Greece

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LEGISLATION AND JURISDICTION

1. What is the relevant merger control legislation? Is there any pending legislation that would affect or amend the current merger control rules described below?

The provisions on merger control in Greece are set out in Law 3959/2011 '*on the protection of free competition*' (the Law) which entered into force in April 2011. The Law abolished Law 703/1977 '*on the control of monopolies and oligopolies and the protection of free competition*' (Law 703/77), the principal until April 2011 antitrust legislative text in Greece, aligned Greek legislation with Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), strengthened the efficiency of the Hellenic Competition Commission (HCC) and ensured enforceability of Greek antitrust legislation.

The Law was amended by Laws 4013/2011 and 4072/2012 and codified in June 2013. The HCC has published various notices on the procedural aspects of Greek merger control, including the Notice of 22.10.2009 on the notification to the HCC of concentrations with a community dimension and the Notice of 3.06.2009 on the notification to the HCC of the privatisation of public companies. It has also adopted decisions: (a) containing information on the submission of complaints concerning alleged infringements of competition law; (b) determining the specific content of the brief merger notification; and (c) quantifying the priority criteria in the handling of the cases. Finally, in January 2013 the HCC published its new *Operation and Management Regulation*.

All relevant Greek merger control legislation is available (in Greek) on the website of the HCC (*www.epant.gr/categoryn.php?Lang=gr&id=73*).

2. What are the relevant enforcement authorities, and what are their contact details?

The HCC is the National Competition Authority (NCA) for the application of the Law and Articles 101 and 102 TFEU, while the NCA responsible for the enforcement of antitrust legislation in the specific sector of telecommunications and postal services is the Hellenic Telecommunications & Post Commission (the EETT), which is also the regulator of telecommunications and postal services.

The contact details for the HCC are the following:
Hellenic Competition Commission
Directorate General for Competition
1a Kotsika Street, 104 34 Athens
Greece

F: +30 210 8809136/210 8809134
W: *www.epant.gr*
Contact form is available on the HCC website:
(*www.epant.gr/contact.php?Lang=en&id=114*)

The contact details for the EEET are as follows:
Hellenic Telecommunications and Post Commission
60 Kifissias Avenue, 151 25 Maroussi
Athens Greece
T: +30 210 615 1000
F: +30 210 610 5049
E: *info@eett.gr*

3. What types of transactions are potentially caught by the relevant legislation?

The Law covers: (i) any kind of merger of two or more previously independent undertakings (or parts of companies); and (ii) the acquisition by one or more undertakings, already controlling at least one undertaking, directly or indirectly, of the whole or parts of another undertaking. The creation of a full function joint venture is also caught by the Law.

Control is mainly acquired by rights, agreements or other means giving the acquirer the power to determine the strategic commercial decisions of the target company taking also into consideration the factual and legal context of the case. In particular, control can be acquired either directly or indirectly. Direct control shall be constituted by ownership or the right to use all or part of the assets of an undertaking. Indirect control is acquired through rights or contracts which give decisive influence on the composition, voting or strategic decisions of the organs of an undertaking.

4. Are joint ventures caught, and if so, in what circumstances?

Full-function joint ventures concerning the creation of a new joint venture performing on a lasting basis all the functions of an autonomous economic entity which does not give rise to co-ordination of the competitive behaviour of undertakings which remain independent, are subject to the merger control rules.

The HCC follows the Commission's practice and considers as full function joint ventures concentrations which meet the criteria set out in the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 '*on the control of concentrations between undertakings*'.

Joint ventures which are not full-function are examined under Article 1 of the Law on anti-competitive agreements, decisions and concerted practices.

5. What are the jurisdictional thresholds?

Until the reform of Greek Antitrust and Merger Law in 2011, there were two types of concentrations' notifications to the HCC: (i) a pre-merger notification as per Article 4b Law 703/77; and (ii) a post-merger notification as per Article 4a Law 703/77. Post-merger notifications of Article 4a Law

703/77 have been abolished since the Law entered into force on the 20 April 2011. Under the Law, all concentrations meeting the following turnover thresholds have to be approved by the HCC prior to their implementation.

A concentration is subject to a notification where:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least €150 million; and
- the aggregate national turnover of each of at least two of the undertakings concerned is more than €15 million.

