

IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

MERGER CONTROL SURVEY 2014



Guest edited by Nicole Kar

Linklaters

Dimitris Emvalomenos and Chara Athanasiou, Bahas, Gramatidis & Partners

Section 1: REGULATORY FRAMEWORK

1.1 What is the applicable legislation and who enforces it?

Law 3959/2011 on the Protection of Free Competition (the Law) is the applicable legislation. The existing legal framework is in general in line with EU law and case law. The merger provisions of the Law generally apply to all market sectors. However, in certain regulated sectors of the economy, (such as media and telecommunications) special legal provisions apply.

The enforcement authority is the Hellenic Competition Commission (HCC). The HCC operates as an independent authority supervised by the Minister for Development, Competitiveness and Shipping. In enforcing the Law, the HCC takes into account all relevant provisions of EC legislation, all notices and guidelines issued by the European Commission and EU case law.

1.2 What types of transactions are caught?

The merger control provisions of the Law apply to concentrations. A concentration arises:

- where there is a merger between two or more previously independent undertakings (or parts of such undertakings);
- where one or more persons already controlling at least one undertaking, acquire, directly or indirectly, control over the whole or parts of one or more other undertakings; and,
- where a full functioning joint venture is established and will control the competitive behaviour of the undertaking or undertakings.

The definition of control is identical to that under the EC Merger Regulation (139/2004) and is defined as the exercise of decisive influence over the decisions and activities of an undertaking. The control may be sole or joint and may derive from contracts or the acquisition of shares or other assets.

Section 2: FILING

2.1 What are the thresholds for notification?



A concentration is subject to prior notification to the HCC, provided that:

- the combined aggregate worldwide turnover of the participating undertakings amounts to at least €150 million (\$203 million); and,
- each of at least two of the participating undertakings has an aggregate turnover of at least €15 million in Greece.

2.2 How clear are the filing requirements? Please also note whether filing is mandatory or voluntary



Filing is mandatory provided that the relevant thresholds are met and the filing requirements are moderately clear.

2.3 Does the merger regime extend to transactions taking place outside your jurisdiction and if so to what extent does there need to be local effect?



The Law follows the so-called effects doctrine and applies to all concentrations which meet the relevant thresholds, including all transactions which take place outside Greece provided that they may have a potential impact on competition in Greece.

2.4 How onerous are the filing requirements?



Notification requirements are rather onerous. All data and information submitted must comply with the standard application form which is posted on the website of the HCC (www.epant.gr) and is only available in Greek, the official language of the procedure.

2.5 On whom does the burden to file fall, and are there filing fees?

When the concentration arises from an agreement, all contracting parties are subject to notification. In all other cases, the party that acquires control has to notify the HCC.

The filing fee amounts to approximately €1,100.

Section 3: PENALTIES

3.1 At what level does your authority have jurisdiction to review and impose penalties for failure to notify deals?



In case of late or non-notification of a concentration, the obliged party faces an administrative fine ranging from a minimum of €30,000 up to 10% of the aggregate worldwide turnover of the relevant party.

In addition to this administrative fine, a criminal fine of between €15,000 and €150,000 may be imposed for non- or late notification of the concentration on any natural person who, acting individually or as the representative or as a responsible person (by any means) of an undertaking.

Section 4: CLEARANCE

4.1 How advanced is the test for clearance?



The test for clearance on behalf of the HCC is well established and focuses on two points: the abuse of market dominance, and possible restriction of competition in the affected markets.

It takes place in two phases:

i) within one month of receipt of the notification, the president of the HCC will decide whether or not the concentration raises anti-competitive concerns (Phase I);

ii) if the concentration raises anti-competitive concerns, the president may then launch the in-depth investigation which may last between 90 days or exceptionally 105 days (Phase II).

4.2 What level of opportunity exists for the decision to be appealed?



Decisions of the HCC may be appealed before the Athens Administrative Court of Appeal within 60 days (or 90 days for non-Greek residents) of the service of the decision upon the interested party.

The decision of the Athens Administrative Court of Appeal may be further appealed before the Council of State (the Supreme Administrative Court of Greece), which examines legal and procedural issues only. The deadline is 60 days from the service of the decision of the Appeal Court (or 90 days for non-Greek residents).



Dimitris Emvalomenos

Partner, Bahas, Gramatidis & Partners

Athens, Greece

T: +30 210 3318 170

F: +30 210 3318 171

E: d.emvalomenos@bahagram.com

W: www.bahagram.com

About the author

Dimitris Emvalomenos is a partner at Bahas, Gramatidis & Partners. He has worked for the firm since 1990, and his areas of practice include commercial, corporate, M&A, product liability and safety, consumer law, competition and antitrust, and network contracts.

Emvalomenos gained an LLB degree from the University of Athens Law School, and an LLM degree from the University of London. He is a member of several professional associations including the Piraeus Bar Association, the Greek Commercial Lawyers' Association, the Competition Law Partnership, the DRI Europe (Country Chair - Greece), the IBA, and the European Justice Forum (EJF).

Emvalomenos is the author of numerous articles, and is fluent in Greek and English.



Chara Athanasiou

Senior associate, Bahas, Gramatidis & Partners

Athens, Greece

T: +30 210 3318 170

F: +30 210 3318 171

E: ch.athanasiou@bahagram.com

W: www.bahagram.com

About the author

Chara Athanasiou is a senior associate at Bahas, Gramatidis & Partners. She has worked for the firm since 2008, and her areas of practice include competition law, merger control, corporate law, corporate criminal liability, anti-bribery and corruption legislation.

Athanasiou holds an LLB degree from the University of Athens Law School, and PhD and LLM degrees from the University of Heidelberg, Germany. She is a member of several professional associations including the Athens Bar Association, the Hellenic Criminal Bar Association, the European Criminal Bar Association, and the Hellenic Association of Construction Law.

Athanasiou is the author of numerous papers in legal magazines, and is fluent in Greek, German and English.