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# Merger Control 2022

Greece: Trends & Developments  
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## Trends and Developments

### *Contributed by:*

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### **Greek Merger Control in 2021–22: Reforms, Increased Merger Activity and Consolidation of Sectors**

#### *Introduction*

The Greek merger control regime is enshrined primarily in Law 3959/2011 (the “Greek Competition Act”) and, as a rule, the Hellenic Competition Commission’s (HCC) decisional practice is aligned with EU case law, taking into account all the relevant EU legislation, notices and guidelines, as well as policy trends at the EU level.

In the context of transposing into the Greek legal order the ECN Plus Directive (Directive 2019/1), the Greek Competition Act was substantially amended with effect from 24 January 2022 by Law 4886/2022. Indeed, Law 4886/2022 has introduced a wide range of modifications to the full spectrum of the Greek competition rules, including certain important reforms to merger control rules. The most notable amendment in this regard is the introduction of a possibility for the relevant national authority to impose remedies in Phase I clearance decisions.

In terms of policy, the HCC has generally followed the policy trends and priorities established at EU level, often adopting innovative initiatives and being at the forefront of discussions regarding the challenges of the application of the competition rules in the (now accelerated) transition to a sustainable and digital economy. In particular, first, the HCC has recently expressed its interest in the relationship between sustainable development and competition law, and the potential relevance of sustainability and environmental considerations for the assessment

of concentrations. Moreover, the HCC has also acknowledged as one of its policy priorities to adjust its enforcement to the developments in the digital markets space. Finally, the HCC has also emphasised the significance of concerns relating to privacy, being particularly sensitive with protection of consumers’ personal data.

Lastly, in the last couple of years there has been a record number of transactions notified to the HCC. The level of merger activity in Greece is currently high, especially in certain sectors, such as paytech, energy and private insurance, while the HCC seems to be vigilantly monitoring transactions related to e-commerce and digital platforms.

#### *Revisions of statutory framework*

##### *Post-closing remedies generally*

The remedies option was inaugurated pursuant to the provisions of Article 8 of the Greek Competition Act and the HCC’s Decision 524/VI/2011. This tool enabled the HCC to clear a concentration subject to conditions, ie, subject to certain post-closing requirements imposed on the parties involved. Such post-closing requirements are not statutorily pre-defined and are in concreto customised in view of the concentration under examination. The proposed remedies may include structural obligations, behavioural obligations, or (more commonly) a combination of both.

The remedies option appears to have gained popularity in recent years with the HCC, which seems eager to impose corrective measures in order to alleviate potential anticompetitive concerns, especially in high-profile mergers.

Moreover, due to a heavy workload and/or understaffing, the HHC appears to be imposing increasingly higher demands on parties to provide voluminous (and sometimes insignificant) data, in order to prolong the statutory deadline within which the authority may reach a decision. Also, until the most recent modification of the Greek Competition Act, remedies could only be proposed by the parties during the Phase II review process, which on occasions led the HCC to initiate a fully fledged Phase II assessment due to the inappropriateness of a Phase I unconditional clearance under the case-specific circumstances.

#### *Remedies in Phase I proceedings*

As of 24 January 2022, Law 4886/2022 has amended the Greek Competition Act to introduce the possibility for the parties to a transaction to offer commitments during a Phase I investigation and the corresponding power of the authority to impose them as remedies for a conditional Phase I clearance decision (see Article 8(4A)). As such, under the current Greek merger control regime, remedies may be proposed and submitted both under the Phase I and the Phase II review process. In particular, remedies should be submitted within:

- 20 calendar days from the notification date, when remedies are proposed in Phase I; or
- 20 calendar days from the date that the case was introduced before the HCC with the submission of the SO by the Rapporteur allotted to the case, when remedies are proposed in Phase II.

#### *Imposition of ad hoc notification thresholds*

In principle, the HCC has no discretion under the merger control rules to review transactions that fall below the notification thresholds set out the Greek Competition Act. However, in accordance with Article 6(7) of the Greek Competition Act (as amended by Law 4886/2022), the Minister of

Finance and the Minister for Development and Investments may, by joint decision published after a public consultation, amend the notification thresholds and impose separate, ad hoc thresholds for different sectors of the economy. This decision must be based on statistics collected by the HCC, based on a detailed mapping of the relevant markets and the competitive conditions therein for the past three years.

