

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

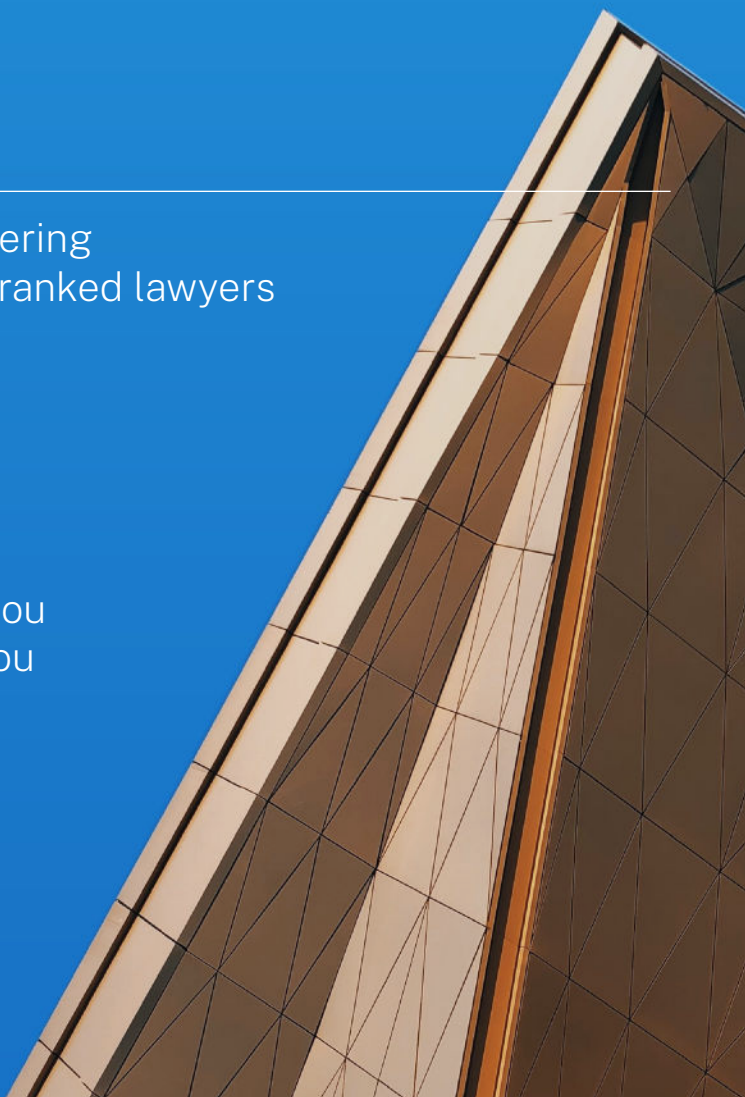
# Merger Control 2023

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

**Greece: Law & Practice**

Anna Manda, Maria Kallidopoulou  
and Maria-Christina Raptopoulou  
Karatzas & Partners



# GREECE



## Law and Practice

### Contributed by:

Anna Manda, Maria Kallidopoulou and Maria-Christina Raptopoulou  
**Karatzas & Partners**

## Contents

### 1. Legislation and Enforcing Authorities p.6

- 1.1 Merger Control Legislation p.6
- 1.2 Legislation Relating to Particular Sectors p.6
- 1.3 Enforcement Authorities p.6

### 2. Jurisdiction p.6

- 2.1 Notification p.6
- 2.2 Failure to Notify p.7
- 2.3 Types of Transactions p.7
- 2.4 Definition of “Control” p.7
- 2.5 Jurisdictional Thresholds p.8
- 2.6 Calculations of Jurisdictional Thresholds p.8
- 2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds p.9
- 2.8 Foreign-to-Foreign Transactions p.9
- 2.9 Market Share Jurisdictional Threshold p.10
- 2.10 Joint Ventures p.10
- 2.11 Power of Authorities to Investigate a Transaction p.10
- 2.12 Requirement for Clearance Before Implementation p.10
- 2.13 Penalties for the Implementation of a Transaction Before Clearance p.10
- 2.14 Exceptions to Suspensive Effect p.11
- 2.15 Circumstances Where Implementation Before Clearance Is Permitted p.12

### 3. Procedure: Notification to Clearance p.12

- 3.1 Deadlines for Notification p.12
- 3.2 Type of Agreement Required Prior to Notification p.12
- 3.3 Filing Fees p.12
- 3.4 Parties Responsible for Filing p.12
- 3.5 Information Included in a Filing p.13
- 3.6 Penalties/Consequences of Incomplete Notification p.13
- 3.7 Penalties/Consequences of Inaccurate or Misleading Information p.14
- 3.8 Review Process p.14
- 3.9 Pre-notification Discussions With Authorities p.14
- 3.10 Requests for Information During the Review Process p.14
- 3.11 Accelerated Procedure p.15

## **4. Substance of the Review** p.15

- 4.1 Substantive Test p.15
- 4.2 Markets Affected by a Transaction p.16
- 4.3 Reliance on Case Law p.16
- 4.4 Competition Concerns p.16
- 4.5 Economic Efficiencies p.16
- 4.6 Non-competition Issues p.16
- 4.7 Special Consideration for Joint Ventures p.17

## **5. Decision: Prohibitions and Remedies** p.17

- 5.1 Authorities' Ability to Prohibit or Interfere With Transactions p.17
- 5.2 Parties' Ability to Negotiate Remedies p.18
- 5.3 Legal Standard p.18
- 5.4 Typical Remedies p.18
- 5.5 Negotiating Remedies With Authorities p.19
- 5.6 Conditions and Timing for Divestitures p.19
- 5.7 Issuance of Decisions p.20
- 5.8 Prohibitions and Remedies for Foreign-to-Foreign Transactions p.20

## **6. Ancillary Restraints and Related Transactions** p.20

- 6.1 Clearance Decisions and Separate Notifications p.20

## **7. Third-Party Rights, Confidentiality and Cross-Border Co-operation** p.20

- 7.1 Third-Party Rights p.20
- 7.2 Contacting Third Parties p.21
- 7.3 Confidentiality p.21
- 7.4 Co-operation With Other Jurisdictions p.21

## **8. Appeals and Judicial Review** p.21

- 8.1 Access to Appeal and Judicial Review p.21
- 8.2 Typical Timeline for Appeals p.22
- 8.3 Ability of Third Parties to Appeal Clearance Decisions p.22

