

GREECE¹

*Prepared by Gregory M. Pelecanos, Nancy G. Gerakini and Eva I. Garbi
Ballas, Pelecanos & Associates Law Offices*

AT A GLANCE

FILING REQUIREMENTS	TIMING	PENALTIES
<p><u>Pre-completion notification is mandatory if:</u></p> <p>Aggregate world-wide turnover of the parties is at least €150 million (US\$ 202.1 million) and</p> <p>The Greek turnover of each of at least two of the parties exceeds €15 million (US\$ 20.2 million)</p> <p><u>Fees:</u></p> <p>The Law requires a €1,050 (US\$ 1,415) filing fee.</p>	<p><u>Deadline for Filing:</u></p> <p>Pre-completion. Filing must be made within 10 working days of either (i) conclusion of a binding agreement, or (ii) announcement of a public bid, or (iii) acquisition of a controlling interest, whichever occurs first.</p> <p><u>Time for Decision:</u></p> <p><u>Preliminary investigation to establish the application of the merger control rules:</u> One month from receipt of notification.</p> <p><u>Preliminary investigation to approve the concentration:</u> one month from notification if there are no serious concerns that competition may be significantly affected.</p> <p><u>In-depth investigation:</u> if there are serious concerns that competition may be significantly affected, a decision must be reached within 90 days from notification, Where no decision is declared within the 90 day deadline, the concentration shall be considered approved.</p>	<p><u>Failure to notify:</u></p> <p>Fine of at least €15,000 (US\$ 20,215) imposed to each one of the parties required to file the pre-completion notification but not exceeding 7% of the aggregate turnover.</p> <p><u>Participating undertakings' failure to meet the terms and conditions set out by the Hellenic Competition Committee or failure to meet their own modifications to the concentration/commitments agreed (during the in-depth investigation):</u></p> <p>Fine not exceeding 10% of the aggregate turnover of the participating undertakings</p> <p><u>Completing prior to clearance:</u></p> <p>Fine of at least €30,000 (US\$40,430) but not exceeding 15% of the aggregate turnover.</p>

¹ Greek merger control law does not apply where the EC merger Regulation or the merger control provisions of the EEA Agreement apply - see European Union chapter.

FILING REQUIREMENTS	TIMING	PENALTIES
<p>Post-completion notification is mandatory if:</p> <ol style="list-style-type: none"> The market share of the products or services related to the concentration, represents in the national market or in a significant part thereof at least ten percent (10%) of the aggregate turnover achieved from products or services, which are regarded as similar by the consumers by reason of their characteristics, prices and intended use; <p>OR</p> <ol style="list-style-type: none"> The aggregate turnover of all the undertakings concerned in Greece is at least €15 million (US\$20.2 million). <p>Fees:</p> <p>The Law requires a €300 (US\$405) filing fee. Post-completion notification is not required if the transaction has been notified pre-completion to the Hellenic Competition Authority or the European Commission.</p>	<p>Upon notification of the in-depth investigation decision to the participating undertakings, the latter may collectively proceed with amending the concentration in order to minimise concerns that competition may be significantly affected. The above amendments and notification thereof may be filed within a deadline of 15 days from the notification of the in-depth investigation decision to the participating undertakings</p> <p>Extension of Deadlines:</p> <p>The above deadlines may be extended if:</p> <ol style="list-style-type: none"> the participating undertakings agree to it; the information contained in the notification form is incomplete and the parties concerned are notified within an exclusive deadline of seven days from notification of the concentration; if the notification is erroneous or misleading. <p>Suspension:</p> <p>Suspension of the transaction pending clearance.</p> <p>Deadline for Filing:</p> <p>Post-completion. Filing must be made within one month from completion.</p>	<p>Failure to notify:</p> <p>Fine of at least €3,000 (US\$ 4,043), imposed on each one of the parties required to file the post completion notification but not exceeding 5% of the aggregate turnover.</p>

OVERVIEW

Legislation and Regulations

Greek merger control is governed by Articles 4 to 4f of Law No. 703/1977 (the "Law"), as amended by Laws No. 1934/ 91, 2296/95, 2323/95, 2741/99, 2837/00, 3373/2005 and 3784/2009. The merger control provisions were added in 1995 (by Law No. 2296/95) and follow the pattern of the original 1989 EC Merger Regulation. One of the latest amendments (Law No. 3373/2005) was published on the 2nd of August 2005 and, *inter alia*, introduced the EC modernisation procedures; re-introduced the post-completion notification procedure (art. 4a L. 703/77) that had been abolished in the past by Law No. 2837/2000; abolished the requirement of "aggregate market share threshold" for pre-completion notification; and set specific deadlines for the approval of concentrations. Exceptions to the basic stipulations of Law No. 703/77 for Greek merger control were introduced by Law

No. 3592/2007 providing for the "Concentration and Clearance of Mass Media Undertakings and further Stipulations" (FEK A' 161/19.07.2007). It should be noted that article 11 of Law No. 3631/2008, providing for the "Establishment of a National Fund of Social Coherence and further Stipulations", has set merger control rules for the acquisition of voting rights for shares that exceed 20% of the share capital of undertakings of strategic importance, such as OTE. The latest amendments brought about by Law No. 3784/2009 (which is in effect as of the 7th of September 2009) have reduced the information required for the post-completion notification, have introduced the possibility for the participating parties to propose remedies eliminating the anti-competitive effects of the concentration during the in depth investigation and set the conditions under which the Hellenic Competition Committee may adopt interim measures to restore competition

Competition Agency or Authority

Merger notifications are submitted to the Hellenic Competition Committee (the "Committee").

Enforcement Practice Trends

The re-introduction of Article 4a (post-completion notification) has been justified as an attempt by the State to monitor market alterations attributed to mergers. Yet pursuant to the latest amendments of Law No. 3784/2009, the purpose lying behind post-completion notification is to exclusively cartograph the market, whereas it is clarified that the data comprising the notification are set restrictively by the law. The purpose of the foregoing type of notification is simply the reference and collection of data required by law and the filing of a copy of the executed agreement, if any. The Hellenic Competition Authority does not examine substantive competition issues or issue decisions.

