The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Greece: Merger Control

This country-specific Q&A provides an overview to merger control laws and regulations that may occur in Greece.

It will cover jurisdictional thresholds, the substantive test, process, remedies, penalties, appeals as well as the author's view on planned future reforms of the merger control regime.

This Q&A is part of the global guide to Merger Control. For a full list of jurisdictional Q&As visit http://www.inhouselawyer.co.uk/index.php/practice-areas/merger-control-3rd-edition

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1. Overview

In Greece, the merger control regime is included in Law 3959/2011,as currently applying (hereinafter: “the Greek Competition Act”), and enforced by the Hellenic Competition Commission (hereinafter: “HCC”), an independent administrative authority. By and large, the Greek merger control regime is aligned with the EU respective regime, in terms of mandatory filings, the prohibition of closing (consummation) prior to clearance, the test of substantive assessment of concentrations, etc. A feature differentiating the Greek regime is the sequence of filing steps. Unlike in the EU, a notification before the HCC does not require a stage of consultation with the case handler. By contrast, is a common practice for the HCC to request for the provision of additional data/documentation before the lapse of the seven days deadline contemplated in the Competition Act, within which the HCC is empowered to exercise this discretion. It is also frequent that the HCC places numerous requests for additional information, which suspend the progress of the procedure for a significant period, and therefore ultimately delay clearance.

2. Is mandatory notification compulsory or voluntary?

A compulsory notification must be submitted to the HCC by the parties acquiring control, thirty days from the execution of an agreement giving rise to such change of control, or from the publication of a binding offer or the assumption of an obligation for the acquisition of a participation conferring such control. The Greek Competition Act does not provide for legal exemptions from the need to obtain merger control clearance.

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for derogation or carve out?

The consummation of the transaction is suspended until the HCC either clears or prohibits the notified merger (“suspension of consummation” rule). However, the public bids and the transfers of shares pursuant thereto are possible, as long as they have

been notified to the HCC and the purchaser does not exercise the voting rights deriving from the ownership of the transferred shares. By contrast, in the past no “carve out” structures have been upheld by the HCC, as they have been considered to inadequately insulate the Greek operations of the parties from the other, non-Greek operations in jurisdictions having cleared the transaction.

Upon application by the parties of the transaction, submitted even before the filing of the notification, the HCC may allow derogations from the above mentioned prohibition only in order to avoid causing serious damage to the interests of one or more parties of the transaction or of a third party. The decision allowing the derogations may include terms and conditions for the protection of effective competition in the market and is freely revocable by HCC, in the event it was grounded on inaccurate information or the parties have breached the terms and obligations set out in the decision approving the derogation.

4. What types of transaction are notifiable or reviewable and what is the test for control?

Although there is no formal threshold of influence or control under the Greek legal competition regime, guidance is provided by article 5 of the Competition Act and the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (“Merger Regulation”). The concept of a concentration is defined, thus, in such a manner as to cover operations only if they bring about a lasting change in the control of the undertakings concerned and in the structure of the market; according to the Law and the Merger Regulation, a concentration shall be deemed to arise where a change of control on a lasting basis results from: (a) the merger of two or more previously independent undertakings or parts of undertakings, or (b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings. The distinction between a merger and the acquisition of control is not crucial for the substantive assessment of concentrations.

Concentration does exist when one or more (natural or legal) persons already

controlling an undertaking acquire control over one or more undertakings or parts thereof. Provided that such criterion focuses on the substantive meaning of “control”, the existence of a concentration shall be assessed on a qualitative basis. Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the **possibility** of exercising **decisive influence** on an undertaking (actual influence needs not be proved, the respective mere possibility suffices), in particular by: (a) ownership or the right to use all or part of the assets of an undertaking. *This will be the case where these assets can amount to a presence in the market, the turnover of which can be definitely determined. For example, the transfer of clientele and the exclusive transfer of IP rights may qualify for concentration, provided that they constitute a business activity, which generated turnover in the market*; (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking. Control is acquired, directly or indirectly respectively, by persons or undertakings which: (a) are holders of the rights -*such acquisition is deemed to provoke a permanent change to the structure of the undertaking involved, provided that such persons conduct business activities on their behalf or control at least one (other) undertaking*; or (b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom- *this is the case where the formal holder of a controlling interest is distinct from the person or undertaking having in fact the real power to exercise the rights resulting from this interest*.

The acquired control can be either exclusive or joint: (a) Exclusive control is in principle acquired when a single undertaking can decisively influence another; usually the decisive influence on the strategic business resolutions is achieved through the acquisition of the majority of the voting rights (*de jure* exclusive control). If the majority of the voting rights is not acquired, the control is not secured, even if the majority of the company share capital is acquired. Relatively, in cases where the bylaws provide for super majority with respect to key business resolutions, the acquisition of simple majority of the voting rights may not suffice for the exercise of control. Exclusive control is also attained in cases where a single shareholder is vested with veto rights with regard to such resolutions; provided that such shareholder can cause a deadlock with respect to the management of the undertaking, it is deemed to exercise decisive influence as per art. 3 para. 2 of the Merger Regulation and art. 5 para. 3 of the Law- the so called “negative exclusive control”. Option rights themselves do not guarantee

