to the Form CO, as well as a short form filed when the notifying party considers that the concentration does not raise serious doubts. As a general rule, the short form may be used for the purpose of notifying concentrations, where one of the following conditions is met:

- none of the parties to the concentration are engaged in business activities in the same relevant product and geographical market (no horizontal overlap), or in a market that is upstream or downstream of a market in which another party to the concentration is engaged (no vertical relationship);
- two or more of the parties to the concentration are engaged in business activities in the same relevant product and geographical market (horizontal relationships), provided that their combined market share is less than 15 per cent; or one or more of the parties to the concentration are engaged in business activities in a product market

that is upstream or downstream of a product market in which any other party to the concentration is engaged (vertical relationships), and provided that none of their individual or combined market shares at either level is 25 per cent or more; or

- a party is to acquire sole control of an undertaking over which it already has joint control.

The Commission may require a full-form notification where it appears either that the conditions for using the short form are not met, or, exceptionally, where they are met, the Commission determines, nonetheless, that a full-form notification is necessary for an adequate investigation of possible competition concerns.

Notifications should be submitted in four copies in the Greek language, with supporting documents as well as by email. In practice, if these are in English, no Greek translation will be required, except for the concentration agreement itself. This document, or at least its principal provisions, should be translated into Greek. The submitting attorney should produce a power of attorney granting him or her all necessary powers to act before the Commission and also to act as an attorney for service.

In a case where wrong or missing information is provided, the law provides for a fine of €15,000, with a maximum level of 1 per cent of the turnover.

Law stated - 01 May 2022

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

Upon receipt of notification, a rapporteur is appointed from the members of the Commission who shall be assisted by a team of employees of the Directorate General of Competition. An investigation shall commence involving contacting third parties, such as competitors or customers, with the purpose of defining the relevant and the affected markets and the competitive conditions therein. Letters may also be addressed to notifying parties with additional requests for information, which should be replied to within at least five days of receipt.

The rapporteur should issue its recommendation to the Commission, and it should also be made available to the notifying parties, regardless of whether it is to clear the transaction. The parties, following the issuance of the recommendation, have access to the non-confidential information of the Commission's file on the case. Third parties do not have access to the file.

A summons is addressed by the secretariat to the parties for a hearing before the Commission. At the hearing, the parties may present their arguments and examine witnesses. Thereafter, they may also submit written pleadings.

Law stated - 01 May 2022

What is the statutory timetable for clearance? Can it be speeded up?

There is a two-stage procedure for pre-merger filings.

If the concentration does not raise serious doubts concerning potential restrictive effects on competition, the Commission should issue a clearance decision within one month of notification (Phase I decision).

If the concentration raises serious doubts, the president of the Commission must issue a decision within one month of notification initiating a full investigation of the notified transaction. The participating undertakings should be immediately informed about this decision.

The case is introduced before the Commission within 45 days. From that date, the undertakings may, within 20 days at

the latest, propose commitments. In exceptional cases, the Commission may accept commitments even after the expiry of the 20-day term, in which case the term for the issuance of a decision under article 8(6) of the Competition Law is extended from 90 to 105 days.

Where the Commission finds that the concentration substantially restricts competition in the relevant market, or that, in the case of a joint venture, the criteria laid down by article 1(3) of the Competition Law are not fulfilled, it shall issue a decision prohibiting the concentration. Such decision must be issued within 90 days of the initiation of Phase II.

If the Commission finds that the concentration does not substantially restrict competition or if it approves the same with conditions, it shall issue an approving decision. If the 90-day term expires without the issuance of a prohibitive decision, the concentration is deemed as approved, with the Commission thereafter issuing a merely confirmatory decision (Phase II decision).

This timetable cannot be speeded up. It can be extended, among other cases, when the notifying undertakings consent, according to article 8(11) of the Competition Law.

If the participating undertakings do not furnish any required information within the set deadline, the term for the issuance of the decision is suspended and recommences as soon as the information is furnished. In its decisions, the Commission mentions the date of the notification, the date of its request for information and the date of submission thereof by the notifying party.

The Commission issues its decisions within the above terms.

