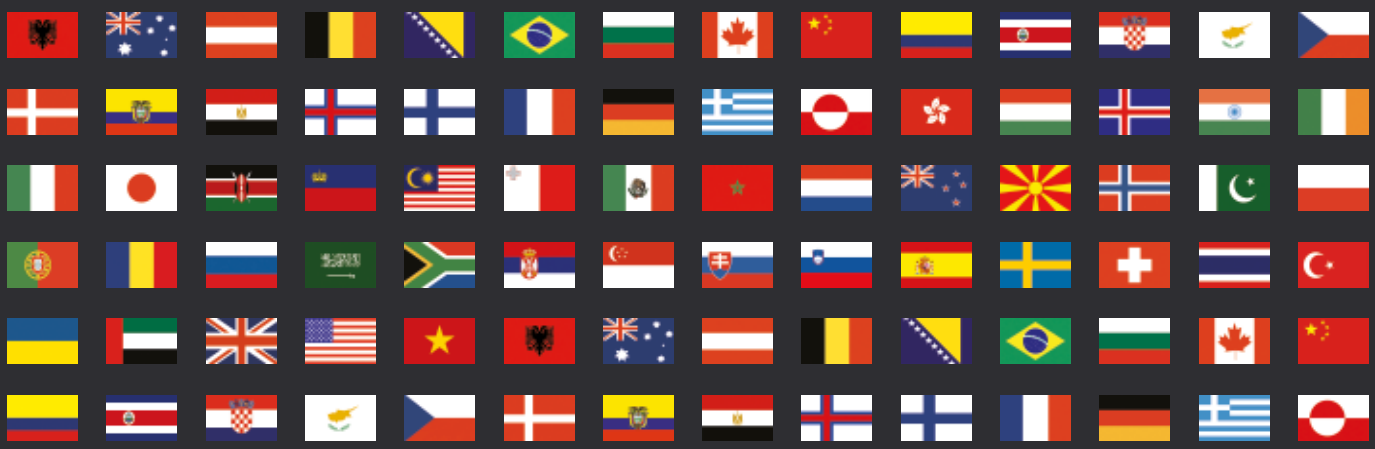
Merger Control 2021

Consulting editor
Thomas Janssens
Freshfields Bruckhaus Deringer



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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the twenty-fifth edition of *Merger Control*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on New Zealand and Vietnam.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Thomas Janssens of Freshfields Bruckhaus Deringer, for his continued assistance with this volume.

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Getting The Deal Through

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For further information please contact editorial@gettingthedealthrough.com

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Greece

Aida Economou
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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

1 | What is the relevant legislation and who enforces it?

The relevant legislation is Law No. 3959/2011 on the Protection of Free Competition (the Competition Law).

The Competition Law is enforced by an eight-member Competition Commission (the Commission), an independent authority with administrative and economic autonomy supervised by the Minister of Development and Investments, with a five-year term of office.

The Directorate General of Competition (DG) is headed by a general director appointed by the Commission for a four-year term of office and consists of 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. 4070/2012, as in force.

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), as in force, and by the Competition Law. These laws are enforced by the Commission.

Scope of legislation

2 | 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.

3 | 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 shall take into account: whether the parent undertakings 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 eliminates competition in a substantial part of the relevant market.

4 | 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 others, 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, that is, when this minority

shareholder can block actions that determine the strategic commercial behaviour of the undertaking. As such, the Commission considers 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 has 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.

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

Thresholds, triggers and approvals

5 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.

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.

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

The filing is mandatory without exception.

7 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. 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.

8 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 markets 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, such as banking, insurance, investment services, telecommunications, media, energy, etc, provide 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 in 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 Greek Development Law 4399/2016 and the Law on Strategic and Private Investments 4146/2013. Tax incentives on transformation of companies are provided by a number of laws, such as Law 4172/2013, Law 2166/1993 and Law 1297/1972.

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

9 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.

10 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.

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

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 in fact elected a new board of directors consisting of 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. In fact, 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 the imposition of 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 these facts, the Commission found that there has not been an 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.

Pre-clearance closing

12 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 attracts 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. 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.

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

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

14 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 to implement its business and pricing policy to the seller's customers in Greece, thus acquiring control of the target's local market share.

Public takeovers

15 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 this board would not proceed to management acts that would substantially modify the assets or liabilities of the company until the issuance of the clearance decision by the Commission.

Documentation

16 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 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.

Investigation phases and timetable

17 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, also made available to the notifying parties, whether to clear the transaction or not. 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.

18 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) 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) 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. They can be extended, inter alia, when the notifying undertakings consent, according to article 8(11).

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 such 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.

SUBSTANTIVE ASSESSMENT

Substantive test

19 | 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 alternatives sources of supply of 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.

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 the Media Law, 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, the lower is the market share conferring dominance. These shares vary from 25 per cent to 35 per cent.

20 | 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.

Theories of harm

21 | 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.

Non-competition issues

22 | 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.

Economic efficiencies

23 | 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.

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

24 | 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 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.

Remedies and conditions

25 | 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 to not 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 of recycling of aluminium waste. 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.

26 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.

27 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.

Ancillary restrictions

28 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.

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

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

Third parties are given the opportunity under 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.

Publicity and confidentiality

30 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, are protected from disclosure under article 28 of the Regulation of Operation and Administration of the Competition Commission.

Cross-border regulatory cooperation

31 | 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.

JUDICIAL REVIEW

Available avenues

32 | 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.

Time frame

33 | 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.

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

34 | 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 2014–2015 to deal with a number of transactions in this sector that were approved at Phase I.

Reform proposals

35 | Are there current proposals to change the legislation?

In January 2020, a legislative drafting committee was constituted and assigned the task of reforming the Competition Law.

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UPDATE AND TRENDS

Key developments of the past year

36 | 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).

Quick reference tables

These tables are for quick reference only. They are not intended to provide exhaustive procedural guidelines, nor to be treated as a substitute for specific advice. The information in each table has been supplied by the authors of the chapter.

Greece	
Voluntary or mandatory system	Filing is mandatory, in Greek.
Notification trigger/ filing deadline	Pre-merger filing: combined aggregate worldwide turnover of at least €150 million and aggregate turnover in Greece for each of at least two participating undertakings exceeding €15 million. Filing within 30 calendar days of signing of a binding agreement.
Clearance deadlines (Stage 1/Stage 2)	Stage 1: one month from notification. Stage 2: two additional months. Implementation is prohibited until issuance of the Commission's decision.
Substantive test for clearance	A concentration must not substantially restrict competition in the Greek market, especially by way of creating or reinforcing a dominant position.
Penalties	Pre-merger filing: in case of failure to file, fines ranging from €30,000 up to 10 per cent of the aggregate turnover may be imposed by the Commission. In case of early closing, fines range from €30,000 up to 10 per cent of the aggregate turnover.
Remarks	Special provisions for acquisition of major holdings in companies in traditionally regulated sectors (ie, banking, insurance, media, telecommunications, etc).

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