The above thresholds are calculated on the basis of the turnover of all affiliated undertakings of the undertakings concerned deriving from the sale of products and services within the undertakings' ordinary activities after deduction of sales discounts, VAT and other taxes directly related to turnover.

As to the calculation of the group turnover of the undertakings concerned, the Law is fully aligned with the provisions of Council Regulation (EC) No 139/2004. In particular, group turnover includes the turnover of the undertaking concerned, its parent companies and their parent companies, its subsidiaries and their subsidiaries, its sister companies, and companies jointly controlled by two or more companies of the group.

6. Are these thresholds subject to regular adjustment?

As mentioned above, the obligation to notify a concentration after its implementation (post-merger notification) was abolished by the Law which entered into force in April 2011.

7. Are there any sector-specific thresholds?

With regard to concentrations in the media sector, Law 3592/2007 provides that the thresholds set out in our answer to question 5 above, are €50 million and €5 million respectively.

8. In the event the relevant thresholds are met, is a filing mandatory or voluntary?

Notification is mandatory if the statutory notification requirements are met.

9. Can a notification be avoided even where the thresholds are met, based on a 'lack of effects' argument?

No. All concentrations meeting the above turnover thresholds must be notified to the HCC even if concentrations take place outside Greece or concern undertakings which have no establishment in Greece.

10. Are there special rules by which a notification of a 'foreign-to-foreign' transaction can be avoided even where the thresholds are met?

No. All concentrations which meet the above jurisdictional thresholds should be notified to the HCC even if they are between 'foreign' undertakings. In *Marfin Investment Group/Robne Kuce* (HCC 451/V/2009), the HCC imposed a fine of €5,000 to a Greek undertaking for failure to duly notify a post-acquisition notification although the target company did not operate in Greece and the relevant geographic market was Serbia.

11. Does the relevant authority have jurisdiction to initiate a review of transactions which do not meet the thresholds for a notification?
No, the HCC does not have jurisdiction under the Law to examine concentrations which do not meet the notification thresholds. Transactions which do not qualify as concentrations (indicatively, creation of a non full-function joint venture) will be reviewed by the HCC under the provisions of Article 1 paragraphs 1 and 3 of the Law, on anti-competitive agreements and concerted practices.

NOTIFICATION REQUIREMENTS, TIMING AND POTENTIAL PENALTIES

12. Is there a specified deadline by which a notification must be made?
A concentration which meets the turnover thresholds must be notified to the HCC within 30 calendar days from the occurrence of the first of the events triggering the concentration, ie the conclusion of a legally binding agreement, the announcement of a public bid to buy or exchange shares or the acquisition of a controlling interest in the acquired party.

13. Can a notification be made prior to signing a definitive agreement?
A notification can be made prior to the event triggering the obligation to notify provided the parties submit evidence of their intention to conclude a binding agreement or in the event of a public offer provided such offer has been announced. Both the above are subject to the condition that they will result in a concentration which meets the notification thresholds.

Official pre-notification discussions with the HCC's case handlers are not legally regulated, although since recently the HCC's case handlers are open to informal pre-filing meetings.

14. Who is responsible for notifying?
The persons responsible to notify are determined, as follows, with regard to: (a) a merger filing – the parties to the merger; (b) an acquisition of control – the party or parties acquiring control; and (c) an acquisition of control over a joint venture – jointly the parties acquiring joint control. In all other cases, the notification is made by the person acquiring control of the undertaking.

15. What are the filing fees, if any?
The fee for filing a notification of a concentration amounts to €1,100. The same fees should be paid for the filing of an application for derogation. If the parties fail to pay the filing/derogation fee, the notification of a concentration and the application for derogation are declared inadmissible.

16. Where a notification is necessary, is approval needed before the transaction is closed/implemented (is there a waiting period or a suspension requirement)?
Yes, the implementation of a concentration which is subject to a notification to the HCC is suspended until the HCC issues its decision (subject to the exceptions mentioned below in paragraphs 17 and 18).

17. If there is a suspension requirement, is it possible to apply for a derogation in order to close before approval is granted? If so, under what circumstances?