The New Law has introduced an important change according to which the parties may propose commitments during Phase I. Such commitments should be proposed within 20 days of the notification of the concentration. If these are accepted, the Commission may approve the concentration with conditions within the term of Phase I (ie, within one month of notification).

Law stated - 01 May 2022

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

The test for clearance is that a concentration must not significantly restrict competition in the Greek market, in particular by way of creating or reinforcing a dominant position. Criteria taken into account include actual and potential competition, barriers to entry, the economic strength of participating undertakings, the supply and demand trends relating to the products or services involved, the structure of the market and the bargaining power of suppliers or customers.

In a 2017 decision, the Competition Commission (the Commission) dealt with a conglomerate merger where an undertaking active in cold meat and cheese products was acquired by an undertaking producing sweet and salted snacks and chocolate products. The Commission cleared the merger on the grounds that it was unlikely that the acquiring company, although it had a significant share in its market, would proceed to combined sales because:

- these were not complementary products;
- supermarkets had alternative sources of supply for cold meat and cheese products given the existence of strong competitors of the acquired company in that market;
- competitors in the crude meat market could deploy effective counter-strategies to react to any attempt of foreclosure; and
- private label products played an important role in that market.

In a 2021 decision relating to the car market, the Commission confirmed that if concentrations result in duopolies with a 50 to 60 per cent market share, the possibility of creating collective dominance will be assessed; however, this does not in itself indicate the existence of a specific presumption.

Regarding horizontal mergers, the Commission has consistently assessed to what extent these mergers might significantly impede effective competition, in particular by creating or strengthening a dominant position, in one of two ways:

- by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (non-coordinated effects); or
- by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour would significantly coordinate and raise prices or otherwise harm effective competition (coordinated effects).

In Law No. 3592/2007, dominance is defined by way of reference to a scale of market shares that will be acquired as a result of the concentration. These market shares vary depending on whether the party acquiring control is active in one or more media of the same type or of different types. The wider the spread in the various media is, the lower the market share conferring dominance is. These shares vary from 25 per cent to 35 per cent.

Law stated - 01 May 2022

Is there a special substantive test for joint ventures?

In addition to examining whether the joint venture will significantly restrict competition, the Commission will assess possible 'cooperative' effects.

Law stated - 01 May 2022

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

Single or joint market dominance is the basic concern of the authorities during their investigation of a concentration. They have also examined unilateral, coordinated, vertical and conglomerate effects.

Law stated - 01 May 2022

Non-competition issues

To what extent are non-competition issues relevant in the review process?

In recent years, the Commission has shown that it also takes into account the effects on the national economy when examining a merger. For example, in relation to the banking sector, the Commission has repeatedly stressed the need to support concentrations therein, as these sectors account for a considerable percentage of gross national income, and concentrations would lead to the formation of more competitive and modernised groups with increased economic and productive strength, which would offer employment to a wide range of professions.

Law stated - 01 May 2022

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

Economic efficiencies are taken into account by the Commission to the extent that they enhance the degree of competition in the market in favour of consumers.

Law stated - 01 May 2022

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

If the authorities find that a concentration significantly restricts competition, then a prohibitive decision shall be issued.

If a concentration has been implemented in breach of Law No. 3959/2011, as amended (the Competition Law) or in breach of a prohibitive decision, the Competition Commission (the Commission) may require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or disposal of all the shares or assets acquired, so as to restore the situation prevailing before the implementation of the concentration.

Divestment has to date been ordered only once, in a transaction between Greek companies. The Commission may also order any other appropriate measure for the dissolution of the merger.

Law stated - 01 May 2022

Remedies and conditions

Is it possible to remedy competition issues, for example, by giving divestment undertakings or behavioural remedies?

The Commission may clear the transaction subject to conditions so as to render the concentration compatible with the substantive test for clearance or to ensure compliance by the parties with the amendments to the terms to the concentration agreed by them. A fine for non-compliance may be threatened by the Commission, which may not exceed 10 per cent of the aggregate turnover of the undertakings. By virtue of a subsequent decision verifying that the conditions have been breached, the Commission may declare that the fine has been forfeited.