## **9. Foreign Direct Investment/Subsidies Review** p.22

- 9.1 Legislation and Filing Requirements p.22

## **10. Recent Developments** p.22

- 10.1 Recent Changes or Impending Legislation p.22
- 10.2 Recent Enforcement Record p.22
- 10.3 Current Competition Concerns p.23

**Karatzas & Partners** was recently recognised by Chambers Europe as the Greece Law Firm of the Year for 2022. In the area of competition law and, in particular, merger control, Karatzas & Partners has a well-established practice handling a steady stream of merger control advice and clearances relating to significant M&A transactions undertaken by the firm. The firm is renowned for its business-oriented approach, which is critical to advising clients on the competition aspects of M&A transactions and

achieving merger clearance even in particularly complex and novel concentrations that lead to Phase II investigations. Karatzas & Partners routinely advises clients on the most innovative transactions in Greece with novel competition law elements, such as the creation of complex joint ventures in high technology sectors, the creation of new relevant product markets and complex (geographical/product) market definitions, thus being at the forefront of competition law developments in Greece.

## Authors



**Anna Manda** joined Karatzas & Partners in 2000 and became partner in 2004. She specialises in competition law, TMT, pharma, M&A and corporate and commercial law and leads the

firm's antitrust and competition, TMT and pharma departments. She has extensive experience in antitrust and competition, including advising on highly complex merger control matters, as well as state aid issues, cartel investigations and leading the K&P team advising on a number of antitrust compliance matters. Anna has participated in many high-profile transactions in these fields, with particular focus in the TMT and pharma markets. She is a member of the Athens Bar Association, and she speaks Greek, English, French and Italian.



**Maria Kallidopoulou** joined Karatzas & Partners in April 2022 as an associate, and EU and Greek competition law specialist. She advises on European, Greek and cross-

jurisdictional competition law matters in sectors including merger control proceedings, cartels and abuse of dominance investigations, horizontal and vertical agreements, and antitrust compliance, as well as state aid. Her practice also includes public procurement and EU trade law. Maria holds an LLB and an LLM from Aristotle University of Thessaloniki and an LLM from the University of Oxford. She is a member of the Thessaloniki Bar Association, and she speaks Greek, English and German.

Contributed by: Anna Manda, Maria Kallidopoulou and Maria-Christina Raptopoulou, **Karatzas & Partners**



**Maria-Christina Raptopoulou** joined Karatzas & Partners in March 2022. She specialises in Competition (both free and unfair) and corporate law. Her practice includes advising on corporate transactions, including M&A due diligence, and all aspects of national and European competition law, including merger control proceedings, cartels, abuse of dominance, horizontal and vertical agreements, as well as antitrust compliance. Maria-Christina holds an LLB in Hellenic Law and an LLM in Private Law & Business Transactions, both from the National and Kapodistrian University of Athens. She is a member of the Athens Bar Association and she speaks Greek, English, German and Italian.

---

## Karatzas & Partners

The Orbit, 5th floor  
115 Kifissias Ave  
115 24  
Athens  
Greece  
LinkedIn: Karatzas & Partners

Tel: +30 21 0371 3600  
Fax: +30 210 323 4363  
Email: [mail@karatza-partners.gr](mailto:mail@karatza-partners.gr)  
Web: [karatza-partners.gr](http://karatza-partners.gr)



## 1. Legislation and Enforcing Authorities

### 1.1 Merger Control Legislation

The relevant Greek merger control provisions are enshrined in Law 3959/2011 (the “Greek Competition Act”), as amended. In addition to these provisions, the Hellenic Competition Commission (HCC) has issued Decision No 780/2022, which clarifies the requirements of the long and short notification forms (“HCC Guidelines”), as well as Decision 779/2022, which determines the content of the remedies form. In the past year, the HCC has issued a manual for its operational procedures, which includes practical guidelines for the application of the Greek Competition Act and has amended its procedural and operational regulation.

In interpreting and applying the Greek merger control legislation, the HCC takes also into account all the relevant EU legislation, notices and guidelines, as well as the EU case law.

### 1.2 Legislation Relating to Particular Sectors

The Greek Competition Act applies in principle to all transactions (including foreign-to-foreign transactions) and to all sectors, and the HCC is the competent authority to implement the Greek competition rules, apart from the transactions relating to electronic communications, and postal services, for the review of which the Hellenic Telecommunications and Post Commission (EETT) is the competent authority.

#### Mass Media Sector

Concentrations relating to informative media (eg, television, radio, papers and magazines) are governed by both the Greek Competition Act and Law 3592/2007, as amended by Law 4279/2014. On the other hand, as regards con-

centrations relating to entertainment (ie, non-informative) media, only the Greek Competition Act applies.

With respect to FDI filing requirements see **9.1 Legislation and Filing Requirements**.

### 1.3 Enforcement Authorities

The HCC is the competent authority for the enforcement of the relevant legislation applicable to merger control, as well as for the review of the notified concentrations. The HCC is an independent authority with administrative and economic autonomy, which is supervised by the Minister of Development and Investments.

For the review of mergers involving undertakings active in the markets of electronic communications and postal services, the EETT is the relevant competent authority.

Decisions issued by the HCC and EETT are subject to judicial review by the Greek administrative courts.

## 2. Jurisdiction

### 2.1 Notification

In case the respective thresholds described in **2.5 Jurisdictional Thresholds** are met, a notification to the HCC, prior to the implementation of the transaction, is compulsory (see also response to **2.14 Exceptions to Suspensive Effect** on derogations from the suspensive effect of the implementation of a notifiable concentration). There is no exception as to the mandatory nature of the filing requirement. The notification shall be submitted within 30 calendar days after the signing of the relevant binding agreement, the acquisition of controlling interest, or the

announcement of a public bid that confers control on a lasting basis.

## 2.2 Failure to Notify

The HCC can impose administrative fines of at least EUR30,000 and up to 10% of the aggregate national turnover of the undertakings responsible for the filing, for failure to notify. The Greek Competition Act explicitly states that the fine imposed must be calculated on the basis of the economic power of the undertakings involved, the number of the affected markets, the competitive conditions therein and the potential effect of the contemplated concentration on competition.

The executives of the undertakings concerned are personally and jointly liable for the payment of all fines imposed against the undertakings by the HCC. In addition, the HCC may also impose administrative fines on the executives themselves for failure to comply with the merger control rules, which range from EUR200,000 to EUR2 million.

Finally, the executives of the undertakings concerned are subject to criminal sanctions, the fines of which range between EUR15,000 and EUR150,000.