Regarding pre-completion notification, the "aggregate market share" threshold is abolished, in favour of the turnover threshold, as it is considered "simple and clear". The Committee monitors mergers and acquisitions activity generally. It regularly sends to the parties of a merger a request to provide information and will impose fines for late filing, failure to file, or for closing a transaction prior to approval being obtained.

CRITERIA FOR REPORTABILITY

Types of Transaction Covered

Mergers are subject to control and to the notification requirements of the Law if they fulfil the following definitions, meet the jurisdictional thresholds and are reviewable according to the territorial scope provisions of the law.

The following transactions qualify as a concentration:

- two or more previously independent undertakings merge, by any means; or
- one or more persons who already control one or more undertakings acquire, directly or indirectly, control of the whole or part of one or more other undertakings. Such control may be accomplished by acquisition of shares in the capital, by purchase of assets, by agreement or by other means.

The Law specifies that control can derive from rights, agreements or other means, which, individually or in conjunction with other means and, taking into account the circumstances of each case, permit the exercise of decisive influence on the activities of the undertaking, and in particular from:

- rights of ownership or enjoyment in the whole or part of the undertaking's assets; or
- rights or agreements that permit the exercise of decisive influence on the composition, meetings or decisions of the organs of an undertaking.

Joint Ventures

The establishment of a joint venture, which permanently performs all the functions of an autonomous economic entity will be viewed as a concentration subject to the Law (Decisions 446/V/2009 and 447/2009). To the extent that the establishment of the joint venture entails co-ordination of activities of undertakings which remain independent, the co-ordination will be examined to ascertain whether conditions of exemption apply. The distinction between co-operative and concentrative joint ventures is abolished.

Minority Interests

The general position is that acquisition of a minority interest (less than 50% of the shares) in another company is not sufficient in itself to establish control. However acquisition of a minority interest when combined with other measures, such as a shareholders' agreement which would allow election of a Board which would result in control of the target company (Decision 117B/II/2000), or the acquisition of the majority of voting rights (Decision 425/V/2008) would be subject to the merger control rules.

Acquisition of a minority shareholding combined with a right to nominate board members which are less than half of the total board members coupled with a shareholders' agreement whereby certain decisions require increased majorities, in such a manner that a minority shareholder could either at the General Assembly or at the Board veto certain crucial decisions, results in control and would be subject to the merger control rules (Decisions 129/II/2000 and 183/III/2001).

Foreign Transactions

The provisions of the Law, including the merger notification requirements, apply to restrictions of competition that have an actual or potential effect on the Greek market. This applies even if these restrictions are the result of, *inter alia*, concentrations of undertakings that take place outside the Greek territory or between undertakings not established in Greece.

Public Takeovers

Law 3461/2006 sets out the rules for public takeovers. The law does not include specific merger control rules for public takeovers. Consequently, the standard rules apply. The Offeror must submit the notification of the Public Offer within the prescribed time period upon the event that control is obtained either through the public offer or through stock exchange transactions (art 4e, paragraph 2, Law 703/77), i.e. within ten (10) working days from publication of the Public Offer. On condition that the shares so acquired confer control of the target company, the Offeror may exercise the rights arising from the acquired shares only after the Competition Committee has given its approval. Until such approval is given, the Offeror may obtain a special permission from the Competition Committee by derogation in accordance with art 4e paragraph 2 and 3 Law 703/77 and exercise voting rights arising from the shares so acquired only to the extent that it is necessary to do so to protect the full value of the Offeror's investment.

Undertakings of strategic importance

According to article 11 of law No. 3631/2008, the Ministerial Committee of Denationalisation has to approve the acquisition of voting rights in the Societes Anonyme of strategic importance, which hold or used to hold a dominant position in the market, and especially for those companies owning or exploiting or administering national networks infrastructure. Such approval is required when the transaction involve the acquisition of shares exceeding 20% of the aggregate share capital from different shareholders than the Greek government or from their associated undertakings. The Ministerial Committee of Denationalisation's approval procedure is regulated by Law No. 3049/2002. The approval is granted as long as the public interest test is satisfied, which means that the acquirer(s) has to be committed to provide secure, constant, and unhampered services. On the other hand, the Minister of Finance has to approve any kind of corporate transformation that the undertakings considered of strategic importance incur. Corporate transformation includes, but it is not limited to: a) the merger with another company; b) the merger by establishing a new Societe Anonyme; and c) the separation in whichever way this can happen as well as secession of a branch or branches, which can put into danger the provision of services in a sector of strategic importance.

Excepted Transactions

Greek merger control law does not apply if the EC Merger Regulation or the merger control provisions of the EEA Agreement are applicable – see the European Union chapter, in particular the section on Threshold Exceptions which explains referral mechanisms in detail.

A concentration is deemed not to have occurred and, consequently, a notification is not required when:

- financial institutions or insurance companies whose usual activities include the trading of titles obtain the temporary right to participate in an undertaking for the purpose of further disposing of such right, provided that they do not exercise their right to vote with a purpose to influence the competitive behaviour of the undertaking or exercise their right to vote with the sole purpose to prepare the disposal of the whole or part of the undertaking, or of its assets or the rights to vote, and

on condition that such disposal takes place within one year from the date on which the institution or company obtained the said right; or

- portfolio investment companies obtain control of the whole or part of one or more undertakings, on condition that the acquired rights are exercised solely for the preservation of the value of the investments and not for determining the competitive behaviour of the undertakings under control.

According to the law, exemptions from the application of the Law may also be granted to public companies, utility companies, undertakings involved in the production, process or sale of agricultural, forestry and fisheries products, as well as to transport companies. Until the Ministers responsible for the relevant sectors grant such exemptions, the provisions of the Law remain fully applicable to such companies.

Filing Thresholds

Pre-completion notification is required where the participating undertakings' aggregate world-wide turnover is at least €150 million (US\$ 188,940,669.54), and at least two of the participating undertakings realise a turnover exceeding €15 million (US\$ 18,894,066.95) in Greece.