exclusive control. (b) Joint control is achieved when two or more undertakings or persons are able to exercise decisive influence on another undertaking. The key point with respect to joint control is the ability of two or more parent companies to cause deadlocks due to their ability to reject suggested business decisions. Joint control exists when: (a) two parent companies have equal voting rights in another undertaking (or representation rights before the governing bodies of such undertaking). *This is the most mainstream case of joint control; the crucial aspect is that neither of the two parent companies can individually exercise control*. (b) there is no equality in the rights mentioned under (a), however, the minority shareholder is vested with veto rights with respect to key business decisions. (c) two or more parent companies jointly exercise either pursuant to a legally binding agreement or even *de facto* the majority of the voting rights in another undertaking in cases where community of interests exists. *In principle, when merely one of the parent companies is vested with a decisive vote, joint control cannot be the case, except if such right is indeed restricted by the terms of the agreement.*

5. In which circumstances is an acquisition of a minority interest notifiable or reviewable?

Minority interests are indeed caught by the merger control rules both within the Greek and Community legal regime.

Although there is no specifically defined percentage shareholding below which it could be safely assumed that control will not arise, it can be concluded from both theory and case law that shareholding below twenty five per cent (25%) does not suffice for the acquisition of control absent any structural links between the parties or any other controlling means, such as agreements containing vote withholding provisions, or vested rights with respect to the appointment of a number of managers or the majority of managers, which secure the determination of the business and commercial policy for such right holder.

Only redacted versions of the Decisions issued by the HCC are made public; shareholding percentages are classified as confidential information, therefore, percentage-specific minority shareholding data is not available. However, in the field of

the EU case law (Case No IV/M.258 -CCIE / GTE), a minority shareholding, amounting to only nineteen percent (19%) of the voting rights, has been found to suffice for the acquisition of control, since such shareholder (CCIEL) was also vested with various rights/privileges: veto rights over all board decisions, a permanent seat on the board of the target and right to appoint the Chairman and the CEO (whereas the remaining investors were entitled to one seat on the board), CCIEL's prior written consent for all significant decisions (such as appointment and removal of senior employees, engagement and disposal of significant assets, material capital expenditure, disposal of significant assets and approval of annual budget).

As already stated above, veto rights are related to the concept of joint control. Veto rights that are granted to minority shareholders in order for their financial interests in their capacity as investors to be secured usually do not suffice for the joint acquisition of control; for this purpose, such veto rights shall be associated with strategic business decisions. Therefore, the exercise of influence on the mere everyday function of the undertaking is not required for the control test; on the contrary, it is essential that such veto rights sufficiently enable veto right holders to have **decisive influence on strategic business issues**; the mere ability of the veto right holders to exercise such influence suffices. Therefore, veto rights with regards to the share capital increase or decrease, the dissolution or liquidation of the joint undertaking do not suffice; on the contrary, according to the EC past practices it has been classified that veto rights related to (i) approval and/or determination of the budget, (ii) the approval of the business plan, which, however, must incorporate specific goals and measures and not be vague and include mere guidelines, (iii) any major investments and (iv) the appointment and the removal of senior management of the undertaking do suffice for the ascertainment of acquisition of control.

The control test can be also satisfied in cases of an acquisition by a minority shareholder of de facto control; this will happen especially when such shareholder can boast plenty of chances (according to the projections regarding the vote allotment following the consummation of the concentration) to secure majority in the shareholder assemblies due to the level of his participation and the intertemporal presence of the other shareholders at the assemblies in the past years. Various other criteria, such as the wide dispersion of the remaining shares, any structural, financial or family bonds of any of the other shareholders with the minority one or any strategic or purely financial interests of such shareholders in the undertaking, shall be taken into account, too. As

long as the minority shareholder is likely to obtain consistent majority at the assemblies, based on his participation, the usual allotment of the votes and the position of the remaining shareholders, then such minority shareholder can be deemed as de facto exercising exclusive control [see *Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01) para. 59*].

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)? Are there different thresholds that apply to particular sectors?

According to the Greek Competition Act, the parties taken into account when examining a concentration are the participating parties. In particular, in the case of a merger the participating parties are the merging entities whereas in the rest of the cases the criterion used for the identification of the participating parties is that of "the acquisition of power". More specifically, in the case of an acquisition the participating undertakings would be on one side the acquiring undertaking(s) and on the other side the Target.

Pursuant to the Greek Competition Act both the global and national turnover of the parties participating to the concentration are taken into account as regards the triggering of the relevant thresholds. More specifically, pursuant to Art 6 of the Greek Competition Act, the worldwide turnover of all parties to the concentration is taken into account for it should amount to at least Euro one hundred fifty million (150,000,000) whereas each of at least two of the participating parties should have an aggregate Greek turnover exceeding Euro fifteen million (15,000,000).

It is, therefore, understood that in order for the afore-mentioned thresholds to be triggered at least two of the participating parties should have an aggregate Greek turnover exceeding Euro fifteen million (15,000,000). It is hence, implied, that the mentioned thresholds cannot be satisfied by one party only, as the fifteen million turnover should be exceeded by at least two participating parties which operate in the Greek market.