As regards fines and penalties that have been imposed recently for failure to notify or gun-jumping see **2.13 Penalties for the Implementation of a Transaction Before Clearance**.

## 2.3 Types of Transactions

All transactions meeting the turnover thresholds described in **2.5 Jurisdictional Thresholds**, are caught by the Greek Competition Act, as long as there is an acquisition of control on a lasting basis. An acquisition of control is deemed to arise in any merger between two or more previously independent undertakings or parts thereof,

in an acquisition of direct or indirect control over the whole or part of one or more undertakings, by one or more persons already controlling at least one undertaking (or by one or more undertakings), and in a creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

Therefore, internal restructurings and reorganisations do not qualify as concentrations under the Greek merger control regime. Operations not involving the transfer of shares or assets may qualify as concentrations, as long as the nature of control changes and there is an acquisition of control as a result of the operation (eg, through veto rights): see also **2.4 Definition of “Control”**.

## 2.4 Definition of “Control”

The definition of “control” under the Greek Competition Act is identical to the one under the European Union Merger Regulation (EUMR).

Control derives from rights, contracts or other means which, either separate or in combination, and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

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

In light of the above, control is acquired by the person(s) or undertakings that (i) are holders of the rights or entitled to rights under the contracts concerned; or (ii) while not being holders of such rights or entitled to rights under such contracts,



have the power to exercise the rights deriving therefrom.

Control may be acquired in the form of (i) sole or (ii) joint control and in both cases, control may be acquired on a de jure or a de facto basis.

## Sole Control

Sole control is acquired when a person or an undertaking is capable of exercising decisive influence on another undertaking. This is normally accomplished by the acquisition of the majority of the voting rights or when a minority shareholder is vested with “special” rights allowing it to define the business strategy of the acquiring entity by – eg, blocking decisions of strategic commercial matters.

## Joint Control

Joint control exists where two or more undertakings have the possibility to exercise, directly or indirectly, decisive influence over another undertaking. This is the case, for example, where two undertakings have equal voting rights. Furthermore, the acquisition of a minority shareholding may also confer joint control, where it allows the minority shareholder to block strategically important decisions through – eg, veto rights. Joint control may also be the result of an agreement between minority shareholders to exercise their voting rights in the same way or where there is a commonality of interests between minority shareholders to the effect that they would not act against each other in exercising their rights in relation to the undertaking concerned.

## 2.5 Jurisdictional Thresholds

Pursuant to Article 6(1) of the Greek Competition Act, a concentration shall be notified to the HCC, provided that the following turnover thresholds are satisfied, and the concentration does not

have an EU dimension. In particular, the turnover threshold is met when:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least EUR150 million; and
- the aggregate turnover of each of at least two of the undertakings concerned in the Greek market exceeds EUR15 million.

Special turnover thresholds apply to concentrations in the informative media sector. In particular, according to Article 3(7) of Law 3592/2007, as amended by Law 4279/2014, concentrations of informative media must be notified to the HCC where:

- the combined aggregate worldwide turnover of all the undertakings concerned is at least EUR50 million; and
- the aggregate turnover of each of at least two of the undertakings concerned in the Greek market exceeds EUR5 million.

The acquisition of informative media is not allowed when it triggers the market share thresholds referred in Article 3 of Law 3592/2007 (see also **4.1 Substantive Test**).

## 2.6 Calculations of Jurisdictional Thresholds

In calculating the turnover to assess whether the jurisdictional thresholds are met, the Greek Competition Act mirrors the EUMR. Turnover must correspond to the “ordinary activities” of the undertakings concerned, which is the turnover generated from the sale of all products and services in the normal course of their business.

Moreover, sales rebates, VAT, other turnover-related taxes and intra-group sales figures, shall be excluded from the calculation.



In case of an acquisition of a part or parts of an undertaking, irrespective of the legal personality and status of those parts, only the turnover of the part or parts is calculated.

Furthermore, in case of a group of undertakings, the turnover must reflect the turnover of the entire group of each of the undertakings concerned, as explained in **2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds**.

Where a currency conversion is necessary, the HCC will use the average annual exchange rates provided by the European Central Bank.

The relevant period for calculating the turnover is the last audited financial year (adjustments must be made for any acquisitions or disposals of businesses subsequent to the date of the audited accounts, in order to reflect the true value of group turnover).

Lastly, specific rules also apply for the calculation of the turnover with respect to credit institutions, insurance companies and other financial companies, which mirror the equivalent EUMR provisions.

## **2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds**

As already stated in **2.6 Calculations of Jurisdictional Thresholds**, turnover must reflect the turnover of the entire group of each of the undertakings concerned. In order to calculate the aggregate turnover of the undertakings concerned, it is necessary to add together the respective turnovers of:

- the relevant undertaking;

- all subsidiaries that are controlled directly or indirectly by the relevant undertaking;
- the turnover of any person/company that control(s) the relevant undertaking;
- if there are any persons/companies that control the relevant undertaking, the turnover of any persons that control those persons/companies; and
- the turnover of any joint ventures, allocated on a proportionate basis to the number of undertakings that control the joint venture.

Control for these purposes means that a person/company, either directly or indirectly:

- owns more than half of the capital or business assets;
- has the power to exercise more than half the voting rights;
- has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the company; or
- has the right to manage the company's affairs.

However, where a transaction concerns the acquisition of a part of one or more undertakings, only the turnover of the transferred part is taken into account, in addition to the aggregated turnover of the acquirer's group.

In summary, in case of an acquisition of control, one takes into account the turnover of the acquiring entity's group (as explained above), and the turnover of the target and its subsidiaries that fall within the scope of the transaction.

## **2.8 Foreign-to-Foreign Transactions**

As explained in **1.2 Legislation Relating to Particular Sectors**, the Greek Competition Act also applies to foreign-to-foreign transactions. As

long as the foreign entities meet the worldwide and national turnover thresholds (ie, the combined aggregate worldwide turnover of all the undertakings concerned is at least EUR150 million and at least two of the undertakings concerned have generated turnover in the Greek market that exceeds EUR15 million), and no EU one-stop shop notification is necessary, a notification to the HCC is compulsory. If no turnover is generated in Greece by one of at least two undertakings, then no filing in Greece will be required.

## 2.9 Market Share Jurisdictional Threshold

There is no market share jurisdictional threshold under the Greek Competition Act. See also **4.1 Substantive Test** for the market share thresholds in relation to the acquisition of informative media.