Post-completion notification is required in the following cases:

- where the market share of the products or services related to the concentration represents in the national market or in a significant part thereof at least ten percent (10%) of the aggregate turnover achieved from products or services, which are regarded as similar by the consumers by reason of their characteristics, prices and intended use; or
- where the aggregate turnover in the national market of all undertakings concerned amounts to at least €15 million (US\$ 18,894,066.95).

Threshold Exceptions

Pursuant to articles 4a par. 5 and 4b par.7 of law No. 703/1977 as amended by law No.3784/2009, following relevant suggestion by the plenum of the Hellenic Competition Committee, the Ministers of Finance and Development may issue a common decision modifying the minimum thresholds and criteria provided for pre-completion and post-completion notifications and/or limiting the application of pre-completion and post-completion provisions to certain fields of economy.

Calculation of Thresholds

The Committee generally follows the European Commission's guidelines and practice.

With reference to the calculation of turnover, Greek merger control law follows European Commission practice.

With reference to market share, the Committee has stated that in its opinion the validity of market shares as an indicator of possible anti-competitive effects is affected by globalisation of business activity and that more emphasis should be placed on barriers to entry. One party alone can meet the post-completion market share threshold and there does not have to be any overlap.

Market share is a rather static criterion of little use in particular in markets where there is technical innovation, low entry barriers and potential competition. Consequently the "market shares of the participating undertakings and the resulting topology of the market should not be overestimated".

MAKING A FILING

Voluntary or Mandatory

The Law now provides that mergers which meet the prescribed market share or turnover thresholds are subject to mandatory post or pre-merger notification, as the case may be.

Responsibility for Filing and Filing Fees

In cases of acquisition of control over the whole or part of one or more undertakings, the acquirer is obliged to notify the concentration. In cases of legal mergers or joint ventures both participating undertakings are responsible for filing.

The Law requires the payment of a €1,050 (US\$ 1,415) fee for the filing of pre-completion notification and the payment of a €300 (US\$405) fee for the filing of post-completion notification.

Timing of Filing

Law 3373/2005 re-introduced Article 4a, which provides for post-merger notification of concentrations within one month of their completion in cases where certain thresholds are met. According to Article 4b, pre-merger notification of concentrations should be filed within 10 days of the conclusion of the agreement, or of publication of the public offer, or of acquisition of a controlling interest in an undertaking, whichever is the earliest.

Pre-signing Contacts with the Authorities

Non-binding documents such as letters of intent or memoranda of understanding are not sufficient for a filing. The Committee considers that a preliminary agreement binding the parties to enter into a final agreement is necessary.

There is no formal mechanism for consulting with the Committee prior to filing, but generally speaking the Committee is open to informal discussion.

Information and Documents to be Submitted

Notifications must be made on a specific form supplied by the Committee. The notification forms must be accompanied by proof of payment of the filing fee or they will be considered inadmissible. The forms contain a considerable number of questions and requests for data.

Indicatively, the notifications must provide the following:

Notification of article 4a of law No. 703/1977: Post Completion

- detailed information on all the parties that participate in the concentration, including details of the appointed attorney(s) in Athens;
- detailed data for the concentration and the market (nature of the notified concentration, relevant markets of products and services, relevant geographical market, data concerning the relevant turnovers);
- complementary documents (documents evidencing the date the concentration was concluded, representation documents, and
- protestation provided by Greek Law 1599/1986.

Notification of article 4b of law No. 703/1977: Pre Completion

- a summary description of the concentration;
- detailed information on all the parties that participate in the concentration, including details of the appointed attorney(s) in Athens;
- detailed financial information on the concentration (i.e., sectors involved, products or services and geographical area concerned, financial information for the financial year preceding the concentration on each of the participating undertakings, main competitors of the participating undertakings);
- detailed information on all undertakings that belong to the same group and each of the participating undertakings;
- market share information in relation to the concerned products or services, details about relevant associations and unions and any other useful information can also be provided on a voluntary basis;
- complementary documents (copies of documents upon which the realisation of the concentration is based, representation documents, copies of the most recent annual reports & financial statements of the participating undertakings).

Short-form Notification

Short-form notification is possible when the parties consider that it is highly likely that the notified concentration cannot significantly affect competition and this can be supported with adequate proof. In case the Hellenic Competition Committee decides to proceed to a more detailed assessment of the case, participating undertakings should provide any supplementary information required thereof.

Penalties for Filing Violations

The Committee has the authority to impose a fine of at least €3,000 (US\$ 4,043), but not exceeding 5% of the aggregate turnover, where post-completion notification is required.

The Committee has the authority to impose a fine of at least €15,000 (US\$20,215), not exceeding 7% of the total turnover of the participating undertakings in cases of failure to notify, where pre-completion notification is required.

MERGER REVIEW PROCEDURES**Timing of Process (Pre-completion notification)**

Following the notification of the concentration by the participating parties:

If it is established that the concentration does not fall within the scope of the Law, the Chairman of the Committee must issue, within one month from the notification, a relevant act which shall be notified to the participating parties.

If it is established that the concentration does not raise serious concerns that competition may be significantly impeded, the Committee, within one month from the notification, shall proceed to the issuance of a decision that will approve the concentration.

If it is established that the concentration falls within art. 4b of L. 703/77 and there are serious concerns that competition may be significantly impeded, the Chairman must refer the case to the Committee for further investigation issuing prior to that a relevant decision (within one month from the notification) ordering the in-depth investigation of the case. Participating undertakings are promptly informed thereof. Upon notification of the in-depth investigation decision to the participating undertakings, the latter may collectively proceed with amending the concentration in order to minimise concerns regarding significant restriction of competition. The above amendments and notification thereof may be filed within a deadline of 15 days starting from the notification of the in-depth investigation decision to the participating undertakings.

The case must be brought before the competition Committee within forty-five (45) days from the date of notification. In exceptional cases relating to the nature of the specific notification, if the Chairman of the Committee decides that the 45 day deadline cannot be met, he shall extend this deadline for no more than 14 days, and shall notify the parties concerned, at least seven days prior to the expiry of the abovementioned deadline. The Committee must, within 90 days from notification, either authorise the concentration or prohibit it, depending on whether it considers that the concentration significantly restricts competition.