It is, therefore, understood that in order for the aforementioned thresholds to be triggered at least two of the participating parties should have an aggregate Greek turnover exceeding Euro fifteen million (15,000,000). A Greek turnover, that is turnover generated in the Greek market, does not necessitate local establishment or presence in Greece.

Pursuant to Article 6 para. 7 of the Greek Competition Act the afore-mentioned turnover thresholds may be updated following a proposal of the HCC and a respective joint decision of the Ministers of the Ministry of Finance and the Ministry of Development, Competitiveness and Shipping. The HCC's proposal is based on statistical data collected on a three-year basis.

Pursuant to Article 10 para. 3 of the Greek Competition Act, as far as credit institutions, financial organisations and insurance companies are concerned different criteria are taken into account instead of the mentioned turnovers.

a) As regards credit institutions and other financial institutions including the cases where they operate in Greece using a branch office or a division, the sum of the following income items is taken into account, without taking into account the VAT as well as any other taxes directly related to the goods and services provided:

i) Income from interest or similar sources;
ii) income from securities, namely from shares and other variable yield securities, from holdings as well as from shares in affiliated undertakings;
iii) commissions;
iv) net profit on financial operations;
v) other operating income.

b) As regards insurance companies, the value of gross premiums are taken into consideration, comprising all received and receivable amounts by virtue of any concluded insurance contracts, as well as any assigned reinsurance premiums, decreased by the amount of taxes and levies charged based on the individual premiums value or the total volume of the premiums. Pursuant to the Greek Competition Act, in order for the turnover of an insurance company to be calculated the gross premiums incurred by parties residing or established in Greece should be

taken into account.

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

The period over which the turnover thresholds are to be considered is the previous fiscal year during which the sale of products or the provision of services took place.

The turnover includes all amounts deriving from the sale of products or the provision of services in the national or the world market on the basis of the usual activities of the company after deduction of rebates on products, VAT and all relevant taxes directly linked to the turnover. Turnover generated on the basis of intra-group transactions is not taken into account for the purposes of calculation of turnover. For the calculation of the participating parties' turnover (Greek and worldwide) one shall take into consideration the turnover of their upstream and downstream links. On the contrary, when it comes to thresholds involving the worldwide turnover of a company, then the calculation is made on the basis of the sales of products or the provision of services globally, i.e. to clients both in Greece and in any other jurisdiction.

Even though market shares are not taken into account as regards the triggering of the thresholds for the notification of a concentration to the HCC, it should be noted that they are being considered at the stage of the evaluation of the possible negative effects a horizontal concentration could imply for competition on the relevant market.

8. Is there a particular exchange rate required to be used to convert turnover and asset values?

No particular exchange rate to convert other currencies into Euros is prescribed by the Greek legislation.

9. In which circumstances are joint ventures notifiable or reviewable (both new joint ventures and acquisitions of joint control over an existing business)?

The Competition Act does not provide for separate thresholds for JVs. Where joint control over a to-be-established-JV (newCo) is the case, all undertakings that acquire control over such JV are deemed as participating parties to the concentration; the JV cannot be considered as a participating party to the concentration, since it practically does not yet exist and generates no turnover. As a result, the acquiring undertakings will be taken into account for considering whether the jurisdictional thresholds are satisfied. On the contrary, when two or more undertakings acquire joint control over an existing JV, then all undertakings concerned, i.e. on the one hand the acquiring undertakings and on the other hand the existing JV, will be considered participating parties to the concentration and will be taken into account for considering whether the jurisdictional thresholds are satisfied.

When the full-function JV (as per how it is defined below) acquires control over another undertaking-target, then, in principle, only the JV and the target will be considered participating parties to the concentration, and not the parent companies of the JV. On the contrary, when the JV is used merely as a vehicle for such acquisition of control by the parent companies, then only the latter along with the target will be considered participating parties to the concentration; only such participating parties will be taken into account for determining whether the thresholds are satisfied.

According to art. 3 para. 4 of the Merger Regulation and art. 5 para. 5 of the Law, a concentration will be found in the case of the creation of a JV performing **on a lasting basis** all the functions of an **autonomous economic entity**; such JV is deemed a "full-function JV" [see *Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01) para. 91 et seq.*]. The criteria taken – on an ad hoc basis- into account for the determination of full functionality or autonomy, among others, are *(ibid. para. 94-102)* related to (i) whether sufficient resources for independent operation in the market exist, (ii) whether activities beyond one specific function for the parents are carried out, (iii) whether there is strong presence of the parent companies in upstream or downstream markets and whether the JV relies on sales/purchases to/from the

parent companies (especially for a period exceeding an initial start-up period, which usually lasts three years). Accordingly the JV must be intended to operate on a lasting basis *(ibid. para. 103-105).* Should the above characteristics of full-functionality and long lasting operation not be met, then the JV may be reviewed under art. 1 of the Law and/or art. 101 TFEU for prohibited collusions.