## 2.10 Joint Ventures

Only full-function joint ventures fall under the ambit of the Greek Competition Act. Specifically, in order for a joint venture to be caught by the Greek merger control provisions, such joint venture must be able to perform on a lasting basis all the functions of an autonomous economic entity, as per the provisions of the European Commission's Consolidated Jurisdictional Notice ("Jurisdictional Notice"). In cases where such a joint venture does not constitute an independent undertaking under the meaning of the Jurisdictional Notice – eg, where a joint venture takes over only a specific function within the parent companies' activities without its own access or presence in the market, that joint venture would not be subject to the Greek merger control provisions.

For calculating the turnover, the HCC applies the relevant paragraphs of the Jurisdictional Notice

(ie, paragraphs 169-194 of the Jurisdictional Notice).

## 2.11 Power of Authorities to Investigate a Transaction

The HCC (and the EETT where applicable) does not have the power to investigate transactions that do not meet the minimum jurisdictional thresholds.

Nonetheless, in accordance with Article 6(7) of the Greek Competition Act (as amended by L. 4886/2022), the Minister of Finance and the Minister for Development and Investments may amend the notification thresholds, as well as impose separate/ad hoc thresholds for different sectors of the economy. See also **4.1 Substantive Test** for the market share thresholds in relation to the acquisition of informative media.

## 2.12 Requirement for Clearance Before Implementation

The Greek Competition Act (Article 9) requires the automatic suspension of a notifiable concentration, until the latter is cleared by the HCC. This inter alia means that the implementation of a notifiable transaction should be suspended until it has been cleared by the HCC (or the relevant timeframe for the HCC to issue a decision has lapsed without the HCC having reached a decision). See also the derogations to the suspensory effect in **2.14 Exceptions to Suspensive Effect**.

## 2.13 Penalties for the Implementation of a Transaction Before Clearance

If a notifiable transaction is implemented prior to the HCC clearance decision, the HCC may impose administrative fines to the undertakings having an obligation to notify. The fine will be at least EUR30,000 and up to 10% of the aggregate turnover of the undertakings concerned.

In calculating the fine, the HCC will take into account the economic power of the undertakings concerned, the number of affected markets and the competitive conditions prevailing in these markets, as well as the estimated impact of the concentration on competition.

In addition, criminal sanctions ranging between EUR15,000 and EUR150,000 may be also imposed on the undertaking's executives for violation of the merger control provisions.

In 2022, the HCC imposed a fine of EUR500,000 for gun-jumping (HCC Decision 752/2021 – OPAP/STOIXIMAN BUSINESS). In 2018, the HCC had also imposed a fine of EUR50,000 on an undertaking for failure to notify and in the same decision an additional fine of EUR30,000 for gun-jumping (HCC Decision 659/2018 – ALTER EGO MEDIA/DOL SA).

To the best of the authors' knowledge, no penalties have been imposed in the case of foreign-to-foreign transactions.

## 2.14 Exceptions to Suspensive Effect

Notwithstanding the suspensive effect of the implementation of a notifiable concentration, the Greek Competition Act provides for two derogations.

- First, the implementation of a public bid or the acquisition of a controlling interest in the context of stock exchange transactions shall not be prevented provided that (i) the concentration is notified to the HCC within the 30-day deadline; and (ii) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on the grant of a special derogation by the HCC. Hence, in case of non-clearance of

the transaction, the risk shifts to the acquirer, since the acquirer would need to dispose of the shares.

- Second, the HCC may, upon request, grant a derogation from the obligation to suspend the completion of a transaction that is notifiable, in order to prevent serious effects to the detriment of one or more of the undertakings concerned or to the detriment of a third party. The HCC decision to grant a derogation may be issued subject to conditions and obligations aimed to safeguarding effective competition and preventing situations that could jeopardise the enforcement of an eventual HCC decision prohibiting the concentration. A derogation granted by the HCC may be revoked where: (i) the derogation is based on incorrect or misleading information; or (ii) the undertakings concerned violate the conditions attached to the derogation. In 2022, the HCC granted a derogation from the suspensive effect of the implementation of a notifiable concentration between two companies active in the market for the supply of natural gas (HCC Decision 804/2022 – PYRSOS/PROMETHEUS GAS). The HCC permitted the implementation of the concentration – ie, the acquisition by Pysros Holding Company SA of sole control over Prometheus Gas SA, prior to the issuance of its final clearance decision in order to prevent serious financial effects to the detriment of the target company caused by the EU sanctions imposed against Russia. The derogation granted was subject to specific prohibitions until clearance, such as the transformation of the target's group, the conclusion of long-term supply agreements, etc. Apart from the aforementioned case, the HCC is generally hesitant to grant such derogations.

## 2.15 Circumstances Where Implementation Before Clearance Is Permitted

There are no other derogations to the suspensory effect for the implementation of a notifiable concentration, apart from the two described in **2.14 Exceptions to Suspensive Effect**. With respect to a potential carve-out, the HCC will follow the relevant case law of the EU Courts and the EC, especially in relation to interim implementation measures, such as warehousing, etc.

## 3. Procedure: Notification to Clearance

### 3.1 Deadlines for Notification

As analysed in **2.1 Notification**, a concentration that satisfies the relevant turnover thresholds (see **2.5 Jurisdictional Thresholds**), shall be notified to the HCC within 30 calendar days after the signing of the relevant binding agreement, the acquisition of controlling interest or the announcement of a public bid that confers control on a lasting basis. For the penalties imposed in the event that the deadline for notification is not met or for a failure to notify, please refer to **2.2 Failure to Notify**. All penalties are made public.

### 3.2 Type of Agreement Required Prior to Notification

The 30 calendar-day timeframe may be triggered when there is a binding agreement, an acquisition of controlling interest, or an announcement of a public bid that confers control on a lasting basis. According to the HCC case law, the aforementioned deadline could be deemed to commence upon the execution of any sort of binding preliminary document, which could be deemed to trigger the concentration process (eg, pre-agreement, binding memorandum of under-

standing). The HCC will assess ad hoc whether a preliminary agreement could trigger the notification obligation on the basis of whether it creates binding obligations on the parties to proceed with the consummation of the transaction.

As such, and pursuant to the HCC Guidelines, a notification may be submitted to the HCC prior to the conclusion of a binding agreement, as long as the notifying parties demonstrate to the HCC their firm intention to enter into a conclusive agreement or, in the event of a public bid, as long as the parties have publicly announced their intention to make such bid.