In a 2011 decision involving the ice cream sector, the Commission analysed in great depth the non-coordinated and coordinated effects of the transaction and cleared it following an undertaking by the acquiring undertaking that the exclusivity clause, obliging the point of sales to use freezers only for the ice cream of the suppliers providing them, would be deleted from the respective agreements. In another 2011 case in the milk sector, the Commission cleared the transaction after a commitment by the acquiring company to divest a business of the target and to appoint a trustee to implement such divestiture.

In a 2017 decision, the Commission, following Phase II proceedings, cleared the acquisition by the second-largest supermarket chain in Greece of another supermarket chain, in a stage of pre-bankruptcy proceedings, with an equal share, which would make the acquiring undertaking the largest chain in Greece, leaving the previous number one chain in second place with a difference of approximately 5 to 10 per cent in terms of market share. The acquiring undertaking had proposed the following commitments, which were accepted by the Commission.

- It would continue its cooperation with the suppliers used both by itself and the acquired chain whose sales to the

new entity emerging from the merger would represent at least 22 per cent of their total sales, for a period of three years; the same commitment was taken regarding local suppliers of the acquired entity. This commitment would cease to apply in certain defined cases, including when the product supplied became obsolete, when there were issues of safety and consumer protection imposing the interruption of the cooperation, when the quality of the product deteriorated or when there was an unreasonable increase in its price.

- The acquiring company and the new entity undertook to sell 22 shops in defined locations so as to address the concerns that high shares would emerge for the new entity post-merger in these geographic areas. Such sale should be effected within a term of nine months.

On that same transaction, the Commission issued a new decision in 2018 accepting a request by the acquiring party to modify the commitments on the grounds that the circumstances had changed. More specifically, out of the 22 stores, only eight had been sold and despite continuous efforts, there was no interest from potential buyers for the remaining 14.

The Commission re-evaluated the market shares in the local markets concerned and found that although before its initial decision in 2017 the share of the acquiring undertaking would exceed 50 per cent, this was no longer the case as in the meantime new undertakings had entered the market and competition had increased. The Commission thus decided to lift the commitment of sale regarding the 12 stores and imposed a commitment on the undertaking not to operate the other two stores as supermarkets for a term of three years.

In a 2019 decision, the Commission cleared a transaction subject to three years of behavioural remedies. In that case, the vertical dimension of the notified concentration posed competition concerns owing to the dominant, if not monopolistic position, of the acquired company in the market aluminium waste recycling. The acquiring undertaking was a big producer and processor of primary cast aluminium.

According to the Commission, there was a risk that access to the recycling service would be offered by the new entity as a tied service with the purchase of primary cast aluminium from the acquiring company. The agreed remedies provided that the offer of recycling services to the customers of the acquired company would not be dependent on the purchase of primary cast aluminium from the acquiring company and vice versa, that the acquired company would continue to offer its recycling services to its existing and creditworthy customers and that the customers of both the acquiring and acquired companies would not be bound by an obligation to exclusively obtain primary cast aluminium and recycling services from them.

Law stated - 01 May 2022

What are the basic conditions and timing issues applicable to a divestment or other remedy?

To date, only one decision imposing divestment as a condition for clearance has been issued. In that case, to entirely remove the horizontal overlap between the parties to the concentration and enable access of competitors in the chocolate milk market and given that it was not possible to separate the business activity of the chocolate milk from that of white milk, the Commission concluded that the acquiring party should sell a leading trademark of chocolate milk of the acquired party to an appropriate buyer.

To ensure the viability and competitiveness of the divested asset, the acquiring party further committed, subject to the buyer's approval, to provide to the buyer access to its distribution network for chocolate milk and to have the new entity enter into a toll manufacturing agreement to produce chocolate milk for the buyer at market prices, for a transitional period of two years following completion of the divestiture.

Law stated - 01 May 2022

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

The Commission has, to date, never imposed remedies in a foreign-to-foreign merger.

Law stated - 01 May 2022

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

A clearance decision covers restrictions directly related and necessary for the implementation of the concentration. The Commission usually examines these restrictions separately and clears them on the basis of principles similar to those of the European Commission's Notice on ancillary restrictions.

In a 2020 decision, the Commission dealt with a concentration involving the acquisition of a part of an undertaking, following which the undertaking that sold part of its business would become a shareholder in the acquiring company. The non-compete clause prevented the shareholder from competing as long as it remained a shareholder and for two years after it had ceased being a shareholder.