Due to the declined volume of concentrations that have taken place in Greece during the past few years, as a result of the unprecedented fiscal crisis the country is facing, the Hellenic Competition Commission has not generated rich case law. In a recent merger control decision issued by the HCC, Decision no. 615/2015, the HCC held that there two conditions which shall be met in order to confirm the full functionality of a JV i.e. a) the exercise of joint control by the parent entities (with a citation to footnote 84 of the Jurisdictional Notice) and b) that the JV shall perform on a lasting basis all the functions of an autonomous economic entity, i.e. be operationally and therefore economically autonomous in an operational respect (with citation to paras 92-93 of the Jurisdictional Notice). Another relative decision of the HCC dealing with a shift of control over a joint venture is decision no. 577/2013; the case pertained to the shift in the quality of control over Waste Syclo, a full-function JV. Such was implemented through the acquisition of the 51% of the shareholding in the JV by a new shareholder. Until the time of the concentration the JV had generated zero turnover (since its activity amounted merely to its participation in an international public tender) and had been funded by its parent companies. The HCC, which approved the concentration, subject to certain commitments assumed by the parties, ruled in its decision that a concentration exists in the case of the establishment of a new legal entity in the form of a JV, which can boast performance on a lasting basis and function as an autonomous economic entity, as well as in the case of a shift in the structure of an existing JV. According to the HCC in its ruling, a JV carries out on a lasting basis all the functions of an autonomous undertaking when it is active in the market and carries out all usual functions of an undertaking that is active in the same market, it is independently managed and has sufficient financial funds, personnel and fixed assets so that it can carry out its business activity on a lasting basis.

It is irrelevant whether the transaction relates to an existing JV or the creation of a new one. The full-functionality criterion set forth above delineates the application of the Merger Regulation for the creation of joint ventures by the parent companies, irrespective of whether such a joint venture is created as a “greenfield operation” or

whether the parties contribute assets to the joint venture which they previously owned individually. In addition, a transaction involving several undertakings acquiring joint control of another undertaking or parts of another undertaking fulfilling the criteria in the test for control, from third parties does constitute a concentration without it being necessary to consider the full functionality criterion.

10. In relation to “foreign-to-foreign” mergers, do the jurisdictional thresholds vary?

Merger control requirements apply to all transactions meeting the notification jurisdictional thresholds (as outlined in question 6), thus foreign-to-foreign transactions may be also captured by the merger control regime. Accordingly, the same fines are also imposed in foreign-to-foreign transactions for failing to notify, subject to the provision that the concentration has an effect in Greece.

11. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not notify?

Provided that the jurisdictional thresholds are met, the filing is mandatory. The Greek Competition Act does not provide for legal exemptions from the need to obtain merger control clearance.

12. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies? Are there different tests that apply to particular sectors?

According to the Greek Competition Act, a concentration which would not significantly impede effective competition in the Greek market or in a substantial part of it, in

particular as a result of the creation or strengthening of a dominant position, shall be declared permissible .

In the context of such test the HCC runs a substantive scrutiny examining among other the following factors: the structure of the relevant markets; the actual or potential competition; the existence of barriers to entry; the market position of the undertakings participating in the concentration and their financial power; the access to supply sources or resale markets of suppliers and users; the evolution of supply and demand in the relevant product and services markets; the interests of intermediaries and final consumers; and the contribution of the concentration in technical and economic progress, and economic efficiency, under the condition that such contribution must benefit consumers and does not impede competition.

In a solid line of jurisprudence, the HCC considers the following criteria when assessing whether a horizontal concentration between two or more undertakings could significantly impede effective competition in the Greek market or in a substantial part thereof, both relating to the creation or strengthening of a dominant position:

a) A possible elimination of any existing significant competitive pressures as far as on one or more undertakings are concerned, resulting, thus, in their increased and stronger market power without them having resorted to any concerted practice or conduct (unilateral effects). Furthermore, concentrations effected in oligopolistic markets could impede effective competition in the relevant markets due to an elimination of the existing competitive constraints between the competitive. Proxies used by the HCC in its decisions are the market shares of the undertakings participating in the concentration, the market shares of closest competitors, the HHI, the close substitutability of products/ services of the undertakings participating in the concentration and their rivals, the potential for exclusion of competitors and the purchasers' counterveiling power

b) A possible change in the nature of competition in the relevant market in the sense that, following the consummation of the concentration, it is more likely for undertakings which had previously not aligned their conduct to do so in the future (co-ordinated effects). Proxies used by the HCC entail the symmetry of market shares of rivals in the market, the ease of co-ordination due to conditions prevailing in the

market (eg stagnating demand, stability of market shares, similar cost structures), as well as the possibility of detecting deviations from the co-ordinated conduct.

In its jurisprudence, the HCC has also evaluated vertical mergers and focused on unilateral and –co-ordinated effects. In most circumstances, unilateral effects relate to the exclusion of a competitor from indispensable inputs.

The HCC does not confine its assessment on the anticipated conduct of the undertakings participating in the concentration, but also on parties non-participating in it; more particularly, the latter could also benefit from the concentration, since an increase in the prices offered by the participating undertakings, would incite the non-participating parties to also increase their own prices.

13. Are factors unrelated to competition relevant?

In assessing concentrations, the HCC focuses on competition factors, adjusted to the needs of each sector involved in the concentration. However, as a rule (with the possible exception of Media Law 3592/2007, safeguarding the plurality of media) no sector-specific tests are explicitly prescribed in the law. Besides, consideration as the preservation of employment positions, the protection of the environment and the safeguarding of businesses against the crisis play only an ancillary role in the HCC analyses, and are certainly not decisive for the substantive assessment set out in its decisions.