In case of mergers, the HCC will review the notification at the pre-binding stage, as soon as the board of directors of the two entities have initiated the merger procedures, but will only issue a decision once it has received the resolutions of the general shareholders' meetings approving the merger, since the latter are considered as binding acts for the purposes of the notification.

### 3.3 Filing Fees

The notification form must be accompanied by the proof of payment of a filing fee of EUR1,100. Absent the proof of payment of the filing fee, the notification will be rejected on the grounds of inadmissibility.

### 3.4 Parties Responsible for Filing

Where the concentration arises from a merger agreement, all parties involved are responsible for the filing.

In case of an acquisition of sole control, the party acquiring control is responsible for the filing, whereas in case of an acquisition of joint control, the notification must be made by all parties acquiring control.

### 3.5 Information Included in a Filing

The information required for a notification (long or short form) under an HCC filing is similar to what is required for the submission of the Form CO before the European Commission (EC). In general, the information typically required to complete a filing includes, inter alia, the following:

- description of the transaction;
- information about the participating parties and their activities;
- the ownership and control structure of the participating parties;
- definition of the relevant product and geographical markets and any affected markets;
- turnover and market share information on the affected markets;
- information on the structure of supply and demand in the affected markets; and
- efficiencies expected to result from the transaction.

The filing shall be accompanied by the following documents:

- a copy of the binding agreement or of the tender document in case of a public bid;
- copies of the most recent annual reports/financial statements of the undertakings concerned;
- copies of all relevant market studies providing information of the structure of the affected markets (such as market shares, competition conditions, existing and potential competitors, structure of supply, etc);
- a copy of the notification announcement as published in the newspaper;
- a power of attorney for representation by a legal counsel (PoA), which should be duly notarised (and apostilled where necessary);

- presentations made from/to the Board of Directors or presented to the Board of Directors or the general assembly, which include competitive assessments; and
- proof of payment of the filing fee.

The notification itself and the accompanying documents should be submitted in Greek. If the accompanying documents are drafted in a language other than Greek, an official (ie, certified by an attorney) translation in Greek should be also submitted.

### 3.6 Penalties/Consequences of Incomplete Notification

The HCC officially commences the review process of the notified concentration as soon as the filing is deemed to be complete. In case the filing is found to be incomplete, further clarifications are requested by the HCC through RFIs. Only when the HCC considers that the filing is complete, the Phase I review period commences.

In cases where the information requested by the HCC is being refused, obstructed, delayed, or in the event that the information provided is incomplete, the HCC may impose on the undertakings concerned fines of up to 3% of their aggregate worldwide turnover on a daily basis (and for as long as the infringement takes place). In addition, the HCC may also impose fines on the undertakings' executives ranging from EUR15,000 to EUR30,000 per day.

Lastly, those that refuse or obstruct the requested information may be also subject to imprisonment of at least six months.

In 2011, the HCC imposed fines of EUR20,000 and EUR15,000 respectively on two gas-providing companies for inter alia delaying to provide

the information requested (HCC Decision 516/VI/2011 – EPA Thessalias/EPA Thessalonikis).

### 3.7 Penalties/Consequences of Inaccurate or Misleading Information

In the event that the parties provide inaccurate or misleading information, the same penalties described in 3.6 Penalties/Consequences of Incomplete Notification apply.

### 3.8 Review Process

After the HCC deems the notification to be complete, it will follow the below review and decision process.

- In case the HCC concludes that the notified concentration does not fall within the jurisdictional thresholds, the President of the HCC will issue a decision within 30 calendar days from the receipt of a complete notification.
- In case the HCC considers that the notified concentration does not raise any adverse effects on the relevant markets, the HCC will issue a decision approving the concentration within 30 calendar days from the receipt of a complete notification (Phase I process).
- In case the HCC considers that the concentration raises serious doubts as to its compatibility with competition law in the relevant markets, the President of the HCC will issue a decision within 30 calendar days from the date of the notification and will initiate the procedure of full investigation of the notified concentration (Phase II process). The participating parties should be immediately informed of this decision. The case is subsequently introduced before the HCC within 45 days from the date on which the in-depth assessment is initiated (the “hearing”). Prior to the hearing, the HCC will issue a report summarising its findings, similar to the statement of objections (SO) of the EC under the

EUMR, on which the parties will be invited to comment. The parties can offer remedies either during the Phase I investigation within 20 calendar days from the date of the notification or during the Phase II investigation within 20 days of the HCC SO. Under the Phase II process, the HCC must issue its decision within 90 calendar days following the initiation of the Phase II review process. In case the deadline of 90 days lapses unused, it is assumed that the HCC has approved the concentration.

The timeframe within which the HCC shall issue its decision under the Phase I and Phase II review process may be extended subject to the parties’ consent.

In terms of an overall estimated timeline, it is estimated that the HCC would issue its decision approximately 75 days after the submission of the notification in Phase I proceedings, and approximately 165 days after the submission of the notification in Phase II proceedings.

### 3.9 Pre-notification Discussions With Authorities

The Greek Competition Act does not provide for pre-notification discussions with the HCC. Nonetheless, there may be informal discussions with the HCC and the parties may also submit formal questions, as long as the 30-day filing deadline is observed.

### 3.10 Requests for Information During the Review Process

It is fairly common for the HCC to request additional information from the parties. In particular, once the notification is filed, the HCC has seven working days in order to assess whether the data provided by the parties is sufficient. If the HCC finds that further data is needed, it shall



notify the parties and the “clock will stop ticking”. Namely, the deadline within which the HCC must reach a decision in Phase I or Phase II will not start running until the HCC has deemed that it has at its disposal all the data that it requires.

### 3.11 Accelerated Procedure

A short notification form may be submitted, if one the following conditions is met:

- none of the parties to the concentration is engaged in business activities in the same relevant product and geographic market (no horizontal overlap), or in a market that is upstream or downstream of a market in which another party to the concentration is engaged (no vertical relationship);
- two or more of the parties to the concentration are engaged in business activities in the same product and geographical market (horizontal relationships), provided that their combined market shares shall not exceed 15%;
- one or more of the parties to the 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 that their individual or combined market shares at either level shall not exceed 25%; or
- when a party to the concentration is to acquire sole control of an undertaking over which it already has joint control.

When following the receipt of the short notification form, the HCC considers that the long notification form is required, the filing will be deemed incomplete, and the HCC will request all or part of the long form notification information through RFIs.

