

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

GREECE

MAY 2015

<http://www.epant.gr/entypa.php?Lang=gr&id=36>

IMPORTANT NOTE: This template is intended to provide background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

[PART 1: LEGISLATION, GUIDELINES AND JURISDICTION \(Questions 1 – 4\)](#)

[PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION \(Questions 5 – 14\)](#)

[PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY MERGER COOPERATION \(Questions 15 – 17\)](#)

[PART 4: SANCTIONS \(Question 18\)](#)

[PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW \(Questions 19 – 23\)](#)

QUICK LOOK SUMMARY	
Mandatory or voluntary regime?	<input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Voluntary
Power to review non-notifiable transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
What are the time limits for review?	Initial review / Phase I <input type="text" value="1 month"/> Extended review / Phase II <input type="text" value="90 days"/>
Substantive merger test?	<input type="checkbox"/> Dominance <input checked="" type="checkbox"/> Significant impediment to effective competition <input type="checkbox"/> Substantial lessening of competition <input type="checkbox"/> Other <input type="text"/>

PART 1: LEGISLATION, GUIDELINES AND JURISDICTION

1. Legal authority and guidance: Merger notification and review

(please provide title(s), popular name(s), effective date and citation(s)/web address)

Statutory law	
A. Notification provisions	<p>Articles 5-10 of the national Law 3959/2011 on the “Protection of free competition” (hereinafter “Competition Act”). The Hellenic Competition Commission (hereinafter “HCC”) is the authority responsible for the enforcement of the Competition Act.</p> <p>(The Competition Act is also available in English on http://www.epant.gr/categoryn.php?Lang=en&id=390).</p>
B. Substantive merger review provisions	Articles 5, 6 and 7 of the Competition Act.
C. Implementing regulations	N/A
D. Notification forms or information requirements	<p>A Pre-merger Notification Form has to be filed. The HCC has issued respective guidelines for the completion of the Form.</p> <p>Furthermore, based on Art. 6 (par. 6) of the Competition Act as well as on the aforementioned guidelines the notifying parties are obliged to have a notification announcement published in a daily financial newspaper of a national coverage.</p> <p>Please refer to the HCC Decision 558/VII/2013 available (only in Greek) on http://www.epant.gr/img/x2/entypa/entypa1_1_1369030846.pdf</p>
Agency guidance	
E. Guidance on merger notification process (e.g., regarding the calculation of thresholds, etc.)	<p>As aforementioned, respective guidance is provided in HCC Decision 558/VII/2013 available (only in Greek) on http://www.epant.gr/img/x2/entypa/entypa1_1_1369030846.pdf</p> <p>With regard to the notion of a concentration, the calculation of thresholds and other jurisdictional issues, the HCC generally applies the principles and guidance adopted at EU level (notably as set out in the EU Consolidated Jurisdictional Notice) and interprets the corresponding provisions of the</p>

	Competition Act accordingly.
F. Guidance on substantive assessment in merger review	<p>As above.</p> <p>With regard to the substantive assessment of mergers, the HCC generally applies the principles and guidance adopted at EU level (notably as set out in the EU horizontal and non-horizontal merger guidelines) and interprets the corresponding provisions of the Competition Act accordingly.</p>
G. Guidance on merger remedies	<p>If commitments are to be undertaken, the notifying parties must submit the respective Commitment Form completed in compliance with the HCC Decision 524/VI/2011 available (only in Greek) on http://www.epant.gr/img/x2/entypa/entypa2_1_1310984101.pdf.</p> <p>Guidance is also provided in the aforementioned Decision.</p> <p>Overall, the HCC follows the decisional practice and jurisprudence at EU level when assessing merger remedies and interprets the corresponding provisions of the Competition Act accordingly.</p>
H. Guidance on the submission of information, especially regarding economic evidence or data, or electronic information	<p>As per Decision 558/VII/2013 available (only in Greek) on http://www.epant.gr/img/x2/entypa/entypa1_1_1369030846.pdf.</p>
I. Guidance or statements regarding the treatment of confidential information and/or domestic laws/regulations on third-party or public access to information provided during the review process (e.g., transparency regulations or freedom of information provisions)	<p>In principle, article 15 of the joint ministerial decision 117/2013 concerning the Regulation of Internal Operation and Administration of the HCC, provides for confidential treatment of classified information and access rights to the file of the case.</p> <p>On 13/1/2015 the HCC issued a Notice on the treatment of confidential information of cases and the submission of the non-confidential version of documents (available on http://www.epant.gr/img/x2/news/news745_1_1425655219.pdf).</p>
J. Guidance on pre-notification consultations	N/A
K. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	N/A
L. If available, please	Please refer to the Annual Report of the HCC available in

<p>provide a link to statistics on annual notifications received, clearances, prohibitions etc.</p>	<p>Greek on http://www.epant.gr/img/x2/news/news752_1_1426496413.pdf. Please also refer to the most recent OECD Annual Report of Competition Policy in Greece available in English: http://www.epant.gr/news.php?Lang=gr&id=316.</p>
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2. Agency or agencies responsible for merger enforcement