The Commission held that non-compete clauses are only justified by the legitimate objective of implementing the concentration when their duration, their geographical field of application, their subject matter and the persons subject to them do not exceed what is reasonably necessary to achieve that end.

Based on this, it held that the clause aimed to eliminate any competitive pressures that the shareholder could exercise on the acquiring company for a term that was unreasonably long. It also found that an obligation to impose a non-compete clause to a third party was equally not necessary. Therefore, both restrictions were found not to be ancillary restraints directly related and necessary to the concentration.

In a 2021 decision relating to the merchant acquiring services and card acquiring processing markets, the Commission held that restrictions agreed between the parties to a transaction involving a transfer of business can be to the benefit of the buyer or the seller. In principle, protection is required for the buyer not the seller, as it is the buyer who has to ensure the full benefit from the acquired business.

As a general rule, either the restrictions to the benefit of the seller are not at all necessary for the implementation of the transaction nor are directly related to it, or their scope and duration should be more limited than those on the buyer. In the case at hand, the Commission found that the ancillary restrictions to the benefit of the seller could not be considered as directly related and necessary to the concentration and should therefore be assessed under articles 1 and 2 of the Competition Law, as well as articles 101 and 102 of the Treaty on the Functioning of the European Union.

Law stated - 01 May 2022

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

Third parties are given the opportunity under Law No. 3959/2011, as amended (the Competition Law) to play an important role in the application of Greek merger control rules. The Directorate General of Competition may address

questions to third parties, such as competitors or customers. These should be replied to within five days, and the Competition Law provides for fines for those who do not comply.

The Competition Commission (the Commission) may invite any third party to the hearing before it if it decides that its participation will contribute to the examination of the case. In addition, any third party, natural or legal person may intervene in the proceedings by submitting written pleadings at least five days before the hearing.

Although the Competition Law does not explicitly give third parties the right to complain in cases of infringement of merger control rules, there is no obstacle to the investigation of a non-notified transaction given the Commission's wide powers to commence on its own initiative investigations with the purpose of establishing whether merger control rules have been infringed.

Third parties demonstrating a legitimate interest may file an appeal against the decisions of the Commission before the Administrative Appeal Court of Athens.

Law stated - 01 May 2022

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

The Commission has fixed the form and content of the public announcement of the concentrations subject to pre-merger control by the notifying party in the daily press. This announcement should take place immediately after notification. This announcement is also uploaded to the Commission's website so that any interested party may submit observations or information on the notified concentration.

The decisions of the Commission are published in the Government Gazette. Commercial information, including business secrets, is protected from disclosure under article 28 of the Regulation of Operation and Administration of the Competition Commission .

Law stated - 01 May 2022

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

Under the Competition Law, the Commission assists the European Commission in investigations carried out on the basis of EU provisions. Decisions of antitrust authorities of other member states play a crucial role in the Commission's assessment of the concentration. The Commission keeps records of concentrations subject to multiple filings in the context of the Network of European Competition Authorities (ECAs) and cooperates with ECAs regarding merger control.

Law stated - 01 May 2022

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

Decisions of the Competition Commission (the Commission) are subject to appeal before the Administrative Appeal Court of Athens. This appeal does not automatically suspend the enforcement of the contested decision, but a petition

to this effect may be submitted to the Appeal Court, which may grant a suspension of the whole or part of the appealed decision, provided serious reasons exist. If the appealed decision imposes a fine, the Appeal Court may suspend only up to 80 per cent of the fine.

A recourse for judicial review of the Appeal Court's decision may be filed before the supreme administrative court, the Council of State, on points of law and procedure.

The Commission seems to recognise the possibility for third parties to request by way of a petition to the Commission the revocation of a decision it has issued approving a concentration, if this decision has been based on inaccurate or misleading information. In such case, the Commission may issue a new decision; however, this possibility is only available if the applicant can invoke a specific damage that it will suffer as a result of the approved concentration and a causal link between such damage and the issued decision.

Law stated - 01 May 2022

Time frame

What is the usual time frame for appeal or judicial review?