## 4. Substance of the Review

### 4.1 Substantive Test

The key substantive test employed by the HCC in its assessment of a concentration is that a concentration should not significantly impede effective competition, similarly to what is applied under the EUMR (“SIEC test”). Pursuant to the SIEC test, the HCC will examine whether the concentration may significantly impede effective competition in the Greek market or in a substantial part thereof, in particular through the creation or reinforcement of a dominant position.

In its assessment, the HCC will take, into account, inter alia, the structure of all the relevant markets, actual and potential competition, barriers to entry, the market position and economic strength of the participating undertakings, any alternatives available to suppliers and users, supply and demand trends for the products and services involved, and the bargaining power of suppliers and customers.

With respect to horizontal mergers, the HCC will assess whether a concentration may lead to a significant impediment to effective competition, by creating or by enhancing a dominant position, either by eliminating substantial competitive constraints (unilateral or non-coordinated effects), or by altering the nature of competition and thus facilitating the co-ordination between previously competitive/non-coordinating undertakings (co-ordinated effects).

With respect to vertical mergers, the HCC will assess whether the concentration may result in co-ordinated or non-coordinated effects on the vertically affected markets or lead to input or customer foreclosure.



Concerning conglomerate mergers, the HCC will assess whether the concentration would result in foreclosure through tying or bundling.

Regarding full-function joint ventures, please refer to **4.7 Special Consideration for Joint Ventures**.

As regards concentrations in the (informative) media sector, Law 3592/2007 expressly provides that a concentration is not permitted where it involves undertakings that hold a dominant position in this sector or where the concentration would result in the creation of such dominant position. Dominance is thereby defined by reference to specific market share thresholds, which range from 25% to 35%.

## 4.2 Markets Affected by a Transaction

The HCC closely follows the EC practice and the relevant EU case law when determining which markets may be affected by the transaction.

In particular, an affected market is deemed to arise when:

- two or more of the participating undertakings are engaged in business activities in the same product and geographic market (horizontal relationships), and the concentration would result in a combined market share of at least 15% in the relevant market (for horizontal mergers); or
- one or more of the participating undertakings are engaged in business activities in a product market that is upstream or downstream from a product market in which any other participating undertaking is engaged (vertical relationships), and either their individual or combined market shares in either level is at least 25%.

In the event that the aforementioned thresholds are not satisfied, no affected markets are deemed to exist, and the competitive concerns are generally deemed unlikely. The same applies where there is no incremental market share increase.

## 4.3 Reliance on Case Law

The HCC heavily relies on EU case law and takes into account all relevant notices and guidelines issued by the EC in relation to the EUMR, which the HCC interprets and implements having regard to the Greek regulatory regime applying to specific sectors – eg, banking and financial services and other regulated activities, such as energy, which may differ in certain aspects from other EU countries.

## 4.4 Competition Concerns

The HCC will examine all potential competition concerns (see also **4.1 Substantive Test**).

## 4.5 Economic Efficiencies

When assessing a concentration, the HCC will consider efficiency considerations that could offset its possible anti-competitive effects, including the development of technical and economic progress. Nonetheless, these efficiency considerations are taken into account only if:

- they produce benefits to consumers;
- they constitute a direct consequence of the concentration;
- they cannot be achieved to a similar extent by less anti-competitive methods; and
- they are verifiable.

## 4.6 Non-competition Issues

Under the Greek Competition Act, non-competition issues, such as industrial policy and national security, are not expressly prescribed and are

generally not taken into account as part of the HCC review process.

Nevertheless, the HCC has expressed its strong interest in the relationship between sustainable development and competition law and in particular, the extent to which sustainability and environmental considerations may be taken into account when assessing a concentration. In this respect, in October 2022, the HCC launched the Sandbox Platform for sustainability (see also **10.3 Current Competition Concerns**). However, the HCC has not relied upon such sustainability arguments in any merger case to date.

The HCC has also considered the potential effects of a concentration on the national economy. More specifically, public interest objectives, such as the liquidity in the banking sector and the stability of the financial system, have been taken into account by the HCC in its decisions regarding concentrations in the banking sector during the financial crisis (HCC Decision 574/2013 – Piraeus Bank/Bank of Cyprus-Cyprus Popular Bank, HCC Decision 568/2013 – National Bank of Greece/FBB, HCC Decision 566/2013 – Piraeus Bank/Millennium Bank, HCC Decision 562/2013 – National Bank of Greece/Eurobank Ergasias Bank).

As regards FDI filing requirements see **9.1 Legislation and Filing Requirements**.

## 4.7 Special Consideration for Joint Ventures

The Greek Competition Act reserves special consideration for the effect that full-function joint ventures may have on competition. In particular, apart from examining whether the full-function joint venture will significantly restrict effective competition, the HCC will also examine possible co-operative effects between the previously

independent undertakings. Such co-ordination will be examined by the HCC under the principles set out in Articles 1(1) and 1(3) of the Greek Competition Act (equivalents of Articles 101(1) and 101(3) of the Treaty on the Functioning of the EU). In particular, the HCC will consider:

- whether two or more parent undertakings retain, to a significant extent, activities on the same market as the joint venture, or in an upstream or downstream or closely-related neighbouring market; and
- whether the co-ordination that results directly from the creation of the full-function joint venture enables the participating undertakings to eliminate competition in a substantial part of the markets where they are active.

## 5. Decision: Prohibitions and Remedies

### 5.1 Authorities' Ability to Prohibit or Interfere With Transactions

The HCC has the power to prohibit a concentration, provided that the latter leads to a significant restriction of effective competition. A prohibition decision shall be issued within 90 calendar days following the initiation of the Phase II review process.

In addition, in the event that a concentration has been implemented in breach of the Greek Competition Act, or in breach of a prohibition decision, the HCC may require the undertakings concerned to dissolve the concentration, so as to restore the situation prevailing before the implementation of the concentration.

## 5.2 Parties' Ability to Negotiate Remedies

The parties can offer remedies within 20 calendar days from the HCC Phase II SO. The HCC may exceptionally accept remedies even after the expiry of the aforementioned 20-day period. In such cases, the HCC may increase the 90-day time limit for the issuance of its decision to 105 calendar days.

In addition, under the recent amendments of the Greek Competition Act, the parties may also offer remedies during the Phase I investigation within 20 calendar days from the date of the notification.

## 5.3 Legal Standard

Similar to the EC's practice, the HCC deems the proposed remedies to be acceptable when these are:

- appropriate;
- comprehensive;
- of a lasting character; and
- capable of being implemented effectively without requiring further medium- or long-term monitoring mechanisms and heavy HCC involvement.