Decisions issued within the above deadlines shall cover restrictions linked directly to the completion of the concentration, which are considered necessary thereof.

The Competition Committee may approve the concentration under conditions and obligations imposed by the Committee itself, in order to ensure that the concentration does not significantly restrict competition.

Law 3373/2005 has introduced a system whereby if, within ninety days from notification, the Committee does not express a view that a merger should be prohibited, then the merger is deemed approved. This deadline may be extended if: (a) the participating undertakings agree to it; (b) the information contained in the notification form is incomplete, as this may prevent the Competition Committee from making an appraisal of the notified concentration. This must be notified to the parties concerned within an exclusive deadline of seven days from notification of the concentration; (c) if the notification is erroneous or misleading, as this may prevent the Competition Committee from making an appraisal of the notified concentration.

Expedited Review

According to Article 4d, paragraph 2, in cases where a concentration falls outside the scope of the law, the Chairman must issue a relevant act within one month from notification, stating that the concentration falls outside the ambit of art. 4b L. 7033/77.

According to Article 4d, paragraph 3, in cases where a concentration does not raise serious concerns that competition may be significantly affected, the Committee must issue a decision within one month from notification, approving the notified concentration. This deadline may be extended if: (a) the participating undertakings agree to it; (b) the information contained in the notification form is incomplete, as this may prevent the Competition Committee from making an appraisal of the notified concentration. This must be notified to the parties concerned within an exclusive deadline of seven days from notification of the concentration; (c) if the notification is erroneous or misleading, as this may prevent the Competition Committee from making an appraisal of the notified concentration.

Suspension Obligation

Regarding pre-completion notification, a concentration may not be put into effect until a decision is taken, although it is possible to apply for a derogation from the suspension obligation (Art. 4e par. 3 L. 703/77). Art. 4e para.3 Law 703/77 provides for the petition of an early completion in order "to avoid serious damage to one or more undertakings to which a concentration relates, or to a third party."

Substantive Review

The substantive test for approval is whether it is possible that "the concentration under review significantly limits competition in any relevant market or causes the danger of creating or strengthening a dominant position".

Penalties for Procedural Infringements

Where a concentration was put into effect without a prior positive decision of the Committee, a fine of at least €30,000 (US\$ 430) but not exceeding 15% of the total turnover of the participating undertakings can be imposed.

In addition, in case the concentration has taken place in violation of the decision and provisions that prohibit the completion of the concentration, the Competition Committee may order the separation of the participating undertakings especially by dissolution of the concentration, or the distribution of all stocks or assets acquired, in order to restore the conditions before the realisation of the concentration. Should the participating undertakings not comply with that decision, the Committee may impose a fine of up to 15% of the total turnover of the participating undertakings and a penalty payment of up to €10,000 (US\$ 13,477) for each day of non-compliance.

Finally, if participating undertakings fail to meet the terms and conditions set out by the Hellenic Competition Committee or fail to meet their amendments to the concentration (in order to minimize concerns that competition is impeded, as mentioned above) the Hellenic Competition Committee may impose a fine. That fine cannot exceed 10% of the aggregate turnover of the participating undertakings

Appeals

Negative decisions may be appealed by the participating undertakings or interested parties before the Ministers of National Economy, Economics and Commerce within one (1) month from the notification of the decision to the parties concerned. A joint ministerial decision must be adopted within two months from the appeal. The absence of a decision within that period is considered a rejection of the appeal.

The decisions of the Competition Committee and of the Ministers of National Economy, Economics and Commerce are subject to appeal before the Administrative Court of Appeals (Dioikitiko Efetio) of Athens. The appeal may be filed within 60 days of the notification of the decisions to its recipients and has no suspensive effect, although the Chairman of the Court may decide otherwise upon request of the interested parties. The judgments of the Administrative Court of Appeals are subject to further appeal before the Greek Supreme Administrative Court (Synvoulion Epikrateias).

For the submission of an appeal against a decision of the Competition Committee to fine a participating undertaking, the Law requires the payment of a fee of at least 20% of the fine imposed, but not exceeding €100,000 (US\$ 134,765)

Interim Measures

The Competition Committee may adopt interim measures for the establishment or maintenance of circumstances of effective competition in case it considers that a concentration has been early implemented or has been implemented in breach of a condition imposed by the Committee.

Confidentiality

Confidentiality is dealt with in Art 27 of Law 703/77. In general, information collected in the course of a merger review can be used only for the purpose of the review. All Committee employees are obligated to keep in confidence any business secrets that come to their attention, whether related to the application of the law or not. If the information is relevant to the case, they are obliged to maintain confidentiality, but inform the Chairman of the Committee. If the information is included in the official case file which is submitted by the Committee to the Courts in the event of legal challenges to the Committee's decisions, then the information ceases being deemed a business secret.

The preconditions, extent, exceptions, time and access procedure to the official case file of the undertakings against which procedure before the Competition Committee has started and of the natural and legal entities who filed a complaint. The procedure of using and publishing the abovementioned confidential data by the Competition General Directorate and any other necessary detail, are subject to the regulatory framework of the Committee's Operation and Administration Rules and not to the general provisions regarding the right to access public documents. Law 3373/2005 as amended by law No. 3784/2009 extends confidentiality to any sub-contractor appointed to carry out research on the Committee's behalf, or any participant to a work group established by the Committee as well as to any lawyer of the legal department of the Hellenic Competition Committee and to any of their agents, where a confidentiality clause exists in the corresponding sub-contracting agreement.

Confidentiality is also dealt with in the Committee's Operation and Administration Rules (Joint Ministerial Decision KYA8275/29.12.2006).

