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PRE-MERGER NOTIFICATION

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Which are the authorities responsible for Merger control enforcement?

The merger authority in Greece is the Hellenic Competition Commission (the "HCC"). The HCC is an independent authority that operates under the supervision of the Ministry of Finance, Competiveness and Maritime.

The Board of the HCC comprises of eight (8) members: The President, the Vice President and six (6) more members, out of which 4 (the "Rapporteurs") are full time employees of the HCC.

HCC deals with mergers with a national dimension, but is also competent to handle mergers with a community dimension, which are referred to it by the European Commission under EU Regulation 139/2004.

The task of the HCC is to identify and prohibit those mergers, which have such an adverse impact on competition that any benefits resulting from them are out-weighted or should be ignored.

HCC is responsible for the enforcement of the merger control rules and the assessment of the transactions notified under these rules. HCC has the power to allow or to prohibit a transaction, to impose certain conditions or to grant derogations. Each case is allocated to one of the four Rapporteurs. The Rapporteur prepares in cooperation with the relevant department of the HCC a Statement of Objections that constitutes the starting point of the examination of a case.

Which legislation applies to Merger control?

Greek merger legislation has recently changed and the Law No 3959/2011 (the "Competition Law") is in force since April 2011. In view of this, a change in the legislation is not anticipated in the near future. The European Merger Control Regulation (EUMR), EC case law, as well as all the relevant guidelines issued by the European Commission are taken into consideration by the HCC in interpreting and applying the Greek merger legislation.

The merger provisions of the Competition Law apply to all sectors of the economy. However, the legislation applicable in the media sector (Law 3592/2007), covering television, radio, newspapers and magazines, sets out specific provisions which apply in relation to transactions in that sector, specifically concerning the thresholds for the notifications as well as the calculation of turnover and market share.

Are there any other authorities relevant to merger control? What is the allocation of responsibilities?

HCC is exclusively competent to apply merger control regulation in all sectors. Nevertheless, in certain regulated sectors, as telecommunications and energy,

the merger control is entrusted to other national regulators (EETT for the telecommunications sector and RAE for the energy sector) which act in cooperation with the HCC. Article 24 of the Competition Law provides the terms of the cooperation between the authorities. Given the lack of specific guidelines the submission of a notification to both relevant authorities (the national regulator and HCC) is currently advisable.

What are the types of transactions caught by merger control regulations?

Merger control is exercised on "concentrations" resulting in a "lasting change" in the undertakings concerned and therefore in the structure of the market. The definition of a "concentration" is included in article 5 of the Competition Law and is identical to the one included in article 3 (1) of the EUMR. Article 5 (1) of the Competition Law provides that: "A concentration shall be deemed to arise where there is a change of control on a lasting basis results from:

- The merger of two or more previously independent undertakings or parts of undertakings, or
- 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 control of the whole or parts of one or more other undertakings."

Furthermore, Article 5 (5) provides:
"The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration under the meaning of this article".
The definition of "control" is included in Article 5(3) and is identical to the definition provided in article 3 (2) of the EUMR:
"Control shall be constituted by rights, contracts or other means which, either separately or in combination and having regards to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- ownership or the right to use all or part of the assets of an undertaking;
- rights or contracts which confer decisive influence on the composition, voting or decisions of the bodies of an undertaking."

The Competition Law merger control provisions intend to track transactions which lead to an undertaking (or undertakings) acquiring the ability to control the strategic commercial behavior of another undertaking.
Article 5 (4) of the Competition law provides that:
"Control is acquired by the person/persons or undertakings which:

- are the holders of the rights or are entitled to rights under the contracts concerned; or
- have the power to exercise the rights derived from the contracts concerned, while not being holders of such rights or entitled to such rights"

In view of the above it is clear that a concentration subject to the merger control may take the form of the acquisition of sole or joint control. Under the provisions of the Competition Law even the acquisition of a minority interest may qualify as

a concentration, if such acquisition confers sole or joint control, as in the case of a minority shareholder that has extended blocking rights on important decisions of the undertaking.

Furthermore, the above rules apply to transactions leading to change in the quality of control (from sole to joint) and this way covers transactions that may result to: a. an entrance of one or more new controlling shareholders irrespective of the fact that they replace existing controlling shareholders, or b. to reduction of the number of controlling shareholders.

Creation of a joint venture that is performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of the merger control provisions of the Competition Law. A co-operative joint venture may be exempted under the merger control rules, but may be subject to control by the HCC under the rules set in articles 1 (prohibition on anti-competitive business agreements) and 2 (prohibition of the abuse of dominant position) of the Competition Law.

What are the Pre-Merger Notification Thresholds?

Assuming that a concentration does not have a "community dimension" under the EUMR rules, such concentration is subject to pre-merger notification if it exceeds the following thresholds provided in Article 6 (1) of the Competition Law:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least €150 mil; and cumulatively
- the aggregate turnover of at least two of the undertakings concerned in the Greek market exceeds €15 mil"

The above thresholds apply to all market sectors, except the media sector, for which law 3592/2007 provides the following thresholds:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least €50 mil; and cumulatively
- the aggregate turnover of each of at least two of the undertakings concerned in the Greek market exceeds €5 mil"

In order to calculate the above thresholds it is necessary to identify the type of concentration and then (a) the "undertakings concerned" and (b) their turnover.

Which are the "undertakings concerned"?

In a merger the undertakings concerned are the merging entities. In an acquisition of control it is the concept of acquiring control that will determine which are the concerned undertakings. On the acquiring side it can be one or more undertakings acquiring sole or joint control. On the acquired side it can be one or more undertakings in whole or in part.