<p>A. Name of agency. If there is more than one agency, please describe allocation of responsibilities.</p>	<p>Hellenic Competition Commission</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>1a Kotsika Street, P.C. 104-34 Athens, Greece Tel: +30 210 88 09 202 Fax: +30 210 88 09 134 Website Address: www.epant.gr</p>
<p>C. Agency contact information for jurisdiction/filing guidance (including possible pre-notification consultations).</p>	<p>DionysiaXirokosta General Director Tel: +30 210 88 09 222 Fax: +30 210 88 09 134 E-mail: dxirokosta@epant.gr</p>

3. Jurisdiction: Covered transactions

<p>A. Definitions of potentially covered transactions (i.e., share acquisitions, asset acquisitions, mergers, de-mergers and combinations such as consolidations, amalgamations and joint ventures)</p>	<p>According to article 5 (par.2) of the Competition Act: <i>“A concentration shall be deemed to arise where a change of control on a lasting basis results from: a) the merger by any means of two or more previously independent undertakings or parts of undertakings or b) 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”.</i></p>
<p>B. If change of control is a determining factor, how is control defined and interpreted in practice?</p>	<p>According to article 5 (par. 3 and 4) of the Competition Act: <i>“3. For the purposes of the application of the present law, control shall be constituted by rights, contracts or any other means which, either separately 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: a) ownership or the right to use all or part of the assets of the undertaking; b) rights or contracts which confer decisive influence on the composition, meetings or decisions of the bodies of an</i></p>

	<p><i>undertaking.</i></p> <p><i>4. Control is acquired by person(s) or undertakings which: a) are holders of the rights or entitled to rights under the contracts concerned or b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom”.</i></p>
<p>C. Are partial (less than 100%) interests/minority shareholdings covered? At what levels?</p>	<p>They are covered as long as they lead to change of control, as described above.</p>
<p>D. If the notification requirements cover joint ventures, what types of joint venture are covered (e.g., production joint ventures)?</p>	<p>According to article 5 (par. 5) of the Competition Act: <i>“The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of the present article”.</i></p>

4. Jurisdiction: Thresholds for notification

Key threshold information	
<p>A. What are the thresholds for notification? If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)</p>	<p>According to article 6 (par. 1) of the Competition Act: <i>“All concentrations of undertakings shall be notified to the Competition Commission within thirty (30) days of the conclusion of the agreement or the announcement of the bid or the acquisition of a controlling interest, where turnover by all undertakings in a concentration within the meaning of Article 10 totals at least EUR one hundred and fifty million (150,000,000) on the global market and each of at least two of the undertakings involved generate turnover totaling over EUR fifteen million (15,000,000) on the Greek market”.</i></p> <p>It should be noted that the amounts taken into account must reflect the undertaking’s performance in the preceding financial year. Article 10 of the Competition Act provides in detail the way turnover shall be calculated.</p> <p>As far as amendments to the aforementioned thresholds are concerned, article 6 (par. 7) of the Competition Act provides: <i>“The minimum limits and criteria provided for in paragraph 1 may be amended by joint decision of the Minister of Finance and the Minister of Economic Affairs, Competitiveness and Shipping, on recommendation of the Competition Commission in plenum. The recommendation by the Competition Commission shall be based on statistics collected by it every three years on the application of the present article and the state of competition over the previous three years”.</i></p>
<p>B. How is the nexus to the jurisdiction determined (e.g., sales or assets in</p>	<p>According to article 46 of the Competition Act: <i>“The present law shall apply to all restrictions of competition which affect or might affect Greece, even if these are due to agreements between undertakings, decisions by associations of</i></p>

<p>the jurisdiction)?</p> <p>If based on an “effects doctrine,” please describe how this is applied in practice.</p>	<p><i>undertakings, concerted practices between undertakings or associations of undertakings or concentrations of undertakings implemented or taken outside Greece or to undertakings or associations of undertakings which have no establishment in Greece. The same shall apply with regard to abuse of a dominant position manifesting in Greece”.</i></p>
<p>C. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p>	<p>No.</p>
<p>D. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>There are no sectors excluded from notification requirements. However, the National Telecommunications and Post Commission is competent for the application of Law 3959/2011 (i.e. the Competition Act) on electronic communications. All other sectors of the economy fall within the HCC’s competence.</p>
<p>E. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)?</p>	<p>No (please refer to article 6 par. 1 of the Competition Act).</p>
<p>F. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so what is the procedure to initiate a review?</p>	<p>Transactions that fall below the thresholds are not subject to review.</p>
<p>Calculation guidance and related issues</p>	
<p>G. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <p>(i) the value of the transaction</p> <p>(ii) the relevant sales or turnover</p>	<p>As provided in article 10 (par. 1) of the Competition Act, the aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings’ ordinary activities after deduction of legal discounts on sales and of value added tax and other taxes directly related to turnover.</p> <p>As per par. 4 of article 10 the aggregate turnover of an undertaking concerned shall be calculated by adding together the respective turnovers of the following undertakings:</p> <p>a) the undertaking concerned;</p> <p>b) the undertakings in which the undertaking concerned, directly or indirectly:</p> <p>aa) owns more than 50% of the share capital or company assets or</p>