14. Are ancillary restraints covered by the authority’s clearance decision?

As far as ancillary restrictions (eg post-consummation non-compete obligations on sellers), the HCC endorses the approaches enunciated in the EC Jurisdictional Notice.

15. For mandatory filing regimes, is there a statutory deadline for notification of the transaction?

Unlike the EU Merger Regulation model, the Greek Competition Act sets a statutory deadline of thirty (30) calendar days starting from the “triggering event”, which can be any of the following:

- Conclusion of the first binding agreement giving rise to a concentration;
- Publication of the purchase or exchange offer; or
- Undertaking of a binding obligation for the acquisition of a controlling stake.

16. What is the earliest time or stage in the transaction at which a notification can be made?

It must be noted that in some cases the HCC has resolved that execution of a binding MoU (Memorandum of Understanding) setting out all the “essentialia negotii” or of a LoI (Letter of Intent) may constitute the triggering event for the notification deadline. These precedents indicate that irrespective of a title of a document the HCC examines whether such document creates binding obligations to the signatory parties thus constituting a triggering event for the countdown of the statutory deadline to file a merger notification.

17. What is the basic timetable for the authority’s review?

a) if the HCC decides that the notified transaction does not fall under the afore-mentioned turnover thresholds raise serious concerns, it issues a clearance decision within thirty (30) calendar days from the point of time that the submitted merger notification is considered “complete” (“Phase A”)

b) if the HCC considers that the notified transaction raises serious concerns that require further investigation it issues a decision for a full-fledged scrutiny procedure within thirty (30) calendar days from the point of time that the submitted merger

notification is considered “complete” (“Phase B”). Upon service of the mentioned decision to the participating parties commitments and amendments to the concentration plan may be proposed. In a phase B context the HCC has a statutory deadline of ninety (90) calendar days to issue a resolution. If the HCC fails to issue a resolution within such time frame, there is a statutory presumption of clearance.

18. Under what circumstances may the basic timetable be extended, reset or frozen?

The aforementioned deadlines may be extended in the following cases:

a) The notifying parties consent to such extension;
b) In case the notification form is not fully completed by the notifying parties or, according to the case handler, substantial information is missing and, as a result, the HCC cannot proceed to its assessment;
c) In case the notification is inaccurate or misleading and, as a result, the HCC cannot proceed to its assessment.

In the last two cases, the deadline for the initiation of the procedure before the HCC does not commence until the latter receives the complete and accurate data that it needs for its assessment, provided that it has informed accordingly the notifying parties within seven (7) working days of the receipt of the notification form.

The afore-mentioned deadlines are exceptionally suspended in case the participating parties do not comply with their obligation to provide information to the HCC provided that they have been notified accordingly within two (2) working days of the expiration of the set deadline for the provision of the mentioned information.

Consequently, incomplete notification stops the clock until the supply of full and accurate information by the parties, provided that the HCC informs on such issue the notifying parties within seven days of the receipt of the notification form. It must be stressed that it is a common practice for the HCC to request for the provision of additional data/documentation before the lapse of the seven days deadline each time.

It is also frequent that the HCC places numerous requests for additional information, which suspend the progress of the procedure for a significant period.

19. Are there any circumstances in which the review timetable can be shortened?

The Greek Competition Act does not provide for any shortenings of the afore-mentioned deadlines.

20. Which party is responsible for submitting the filing?

In the event of a merger or any other agreement pertaining to the acquisition of joint control, the parties obliged to proceed with the notification are all undertakings participating therein. In all other cases of control acquisition, the parties obliged to notify the HCC of such acquisition are all individuals, undertakings or groups acquiring such control.

21. What information is required in the filing form?

The form and the content of the filing (either in the full or short form) are determined by HCC as per article 6 para. 5 of the Greek Competition Act; the HCC has indeed issued Decision 558/2013 where the content of both full and short notification forms are set out. In a nutshell, the information required in a full notification form comprises, indicatively, the following: (a) brief description of the concentration; (b) information on the parties involved; (c) detailed elements of the concentration (including, among others, value of the notified action, world-wide turn-over and turnover in the Greek market, economic rationale of the concentration for each of the undertakings involved etc.); (d) ownership and control status of each of the parties involved; (e) supporting documentation related to the concentration and the parties (agreements, offer prospectus – if applicable, annual reports and financial statements etc.); (f) information regarding the relevant product, geographic and affected markets; (g) general terms on

the affected markets (information on suppliers, distribution networks, customers, cooperation agreements etc.); (h) description of the general context of the market and efficiency gains; (i) assessment of the potential coordination effects of a joint venture; (j) additional information (application of the two third rule (if applicable) and any notified concentrations to other Member States). In case the notification concerns a concentration in the media sector to the HCC, additional filing requirements, enlisted in section 12 of the filing form, shall be submitted with the HCC.