According to the Ministerial Decision:

- Natural or legal entities filing information during the merger review process or from which information is collected, have to file with the Competition General Directorate a justified application specifying this information, documents and parts thereof including confidential information and produce them in a separate non confidential version. If not, the information, documents and parts thereof are not considered confidential.
- The Competition General Directorate accepts temporarily the abovementioned applications to the extent they are considered adequately justified, otherwise it notifies its disapproval to the applicant undertaking. The Competition General Directorate may revoke the above temporary approval in part or in total. In both the above cases the Competition General Directorate notifies in written its intention to reveal the information and sets a deadline for the applicant undertaking to present on paper its opinion. If a disagreement continues to exist, the Chairman of the Committee is entitled to provide final decision regarding the nature of the information or document.
- Information relating to the case under review that is collected by the Competition General Directorate constitutes part of the official case file.
- Persons against which charges have been pressed or that have notified the concentration are entitled to access the non-confidential information of the official file following service of the subpoena pursuant to article 8 par. 14 of law No. 703/1977, or following relevant decision of the Chairman of the Committee.
- Natural or legal entities that have pressed charges are entitled to access non-confidential information following service of the subpoena.
- Third parties are not allowed access to case files.

To our knowledge there are no particular agreements with other countries or authorities regulating inter alia the passing on of information of such a nature.

REFORM

Reform measures have recently been introduced by law No.3784/2009 in order to harmonise Greek with Community Competition Law, to reduce the Committee's workload in order to concentrate on more significant infringements of competition law and expedite process by the Committee. Indicatively, Law 3784/2009 introduced amendments in relation to:

a) The structure of the Competition Committee and its members. The members of the Competition Committee are reduced to nine (9) regular and five (5) substitutes, whose service term is three years and only once renewable. Competition Committee's members are not allowed to occupy any position in the public sector incompatible to a Commission's member duties. Merger control cases are allocated to one of the Rapporteurs. Exceptionally, in case the notified concentration does not raise serious concerns that competition may be significantly affected (article 4d par.3 Law No. 703/1977) it is the Chairman of the Committee who takes over the rapporteur's role. Merger cases are brought before a three-member committee except from cases of great importance that are brought directly before the Committee's plenum.

GREECE

**MERGER CONTROL PROVISIONS OF LAW 703/1977
as amended by Law 3373/2005 and Law 3789/2005**

Article 4. Concentration of undertakings

1. The concentration of undertakings does not, in itself, fall within the prohibitions of Article 1 paragraph 1 and Article 2 of the present Law.
2. A concentration takes place:
 - (a) when two or more previously independent undertakings merge, by any means,
 - (b) when one or more persons who already control one or more undertakings acquire, directly or indirectly, by participation in the capital, purchase of assets, agreement or other means, control over the whole or part of one or more undertakings.

However, article 3, paragraphs 1, 2, 3, 8 and 12 of the law No. 3592/2007, providing for the concentration of **Mass Media Undertakings**, stipulates that:

"1. A concentration with control in the market is defined by the extent mass media influence the public in relation to the ownership or participation in the same or different forms of mass media (television, radio, press and magazines) in the relevant market or in certain sectors of the relevant markets where mass media operate (television, radio, press and magazines).

2. The decision on whether or not a concentration of control in the mass media sphere exists is taken according to the stipulations of the present law and additionally according to the provisions of Law No.703/77 on the restrictions of competition law, as amended.

3. A concentration of control defines the notion of dominant position in the market as follows: a) when a natural or legal entity operates in one or more mass media of the same nature, either by acquiring over thirty five per cent (35%) market share in the relevant market of each medium (television, radio, newspapers and magazines). b) when the natural or legal entity operates in two or more mass media of different nature: ba) either by acquiring over thirty five per cent (35%) market share in the relevant market of each medium, bb) either by acquiring: i) over thirty two per cent (32%) market share in the aggregate of both markets, when it operates in two different mass media of the same range, ii) over twenty eight per cent (28%) market share in the aggregate of three markets, when it operates in three different mass media of the same range and iii) over twenty five per cent (25%) market share in the aggregate of four markets, when it operates in four different mass media of the same range....

8. The abovementioned apply to the case of associated undertakings pursuant to the stipulation of article 42e of Law 2190/1920 (FEK 37A'), as amended by law No. 3604/2007 (FEK A' 189A'/8.8.2007).

9. The threshold of the concentration of control is estimated in total for each of the mass media undertakings and their shareholders and associates, pursuant to the stipulation of par. 3 of article 5 and their parenthetical persons, pursuant to par. 9 of article 2 of the law No. 3310/2005 (FEK 30A'), as amended....

12. The stipulations of this article (3 of law No. 3592/2007) apply also for the provision of radio and television services through wide-broadcast networks for which a certain frequency is required, which has already been provided for the broadcast of radio-television signal or through wide area networks for the operation of which a frequency is not required or actually a different frequency from those already provided for the radio-television signal is required".

3. For the application of the present Law, control derives from rights, agreements or other means, which, individually or in conjunction with other means and taking into account the relevant legal and factual circumstances of each case, permit the exercise of decisive influence on the activities of an undertaking, and in particular from:
 - rights of ownership or enjoyment of the whole or part of the undertaking's assets, or

- rights or agreements that permit the exercise of decisive influence on the composition, meetings or decisions of the bodies of an undertaking.
4. Control is acquired by the person, persons or undertakings who:
- (a) are the holders of these rights, or the beneficiaries of these agreements, or
 - (b) are entitled to exercise the rights resulting from these agreements, without being the holders of such rights or the beneficiaries of such agreements.
5. The establishment of a joint undertaking, which permanently accomplishes the functions of an autonomous economic entity, constitutes a concentration within the meaning of this Article. To the extent that the establishment of a joint undertaking has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination will be appraised in accordance with the criteria of Article 1 (1) and (3). In making this appraisal the Committee shall take into account in particular: 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 neighbouring market closely related to this market (b) whether this coordination which is the direct consequence of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of their markets.
6. A concentration is deemed not to take place when:
- (a) Financial, or credit institutions, or insurance companies, whose usual activities include the trading of securities, on their behalf or on behalf of third persons, acquire the temporary right to participate in an undertaking with the purpose of further disposing of such right, provided that they do not exercise their right to vote with a purpose of influencing the competitive behaviour of the undertaking or they exercise their right to vote with the sole purpose to prepare the disposal of the whole or part of the undertaking, of its assets or the rights to vote, and on condition that such disposal takes place within one year from the date on which the institution or company obtained the said right. This deadline may be extended for a reasonable period of time by the Competition Committee, when the said institutions or companies justify that the disposal within the original deadline was not reasonably possible,
 - (b) the acts of paragraph 2 (b) are carried out by portfolio investment companies on condition that they exercise these rights, in particular by appointing the members of the executive or surveillance board of the undertakings, where they acquire rights of participation, for the preservation of the value of the investments and not for determining, directly or indirectly, the competitive behaviour of the undertakings under control.