<p>(iii) the relevant assets</p> <p>(iv) market shares</p> <p>(v) other (please describe)</p>	<p>bb) has the majority of voting rights or cc) has the power to appoint or dismiss the majority of the members of the administrative board of the undertakings or dd) has the right to manage the undertakings' affairs; c) those undertakings which have in an undertaking concerned the rights or powers listed in (b); d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b); e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b).</p> <p>Where undertakings concerned by the concentration jointly have the rights or powers listed above (article 10 par. 4 case b), when calculating the turnover of the undertakings concerned:</p> <p>a) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them (as set out in article 10 par. 4 cases b to e); b) account shall be taken of the turnover resulting from the sale of products and the provisions of services between the joint undertaking and any third undertaking. This turnover shall be apportioned equally among the undertakings concerned.</p> <p>In cases where the concentration consists of the acquisition of parts of one or more undertakings, regardless of whether or not these parts constitute legal entities, only the turnover relating to the part transferred shall be taken into account with regard to the seller.</p>
<p>H. Which entities are included in determining relevant undertakings/firms for threshold purposes?</p> <p>If based on control, how is control determined for notification purposes?</p>	<p>As per answer 4G above.</p>
<p>I. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p>According to article 10 (par. 3) of the Competition Act: <i>"In place of "turnover" the following shall be used:</i></p> <p><i>a) for credit institutions and other financial institutions, the sum of the following income items, as defined under the provisions of Presidential Decree 367/1994 (Government Gazette 200A), after deduction of value added tax and other taxes directly related to the goods and services supplied, where appropriate:</i></p> <p><i>aa) interest income and similar income;</i> <i>bb) income from securities:</i> <i>- income from shares and other variable yield securities,</i> <i>- income from holdings,</i> <i>- income from shares in affiliated undertakings;</i> <i>cc) commissions;</i> <i>dd) net profit on financial operations;</i> <i>ee) other operating income.</i></p> <p><i>The turnover of a credit or financial institution in Greece shall comprise the income items, as defined above, which are received by the branch or division of that institution established in Greece;</i></p> <p><i>b) for insurance undertakings, the value of gross premiums,</i></p>

	<i>which shall comprise all amounts received and receivable in respect of insurance contracts issued by them or on their behalf, including also outgoing reinsurance premiums, after deduction of taxes and levies charged by reference to the amounts of individual premiums or the total volume of premiums. As regards the calculation of turnover within Greece in accordance with Article 6, gross premiums received from persons resident or established in Greece shall be taken into account”.</i>
J. Describe the methodology for calculating exchange rates.	Where necessary European Central Bank’s average exchange rates are usually used for conversions.

PART 2: PRE-NOTIFICATION, NOTIFICATION AND DECISION

5. Pre-notification

A. If applicable, please describe the pre-notification procedure (e.g., time limits, type of guidance given etc.)	There is no formal pre-notification procedure in place. At the initiative of the notifying parties, the HCC may occasionally engage in pre-notification contacts with the parties, but this does not occur as standard practice.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	N/A

6. Notification requirements and timing of notification

A. Is notification...	<input checked="" type="checkbox"/> Mandatory pre-merger <input type="checkbox"/> Mandatory post-merger <input type="checkbox"/> Voluntary
B. If parties can make a voluntary merger filing when may they do so?	The Competition Act does <u>not</u> provide for the possibility of submitting a voluntary merger filing.
C. What is the earliest that a transaction can be	Notification can be filed upon the conclusion of the agreement or the announcement of the bid or the acquisition of a controlling interest on the grounds that the pre-merger notification obligation

<p>notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</p>	<p>is triggered.</p>
<p>D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</p>	<p>According to article 6 of the Competition Act the parties are obliged to file prior notification within 30 days of the conclusion of the agreement or the announcement of the bid or the acquisition of a controlling interest as long as turnover thresholds for notification are reached.</p> <p>The 30 days time limit is fixed, does not depend on the structure of the transaction and shall commence on the date of the first of the aforementioned acts.</p>
<p>E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</p>	<p>No.</p>
<p>F. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</p>	<p>There is no limitation regarding the documents that the parties may voluntarily submit.</p>

7. Simplified procedures

<p>A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).</p>	<p>The HCC has adopted a simplified procedure for reviewing mergers (following the relevant EU best practices). For this purpose, the notifying parties are called upon to complete a special form, also available on the HCC's site: http://www.epant.gr/img/x2/entypa/entypa1_1_1369030846.pdf</p>
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8. Information and documents to be submitted with a notification

