Greek merger control: rules of procedure and major cases 2023–2024

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1. Introduction

Merger control in Greece is mainly governed by Articles 5 to 10 of Law 3959/2011 on the protection of free competition, as amended and in force ('Law 3959/2011' or 'the Greek Competition Act'), which mirror, in essence, the provisions of the EU merger review regime.

The national competition authority, empowered to implement Law 3959/2011 and review concentrations between undertakings that are notifiable to it (or referred to it by the European Commission), is the Hellenic Competition Commission ('the HCC'). The HCC is an independent administrative authority that has legal personality and enjoys administrative and financial autonomy. The HCC is supervised by the Ministry of Development and is subject solely to parliamentary control.

Article 12 of Law 3959/2011 provides that the HCC shall consist of ten members, including its chairman, vice-chairman, six rapporteurs and two regular members with their alternates, each of whom is appointed for a term of five years, that may be renewed once.

The HCC operation is governed by its Internal Procedure and Management Regulation ('the HCC Regulation'), which sets out the process for the examination of cases by the HCC, including access to file, confidentiality and rules of oral/written procedure. The HCC Regulation was last codified in September 2024.[1]

The HCC is assisted in its tasks by the Directorate General for Competition ('the DGC').

2. Merger review procedure

2.1 Notion of concentration of undertakings

As under EU law, Greek merger control rules apply to transactions that bring about a change of control on a lasting basis by way of:

- the merger of two or more previously independent undertakings or parts thereof; 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 direct or indirect control of the whole or parts of one or more other undertakings.

Control can be sole or joint, de jure or de facto. Pure internal group restructurings do not come under the HCC merger review.

Merger control rules also apply to the creation of joint ventures, if these perform on a permanent basis all the functions of an autonomous economic entity.

2.2 Notification thresholds and turnover calculation rules

Concentrations are notifiable to the HCC where:

- the worldwide turnover of all the undertakings concerned totals at least €150 million; *and*
- each of at least two of the undertakings concerned generate, separately, turnover of at least €15 million on the Greek market.[2]

For concentrations in the media sector, these thresholds are lowered to €50 million (worldwide) and €5 million (as regards national turnover).[3]

The undertakings concerned are, in a merger, each of the merging parties, and, in an acquisition of control scenario, each of the undertakings acquiring control and the target undertaking (or business).

As regards turnover, Article 10 of Law 3959/2011 follows in essence the EU approach. Hence, an undertaking's turnover is comprised of the amounts deriving, during the last financial year, from the sale of products and/or the provision of services falling within the undertaking's ordinary activities, after deduction of sales rebates and of VAT and other taxes directly related to turnover. Intra-group generated turnover is excluded.

To calculate the turnover attributable to an undertaking concerned, one must take account of the undertaking's group turnover (excluding internal turnover). This includes the turnover of the following entities:

- the undertaking concerned;
- its direct and indirect subsidiaries;
- its direct and indirect parents, up to ultimate controlling shareholder(s);
- any other direct or indirect subsidiaries of the parents; and

1 Joint Ministerial Decision 70138/2024 on the 'Amendment-Codification of joint ministerial decision no 24611/21.3.2023 of the Ministers of Finance, Development and Investments and Internal Affairs "Competition Commission Internal Procedure and Management Regulation" (B'1790)' (Official Gazette, B' 5338/23.9.2024).

2 Greek Competition Act Article 6(1).

3 Article 3(7)(a) of Law 3592/2007 'Concentration and licensing of Mass Media Enterprises and other provisions' (Official Gazette A' 161/19.7.2007), as in force.

– any other undertakings jointly controlled by any of the above.

The seller is not an undertaking concerned and its turnover (other than the turnover of the target) is not part of the calculation, unless it remains as a co-controlling shareholder post-deal completion.

A group's turnover corresponds to turnover from all activities of the group entities (that is, not only those related to the target's activity).