The purpose of the remedies would be to ensure that the competition concerns arising from the concentration are being removed. Thus, there is often pushback for behavioural remedies.

## 5.4 Typical Remedies

HCC Decision 779/2022 determines the content of the notification form on remedies and its accompanying documents. The HC decision also includes a model text for divestiture commitments and a model text for trustee mandates.

In general, the HCC follows the EC's Notice on Remedies and the relevant EU case law in assessing remedies.

In this respect, it is considered that structural commitments are generally preferable since they are deemed to avert the competition concerns over the longer term. Nonetheless, the HCC has accepted behavioural remedies in a number of cases thus far. For instance, in Case 682/2019 (Mytilineos/EPALME), the HCC has accepted behavioural remedies that aimed at addressing vertical foreclosure concerns. Moreover, the HCC, in Case 775/2022 (Delivery Hero/ALPHA-INKAT-E-TABLE), accepted a series of behavioural remedies. The concentration concerned the acquisition by an online delivery platform, Delivery Hero, of the sole control over companies that are active in the wholesale supply of goods to supermarkets and run online platforms that provide intermediation services for orders and reservations in restaurants. The HCC was concerned that the combination of end user data collected from these online platforms would allow the merged entity to implement personalised promotion strategies, thereby having a competitive advantage to such an extent that the combined entity's competitors would no longer be able to compete effectively. The HCC eventually cleared the concentration with behavioural remedies, which included, inter alia, the obligation by Delivery Hero (i) not to tie the online intermediation services for food ordering with the online reservation services in restaurants when offered to business users; (ii) not to provide special discounts to business users; and (iii) not to use end user data collected from its platform in order to implement personalised promotion strategies.

It is also often the case that the HCC accepts both structural and behavioural remedies. For

example, in 2017, the HCC accepted both structural and behavioural measures when granting clearance to the acquisition by supermarket Sklavenitis of sole control over the Marinopoulos supermarket chain. With respect to the structural measures, the acquiring company undertook to divest 22 supermarket stores within nine months from the publication of HCC decision (HCC Decision 637/2017). With respect to behavioural remedies, the acquiring company undertook to continue the commercial co-operation with Marinopoulos' local suppliers and other mutual suppliers for a period of three years commencing from the publication of the HCC decision. Likewise, in 2018, the HCC cleared the acquisition of Hellenic Seaways by Attica Group (HCC Decision 658/2018 – Hellenic Seaways/Attica Group), subject to both behavioural and structural commitments. As per the commitments undertaken, the Attica Group was bound not to increase ticket prices in certain itineraries, to proceed with the divestiture of certain boats, add routes to certain island connections, and to facilitate the entry of competitors in the relevant markets.

## 5.5 Negotiating Remedies With Authorities

Until the modification of the Greek Competition Act (see **1.1 Merger Control Legislation**), remedies could only be proposed by the parties during the Phase II review process. However, under the current Greek merger control regime, remedies can 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 on which the case is introduced before the HCC with the submission of the SO by the Rapporteur allot-

ted to the case, when remedies are proposed in Phase II. Exceptionally, the HCC may accept remedies proposed after the aforementioned deadline. In this case, the 90-day time limit for the completion of Phase II may be extended to 105 calendar days.

Under the Greek Competition Act, there is no “earliest” point in the procedure when the parties can begin negotiating remedies with the HCC. In practice, the parties would seek to start negotiating the proposed remedies with the HCC as early as possible in the process, and even before the Rapporteur issues its SO in the Phase II review.

The HCC can only impose the remedies proposed by the parties and does not have the power to impose remedies not agreed by them. In practice, however, the remedies proposed by the parties often result from unofficial discussions with the HCC, during which the HCC often guides the parties as to the type of remedies that could address the competition concerns.

## 5.6 Conditions and Timing for Divestitures

As analysed in **5.5 Negotiating Remedies With Authorities**, HCC Decision 779/2022 determines the content of the notification form on remedies and its accompanying documents. The latter decision sets out the information that should be included in the submission of remedies, and also includes a standard notification form for divestment remedies.

Remedies have to be implemented in accordance with the relevant merger clearance decision of the HCC, normally within a prescribed period post-completion of the transaction. To date, the HCC has issued only one decision where the divestment was imposed as a condition for

clearance (HCC Decision 515/2011 – Vivartia/MEVGAL).

A divestment remedy would normally require keeping the business/asset to be divested separate until the completion of its sale. The parties will be also required to report to the HCC regarding the actions taken in order to implement the agreed remedies. If necessary, the HCC may also appoint a trustee to monitor the implementation of the agreed remedies.

If the parties do not comply with any of the agreed remedies, the HCC may revoke its clearance decision. In addition, the HCC may also impose a fine of up to 10% of the combined aggregate turnover of the participating undertakings. The relevant undertakings may also request for the modification of the agreed remedies, in the event that the circumstances significantly change. In HCC Decision 713/2020 – DIAMANTIS MASOUSTIS SA/PROMITHEFTIKI SA, the HCC accepted the modification-replacement of the agreed remedies (as imposed in HCC Decision 665/2018) due to exceptional financial market conditions emerging from the COVID-19 outbreak.

## 5.7 Issuance of Decisions

HCC decisions that either clear (without remedies), clear with remedies or prohibit a concentration, are notified to the parties within the prescribed time limits (ie, 30 calendar days for Phase I and 90 or 105 calendar days for Phase II). A non-confidential version of the HCC decision is also published on HCC website and on the Greek Government Gazette.

## 5.8 Prohibitions and Remedies for Foreign-to-Foreign Transactions

The HCC has not, to date, required remedies or prohibited transactions as regards foreign-to-foreign transactions.

## 6. Ancillary Restraints and Related Transactions

### 6.1 Clearance Decisions and Separate Notifications

An HCC clearance decision covers any ancillary restraints that are directly related to, and necessary for, the implementation of the concentration, such as long-term service agreements, non-compete clauses, etc. The HCC examines such restrictions on the basis of the EC's Notice on ancillary restrictions.

## 7. Third-Party Rights, Confidentiality and Cross-Border Co-operation

### 7.1 Third-Party Rights

Under the Greek Competition Act, third parties, including inter alia customers, and competitors can play an important role in the assessment of a notified concentration.

First, when the HCC conducts its market testing in order to assess the competitive conditions in the relevant markets, it sends requests for information to third parties, the opinion of which may be critical for the assessment of the transaction.