The HCC may, upon request of the parties, grant a derogation from the suspension obligation so as to prevent serious damage to the parties to the concentration or to any third party. To this end, the HCC takes into account, among others, the threat posed by the concentration to competition. In its derogation decision the HCC may impose conditions and obligations on the parties in order to ensure effective competition and prevent situations which could obstruct the enforcement of a future prohibition decision. A derogation may be requested at any time (prior to or after a notification has been submitted).

The HCC may revoke its decision to grant derogation, in the event the decision was based on inaccurate or misleading information, or the participating undertakings violate any condition or obligation set out in the derogation decision.

In practice, a high number of derogations granted by the HCC concern the exercise of voting rights related to the acquired shares by bidders in order to maintain the full value of their investments in case of a public bid (see also the response to question 18).

18. Are any other exceptions (carve-outs, etc) available to allow parties to close/implement prior to approval?

The Law does not contain any specific carve-out provisions giving the right to the parties to implement a concentration which is subject to notification to the HCC prior to a clearance decision.

However, in the event of public bids to acquire or exchange shares, or in the case of an acquisition of a controlling interest through a regulated stock exchange transaction, the implementation of the concentration prior to notification or clearance by the HCC is permitted, provided the transaction is duly notified to the HCC and the acquirer does not exercise the voting rights related to the shares. The acquirer may only exercise its voting rights in order to maintain the full value of its investments pursuant to a derogation granted by the HCC as mentioned above.

19. What are the possible sanctions for failing to notify a transaction?

The HCC may impose fines on each undertaking having the obligation to notify a concentration ranging between €30,000 and 10 per cent of the aggregate turnover of the undertakings concerned, if they intentionally or negligently fail to notify to the HCC a concentration which meets the turnover thresholds. The HCC takes into account the economic power of participating undertakings, the number of affected relevant markets, competition conditions in the affected relevant markets as well as the influence of the concentration on competition.

The HCC may also impose separate fines on the executives of undertakings for failure to duly notify a concentration if there is evidence that they participated in the violation; such fines range between €200,000

and €2,000,000. In addition to this, failure to notify a concentration constitutes a criminal offence for the undertaking's executives, punishable with a fine ranging from €15,000 to €150,000.

Historically, the HCC has imposed severe fines for failure to duly notify concentrations. By way of example, in 2002 the HCC fined two shipping companies, Minoan and Flying Dolphins, €1,500,000 and €600,000 respectively for failure to notify 20 concentrations (HCC 210/III/2002) and in 2009 the HCC fined the company Sea Star Capital Plc €3,742,945 for failure to notify the acquisition of ANEK (HCC 427/V/2009).

20. What are the possible sanctions for implementing a transaction prior to receiving approval (so-called 'gun-jumping')?

The above-mentioned (see response to question 19) sanctions for failure to duly notify a concentration to the HCC also apply in the case of an implementation of a notifiable transaction prior to receiving clearance from the HCC.

The HCC in its prohibition decision or in a separate decision may also order the participating undertakings to undo the transaction (indicatively, undo the merger or divest all shares and assets acquired) so as to restore the market situation as it was prior to the implementation of the transaction or take any other appropriate measures. The participating undertakings which do not comply with that decision may be fined up to 10 per cent of their aggregate turnover and they are subject to a daily penalty of €10,000.

In 2002, the HCC fined Minoan €3,000,000 and Flying Dolphins €1,200,000 for implementing 20 transactions prior to receiving approval (HCC 210/III/2002).

21. What are the possible sanctions for implementing a transaction despite a prohibition decision or in breach of a condition/obligation imposed by a conditional clearance decision?

The same sanctions mentioned in question 20, which apply for implementing a transaction prior to receiving a clearance, apply in the event of the implementation of a concentration despite the issuance of a prohibition decision.

Should the participating undertakings breach the conditions/obligations imposed by a conditional clearance decision, the HCC may fine the participating undertakings up to 10 per cent of their aggregate turnover and may further apply a daily penalty of €10,000 for each day of non-compliance. In calculating the amount of the fine the HCC shall take into account the effects of the implementation on competition.

The HCC may also take interim measures to restore or maintain effective competition in the market in the event the parties implement a concentration prior to receiving clearance or in case of breach of a condition/obligation imposed by a conditional clearance decision.