The time frame for an appeal before the Appeal Court is 60 days from the decision being served to the parties concerned. The term for recourse before the Council of State is 60 days from the Appeal Court's decision being served. It may take more than a year for the Appeal Court to deliver its decision and even longer for the Council of State.

Law stated - 01 May 2022

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

What is the recent enforcement record and what are the current enforcement concerns of the authorities?

The Competition Commission (the Commission) has, to date, never prohibited a foreign-to-foreign merger, but has imposed fines for failure to notify and for early closing.

Given the increased concentration occurring in the supermarket sector, the Commission had the opportunity in 2014 to 2015 to deal with a number of transactions in this sector that were approved at Phase I.

Law stated - 01 May 2022

Reform proposals

Are there current proposals to change the legislation?

No.

Law stated - 01 May 2022

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

Following changes in the composition of the Competition Commission in the last quarter of 2019, its current members are I Lianos (the president); K Benetatou (the vice president); P Fotis, I Stefatos, M Ioannidou and M Rantou (the rapporteurs); S Karkalakos and I Petroglou (ordinary members); and M Polemis and A Adamakou (substitute members).

In January 2022, Parliament passed Law 4886/2022, which significantly amended Law No. 3959/2011 on the Protection of Free Competition. Its objectives were to modernise the provisions of substantive and procedural competition law so as to confront the challenges of the digital economy and to transpose in the Greek legal order Directive (EU) 2019/1, empowering the competition authorities of the EU member states to be more effective enforcers and ensuring the proper functioning of the internal market.

Law stated - 01 May 2022

Jurisdictions

Albania	Wolf Theiss
Australia	Allens
Austria	Freshfields Bruckhaus Deringer
Belgium	Freshfields Bruckhaus Deringer
Bosnia and Herzegovina	Wolf Theiss
Brazil	TozziniFreire Advogados
Bulgaria	Boyanov & Co
Canada	McMillan LLP
China	Freshfields Bruckhaus Deringer
Colombia	Posse Herrera Ruiz
Costa Rica	Zurcher Odio & Raven
Croatia	Wolf Theiss
Cyprus	Antoniou McCollum & Co LLC
Czech Republic	Nedelka Kubáč advokáti
Denmark	Kromann Reumert
Ecuador	Bustamante Fabara
Egypt	Zulficar & Partners
European Union	Freshfields Bruckhaus Deringer
Faroe Islands	Kromann Reumert
Finland	Roschier, Attorneys Ltd
France	Freshfields Bruckhaus Deringer
Germany	Freshfields Bruckhaus Deringer
Ghana	Bentsi-Enchill Letsa & Ankomah
Greece	Vainanidis Economou & Associates
Greenland	Kromann Reumert

India	Shardul Amarchand Mangaldas & Co
Indonesia	ABNR
Ireland	Matheson
Italy	Freshfields Bruckhaus Deringer
Japan	Freshfields Bruckhaus Deringer
Liechtenstein	Sele Frommelt & Partner Attorneys at Law
Malta	Camilleri Preziosi
Mexico	Castañeda y Asociados
Morocco	UGGC Avocats
Netherlands	Freshfields Bruckhaus Deringer
New Zealand	Russell McVeagh
Norway	Wikborg Rein
Pakistan	Axis Law Chambers
Peru	Payet Rey Cauvi Pérez Abogados
Poland	WKB Wiercinski Kwiecinski Baehr
Portugal	Gomez-Acebo & Pombo Abogados
Romania	Wolf Theiss
Saudi Arabia	Freshfields Bruckhaus Deringer
Serbia	Wolf Theiss
Singapore	Drew & Napier LLC
Slovakia	Wolf Theiss
Slovenia	Wolf Theiss
South Korea	Bae, Kim & Lee LLC
Spain	Freshfields Bruckhaus Deringer
Sweden	Mannheimer Swartling

Taiwan	Yangming Partners
Thailand	Weerawong, Chinnavat & Partners Ltd
Turkey	ELIG Gurkaynak Attorneys-at-Law
Ukraine	Asters
United Arab Emirates	Freshfields Bruckhaus Deringer
United Kingdom	Freshfields Bruckhaus Deringer
USA	Davis Polk & Wardwell LLP
Vietnam	Freshfields Bruckhaus Deringer
Zambia	Corpus Legal Practitioners