The provision of Article 6(7) pre-existed but had not been used to date. The fact, however, that it has been amended to include as a pre-requirement for any decision the need for a detailed mapping of the relevant markets, and the competitive conditions therein, illustrate that there may be appetite to employ this tool if and where necessary.

#### *Policy trends*

On 22 June 2022, the HCC launched an innovative initiative, the so-called Sandbox for Sustainable Development and Competition, which aims to strengthen competition in par with a sustainable development. The adoption of the Sandbox follows the various recent initiatives at national and European level pertaining to the integration into competition law of the objective of sustainable development. Even though this initiative is not directly related to merger control, it certainly displays the HCC's appetite to take due regard of sustainability and environmental considerations in the context of the application of the competition rules. As such, in the context of assessing the efficiencies of a transaction, it is a conceivable scenario for the HCC to take into account whether it contributes significantly to sustainable development and the public interest.

A major development is the European Commission's (EC) new policy of encouraging Member States to refer transactions to it, even if they are not notifiable under the national rules, provided those transactions could be

perceived as stifling future competition. The EC has started claiming the right to review mergers that would normally not be notifiable, by calling in two deals since its policy change (Illumina/Grail and Facebook/Kustomer). In this regard, it is worth mentioning that the HCC has been a warm supporter of this policy shift, and thus will most probably align itself to the newly adopted approach to Article 22 of the EU Merger Regulation.

## *Merger control decisions*

### *Statistics*

According to publicly available information, the HCC issued in 2021 30 decisions in total, 16 of which were merger control decisions. Specifically, out of these 16 merger control decisions:

- 14 were cleared in Phase I;
- one involved the withdrawal of some of the undertaken commitments under a previous conditional clearance decision and the extension of some others; and
- one provided exemption from commitments undertaken under a previous conditional clearance decision.

In the first half of 2022 (as of 28 June 2022), according to information available on the HCC's site, the HCC cleared unconditionally six notified transactions (Phase I), while one concentration, ie, Delivery Hero's acquisition of companies Alpha Distributions SA, Inkat SA, Delivery.gr Single Member PC and E-Table Single Member PC, was approved subject to commitments following an in-depth review (Phase II).

### *Delivery Hero/Alfa Distributions, Inkat, Delivery.gr and E-table.gr*

Following an in-depth Phase II investigation, the HCC cleared on 18 April 2022 Delivery Hero's acquisition of (a) Alfa Distributions SA, (b) Inkat SA, (c) Delivery.gr Single Member PC and (d) E-table Single Member PC, subject to commit-

ments offered by Delivery Hero. This transaction concerned essentially the acquisition of sole control by one of the largest online delivery platforms in Greece (Delivery Hero's "e-food") over three companies active in the markets for wholesale trading, e-commerce and electronic reservations for restaurants. This was the first instance where the HCC had to deal with the markets for online intermediation for restaurant reservations (where e-table is active) and online intermediation for food ordering (where e-food is active). The HCC was concerned that the transaction would give rise to conglomerate effects, mindful of both platforms' significant market power in the respective markets in Greece.

Following the acquisition of control, the HCC was concerned that: (a) the merged entity would have both the ability and the incentive to bundle the two services vis-à-vis their business; and (b) the combination of end-user data collected from e-food and e-table would allow the merged entity to implement personalised promotion strategies. In response to these concerns, Delivery Hero offered several behavioural commitments, subject to which the transaction was eventually cleared. The proposed commitments included, among others, the following obligations: (a) refrain from tying the online intermediation services for food ordering with the online reservation services in restaurants (through e-table) when offered to business users (ie, restaurants); (b) refrain from providing special discounts to business users and/or not to charge reduced commissions/fees; and (c) refrain from using end users' data collected from the e-food platform to implement personalised promotion strategies for the e-table services, and vice versa.