22. What are the different phases of a review? Is there any way to speed up the review process?

The procedure of merger review by the HCC is to a great extent aligned with the merger review before the European Commission. Hence, it comprises a Phase I investigation which may be followed by an in-depth Phase II investigation in the event of serious concerns about the admissibility of the notified concentration.

Phase I: Phase I commences upon receipt of a complete notification form. If a notification is deemed incomplete, the HCC must request within seven working days the submission of all outstanding information by the notifying undertakings. The clock does not start ticking until a duly completed notification form is submitted to the HCC.

Phase I investigation must be completed within one month from the submission of a complete notification form. During this one month period, the HCC usually sends out various requests for information to the parties to the concentration as well as to third parties (indicatively, competitors, customers, suppliers). The HCC shall set a time limit not shorter than five days for the submission of the responses to its request for information. Due to time constraints, this time limit is usually 10 days. Although during Phase I there is no formal procedure for the HCC to make its potential concerns known to the parties (eg, through the issuance of a statement of objections) the case handlers are so far open to the possibility of an informal meeting with the parties to discuss their potential concerns.

At the end of Phase I, the HCC's Chairman may: (a) find that the notified transaction does not fall under the merger provisions of the Law; (b) clear the concentration with or without remedies if the transaction does not raise serious competition concerns; or (c) open a Phase II in-depth investigation if the transaction raises serious competition concerns. The vast majority of concentrations are cleared at the end of Phase I while a Phase II in-depth investigation is initiated only in a small number of cases.

Phase II: within 90 days (which can be extended in the cases mentioned below) following the issuance of the decision to initiate a Phase II, the HCC adopts a clearance or prohibition decision. In the event that the HCC does not issue a decision within the above deadline, the concentration is considered as unconditionally cleared by the HCC.

Following the notification of the decision of the HCC's Chairman to initiate Phase II, the participating undertakings may jointly amend the transaction or undertake commitments to address HCC's concerns. The case is brought before the HCC by issuing a statement of objections within 45 days from the date the decision to open an in-depth investigation was issued. The participating undertakings are entitled to undertake remedies within 20 days at the latest as of the initiation of Phase II. Within 20 days following the submission of remedies by the parties, the HCC shall express its views by issuing a statement of objections on the proposed remedies.

The participating undertakings also have the right to attend the oral hearing before the HCC. Therefore, they will receive a summons at least 15 days prior to the oral hearing. However, the participating parties have the right to waive their right to the 15 days previous summons or request an abbreviation of that time limit.

At the end of Phase II the HCC issues a decision which either conditionally or unconditionally clears the transaction or prohibits it. To the best of our knowledge, the HCC has never up to date issued any prohibition decision.

The Phase II investigation period of 90 days is automatically extended by 15 days if the participating parties offer remedies later than 20 days after the initiation of the Phase II proceedings. Hence, the maximum duration of Phase II is 105 days.

The Phase I and Phase II review periods are suspended in the event that the participating parties do not comply with HCC's request for information and the parties are notified by the HCC within two days following the expiration of the deadline for the provision of the information requested. In such a case, the Phase I and Phase II review periods recommence from the date the information requested is fully and accurately provided.

23. Is there a possibility for a 'simplified' procedure or shorter notification form and, if so, under what conditions would this apply?

In 2013, the HCC published a decision (HCC 558/VII/2013) determining the specific content of merger notifications as regulated by Articles 5–10 of the Law. By this decision, the HCC further identified the conditions under which a notified merger falls within the simplified examination on the basis of a short-form notification, while its practical application results in a more effective and focused merger control.

Pursuant to the above decision, the notifying parties who are convinced that the notified transaction shall not raise any serious competition concerns and can submit evidence to support their views have the option to submit a short notification form. In such a case, the HCC issues a short-form decision. The short notification form contains information about the parties, the transaction, the parties' groups and only a little information about the relevant product markets affected by the transaction (indicatively, size of the market, parties' and competitors' market shares).