In the case of jointly controlled entities, their turnover is apportioned equally between the controlling shareholders (irrespective of the actual stake of each in the joint venture).

Special rules apply to the calculation of turnover of banking and insurance institutions and of investment funds.

For the purpose of turnover calculation, the HCC will rely on the most recent year's audited financial statements, as adjusted to account for any changes that have occurred in the business after they were drawn up, such as new acquisitions or divestments. If the most recent year's audited figures are not released at the time of notification (if, for instance, a transaction occurs early in a year), then the parties shall provide the last available audited figures and are also expected to produce draft figures (pro-forma accounts) for the previous financial year.

This is important as it allows the HCC to verify it has competence over a concentration and to exclude the EU dimension (which would render the European Commission competent, unless referral were to come into play).

2.3 Notification deadline and waiting periods

Concentrations meeting the thresholds for notification must be notified to the HCC within 30 days from conclusion of the relevant agreement or the announcement of the public bid to buy or exchange or the assumption of an obligation to acquire a controlling interest in an undertaking, whichever occurs first. According to HCC case law, the notification deadline is triggered by the execution of any form of preliminary document, so long as it is binding on the parties.

Wilful failure to notify (or to notify on time) entails the imposition of a fine by the HCC on those responsible for making the filing (in case of a merger, each merging party, while in an acquisition of control scenario, the party or parties acquiring control) ranging from €30,000 up to 10 per cent of the undertaking's group aggregate turnover.

A transaction that is subject to notification before the HCC may not be implemented pending the outcome of the HCC's investigation. In practice, therefore, the completion of the transaction is suspended until the HCC decides to clear (conditionally or subject to remedies) or prohibit the notified concentration.[4] Failure to suspend (gun jumping) entails the imposition of a fine on those liable to notify, ranging, in this case too, from €30,000 up to 10 per cent of the undertaking's group aggregate turnover.[5]

The HCC has previously imposed fines totalling €110,000 against the media company Dimera Media Investments for failure to notify and violation of the standstill obligation.[6] In 2021, the HCC dealt with a case involving failure to notify and gun-jumping concerning the creation of a joint venture by PPC Renewables and Terna Energy in the market for production of electricity from renewables, but no fines were imposed because it was deemed that the required degree of fault was not met.[7] In 2023, the HCC fined the acquirer of supermarket stores €30,000 for late notification.[8]

Partial or full derogation from the duty to suspend may be granted by the HCC upon request in case of stock exchange transactions or to prevent serious damage to one or more undertakings concerned or to a third party.[9]

In practice, the HCC would be reluctant to grant derogations and would prefer to speed up the clearance process, unless circumstances required otherwise. For example, in December 2022 the HCC granted full derogation for the implementation of the acquisition by Pyrsos Holding Company (Pyrsos) of sole control over Prometheus Gas SA. Prior to the transaction, Pyrsos held 50 per cent of the target's shares and Gazprom Export, a subsidiary of PJSC Gazprom, held the remaining 50 per cent. Post-completion, Pyrsos would be the target's 100 per cent shareholder. The HCC considered that there was a risk of serious damage to the target due to the risk of an asset freeze being imposed by the European Commission on PJSC Gazprom, which would have significant negative repercussions on the target's viability. The HCC took account of the fact that the transaction involved a change from joint to sole control over the target, which was not expected to bring about a significant change in competition conditions in the relevant market, as well as of the lower than 15 per cent share held by the target in the natural gas wholesale supply market in the previous three years, which meant there was no risk of an individual dominant position being created or strengthened as a result of the transaction.

To obtain the derogation, Pyrsos agreed that, until the adoption of the HCC's final decision, it would not enter into any share purchase, merger or other transaction (including spin-offs and restructurings) with any third party, it would not suspend or significantly alter the target's business activity, it would not enter into any long-term gas supply agreement or provide any third-party guarantee outside the target's ordinary course of business and it would not proceed to the sale or impairment of the target's assets.[10]

The transaction was subsequently cleared by the HCC in February 2023.[11]

4 In practice, the HCC is not expected to prohibit a concentration, but it will accept remedies to ensure competition is not distorted.