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>As provided in the notification form guidelines (HCC Decision 558/VII/2013) the form has to be accompanied by the following documents:</p> <ul style="list-style-type: none"> - copy of the concentration agreement, - copy of the tender document in case of a public bid, - copies of the most recent annual reports 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), - copy of the notification announcement as published in the newspaper, and - fiscal stamp. <p>Furthermore, the notifying parties are obliged to submit within 5 working days from the notification the newspaper where the notification announcement was published.</p>
<p>B. Is there a procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>No specific provisions exist.</p>
<p>C. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalised?</p>	<p>All documents submitted to the HCC must be either original or certified copies. If the notification is signed by the representatives or proxies of the undertakings, legalization documents have to be submitted.</p>
<p>D. What is the agency's practice regarding exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</p>	<p>No specific provisions exist.</p>
<p>E. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the</p>	<p>In case needed, the HCC may require third parties (e.g. competitors, customers) to submit information during the review process.</p> <p>Moreover, any third party may intervene in the proceedings by submitting a written pleading at least 15 days before the oral hearing. Third parties may be present during the oral hearing upon request as long as they can prove that they hold a</p>

agency to intervene?	legitimate interest in the case.
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9. Translation

<p>A. In what language(s) can the notification forms be submitted?</p>	<p>All documents must be submitted in Greek.</p> <p>By way of derogation, some documents or parts of documents may be submitted in English.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <p>(i) with the initial notification; and</p> <p>(ii) later in response to requests for information.</p> <p>In addition:</p> <p>(iii) what are the categories or types of documents for which translation is required;</p> <p>(iv) what are the requirements for certification of the translation;</p> <p>(v) which language(s) is/are accepted; and</p> <p>(vi) are summaries or excerpts allowed in lieu of complete translations and in which languages are summaries accepted?</p>	<p>All documents submitted should be officially translated in Greek. However, proxies of the merging parties may validate the translated documents.</p> <p>By way of derogation, some documents or parts of documents may be submitted in English.</p>

10. Review periods

<p>A. Describe any applicable review periods following notification.</p>	<p>According to article 8 of the Competition Act, the Competition Commission shall examine a notified concentration as soon as it is received and proceed as following depending on the outcome of the review:</p> <p>i) <u>Out of scope</u>: Where it concludes that the concentration notified does not fall within the scope of Article 6(1) [i.e. does not reach the thresholds for notification], the President of the</p>
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	<p>Competition Commission shall issue a deed within one (1) month from the notification, which shall be notified to the persons or undertakings which filed the notification.</p> <p>ii) <u>Simplified procedure</u>: Where it finds that the concentration notified, although falling within the scope of Article 6(1), does not raise serious doubts as to its compatibility with the requirements of the functioning of competition in the individual markets it concerns, the Competition Commission shall issue a decision approving the concentration within one (1) month from notification.</p> <p>iii) <u>Full investigation procedure</u>: Where it finds that the notified concentration falls within the scope of the present law and raises serious doubts as to its compatibility with the requirements of the functioning of competition in the individual markets it concerns, the President of the Competition Commission shall issue a decision within one (1) month from notification, initiating the procedure of in depth investigation of the concentration notified and shall immediately advise the undertakings concerned of his decision.</p> <p>The case shall be introduced before the Competition Commission within forty-five (45) days from the date on which the full investigation procedure was initiated.</p> <p>The concentration shall be prohibited by decision of the Competition Commission, issued within ninety (90) days from the date on which the full investigation procedure was initiated, in case of serious competition concerns raised. The Competition Commission shall permit the concentration in all other cases. However, if the period of ninety (90) days expires and a decision prohibiting the concentration has not been issued, it shall be construed as approval of the concentration by the Competition Commission, which must issue the relevant declaratory act.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p>The aforementioned deadlines provided for the simplified and full investigation procedure, may be extended where:</p> <p>a) the undertakings in the concentration agree;</p> <p>b) the notification is incorrect or misleading, such that the Competition Commission is unable to evaluate the notified concentration.</p> <p>Furthermore, the 30 days deadline provided for the issuing of the clearance decision in case of a simplified procedure or the initiation of an in-depth review, may also be extended if the notification form has not been fully completed, so that the Competition Commission is unable to evaluate the notified concentration. With the exception of case (a) of the present paragraph, the Commission is bound to ask, within seven (7) working days of the date of notification, the notifying undertakings to correct the original notification, in which case the deadlines shall commence on the date of due notification.</p> <p>The deadlines provided for the simplified and full investigation procedure, shall, exceptionally, be suspended, in cases where the undertakings in the concentration fail to comply with their</p>