Article 4a Notification of concentration of undertakings

1. Every concentration of undertakings must be notified to the Competition Committee within one month from completion where: a) the market share of the products or services related to the concentration, as specified in article 4f, represents in the national market or in a significant part thereof, in relation to the characteristics of the products or services, at least ten percent (10%) of the aggregate turnover achieved from products or services, which are regarded as similar by the consumers by reason of their characteristics, prices and intended use or (b) the combined aggregate turnover in the national market, as specified in Article 4f, of all undertakings concerned amounts at least up to fifteen million (15,000,000) euro.

As an exception to the abovementioned, article 3, paragraph 7, point a (b') and (d') of law No. 3592/2007 determines that:

"(...) for the purposes of the present paragraph the amount mentioned in article 4(a) par.1 section b' of law No. 703/77, as amended, respecting the aggregate turnover of all undertakings participating in the concentration drops to five hundred thousand (500.000) Euros....The abovementioned amount may be readjusted following a common decision of the Minister of Development and the Minister each time entrusted with the powers of the Minister of Press and Mass Media".

2. The following are required to notify:

- (a) each of the participating undertakings, in the event that the concentration constitutes the object of an agreement between the participating undertakings,
- (b) the persons, undertakings or groups of persons or undertakings that acquire control of the whole or part of one or more undertakings, in all other cases.

3. By decision of the Competition Committee any issue relevant to the notification, which anyways consists exclusively of information regarding the identity of the participating undertakings, the time when the concentration was concluded, the relevant markets and the annual turnovers pursuant to par. 1 of the present article, shall be determined.

4. In case of intentional violation of the obligation to notify, the Competition Committee shall impose on each of the parties required to notify a fine of at least three thousand (3,000) euro, which may not exceed five percent (5%) of the aggregate turnover, as set in Article 4f.

5. Following relevant suggestion by the plenum of the Hellenic Competition Committee, the Ministers of Finance and Development may issue a common decision modifying the minimum thresholds and criteria provided in paragraph 1 of the present article, or limiting the application of the present article to specific fields of economy. Competition Committee's suggestion is based on statistics accumulated every three years by the Committee regarding the application of the present article and the situation of competition during the last three years.

Article 4b. Pre-completion notification of concentration of undertakings

1. Every concentration of undertakings must be notified to the Competition Committee within ten (10) working days from the conclusion of the agreement, or from the publication of the bid, or exchange, or of the acquisition of participation that ensures control of the undertaking, in cases where the combined aggregate world-wide turnover of all undertakings concerned, as specified in Article 4f, amounts at least up to one hundred fifty million (150,000,000) euro and the aggregate turnover of each of at least two of the undertakings concerned is more than fifteen million (15,000,000) euro in the Greek market.

In what concerns the in-depth investigation of concentrations of Mass Media Undertakings, article 3, paragraph 7, point a (c') and (d') of law No. 3592/2007 provides that:

"(...) for the purposes of the present paragraph the amounts mentioned in article 4(b) par.1 of law No. 703/77, as amended, respecting the aggregate turnover of all undertakings participating in the concentration drops to five million (5,000,000) Euros in the national market and fifty million (50,000,000) Euros in the global market respectively. The abovementioned amounts may be readjusted following a common decision of the Minister of Development and the Minister each time entrusted with the powers of the Minister of Press and Mass Media".

2. The deadline of ten (10) days begins from the realization of the first of the acts, referred to in the previous paragraph.

3. The following are required to notify:

- (a) each of the participating undertakings, in the event that the concentration constitutes the object of an agreement between the participating undertakings,
- (b) the persons, undertakings or groups of persons or undertakings that acquire control of the whole or part of one or more undertakings, in all other cases.

4. In case of violation of the obligation to notify, the Competition Committee shall impose a fine of at least 15,000 euro not exceeding seven per cent (7%) of the aggregate turnover of the participating parties, as defined in Article 4f.
5. The detailed content of the notification and any other issue relating to it shall be determined by decision of the Competition Committee.
6. The parties that are required to notify shall at their own expense publish, immediately after the notification, their concentration in a daily financial newspaper, circulated in the entire Greek territory. The published text is directly served to the Competition Committee and published in the Competition Committee's webpage. Anyone bearing an interest may comment or provide information regarding the notified concentration. The Competition Committee takes into consideration the vested interest of the participating undertakings for maintaining confidentiality. The detailed content of the publication and any other issue relating to it shall be determined by decision of the Competition Committee.
7. Following relevant suggestion by the plenum of the Hellenic Competition Committee, the Ministers of Finance and Development may issue a common decision modifying the minimum thresholds and criteria provided in paragraph 1 of the present article, or limiting the application of the present article to specific fields of economy. Competition Committee's suggestion is based on statistics accumulated every three years by the Committee regarding the application of the present article and the situation of competition during the last three years.

Article 4c. Control of concentrations

1. By decision of the Competition Committee, all concentrations that are subject to pre-completion notification and that may substantially restrict competition on the national market or in an important in connection to the characteristics of the products and services part thereof, particularly by the creation or re-enforcement of a dominant position, are prohibited. By decision of the Competition Committee any concentration of undertakings falling within the ambit of par. 5 of article 4 is also prohibited, if it involves provisions regulated by par.1 of article 1 of the present law (No. 703/1977), without meeting the preconditions set by par. 3 of article 1 thereto.

On the contrary, Article 3, paragraph 7, point a (a) of the law No. 3592/2007, providing for the concentration of **Mass Media Undertakings**, stipulates that:

"Concentration of undertakings is prohibited either in case, where pursuant to the above one or more of the participating to the concentration undertakings has already a dominant position in the market or gains a dominant position in the market as a result of the concentration" Moreover, article 5 of the same law provides among others that "9. In no case acquisition of mass media is permissible (television, radio, press, magazines), when such an acquisition exceeds the threshold of the concentration in the market set out by article 3 of the present law".