5 Greek Competition Act Article 9.

6 HCC Decisions 652/2017 and 655/2018.

7 HCC Decision 729/2021.

8 HCC Decision 823/2023, which is analysed further below.

9 The duty to suspend a concentration will not prevent the implementation of a public bid to buy or exchange, or the acquisition through the stock market of a controlling interest, when the transaction is notified to the HCC on time, provided the acquirer does not exercise the voting rights attached to the securities, or does so only to maintain the full investment value on the basis of a derogation granted by the HCC (partial derogation).

10 HCC Decision 804/2022.

11 HCC Decision 809/2023.

Where a concentration has been implemented contrary to a prohibitive provision or decision, or to a term or condition attached to the HCC's clearance decision, the HCC may order the parties to dissolve the transaction or take appropriate restorative measures.

2.4 Examination procedure after filing

The HCC shall examine notified concentrations as soon as notification is made.

In practice, examination involves the collection of information by the DGC, so that the notification is deemed complete and the deadlines for issuance of a decision are triggered. In this respect, the DGC has seven working days from submission of the notification to send its first request for information ('RFI') to the parties, identifying missing points or points requiring clarification. From receipt of the parties' replies, the DGC has another two working days each time to send additional RFIs. There is no limit by law on the number of RFIs which the DGC may send out to conclude it has all the information required to deem the filing as complete, nor is there a statutory time limit within which the collection of information by the DGC must be completed.

The HCC may examine a notification made to it in one or two phases, as follows:[12]

- Where it is concluded that the notified transaction does not come within the ambit of Greek merger control rules, the HCC chairman shall issue a deed to that effect within one month from when notification has been deemed to be complete (that is, the RFI phase has been completed), which shall be served to the notifying parties.[13]
- Where it is found that the notified concentration, although coming within the ambit of Greek merger control rules, does not raise serious doubts as to its compatibility with the requirements of the functioning of competition in the relevant markets, the HCC shall issue a decision approving the transaction within one month from when notification has been deemed to be complete (Phase 1 clearance without remedies).
- If, during the RFI period, it becomes evident that the notified concentration raises serious doubts of compatibility with the functioning of competition in the individual markets affected by it, the parties may propose amendments/commitments no later than 20 days from when notification has been deemed complete which, if acceptable to the HCC, will also lead to a Phase 1 clearance within same one-month deadline (Phase 1 clearance with remedies).[14]
- Where it is found that the notified concentration falls within the ambit of Greek merger control rules and raises serious doubts as to its compatibility with the requirements of the functioning of competition in the relevant markets (and no commitments are offered by the parties in Phase 1), the HCC chairman shall issue a decision initiating the in-depth investigation of the transaction within one month from when notification has been deemed to be complete (initiation of Phase 2).
- Following initiation of phase 2, the HCC has 90 days from that date to prohibit the transaction, otherwise the transaction is deemed approved, and the HCC will have to issue a declaratory act to that effect (in practice, this means it has 90 days from Phase 2 initiation to issue its decision on the transaction) (Phase 2 clearance with or without remedies).
- In case of Phase 2 initiation, the transaction is brought before the HCC for examination within 45 days from when full investigation commenced. This is done by means of submission of the report prepared by the HCC rapporteur (who draws up the report with the assistance of the DGC team handling the case). The parties must propose commitments (if required) within no more than 20 days from when the case is brought before the HCC. The HCC may accept to extend the deadline for the proposal of the parties' commitments, in which case the 90-day deadline for issuance of a decision may be extended by 15 days to 105 days overall..

Initiation of Phase 2 does not necessarily entail commitments; it may be that there are markets where the HCC has identified concerns (through market testing, for instance) and needs more time to conclude.