In cases where (a) there is no horizontal or vertical product and geographical market overlap between the parties to the concentration, or (b) there is horizontal product and geographical market overlap among at least two the parties to the concentration, however their combined market shares do not exceed 15% or there is vertical product and geographical market overlap among at least two the parties to the concentration, however either the individual or their combined market shares do not exceed 25% on both levels, or (c) one of the parties to the concentration is to gain sole control of an undertaking of which already possesses joint control, the parties may proceed with the short form notification which requires less information that the full form while no information is requested relating to sections (g) and (h) above.The HCC has the discretion however to request from the parties to submit the full form. In all other cases, the submission of the full notification form is required.

Decision 558/2013, where the content of both the short and the full notification forms are set out, can be found at https://www.epant.gr/Pages/Complaints (available only in Greek though).

22. Which supporting documents, if any, must be filed with the authority?

The supporting documentation accompanying the notification filing is explicitly outlined in the HCC Decision 558/2013. In particular, the legal representative of the notifying party must submit the Power of Attorney (together with any relevant legalization documentation) pursuant to which is entitled to submit the notification form, either in its original, notarized and apostilled form (accompanied by its Greek translation, as the case may be) or a certified copy. Moreover, according to the information required in

the notification form (as set forth in question 23), each of the parties to the concentration shall provide a list (or chart or diagram) of all undertakings belonging to the same group. This list shall include (i) all undertakings or persons controlling these parties, directly or indirectly; (ii) all undertakings active in any of the affected markets that are controlled, directly or indirectly either by these parties and/or by any other undertaking identified under (i) above. In addition, the notifying parties must submit (a) copies of the final or most recent versions of all documents bringing about the concentration, whether by agreement between the parties to the concentration, or acquisition of a controlling interest or a public bid; (b) for public bids, a copy of the offer prospectus. If such document is not available at the time of the notification, it is submitted as soon as possible and not later than when it is posted to the shareholders; (c) copies of the most recent annual reports and financial statements of all the parties to the concentration; (d) copies of all the analyses, reports, studies, researches and other relevant documents that have been submitted or drafted by or for any member(s) of the board of directors or the supervisory board or any other person(s) exercising similar functions or charged with similar duties or to the assembly of the shareholders, in order for the concentration with regards to market shares, competition conditions, the competitors (either actual or potential), the scope of the concentration, the potential for increase of sales or expansion to other product or geographic markets or/and the general market conditions to be analysed or assessed.

All the supporting documentation shall be submitted either in its original form or/and in certified copies, in the official language in which it has been drafted, otherwise officially translated in Greek. In general, there is not an explicit requirement or restriction regarding the time of issuance of each of the supporting documents, but it is a common practice facilitating the accuracy and the completeness of the filing, for the documents to have been issued as recent as possible, evidencing the current situation of the information depicted therein.

The notification filing must be signed by the parties as per what set forth in question 22 or their legal representatives or their authorized attorneys by means of a Power of Attorney. The legal representatives and the authorized attorneys must accompany the notification filing with their legalization documentation as specified above. In case the joint notification must be filed by a common representative authorized to deliver and collect any document in the name of the notifying parties.

23. Is there a filing fee?

The notification forms (either full or short) must be accompanied under penalty of inadmissibility by a fiscal fee amounting to one thousand one hundred (€1,100) Euros.

24. Is there a public announcement that a notification has been filed?

The notification is subject to publication requirements, namely the publication of a summary of the notified concentration in a daily Greek financial newspaper which shall take place immediately following the notification and at the obligors' cost. The text of this publication is immediately notified to the HCC and is published on the official website of the HCC.

25. Does the authority seek or invite the views of third parties?

Following the publication of the summary as referred in question 26, any interested person may submit its comments or provide information in connection with the notified concentration. In addition, in the context of the assessment of a notified concentration, the HCC is entitled by virtue of the Greek Competition Act, when it deems it is necessary, to address written questionnaires to any enterprises, natural persons and legal entities, public or other authorities and invite them to provide certain information within a set deadline ("market testing"). In practice, the addressees of such questionnaires may be customers, competitors, trade associations, consumer organisations or other public and administrative authorities.

26. What information may be published by the authority or made

available to third parties?

The confidentiality obligation is provided in the Greek Competition Act and shall apply among the notifying parties as well. Third parties do not have access to the notification file (including any supporting documentation and any other relevant submission by the parties), rather than only to the decision of the HCC, which is made available as follows: upon the assessment of the notified concentration, HCC will publish a non-confidential version of its decision in the official website of the HCC and the Greek Government Gazette. The publication in the HCC's website takes place immediately, whereas in the Greek Government Gazette may require from one (1) to three (3) months.

In the context of a notification (as well as any other submission of information made in accordance with the Greek Competition Act) and in case the notifying parties (or the party by which any information has been provided) deem that certain information provided to the HCC constitutes confidential business information and their publication could impair their interests such parties may file a "Confidentiality Request" pursuant to which they file a confidential version of such information, explicitly justifying the reason for which they consider such information as confidential. According to the Regulation of Operation of HCC, any information and documentation submitted to the HCC without being accompanied by a Confidentiality Request or not submitted with in a separate confidential version, are deemed as non-confidential.