How is the turnover of the "undertakings concerned" calculated?

Article 10 (1) of the Competition Law defines turnover as the amounts derived by the undertakings concerned in the previous financial year from the sale of the products and provision of services falling within the undertaking's ordinary activities (in the national market or internationally as the case may be).

The calculation is based on the figures of the last audited financial accounts of the undertakings concerned.
Article 10(2) sets out the rules which apply where the concentration consists of the acquisition of part or parts of one or more undertaking(s). in such case the turnover of the part or parts are taken into account.
Article 10(3) sets out the special rules that apply to credit and other financial institutions and insurance companies.
Article 10 (4) sets out the rules for the calculation of turnover for undertakings belonging to a group. It provides that the turnover is calculated not only byreference to those undertakings concerned but also by reference to the turnover of all those entities which they control or by whom they are controlled, and to other connected undertakings.
Please note that the definition of "control" provided in article 10(4) is different and more strictly defined than the definition included in article 5(4) of the Competition Law.
In the event of group's turnover calculation, under article 10 (4), intra-group transactions are excluded and the relevant amounts should be deducted from the aggregate turnover of the group (Article 10(5) of the Competition Law)

Are transactions that do not meet Pre-merger notification thresholds subject to substantive merger control?

No. The need for a post-merger notification of certain transactions provided by previous legislation (Law 703/77) is now abolished.

What is the Deadline of the Pre-Merger Notification? At what stage of the transaction is the Pre-Merger Notification filed?

Pre-merger notification is mandatory and there are no exceptions. The notification takes place within thirty (30) days from the entry into an agreement or the publication of an offer or an exchange, or the obligation from an undertaking to acquire a participation, which secures the control of another undertaking (Article 6 (1)).
The transaction should be notified following the first triggering event (Article 6 (2)).

Who are the Notifying Parties? Are there any filing fees?

All parties to a merger are subject to the obligation to notify. In all other cases of concentration the notification should be notified by the person/persons or undertaking/ undertakings acquiring control.
There is no distinction between Greek or foreign undertakings and no exceptions, in the event of a transaction that falls subject to the Greek merger control rules.
There is a filing fee of €1,100.Article 45(1)

Is there a prohibition to complete the transaction before clearance by the HCC is received?

Yes. The implementation of a concentration prior to receiving the clearance of HCC is not allowed. Article 9(1) There are the following exceptions:

- In the event that an undertaking acquires control as a result of a public offer or other stock exchange transactions and provided that these transactions were duly notified to HCC and the entity that acquires control does not exercise its voting

rights or exercises them only in order to preserve the total value of its investment. In such case special permit is granted by HCC (Article 9(2)); or

- In the event that the derogation is permitted by a special decision of the HCC in order to avoid severe damages.

Is there a special notification form? Which is the working language of the HCC?

The content of the notification forms are defined by a decision of the HCC. The latest standard pre-merger notification form was determined by decision No 523/VI/2011. Forms are available on-line on HCC's website (www.epant.gr) and are only available in Greek language.

The notification form and all supporting information should be submitted in Greek language. In the event that the originals are in another language these are submitted in their original language with an official translation in Greek.

Are there procedures available to request confidential treatment?

The notifying parties may request confidentiality for certain parts of the information submitted. This commercially sensitive information is omitted from the HCC's decision, when published. The Competition Law provides sanctions for breach of confidentiality by the HCC's officials (Articles 6 (6) and 41 of the Competition Law).

What are the phases of the examination?

Following the notification, a preliminary examination of the transaction is conducted (Article 8). Within one (1) month from the receipt of a complete file of the notification, the President of the HCC has to issue a decision that either allows the merger to be carried out or initiate the process of a thorough examination (Phase II) If the notified concentration does not raise serious doubts as to its compatibility with the Competition Law the HCC issues a clearance within a month (i.e. within the same period granted for the verification that the concentration is within or outside the scope of the Competition Law). If the HCC finds that the concentration raises serious doubts, then the President issues a decision and initiates Phase II. Following this decision the case should be introduced before the HCC within forty five (45) days from from the initiation of Phase II and the HCC has to decide within ninety (90) days from the initiation of Phase II.

The HCC may approve the concentration as notified or impose certain conditions in order to ensure compliance of the concentration with the Competition Law.

Is it possible to negotiate remedies? At what stage?

From the date that the notifying parties are informed that Phase II is initiated and within a period of fifteen (15) days the notifying parties may propose remedies. The HCC may accept these remedies. In this case the deadline for the issuance of a decision is extended by fifteen (15) days. By virtue of Decision n. 524/VI/2011, HCC has created for the first time a special form for the submission of remedies, which is available on-line on HCC's website (www.epant.gr).

What are the risks of not filing? Formal sanctions and statute of limitation. Possibility of civil actions.

HCC may impose the following fines:

- at least €30.000 and up to 10% of the aggregate turnover as defined in Article 10 of the Competition Law (Article 6(4)) in the case that an undertaking violates its obligation to notify in time a concentration or in the event that the parties implemented a concentration before the issuance of the approval by HCC (Article 9(1));
- up to 10% of the aggregate turnover of all participating undertakings in the event of not compliance with the remedies or conditions imposed by the HCC (Article 8(8)).

Can a decision of merger be appealed?

Decisions of the HCC may be appealed before the Administrative Court of Appeals of Athens within sixty (60) days from of the relevant decision.

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