Overall, the HCC may clear a transaction subject to conditions so that the concentration may be rendered compatible with the substantive test applied by the HCC in the course of the merger review (that is, to ensure that the notified transaction is not likely to significantly impede competition in the national market or in a substantial part thereof, taking account of the characteristics of the relevant products and/or services, particularly by creating or strengthening a dominant position). In this context, the notifying parties offer remedies to alleviate any concerns of the HCC, either in Phase 1 (following the law's amendment of 2022) or in Phase 2. Parties wishing to propose remedies must do so within the deadlines set by the law and they must file the relevant form (which is available on the HCC's website), which also includes model text for divestitures and trustee mandates.[15]

Ancillary restrictions that are directly connected to, and necessary for, the implementation of a concentration are covered by the clearance decision (although, if appropriate, the HCC may require their amendment in terms of scope and time).

12 Greek Competition Act Article 8.

13 This does not restrict the application of Greek Competition Act's provisions on horizontal/vertical cooperation and abuse of dominance.

14 The possibility of Phase 1 remedies was introduced by virtue of Law 4886/2022 and is in line with EU merger control procedure.

15 HCC Decision 779/2022.

2.5 Third-party access to file

In general, third parties are not granted access to pending case files, including in merger control cases.[16] However, the HCC may invite third parties to act as witnesses in the hearing of a pending case if their involvement is considered to contribute to the case review. In addition, third parties may also submit a memorandum to the HCC in the context of a pending case, which is made available to the notifying parties. In limited cases, the HCC may allow third parties to obtain access to the non-confidential version of the parties' memoranda and records of the proceedings.

2.6 Judicial review

HCC decisions may be appealed before the Athens Administrative Court of Appeals and, ultimately, the Council of State (which is the Supreme Administrative Court in Greece). The right to appeal lies with the notifying parties, the Greek State and any third party with a legitimate interest.

If a merger clearance decision issued by the HCC is partly or wholly annulled by the Administrative Court, the HCC shall re-examine the concentration in the light of existing market conditions. To this end, the notifying parties shall submit a revised or supplementary version of the notification if there is a change of conditions. In practice, however, there is no precedent to date of the court overturning an HCC decision approving a concentration.

2.7 Allocation of competence between the HCC and the NTPC

While the HCC is the authority competent for the application of Greek competition rules, including merger review, by way of exception Law 4727/2020 on digital governance, electronic communications and other provisions, as in force ('Law 4727/2020'), makes the National Telecommunications and Post Commission ('the NTPC') competent to enforce competition law, including merger control provisions, in the sectors of electronic communications and postal services.[17] For all other sectors competence lies with the HCC.

In practice this means that in cases involving activities coming partly under the HCC competency and partly under the NTPC scope, transactions are notified to both authorities and each of them deals with the activities over which it has competence to apply competition rules. For example, in an acquisition of control case, where Vodafone acquired sole control over Cyta,[18] the HCC provided significant input regarding its interrelationship in terms of competence with other national authorities authorised by law to implement merger control rules (that is, the NTPC). Specifically, the HCC clarified that for 'bundles' of services including both media and electronic communications activities, it would be necessary and sufficient for one of the two authorities to make the required competition assessment, in line with the general principle of effectiveness of the public administration, which consists in saving time and resources, as well as in ensuring flexibility and speed in the implementation of public policy. It is also consistent with the principle of legal certainty and avoidance of the risk of contradictory decisions being issued over the same case. In this case, the HCC cleared the transaction only in respect of the media aspect of the concentration (sale of televised content, including broadcasting rights and the sale of subscription TV services), whereas it abstained from the assessment of the aspect of the concentration under the NTPC's power of investigation (namely, the provision of combined services which, according to the HCC, consisted of 'packages' composed mainly of services falling under the NTPC's exclusive competence).[19] In turn, the NTPC cleared its part of the transaction later in the same year.[20]

It is noted that Law 5019/2023 has introduced a new paragraph 1A in Article 14 of the Greek Competition Act, pursuant to which the HCC is the competent national authority for the implementation of the Digital Markets Act (EU Regulation 2022/1925), without prejudice to the specific powers entrusted to the NTPC.