This transaction was of particular importance for the HCC, as it fell within its current focus on e-commerce and digital platforms. Particularly, the HCC launched in April 2020 an e-commerce sector inquiry and published an interim report

in August 2022. In line with this, the HCC carried out earlier this year several unannounced inspections (dawn raids) looking into potential restrictions of sales through online platforms. All in all, it should be expected that the digital and e-commerce fields will certainly be one of HCC's enforcement priorities for the years to come, both in antitrust and merger control.

#### *Increased merger activity and consolidation of sectors*

Even though merger activity has evidently increased in general, certain sectors and industries have been characterised by particularly high merger activity and consolidation.

#### *Financial services*

In the financial services sector and, specifically, the paytech industry, all four systemic banks in Greece have now carved out and sold their merchant acquiring services to foreign companies. Within the last couple of years, the HCC cleared the acquisition of sole control (a) by EFT Services Holding BV (part of Euronet Worldwide Inc group) of sole control of the Pireaus Bank merchant acquiring activities; (b) by Worldline on the Merchant Acquiring Business Unit of Eurobank SA; and (c) by Nexi SpA on the Merchant Acquiring Business Unit of Alpha Bank SA. Greek banks are following the global trend of banks moving away from the payment sector, which requires special and accurate know-how and large investment costs.

#### *Energy*

The HCC cleared in the course of 2021 and early 2022 several important concentrations in the energy sector. In March 2022, the HCC approved (Decision 770/2022) the acquisition of sole control, by Italgas Newco SRL, 100% subsidiary of Italgas SpA on company DEPA Infrastructure SA and in the gas transmission and distribution market, one of the most important energy-related privatisations in Greece. The HCC has

also reviewed and cleared several transactions in the markets for the generation and wholesale and retail supply of electricity, including but not limited to (a) DEPA Commercial's (gas supplier) move into the renewable energy sector through the acquisition of joint control over North Solar, a company developing solar energy projects (Decision 733/2021); (b) the acquisition of joint control by the Public Power Corporation Renewables SA (PPC Group) and Geoenery Aegean Single Member SA (ELLAKTOR Group) of company Geothermal Target TWO II Single Member SA, for development of four geothermal fields in Greece (Decision 740/2022); and (c) the acquisition by Gek Terna SA of sole control over Heron I and Heron II and its energy production and supply activities (Decision 747/2022).

#### *Insurance*

Concentration in the healthcare services sector in Greece has been continuously growing in recent years. Of particular interest is the ever-increasing consolidation of the private insurance sector, as marked by the two recent HCC decisions clearing two transactions between four of the largest companies in the sector, ie, (a) the acquisition of sole control by Allianz SE over the company European Reliance General Insurance Co (Decision 782/2022), and (b) the acquisition of sole control by Assicurazioni Generali – Società per Azioni over Axa Insurance SA (Decision 732/2021). In the same vein, the EC's unconditional clearance decision of CVC Capital's acquisition of sole control over the Hellenic General Insurance Co SA, one of the largest private insurance companies in Greece, is noteworthy, mindful of the fact that CVC controls most of the Greek private hospitals.

#### *Conclusion*

Following the latest amendment of the Greek Competition Act and the introduction of the possibility to submit remedies in Phase I proceedings, the HCC has an important tool in

its toolbox to become more agile and prompt in its review of notifiable transactions. Even though the HCC has a longstanding practice of rarely blocking transactions, which was also the case in 2021, this should not be interpreted as the Greek competition authority not being vigilant enough. On the contrary, the HCC has risen to the challenge of reviewing an ever-increasing number of transactions, while attentively assessing the complex competition-related considerations arising from increased merger activity and increasing levels of concentration.

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**Zepos & Yannopoulos** is one of the longest-established law firms in Greece. With more than 127 lawyers and 75 business professionals, it is one of the largest law firms in Greece and the only one offering comprehensive legal and tax and accounting services. Its experienced practice team has a unique focus on the full spectrum of antitrust and competition matters.

Since the enactment of the first Greek Competition Act back in the late 1970s, the proliferation of EC (now EU) rules and guidelines, the decentralisation of EU antitrust enforcement, the changes in merger control and the development of EU state aid law, the firm has been at the forefront of specialised services in this field.

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