Moreover, a summary of the notified concentration, including the undertakings concerned, the form of control acquired, and the relevant markets, is published in a national daily financial newspaper, as well as on the HCC website, within five working days of the submission of the notification to the HCC. Within fifteen calendar days from the publication of the announcement of the proposed concentration in the newspaper, any interested third party may submit comments or provide information regarding the notified concentration to the HCC.

In addition, third parties may be invited by the HCC to the hearing before it during the Phase II investigation, provided that the HCC considers that their participation will be essential for the examination of the case.

Furthermore, any third party establishing a legitimate interest may intervene during the HCC proceedings by submitting written pleadings at least 30 calendar days prior to the aforementioned hearing.

Finally, third parties are also entitled to appeal against HCC decisions before the Administrative Court of Appeal of Athens within a period of 60 calendar days from the publication of the HCC decision, provided that they establish a legitimate interest.

## 7.2 Contacting Third Parties

Third parties are a source of information and evidence for the HCC in relation to the assessment of a proposed concentration. In particular, the HCC may, when considered necessary, contact third parties as part of its review process by sending written questionnaires to third parties, such as competitors, customers and consumer organisations. These questionnaires should be replied to within five calendar days and there are fines in case of non-compliance and for providing inaccurate or misleading information (see also **3.6 Penalties/Consequences of Incomplete Notification** and **3.7 Penalties/Consequences of Inaccurate or Misleading Information**). In the same manner, the HCC also typically sends written questionnaires to third parties regarding the sufficiency of the proposed commitments and their ability to eliminate the competition concerns raised by the concentration.

## 7.3 Confidentiality

HCC decisions are published both on the HCC website and the Greek Government Gazette. The HCC publishes the non-confidential versions of its decisions, meaning that the parties' commercially sensitive information, including business secrets, are protected from disclosure.

## 7.4 Co-operation With Other Jurisdictions

As a member of the European Competition Network, the HCC co-operates closely both with the EC and the national competition authorities in other EU member states regarding the enforcement of EU competition law. The HCC also participates in the International Competition Network.

Over the past year, the HCC further enhanced its co-operation with other national competition authorities outside the EU, by signing several memoranda of co-operation with the national competition authorities of North Macedonia, Albania, Armenia, Serbia, Morocco, South Africa, Israel, Egypt and Armenia.

In order to share information with other jurisdictions, the HCC should seek relevant permission.

# 8. Appeals and Judicial Review

## 8.1 Access to Appeal and Judicial Review

HCC decisions may be appealed before the Administrative Court of Appeal of Athens. Neither the timeframe for filing the appeal nor its filing may suspend the enforcement of the HCC decision.

The judgment of the Administrative Court of Appeal of Athens may in turn be appealed before



the Council of State (ie, the Supreme Administrative Court of Greece).

## 8.2 Typical Timeline for Appeals

The timeline for filing an appeal against an HCC decision is 60 calendar days from its publication or, in the absence thereof, of its notification to the parties. To the best of our knowledge, there are not any examples of successful appeals against HCC decisions to date.

## 8.3 Ability of Third Parties to Appeal Clearance Decisions

Any third party that establishes a direct, personal and present legitimate interest regarding the clearance decision may appeal against the HCC decision before the Administrative Court of Appeal of Athens. The relevant timeframe for the appeal (60 calendar days) starts to run from the publication of the HCC decision in the Greek Government Gazette. To the best of the authors' knowledge, there has not been any successful appeal against an HCC clearance decision.

## 9. Foreign Direct Investment/ Subsidies Review

### 9.1 Legislation and Filing Requirements

Currently, there are no foreign direct investment (FDI) filing requirements under the Greek legal regime and therefore no filing is required. However, there is an ongoing consultative process which is expected to result in the adoption of an FDI mechanism. There are no further details available regarding the timing of the potential adoption of such a mechanism.

In addition, apart from the notification requirements under the Foreign Subsidies Regulation, which is expected to enter into force within 2023, the Greek legal regime does not provide

for any further filing requirements in relation to foreign subsidies.

## 10. Recent Developments

### 10.1 Recent Changes or Impending Legislation

As described in **1.1 Merger Control Legislation**, in January 2022, the Greek Competition Act was modified by Law 4886/2022. Among the most important amendments is the envisaged possibility for the parties to submit remedies during the Phase I investigation (see also **5.5 Negotiating Remedies With Authorities**). Moreover, changes in relation to the procedures for reviewing concentrations are anticipated further to the adoption of the 2023 merger simplification package by the European Commission.

### 10.2 Recent Enforcement Record

Among the 28 concentrations notified to the HCC in 2022 and 2023 (as of 29 May 2022), only two were cleared with commitments and all the rest were cleared unconditionally. Hence, the HCC has not prohibited any concentration recently.

In a nutshell, from the 28 notified concentrations brought before the HCC:

- 26 were cleared in Phase I without remedies;
- one was cleared in Phase I with remedies (HCC Decision 803/2022–KRITIKOS ANEDIK S.A./SYNERGAZOMENI PANTOPOLES S.A.). This has been the first case in which the HCC imposed remedies during Phase I, without initiating a Phase II investigation; and
- one was cleared in Phase II with remedies (HCC Decision 775/2022–Delivery Hero/ALPHA-INKAT-E-TABLE).



Out of the 28 notified transactions, none of them concerned a foreign-to-foreign transaction.

As regards fines and penalties that have been imposed recently for failure to notify or gun-jumping see **2.13 Penalties for the Implementation of a Transaction Before Clearance**.

### 10.3 Current Competition Concerns

As described in **5.4 Typical Remedies**, the HCC has recently expressed its interest in the relationship between sustainable development and competition law and, in particular, the extent to which sustainability and environmental considerations may be taken into account when assessing a concentration. By virtue of the above, in October 2022, the HCC launched the HCC Sustainability Sandbox platform, a supervised environment for experimentation for sustainable development (sustainability) and competition in the Greek market. Such mechanism will enable the submission (to the HCC) of business proposals aimed at enhancing the conditions for sustainability and which, in order to materialise, will require greater legal certainty in relation to competition law enforcement.

In addition, the HCC has also acknowledged as one of its policy priorities to adapt its enforcement on the basis of the developments in the digital markets space.

The HCC has also appeared to demonstrate privacy concerns and to be particularly sensitive regarding the protection of the consumers' personal data (see also **5.4 Typical Remedies**).

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Katie.Burrington@chambers.com](mailto:Katie.Burrington@chambers.com)