	<p>obligation to provide information in accordance with the respective provisions of the Competition Act (please refer to article 38), and provided that the undertakings concerned are advised accordingly within no more than a prescription period of two (2) days from the expiry of the deadline set for the submission of the information, in which case the deadlines shall re-commence from the date on which the undertakings concerned provide full and accurate information, as requested.</p>
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>No.</p>
<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p>Please refer to answer 10C.</p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p>There are no set accelerated review periods (even as concerns mergers reviewed under the simplified procedure).</p>
<p>G. What is the procedure for offering and assessing remedies and how does this impact the timing of the review?</p>	<p>According to article 8 (par. 4 and 8) of the Competition Act once the undertakings concerned have been advised that the procedure for a full investigation has been initiated, the undertakings concerned may jointly proceed to modifications to the concentration or propose the undertaking of commitments, so that there are no serious doubts as to its compatibility with the requirements of competition in the individual markets it concerns, and notify them to the HCC. The Competition Commission may issue a decision approving a concentration, subject to terms and conditions stipulated by it, in order to ensure that the undertakings concerned abide by the commitments undertaken by them before the HCC in order to make the concentration compatible to the provisions of the Competition Act. The commitments proposed by the undertakings concerned must be submitted within no more than twenty (20) days of the date on which the case is introduced before the Competition Commission with the submission of the relevant report. The HCC may, in exceptional cases, accept commitments once the above deadline for their submission has expired. In that case, the deadline of ninety (90) days for HCC to issue its decision may be extended to one hundred and five (105) days, by decision of the Commission which is notified to the undertakings concerned. The HCC may, in the same decision, threaten the undertakings concerned with a fine if they fail to comply with the above terms or conditions applicable to commitments.</p>

11. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	<p>According to Article 9 of the Competition Act, the implementation of a concentration shall be prohibited until a decision has been issued. The prohibition also applies to concentrations that were not notified in accordance with article 6(1). The aforementioned provision shall not prevent the implementation of a public bid, purchase or exchange or the acquisition, via a series of stock exchange transactions in securities, of a holding which provides control of an undertaking, provided that such acts are notified to the Competition Commission by the deadline provided for in Article 6(1) and provided that 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 on the basis of a special licence granted by the HCC.</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>According to article 9 of the Competition Act, the HCC may, on request, grant derogation from the suspension obligations imposed, in order to prevent serious losses to one or more undertakings affected by the concentration or to a third party. In deciding on the request, the Competition Commission shall take into account, inter alia, the threat to competition posed by the concentration. The decision granting the derogation may set conditions and obligations in order to ensure conditions of effective competition and prevent situations which might hamper the execution of any final decision. A derogation may be applied for and granted at any time, either before notification or after the transaction.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)?</p> <p>If not, to what extent can the parties implement the transaction outside the jurisdiction prior to clearance (e.g., derogation from suspension, hold separate arrangements)?</p>	<p>All procedural provisions of the Competition Act apply with regard to the subject matter of the transaction notified.</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>As provided in Article 8 par. 6 of the Competition Act, the concentration shall be prohibited by decision of the Competition Commission, issued within ninety (90) days from the date on which the full investigation procedure was initiated, in case of serious competition concerns raised. The Competition Commission shall permit the concentration in all other cases. However, if the period of ninety (90) days expires and a decision</p>

	prohibiting the concentration has not been issued, it shall be construed as approval of the concentration by the Competition Commission, which must issue the relevant declaratory act.
E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.	Please refer to answer 10C.
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	There is no such provision.
G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	There is no such provision.

12. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	According to article 6 (par.3) of the Competition Act subject to the duty of notification are: a) where the concentrations consist in a merger or in the acquisition of joint control: jointly the parties to these acts; b) in all other cases: the person or undertaking acquiring control of the whole or parts of one or more undertakings.
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No.
C. Are there any rules as to who can represent the notifying parties (e.g.,	No.

<p>must a lawyer representing the parties be a member of a local bar)?</p>	
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</p>	<p>The validity of the representation is attested by a notarized power of attorney accompanied with the respective extract form the competent company registry. There are no special rules for foreign representatives/firms provided for in the applicable national legislation. The legalization documents for foreign representatives have to be apostilled under the Treaty of the Hague.</p>

13. Filing fees

<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</p>	<p>According to article 45 of the Competition Act, the notification must be accompanied, under penalty of inadmissibility, by a fiscal stamp. The respective fee is set at the sum of EUR one thousand one hundred (1,100). The aforementioned fee is also applicable for submitting a derogation request (with regard to answer 11C).</p>
<p>B. Who is responsible for payment?</p>	<p>The notifying parties.</p>
<p>C. When is payment required?</p>	<p>Payment is required upon notification.</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>The parties are obliged to submit proof of payment to the HCC.</p>