3. Review of case law 2023–2024

In 2023, the HCC continued its merger review work, clearing 25 concentrations notified to it, either in Phase I or Phase II. It also imposed a fine of €30,000 for late notification in one case.[21] The following are some of the major cases.

3.1 Creation of the fifth banking pillar in Greece

On 30 August 2024 the HCC unconditionally cleared in Phase 1 the concentration concerning, on the one hand, the merger between Pancreta Bank and Attica Bank and, on the other hand, the acquisition of sole control by Thrivest Holding over the merged entity.[22]

The transaction concerned the broader banking sector and did not raise competition concerns due to the low market shares of the merging banks and the absence of any vertical overlap between their activities. No conglomerate effects emerged either from the HCC's investigation.

This is a decision of significant impact, as it enabled the creation of the fifth major banking institution in Greece. The deal has allowed the corporate transformation of Attica Bank (as a result of its merger with Pancreta Bank, through absorption of Pancreta Bank by Attica Bank) and further investment of the shareholders in the share capital of the new bank post-merger to support the implementation of

16 HCC Regulation Article 15(9).
17 Law 4727/2022 Article 113(2)(f).
18 HCC Decision 656/2018.
19 The combined offers consisted of (a) landline telephone services, internet access within the eurozone and subscription TV, and (b) landline telephone services, internet access within the eurozone, subscription TV and mobile telephone services.
20 NTPC Decision 857/7 of 28 June 2018.
21 HCC Annual Report 2023.
22 HCC Decision 855/2024.

its business plan and cover the additional capital needs arising from the inclusion of non-performing exposure portfolios of Attica Bank and Pancreta Bank in the state guarantee programme 'Hercules III'. This has been a much-publicised transaction that is expected to boost competition in the Greek banking sector and contribute to Greece's economic growth.

3.2 Phase 2 unconditional clearance of a concentration in the Greek construction sector

On 7 November 2023, following a Phase II review, the HCC unanimously approved the acquisition by Intrakat SA of sole control over Aktor SA.[23] Intrakat SA (now Aktor Group of Companies SA) is the parent company of Intrakat Group and is active in the Greek construction sector. Aktor and its subsidiaries' main activities include infrastructure, building and industrial construction, aggregates production and facility management services.

The HCC unconditionally cleared the concentration in Phase 2, concluding that, despite the horizontal overlap in parties' activities, competition conditions would not be affected in any of the relevant markets in the Greek construction sector. More specifically, the HCC took into account, among other factors, the market shares of the parties and their competitors, the levels of concentration, the number and frequency of tenders, the proximity of competition between the parties, the analysis of historical data on tenders in the period 2018–2022 and the parties' and their competitors' capacities. The HCC also found that there were no significant vertical or conglomerate effects between the rest of the parties' activities.[24]

This is an important decision as it involved two key players in the Greek construction sector, and it marks the first time the HCC looked into public and private works' market delimitation issues in the context of a merger.[25]

3.3 First failing firm defence merger clearance

On 3 August 2023, the HCC issued Decision 827/2023 by which it unanimously approved, in Phase 2, the merger by absorption of Anek Lines by Attica Group and the repayment, by the post-merger entity, of the target's loan obligations to its creditors. The transaction involved the markets for the provision of maritime transport services for passengers, cars and trucks in the Greek territory and in port pairs in Crete and the Adriatic, as well as the market for the provision of maritime transport services through public service contracts. Following an in-depth investigation, the HCC found that the transaction did not raise serious doubts as to its compatibility with the requirements for the functioning of competition in the affected markets.