27. Does the authority cooperate with antitrust authorities in other jurisdictions?

International cooperation lies within the statutory powers of the HCC. According to the Greek Competition Act, HCC must ensure its cooperation with the competition authorities of the EU Commission and the provision to any of its competent bodies of any assistance necessary for the realisation of investigations taking place in accordance with the EU legislation. HCC shall ensure such cooperation with the competition authorities of other countries as well. If any undertaking registered in Greece or exercising its business activities in Greece, refuses to accept the investigation or audit provided in the EU legislation, HCC and its duly authorised body,

acting ipso jure or upon a request by an EU Commission body, ensures that such investigation or audit takes place smoothly, especially by providing the necessary assistance. In case of any refusal or delay on providing any requested information or the information provided is inaccurate or defective, with no prejudice to any criminal sanctions imposed according to the Greek Competition Act, the HCC a) may impose a fine amounting to €15,000 with upper limit the 1% of turnover for each person and for each infringement, when such infringement is committed by undertakings or associations of undertakings, managers and their employees, individuals or legal entities of private law or b) may file a disciplinary report in case such infringements are effected by public officers or employees of public legal entities.

28. What kind of remedies are acceptable to the authority?

Under Greek law, the authority of the HCC to impose remedies is provided in Article 8 para. 8 of the Greek Competition Act) according to which, "*the HCC may clear a concentration … subject to terms and conditions … for the purpose of ensuring the compliance of the participating undertakings with any remedies undertaken vis-à-vis the HCC*" as well as in order to eliminate any anti-competitive concerns.

In imposing and/or accepting remedies, the HCC appears to follow the principles followed by the EU Commission (as those are set forth in the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004) and the case-law of the EU courts, taken into consideration the particular conditions of the case at hand.

in particular:

- Any proposed remedies by the parties must be relevant to the competition law concerns identified in the affected markets and likely to eliminate such concerns;
- Any proposed remedies must conclusively and effectively address any concerns. Furthermore, they must be able to be implemented within a relatively short timeframe, in order to ensure the competition within the affected markets;
- Remedial measures with a structural and permanent character are given preference over behavioral measures subject however to the principle of proportionality (i.e. the measure

which is the most appropriate and effective in order to erase any competition concern); divestitures of businesses are particularly seen as the most effective remedy to eliminate any concerns at horizontal and/or vertical level, (however, any business divested must be in principle viable) on the other hand the principle of proportionality needs always to be taken into consideration;

- Any remedial measures must not trigger additional competition concerns.

As regards the content of the commitments customarily endorsed by the HCC, the following are to be noted:

As a matter of principle, the HCC seldom considers *structural* commitments as indispensable for the clearance of a concentration, save in circumstances in which *behavioral* measures may not provide sufficient safeguards for the protection of competition post consummation. A distinction is to be drawn between concentrations in the form of outright acquisitions of control and concentrations in the form of fully functional joint venture (where, the concentration may furthermore result in the leakage of commercially sensitive information among the parents of the joint venture or, ultimately, the anticompetitive alignment of their conduct).

There are only a few reported HCC decisions in which the HCC has cleared concentrations subject to the divestiture of business lines in which the parties had high combined market shares (coupled with the provision of interim facilitation to the prospective acquirer of said business lines in production and distribution) or the termination of relationships with downstream customers with the view to opening up the market to competitors.

In other cases, where the parties had lower combined market shares, the HCC was content to accept behavioral measures: (a) the supply of quantities of products to competitors, for a limited period of time post consummation; (b) the preservation of existing contractual relationships with third parties, especially small-scale customers for a limited period of time post consummation, and with the same terms applying before consummation (HCC Decision 51/II/1999); (c) the lifting of exclusivity arrangements tying retail points of sale and foreclosing competitors; and, finally (d) the granting of access to facilities and infrastructure to downstream customers on a non-discriminatory basis (HCC Decision 465/VI/2009).

29. What procedure applies in the event that remedies are required in order to secure clearance?

Commitments can be proposed only after the Chairman of the HCC has issued a resolution that has been served on the parties to the concentration, holding that the notified concentration gives rise to significant doubts as to its compatibility with competition in the particular markets to which it relates. According to the Competition Act, this resolution may be issued within one month following the date of submission of the notification by the parties to the concentration, a deadline that may in practice be extended if the parties are requested by the HCC case handler to submit additional evidence on their operations and the concentration itself. A report is then drafted on the merits of the concentration within forty five days from the issuance of the Chairman's resolution, on the basis of which the case is referred to the HCC for further assessment.

The parties have the right to submit commitments any time from the date they have been served with the Chairman's resolution initiating Phase B, and, in any event, no later than twenty days following the referral of the case to the HCC. Exceptionally, the HCC may accept the submission of commitments even after the expiration of said deadline, but it would be expected that the parties advance sufficient reasons for which submission of commitments within the said statutory deadline was not possible. The acceptance of the substance of the commitments as a condition to clearance of concentrations lies within the HCC's ample discretion. If the HCC has accepted the substance of the commitments, it may impose a fine of up to 10% of the turnover of the parties to the concentration in case the commitments have not been complied with post consummation.

30. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

Failure to notify/late notification: Where the notification thresholds are triggered, any party who intentionally or negligently fails to notify within the thirty (30) day deadline,

may be fined with at least Euro 30,000 up to 10% of its turnover. Parameters, such as the economic power of the undertakings participating in the concentration, the number of the affected markets and the level of competition in those, as well as the estimated impact of the concentration on competition shall be assessed when defining the exact height of the fine to be imposed.

Early consummation: In case of implementation of a concentration that has been notified but not cleared yet by the HCC (pre-mature consummation), the parties obliged to notify may be fined with at least Euro 30,000 up to 10% of their aggregate turnover. The HCC may also order the unwinding / divestiture of the concentration. More particularly, the HCC may issue a decision: a) ordering the dissolution of the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, so as to restore the situation prevailing prior to the implementation of the concentration; or b) ordering any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures. The HCC may impose a fine of up to 10% of the aggregate turnover of the concentration on undertakings that fail to comply with the above decision, plus a fine of 10,000 EUR for every day on which they fail to comply with the decision in question.

The same fines are also imposed in foreign-to-foreign transactions for failing to notify, subject to the provision that the concentration has an effect in Greece (Art. 46 of Law 3959/2011 – “effects doctrine”).

In terms of criminal sanctions, late or non-filing as well as early consummation of a notified transaction might trigger in addition the imposition of monetary fines to the natural persons being assigned with the administration of the infirming entity, ranging between Euro 15,000 and Euro 150,000.

The provision of incomplete information within the context of a notification process suspends the deadlines set for the HCC by law for the issuance of a respective decision until the supply of full and accurate information by the parties, provided that the HCC informs on such issue the notifying parties within seven days of the receipt of the notification form.

Furthermore, in terms of sanctioning, the provision of incomplete or misleading information may lead to the imposition of administrative fines ranging between Euro 15,000 up to 1% of the turnover of the liable undertaking or the initiation of disciplinary measures in case of civil servants or employees of public-law entities.

31. Can the authority's decision be appealed to a court?

HCC decisions on merger control cases may be challenged (and if challenged supported via an intervention) before the Administrative Court of Appeals of Athens within sixty calendar days as of the publication of the decision in question. Any party that can substantiate a legal interest can have standing before the ACA. The legal interest must be (i) direct, i.e. the damage by the decision must be borne by the party filing and not any third party, (ii) personal, i.e. there must be a factual or legal nexus between the filing party and the decision, and (iii) present, i.e. the damage should be on-going at the time the challenge is filed and heard.

32. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment?

In the history of the HCC virtually all proceedings (with the exception of two concentrations banned in the 1990s) ended up in clearances; abandonments and prohibitions were not imposed so far. Lately, there are instances where the HCC is using more often the tool of remedies. As regards the imposition of remedies, the HCC shows a stability as to the methodology it follows:

- When the HCC resolves to impose remedies on a concentration where the combined market shares of the parties exceed 40-50% in certain market segments, reference appears to be given to structural remedies and/or divestitures. The arithmetic majority of relevant concentrations appear to have culminated in the imposition of such structural remedies.
- Nevertheless, there are several notable instances where the HCC has decided to impose behavioral measures instead (see e.g., 513/VI/2011 - ELAIS UNILEVER / EVGA). As a matter

of principle, the respective instances involved cases where, despite the high market shares of the parties, the horizontal overlap of their activities was not as substantial and the anticompetitive concerns could be addressed through behavioral measures (e.g., removal of exclusivity clauses from contracts).

- There have been some cases, where, despite the high combined market shares of the parties in certain market segments, the HCC imposed no remedies whatsoever (In these cases, particular weight was given to the analysis of the structure of the market following the implementation of the concentration (future behavior) as well as the current competitive conditions in the market overall (e.g., existence of competitors with equally high market shares, status of parallel imports etc.), pointing out that there is no necessity to impose any remedy whatsoever
- It would be nevertheless suggested that the non-imposition of any remedies in cases where the combined market shares of the parties exceed 40-50% in certain market segments constitutes the exception rather than the norm (at least in recent years). Non-imposition of any remedies may be, for example, justified on the basis that the market segments in question were treated as a rather insignificant part of the overall market.
- All in all, the above analysis does not provide a safe harbor that would apply in any future concentration assessed by the HCC, nor can point out the "total mix" of remedies that would be imposed in each case; it rather signifies a tendency as to the remedies framework that the HCC would be inclined to impose under given circumstances.
- Finally, a note could be made in the recent practice of HCC with respect to clearing concentrations arising from acquisitions of assets further to a privatizations process. Such concentrations are often cleared without the imposition of any remedies, regardless of the fact that the combined market shares of the parties may be found to be relatively high in certain markets. For example, the acquisition of State Lotteries by OPAP, a company active in the organization and distribution of gambling games was cleared without any remedies on the ground that there was no overlap as to the activities of the participating undertakings (HCC Decision 573/VII/2013). Similarly, the HCC has recently cleared the concession of 14 Greek regional airports from the Hellenic State to Fraport AG without any remedies (HCC Decision 626/2016) as, according to the respective announcement, "*the notified transaction did not raise serious doubts as to its compatibility with merger control rules in the relevant markets concerned by the concentration*.

33. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

There are no – at least widely known - planned future reforms of the merger control regime in Greece.