14. Process for substantive analysis and decisions

<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers,</p>	<p>Upon notification of the concentration, the HCC shall identify any missing or incorrect data and respond within seven (7) working days by asking the notifying parties to proceed with the respective</p>
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<p>consulting third parties)?</p>	<p>modifications. The HCC shall set a deadline of at least five (5) days for each request for information. In case the undertakings fail to respond to the HCC request adequately, the Commission shall ask within two (2) working days the parties to provide all missing data within at least five (5) working days. The aforementioned steps are repeated until the HCC regards that the notification has been adequately documented. In the meantime, the HCC may also request either from the undertakings concerned or third parties (e.g. customers, suppliers, competitors) for any quantitative or qualitative data necessary for a thorough and efficient evaluation of the concentration's effect.</p>
<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p>In evaluating the effect of a concentration, the HCC takes into account the characteristics of the affected markets such as market shares, supply and demand conditions, actual and potential competition, barriers to entry, the structure of the market and the bargaining power of suppliers or customers. The use of indexes (such as Diversion Ratio, Gross Upward Pricing Pressure Index, Coordinated Price Pressure Index) may facilitate the HCC estimations.</p> <p>With regard to the substantive assessment of mergers, the HCC generally applies the principles and guidance adopted at EU level (notably as set out in the EU horizontal and non-horizontal merger guidelines) and interprets the corresponding provisions of the Competition Act accordingly.</p>
<p>C. What theories of harm does the agency consider in practice?</p>	<p>Unilateral, coordinated, vertical and conglomerate effects subject to the concentration.</p> <p>With regard to the substantive assessment of mergers, the HCC generally applies the principles and guidance adopted at EU level (notably as set out in the EU horizontal and non-horizontal merger guidelines) and interprets the corresponding provisions of the Competition Act accordingly.</p>
<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>According to Article 7 of the Competition Act:</p> <p><i>“1. Any concentration of undertakings subject to prior notification which may significantly impede competition in the national market or in a substantial part of it, in terms of the specific characteristics of goods or services, especially by creating or strengthening a dominant position, shall be prohibited by decision of the Competition Commission.</i></p> <p><i>2. In appraising the potential of a concentration to significantly impede the competition within the meaning of paragraph 1, account shall be taken, in particular, of the structure of all the relevant markets, of the actual or potential competition from undertakings located inside or outside Greece, of any legal or other barriers to market entry, of the market position of the undertakings concerned and their economic and financial power, of the alternatives available to suppliers and users, of their access to sources of supply or markets for the goods, of the supply and demand trends for the relevant goods and services, of the interests of the intermediate and ultimate consumers and of</i></p>

	<p><i>the contribution to technical and economic progress and to improving economic efficiency, provided that it is to consumer's advantage and does not form an obstacle to competition.</i></p> <p><i>3. To the extent that the creation of a joint venture has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 1(1) and (3) [national provisions equivalent to 101 (1) and (3) of TFEU]. In making this appraisal, the Competition Commission shall take account in particular of:</i></p> <p><i>a) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a similar market closely related to this market and</i></p> <p><i>b) whether the coordination, which is the direct consequence of the creation of the joint venture, affords the undertakings concerned the possibility of eliminating competition on a substantial part of their markets”.</i></p> <p>It should be noted that market definition is of crucial importance for setting the scope of the analysis on the effects of the concentration notified. As aforementioned, in its evaluation, the HCC takes into account the characteristics of:</p> <ul style="list-style-type: none"> - the affected markets such as, supply and demand conditions, elasticity of demand/supply, maturity of the market, transparency, actual and potential competition, barriers to entry, and - the market players such as market shares, cost structure, pricing, switching costs, bargaining power of suppliers or customers, structural bonds.
<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>No.</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>In most cases the review results in unconditional clearance. However if serious competition concerns are raised, the parties might need to undertake commitments. Prohibition is of rare occasion.</p>
<p>G. What types of remedies does the agency accept in practice? How is the process initiated and conducted in practice?</p>	<p>The merging parties might need to propose the undertaking of commitments, either behavioral or structural or even both, in order to alleviate the HCC concerns with regard to the effects of the concentration notified. In case the HCC accepts the commitments undertaken, it proceeds with issuing conditional clearance. Non-compliance with the commitments undertaken is subject to fines.</p> <p>It should be noted that in case of a divestiture, a trustee must be appointed by the notifying parties and approved by the HCC for monitoring the remedy implementation.</p>

**PART 3: CONFIDENTIALITY, TRANSPARENCY AND INTERAGENCY
MERGER COOPERATION**

15. Confidentiality

<p>A. To what extent, if any, does the agency make public the fact that a pre-merger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<p>As mentioned above, according to article 6 (par. 6) of the Competition Act, the parties under a duty of notification must report the notified concentration in a daily financial newspaper of national coverage at their own expense immediately after notification. The text of the report has to be notified immediately to the Competition Commission, which shall post it on its website. Any interested party may submit comments or provide information on the notified concentration. The Competition Commission shall take into account the reasonable legitimate interests with regard to the protection of business secrets of undertakings participating to the concentration. The precise content of the report is stipulated in HCC Decision 558/VII/2013 available (only in Greek) on http://www.epant.gr/img/x2/entypa/entypa1_1_1369030846.pdf.</p>
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>In principle, article 15 of the joint ministerial decision 117/2013 concerning the Regulation of Internal Operation and Administration of the HCC, provides for confidential treatment of classified information and access rights to the file of the case. More specifically, the notifying parties are granted access to the non-confidential version of the file only after the Rapporteur's report has been completed and an invitation for attending the HCC oral hearing has been sent.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)?</p> <p>If so, under what circumstances?</p>	<p>No, neither third parties nor government agencies have access to the file.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>The parties may request confidential treatment of the notification documents. In this case the parties shall submit a non-confidential version of the documents and provide the Commission with an adequate justification of the reasons for confidentiality.</p> <p>On 13/1/2015 the HCC issued a Notice on the treatment of confidential information of cases and the submission of the non-confidential version of documents (available on http://www.epant.gr/img/x2/news/news745_1_1425655219.pdf).</p>