2. For the purpose of assessing whether a concentration might substantially restrict competition within the meaning of paragraph 1 of the present Article, the following should be taken particularly into account: the structure of all relevant markets, the actual or potential competition from undertakings established in or outside Greece, the existence of legal or factual obstacles to the access to the market, the position of the interested undertakings on the market and their financial and economic strength, the possibilities of the undertakings or of other competitive or potentially competitive undertakings to select the suppliers and users, their access to sources of supply or to markets for the sale of their products, the development of supply and demand of the relevant products or services, the interests of the intermediary and final consumers and the contribution to the technical and economic evolution, on condition that this evolution is beneficial to the consumers and does not constitute an obstacle to competition. The assessment of whether there is coordination or not, contravening to par. 1 of article 1, without falling within the meaning of par. 3 of article 1 of the present law, between undertakings participating to the concentration pursuant to par. 5 of article 4 is based on the criteria of the same par. 5.
3. A concentration that was prohibited by the Competition Committee on the basis of paragraph 1, may be approved by reasoned decision of the Ministers of National Economy and Economics and Development, on the basis of Article 4d paragraph 9, when the concentration presents more general economic advantages, which counter-balance the restriction on competition that will take place or when it is considered necessary for the

service of a superior public interest, in particular when it contributes to the modernization and rationalization of the production and economy, the attraction of investment, the re-enforcement of the competitiveness in the European and international market, the creation of employment.

Article 4d. Procedure of preventive control of concentrations

1. The Competition Committee shall examine the concentration as soon as the relevant pre-completion notification has been filed.
2. If it is established that the notified concentration does not fall within the scope of application of Article 4b paragraph 1, the Chairman of the Competition Committee shall adopt, within one (1) month from notification, a relevant act, which should be notified to the persons or undertakings that proceeded to the notification. This act shall not limit the implementation of the provisions of Articles 1, 2, 2a, and 5 of this Law thereof.
3. If it is established that the notified concentration despite falling within the scope of application of Article 4b paragraph 1, does not create serious concerns that it may significantly affect competition in all relevant markets concerned, the Competition Committee shall adopt, within one (1) month from the date of notification, a decision allowing the concentration.
4. If it is established that the notified concentration falls within the ambit of this Law, and creates serious concerns regarding its conformity with the requirements for the operation of competition in the relevant markets concerned, the Head of the Competition Committee, shall adopt within one (1) month from notification, a decision initiating the procedure of in-depth investigation of the notified concentration, which should be promptly notified to the undertakings concerned. Upon notification of the initiation of the in-depth investigation procedure to the participating undertakings, they may altogether proceed to modifying the concentration in order to avoid raising serious doubts as to its compatibility to the operation expectations of competition within the markets the concentration concerns and to notify those modifications to the Competition Committee. The amendments and notification thereof may take place within fifteen (15) days following the participating undertakings' notification.
5. Without prejudice to the provisions of paragraphs 2 and 3, the case is brought before the Competition Committee, within forty-five (45) days from the date of notification. In exceptional cases, relating to the nature of the specific notification, if the Chairman of the Committee, ascertains that the forty-five (45) days deadline cannot be met, he shall extend this deadline for no more than fourteen (14) days, and shall respectively notify the parties concerned, at least seven (7) days prior to the expiry of the abovementioned deadline.
6. By decision of the Competition Committee, to be adopted within ninety (90) days from notification of the concentration, where the requirements of Article 4c, paragraph 1 are not fulfilled, the concentration will be prohibited. In any other case the Competition Committee will allow the concentration. In case that no decision prohibiting the realization of the concentration is adopted within the ninety (90) days deadline, the concentration shall be considered to be approved by the Competition Committee, which is then obliged to adopt a relevant certifying act.
7. The decisions adopted in accordance with paragraphs 3 and 6 above, also cover the restrictions that are directly related with the concentration and are necessary for its implementation.
8. The Competition Committee may approve the concentration, in accordance with paragraph 6, under conditions and obligations imposed by the Committee itself, in order to ensure that the undertakings concerned will comply with art. 4c par. 1 or to ensure compliance of the participating undertakings regarding concentration modifications incurred by them. The Competition Committee may by the decision above impose against the participating undertakings a fine, in case they fail to meet the terms and conditions set out by the Hellenic Competition Commission or their own modifications to the concentration. The said fine cannot exceed 10% of the aggregate turnover of the participating undertakings, as it is defined in article 4f. The Competition Committee may by issuing a decision consider that the fine has actually been imposed, if non-compliance of the participating undertakings to the terms and conditions set or to their own modifications regarding the concentration is ensured. In case the participating undertakings continue not to comply, par. 4 of article 4e of the present law are applicable.
9. The Ministers of National Economy and Commerce may approve the concentration on the basis of Article 4c paragraph 3, upon request by the interested persons or participating undertakings submitted within one (1) month from the notification of the decision of the Competition Committee prohibiting realization of

the concentration. The decision of the Ministers of National Economy and Commerce should be adopted within two (2) months from the submission of the request and may set conditions and impose obligations to ensure effective competition, or the realization of economic or other advantages which will counter-balance the negative effects on competition. If no decision is adopted within these two months, the request should be considered as rejected.

10. The deadlines of paragraphs 3, and 6 of the present Article may be extended in the following cases:
- (a) if the participating undertakings agree to it;
 - (b) if the information contained in the notification form is incomplete, with the consequence that the Competition Committee cannot proceed to evaluation of the notified concentration and on proviso that the parties concerned are respectively notified within an exclusive deadline of seven (7) days from notification of the concentration
 - (c) if the notification is erroneous or misleading, with the consequence that the Competition Committee cannot proceed with the evaluation of the notified concentration

In the cases referred to under points (b) and (c) above, the date of the correct notification or of the assembly of full and accurate information by the competent competition authority shall be considered as the point from which the deadlines begin to run.

11. In cases where a decision adopted pursuant to the provisions of the present Article is totally or partially annulled by judicial decision, the deadlines of paragraphs 3, and 6, of the present Article, begin to run again, from the date of notification of the decision to the competent authority.