In approving the transaction, the HCC took into account the target's status (firm in difficulty) and upheld, for the first time, the failing firm defence. In particular, it found that all three criteria of the failing firm defence, as formulated by the European Commission case law, were fulfilled. Specifically:

- the target company would be forced to exit the market in the near future due to its financial difficulties;
- there was no alternative acquisition option, less harmful to competition, other than the notified transaction;

and

- there was no credible interest in acquiring the target's assets which, therefore, would exit the market.

Under the circumstances, the HCC concluded that the competitive structure in the affected markets would not be worse as a result of the notified merger and, as such, was not causally related to it.

This is a landmark case, as it is the first failing firm defence approval decision of the HCC and forms a significant precedent.

3.4 Phase I commitments and fine for overdue notification

On 5 December 2022, the HCC cleared the acquisition by Anedik Kritikos SA ('Kritikos') of sole control over the company Synergazomeni Pantopoles SA. The case involved the retail and wholesale market for daily consumer goods. Specifically, it involved the acquisition by Kritikos of the target's privately owned supermarket stores, as well as its network of collaborating stores, including those using the target's brand names.

The HCC unanimously approved the notified concentration in Phase I, subject to remedies.[26] Specifically, with respect to two collaborating stores in the areas of Grevena and Rethymno, the HCC considered that, though these would not be transferred to Kritikos, they would continue to have an increased cooperative relationship with the acquirer post-completion, thus enabling Kritikos to further strengthen its dominant position locally. As such, with respect to these two stores, the acquirer undertook to:

- cease licensing to them the right to use any of the trademarks owned by the target or the seller, which were transferred to Kritikos as part of the transaction, and to refrain from any such licensing in the future;
- refrain from granting them usage of any other brand names owned or managed by Kritikos; and
- save for their supply relationship post-merger, terminate, and not enter in the future into, any cooperation with these stores concerning, indicatively, joint commercial plans and granting of benefits based on turnover, joint issuance of offer

23 HCC Decision 830/2023.

24 HCC press release dated 8 November 2023.

25 There has been an ongoing HCC market investigation in the construction sector since 2021, which has not yet been completed.

26 HCC Decision 803/2022.

brochures and joint promotions, use of common loyalty cards, triangular sales and placement of private label codes.

In parallel with the clearance decision, the HCC initiated an ex officio investigation to determine whether the conditions for late notification were met. On 13 July 2023, the HCC fined Kritikos €30,000 for overdue notification of the transaction.[27]

According to the HCC, the transaction was notified 63 days after execution of a private preliminary share transfer agreement, thus exceeding by 33 days the statutory 30-day deadline for timely submission of the notification. Kritikos argued that it had not been under an obligation to notify, as the preliminary agreement (by virtue of which the transfer of the target's business took place) was not a final legally binding agreement. However, the HCC took a different view and ruled that the said agreement did constitute, in essence, the decisive agreement between the parties, by which a permanent change of control was effected, since, on the one hand, it contained the essential terms to be included in the definitive share transfer agreement that would subsequently be entered into and the mechanism for implementing the transaction and, on the other hand, it lacked any clauses or conditions capable of overturning its effect.

4. Final remarks

The HCC is the national competition authority and has a mandate to investigate all concentrations falling within its scope of competence under the Greek Competition Act (or by way of referral from the European Commission). The obligation to notify in Greece is determined by reference to turnover criteria. This enables companies to clearly foresee when a concentration must be reviewed by the HCC and the expected timeline for its implementation.

During 2023–2024, the HCC activity in the area of merger control has been marked by landmark rulings and decisions that are important for the Greek economy and consumers, including the first failing firm defence merger approval, setting an important precedent for the future.

Moving forward, it will be interesting to see how the HCC will deal with tech M&A transactions that affect the Greek market and what the role of sustainability will be in terms of theories of harm or efficiencies or merger remedies.

27 HCC Decision 823/2023.