<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>As aforementioned, the party's claim for confidential treatment must always be well reasoned. In case of disagreement with the confidential treatment claim, the Directorate-General or the Rapporteur informs the party of the reasons behind this objection as well as of the HCC intention to disclose the information and invites the party to share its view within a certain period of time. In case of no agreement reached, the President of the HCC shall decide on the classification of the document or information.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>The HCC decisions are issued in different versions:</p> <ul style="list-style-type: none"> -The non-confidential version, which is published in the government gazette and can be accessed by everyone interested (it is also posted in the HCC website). - The confidential version intended only for the parties concerned, where confidential information is concealed depending on the data they are allowed to access. In case of more than one party, a different version is issued for each of them.

16. Transparency

<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>Once a year, the HCC submits to the Minister of National Economy and Development, as well as to the President of the Parliament, its Annual Report, covering its activities, decisions and evaluations regarding the conditions and developments in the area of its competence. These reports are made available on the HCC website (http://www.epant.gr/).</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>A press release of each concentration notified or clearance/prohibition decision is published on the HCC website (http://www.epant.gr/).</p>
<p>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of</p>	<p>The HCC decisions on notified transactions are published at the Official Government Gazette. They are also published on its website (http://www.epant.gr/).</p>

decisions.	
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17. Interagency Merger Cooperation

<p>A. Is the agency able to exchange information or documents with foreign competition authorities?</p>	<p>The HCC exchanges only non-confidential information.</p>
<p>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>Information exchange can take place at all stages of handling of a case.</p> <p>(a) ECN Regulation (EC) 1/2003 provides for the most advanced co-operation platform, setting out detailed rules and general procedures on co-operation between the Members of the European Competition Network (see also below Section 2). Under Regulation 1/2003, certain forms of co-operation are obligatory, while other forms are available to the agencies for use, as appropriate. However, this framework of structured cooperation within the ECN pertains to antitrust cases, and not to merger cases. Nonetheless, based on the ECN experience, Members of the Network have also developed significantly their co-operation on merger cases, albeit in a more informal way.</p> <p>(b) ECA Given the focus of the ECN on antitrust cases pursuant to Regulation (EC) 1/2003, co-operation on merger cases may take place by using the ECA platform. Within ECA, a system of notifying mergers with likely multi-jurisdictional scope to other European agencies has been developed. Nonetheless, in practice, the HCC does not make real use of this instrument.</p> <p>(c) Regional co-operation The HCC also participates in looser forms of co-operation at a regional level, bilaterally (Cyprus) and in the context of the South Eastern Europe Cooperation Initiative. However, such regional platforms do not provide for a solid legal base for the regular exchange of information and, thus, the HCC does not really make use of their instruments (to the extent existent and/or available).</p> <p>(d) OECD – ICN The HCC participates actively in both for a, but these forms of co-operation do not extent to specific cases at the investigation stage.</p>
<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the</p>	<p>N/A</p>

agency accepts the ICN's model waiver of confidentiality in merger investigations form.

PART 4: SANCTIONS

18. Sanctions/penalties

A. What are the sanctions/penalties for:

- (i) failure to file a notification
- (ii) incorrect/misleading information in a notification
- (iii) failure to observe a waiting period/suspension obligation
- (iv) failure to observe or delay in implementation of remedies
- (v) implementation of transaction despite the prohibition from the agency?

- According to article 6 (par. 4) of the Competition Act, the HCC shall impose on each person who is at fault for **failing to notify**, a fine of at least EUR thirty thousand (30,000) capped at ten per cent (10%) of aggregate turnover (as defined in article 10 of the Competition Act – please refer to answer 4G). In fixing the amount of the fine, the economic power of the undertakings participating in the concentration, the number of the affected markets and the level of competition in those, as well as the estimated impact of the concentration on competition shall be taken into consideration.

- As provided in article 9 (par. 1) **the implementation of a concentration is prohibited until a decision has been issued.** The prohibition also applies to concentrations which were not notified in accordance with the provisions of the Competition Act (article 6 par. 1). In the event of culpable **infringement of this prohibition**, the Competition Commission shall impose a fine of at least of EUR thirty thousand (30,000), capped at ten per cent (10%) of aggregate turnover (as defined in article 10) on parties who fail in their duty of notification. In fixing the fine, the HCC shall take into account the economic power of the undertakings, the number of the relative markets affected by the concentration and the competitive conditions prevailing in these, as well as the estimated impact of the concentration on competition.

- As per article 9 (par. 4) of the Competition Act, **where a concentration has already been implemented in contravention of provisions or decisions prohibiting its implementation or has been implemented in contravention of a term or condition attached to a decision taken (in the case of commitments been undertaken)**, the Competition Commission may issue a decision without time limit:

- a) ordering the dissolution of the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, so as to restore the situation prevailing prior to the implementation of the concentration;
- b) ordering any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures.