Based on the HCC's relevant decision, in principle the short-form notification should be used in the following cases:

(i) in the absence of any horizontal or vertical effects;
(ii) when two or more parties to a concentration are engaged in business activities in the same product and geographical market (horizontal relationships) provided their combined market share is less than 15 per cent;
(iii) when two or more of the parties to a concentration are engaged in business activities in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged (vertical relationships) provided none of their individual or combined market shares is at either level 25 per cent or more, ie concentrations which do not lead to 'affected markets'; or
(iv) when a party is to acquire sole control of an undertaking over which it already has joint control.

However, in the event that the HCC: (a) considers that the conditions for the submission of a short-form notification are not met; (b) considers

that even if the conditions are met, the submission of further information is necessary for the competition issues to be examined; or (c) decides to initiate an in-depth investigation, the notifying parties will be asked to submit a supplemental notification containing all additional information provided for in the full notification form. In this case, the Phase II review period of 90 days will not start until this additional information has been submitted.

24. What types of data and what level of detail is required for a notification?

The level of information required for the submission of a duly completed notification form is similar to the information required for the completion of a Form CO before the European Commission. In particular, a crucial element in order for the Greek notification form to be considered as complete is the submission of information concerning horizontally and vertically affected markets, as well as any other market(s) where the notified transaction may have a significant impact.

25. In which language(s) may notifications be submitted?

Notifications must be submitted in the Greek language which is also the official language of the procedure.

26. Which documents must be submitted along with a notification?

The notifying parties must submit the following documents along with the notification:

(i) the documents evidencing the concentration;
(ii) in the case of a public bid, the offer document;
(iii) the most recent annual report and financial statements of the participating parties;
(iv) all analyses, reports, studies prepared for or by any member of the board of directors or the supervisory board or any other person exercising similar duties or the shareholders' meeting for the assessment of the notified concentration from a competition law aspect;
(v) the publication of the notified transaction in a daily economic newspaper of nationwide circulation pursuant to Article 6, paragraph 6 of the Law; and
(vi) legalisation documents of the persons signing the notification form.

The above documents are submitted either in the original form or in certified copy. If these documents are in a language other than the Greek language, an official translation in Greek should also be submitted along with the notification. In practice, the case handlers require full translation of the agreement establishing the concentration.

27. What are the possible sanctions for providing incorrect, misleading or incomplete information in a notification?

As mentioned above (see question 22), if the HCC believes that a notification form is not duly completed, it may request within seven working days after the notification, that the notifying parties provide the outstanding

information. The clock will only start ticking after the submission of the complete notification form. Furthermore, Phase I and Phase II review periods are suspended, if the participating parties do not comply with HCC's request for information and the parties are notified by the HCC within two days after the expiration of the deadline for the provision of the information requested.

The undertakings or their executives, who provide incorrect or incomplete information, refuse or delay in providing the information in response to an HCC request for information may incur a fine ranging between €15,000 and 1 per cent of the aggregate turnover of the undertakings concerned. Along with the civil sanctions, the individuals that have denied or delayed or have been obstinate in submitting the information requested by the HCC or have provided incorrect or incomplete information, may incur a sentence of imprisonment of at least six months. Although the imposition of fines for providing incorrect or misleading information in notification proceedings is rare, in 2003 the HCC fined Carrefour-Marinopoulos €8,804 for delaying to provide the information requested (HCC 248/III/2003), in 2009 an individual €75,000 for refusing to provide the information requested (HCC 427/V/2009), while in 2011 the HCC fined a gas-provider company €20,000 for delaying in providing the information requested and another gas-provider company €15,000 for providing incorrect information (HCC 516/VI/2011).

Finally, the HCC may revoke a decision issued at the end of Phase I or Phase II if those decisions were based on incorrect and misleading information.

28. To what extent is the relevant authority available for pre-notification discussions? Are pre-notification consultations customary?

Officially, there is no possibility for pre-notification contacts nor were such meetings between notifying parties and the HCC's case handlers customary in the past. However, such consultations have recently become common practice, as the HCC has adopted a more 'open door' policy. On the contrary, a submission of a draft notification before the final notification form is submitted to the HCC, is still an unusual practice.

29. Where pre-notification consultations are possible, what measures does the relevant authority take to ensure that such discussions are treated confidentially?