12. The decisions taken pursuant to paragraphs 2, 3 and 6 of the present Article may be revoked by the institution which adopted them in the following cases:

- (a) if their adoption was based on inaccurate or misleading information,
- (b) if the participating undertakings violated one of the conditions and obligations that are imposed by the decision.

In the event that a decision is revoked pursuant to the previous paragraph, the adoption of a new decision should not be subject to the deadlines of the present Article.

Article 4e. Suspension of the realization of a concentration

1. Without prejudice to the provisions of paragraphs 2 and 3 of the present Article, the realization of a concentration shall be prohibited until one of the decisions provided for in Article 4d paragraphs 2, 3, and 6, has been adopted. The above-mentioned prohibition also applies to concentrations which were not notified, although required, pursuant to Article 4b paragraph 1. In case of intentional violation of this prohibition, the Competition Committee shall impose on the parties that are required to notify, pursuant to paragraph 3 of article 4b, a fine of at least thirty thousand (30,000) euro but not exceeding fifteen per cent (15%) of the total turnover, as defined in Article 4f.

2. The provisions of the previous paragraphs do not constitute an obstacle to the realization of a public bid of sale or exchange, or to the acquisition, in the context of financial transactions, of a participation that ensures the control of an undertaking, provided that these acts have already been notified to the competent competition authority within the deadline provided for in Article 4b paragraph 1 and on condition that the acquirer does not exercise the rights of vote related to the said titles or exercises them exclusively in order to maintain the full value of its investment and on the basis of special permission granted by the Competition Committee pursuant to paragraph 3 of the present Article.

3. The Competition Committee may, upon request, allow a deviation from the obligations referred to in paragraphs 1 and 2 of the present Article in order to prevent one or more participating undertakings or a third person from suffering serious prejudice. The decision allowing the deviation may impose conditions and obligations destined to ensure effective competition and to prevent situations that could hinder the execution of a potential prohibiting decision. The deviation permission can be requested and provided at any time

either before the notification or after the transaction. The Competition Committee may revoke authorizations allowing such deviation, when one of the reasons referred to in Article 4d paragraph 12 exists.

4. In the event that the concentration has already been put into effect in violation of the provisions or decisions that prohibit its realization, the Competition Committee may request by decision pursuant to Article 4d paragraph 6 or by separate decision, without any deadline, the separation of the participating undertakings especially by dissolution of the concentration, or the distribution of all stocks or assets acquired, in order to restore conditions before the realization of the concentration.

In case of non-compliance with the above-mentioned decision, the Competition Committee shall impose a fine of up to fifteen per cent (15%) of the aggregate turnover of the participating undertakings, pursuant to Article 4f, and a penalty of up to ten thousand (10,000) euro for every day of non-compliance to the decision.

5. The Competition Committee may take interim measures for the establishment or maintenance of circumstances of effective competition in case a concentration:

- (a) Has been completed in breach of par. 1 of the present article and decision has not been yet taken according to par. 1 of article 4c;
- (b) Has been completed in breach of a term or condition that has been imposed to the participating undertakings by the decision provided in par. 6 of article 4d;
- (c) Has been completed in breach of par. 1 of the present article although by decision provided in par. 1 of article 4c, it has been decided that it seriously limits competition within the national market or within an important in connection to the products or the services part thereof, particularly by the creation or re-enforcement of a dominant position.

6. The validity of transactions that take place in violation of paragraph 1 of the present Article depends on the decision that is adopted pursuant to Article 4d paragraphs 2, 3 and 6 or pursuant to paragraphs 4 or 5 of the present Article. In any event, the decision by the Ministers of National Economy, Economics and Development authorizing a concentration shall prevail.

7. The present Article shall not affect the validity of financial transactions concerning securities, including securities that can be converted, unless the buyers and sellers knew or were required to know that the relevant transaction was taking place in violation of paragraph 1 of the present Article.

Article 4f. Calculation of market share and turnover

1. The market share referred to in Article 4a paragraph 1, corresponds to the aggregate of the market shares of all the participating undertakings in the national market, or in the part thereof concerning the concentration.

2. The aggregate turnover referred to in Article 4a (paragraphs 1(b) and 4), Article 4b, paragraphs 1 and 4, and Article 4e (paragraphs 1(3) and 4(2)), includes the amounts derived by the undertakings concerned in the preceding financial year from the sale in the national market or world-wide market, as the case may be, of products and services falling within their ordinary activities after deduction of sales rebates, VAT and other taxes directly related to turnover.

The overall turnover of a participating undertaking does not include transactions between the undertakings referred to in paragraph 5 of the present article.

3. As an exception to the above paragraph, when the concentration takes place by acquisition of parts of one or more undertakings, regardless of whether these parts have legal personality or not, only the turnover and market share that correspond to the acquired part shall be taken into account, as regards the transferring party. Two or more acts, pursuant to the previous paragraph, that take place during a two-year period between the same persons or undertakings are considered as a single concentration that takes place at the date of the last acts.

4. [Subparagraph 4 of Article 4f provides for special rules for calculating turnover of credit institutions and insurance companies.]

5. Unless otherwise provided in paragraph 3, the turnover and market share of a participating undertaking pursuant to Article 4a paragraphs 1(b) and 4, Article 4b paragraphs 1 and 4, and Article 4e paragraphs 1(3) and

4(2), shall be constituted by the aggregate turnover and market share of the participating undertaking [and affiliated undertakings as defined in subparagraph 5.]

6. When participating undertakings jointly hold the rights or possibilities of influence referred to in paragraph 5(b), for the purposes of the calculation of the turnover of the participating undertakings within the meaning of Article 4a paragraphs 1(b) and 4, Article 4b paragraphs 1 and 4, and Article 4e paragraphs 1(3) and 4(2), it is required that:

- (a) the turnover from the sales or products or provisions of services between the joint undertaking and each of the participating undertakings or any other undertaking that is related to them within the meaning of paragraph 5 points (b) to (e), be not taken into account;
- (b) the turnover from the sales of products or provisions of services between the joint undertaking and all third undertakings, be taken into account. The said turnover shall be equally attributed between the participating undertakings.