The Competition Commission shall impose a fine of up to ten per cent (10%) of the aggregate turnover of the concentration (as stipulated in Article 10) on undertakings that fail to comply with the above decision, plus a fine of EUR 10,000 for every day on which they fail to comply with the decision.

- According to article 8 (par. 8) in case of **remedies been undertaken**, the HCC may in its decision of conditional clearance threaten the undertakings concerned with a fine if they fail to comply with the above terms or conditions applicable to commitments. The fine referred to in the previous sentence may be up to ten per cent (10%) of the aggregate turnover of the undertakings concerned (as calculated in Article 10). In fixing the amount of the fine the HCC shall consider the impact of the non-compliance on competition. The HCC may, by its decision, regard the fine as being forfeit, if the non-compliance of the undertakings in the concentration with the terms or conditions imposed is established. Where the undertakings in the concentration continue not to comply, the provisions of article 9 par. 4 (as described above) shall be applied.

-As per article 8 (par. 14) the HCC decisions issued on notified concentrations may be revoked where:

- a) they were issued on the basis of inaccurate and misleading information; or
- b) the undertakings concerned commit a breach of any term or obligation attached to the decision.

If a decision is revoked in the above cases, a new decision may be issued without a time limit.

- As provided in article 38 (par. 3), in the event of refusal, obstruction or delay in providing information requested from the HCC on in the event that **inaccurate or incomplete information** is provided, the HCC shall, without prejudice to criminal sanctions in accordance with Article 44:

- a) in the case of undertakings or associations of undertakings and their directors and employees or private individuals or private-law legal entities: impose a fine of EUR fifteen thousand (15,000), capped at 1% of turnover calculated in accordance with Article 10, on each person, for each infringement;
- b) in the case of civil servants or employees of public-law legal entities: file an official report, so that disciplinary action can be taken for the above infringements, which are a disciplinary offence.

In terms of criminal sanctions, according to article 44 (par.1) any person (in the capacity of article 25 par. 2c), acts in breach of Articles 5 to 10 shall be punished by a fine between EUR fifteen thousand (15,000) and one hundred and fifty thousand (150,000).

As per article 25 (par. 2c) liable for compliance with articles 5 to 10 of the Competition Act shall in the case of individual undertakings be the owners, in the case of civil and commercial companies and joint ventures, their managers and all the general partners and in the specific case of public limited companies, the members of the board of directors and those persons responsible for implementing the relevant decisions. Designating another person as liable for the infringement of competition rules is prohibited and invalid. The above natural persons shall be liable, by means of their personal assets, jointly and severally with the relevant legal staff, for payment of the sum. The Competition Commission may also impose on the above natural persons, following their hearing, a separate fine from two hundred thousand (200,000) Euros to two million (2,000,000) Euros where they demonstrably participated in preparatory acts, the organization or commission of the unlawful behavior of the undertaking. In determining the fine, particular account shall be taken of their position in the undertaking and the extent of their participation in the unlawful conduct.

B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(v)?	Please refer to answer 18A.
C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	The HCC imposes fines directly except for criminal sanctions for which the penal courts are competent.
D. Are there any recent or significant fining decisions?	No.

PART 5: POST-REVIEW MATTERS/JUDICIAL REVIEW

19. Ministerial intervention

A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No. Interested parties may appeal the decision only in court.
B. What are the grounds for such ministerial intervention? Other policy goals? Are they defined? What guidance is available regarding such grounds?	N/A
C. Describe the main elements of the ministerial intervention	N/A

process and procedures, and indicate any guidance available	
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20. Administrative and judicial processes/review

A. Describe the timetable for judicial and administrative review related to merger transactions.	According to article 30 of the Competition Act, the decisions of the HCC may be challenged on appeal to the Athens Administrative Court of appeal within sixty (60) days as from their notification.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	According to article 41 of the Competition Act, confidential information shall form part of the file submitted to the Athens Administrative Court of Appeal and the Council of State and shall remain confidential. The above information shall therefore be forwarded in a separate section of the administrative file marked 'confidential information'. The court registrar shall ensure that the parties cannot access the parts of the file that are confidential for them, unless access is deemed necessary for the defense of their overriding interest and the adjudicating court grants them respective permission, to the necessary extent, at their request.
C. Are there any limitations on the time during which an appeal may be filed?	Please refer to answer 20A.

21. Additional filings

A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	No.
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22. Closing deadlines

A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension	No. However, if the competitive conditions change materially following a decision and the parties have not yet implemented the merger, in practice the HCC may ask them to re-notify the transaction.
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of the deadline to close?

23. Post merger review of transactions

A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?

As aforementioned, according to article 8 (par. 14) the HCC decisions issued on notified concentrations may be revoked where:

- a) they were issued on the basis of inaccurate and misleading information; or
- b) the undertakings concerned commit a breach of any term or obligation attached to the decision.

If a decision is revoked in the above cases, a new decision may be issued without a time limit.