The HCC and the officials of the Directorate General for Competition are obliged to use any information they receive 'according to the provisions of the Law' solely for enforcement purposes. Given the fact that pre-notification consultations are not explicitly provided for in the Law, it could be argued that this confidentiality obligation does not cover pre-notification consultations. However, the HCC and the Directorate General for Competition officials are also obliged not to disclose any business secret that comes to their attention during the carrying out of their functions even if this information is not related to the Law's enforcement. Therefore, it could be supported that the HCC and the Directorate General for Competition officials are obliged not to disclose confidential information obtained during

pre-notification consultations even if those consultations are not explicitly provided for in the Law.

30. At what point and in what forum does the relevant authority make public the fact that a notification has been made?

The notifying parties immediately after submitting the notification should publish in a daily economic newspaper of nationwide circulation a notice containing information about the name of the parties, the sectors they are active in and the nature of the transaction (merger, acquisition of shares etc) and submit a copy of the newspaper to the HCC within five days after the filing of the notification. This notice will then be published on the HCC's website so that third parties are aware of the notified transaction and can therefore submit their comments to the Directorate General for Competition within 15 days as of the posting on the authority's website.

31. Once the authority has issued its decision, what information about the transaction and the decision is made publicly available?

The decisions of the HCC are published in the *Government Gazette* and on the authority's website. Therefore, clearance decisions of the HCC either at the end of Phase I or at the end of Phase II as well as prohibition decisions at the end of Phase II are made publicly available, while this obligation does not apply for decisions of the HCC's Chairman resolving that the notified transaction does not fall under the provisions of the Law.

The text of the decision which is published in the *Government Gazette* and on the HCC's website, does not contain information which can be considered a business secret, to the extent that this information is not required for the decision's reasoning. The published decisions do not usually contain turnover figures of the parties.

Prior to the publication of the decision in the *Government Gazette* and on the HCC's website, the HCC usually publishes a press release on its website at the end of each Phase I or Phase II proceeding.

SUBSTANTIVE ASSESSMENT OF THE MERGER, ROLE OF THIRD PARTIES AND REMEDIES

32. What is the substantive test for assessing the legality of a notified transaction?

According to the Law, concentrations are prohibited if they significantly restrict effective competition in the national (Greek) market or in a substantial part of it, resulting in particular in the creation or strengthening of a dominant position ('SIEC' test).

In assessing whether a concentration is capable of significantly impeding competition in the Greek market the HCC takes indicatively into consideration the structure of the relevant markets, the incumbent and potential competitors within or outside Greece, the legal or factual entry barriers, the position of the participating undertakings in the market, the alternative sources for suppliers and customers, the evolution of offer and demand, the interests of intermediary and final consumers, the economic efficiencies etc.

33. Which theories of harm are considered by the authority in assessing the transaction? How concerned are the authorities with non-horizontal (eg, vertical or conglomerate) effects, and are any other theories of harm analysed (eg, coordination in the case of joint ventures)?

The HCC follows the Commission's Guidelines on the assessment of non-horizontal mergers and generally takes the view that non-horizontal mergers do not threaten effective competition unless the merged entity has significant power in at least one of the relevant product markets. In particular, the HCC examines in accordance with the above Guidelines whether the notified concentration is likely to result in input or customer foreclosure. In the *Hellenic Petroleum/BP* case (HCC 465/VI/2009), the HCC found that the merger was not likely to foreclose downstream or upstream rivals given the asymmetry of competitors' market shares in the downstream and upstream markets and the lack of price transparency.

Furthermore, in the case of joint ventures, the HCC analyses not only whether the notified joint venture is full function and long lasting but also whether its creation is expected to lead to coordination between the mother companies outside the joint venture (see, HCC 390/V/2008 *Pigasos Ekdotiki/DOL*).

34. Are non-competition issues, such as industrial policy or labour policy, commonly taken into account in the assessment of the transaction?

Non-competition issues such as industrial policy or labour policy have not so far been taken into consideration in the assessment of notified concentrations by the HCC.

35. Are economic efficiencies considered as a mitigating factor in the substantive assessment?

In its competitive appraisal of the merger the HCC will take into account the factors mentioned in the Law, including *inter alia* the development of technical and economic progress provided that this development is to the consumer's advantage and does not restrict competition. Although the HCC has not so far concluded that due to the economic efficiencies generated by the merger there are no grounds to declare the merger as incompatible with the Greek market, it is expected that the HCC will follow the Commission's Guidelines on the assessment of horizontal mergers providing that economic efficiencies are taken into account in the assessment of mergers provided that they cumulatively: (i) benefit consumers; (ii) are merger-specific; and (iii) can be verified.

36. Does the relevant authority typically cooperate/share information with authorities in other jurisdictions?

The HCC cooperates both with the European Commission and the NCAs of the EU Member States in the context of the European Competition Network (ECN) as well as with international organisations such as the Organisation for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD).

In particular, in the context of its cooperation with other competition authorities within the EU, the HCC exchanges views with competition authorities of the EU Member States on merger law issues, makes use of referral mechanisms provided for in the EC Merger Regulation and generally provides comments on concentrations notified to other jurisdictions within the EU.

Indicatively, in 2010 the HCC requested the referral from the Commission to the HCC of the proposed acquisition of Shell Overseas Holding's network of activities in Greece to Motor Oil (Hellas) Corinth Refineries based on Articles 9(2)(a) or (b) of the EC Merger Regulation. The Commission found that the criteria for referral under Article 9(2)(a) of the EC Merger Regulation were fulfilled as the relevant affected markets with regard to the envisaged operation were at most national in their geographic scope and referred the notified transaction to the HCC. The transaction was conditionally cleared by the HCC a few months later.

Further, in 2010 the HCC joined an initial referral request concerning the proposed acquisition by SC Johnson of Sara Lee's household insecticides business to the Commission submitted by the competent authority of another Member State pursuant to Article 22 of the EC Merger Regulation. According to the HCC, the conditions for a case referral were met also with respect to the Greek territory, although the notified transaction did not appear to meet the pre-merger notification requirements of Greek law.

More recently, in 2013, following an invitation by the Commission, the HCC referred to the Commission the acquisition of Olympic Air by Aegean Airlines, pursuant to the same Article (Article 22 of the EC Merger Regulation). The HCC was of the view that the concentration was liable to have a discernible influence on the pattern of trade between Member States and to affect significantly competition in relation to distinct product markets in Greece and in another Member State. Furthermore, the HCC found that such a referral was warranted in the specific circumstances of that case, notably due to the fact that the Commission had previously reviewed the parties' attempted merger in 2010 and possessed specific expertise concerning the restructuring of the airline industry at EU level.

37. To what extent are third parties involved in the review process?

As mentioned above (see response to question 30), the notifying parties must publish a brief notice containing basic information on the concentration in a daily economic newspaper which is also published on the HCC's website so that third parties are able to submit their comments on the concentration within 15 days as of its publication on the website.

During Phase I and Phase II, the HCC sends to third parties (usually competitors, suppliers or customers of the participating undertakings) requests for information. The time limit for responding to those requests will usually be 10 days and in any case it cannot be shorter than five days.

In case the HCC opens an in-depth investigation, third parties may submit briefs to be served on the notifying parties at least five days before the oral hearing. The HCC or its Chairman may also invite any third party

to participate in the oral hearing in case they believe that its participation will contribute to the review of the merger. Third parties do not have access to the file of the case.

In practice, third parties' views are very significant for the HCC's review of mergers and the authority makes specific reference to those views in its decisions.

38. Is it possible for the parties to propose remedies for potential competition issues?

Yes, the participating undertakings may jointly amend the transaction or undertake commitments to address the HCC's concerns after the HCC's Chairman has communicated to the parties its decision to initiate an in-depth investigation.

Although the participating undertakings have initially 20 days as of the initiation of Phase II to propose remedies, the HCC may in exceptional cases accept remedies filed after the 20-day time limit. In this case, the Phase II review period will be 105 days (instead of 90 days). The HCC shall express its views by issuing a statement of objections on the proposed remedies within 20 days after their submission. In practice, the remedies proposed by the parties will be the subject of informal discussions and meetings with the HCC's Rapporteur and case handlers.

In any event, the HCC cannot impose in its decision remedies which have not been proposed by the parties.

39. What types of remedies are likely to be accepted by the authority (eg, divestment remedies, other structural remedies, behavioural remedies, etc)?

Until recently, the HCC generally followed the Commission's 2008 Notice on Remedies and European Courts' case law providing that remedies must be capable of being effectively implemented and should be proportionate to the competition concerns created by the concentration. Since July 2011, the HCC has issued its own guidance on Remedies (HCC 524/VI/2011). Divestitures of a permanent nature are preferable to behavioural remedies which will be only exceptionally admissible (case *Hellenic Petroleum/BP*, HCC 465/VI/2009).

In practice, during the last five years the HCC has cleared several transactions subject mainly to divestitures or other structural and behavioural remedies. In particular, in 2009 and 2010 the HCC cleared two mergers in the oil industry subject to divestitures and behavioural remedies (cases *Hellenic Petroleum/BP*, HCC 465/VI/2009 and *MOH/ Shell Overseas*, HCC 491/VI/2010, respectively). In 2011, the HCC cleared two further mergers in the dairy industry subject to divestitures and behavioural remedies (case *Vivartia/Mevgal*, HCC 515/VI/2011) and subject to amendment of distribution agreements (case *Elais Unilever/Evga*, HCC 513/VI/2011). In 2012, the HCC cleared a merger in the banking sector subject to behavioural remedies (case *ALPHA BANK/EFG EUROBANK ERGASIAS*, HCC 534/VI/2012).

HCC decision 524/VI/2011 issued in July 2011 gives guidance on the contents of a remedy form and provides samples of (i) a divestiture

commitment and (ii) an agreement for the appointment of a monitoring/divestiture trustee.

40. What power does the relevant authority have to enforce a prohibition decision?

If the HCC issues a prohibition decision and the concentration has already been implemented, the HCC may also order the participating undertakings to undo the transaction (indicatively, undo the merger or divest all shares and assets acquired) so as to restore matters as they were prior to the implementation of the transaction or take any other appropriate measures. The HCC may impose significant fines on the participating undertakings which do not comply with that decision, namely a fine of up to 10 per cent of their aggregate turnover and a further daily penalty of €10,000 for each day of non-compliance (see question 21). The same fines and/or daily penalties can also be imposed if the participating entities infringe the remedies imposed by the HCC.

JUDICIAL REVIEW

41. Is it possible to challenge decisions approving or prohibiting transactions? If so, before which court or tribunal?

Decisions approving or prohibiting transactions may be appealed before the Athens Administrative Court of Appeal within 60 days of their publication or, in the absence thereof, of their notification to the parties. The judgment of the Athens Administrative Court of Appeal may be appealed before the Council of State within 60 days as of its notification to the parties. The Council of State examines points of law and procedure only.

If the HCC's decision is entirely or partially annulled, the HCC will re-examine the transaction. The notifying parties will then have to submit a new or a supplementary notification.

42. What is the typical duration of a review on appeal?

Although appeals against HCC decisions have priority over other cases before the Administrative Courts the standard procedure is expected to last at least two years until the Court issues its judgment. Proceedings before the Council of State last longer than proceedings before the Athens Administrative Court of Appeal (on average three to five years).

43. Have there been any successful appeals?

There have so far been no successful appeals against an HCC decision on mergers.

STATISTICS

44. Approximately how many notifications does the authority receive per year?

In 2009, the HCC received five pre-merger notifications and published 14 decisions on pre-merger notifications.

In 2010, the HCC received 11 pre-merger notifications and published 11 decisions on pre-merger notifications.

In 2011, the HCC received four pre-merger notifications and published three decisions on pre-merger notifications.

In 2012, the HCC received 14 pre-merger notifications and published 11 decisions on pre-merger notifications.

In 2013, the HCC received 19 pre-merger notifications and published five decisions on pre-merger notifications.

45. Has the authority ever prohibited a transaction? How many prohibition decisions has the authority issued in the past five years?

No, the HCC has not so far prohibited any transaction subject to merger review.

46. Over the past five years, in what percentage of cases have binding commitments been required in order to obtain clearance for a transaction?

From 2009 to 2013, only eight merger cases out of a total of 44 published decisions required binding commitments in order to obtain clearance.

47. How frequently has the authority imposed fines in the past five years?

In the past five years, the HCC has imposed fines on merger cases in 12 cases.